

START-UP BILL, 2024

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DRAFT

START-UP BILL, 2024

A Bill for;

AN ACT of Parliament to provide for a framework the recognition and support of start-ups, to encourage growth and a sustainable innovative entrepreneurial culture; and to create a favourable environment for incubators, accelerators and technology transfer, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I — PRELIMINARY

Short title.

1. This Act may be cited as the Start-up Act, 2024.

Interpretation.

2. In this Act —

"accelerator" means a company, partnership, an establishment within an institution of higher learning or a formal or informal sector business association whose principal object is to offer short, time bound, and cohort-based programmes, to support the development of start-ups, innovation, and other activities related to the transfer of skills, research, development, and innovation processes and has been labelled as such under this Act.

“angel investor” means a high net worth individual or company which provides funding to an early-stage start-up, typically in exchange for equity in the start-up company;

"cabinet secretary" means the Cabinet secretary responsible for matters relating to Micro, Small and Medium Enterprises Development;

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“credit guarantee scheme” means the credit guarantee support to Micro, Small and Medium Enterprises in securing credit from formal lending institutions anchored on the Public Finance Management Act;

“early-stage Start-up” means a start-up focused on product development, building a customer base, and establishing a strong cash flow;

“financial inclusion fund” means the affordable credit fund anchored on the Public Finance Management (Financial Inclusion Fund) Regulations, 2022;

"incubator" means a company, partnership, an establishment within an institution of higher learning or a formal or informal sector business association whose principal object is to support the birthing/initiation and/or development of Start-ups, innovation, and other activities related to the transfer of skills, research, development, and innovation processes, through the offer of dedicated physical or virtual spaces and advisory services and has been labelled as such under this Act;

"incubation Park" means a virtual or physical space that brings together researchers, creators and innovators to nurture ideas into industry-changing products and services, encourages collaboration, serves as a springboard for new ideas and helps innovators pursue creative solutions;

"incubation" means the provision of enabling environment to facilitate the birthing, development, or growth of start-ups;

"incubation programme" means the provision of systematic support to applicants such as access to training, mentorship, and other support services such as the establishment and transformation of enterprises that may be developed by either public or private institutions and executed by an accelerator or incubator;

"innovation" means the creation or distinct improvement of a product or process that has a disruptive positive effect on the economy or society;

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"institution" means the Kenya Industrial Estates, a company and a development financial institution in the Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development established under the State Corporations Act to champion the development of MSMEs throughout the country with focus on clustering of industries, entrepreneurship development and value addition to locally available raw materials;

"investor" any individual or entity that contributes its resources and or technical know-how to the development of Start-ups for a reasonable return;

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“label” under this Act is a certificate issued by the Institution to a start-up, incubator, or accelerator upon the fulfilment of the labelling requirements under this Act.

“labelling” means the assigning of a tiered designation to Start-ups, and the classification of incubators and accelerators in accordance with this Act;

“national research fund” has the meaning assigned to it under the Science, Technology and Innovation Act;

“start-up Maturity Framework” means the model developed by the Agency to assess the technology readiness levels of Start-ups, and to assign them tiers for purposes of labelling, financing and graduation;

“scale-up” means a Start-up that has already validated its product within the marketplace and has proven that its business model and economics are sustainable;

"start-up" means a private limited company legally recognized under the laws of Kenya, which has been in existence for a period of not more than ten years with a strong growth potential, incremental innovation or disruptive business model; and has been labelled as such under this Act;

“technology” means the application of knowledge to meet the goals, goods and services for sustainable development as defined in the Science, Technology and Innovation Act;

“technology transfer office” means an office set up within an institution of higher learning or a Technical and Vocational Education and Training centre or a research centre to manage Intellectual Property Rights and commercialize any innovations from the institution.

Objects.

3. The object of this Act is to provide for a framework for the—

- (a) recognition of start-ups;
- (b) establishment, development, support and growth of start-ups;
- (c) facilitation of the provision of fiscal and non-fiscal support to startups, incubators, accelerators and technology transfer offices;

- (d) catalysing the growth of Kenya's start-up ecosystem through infrastructural enhancement, innovation and talent development, entrepreneurial culture growth and ecosystem coordination;
- (e) enhancement of private sector investments in start-ups and Kenya's positioning in the global innovation and start-up economy; and
- (f) linkage of start-ups with financial institutions, research institutions and other institutions at the national and county governments

Functions
institution.

of the

4. (1) The institution shall—

- (a) develop a framework setting out modalities on funding;
- (b) receive, assess, and issue labels to start-ups, incubators and accelerators;
- (c) create guidelines for incubation programmes run by public agencies;
- (d) create an enabling environment for micro, small and medium enterprises to be innovative;
- (e) issue a framework for the establishment, revamping and operation of accelerators and incubation hubs in every county;
- (f) enter into partnerships to promote the start-up ecosystem based on the start-up Maturity Framework;
- (g) design and implement training and capacity building programs for start-ups, incubators, and accelerators in accordance with this Act;
- (h) carry out resource mobilization to support technology, transfer offices, labelled start-ups, incubators and accelerators;
- (i) formulate and provide general policy guidelines for realisation of the objects of this Act;
- (j) investigate alleged violations of the provisions of this Act upon receipt of a complaint or on its own initiative;
- (k) develop strategies and measures to ensure protection of talent in start-ups;
- (l) accredit start-ups for purposes of seeking funding;
- (m) support start-ups through collaboration with relevant agencies to facilitate registration and commercialization of their intellectual property;
- (n) advise the Cabinet Secretary on offering of fiscal and non-fiscal incentives;
- (o) ensure all persons irrespective of their sex, disability or ethnicity is afforded an equal opportunity to establish and benefit from their innovation;

- (p) establish a database of all start-ups; and
- (q) undertake any other function, which is incidental to the performance of any of the foregoing functions.

PART II- LABELLING OF START-UPS, INCUBATORS AND ACCELERATORS

Eligibility criteria.

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5. (1) The institution shall issue a start-up label upon fulfillment of the following requirements—

- (a) certificate of incorporation under the Companies Act;
- (b) involvement in the innovation, development, production or improvement and commercialization of innovative products, processes or services;
- (c) a scalable business model;
- (d) headquarters in Kenya;
- (e) its annual turnover does not exceed the amount prescribed by the Cabinet Secretary;
- (f) commits to directing five percent of the proceeds to savings and pension; and
- (g) falls within the tiered structures as prescribed by the Startup Maturity Framework.

(2) subject to sub-section (1), no person shall act as a start-up unless admitted by the institution.

(3) This criteria shall not apply to a holding company or subsidiary of an existing company which is not labelled as a start-up.

Eligibility for grant of incubator or accelerator label.

6. (1) An incubator or accelerator label is eligible for labelling where it—

- (a) is registered as a company, partnership, an establishment within an Institution of higher learning or a formal or informal sector business association;
- (b) it supports the establishment and development of start-ups;
- (c) has in place facilities, suitable to accommodate start-ups, such as reserved spaces to install, test, verify or research, and adequate equipment for start-up activities.
- (d) is administered or directed by persons of recognised competence in business development and innovation and has a structure at its disposal for technical and managerial consulting;

- (e) has structured collaborative relationships with institutions of higher learning or centres of research or public institutions or private institutions or financial partners that carry out activities and projects related to start-ups; and
- (f) has experience in supporting start-ups with such indicators as may be prescribed.

Application for labelling.

7. (1) A start-up, incubator or accelerator required to issue a label under section 4 shall submit an application to the Institution in the prescribed form.
- (2) An application under sub-section (1) shall submit a statement setting out the following information—
- (i) the name of the entity;
 - (ii) the general nature of the proposed business of the entity;
 - (iii) a declaration form stating whether an entity has complied with section 23; and
 - (iv) The proposed registered office of the entity;
- (3) The institution shall put in place mechanisms to ensure that the admission process is simple, efficient, accurate and transparent and shall for this purpose—
- (a) establish an online platform for the submission of the documents and information specified under sub-section (1); and
 - (b) devolve the labelling process to the lowest devolved unit by establishing labelling desks as may be necessary to enable access to labelling.
- (4) A start-up, incubator or accelerator who knowingly supplies any false or misleading information under subsection (2) commits an offence.
- (5) The Institution shall issue a label where a start-up, incubator or accelerator meets the requirements for labeling.
- (6) A start-up, incubator or accelerator shall notify the Institution of a change in any particular outlined under sub-section (2).
- (7) On receipt of a notification under sub-section (6), the Institution shall amend the respective entry in the register.

Obligations.

8. (1) A start-up, incubator and accelerator labeled under this Act, shall—
- (a) comply with all the applicable laws in Kenya;
 - (b) provide information to the Institution annually on its annual turnover;

- (c) maintain proper books of accounts in accordance with the relevant laws;
- (d) provide an annual report on monies received to support their activities;
- (e) comply with any other obligations set out by the Institution after issuance of the label; and
- (f) provide any other information that may be required during the period.

Duration of label.

- 9.** (1) The label issued under section 25 shall be valid for a period determined at the time of application after taking into account the need for the label.
(2) The holder of the label may apply for renewal of the label after expiry of the label.

Register of start-ups,
incubators and
accelerators

- 10.** (1) The institution shall keep and maintain a register of the labelled start-ups, incubators and accelerators.
(2) The institution may, at the request of a start-up, incubator or accelerator, remove any entry in the register which has ceased to be applicable.
(3) The register shall be a public document and available for inspection by any person.
(4) A person may request the institution for a certified copy of any entry in the register.

Cancellation or variation
of the label.

- 11.** The institution may, on issuance of a notice to show cause, vary terms and conditions of the label or cancel the label where—
(a) any information given by the applicant is false or misleading; or
(b) the holder of the label, without lawful excuse, fails to comply with any requirement of this Act.

Compliance and audit.

- 12.** The institution may carry out periodical audits of the processes and systems of the start-ups, incubators or accelerators to ensure compliance with this Act.

Start-up maturity
framework.

- 13.** The institution shall develop a start-up maturity framework for purposes of —
(a) assessing the technology readiness levels of startups;
(b) assigning them tiers for purposes of labelling and financing;
(c) assisting in performance measurement and decision making of the startup ecosystem; and
(d) defining the graduation of startups out of the scope of the maturity framework.

PART III— COORDINATION OF TECHNOLOGY TRANSFER OFFICES

Establishment.

- 14.** (1) The Cabinet Secretary may, on the recommendation of the institution, by notice in the *Gazette* establish a technology transfer office and grant a Certificate of Registration in accordance with the provisions of this Act.
- (2) Without prejudice to the generality of (1), the technology transfer centers may include—
- (i) universities and other institutions of higher learning;
 - (ii) vocational institutions and training centers; or
 - (iii) research centers.
- (2) An order under this section shall specify matters with respect to the conduct and management of the technology transfer office as the Cabinet Secretary, may find it necessary or desirable to provide for.

Operating procedure.

- 15.** The institution shall develop standards and guidelines for the setting up and running operations of pre-existing technology transfer offices in Kenya.

Functions of technology transfer offices.

- 16.** Technology transfer offices shall—
- (a) act as a link between academia and the industry to facilitate commercialisation of intellectual property and innovations;
 - (b) receive disclosures and analyse the disclosures for any commercial potential and the likely success of such commercialisation;
 - (c) subject to the law relating to intellectual property, facilitate researchers and innovators in seeking the statutory protection of their intellectual property;
 - (d) facilitate Intellectual Property Commercialization through, licensing, assignment, and creation of Startups; and
 - (e) carry out awareness programmes on commercialization of intellectual property.

PART IV— FISCAL AND NON-FISCAL INCENTIVES

Support for labelled start-ups

- 17.** The Cabinet secretary, shall put in place measures to support the establishment and development of start-ups and shall, for this purpose—
- (a) facilitate tax reliefs based on the startup maturity framework;
 - (b) determine the rate of the Personal Income Tax relief entitlement;
 - (c) negotiate on their behalf competitive interest rates on startup loan products of the Financial Inclusion Fund;

- (d) seek exemptions for startups in the manufacturing sector from the requirement in public procurement giving priority to quality standards and technical parameters; and
- (e) collaborate with relevant government agencies to ease work permit requirements for foreign talent with the requisite skill meant to support startups.

Incentives for labelled incubators and accelerators.

18. The institution shall put in place measures to support incubators and accelerators and shall, for this purpose—

- (a) negotiate for tax concessions on the machinery or any other unique equipment to be used by incubators or accelerators; and
- (b) offer grants and aid for research, development, training, and expansion of projects taking place in the incubators or accelerators.

Incentives for investors.

19. The cabinet secretary, in consultation with the Cabinet secretary responsible for finance, shall put in place measures to provide incentives to incubators and accelerators, subject to the provisions of any other relevant law, including, but not limited to, the following—

- (a) tax relief on investment and from Capital Gains Tax;
- (b) tax relief in the event of loss of investment;
- (c) tax relief for organizations or companies who have made equity investments in start-ups;
- (d) tax relief for investors who invest in Startups that have three-quarters of their staff as local employees;
- (e) creation of a special visa for Foreign Direct Investment.

General requirements on exemptions and deductions.

20. The following apply with respect to exemptions and deductions described in this Act—

- (a) no person is eligible for an exemption or deduction unless the exemption or deduction has been recommended by the Institution and approved by the appropriate government authority;
- (b) no person is eligible for an exemption or deduction unless any additional requirements or conditions prescribed in the regulations made by the Cabinet Secretary are satisfied; and
- (c) an exemption or deduction may be refused on the basis that it has not been provided for in the allocation of public resources.

PART V-FUNDS, ACCOUNTS AND AUDIT

Funds for start-ups.

21. (1) The funds shall consist of –

- (a) monies allocated by Parliament for purposes of funding start-ups;
- (b) the national research fund
- (c) any grants, gifts, donations or other endowments given to the institution; and
- (d) such funds as may vest in or accrue to the institution in the performance of its functions under this Act or any other written law.

(2) Any funds donated or lent to, or gift made to the institution shall be disclosed to the National Assembly and made public before use.

Accounts and audit.

22. The annual accounts of the Institution shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

PART VI-MISCELLANEOUS PROVISIONS

Data protection.

23. The personal data concerning a start-up, incubator or accelerator, shall be processed only in accordance with the provisions of the Data Protection Act.

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General offence and penalty.

24. A person, who intentionally signs or issues any false or incorrect notification, report, document or statement required to be issued in accordance with this Act, commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding five years, or to both.

Regulations.

25. The cabinet secretary, may make regulations generally for the better carrying out of the purposes and requirements of this Act and in particular, may make regulations specifying —

- (a) the procedure to be followed by any person, public entity or other organization, in doing anything that the person, public entity or other organization is required or permitted to do under this Act;
- (b) the procedure to be followed when seeking exemption from labelling fees;
- (c) forms and fees payable under the Act; and
- (d) any other matter, which is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

MEMORANDUM OF OBJECTS AND REASONS

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