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THE STARTUP BILL, 2020

A Bill for

AN ACT of Parliament: to provide a framework to encourage growth and sustainable technological development and new entrepreneurship employment; to create a more favourable environment for innovation; to attract Kenyan talents and capital; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Startup Act, 2020.

Short title.

2. In this Act—

Interpretation.

“Agency” means the Kenya National Innovation Agency established under section 28 of the Science, Technology and Innovation Act;

No. 28 of 2013.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to science, technology and innovation;

“startup incubator” means a company, partnership, non-governmental organization or limited liability partnership, whose principal object is the support of the birth and development of start-ups, innovation, and related activities related to the transfer technological and research, development and innovation processes, through the offer of dedicated physical spaces and services advice;

“county executive committee member” means the county executive committee member responsible for matters relating to trade, technology, commerce and related matters;

“credit guarantee” means the guarantee of monetary liabilities, excluding technology guarantee, borne by an enterprise;

“Fund” means the National Research Fund established under section 32 of the Science, Technology and Innovation Act;

No. 19 of 1990.

“incubation” has the meaning assigned to it under

section 2 of the Science, Technology and Innovation Act;

“incubator” means a company, partnership, non-governmental organization or limited liability partnership, whose principal object is the support for the birth and development of start-ups, innovation, and related activities related to the transfer technological and research, development and innovation processes, through the offer of dedicated physical spaces and services advice;

“innovation” has the meaning assigned to it under section 2 of the Science, Technology and Innovation Act;

“non-governmental organization” has the meaning assigned to it under section 2 of the Non-Governmental Organizations Co-ordination Act; and

“technology” has the meaning assigned to it under section 2 of the Science, Technology and Innovation Act.

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

- (a) that fosters a culture of innovative thinking and entrepreneurship;
- (b) for the registration of startups;
- (c) for linkage of startups with private investors, financial institutions, the private sector, research institutions and such other institutions at the county, national and international level;
- (d) to facilitate investments in startups;
- (e) to facilitate the provision of fiscal and non-fiscal support to startups in Kenya;
- (f) that promotes an enabling environment for the establishment, development, conduct of business and regulation of startups;
- (g) for the establishment of incubation facilities at the National and county levels of government;
- (h) to establish an environment that promotes the establishment of startups; and
- (i) for the monitoring and evaluation of the legal and regulatory framework to encourage the development of startups.

PART II — ESTABLISHMENT OF INCUBATION PROGRAMMES

4. (1) The National and county governments shall —

Role of National
and county
governments.

- (a) promote innovation;
- (b) facilitate the transfer of technology innovation;
- (c) create and develop a sustainable, globally competitive technology innovation sector that contributes towards the accelerated growth of the economy;
- (d) promote the creation of employment and wealth creation; and
- (e) promote the linkages between universities and research institutions and the business community.

(2) The Agency and the county executive committee members shall, for purposes of subsection (1) —

- (a) put in place a national and county incubation policy framework for the development of the business incubation sector and startup system;
- (b) enter into partnerships with local and international business incubators in order to promote the establishment and growth of startups in Kenya;
- (c) establish programmes for the certification and admission of incubators into the incubation programmes;
- (d) put in place mechanisms that promote the development of business incubation programmes;
- (e) create an enabling environment for the promotion of business incubators including fiscal and non-fiscal incentives to incubators and startups;
- (f) establish public online and other platforms for access to information including the establishment and development of startups, existing incubation programmes, access to fiscal and non-fiscal support;
- (g) keep and maintain a directory of startups and incubators;
- (h) support any research and development activities

undertaken by startups;

- (i) put in place mechanisms for pre-incubation of entities and for this purpose, provide training and capacity building programmes to startups registered under this Act;
- (j) put in place mechanisms to enable access to entities from marginalized groups through the use of quotas or mechanisms that match them to unused capacity in existing programmes; and
- (k) put in place facilitative structures that ensure the protection of the innovations of startups at the national and international level for the protection of the intellectual property.

5.(1) The Agency and the county executive committee members shall, in realising the objectives of this Act and ensuring that the National and county governments fulfil their roles under section 4, establish incubation programmes.

Establishment of
incubation
programmes

(2) The Agency and the county executive committee members shall, for purposes of subsection (1), —

- (a) develop standards and guidelines to regulate the relationship between an incubator and a startup under this Act;
- (b) establish an online platform setting out information on existing incubator programmes, incubators and startups and the process of registration and admission into the programmes; and
- (c) prescribe a criteria for the evaluation of entities, programmes and structures set up for the purposes of implementing this Act.

PART III— REGISTRAR OF STARTUPS AND ADMISSION INTO AN INCUBATION PROGRAMME

6.(1) The Agency shall be responsible for the registration of startups under this Act.

Appointment and
functions of
Registrar and
other officers

(2) There shall a Registrar of startup who shall be—

- (a) competitively recruited by the Public Service Commission; and

- (b) appointed by the Agency on such terms and conditions as the Agency may, in consultation with the Salaries and Remuneration Commission, determine.

(3) The Agency may, in consultation with the Public Service Commission, appoint—

- (a) a Deputy Registrar; and
- (b) such number of county registrars in the counties, as shall be necessary for the performance of the functions of the Registrar and who shall be subject to the directions of the Registrar.

7. (1) The Registrar shall —

Functions of the registrars.

- (a) keep an updated database of all registered startups and startups under review indicating-
 - (i) business development stage;
 - (ii) ownership;
 - (iii) description of the innovative aspects of the company, including intellectual property rights;
 - (iv) products and services offered;
 - (v) investment support received;
 - (vi) financial needs; and
 - (vii) target market;
- (b) register and supervise startups registered under this Act to ensure compliance with the provisions of this Act;
- (c) maintain a register of all registered startups in the country;
- (d) keep all documents and records of registered startups;
- (e) enforce the decisions of the Board of the Agency with respect to the registration, regulation and supervision of startups under this Act;
- (f) co-ordinate the functions of county registrars under this Act;
- (g) perform such other functions as may be necessary

for the implementation of this Act or as may be specified under any other law.

(2) The Deputy Registrar shall deputise the Registrar and shall perform such duties as may be assigned to him or her by the Registrar.

(3) The county registrars and assistant registrars shall—

- (a) facilitate the registration and development of startups under this Act;
- (b) receive applications for registration of startups;
- (c) monitor and evaluate startup projects; and
- (d) carry out such duties as may be delegated from time to time.

8. (1) An entity shall be eligible to be registered as a startup and for admission into an incubation programme if the entity —

Eligibility for admission into incubation programme.

(a) is registered in Kenya as a—

- (i) company under the Companies Act; or
- (ii) partnership firm under the Partnership Act; or
- (iii) limited liability partnership under the Limited Liability Partnership Act; or
- (iv) non-governmental organization under the Non-Governmental Organizations Co-ordination Act;

No. 17 of 2015.

No. 16 of 2012.

(b) is newly registered or has been in existence—

- (i) for a period of not more than seven years from the date of its incorporation or registration; and
- (ii) in the case of startups in the biotechnology sector, the period shall be up to ten years from the date of its incorporation or registration;

No. 42 of 2011.

(c) has as its objects; the innovation, development, production or improvement and commercialisation of innovative products, processes or services or if it is a scalable business model;

No. 19 of 1990.

- (d) has its human resources, total assets, and annual turnover number as prescribed by the Cabinet Secretary;
- (e) has its headquarters in Kenya;
- (f) is majority owned by one or more citizens of Kenya;
- (g) at least fifteen percent the entity's expenses can be attributed to research and development activities; and
- (h) is a holder, depositary or licensee of a registered patent or the owner and author of a registered software.

(2) This Act shall not apply to an entity which is—

- (a) established or formed as a result of the split, reconstruction, merger or reconstitution of an existing business; or
- (b) a holding company or subsidiary of an existing entity which is not registered as a startup.

9. (1) An entity that qualifies for admission into an incubation programme under section 8 may submit an application, in the prescribed form—

Application for admission into an incubation programme.

- (a) in the case of an incubation programme managed by the Agency, Ministry or any other entity on behalf of the National Government, to the Agency; or
- (b) in the case of an incubation programme managed by a county government, to the county registrar.

(2) An applicant for admission under subsection (1) shall submit the application together with—

- (a) 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 8;

- (iv) the proposed registered address of the entity;
 - (v) the entity's place of incorporation or registration;
 - (vi) the entity's registration number; and
 - (vii) the registered address of the entity to which all communications may be addressed;
- (b) a letter of recommendation or support which may include a letter—
- (i) a patent or trademark registered in Kenya;
 - (ii) statement on information regarding the elements inherent in the economic model of said entity including—
 - (A) innovation aspects;
 - (B) factors differentiating the factors of realization of the strong potential of economic development;
 - (C) scientific and technical qualifications and the experience of the project team;
 - (D) a prize or reward obtained and any patent for invention filed;
- (c) the certificate of incorporation or registration of the entity;
- (d) a brief description of the innovative nature of the product or service; and
- (e) such other information concerning the proposed startup as the Cabinet Secretary or county executive committee member may prescribe.

(3) The Registrar, as the case may be, may require the applicant to submit to the Registrar, such further information as may be considered necessary for the purpose of determining the application for admission.

(4) The Agency and the county executive committee members shall put in place mechanisms to ensure that the admission process of an entity under this section 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 subsection (1); and
- (b) devolve and decentralize the registration process to the lowest devolved unit and may establish such registration desks as may be necessary to enable access to registration

10. (1) The Registrar or the county registrar, as the case may be shall, within thirty days upon receipt of an application under section 9 —

Consideration of application and registration.

- (a) examine the application together with the documents; and
- (b) if the Registrar or the county registrar considers it necessary, call for such further information or carry out such inspections as he or she may consider necessary for the determination of the application.

(2) Where the Registrar or the county registrar is satisfied that an applicant meets the requirements for registration under this Act, the Registrar or county registrar shall, subject to the provisions of this Act, enter the name and particulars of the applicant in the register of startups kept for that purpose.

11. The Registrar or county registrar, as the case may be, shall, upon entering the name of the applicant in the register, issue to the entity, a certificate in the prescribed form.

Certificate of Registration.

12. (1) The certificate of admission into an incubation programme issued under section 11 shall be conclusive evidence that the startup—

Effect of admission into incubation programme.

- (a) has met all the requirements for registration specified under this Act; and
- (b) has been duly registered in accordance with this Act unless it is proved that the registration of the startup has been cancelled.

13. (1) The Registrar or county registrar may reject an application for the admission of an entity where—

Refusal to admit an entity into an incubation programme.

- (a) the entity has submitted false or misleading information in its application;
- (b) the application does not comply with the provisions of this Act;
- (c) the entity does not meet the criteria specified under this Act for the registration of a startup; or
- (d) the objects of the entity are likely to be pursued for an unlawful purpose or used for a purpose incompatible with public interest.

(e)

(2) The Registrar or county registrar, as the case may be, shall notify the applicant, in writing, of the decision to reject an application for admission within fourteen days of such rejection.

14. (1) A person who is aggrieved by the decision of the Registrar or county registrar under this Part may, within thirty days of being notified of the decision, apply to the Cabinet Secretary for a review of the decision.

Application from an order of refusal or de-registration.

(2) An application for review shall be in such form as the Cabinet Secretary shall prescribe.

(3) The Cabinet Secretary shall determine an application under subsection (1) within sixty days of receipt of the application under subsection (1) and may confirm, vary or reverse the decision under review.

15. (1) The Registrar shall keep and maintain a register of —

Register of startups.

- (a) all startups registered under this Act specifying—
 - (i) the name of the startup;
 - (ii) the members of the startup;
 - (iii) the address of the startup; and
 - (iv) such other particulars as the Registrar may from time to time determine;
 - (b) all de-registered startups; and
 - (c) all startups which have voluntarily deregistered under this Act.
- (2) Any person may inspect the register and obtain a

copy of, or an extract from the Registrar upon payment of such fee as the registrar shall determine.

16. (1) The Registrar, as the case may be, may, from time to time, make changes or corrections in the register relating to any entry.

Alteration of register.

(2) Any change or correction in relation to an entry made pursuant to a notice issued by a startup shall be made to the Registrar as soon as it is practicable after receipt of an authenticated notification thereof.

17. (1) A startup that makes a change to any of its particulars shall, within thirty days of such change submit to the Registrar information regarding the change.

Change of particulars.

(2) Upon receipt of the information under subsection (1) and where the Registrar is satisfied that the change does not affect its status of registration as a startup, enter the changes in the register kept by the registrar under this Act.

18. A startup registered under this Act shall—

Obligations of registered startups.

- (a) be encouraged to achieve growth goals related to the number of human resources, total assets and the annual turnover set by a regulations;
- (b) maintain accounting in accordance with the legislation and arrangements in place for the work and submit its annual financial budgets to the Agency no later than thirty first day of March in each financial year; and
- (c) inform the Agency of a change in its structure, composition or object within a period of one month from the date of the change.

PART IV—CERTIFICATION OF INCUBATORS

19. An entity may be certified as an incubator, if the entity—

Eligibility for admission into an incubation programme

- (a) is registered as a public limited company, a non-governmental organization, a private limited company, a limited liability partnership or a partnership;
- (b) has as its principal object the delivery of services to support establishment and development of

innovative start-ups;

- (c) has in place —
 - (i) facilities, suitable to accommodate innovative startups; and
 - (ii) adequate equipment for startup activities innovation.
- (d) is administered or directed by persons of recognised competence on business and innovation and has a structure at its disposal for technical and managerial consulting; and
- (e) has established collaborative relationships with universities, centres of research, public institutions and financial partners that carry out activities and projects related to innovative start-ups.

20. (1) An entity that meets the criteria specified under section 21 may apply for admission as an incubator by submitting an application together with a statement setting out information under subsection (2) —

Certification of incubators.

- (a) in the case of an incubator programme managed by the Agency, to the Registrar; and
- (b) in the case of a programme managed by the county government, to the county registrar.

(2) A statement complies with this subsection if it contains the following information relating to the incubator—

- (a) address of the incubator;
- (b) principal object;
- (c) brief description of the projects carried out;
- (d) expenditure on research and development;
- (e) list of shareholders;
- (f) list of investor companies;
- (g) educational qualifications and professional experiences of members and staff;
- (h) the existence of professional relationships, of collaboration or commercial with other incubators,

investors institutional and professional, universities and research centers;

- (i) last financial statements filed; and
- (j) list of industrial property rights and intellectual property rights.

21. (1) The Agency shall, in consultation with the county executive committee members, prescribe standards and guidelines to be adhered to by a startup or an incubator that intends to withdraw from an incubation programme established pursuant to this Act.

Withdrawal from an incubation programme.

(2) The Agency or a county executive committee member may, where an incubator fails to adhere to or meet the requirements under this Act, revoke the admission of the incubator in accordance with the guidelines prescribed by the Agency under subsection (1).

22. An incubator registered under this Act shall—

Obligations of an incubator.

- (a) support novice technological entrepreneurs at the earliest stage of technological entrepreneurship;
- (b) have a defined minimum and maximum technological innovation projects it can handle simultaneously;
- (c) facilitate technological innovators to implement their ideas and form new business ventures;
- (d) determine the technological and marketing applicability of a technological innovation idea;
- (e) have a viable research and development plan and expertise;
- (f) raise capital and prepare marketing for startups;
- (g) provide secretarial and administrative services to startups;
- (h) create investment opportunities for the private sector, including for venture capitalists;
- (i) transfer technologies from research institutions and into the technological startups' industry; and
- (j) enhance entrepreneurship in Kenya.

PART V—INCENTIVES FOR STARTUPS

23. The Agency and the county executive committee members shall put in place measures to support the establishment and development of startups and shall, for this purpose—

Support to startups.

- (a) subsidise the formalisation of startups;
- (b) facilitate the protection of the intellectual property of innovations by startups in Kenya and with international organisations;
- (c) provide fiscal and non-fiscal support to startups admitted into incubation programmes under this Act;
- (d) provide support in the form of research and development activities; and
- (e) provide such other support to enable the development and growth of startups registered under this Act.

24. (1) The Cabinet Secretary may, in consultation with Board of Trustees of the Fund and where necessary for the development and growth of startups under this Act, establish a credit guarantee scheme.

Credit Guarantee Scheme.

(2) Where the Cabinet Secretary establishes a credit guarantee scheme under subsection (1), it shall have as its objectives—

- (a) the provision of accessible financial support to startups;
 - (b) a framework for credit guarantee for startups;
 - (c) guarantee for investors in startups;
 - (d) availing of financial and credit information to startups; and
 - (e) capacity building on financial and risk management to startups.
- (3) Where a credit guarantee scheme is established pursuant to subsection (1), the Cabinet Secretary shall ensure that there is in place -
- (a) a strategy and operational goals that are aligned to

the objectives under subsection (2);

- (b) a criteria for eligibility and qualification for recipients of funding under the Scheme;
- (c) a criteria for the monitoring and evaluation of projects undertaken under the Scheme and the efficiency of the operations of the Scheme; and
- (d) mechanism for transparency, accountability and reporting on the activities of the Scheme.

25. The Agency shall put in place a programme for the training and capacity building of startups under this Act and shall, for this purpose establish a platform setting out information at the national and county level of government, on—

Training and capacity building.

- (a) existing incubators;
- (b) available training programmes;
- (c) mentors and resource persons;
- (d) projects under existing incubation programmes;
- (e) available fiscal and non-fiscal support services;
- (f) business information necessary for the management and development of startups; and
- (g) such other information as the agency shall, in consultation with the county executive committee member consider necessary.

26. (1) The Agency shall facilitate the startups in the application for grant or revocation of patents and institution of legal action for infringement of any intellectual property rights.

Application for grant or revocation of patents.

(2) The Agency shall facilitate the startups to file and register patents at the international level.

27. The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, put in place measures for the granting of fiscal incentives including tax incentives as shall be considered necessary for the development of startups in the country.

Fiscal incentives.

28. A startup shall be encouraged to cumulatively achieve growth objectives as set out by the Cabinet Secretary by regulation.

Growth objectives.

PART VI — MISCELLANEOUS PROVISIONS

29. (1) The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations —

- (a) on the conditions and process for the exemption of startups from registration fees;
- (b) on workplace and labour issues with employees, independent contractors, and service providers;
- (c) on commercial transactions, including product development, production, corporate partnering, advertising, marketing, and sales;
- (d) on employee benefits and compensation;
- (e) on protection of intellectual property rights;
- (f) on the relationship between founders and employees;
- (g) for the reporting and accountability by startups, under this Act, of the funds utilised by them;
- (h) for the de-registration of startups;
- (i) for the grounds and process on refusal to admit an entity into an incubation programme;
- (j) for the advertising and impact assessment of the measures of startups; and
- (k) for incentives to invest in innovative startups.

30. The Science, Technology and Innovation Act is amended—

Amendment of
No. 28 of 2013.

(a) in subsection (1) of section 29 by inserting the following new paragraph immediately after paragraph (p)—

(pa) provide financial support to technological innovations registered under the Startups Act;

(b) in section 32 —

(i) by deleting subsection (4) and substituting therefor the following new subsection—

(4) The Fund shall be managed by a Board of Trustees which shall consist of eleven members to be appointed by the Cabinet Secretary as follows—

- (a) a chairperson, being a person with knowledge and experience in matters related to finance, investment and fundraising related to science, innovation and technology;
 - (b) the Principal Secretary in the Ministry responsible for finance;
 - (c) the Principal Secretary in the Ministry responsible for science and technology;
 - (d) one person nominated by the Kenya Private Sector Alliance;
 - (e) one person with knowledge and experience in finance and investment nominated by the Kenya Bankers Association;
 - (f) two persons with knowledge and experience in the fields of innovation, technology and entrepreneurship;
 - (g) two persons representing startups in the country nominated by the most representative organisations representing startups;
 - (h) the Director of the Kenya Innovation Agency, who shall be an *ex officio* member; and
 - (i) the Secretary to the Commission, who shall be an *ex officio* member.
- (ii) by deleting the words “subsections (4)(a), (d), (e) and (f)” appearing immediately after the words “Trustees referred to under” in subsection (5) and substituting therefor the words “subsection (4) (a), (d), (e), (f) and (g)”;
- (c) in subsection (2) of section 33 by inserting the following new paragraph immediately after paragraph (b)—

- (ba) financial support to technological innovations;
- (d) in subsection (1) of section 36 by inserting the following new paragraph immediately after paragraph (g)—
 - (ga) provide financial support to technological innovations;

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Kenyan startup ecosystem has experienced rapid growth over the last decade. Construction of Konza Techno City, “Silicon Savannah” is expected to further positively impact the country’s tech startup ecosystem. Start-up is generally associated with young innovative tech companies or new businesses that leverages on technology to solve a problem or pain point of a population segment.

Startups are increasingly playing a critical role to the world’s socio-economic development through development of innovation and aiding optimisation of current economic sectors

Startups focus on solving problems through new technology and cutting-edge innovation.

Further due to their unique rapid growth model over a short period of time, startups have a high capacity of quality job creation. For instance, Twiga foods and Sendy support over 40,000 people on their platforms.

Examples of startups that have fundraised successfully in Kenya include—

- (a) Cellulant that has developed a digital payment platform that offers flexible payment options for consumers and businesses, and works with financial institutions, governments, and mobile network operators to increase transparency and expand their reach in Africa.
- (b) Sendy, a logistics platform that started operating before Uber came into the Kenyan market. They provide a platform for its partner drivers to fulfil customers’ logistics needs from motorcycle deliveries to trucks.
- (c) Twiga foods that sources quality produce from thousands of farmers around Kenya, providing them with a ready guaranteed market, and through their mobile-based supply platform, vendors can order fresh and high-quality groceries and vegetables and Twiga reliably deliver to their shops at below market prices.
- (d) M-Kopa that provides “pay-as-you-go” energy services for off-grid customers across emerging markets. Through its proprietary, patented technology platform that combines embedded GSM + mobile payments, the company had already connected 600,000 homes across Africa, providing 75 million hours of kerosene-free

lighting each month with its battery-powered systems that come with lights, phone-charging, and a solar-powered radio.

The impact of innovation linked to startups in Kenya has been felt socio-economically both locally and globally with the most successful and recognised innovation being Mpesa with is present apart from Kenya in nine other countries namely Albania, the Democratic Republic of Congo, Egypt, Ghana, India, Lesotho, Mozambique, Romania and Tanzania.

Startups are also synonymous with creation of new markets as well as transforming old ones as indicated by startups such as Uber, Airbnb, Jumia and Twiga foods.

In Kenya, startups are yet to be recognized in law even though the startups innovations have greatly contributed to Kenya's economic development by acting as a support infrastructure to other economic sectors (KNBS 2019 Economic survey).

In Africa, Tunisia and Senegal have noticed the potential of startups to support rapid social-economic development and have already enacted laws to recognise, support and regulate start-ups activities in their countries.

Currently, there is no regulatory framework for startups in Kenya. The Bill therefore seeks to provide a legislative framework —

- (a) that fosters a culture of innovative thinking and entrepreneurship;
- (b) for the registration of startups and the linkage of such startups with financial institutions, the private sector research institutions and such other institutions at the National and county level of government;
- (c) to facilitate investment in and the provision of fiscal and non-fiscal support to startups in Kenya;
- (d) that promotes an enabling environment for the establishment, development, conduct of business and regulation of startups;
- (e) for the establishment of incubation facilities at the National and county levels of government and environment that promotes the establishment of startups; and
- (f) for the monitoring and evaluation of the legal and regulatory framework and the mechanisms put in place to encourage the development of startups.

PART I of the Bill has preliminary provisions on the short title, definitions and object of the Bill.

PART II of the Bill is on Establishment of Incubation Programmes and provides for matters related to the role of the National and County Governments. The Bill provides for role of National and county government in relation to startups to include, among others, to—

- (a) promote innovation;
- (b) facilitate the transfer of technology innovation;
- (c) create and develop a sustainable, globally competitive small and medium enterprise sector that contributes towards the accelerated growth of the economy;
- (d) promote the creation of employment and wealth creation; and
- (e) promote the linkages between universities and research institutions and the business community.

The Bill mandates the national and county governments put in place a national and county incubation policy framework for the development of the business incubation sector and startup system.

The Bill mandates the Kenya National Innovation Agency established under the Science, Technology and Innovation Act, 2013 and county executive committee members responsible for matters relating to science, technology and innovation to establish incubation programmes and regulations on relationship between incubators and startups.

PART III of the Bill is provides for the registration of Startups and admission into an Incubation Programme. The part provides for the criteria for registration of startups, admission into incubation programmes and obligations of startups.

The Bill provides that the Kenya National Innovation Agency shall be responsible for the registration of startups as well as maintenance of a startups database. It provides for the Registrar to be competitively recruited by the Public Service Commission and appointed by the Agency. Under the Bill an entity shall be registered as a startup, if, among other things, it —

- (a) is registered in Kenya as a: private limited company under the Companies Act; partnership firm under the Partnership Act; limited liability partnership under the Limited Liability Partnership Act or non-governmental organization under the Non-Governmental Organizations Co-ordination Act;
- (b) is newly registered or has been in existence for a period of not more than seven years from the date of its incorporation or registration and in the case however, in the case of

startups in the biotechnology sector, the period shall be up to ten years from the date of its incorporation or registration;

- (c) has as its objects the innovation, development, production or improvement and commercialisation of innovative products, processes or services or if it is a scalable business model;
- (d) is wholly owned by one or more citizens of Kenya;
- (e) at least fifteen percent the entity's expenses can be attributed to research and development activities.

PART IV of the Bill is on Certification of Incubators. The Part provides for admission into incubation programmes, certification of incubators and obligations of incubators. Under the Bill, an entity may be certified as an incubator, if the entity, among other things—

- (a) is registered as a public limited company, a non-governmental organization, a private limited company, a limited liability partnership or a partnership;
- (b) has as its principal object the delivery of services to support establishment and development of innovative start-ups;
- (c) is administered or directed by persons of recognised competence on business and innovation and has a structure at its disposal for permanent technical and managerial consulting;
- (d) has regular collaborative relationships with universities, centres of research, public institutions and financial partners that carry out activities and projects related to innovative start-ups; and
- (e) has experience in supporting innovative start-ups with such indicators as may be prescribed by the Agency in consultation with county executive committee members.

Further, startup incubators are obligated to, among others—

- (a) raise capital and prepare marketing for startups
- (b) support novice technological entrepreneurs at the earliest stage of technological entrepreneurship;
- (c) have a defined minimum and maximum technological innovation projects it can handle simultaneously;
- (d) facilitate technological innovators to implement their ideas and form new business ventures;

- (e) determine the technological and marketing applicability of a technological innovation idea; and
- (f) have a viable research and development plan and expertise.

PART V of the Bill provides for incentives for Startups. The Bill provides the following incentives for startups—

- (a) subsidised formalisation of startups;
- (b) the protection of the intellectual property of innovations by startups in Kenya and with international organisations;
- (c) fiscal and non-fiscal support to startups admitted into incubation programmes;
- (d) support in the form of research and development activities; and
- (e) establishment of a credit guarantee scheme for startups.

PART VI of the Bill provides for miscellaneous matters including regulations and consequential amendments to the Science, Technology and Innovation Act, 2013. The Bill further expands the membership of the Board of Trustees of the National Research Fund established under the Science, Technology and Innovation Act, 2013 to include two people with knowledge and experience in the fields of innovation, technology and entrepreneurship and one person representing startups in the country nominated by an organisation representing startups.

Additionally, the Bill amends Science, Technology and Innovation Act, 2013 by mandating the Kenya National Innovation Agency and the National Research Fund to financially support technological innovations.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the functions and powers of the County Governments. The Bill provides for the role of county government in relation to startups to include, among others, to—

- (a) promote innovation;
- (b) facilitate the transfer of technology innovation;

- (c) create and develop a sustainable, globally competitive small and medium enterprise sector that contributes towards the accelerated growth of the economy;
- (d) promote the creation of employment and wealth creation;
- (e) promote the linkages between universities and research institutions and the business community; and
- (f) establish a county innovation policy.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

Article 114 of the Constitution provides for matters that fall within the ambit of a money Bill. Article 114(1) provides that a money Bill may not deal with any matter other than those listed in the definition of a “money Bill” in clause (3). Clause (3) provides that a “money Bill” means a Bill which contains provisions dealing with —

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to those matters.

The primary purpose of the Startup Bill, 2020 is to establish a legal framework —

- (a) that fosters a culture of innovative thinking and entrepreneurship;
- (b) for the registration of startups and the linkage of such startups with financial institutions, the private sector research institutions and such other institutions at the National and county level of government;
- (c) to facilitate investment in and the provision of fiscal and non-fiscal support to startups in Kenya;
- (d) that promotes an enabling environment for the establishment, development, conduct of business and regulation of startups;
- (e) for the establishment of incubation facilities at the National and county levels of government and environment that promotes the establishment of startups; and

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- (f) for the monitoring and evaluation of the legal and regulatory framework and the mechanisms put in place to encourage the development of startups.

As such, the Bill is not a “money Bill” within the meaning of Article 114(1) as read together with Article 114(3) of the Constitution.

Dated the 7th August, 2020.

JOHNSON ARTHUR SAKAJA,
Senator.

Section 29 (1) of Act No. 28 of 2013 of which it is proposed to amend

29. Functions of the Agency

(1) The functions of the Agency shall be to develop and manage the Kenya National Innovation System, and for that purpose to—

- (a) institutionalise linkages between universities, research institutions, the private sector, the Government, and other actors in that System;
- (b) cause the creation of science and innovation parks, institutes or schools or designate existing institutions as centres of excellence in priority sectors;
- (c) develop and continuously benchmark national innovation standards based on international best practices;
- (d) scout for and nurture innovative ideas from individuals, training institutions, the private sector and similar institutions;
- (e) establish and regularly update a database on innovation in collaboration with other relevant institutions;
- (f) monitor, forecast and maintain a database of the latest and future global technology;
- (g) increase awareness of intellectual property rights among innovators;
- (h) ensure the inclusion of science, technology and innovation in the country's programs and policies at all levels;
- (i) establish and maintain a Presidential or other award system for novel innovations, subject to prescribed conditions;
- (j) implement the national innovation and commercialization policy;
- (k) disseminate scientific knowledge or technology through any medium;
- (l) recommend provision of financial and any other assistance to any person, for the purpose of enabling that person to develop any technological innovation;
- (m) acquire rights or interests in or to any technological innovation supported by the Agency from any person or assign any person any rights in or to such technological innovation;
- (n) create synergies among different technological innovations, incubations initiatives for diffusion of technology in Kenya;

- (o) develop the national capacity and infrastructure to protect and exploit intellectual property derived from research or financed by the Agency;
- (p) facilitate the application for grant or revocation of patents and institution of legal action for infringement of any intellectual property rights;
- (q) recommend the provision of financial and any other assistance to any person for the purpose of encouraging the person to develop any technological innovation;
- (r) identify strategic fields of innovation; and
- (s) provide incubators for innovative ideas;
- (t) perform other functions incidental to the above.

Section 32 (4) of Act No. 28 of 2013 of which it is proposed to amend

(4) The Fund shall be managed by a Board of Trustees which shall consist of nine members to be appointed by the Cabinet Secretary as follows—

- (a) a chairperson, being a person with knowledge and experience in matters related to finance, investment and fundraising;
- (b) the Principal Secretary in the Ministry responsible for finance;
- (c) the Principal Secretary in the Ministry responsible for science and technology;
- (d) one person nominated by the Kenya Private Sector Alliance;
- (e) two persons with knowledge and experience in finance and investment nominated by the Kenya Bankers Association;
- (f) one person from a body with functions similar to those of the Fund in Kenya;
- (g) the Director of the Kenya Innovation Agency; and
- (h) the Secretary to the Commission.

Section 33 (2) of Act No. 28 of 2013 of which it is proposed to amend

(2) Without prejudice to the generality of the foregoing, monies out of Fund may be applied for—

- (a) the award of contracts, grants, scholarships or bursaries or any other award determined by the Commission to persons or institutions;

- (b) financial support for the acquisition or establishment of research facilities;
- (c) the development of appropriate human resources and research capacity in the areas of science technology and innovation;
- (d) financing research systems in all sectors and all levels of education;
- (e) funding the co-operation and sharing of research information and knowledge, including supporting conferences, workshops, seminars, meetings and other symposia.

Section 36 (1) of Act No. 28 of 2013 of which it is proposed to amend

36. Functions of the Board of Trustees

- (1) The Board of Trustees shall—
 - (a) mobilize resources for the Kenya National Innovation Agency from the Government, the private sector, venture capital, development partners and other sources;
 - (b) prudently manage and invest the funds so mobilized;
 - (c) support the development of human resources through grants to persons or research institutions or universities pursuing postgraduate programs in prioritized areas of science, technology and innovation with priority being given to marginalised indigent communities;
 - (d) support the development of research capacities in the national priority areas of science, technology and innovation;
 - (e) allocate funds for research and promote multi-disciplinary collaboration among Universities and research institutions, including the innovation delivery agencies established under section 29;
 - (f) evaluate the needs, status and results of research financed through the Fund;
 - (g) provide financial support for the development of research facilities by universities, research institutions and other bodies identified by the Commission;
 - (h) provide financial support for participation in international scientific activities through maintaining membership to appropriate international science organizations;

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- (i) provide financial support for collaboration, co-operation and sharing of research information and knowledge, including supporting conferences, workshops, seminars, meetings and other symposia;
 - (j) promote the provision of an information infrastructure linking research institutions to facilitate co-operation and sharing of research information and knowledge;
 - (k) initiate liaison with bodies involved in the protection of intellectual property rights;
 - (l) compile and maintain a national database of research and innovation funded by the Fund as well as those funded by other agencies.