



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 1 of 2021)

THE STARTUP BILL, 2021

(A Bill published in the Kenya *Gazette* Supplement No. 9 of 3rd February, 2021 and passed by the Senate, with amendments, on 2nd December, 2021.)

THE STARTUP BILL, 2021

ARRANGEMENT OF CLAUSES

PART I— PRELIMINARY

- 1— Short Title.
- 2— Interpretation.
- 3— Object.

PART II — ESTABLISHMENT OF INCUBATION PROGRAMMES

- 4— Role of National and county governments.
- 5— Establishment of incubation programmes.

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

- 6— Appointment and functions of Registrar and other officers.
- 7— Functions of the registrars.
- 8— Eligibility for admission into incubation programme.
- 9— Application for admission into an incubation programme.
- 10— Consideration of application and registration.
- 11— Certificate of registration.
- 12— Effect of admission into incubation programme.
- 13— Refusal to admit an entity into an incubation programme.
- 14— Application from an order of refusal or de-registration.
- 15— Register of startups.
- 16— Alteration of register.
- 17— Change of particulars.
- 18— Obligations of registered startups.

PART IV—CERTIFICATION OF INCUBATORS

- 19— Eligibility for admission into an incubation programme.
- 20— Certification of incubators.
- 21— Withdrawal from an incubation programme.
- 22— Obligations of an incubator.
- 23— Incentives for incubators.

PART V— INCENTIVES FOR STARTUPS

- 24— Support to startups.
- 25— Credit Guarantee Scheme.
- 26— Training and capacity building.
- 27— Application for grant or revocation of patents.
- 28— Fiscal incentives.
- 29— Growth objectives.

PART VI – MISCELLANEOUS PROVISIONS

- 30— Regulations.
- 31— Amendment of No. 28 of 2013.

THE STARTUP BILL, 2021

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

Short title. 1. This Act may be cited as the Startup Act, 2021.

Interpretation. 2. In this Act—

No. 28 of 2013. “Agency” means the Kenya National Innovation Agency established under section 28 of the Science, Technology and Innovation Act;

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

“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;

“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;

“startup” includes a technology-based innovative entity, legally recognized by the laws of Kenya, with strong growth potential and a disruptive economic model ;

“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 activities related to the transfer of technology, research and development and innovation processes through the offer of dedicated physical spaces and services advice; and

No. 19 of 1990.

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

Object.

3. The object of this Act is to provide a framework—
- (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) to promote 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

Role of National
and county
governments.

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

- (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.

Establishment
of incubation
programmes

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.

(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

Appointment and functions of Registrar and other officers

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

(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.

Functions of the registrars.

7. (1) The Registrar shall —

(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.

Eligibility for admission into incubation programme.

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

(a) is registered in Kenya as a—

No. 17 of 2015.

(i) company under the Companies Act; or

No. 16 of 2012.

(ii) partnership firm under the Partnership Act; or

No. 42 of 2011.

(iii) limited liability partnership under the Limited Liability Partnership Act; or

No. 19 of 1990.

- (iv) non-governmental organization under the Non-Governmental Organizations Co-ordination Act;
- (b) is newly registered or has been in existence prior to the coming into force of this Act;
 - (i) for a period of not more than three 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 five 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) has its headquarters or a branch in Kenya;
- (e) is at least one third owned by one or more citizens of Kenya; and
- (f) at least fifteen percent the entity's expenses can be attributed to research and development activities.

(2) The Agency may develop alternative criteria for startups that do not satisfy the requirements of subsection (1) for registration as startups and for admission into incubation programme

(3) 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

a holding company or subsidiary of an existing entity which is not registered as a startup.

Application for admission into an incubation programme.

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

- (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;

(b) the certificate of incorporation or registration of the entity; and

(c) a brief description of the innovative nature of the product or service.

(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

Consideration of application and 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 —

(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.

Certificate of Registration.

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.

Effect of admission into incubation programme.

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

- (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.

Refusal to admit an entity into an incubation programme.

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

- (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.

(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.

Application from an order of refusal or de-registration.

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.

(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.

Register of startups.

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

- (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.

Alteration of register.

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.

(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.

Change of particulars.

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.

(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.

Obligations of registered startups.

18. A startup registered under this Act shall—

- (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

Eligibility for admission into an incubation programme

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

Certification of incubators.

20. (1) An entity that meets the criteria specified under section 22 may apply for admission as an incubator by submitting an application together with a statement setting out information under subsection (2) —

- (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.

Withdrawal from an incubation programme.

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.

(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).

Obligations of an incubator.

22. An incubator registered under this Act shall—

- (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) provide secretarial and administrative services to startups;
- (g) create investment opportunities for the private sector, including for venture capitalists; and
- (h) transfer technologies from research institutions and into the technological startups' industry.

Incentives for Incubators

23. The National and county governments shall support incubators through capital grants, fiscal and non fiscal support.

PART V—INCENTIVES FOR STARTUPS

Support to startups.

24. 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 –

- (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.

Credit
Guarantee
Scheme.

25. (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.

(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.

Training and
capacity
building.

26. 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–

- (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.

Application for grant or revocation of patents.

27. (1) The Agency shall facilitate startups in the -
- (a) application for registration, grant, revocation and institution of legal action for infringement of intellectual property rights; and
 - (b) filing and registration of intellectual property at the international level.

Fiscal incentives.

28. 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.

Growth objectives.

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

PART VI - MISCELLANEOUS PROVISIONS

Regulations.

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

(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) on the exemption of startups from competition laws;
- (h) on the intergovernmental support for startups;
- (i) for the reporting and accountability by startups, under this Act, of the funds utilised by them;
- (j) for the de-registration of startups;
- (k) for the grounds and process on refusal to admit an entity into an incubation programme;
- (l) for the advertising and impact assessment of the measures of startups; and
- (m) for incentives to invest in innovative startups.

Amendment of
No. 28 of
2013.

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

(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 Capital Markets Authority;
- (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;

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 2nd December, 2021.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.



Speaker of the Senate

