

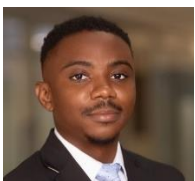
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# The Nigerian Startup Act - Putting the Startup and Engagement Portal to Work

## Introduction

In November 2023, the Minister of Communications, Innovations and Digital Economy, Dr. Bosun Tijani, announced the launch of the startup support and engagement portal (the “Portal”). The Portal is a creation of the Nigeria Startup Act (the “Act”) which was signed into law in October 2022 by former President Muhammadu Buhari.<sup>1</sup> Primarily, the Portal is to facilitate the labelling of Nigerian startups and the registration of key players in the Nigerian startup space, including venture capitalists, angel investors, accelerators, incubators and innovation hubs and civil society organisations.

The launch of the Portal is a pivotal step towards the effective implementation of the Act. Consequently, it prompts a detailed examination of the Act itself, focusing on its objectives and how its provisions can be optimally executed to support startups in Nigeria. In this article, we will assess the progress made in achieving the Act's goals since its enactment and explore the implications of the Portal's establishment for Nigerian startups and the entire ecosystem.

## The Nigeria Startup Act: The Journey So Far

The enactment of the Act was a culmination of several months of engagement between players in the tech startup ecosystem, key regulators, including the Ministry of Communications, Innovations and Digital Economy (headed then by former Minister of Communication Prof. Isa Ali Ibrahim Pantami), and the Presidency. The Act was well-received, with various stakeholders expressing high hopes and expectations from the enactment.<sup>2</sup>

However, since the enactment of the Act, there has been limited progress in terms of implementation. Notably, it took nearly six months for the National Council on Digital Innovation and Entrepreneurship (the “Council”) to be established. The Council, consisting of 14 members, was inaugurated by former Nigerian President Muhammadu Buhari in April 2023, marking the beginning of the Act's implementation process. However, since its inception, there has been little communication about the Council's activities.

<sup>1</sup> Read our highlights of the key provisions of the Act [here](#).

<sup>2</sup> The Act has the objective of providing a legal and institutional framework for the development of startups in Nigeria, providing an enabling environment for the establishment, development and operation of startups in Nigeria and positioning Nigeria's startup ecosystem as the leading digital technology center in Africa, having excellent innovators with cutting-edge skills and exportable capacity (section 1 of the Act).

Relatedly, in August 2023, the National Information Technology Development Agency ("**NITDA**"), the secretariat of the Council, organized a Digital Policy Dialogue session with relevant stakeholders from the tech ecosystem. The objective was to gather ideas for effectively implementing the Act. Held in Lagos, the session aimed to create a platform where inclusive and valuable insights could be gathered to develop a practical framework for the implementation of the Act.

The recent launch of the Portal is the latest step taken towards implementing the Act. In subsequent parts of this article, we will carefully analyze the significance of its establishment.

Additionally, while not directly related to the implementation of the Act, it is noteworthy that the Nigerian Exchange Limited ("**NGX**" or the "**Exchange**"), on 15 December 2022, announced the SEC's approval of the Rules for Listing on the NGX Technology Board (the "**Rules**"). The NGX Technology Board (the "**Board**") is a special platform for technology-focused companies to list and raise capital on the Exchange. The Rules contain exhaustive details on the admission of technology companies to the Board, listing criteria, disclosure requirements, and notification obligations for issuers, sponsors, investors, and advisers. At the moment, no specific date has been announced for when the Rules will become operational.

## The Startup Portal

Essentially, the Portal facilitates the labelling of Nigerian Startups and the registration of Venture Capitalists, Angel Investors, Accelerators, Incubators & Innovation Hubs and Civil Society Organisations involved in the advancement of the startup ecosystem in Nigeria.<sup>3</sup> It is likewise supposed to provide, amongst other things, a platform for interaction between a startup and the federal government as well as other stakeholders in the startup ecosystem.

The Portal is divided into segments for startups, angel investors, venture capitalists and accelerators, innovation hubs and incubators. The registration requirements for each of these entities are briefly discussed below:

### Startups

For startups to be able to enroll on the Portal, such a startup must be a limited liability company registered under the Companies and Allied Matters Act (CAMA) with at least one-third of local shareholding of the startup company held by one or more Nigerians as founder or co-founder, and existing for less than 10 years from the date of incorporation. The objects of the startup must be focused on innovation, development, production, improvement, and commercialization of a digital technology, innovative product or process. The startup must also be a holder or repository of a product or process of digital technology or the owner/author of a registered software. The startup must also be a tech-enabled business that uses existing tools, platforms, libraries, and frameworks to create efficient or effective solutions.<sup>4</sup> In the case of a sole proprietorship or partnership, the startup must satisfy the preceding general requirements, save the obligation to incorporate a company.

<sup>3</sup> Section 10 of the Act.

<sup>4</sup> This last requirement is absent in the Act.

## Angel Investors

To enrol on the portal, an angel investor<sup>5</sup> must be a high-net-worth individual or company that provides funding to an early-stage startup, typically in exchange for equity in the startup company. Such an angel investor must provide proof of investments, membership of an angel network,<sup>6</sup> or investment<sup>7</sup> syndicate.

## Venture Capitalists

For a venture capital<sup>8</sup> to be registered on the Portal, the venture capitalist must be a partnership or company that provides capital to a startup that is exhibiting high growth potential in exchange for equity and must have at least one fund with investments in a Nigerian startup.

## Accelerators, Innovation Hubs & Incubators

To register as an incubator, the registering entity must be one whose principal object is to support the establishment, development and promotion of tech start-ups and innovation through the offer of dedicated physical spaces and services. Accelerators must demonstrate experience in developing and implementing a fixed-term, cohort-based programme which provides start-ups with mentorship and educational assistance and innovation hubs are required to provide or demonstrate proof possession of physical or virtual space where innovators, entrepreneurs, and technology enthusiasts come together to collaborate, exchange ideas, and work on innovative projects.

## Expectations, Reality and Challenges

Undoubtedly, it is commendable that the NITDA (as the Secretariat) has taken this necessary step in establishing the Portal, hitting yet another crucial milestone in the attainment of the ideals of the Act. However, one might wonder whether the pace of the implementation of the Act's provisions is not quite slow, especially considering the fast-paced nature of the tech startup space. The implementation of the Act appears to have fallen short of the high expectations and promising prospects it initially held.

Regarding the Portal, its current functionality seems to be confined to labeling and registration, with no mention of its other intended functions. As previously emphasized, the Act envisions a Portal, not only for facilitating registration and labelling but also foster engagement and collaboration among startups and key tech industry stakeholders, while serving as a gateway to a suite of government incentives. Therefore, it is crucial that the Portal is not reduced to a mere registration channel, as that would severely limit the intentions of the Act.

Another notable challenge is the requirements for eligibility for labelling. Both the Act and the Portal require that eligible startups must have their primary focus on the innovation, development, production, improvement, or commercialization of digital technology-based innovative products or processes. To be eligible, these startups are further expected to either be holders or repositories of digital technology products or processes or be owners/authors of registered software. The language employed in phrasing the

<sup>5</sup> An angel investor is not expressly defined in the Act or on the Portal. However, from the description on the Portal, it can be surmised that an angel investor is an entity that provides early-stage funding and mentorship to catalyze innovation and help startups attract larger funding rounds.

<sup>6</sup> The Act does not contain a definition of angel network or investment syndicate. However, an angel network or syndicate comprises angel investors who pool their resources to invest in new businesses in an organized manner.

<sup>7</sup> Likewise, the Act does not define an investment syndicate. An investment syndicate by popular understanding refers to a group of investors who pool their resources to invest in a startup company. The difference between angel syndicates and networks lies in the fact that the former is less formalized and hence operates faster than the latter.

<sup>8</sup> Venture Capitalists are described on the Portal as including entities that foster innovation and drive economic growth by providing essential funding and strategic support to startups.

requirements gives the presumption that the Act focuses on the IT sector without catering to startups that could, and do exist, in other spheres. The exclusionary language may potentially deprive startups who exist in non-IT spaces from the benefits of the Act and could further create regulatory uncertainty regarding the applicability of the Act to these non-IT startups. While it may be arduous to require an amendment of the Act so soon after its enactment, the Portal can be amended to broaden its language to include startups that are not in the IT space.

Another area of concern arises from the requirement for labeled startups to have at least one-third local ownership held by one or more Nigerians, either as a founder or co-founder. The primary challenge with this requirement lies in its ambiguity regarding whether the local ownership must be beneficial or legal. If the intention is legal ownership, this presents a dilemma for the ecosystem where the prevalent structure involves foreign founders holding shares in an offshore holding company ("**holdco**"), which in turn wholly owns the Nigerian entity. A legal ownership requirement may render startups adopting this holdco model ineligible for the startup label. On the other hand, if beneficial ownership suffices, this challenge may not arise. However, the lack of clarity exacerbates the uncertainty surrounding this issue.

Relatedly, it appears that the intention of creating this requirement is for local ownership of startups in Nigeria through enforcing local content regulations. However, it is unclear why the Act mandates that the shares be held by a founder/co-founder of the startup and not just any Nigerian. This poses a significant challenge, particularly in cases of founder exits, which are not uncommon in the tech ecosystem. If founders exit, this requirement may no longer be met, potentially resulting in the loss of the startup label, even if all other criteria are fulfilled. It is doubtful that this unintended consequence aligns with the Act's original intent. Where the requirement is that the required shareholding must be held by a Nigerian, simpliciter, that would give a level of flexibility to the startups while simultaneously meeting the local content objective.

There are also some definitional challenges in the listed requirements for obtaining registration via the Portal. For instance, the qualification of "high-net-worth individual" as used to describe angel investors is not defined in the Act or on the Portal. Although the Securities and Exchange Commission (SEC) Rules 2013 defines a high-net-worth individual as an individual with net worth of at least 300 million Naira, excluding automobiles, homes, and furniture<sup>9</sup>, the Portal does not contain any reference to the SEC Rules or any other enactment, hence leaving the phrase open to a myriad of interpretations. The Portal also does not provide a definition for "angel network" or "investment syndicate".

Similarly, the Portal like the Act does not provide any guidance regarding when a startup is said to be exhibiting "high growth potential". This guidance is important because a venture capital can only be registered where the venture capital is a partnership or a company that provides capital to a startup that is exhibiting "high growth potential". These definitional deficit create uncertainty and imply that regulatory guidance will need to be sought at every juncture by angel investors or venture capitalists seeking registration via the Portal.

<sup>9</sup> Section 321 of the SEC Rules 2013.

## Conclusion

It goes without saying that the launch of the Portal is very pivotal to the successful implementation of the Act and startups<sup>10</sup> investors<sup>11</sup>, accelerators and incubators<sup>12</sup> will derive benefit from their registration on the Portal. However, as gleaned from our analysis above, there is still so much to be done to operationalize the Portal. Moving forward, there is a need for continued engagement between stakeholders, regulators, and policymakers to address the challenges hindering the full realization of the Act's goals. This will ensure that the Act fulfills its objectives of fostering innovation, entrepreneurship, and sustainable economic growth within the Nigerian startup ecosystem.

<sup>10</sup> These benefits include access to tax reliefs and incentives such as relief from payment of income tax for 3 years and additional two years, deduction of expenses on research and development, exemption from contributing to the Industrial Training Fund; access to import incentives under the Export (Incentives and Miscellaneous Provisions) Act, access to grants and loans administered by the Central Bank of Nigeria, access to the Credit Guarantee Scheme under the Act, etc. (sections 24, 25 and 26 of the Act).

<sup>11</sup> Angel investors, venture capitalists, private equity fund, accelerators and incubators which invest in a labelled startup are entitled to an investment tax credit equivalent to 30% of the investment in the labelled startup, and capital gains is not to be charged on gains that accrue from the disposal of assets by an angel investor, venture capitalist, private equity fund, accelerators and incubators with respect to a labelled startup provided the assets have been held in Nigeria for a minimum of 24 months. (Section 29(2) & 93) of the Act.) The Act is not clear whether the benefits that accrue to angel investors apply only to registered angel investors, or whether the investment in a labelled startup alone, in the absence of registration, makes an angel investor eligible for the benefits provided for under the Act.

<sup>12</sup> Registered startup accelerators and incubators are entitled to grants and aids for research, development, training and expansion projects. (Section 39(2) (b) of the Act).