

A CRITICAL ASSESSMENT OF THE NIGERIAN STARTUP ACT*

Abstract

Technology has revolutionized the global economy, leading to rapid innovation and disruption in the creation, distribution, and consumption of goods and services. Startups have been at the heart of this technological revolution, which has led to efforts by different countries to promote the growth of startups. The Nigerian Startup Act (NSA) is seen as a crucial tool for promoting innovation and supporting developing high-growth technology-based businesses in Nigeria. The Act establishes the legal and institutional frameworks for the technology startup ecosystem and provides a mechanism to attract and safeguard investment in the startup sector. Many believe that its implementation will significantly boost Nigeria's technological potential. This analysis examines the provisions of the Act, highlighting key areas that offer hope for the growth of the Nigerian startup industry, addressing the exaggerated expectations surrounding the Act, and outlining the necessary steps to achieve its objectives. The conclusion emphasizes that while the new legislation shows promise, it is unrealistic to expect the NSA alone to drive the growth of Nigeria's startup economy.

Keywords:

Startup, Regulations, Technology, Innovation, Ecosystem, Nigerian Startup Act (NSA)

1. Introduction

Rapid technological advancement has facilitated the establishment of new companies driven by technological innovation, known as startups.¹ These startups are young companies that provide specific technological solutions, products, or services, often leading to innovation and advancements in various industries and scientific fields.² Startups have emerged as a crucial component of the global economy, especially in the technology sector.³ These innovative companies have challenged traditional service delivery methods and addressed human problems through disruptive technology. They also play a crucial role in creating wealth and global economic development.⁴ At the same time, three out of four startups in the United States fail.⁵ 61% of Nigerian startups failed between 2010 and 2018.⁶ Several factors account for this high failure rate, including lack of funding, limited level of expertise, unfavourable government policies, regulatory bottlenecks, over-saturation of startups in select locations, talent shortage, high cost of doing business, etc.⁷ The high mortality rate of startups and the growing realisation of the importance of technological innovation have made providing an enabling environment

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¹ A Conti, MC Thursby & F Rothaermel, 'Show Me the Right Stuff: Signals for High Tech Startups', *NBER Working Paper 17050* <<http://www.nber.org/papers/w17050>>

² A Skala, (2019). 'The Startup as a Result of Innovative Entrepreneurship'. In: *Digital Startups in Transition Economies*. Palgrave Pivot, Cham. <https://doi.org/10.1007/978-3-030-01500-8_1>

³ *Ibid*

⁴ UNCTAD, 'Technology and Innovation Report 2021' <<https://unctad.org/page/technology-and-innovation-report-2021>>

⁵ Deborah Gage, 'The Venture Capital Secret: 3 Out of 4 Start-Ups Fail', *The Wall Street Journal*, <https://chasegrowthcapital.com/wp-content/uploads/2016/11/THE-VENTURE-CAPITAL-SECRET-3-OUT-of-4-Start-Ups-Fail.pdf>

⁶ B Bailey *Nigeria records 61% start-ups' failure rate in 9 years*

<https://businessday.ng/uncategorized/article/nigeria-records-61-start-ups-failure-rate-in-9-years/>

⁷ *Ibid*

for their survival essential.⁸ As such, governments implement policies to support startups.⁹ Many countries have recognised the importance of promoting innovation and have established policies, legislation, and initiatives to foster technological growth. Technological innovation and enterprise have gained momentum in the past few years, leading to heightened tech-driven startups in Nigeria.¹⁰ The Nigerian government sees considerable potential in the growth and contribution of the tech startup ecosystem to the Nigerian economy, as these startups have the potential to lead and dominate Africa's digital economy, a priority for governments.¹¹ Nigerian startups received USD1.37 billion of Africa's USD 4 billion funding in 2021, the highest volume of startups in Africa.¹² To attract more startup capital and grow startups in the country, the Nigerian government enacted the Nigerian Startup Act (NSA), with the principal objective of increasing the country's ICT sector by improving the financing and regulation of startups in the country.¹³ Given the enormous relevance of technological innovation in today's world and the proclaimed benefits of the NSA, it is crucial to examine and ascertain the capacity of the NSA to promote the development of startups in the country. Section two provides the conceptual and theoretical framework underpinning starts, while section three examines the provisions of the Act. Section four outlines gaps in the Act that will undermine its transformative impact on the Nigerian startup ecosystem. Section five offers a conclusion.

2. Conceptual Framework

The startup concept has existed for some time, but its meaning needs to be clarified. Is it based on the sector in which the business operates? Must it be a technology company? Is a company's startup status determined by the innovativeness of its solutions or by size? ¹⁴ There is no universally accepted definition due to the difficulty delineating what constitutes a startup. Merriam-Webster Dictionary defines startup as "the act or an instance of setting in operation or motion or a fledgling business enterprise".¹⁴ Cambridge Dictionary defines it as "a small business that has just been started".¹⁵ These definitions emphasise the recency of commencement as the primary consideration in determining a business as a startup. Kelly Peter describes them as newly created businesses that search for a repeatable and scalable business model.¹⁶ Disrupt Africa refers to startups as young businesses driven by innovation and the

⁸ A Hyytinen, M Pajarinen & P Rouvinen, 'Does innovativeness reduce startup survival rates'? *Journal of Business Venturing*, Vol 30, Iss 4, p. 564

⁹ Starting with the Italian Startup Act of 2012, other countries have passed similar laws including India (2013), Latvia (2016), Austria (2017) and Belgium (2017). See F Biancalani, D Czarnitzki & M Riccaboni, 2020. "The Italian Startup Act: Empirical evidence of policy effects," *Working Papers of Department of Management, Strategy and Innovation*, Leuven 648452, KU Leuven, Faculty of Economics and Business (FEB), Department of Management, Strategy and Innovation, Leuven. For discussion on startup legislation in Africa, see

¹⁰ Ayomide Oguntoye, 'Analysts Review How Digital Platforms Have Become Integral to Nigeria's Economic Growth' <<https://www.proshareng.com/news/TECH%20TRENDS/Analysts-Review-How-Digital-Platforms-Have-Become-Integral-To-Nigeria-s-Economic-Growth/54276>>

¹¹ MK Inuwa, 'Digital Economy: Collaboration Amongst Stakeholders Accounts For Unprecedented Achievements-DG NITDA' <<https://nitda.gov.ng/digital-economy-collaboration-amongst-stakeholders-accounts-for-unprecedented-achievements-dg-nitda/>>

¹² Otoru & AM Dosumu, *The Startup Act: What it is and why it matters*, <https://businessday.ng/news/legal-business/article/the-startup-act-what-it-is-and-why-it-matters/>

¹³ L Ojedokun, 'Improving the startup environment with Nigerian Startup Act', *PM NEWS*, 8th November 2022, available at <https://pmnewsnigeria.com/2022/11/08/improving-the-startup-environment-with-nigerian-startup-act/>

¹⁴ <https://www.merriam-webster.com/dictionary/start-up>

¹⁵ <https://dictionary.cambridge.org/dictionary/english/start-up>

¹⁶ TP Kelly, *Startups in South Africa, Barriers to Growth and Opportunity through Unconventional Institutional Structures* (University of Cape Town: 2022) 9.

promise of tremendous growth or scaling, regardless of geography.¹⁷ Baldrige emphasises that these young companies seek to develop a unique product or service, bring it to market, and make it irresistible and irreplaceable for customers.¹⁸ Ries considers startups as ventures designed to create a new product or service under market conditions of great uncertainty.¹⁹ *Their success depends on a thriving startup ecosystem that provides an enabling environment for entrepreneurs, offering funding, networking opportunities, and access to resources. Such an ecosystem enables them to overcome the two significant obstacles that account for startup mortality: regulation and financing.*

Startups are generally associated and often limited to innovative companies in the technology sector. This is subsumed in most definitions, emphasising scalability driven by technology today. The NSA makes the technological connection clear by defining a startup as “a company in existence for not more than ten years, with its objectives being the creation, innovation, production, development or adoption of a unique digital technology innovative product, service or process”.²⁰ However, Graham challenges this connection, noting that the only essential thing for a business to be classified as a startup is growth, as everything else associated with startups follows from growth.²¹ Nonetheless, Graham’s view can be countered on the ground that technology is the primary driver of business growth in the Fourth Industrial Revolution.²² From the above, a few salient features of startup emerge. Firstly, startups are relatively new or young companies, as much as ten years old, in the case of the NSA. Secondly, the business must focus on scalability and achieving rapid growth powered by technology. Startups have peculiar lifecycles and players. Bootstrapping refers to the self-funding stage, where the founders use their resources to support the business financially.²³ This limits the amount of debt accrued. Also, angel investors and venture capitalists assist startups in raising funds. Angel investors are the most common kind of investors who are interested in startups that already have products or services available. On the other hand, venture capitalists invest with long-term growth in mind. Accelerators, hubs, and incubators help startups by providing them with resources such as funding, training, working spaces, legal services, access to investors, etc, that startups need to grow.²⁴

1 Overview of the Nigerian Startup Act

The NSA, the fruit of the combined initiative of Nigeria’s tech startup ecosystem and the Presidency, seeks to harness Nigeria’s digital potential by providing legal and institutional frameworks that align with the expectations of tech ecosystem stakeholders. The Act’s specific objective is to promote the growth of the Nigerian startup ecosystem. Furthermore, the Act intends to promote the establishment, development, and operation of startups, nurture and grow

¹⁷ *Ibid.*

¹⁸ R Baldrige, 'What is Startup? The Ultimate Guide', *Forbes Advisor*, October 2022) <<https://www.forbes.com/advisor/business/what-is-a-startup/>>

¹⁹ E Ries, 2011. *The Lean Startup: How Today’s Entrepreneurs Use Continuous Innovation to Create Radically Successful Business*, New York: Crown Business.

²⁰ s. 47, The Nigerian Startup Act 2022,

²¹ P Graham, 'Startup=Growth' <<http://www.paulgraham.com/growth.html>>

²² The Fourth Industrial Revolution, or Industry 4.0, popularized by Klaus Schwab, conceptualizes the rapid change to technology, industries, and societal patterns and processes in the 21st century due to increasing interconnectivity and smart automation. See T Philbeck & N Davis, ‘The Fourth Industrial Revolution’. (2018) *Journal of International Affairs*. 72 (1): 17–22.

²³ A Bhide, ‘Bootstrap Finance: The Art of Start-ups’, *HBR November-December 1992*, 110 - 117

²⁴ A Mustapha & J Tlaty, (2018) ‘The Entrepreneurial Finance and the Issue of Funding Startup Companies’, *European Scientific Journal Vol.14, No.13, 268*

technology-related talent, and pivot the nation's startup ecosystem as Africa's leading digital technology centre.²⁵ Before the enactment of the Act, Nigerian tech startups were regulated under general laws regulating companies in Nigeria, notably the Companies and Allied Matters Act 2020, the Federal Inland Revenue Service Act, the Nigerian Data Protection Regulation, and the National Information Technology Development Agency Act (NIDTA)²⁶. Given that the Act is the product of government-industry collaboration, its enactment generated considerable excitement among technology industry stakeholders, who are optimistic it will yield transformative impacts on the country's economy.²⁷ This is anchored on the hope that, among other things, the NSA will bridge the engagement gap between startups and regulators. In contrast, startups will benefit from the funding mechanism, tax breaks, government loans, and credit guarantee schemes provided under the Act. At the same time, the need for cautious optimism has been expressed, given the pitfalls that have undermined hyped initiatives that failed to deliver expected outcomes.²⁸

The Nigerian Startup Act (NSA) provides the legal and institutional framework for developing startups in Nigeria. Its objective is to promote cooperative engagement between startups and regulators. The law applies to companies incorporated under the Companies and Allied Matters Act 2020(CAMA)²⁹ as digital technology companies. Nigerians must own at least a third of the issued shares in the startup as either founder or co-founder.³⁰The Act has ten (10) parts and applies to companies labelled as startups and institutions that incubate, hatch, and support labelled startups.³¹Part II and III established the National Council for Digital Innovation and Entrepreneurship ("The Council") and its operational structure, respectively.³² Part IV contains the startup labelling process from eligibility to withdrawal of the startup label and resistance.³³The Startup Investment Seed Fund ("The Fund") was created under Part V.³⁴ Part VI and VII provide training, capacity building, talent development, and tax and fiscal incentives.³⁵ Collaboration between the secretariat and other Regulators, both local, foreign, and international, is covered under Part VIII.³⁶ Part IX provides for Accelerators and Incubators, covering sections 38 and 39 of the Act. Part IX empowers the Council to establish and manage startup hubs, clusters, innovative parks, and technology development zones.³⁷Part X contains miscellaneous sections, including pre-action notice and interpretation.³⁸The rest of this section highlights the key aspects of this legislation.

3.1.The Council and the Secretariat

²⁵*Ibid*

²⁶ National Information Technology Development Agency Act 2007Act No. 28, the Federal Republic Of Nigeria Official Gazette No. 99 Vol. 94 Lagos 5th October 2007, available at <https://nitda.gov.ng/wp-content/uploads/2020/11/NITDA-ACT-2007-2019-Edition1.pdf>

²⁷T Odueso, 'The Nigeria Startup Act has been Approved', *Techcabal*, available at <https://techcabal.com/2022/10/19/the-nigeria-startup-bill-has-been-approved/>

²⁸ A Adepetun & J Chibueze, 'Start Up Act: Experts list gains, warn against pitfalls' (Guardian, 2022) <<https://www.google.com/amp/s/guardian.ng/news/start-up-act-experts-list-gains-warn-against-pitfalls/amp>>

²⁹ CAP C20 LFN 2004

³⁰ NSA, s1.

³¹ *Ibid*, s2.

³² *Ibid*, ss 3-12.

³³ *Ibid*, ss13-18

³⁴ *Ibid*, ss19-20

³⁵ *Ibid*, ss21-29

³⁶ *Ibid*, ss30-37

³⁷ *Ibid*, ss40-42

³⁸ *Ibid*, ss43-48.

Section 3 of the Act established the National Council for Digital Innovation and Entrepreneurship (“The Council”) and confers it with corporate personality, and can sue and be sued in its name.³⁹ Membership of the Council includes the President of Nigeria,⁴⁰ the Vice President,⁴¹ the Minister of Communications and Digital Economy,⁴² the Minister of Finance, Budget and National Planning, the Minister of Industry, Trade and Investment, the Minister of Science, Technology and Innovation, the Governor of the Central Bank of Nigeria, four (4) representatives of Startup Consultative Forum, and one representative each from the Nigeria Computer Society and Computer Professional Council of Nigeria). The membership of the Council is widely drawn to cover all stakeholders in the Nigerian startup ecosystem, and the purpose is to allow stakeholders to promote their interests before the Council. Statutorily, the functions of the Council include formulating and providing general policy guidelines for the realisation of the objectives of the Act; giving overall directions for the harmonisation of laws and regulations that affect a startup; approving the programmes of the Secretariat established under the Act; ensure the monitoring and evaluation of the regulatory framework to encourage the development of startups in Nigeria; monitor and ensure the implementation of the policies and programmes of the Secretariat; support digital technological development; make, alter or revoke rules and regulations for carrying out the functions of the Secretariat; and perform such other functions as may be necessary towards achievement of the general intendment of the Act.⁴³ The Council is saddled with the power to review policies and directives of Ministries, Departments, and Agencies (MDAs), which may affect the operation, establishment, and investments in startups.⁴⁴ The Council shall operate through its Secretariat established under the Act, the National Information Technology Development Agency (NITDA).⁴⁵ Functionally, as the Secretariat, NITDA shall manage the process of travelling a startup, establish online platforms to provide access to startup information, collaborate with MDAs and other stakeholders on innovative digital technologies, ensure the religious implementation of the National Digital Innovation, Entrepreneurship, and Startup Policy (NDIESP),⁴⁶ develop, establish, support and incentivise digital technology innovation hubs, parks and community etc.⁴⁷

3.2. The Fund

Section 19 of the Act established the Startup Investment Seed Fund (the Fund) to be managed by the Nigerian Sovereign Investment Authority (NSIA), which shall function as the Fund Manager.⁴⁸ The role of the Fund is to avail seed capital to Labelled Startups on the

³⁹ *Ibid*, s.3.

⁴⁰ The president presides over the Council.

⁴¹ The Vice President presides over the Council in the absence of the President.

⁴² Presides over the Council in the absence of the President and/or Vice President.

⁴³ The NSA 2022, s7(1).

⁴⁴ *Ibid*, s7(2).

⁴⁵ *Ibid*, s8(1).

⁴⁶ National Digital Innovation, Entrepreneurship and Startup Policy (NDIESP) was launched by NITDA in 2021 as a mission statement for startup innovation in Nigeria. The Policy comprises of five priority thrusts namely: Advancing Human Capital, Unlocking Access to Capital, Enabling Infrastructure, Boosting Demand, and Promoting Innovative Entrepreneurship. The Secretariat is charged under section 8 of the Act to see to the fill implementation of the Policy.

⁴⁷ See NSA, s.9(2)a-r, ss10-12 for the full functions of the Secretariat.

⁴⁸ The Nigerian Sovereign Investment Fund is in charge of the Nigeria Sovereign Wealth Fund and started operation with a seed capital of \$ 1 billion in 2013. The Authority has the mandate of investing in areas with investment deficit and encouraging and incentivizing such areas for private investors and has, since its inception, it has concluded about 15 projects. See the website of the Authority at <<https://nsia.com.ng/>>

recommendation of the NSIA and provide relief to technology laboratories, accelerators, incubators, and hubs.⁴⁹ An annual sum of at least Ten Billion Naira (N10,000,000,000.00k) shall be paid into the Fund from sources approved by the Fund.⁵⁰ The Fund is meant to reduce the challenge of securing venture capital for startups in Nigeria.

3.3. Startup Labelling Process under the NSA

The labelling process outlines the steps to be undertaken by new entities to be recognised as labelled startups under the NSA.⁵¹ To qualify as a startup label, an entity must be a company incorporated under the Companies and Allied Matters Act and has been so incorporated for a period not more than ten years; its objects must be innovation, development, production, improvement and commercialisation of a digital technology innovative product or process; it must be a holder or repository of a product or process of digital technology or the owner/author of a registered software; and has at least, one-third local shareholders who are Nigerian founder and or co-founders.⁵² Upon satisfaction of all the requirements, such entity obtains a startup label, a certificate issued to show that an entity is a startup having complied with the provisions of the Act.⁵³ The conditions are conjunctive and jointly required. Once labelled a startup, a startup shall be qualified to receive the incentives accruable to startups under the Act. The procedure for applying for a startup status involves submission of an application to the Secretariat on the Startup Portal supported by the requisite documents as may be prescribed by the Secretariat from time to time.⁵⁴ The Secretariat maintains the Startup Portal in exercising its power under sections 10-11 of the Act. A startup label certificate shall be for ten years.⁵⁵ The Act does not address the renewability of startup labels. One cannot imagine a startup seeking renewal after ten years, at which time a Startup should have either scaled, been extinguished, acquired, or merged with a new entity. The duties/responsibilities of a startup are enumerated, and a startup that defaults on these statutory duties has 30 days to remedy the default or risk withdrawal of the label certificate.⁵⁶ Indeed, where a startup fails to cure any infringement of its duty under the Act or any of the conditions upon which the startup label was granted, the Secretariat shall withdraw the startup label of the startup and further inform investors and appropriate MDAs of the withdrawal.⁵⁷ The essence of informing investors and MDAs of such withdrawal is to put all stakeholders of the deviance of the startup. However, upon remedying its infractions(s), a startup shall have its startup label reissued upon application to the Secretariat.⁵⁸

3.4. Tax and Fiscal Incentives

Specific tax and fiscal incentives are provided under the Act to encourage startups to survive their early years. A labelled startup that qualifies as a pioneer company under the Pioneer Status Incentives (PSI) shall have its application for a pioneer incentive expeditiously processed through the assistance of the Secretariat, working closely with the Nigerian Investment Promotion Commission (NIPC). In the same vein, the Federal Ministry of Finance shall simplify

⁴⁹ NSA, s19(3).

⁵⁰ *Ibid*, s19(2).

⁵¹ This is covered under Part IV (sections 13-18) of the Act.

⁵² *Ibid*, s13k2).

⁵³ *Ibid*, s13(1), s15.

⁵⁴ *Ibid*, s14.

⁵⁵ *Ibid*, s15(3).

⁵⁶ *Ibid* s.16

⁵⁷ *Ibid*, s17.

⁵⁸ *Ibid* s.18

and expedite the application process for any existing incentive that inure to startups.⁵⁹ A startup may be permitted to not pay income tax for its first period of 3 years and an additional two years, and the commencement date for the tax relief shall be from the date of issuance of the startup label.⁶⁰ Where a startup undertakes research and development, the startup may be entitled to a total deduction of the amount expended, provided the research expenditure was wholly incurred within Nigeria.⁶¹ The incentives extend to foreign companies that transact with Nigerian startup companies. Accordingly, where a foreign company offers technical, consulting, professional or managerial services to labelled startups, the foreign company shall enjoy a 5% Withholding Tax (WHT) on income made by such foreign companies from Nigeria. Where a startup trains its employees (in-house training), such startup companies shall not be required to contribute to the Industrial Training Fund.⁶² Startups involved in exporting products and services covered by the Export (Incentives and Miscellaneous Provisions) Act⁶³ are entitled to incentives and support from the Export Development Fund, Export Expansion Grant, and the Export Adjustment Scheme Fund.⁶⁴ The Secretariat shall ensure that startups have access to any grants, loans, and support facilities availed by the Central Bank of Nigeria, Bank of Industry, and similar bodies.⁶⁵ Section 28 empowers the Secretariat to establish the Startups Credit Guarantee Scheme (CGS) to function for developing and growing startups in Nigeria. The CGS shall aim towards providing accessible financial support to a labelled startup, creating a framework for credit guarantee for labelled startups, providing economic and credit guarantee information to startups, providing a financial capacity-building programme for startups, etc. The Act also provides that through the Ministry of Finance and other MDAs, the Federal Government of Nigeria shall develop and implement a policy framework allowing investors in labelled Startup to enjoy tax credits and reliefs for their investments up to 30%.⁶⁶ Furthermore, no capital gain tax is chargeable if investors seek to dispose of acquired assets through profits from their investments.⁶⁷

3.5. Collaboration

The NSA makes ample provision for collaboration between startups and regulators (the Council, the Secretariat, and the Fund). This fosters cooperation among government institutions and avoids one institution frustrating startups' activities. Hence, it provides for collaborations between the Secretariat and the Central Bank of Nigeria (CBN), the Corporate Affairs Commission (CAC), the Security and Exchange Commission (SEC), and various MDAs.⁶⁸

3.6. Promotion of Innovation

Intellectual property is a startup's most valuable asset. To promote innovation, the NSA guarantees the protection of startups' intellectual property within and outside Nigeria via registration, internationalisation, and commercialisation.⁶⁹ The protections include speedy and seamless registration of startup trademarks, patent rights, and other intellectual property rights.

⁵⁹ *Ibid*, s.25(1).

⁶⁰ *Ibid*, s.25(2).

⁶¹ *Ibid*, s.25(3).

⁶² *Ibid* s.25(4). See Industrial Training Fund Cap. 19 Laws of the Federation of Nigeria, 2004

⁶³ Export (Incentives and Miscellaneous Provisions) Amendment 1992 No. 65 A 589.

⁶⁴ NSA s.26

⁶⁵ *Ibid*, s.27.

⁶⁶ *Ibid* s.29

⁶⁷ *Ibid*, s.29

⁶⁸ See ss 30-36 of the Act.

⁶⁹ See NSA s.31

On average, it takes 18 months or more to register trademarks and patents in Nigeria, but the NSA, though non-specific, guarantees fast registration to enhance intellectual property protection. Regarding funding, the NSA permits startups to raise funds through crowdfunding and commodities investment platforms duly licensed by the SEC.⁷⁰ Part VIII provides for startup accelerators and incubator support programmes by the Secretariat, provided that an incubator is registered with the Secretariat. The incubators and accelerators nurse and hatch startups to birth new startup companies in the ecosystem. They assist young innovators in bringing their intentions to fruition. Registered incubators and accelerators are provided to several supports under the Act.⁷¹ Part IX makes provisions for startup clusters, hubs, innovation parks, and technology development zones covered.⁷²

3.7 The Startup Portal

The Secretariat establishes the startup portal with the approval of the Council.⁷³ The startup portal makes the issuance of a licence to startups. It allows a startup to communicate with the federal government, private institutions, investors, and other related programmes. It serves as an avenue for them to access finance and other resources. It also allows them to get feedback from the public and enables them to receive information on registration, approval, incentives, schemes granted by the government, etc. The Secretariat shall appoint a Coordinator to maintain a register and records of labelled startups.⁷⁴

3.8 The Forum

The Forum was established to share information and collaborate on issues relevant to the Nigerian startup ecosystem.⁷⁵ It provides information on a startup that qualifies to be labelled, information on incentives, and available local capabilities. It shall give the nomination of representatives to the council. The Forum comprises labelled startups, venture capitalists, angel investors, incubators, accelerators, innovation hubs, and two civil society organisations involved in innovation and technology.

3.9 Capital/Profit Repatriations and Transfer of Technology

Section 37 requires that the Secretariat, in collaboration with the CBN, guarantee the repatriation of investments by foreign investors through the CBN's authorised dealer. This section ensures that foreign investors who have invested in labelled startups can easily and safely repatriate their capital at the official CBN rate. Furthermore, the Secretariat liaises with the National Office for Technology Acquisition and Promotion (NOTAP) to prioritise applications from labelled startups and ensure that the process of technology transfer and other related activities is smooth. This means that they should ensure that startups have access to a faster and more systematic method for acquiring and utilising foreign technologies, with discounted registration fees.

4. Shortcomings and Recommendations of the Nigerian Startup Act

The NSA aims to position Nigeria's startup ecosystem as Africa's leading digital technology centre, with excellent innovators with cutting-edge skills and exportable capacity. The Act provided institutional and legal frameworks for Nigerian startups to achieve this aim. However, some issues need to be addressed to improve the capacity of the Act to achieve its stated objectives. Firstly, given the domicile of the Council Secretariat in NITDA and the extensive

⁷⁰ *Ibid*, s.32.

⁷¹ *Ibid*, s.39

⁷² *Ibid*, ss.40 - 42

⁷³ *Ibid* s.10

⁷⁴ *Ibid* s.11

⁷⁵ *Ibid* s.12

role that NITDA has to play under the NSA, the first issue is whether there was a need to pass the NSA in the first place. Would it have been better to strengthen the role of the NITDA head and include the management of the startup ecosystem as part of NITDA's responsibilities? Domiciling the startup agency in NITDA suggests that their roles are similar. Is it possible that Nigeria has bought into the fad that passing legislation that incentivises the birth and growth of startup ecosystems will automatically spur and sustain investment in the nation's startup sector? Such perfunctory importation of a law or policy that might have worked in other countries may fail to consider the Nigerian context's peculiarities and the relatedness of the new law with existing legislation. As de Angelis observed," countries should promote startups not because they are a "nice to have" but because, if done right, startups can boost the innovation content of an economy and spur economic growth".⁷⁶ Secondly, regulations and bureaucracy are an impeding factor in the development of startups. Yet, in seeking to strengthen the regulatory environment for startups, the NSA sadly complicates it by creating a dizzying array of institutions, roles, and positions - Secretariat, Council, Forum, Agent, Coordinator, Secretary. The multiplicity makes it challenging to delineate the role of each office. The mezzanine bureaucracy that the Act created will hamper the ease of startup business in Nigeria. Therefore, these roles and positions should be streamlined for ease of business and engagement with startups. Thirdly, s.3 established the National Council for Digital Innovation and Entrepreneurship as an integral organ for realising the NSA's objectives. It includes the President and Vice President of the country and stakeholders drawn from the Nigerian startup ecosystem. Theoretically, the presence of the President and Vice President in the membership of the NCDIE will suggest that startup development has the highest priority. Still, it sounds like killing an ant with a sledgehammer, taking into account the entirety of the issues addressed by the Act. In practice, the composition will limit the Council's meeting and functioning, given the many demands on the plate of its members. Wolken noted, "many entrepreneurs—especially in countries like Nigeria where elderly politicians rule over a young populace—tech-savvy individuals tend to view the government as out-of-touch with their demands."⁷⁷ Creating a Council, which is the body that should "formulate and provide general policy guidelines for the realisation of the objectives of this Act" and filling it with the same "elderly politicians" that are out of touch with the demands of young entrepreneurs, appears counterintuitive. It is, therefore, recommended that the Council be streamlined, with the appointment of its Chairman by the President on the recommendation of the Minister for Communication and Digital Development similar to the appointment of the head of the Governing Board of NITDA.⁷⁸ This will ensure that the Council is more responsive to the dynamic demands of the startup ecosystem.

Part V provides for the establishment of the Startup Investment Seed Fund. The Fund shall receive at least 10 billion Naira⁷⁹ annually, be applied to finance labelled startups, and provide relief to technology laboratories, accelerators, incubators and hubs. However, the source of the annual income needs to be specified but is left to be approved by the Council. Furthermore, the Fund shall be managed by the Nigeria Sovereign Investment Authority (NSIA). The role of the adds another layer to the complexity of the bureaucracy of the startup

⁷⁶ de Angelis, Luca. "When Too Much Is Too Little: Evaluating the Italian Startup Act." *The Journal of Private Equity*, vol. 21, no. 4, 2018, pp. 29–40

⁷⁷ Jordan Wolken, Startup Acts are the next form of policy innovation in Africa, <https://www.atlanticcouncil.org/blogs/africasource/startup-acts-are-the-next-form-of-policy-innovation-in-africa/>

⁷⁸ NITDA s.2(3)

⁷⁹ Approximately \$23M, at N448/\$. The Nigerian Fund should be compared to that recently announced by Algeria where a whopping 411m USD was allocated for the nation's startup fund

ecosystem. It is recommended that the Act be revised to specify the course of the revenue for the Fund and to domicile the Fund management within the Secretariat for easier administration. The NSIA may need to be more competent to perform the functions assigned under the Act, which includes creating an innovation grant budget and management framework to support research and development projects and issuing a framework which shall set out modalities to fund, manage, and access the Fund.⁸⁰ Furthermore, whereas the Fund shall provide finance for labelled startups⁸¹, s. 28 empowers the Secretariat to “establish a Credit Guarantee Scheme (“the Scheme”) for the development and growth of a labelled startup under this Act”. The Scheme is meant to provide, among other things, accessible financial support to a labelled startup⁸². The NSA does not distinguish between the financing provided under the Fund and the Scheme. It also does not specify how the funds under the Scheme shall be raised. This, it is submitted, reinforces the need to make the Secretariat the Fund Manager for the Fund.

Part VI provides for training, capacity building, and talent development to develop the skills required by the startup ecosystem. The modalities provided therein appear hackneyed, regurgitating old formulas that have yet to work. For instance, it provides training facilitated by the Industrial Training Fund⁸³. This organisation needs to be more competent in delivering the innovative ideas required by the startup ecosystem, akin to putting new wine in an old wineskin. The Secretariat shall establish centres for acquiring digital technology in Nigeria's six geopolitical zones to promote digital technology utilisation and strengthen digital technology management capability and information systems. It is recommended that emphasis should be given to the provisions of section 23, which encourages the Secretariat to create linkages with “research institution, the private sector, the Federal Government and other stakeholders in the startup ecosystem” since it may offer greater access and opportunities for training and nurturing the skills required by startups. In addition, nurturing startups is not the exclusive preserve of the Federal Government. Hence, all states within the Federation need to replicate the Act and introduce supportive measures to complement the federal government’s efforts.

4. Conclusion

Startups are essential for Nigeria's growth and increased participation in the digital economy. These businesses drive innovation, promote productivity, attract investment, and stimulate entrepreneurship, which increases market competition. The Nigerian Startup Act is crucial legislation aiming to harmonise the nation's laws and government agencies' activities, ensuring a favourable startup ecosystem. The Act addresses the regulatory and financial obstacles hindering startups in the country. It is recommended that the Act be improved in line with the above recommendations. Despite the shortcomings, effective implementation of the NSA will enhance Nigeria's appeal as a destination of choice for startup investments, with the potential to transform the country's startup ecosystem.

⁸⁰ See s. 20, NSA

⁸¹ S. 19 (3)(a)

⁸² S. 28(2)(a)

⁸³ See s. 21(2), NSA

