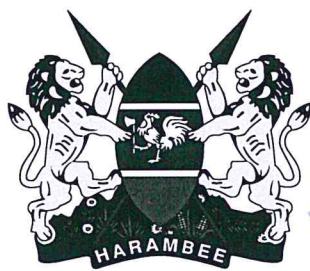


PARLIAMENT OF KENYA



THE SENATE

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| DATE | 4/5/2023 |
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| COMMITTEE | |
| CLERK AT THE TABLE | Abdullahi |
| PAPERS LAID | |

THIRTEENTH PARLIAMENT-SECOND SESSION

STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND
TOURISM

REPORT ON THE STARTUP BILL, 2022 (SENATE BILLS NO. 14 OF 2022)

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date:.....02/05/23.....

Approved.

02/05/23

Clerk's Chambers
Parliament Buildings
NAIROBI.

April, 2023

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ABBREVIATIONS AND ACRONYMS

| | |
|-------|--|
| ICT | - Information and Communication Technology |
| KAM | - Kenya Association of Manufacturers |
| KEPSA | - Kenya Private Sector Alliance |
| PPPs | - Public Private Partnerships |
| SAP | - Startup Action Plan |

PRELIMINARIES

The Senate Standing Committee on Trade, Industrialization and Tourism is established pursuant to Standing Order 228(3) of the Senate Standing Orders. As set out in the Fourth Schedule of the Senate Standing Orders, the Committee is mandated to consider *all matters related to trade, industrialization, tourism, cooperatives, investment and divestiture policies.*

In undertaking its mandate, the Committee oversees the Ministry of Investment, Trade and Industry, Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development and the Ministry of Tourism, Wildlife, Culture & Heritage. Specifically, the Committee oversees the following state departments-

- (a) State Department for Investment Promotion;
- (b) State Department for Trade;
- (c) State Department for Industry;
- (d) State department for Cooperatives;
- (e) State Department for Micro, Small and Medium Enterprise (MSME) Development; and
- (f) The State Department for Tourism.

The Committee also works closely with the Council of Governors, the County Assemblies Forum and non-state actors including Kenya Association of Manufacturers, Kenya Private Sector Alliance (KEPSA), Kenya National Chamber of Commerce and Industry (KNCCI), among others.

Membership of the Committee

The Standing Committee on Trade, Industrialization and Tourism comprises of the following Members: -

- | | |
|---|---------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | – Chairperson |
| 2. Sen. Esther Okenyuri, MP | – Vice-Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | – Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH, MP | – Member |
| 5. Sen. Paul Karungo Thangwa, MP | – Member |
| 6. Sen. Crystal Kegehi Asige, MP | – Member |
| 7. Sen. Andrew Omtatah Okoiti, MP | – Member |
| 8. Sen. Betty Batuli Montet, MP | – Member |
| 9. Sen. Hezena M. Lemaletian, MP | – Member |

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Startup Bill, 2022 (Senate Bills No. 14 of 2022) is a Bill for an Act of Parliament that seeks to provide a framework to encourage innovation and incentivize the establishments of startups through incubation programmes and a streamlined administrative mechanism for registration and operations.

The Bill was read a first time on 15th February, 2023 and was thereafter committed to the Standing Committee on Trade, Industrialization and Tourism. The Bill is sponsored by Sen. Crystal Kegehi Asige, MP.

The main objects of the Bill include, among others, to provide a 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 investments 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; and
- (e) for the establishment of incubation facilities at the national and county levels of government and environment that promotes the establishment of startups.

Mr. Speaker, Sir,

Pursuant to the provisions of Article 118 and Standing Order 145 (5) of the Senate Standing Orders, the Committee invited interested members of the public to submit their representations on the Bill on 21st February, 2023. The Committee received submissions on the Bill from the Council of Governors, the National Gender and Equality Commission (NGEC), the Kenya Association of Manufacturers (KAM), Association of Startup and SME Enablers of Kenya (ASSEK), TechHive, University of Nairobi Women Economic Empowerment Hub, TheBhub and Ms. Shikoh Gitau, a member of the public.

Mr. Speaker, Sir,

The Committee held five (5) sittings to consider and review the submissions received. The Committee further undertook a comparative analysis of startup ecosystems in other jurisdictions and reviewed case studies where startup legislation has been applied with relative success such as the United States Jumpstart Our Business Startups, India Startup Action Plan, Tunisia Startup Act and the Ghana Startup Act.

Mr. Speaker, Sir,

The Committee made the following key observations from the submissions received -

- (i) **THAT**, the time frame for qualification as a startup as provided for under Clause 8 (1) (b) is too narrow and constraining as startups may take longer to set up their businesses and obtain the necessary registration and licenses. It is therefore reasonable to extend the threshold for registration under the Bill for a period of up to five years;
- (ii) **THAT**, the limitation of registration to entities wholly owned by Kenyan citizens as provided in Clause 8 (1) (g) is a deterrent to foreign investors. This might discourage foreign direct investment as well as technology transfer in cutting edge sciences;
- (iii) **THAT**, sections 7(2)(j), 9(1)(r), 33(2)(f) and 53(6) of the Public Procurement and Asset Disposal Act provides preferential treatment of procurement by youth, women, persons with disabilities among others.

Mr. Speaker, Sir,

From the above observations, the Committee proposed the following amendments-
THAT;

- (i) Clause 8 (1) (b) of the Bill be amended to increase the period that an entity may be in existence to be eligible for registration as a startup to a maximum period of five years from the date of incorporation.
- (ii) Clause 8(1)(g) of the Bill be amended to provide that entities seeking registration must have at least ninety percent (90%) of the company's shares owned by one or more citizens of Kenya to be eligible for registration as startups.
- (iii) Clause 8(1)(i) of the Bill be deleted.
- (iv) Clause 26 of the Bill be amended to mandate incubators to provide online and remote services to startups.

Acknowledgement

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by the institutions and individuals that prepared and submitted memoranda to the Committee. I also wish to express my gratitude to my colleagues, Members of the Committee for their thoughtful insights and contributions to ensure Kenya has the Startup legislation. The Committee also acknowledges and appreciates the sponsor of the Bill, Sen. Crystal Kegehi Asige, MP, who sat through all the sessions during consideration of the Bill.

Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating the Committee.

Mr. Speaker, Sir

It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders, to present the Report of the Standing Committee on Trade, Industrialization and Tourism on the Startup Bill, 2022 (Senate Bills No. 14 of 2022).

I thank you.

Signed.......... Date..... 27/4/2023

**CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP,
STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM**

CHAPTER ONE: OVERVIEW OF THE BILL

1.1. Background

1. The Startup Bill, 2022 (Senate Bills No.14 of 2022) was published in the Kenya Gazette Supplement No. 207 of 30th December 2022. The Bill was read for the First Time on 5th February 2023 and subsequently stood committed to the Committee on Trade, Industrialization and Tourism. The Bill is for an Act of Parliament to provide a framework to encourage growth and sustainable technological development, new entrepreneurship employment; create a more favourable environment for innovation; attract Kenyan talents and capital; and for connected purposes.

1.2. Overview of the Bill

The Bill proposes the following -

Role of National and County Governments

2. **Part II** of the Bill sets out the role of the National and County Governments in relation to startups by requiring them to -
 - a) promote innovation and facilitate technological innovation transfer;
 - b) promote sustainable competitive technology innovation;
 - c) promote the creation employment and wealth creation; and
 - d) promote linkages between universities and research institutes and the business community.
3. In order to ensure the effective implementation of the roles conferred on the National and county governments above, the Bill imposes an obligation on the Kenya Innovation Agency (the “Agency”) established under the Science, Technology and Innovation Act and the respective county executive committee members to –
 - a) put in place a national and county incubation policy framework;
 - b) enter into partnerships with local and international business incubators and establish programmes for the certification and admission of incubators into the incubation programmes.
 - c) promote the development of business incubation programmes; and
 - d) create an enabling environment for the promotion of business incubators including fiscal and non-fiscal incentives to incubators and startups.
4. The Agency and county executive committee members are also required to set up online platforms for increased access to information, support any research and development activities undertaken by startups, train and build the capacity of pre-incubation entities, promote access to entities for marginalized groups

and set up facilitative structures that ensure the protection of innovations and startups.

Establishment of Incubation Programmes

5. **Part II** of the Bill further provides for the establishment of incubation programmes for purposes of setting up and maintaining enabling environmental conditions for the purpose of facilitating the growth or development of infant technologies, ideas or industries.
6. Accordingly, the Agency and county executive committee members have been tasked with the responsibility of developing standards and guidelines to regulate the relationship between incubators and startups set up under the Bill once enacted, setting up an online data-base of existing incubation programmes with information on the process of registration and admission to the programmes and establishing an evaluation criterion of entities, programmes and structures set up for purposes of implementing the Bill once enacted.

Registrar of Startups and admission into an Incubation Programme

7. **Part III** of the Bill provides that the Agency shall be responsible for the registration of startups and, in consultation with the Public Service Commission, appoint a Registrar of startups. The Bill, further, provides for the appointment of a Deputy Registrar and the deployment of county registrars in counties as is necessary for the performance of the functions of the Registrar.
8. Clause 6 of the Bill requires the Registrar to keep an updated database of registered startups, register, inspect, regulate and supervise startups, issue, renew and cancel certificates of registration, maintain a register of all startups, keep relevant records and coordinate the functions of county registrars. The said county registrars are required to facilitate registration, receive applications, monitor and evaluate start up projects.

Eligibility for registration as a startup

9. In order to be eligible for registration as a startup and for admission into an incubation programme, an entity must be registered as either, a private limited company, a partnership, a limited liability partnership or a Non-Governmental Organisation with the objective of developing, improving and commercialising innovative products. The startup should also not have been in existence for a period of more than three years from its date of incorporation, save for bio-technology startups that should not have been in existence for more than five years from the date of incorporation.

10. The Bill requires a Startup to have its headquarters in Kenya, be one that does not distribute profits and is wholly owned by one or more Kenyans and demonstrate that at least 15% of its expenses are expended on research and that it holds a registered patent or licenced software.
11. Companies formed as a result of a merger, split, reconstruction or reconstitution of an existing company are not eligible for registration or admission into an incubation programme. A holding company or a subsidiary of an existing entity that is not a startup is also not eligible for registration or admission into an incubation programme.
12. A person intending to be registered as a Startup is required to submit an application, in the prescribed form, together with accompanying documents to the Agency or county executive committee member, as the case may be. The Agency and county executive committee members are required to put in place an online platform to ensure access and ease the process by which an application may be made. They are also required to devolve and decentralize the registration process to the smallest devolved unit. Once a person is registered, a certificate of registration and certificate of admission in the prescribed form would be issued to the applicant.
13. An entity shall be de-registered where it is established that the objects of the entity are unlawful, that the startup has failed to comply with a directive of the registrar, that members of the startup have failed to comply with the provisions of their constitution, failed to provide the registrar with information required under the Act or provided the registrar with false or misleading information. The Registrar is also required to de-register an entity that ceases to be a startup within the definition under the Act.
14. The Bill has also set out the process of de-registration which includes the issuance of a compliance notice of which failure to comply with the notice will result in de-registration. Aggrieved entities may appeal the registrar's decision with the Cabinet Secretary for ICT.
15. A registered startup will be required to achieve the growth goals related to the number of human resources, total assets and the annual turnover set by regulations, maintain accounts and submit financial statements to the Agency and inform the Agency of any change in its structure, composition or object.

Admission into incubation programmes and certification of incubators

16. **Part IV** of the Bill provides a framework for admission into incubation programmes, certification of incubators and outlines the obligation of incubators. In particular, an entity may be certified as an incubator if it's a registered entity with objectives of supporting the establishment of startups and has the facilities, equipment, human resource, networks and experience to achieve these objectives.
17. The Agency and the respective county executive committee members are required to prescribe standards and guidelines to be adhered to by startups and incubators and the procedure for the withdrawal from an incubation programme.
18. The Bill requires incubators registered under the Bill once enacted to support novice technological entrepreneurs, have a defined minimum and maximum technological innovation projects it can handle simultaneously, facilitate technological innovators to implement their ideas and form new business ventures, raise capital, provide secretarial and administrative services, create investment opportunities and enhance entrepreneurship.
19. Further, startup incubators are obligated to, among other things—
 - 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.

Incentives for Startups

20. **Part V** of the Bill sets out that the Agency and the respective county executive committee members shall put in place measures to incentivise startups such as facilitating the protection of intellectual property and providing fiscal and non-fiscal support. The Bill also seeks to establish a Credit Guarantee Scheme for the provision of accessible financial support, credit information and capacity building on financial and risk management to start ups.

21. The Agency is also required to put in place a programme for the training and capacity building of startups and for that purpose establish a platform setting out information on existing incubators and available resources necessary for the management and development of startups. The Agency is further required to assist startups in the application for grant or revocation of patents and in the institution of legal action for the infringement of intellectual property rights. The agency is also required to guide startups in the process of filing and registering patents at the international level.
22. The Cabinet Secretary responsible for Information Communication and Technology, in consultation with the Cabinet Secretary for Finance, is required to put in place measures for granting of fiscal incentives including tax incentives as shall be considered necessary. Startups are further required to achieve growth objectives (workforce, balance sheet and annual turnover) set out by a resolution of the Cabinet Secretary responsible for Information Communication and Technology.

Miscellaneous provisions

23. The Bill confers on the Cabinet Secretary, the power to make regulations for, among others, the exemption of startups from registration fees, protection of intellectual property rights, relationship between founders and employees and reporting and accountability of startups.
24. The Bill further amends the Science, Technology and Innovation Act to provide for financial support of technological innovations, representation of startups in the National Research Fund and allocation of monies to provide financial support to technological innovations registered under the Bill once enacted.

CHAPTER TWO: COMPARATIVE STUDIES

2.1 Unpacking and Contextualizing Startups and Startup Ecosystems

25. Steve Blank defines Startups as an organization formed to search for a repeatable and scalable business model¹ based on technology and innovation². The latter setting apart startups from other newly established businesses. Startups create new jobs and tax income as well as develop new services and solutions and as such fuel the renewal of more established businesses and industries³. However, most new startups fail and only very few are able to scale up and grow. Therefore, for each successful startup there will be several other startups that have failed.
26. A start up is developed through specific stages and requirements like building a team; defining concepts for the new products and services; setting up a viable strategy and committing to its implementation. Further, they also require the validation of products and services through initial customers and resources for further development. Startups subsequently need to scale up by attracting new customers and getting into broader markets. For a startup to succeed in global competition, they require the right human resource (talent), efficient collaboration, funding and growth financing, access to networks and strong business competence and potential customers and end-users.
27. Currently, the Startup ecosystem is being used in the context of innovation and entrepreneurship to refer to a specific geographic area or 'hotspot' (e.g. Silicon Valley) with high density of startup companies and entrepreneurs. The Global Startup Ecosystem Ranking report⁴ defines startup ecosystems as 'a metropolitan city or geographic area with a shared pool of resources'. Further, startup ecosystems rely on actors like startups themselves; funders and investors; incubators; accelerators or other public or private service providers; processes, events; and institutions like meetups and hackathons.

2.2 Startup Legislation: Comparative Studies

28. Startup Legislation is designed to make it easier for startups to operate. Startup legislation includes an amalgamation of policies intended to increase the incentives for young people to start a venture, investors to put their money into promising companies, and other ecosystem actors to lend their support where it's needed.

¹ <https://steveblank.com>.

² Lovely Matharu and Dr. Sunil Kumar, 'Different Laws related to Startup. Journal of Critical Reviews. Vol7, Issue 16,2020

³ Kane, T. (2010)

⁴ most comprehensive international benchmark analysis of different startup ecosystems,

29. The startup ecosystem emerged globally in the United States, in what is now referred to as the ‘Silicon Valley’ consisting of mainly information technology companies like Google, Apple, HP, Oracle, Cisco, Facebook, Twitter among others. It is also deemed to comprise the highest number of startups in the world⁵.

India

30. In 2016, India launched the Startup Action Plan (SAP), ‘the Startup India Initiative’ whose objective was to address aspects of startups ecosystem and as a support framework for innovative entrepreneurs. India’s motivation behind the action plan was to fast-track the spread of the startup movement from digital/technology sector to other sectors including social, manufacturing, agriculture, education and healthcare. Further, to move their concentration, from cities (Tier 1 cities like Mumbai and Delhi) to (Tier 2 and 3), semi urban and rural areas.

31. To this end, SAP contains three major areas for empowering potential startups i.e.: (i) handholding and simplification; (ii) funding support and incentives; and (iii) incubation and industry–academia partnership (Startup India 2016). In terms of India’s focus on ‘simplification and handholding’ the following strategies apply: -

- (i) relaxing the compliance regime;
- (ii) providing official online networking portals at www.startupindia.gov.in;
- (iii) fast tracking patent examination at lower costs including legal support;
- (iv) relaxed norms of public procurement for startups; and
- (v) faster exit for startups.

32. Funding support initiatives through funds of funds for startups include-

- (i) formulation of Credit Guarantee Scheme for Startups; and
- (ii) offering tax exemptions including tax exemption on capital gains, tax exemption/holiday for startups for three years, tax exemption on investments above fair market value etc.

33. To facilitate industry-academia partnership and incubation, SAP provides for the following: -

- (i) organizing startup fest for showcasing innovation and providing a collaboration platform;
- (ii) launch of the Innovation Mission;
- (iii) harnessing private sector expertise for incubator setup;
- (iv) building innovation centers at national institutes;
- (v) setting up research parks; and
- (vi) annual incubator and grand challenge.

⁵ Ester, 2017

Tunisia Start Up Act

The basis of the Tunisian Startup Act was the following elements-

- (a) The Tunisian entrepreneurship ecosystem is dominated by public sector entities;
- (b) The hierarchical structure of the business sector in Tunisia inhibits the entry of young entrepreneurs who are not yet part of established business networks but who are usually willing to bring innovative, often unconventional ideas into the market.
- (c) The business activity is highly concentrated in Tunis and a few other coastal cities, hence making it difficult to create jobs;
- (d) The high rate of youth unemployment, especially in the country's southern and interior regions where the digital sectors have started more slowly; and
- (e) The low co-ordination of funding programs making some companies more dependent on outside funding than on maintaining a competitive edge.

34. The Startup Act is therefore part of the wider strategy called Digital Tunisia 2020, promoted by the Tunisian Government. It identifies a legal framework that includes 20 measures in favour of investors and startups. These measures are structured around five main themes: -

- (a) define and label the startups;
- (b) support entrepreneurship;
- (c) create an environment that makes it easier the establishment, development, and liquidation of companies;
- (d) access to funding; and
- (e) access to international markets.

35. Key elements of Tunisia's Startup Act include-

- (a) State salaries for up to three founders per company during the first year of operations;
- (b) generous tax breaks, and a one-year leave period for both public and private sector employees to start a company with the right to return to their old jobs;
- (c) startup grants;
- (d) fast-track licenses to obtain startup registration documents; and
- (e) increased state support for covering patent licenses.

36. The same applies to the Senegal version which aims to help position the country as the leader among countries in tech and entrepreneurship on the continent. Senegal policies includes three tax-free operational years for startups, training for youth

and female entrepreneurs, and a startup registration platform easily accessible on a government website.

Ghana Startup Act

37. For the case of Ghana, the Startup Act is a legal framework that defines what a startup is and creates specific incentives that would encourage the creation and development of startups in Ghana to drive economic development. The Ghana Startups Act provides the opportunity to create a startups friendly ecosystem that would accelerate the digital transformation agenda. The reasons for the Startup Act are as discussed below-

(a) Definition and labelling of startups

38. The Ghana Startups Act clearly defines what a startup is and what it is not hence providing clarity for policymakers, development partners, corporate entities, and other stakeholders who design specific programs to support the growth of startups in Ghana. This clear definition ensures quality data is collected for program and incentive design. A succinct definition of startups would also remove all ambiguity and territorial clashes among government agencies related to entrepreneurship and private sector support in Ghana.

(b) Clear and predictable framework

39. The Ghana Startups Act also provides a clear and predictable framework for the startups ecosystem. The Act is expected to harmonize all the incentive structures aimed at supporting venture building scattered in various policies and programs implemented by different ministries. This ensures the alignment, coherence, and continuity needed to catalyse the entrepreneurship ecosystem. A consistent and predictable legislative framework attracts investors and significantly improves the business environment in a country. This makes startups Acts preferable to the best entrepreneurship policy or program.

(c) Improved ease of doing “startups” in Ghana

40. The Startups Act prioritizes the unique challenges startups face at distinct phases of their growth and suggests specific recommendations to mitigate them. For instance, the act proposes a tiered tax obligation on startups based on their growth stage. It also recommends capacity and financial support for startups to protect their intellectual property, access markets, and bankruptcy support, among others. Some of the success stories of tech startups in Ghana include *mPharma*, *ZeePay*, *AgroCenter*, *Dext* technology, among many others.

2.1. Startups: Policies and Instruments

41. Startup ecosystems rely on consistent policy instruments for successful implementation and scale up. The following eight (8) policy domains have been identified as key: Government and regulation; research, development and innovation system; infrastructure and attractively; markets & customers; financing; entrepreneurial skills and education; culture, networks and community and business support. In terms of government and regulation, general policies linked to startup up law may include: regulation related to starting a business, exits, bankruptcies, taxation, corporate and entrepreneurial laws, and immigration and labour policies among others.

42. Startups require specific support instruments and programs and as such any startups policy may need to articulate the legal frameworks underpinning such instruments. The main ones include the following: -

| No. | Policies and Instruments | Definition | Role of Government | Prerequisites for law and regulation |
|-----|--|---|--|---|
| 1 | Pre-incubators/ startups launch programmes | Support programmes for individuals or teams with early stage business ideas with an objective to inspire entrepreneurs to build motivation, confidence and skills needed to transform an idea into a new business. They prepare business ideas and future entrepreneurs to be ready for incubation or an accelerator programme. | Located in universities hence calls for public funding. | No laws or regulations needed for pre-incubators to function. |
| 2. | Incubators | Support programmes for startups with an existing business idea, product or concept. Focus on developing the business idea further. Services include business development, networking and basic infrastructure. | Majority of incubators and non-profit making organizations. Government can help by providing funding schemes and grants. | No laws or regulations needed for incubators to function. |
| 3. | Accelerators | They are special focus oriented entities targeting startups with skilled and established teams, a solid business idea and a strong | Government can engage through PPPs. However, once private | Never addressed through laws and regulations. Government should |

| | | | | |
|----|--|--|--|---|
| | | (international) growth expectation. They provide programmed events, intensive mentoring and financial support with an objective to help startups to accelerate their growth and scale their business idea within the timeframe of the programme. | accelerators markets are in place government should avoid disruptions with publicly funded accelerators. | ensure not to prohibit this through regulation. |
| 4. | Co-working Spaces | These are shared office spaces meant for individual entrepreneurs, teams and startups. They provide companies in their early phases an affordable and flexible access to office spaces, internet access and postal services. They provide the possibility to network, benchmark and share ideas with other entrepreneurs and hence peer support. | Public sector involvement occurs through universities or cities. | No additional laws and regulations are needed. However, if regulations on rental activities exists, this applies. |
| 5. | Hackathons, Meetups and other Startup events | They comprise of occasions for startups to meet other ventures, entrepreneurs and other startups-minded people. Hackathons are the most resource intensive compared to casual meet-ups. | Minimal government involvement except provide for a startup culture to thrive. | These do not differ from other events hence no additional laws or regulations are needed. |

Source: Mekong Business Initiative, 'International Best Practices on supporting startups Ecosystems'

CHAPTER THREE: PUBLIC PARTICIPATION AND THEMATIC SYNTHESIS OF THE SUBMISSIONS

3.1. Public Participation

43. The Committee pursuant to the provisions of Article 118 of the Constitution and standing order 140 (5) of the Senate Standing Orders, proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Tuesday, 21st February, 2023 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website.
44. In response to the advertisement and invitations, the following institutions and individuals submitted memoranda; the Council of Governors, the National Gender and Equality Commission (NGEC), Kenya Association of Manufacturers (KAM), TechHive, University of Nairobi Women Economic Empowerment Hub, TheBhub and Ms. Shikoh Gitau, a member of the public. The detailed copies of the stakeholder submissions on the Bill are attached.

3.2. Consideration of the Bill from the Submissions

45. The following are some of the key issues arising from the public and stakeholder submissions-

Interpretations

46. The National Gender and Equality Commission proposed insertion of the phrase “Inter-Agency Committee” into the definitions section to read-

“Inter-Agency Committee” means a committee of Principal Secretaries in the ministries and other entities that are relevant to the implementation of the Act”

They justified that Implementation of the Startup Bill will require the collaboration of various stakeholders from different government agencies.

47. **The Committee rejected the proposal** noting that the office of the registrar of startups which has been devolved to the county level is adequate for implementation of the Bill. The involvement of the County Executive Committee further supplements the implementation of the Bill at county level. Thus the introduction of an inter-agency committee will result in an additional burden on the exchequer.
48. The National Gender and Equality Commission proposed that the definition of “startup incubator” be amended by deleting the word “means” immediately after the word “incubator” and substituting thereon the word “includes”. They held that the

word “means” as per the interpretation only gives examples of startups but not the meaning of the word.

49. **The Committee rejected the proposal** to amend the interpretation of the term “startup incubator” as this would result in ambiguity. The phrase “means” is definitive.
50. Association of Startup and SME Enablers of Kenya (ASSEK) proposed that the definition of Startup Incubator be amended to read *“a recognized private limited liability company, partnership or limited liability partnership, whose principal object is the support for the birth and development of Startups to help them grow and become successful. These resources may include funding, office space, networking opportunities and access to expertise and advice”*.
51. The rationale is that the objective of a startup incubator is to help Startups grow and become successful; in some cases, a dedicated physical space may not add value. There is more support that is needed for a startup to succeed and so a general statement will suffice.
52. **The Committee partially accepted the proposal** to expand the definition of the term “startup incubator” and further define the term “resources” for more clarity on the support that will be offered by the Startups.
53. Association of Startup and SME Enablers of Kenya (ASSEK) proposed that the definition of Startup be amended to read *“A company legally recognized by the laws of Kenya that is in its early operational stages and is typically founded by one or a few entrepreneurs. It is focused on developing and delivering innovative products or services that solve a specific problem or fulfill a market need”*.
54. The rationale is that a Startup is always in search of a scalable and sustainable business model, delivering innovative products or services that can solve a specific problem or fulfil a market need.
55. **The Committee partially adopted the proposal** noting that the term “disruptive model” used in the current definition of Startups is ambiguous. It has been resolved to amend the definition by removing the term “disruptive model” and replacing with the phrase *“that solve a specific problem or fulfill a market need”*

Objectives

56. Association of Startup and SME Enablers of Kenya (ASSEK) proposed amendment to Clause 3 (e) to read-

“For the establishment of incubation facilities at the national and county levels of government and privately owned that promotes the establishment of startups and includes privately owned incubation facilities”.

57. **The Committee rejected the proposal** as the Bill has not made any distinction between public and private incubators. The Committee noted that all the incentives under the Bill will apply equally to private or public incubation programmes.

58. The National Gender and Equality Commission proposed amendment to clause 2 by inserting a new sub-clause immediately after sub-clause (f) to read -

(g) to ensure that all the youth in the country irrespective of gender, status and ethnicity are afforded an equal opportunity to establish and benefit from their innovations”

The rationale behind this proposal is that although the target beneficiary group is the youth, the Bill is not explicit on how youth from diverse backgrounds especially at the county level will be beneficiaries of their startups/innovation.

59. **The Committee adopted the proposal to insert the new sub-clause (g)** as this will ensure that implementation of the Bill is inclusive pursuant to Article 27 of the Constitution.

Establishment of Incubation Programmes -Role of National and County Governments

60. The Council of Governors proposed amendment to clause 4 to provide that the Board of Trustees have representation of the National and County Governments. The rationale is that representation of the County Governments is required in the spirit of consultation and cooperation as seen under Article 6.

61. **The Committee rejected the proposal** as such an amendment will be effected in separate amendment of the Science, Innovation and Technology Act.

62. Association of Startup and SME Enablers of Kenya (ASSEK) proposed amendment to Clause 4(1)(b) to read

“Facilitate transfer of innovative technology developed in one organization or county to another organization or county to achieve increased innovation, economic growth and better access to new technologies”.

63. **The Committee adopted the proposal** in order to provide clarity on knowledge transfer and protecting innovation by regulating the exchange of knowledge between parties.

64. The National Gender and Equality Commission (NGEC) proposed an amendment to Clause 4(1) and 4(2) to provide for separate and distinct roles of the National Agency and the County Executive Committee as opposed to lumping them up together.

65. Further, NGEC proposed the following: -

(a) the functions of the National Government must be aligned with the functions of the National Commission for Innovation, Science and Technology as regulator

as per the provisions of section 3 of the Science, Technology and Innovation Act No. 28 of 2013;

- (b) the functions of the Kenya National Innovation Agency established under section 28 of the Science, Technology and Innovation Act 2013 are clearly enumerated in section 29 and so should be separated from the roles of the County Executive Members;
- (c) the functions of the other institutions established by the Act including the National Research Fund and the Research Committees need to be clearly indicated; and
- (d) the role of the County Government through the CEC has also to be spelt out. The memorandum of objects and reasons has singled out roles of the County Government and this should be reflected under this clause.

66. The Committee rejected the proposal to amend clause 4(1) and 4(2) as it is administratively efficient for the roles of the National and County governments to be uniform and thereafter implemented in a streamlined manner at both levels of government as provided under clause 9 (4) (b)

Establishment of Incubation programmes

67. Association of Startups and SME Enablers of Kenya proposed amendment to Clause 5(2)(c) to read-

“Prescribe a criteria for supporting the establishment, management and evaluation of incubation programmes evaluation of entities, programmes and structures set up for the purposes of implementing this Act.”

68. The Committee partially adopted the proposal noting that this can be provided for in Subsidiary legislation by the Cabinet Secretary.

Functions of Registrars

69. The Kenya Association of Manufacturers proposed an amendment to clause 7(1) of the Bill to simplify the registration process and reduce the bureaucratic measures and time taken to set up a Startup under the Act. The KAM reasoned that the introduction of a further registration by the Registrar of Startups is an added regulatory step that increases the compliance costs for a Startup.

70. The Committee rejected the proposal to amend clause 7(1) as the Registrar of Startups plays an important role in record keeping, registration, certification and administration of startups. The office of the Registrar of startups is a salient provision of the Bill without which majority of the provisions will remain unenforceable.

71. The National Gender and Equality Commission proposed an amendment to clause 7(3) by deleting 7(3)(a) and (b) without any replacement as the functions under 7(3) (a) and (b) are ideally a function of the registrar. The ideal is to have a central registry

managed by one Registrar and the deputies in the counties should have distinct duties which do not include registration.

72. **The Committee rejected the proposal** to amend clause 7(3) of the Bill which provides for devolution of the registration function to the smallest devolved unit. The devolution of the registration function was provided for purposes of ensuring accessibility for Startups in rural areas within counties. Deleting the provision will therefore be detrimental to the principal objectives of the Bill that seek to provide accessible support for innovative ideas throughout the country.

Eligibility for registration as a Startup and admission into an incubation programme

73. TechHive proposed an amendment to clause 8(1)(b) of the Bill to increase the time frame from three (3) years to a period between five (5) to eight (8) years of existence for an entity eligible for registration as a startup and for admission into an incubation programme.
74. The rationale provided is that the time frame for qualification as a Startup is too narrow and constraining as entities that have formally existed for more than three years are no longer eligible to register as Startups or get into incubation programs. In reality, Startups may take longer to set up their businesses, obtain needed registrations and licenses and set up effective corporate governance structures. It is therefore reasonable to extend the threshold for registration under the Bill for a period between five to eight years.
75. **The Committee adopted the proposal.** The Committee proposes that Clause 8 (1) (b) of the Bill be amended to provide that an entity shall be in existence for a maximum period of five years from the date of its incorporation to be eligible for registration as a Startup.
76. Association of Startups and SME Enablers of Kenya proposed that Clause 8 (1)(b) be amended to read-
- “Is newly registered or has been in existence for period of not more than three years from the date of its incorporation or registration”*
77. **The Committee rejected the proposal** as the Committee had already determined that there was need to extend the eligibility period to five years post incorporation.
78. Further, TheBhub proposed amendment to clause 8(1)(b) such that the restriction on the period of existence of startups be based on the time of product launch rather than registration of the entity.
79. **The Committee rejected the proposal.** The Committee noted that the average product development period of 6 months to one year does not significantly affect an entity such that they will potentially fall out of the eligibility period. The Committee has also further resolved to extend the period to five (5) years as a

reasonable timeframe for a startup to launch its product and thereafter be incubated to profitability.

80. Association of Startups and SME Enablers of Kenya proposed that Clause 8 (1)(f) be amended by deleting the entire clause. The rationale is that for-profit entities limited by shares have no statutory limitations in distributing profits.
81. **The Committee rejected the proposal** as entities that are recording and distributing profits will not need the assistance of Incubators in the same measure that small Startups that are working on an innovative idea will require. The proposed amendment will negate equity in the allocation of resources to Startups.
82. TechHive proposed an amendment to clause 8(1)(g) of the Bill on eligibility criteria for registration as a startup from ‘an entity being wholly owned by one or more citizens of Kenya’ to “an entity that has at least sixty percent of the company’s shares owned by one or more citizens of Kenya”. The limitation of registration to entities wholly owned by Kenyan citizens is a deterrent to foreign investors with potentially valuable fiscal and non-fiscal contributions to Kenyan startups.
83. Kenya Association of Manufacturers also proposed an amendment to clause 8(1)(g) of the Bill for the inclusion of a wider pool of Startups that are eligible for incubation, the rationale being to encourage an increase in foreign direct investment as well as technology transfer in cutting edge sciences.
84. **The Committee partially adopted the proposal.** The Committee proposes that Clause 8(1)(g) of the Bill be amended to provide that entities seeking registration must have at least ninety percent (90%) of the entity’s shares owned by one or more citizens of Kenya.
85. Association of Startups and SME Enablers of Kenya proposed that Clause 8 (1)(h) be amended by deleting the entire clause. The rationale is that the threshold on expenses is too high for an enterprise. Other monitored parameters will inform budgets for research and development activities.
86. TheBhub also proposed an amendment to clause 8(1)(h) such that the requirement for at least fifteen percent of the entity’s expenses to be attributed to research and development activities be restricted to startups in specific domains such as AI biotech and others whose competitive edge relies on Research and Development.
87. **The Committee rejected the proposal** as the 15% threshold is necessary in order to identify and foster ideas of startups that can demonstrate significant investment into the development of their innovative ideas.
88. TechHive proposed deletion of Clause 8(1)(i) of the Bill to remove the requirement of an entity possessing a depositary or licensee of a registered patent or the owner and author of a registered software as a mandatory requirement for an

entity to be eligible for registration as a startup. The rationale provided is that the requirement may result in the exclusion of entities as most startups do not have enough capital to fulfil the condition.

89. The Committee adopted the proposal for deletion of Clause 8(1)(i).

90. TheBhub proposed that Clause 8(1)(i) be amended to allow for the partner with incubators to help with the verification process of registered patents and software.

91. The Committee rejected the proposal as the Committee had proposed deletion of the entire clause as it introduces a stringent requirement for incubation of Startups.

92. TechHive proposed the deletion of clause 8(2)(b) of the Bill which excludes the registration of an entity which is a holding company or subsidiary of an existing entity which is not registered as a startup. The rationale provided is that the exclusion of startups that are subsidiaries of entities that are not startups does not reflect the reality of many African startups of which a significant number may be subsidiaries of non-startup entities for investment purposes.

93. The Committee rejected the proposal for deletion of clause 8(2)(b) as the purpose of the Bill is to foster innovation for entities that ordinarily would not have any form of support in their setting up and establishment of operations. Subsidiaries of already existing and established companies have this form of support through their holding and parent companies and can therefore not be considered to be startups eligible for registration as envisioned under the Bill.

Application for admission into an incubation programme

94. TheBhub proposed that clause 9(1)(b) be amended to provide that a county government is assisted by the Agency in the registration process. The rationale is that where an incubation programme is managed by a county government, support from the Agency may be necessary in case a committee member is overwhelmed by applications.

95. The Committee rejected the proposal noting that it is the office of the Registrar of Startups in counties that will receive the applications for registration and not the County Executive Committee as suggested by the stakeholder. The devolved system of registration envisioned under the Act will further ensure that the volumes of applications received will be dealt with expediently due to the decentralization of the registration function to counties.

96. The Kenya Association of Manufacturers also proposed the deletion of clause 9(2)(b)(i) of the Bill that provides that an applicant seeking admission into an incubation programme must submit the application together with a letter of recommendation or support which may include a patent or trademark registered in Kenya.

97. The rationale provided is that the requirement might lock out startups whose trademarks are not registered in Kenya and might be a direct bottleneck for startups that have already registered their trademarks in other jurisdictions that they consider more favorable in terms of intellectual property protection.
98. **The Committee rejected the proposal** as the use of the word “may” infers that it is not a mandatory provision and there is therefore no justification for deleting it.
99. Association of Startups and SME Enablers of Kenya proposed an amendment to clause 9 (2)(b) (iii) to read “*Business and entrepreneurial qualifications and skills of the founding team*”. The rationale is that Business and Entrepreneurial skills of the founding team are critical to the success of a startup.
100. **The Committee rejected the proposal** as Business and entrepreneurial qualifications and skills form part of technical qualifications mention in clause 9 (2)(b)(ii). Further, the Committee noted that it is possible that an innovator may not have any prior business or entrepreneurial qualifications at the time of applying for admission into an incubation programme and it is for this purpose that the incubation programmes have been established.
101. University of Nairobi (African Women’s economic Empowerment Hub) proposed an amendment to clause 9 (2) (e) to add that in circumstances where there are no registration documents such as certificate of incorporation the description of innovation shall form a basis of eligibility for admission into incubation programme. To register the start-ups, the registrars will collaborate with the innovators through the Business Registration Service.
102. The rationale is that data collected from the Kenya National Bureau of Statistics MSME Survey shows that most women-led firms are not formally registered thus adopting stringent registration requirements will exclude them.
103. **The Committee partially adopted the Proposal** and recommended that the Bill be amended to enable the registrar to effect registration of an entity where satisfied that the applicant does not have means to register their entity. The Committee further resolved that the Cabinet Secretary provides for subsidiary legislation on the same.

Effect of Admission into an Incubation Programme

104. Association of Startups and SME Enablers of Kenya proposed an amendment to section 12 (1) to read that the Certificate of admission into the Startup Register issued by the registrar or county executive committee member under section 11 shall be conclusive evidence that the startup is registered under the Act.
105. **The Committee adopted the Proposal.** The Certificate of Registration as a Startup issued by the office of the Registrar of Startups is conclusive proof of registration as a Startup under the Bill.

Refusal to admit an entity into an incubation programme

106. TechHive proposed an amendment to clause 13(1)(d) of the Bill which provides that the registrar of startups or the County Executive Committee may reject an application for the admission into an incubation programme if the objects of the entity are likely to be pursued for an unlawful purpose or used for a purpose incompatible with public interest.
107. The rationale provided is that there is ambiguity in the clause as to what actions are incompatible with or prejudicial to public interest and this could engender interference with creative interests and create bias thereby stifling startups.
108. **The Committee partially adopted the Proposal.** The Committee proposes that clause 13(1)(d) of the Bill be amended to provide that the registrar of startups or the County Executive Committee may reject an application for the admission into an incubation programme if the objects of the entity are likely to contravene the provisions of any written law for the time being effective in the Republic of Kenya.

Grounds for de-registration of a Startup

109. TechHive proposed amendment to clause 14 (2) of the Bill to specify the instances in which a startup ceases to be a Startup under the Bill. The rationale provided is that it will clear any ambiguity on the provision.
110. **The Committee partially adopted the proposal** and recommended that the specific grounds for deregistration of a Startup be provided for under subsidiary legislation within a year from the date of enactment of the Bill.

Obligations of registered startups

111. Association of Startups and SME Enablers of Kenya proposed amendment to clause 22(a) and (b) to read-
- “Create job opportunities as set out by regulations”*
- “Maintain financial records in accordance with the legislation and submit its financial annual report to the Agency no later than thirty first day of March in each financial year.”*
112. **The Committee partially adopted the proposal** and recommended that further provisions on Clause 22(a) on human resource growth objectives be addressed through subsidiary legislation.

113. The Committee resolved that the term “accounting” be replaced with “financial records” and Clause 22(b) be amended to include the furnishing of annual financial reports to the Agency by Startups.
114. The Kenya Association of Manufacturers proposed an amendment to clause 22 of the Bill by inserting a paragraph immediately after paragraph (b) to provide that a startup registered under the Bill once enacted shall ‘provide online and remote support services’.
115. The rationale provided is that online and remote service provision has been a recurrent emerging trend in Startups especially in the wake of the Covid 19 pandemic and most startups rely on data centers and cloud servers to store their data and operate.
116. **The Committee partially adopted the proposal**, resolving that whereas the Kenya Association of Manufacturers proposed that the Bill be amended under clause 22, the same ought to be an amendment in clause 26 as it should be the obligation of incubators to provide for online and remote services to startups.
117. TheBhub proposed that clause 22(b) be amended to include a provision in which the Agency will allocate accountants to Startups to help with accounting in the incubation stages.
118. **The Committee rejected the proposal** as the request is a benefit that will be provided by the Incubation Programmes in assisting Startups with financial management and record keeping.

Eligibility for admission into an incubation programme

119. Association of Startups and SME Enablers of Kenya proposed amendment to clause 23 (c) (1) to read
- “Facilities, suitable to accommodate innovative startups both physical and virtual, such as reserved spaces to be able to install test, verification or research equipment.”*
120. The rationale is that this will encourage the adoption of technology.
121. **The Committee adopted the proposal**, noting that this will enhance the provision of remote support services to Startups by Incubators
122. University of Nairobi (African Women’s economic Empowerment Hub) proposed that clause 23 be amended to add that an Entity may be certified as an incubator, if the entity- if has met conditions for decent work, safety work conditions, with no history of consistent violation of women rights.

123. **The Committee partially adopted the proposal, resolving** that the proposed provision to be amended to wholesomely provide for the protection of “Human Rights” and not just “Women’s Rights”.

124. TheBhub proposed that Part IV be amended to provide for both foreign and local incubators with foreign majority shareholding by a Kenyan Citizen or entity. The rationale is that the clause does not specify where an incubator shall be domiciled and requirements on citizenship. This should therefore be specified.

125. **The Committee partially adopted the proposal** and recommended comprehensive provisions on citizenship will be provided for under subsidiary legislation.

Certification of Incubators

126. Association of Startups and SME Enablers of Kenya proposed that clause 24 (2) (h) be deleted.

127. **The Committee rejected the proposal** as institutional networks and professional relationships are imperative in incubation programmes and therefore this cannot be deleted as a requirement.

128. Association of Startups and SME Enablers of Kenya proposed that clause 24 (2) (j) be amended to read-

List of industrial property rights and intellectual property rights for the incubator

129. **The Committee partially adopted the proposal resolving** that the clause be amended in order to provide for the list of Industrial and Intellectual Property Rights owned respectively by the Incubator and the Startup.

Obligations of an Incubator

130. Association of Startups and SME Enablers of Kenya proposed that clause 26 (a) be amended to read-

Support technological entrepreneur that are developing and delivering innovative products or services that solve a specific problem or fulfill a barite need at their early stage

131. The rationale provided that is as way the provision is will lock out many innovators as novice technology or innovations are rare.

132. **The Committee adopted the proposal** as the the proposed amendment will ensure that the standard for admission is not novelty but the potential to solve a specific problem and fulfill a market need.

133. Association of Startups and SME Enablers of Kenya proposed that clause 26 (f) be amended to read-

“Support startups to raise capital”

134. The rationale is an incubator can only support a startup to raise capital but is not mandated to do so.

135. **The Committee adopted the proposal** to amend clause 26 (f).

136. Association of Startups and SME Enablers of Kenya proposed that clause 26 (i) be amended to read-

“Where an incubator is not owned by a learning institution, an incubator may collaborate with such institutions with an aim to transfer technologies from research institutions and into the technological Startup industry”

137. **The Committee adopted the proposal** as this will help regulate the parameters for technology and knowledge transfer.

Incentives to startups

138. TechHive proposed an amendment to clause 27(a) of the Bill to provide specific subsidization measures that will be taken to incentivize the establishment and growth of startups by the Kenya Innovation Agency and county executive committee members. TechHive also proposed an amendment to the clause for the Kenya Innovation Agency and County Executive Committee members to provide online and remote support services to startups. The rationale provided is that specification of subsidies and the provision of shorter set up timelines will be beneficial to startups.

139. **The Committee rejected the proposal**, noting that clause 27(a) is sufficient as only the National and county executives, through the Agency and respective County Executive Committee members can identify the specific subsidies to support startups. The Committee also noted that any tax and financial subsidy would need the approval of the National Assembly and respective county assemblies, as the case may be.

140. The National Gender and Equality Commission proposed an amendment to Part V to separate the incentives offered by each entity. They explained that there is need for clarity on the responsibility of each entity with respect to each incentive and whether the support is sustainable.

141. **The Committee rejected the proposal** noting that the incentives provided for at both National and County Level must be similar for purposes of uniformity in implementation and administration.

142. University of Nairobi (African Women's economic Empowerment Hub) proposed that clause 27 be amended to require the Agency and the county executive committee members to target women, persons with disability and marginalized groups in providing fiscal and non-fiscal incentives.

143. **The Committee adopted the proposal** as it was important for deliberate efforts to provide targeted incentives for women, persons with disabilities and marginalized groups.

Credit Guarantee Scheme

144. University of Nairobi (African Women's economic Empowerment Hub) proposed amendment to clause 28 (2) by adding a new clause 28(2) that states:

"Where the Cabinet Secretary establishes a credit guarantee scheme under subsection (1), it shall have as its objectives to target women, marginalized groups and rural populations who have no access to financial market instruments"

145. The rationale is that a policy of Credit Guarantee Scheme would be effective if it targets efficiently the groups that have been left behind in creation of firms and startups.

146. **The Committee adopted the proposal** noting that it was justified.

Application for Grant or Revocation of Patents

147. Association of Startups and SME Enablers of Kenya proposed that clause 30 (1) be amended to read-

"The Agency shall facilitate the startups in the application for grant or revocations of patents and institutions of legal actions for infringement of any intellectual property rights relating to the startup's work"

148. **The Committee adopted the proposal** as this amendment will provide more clarity.

Growth Objectives

149. TechHive proposed an amendment to Clause 32 of the Bill to set out how the growth objectives will be determined and achieved. The rationale provided was that the proposal will clearly set out how the growth objectives startups will be subjected to in order to avoid ambiguity.
150. **The Committee partially adopted the proposal** and recommended that comprehensive provisions on growth objectives be addressed through subsidiary legislation.

Miscellaneous provisions

151. The National Gender and Equality Commission proposed amendment to Clause 33 by inserting “in consultation with the Inter-Agency Committee”. In their justification, they observe that “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to Science, Technology and Innovation. However, a close look at all the issues mentioned in clause 33 reveals that they are all domiciled in different ministries. For that reason, the Responsible Cabinet Secretary must consult with the other ministries and entities in making a number of regulations.
152. **The Committee rejected the proposal** as it had determined that the proposed Inter-Agency Committee is not necessary for the implementation of the Bill.

General Proposals

153. The Kenya Association of Manufacturers proposes inclusion of the following provisions in the Bill—
- a) a 360-degree incentives for the startups, entrepreneurs and investors;
 - b) access to public procurement preferential regime; and
 - c) startup stipends, leave and amicable liquidation.

The rationale provided is that the provisions will provide a more robust and incentivizing regulatory framework for startups as seen in other jurisdictions.

154. **The Committee rejected the proposals** for the following reasons:

- a) the Bill has set adequate provisions on incentives under clause 27;
- b) sections 7(2)(j), 9(1)(r), 33(2)(f) and 53(6) of the Public Procurement and Asset Disposal Act already provides preferential treatment of procurement by youth, women and persons with disabilities among others; and
- c) stipends have been covered under incentives in clause 27 of the Bill and amicable liquidation may be provided for under subsidiary legislation if at all necessary.

Proposed amendment to the Science, Innovation and Technology Act

155. The National Gender and Equality Commission proposed that the Science, Innovation and Technology Act be amended to insert the appointment of the Registrar and the Deputies and the functions of the Office.
156. **The Committee rejected the proposal** as the omission of the provisions on the Office of the Registrar of Startups from the Science, Innovation and Technology Act will not occasion any administrative impediment to the functioning of the office.
157. Additionally, amending the Act to provide for what has already been provided in another act will result in duplicity of legislation.

Money Bills

158. National Gender and Equality Commission submitted that the bill is a money bill as per Article 114 of the Constitution.
159. The Committee held the view that the bill was not a money bill for the following reasons:
- (a) The Bill's salient provisions address trade development which is a devolved function under part 2 of the Fourth Schedule of the Constitution.
 - (b) Pursuant to Article 114 (1) of the Constitution a Money Bill may not deal with any other matter other than those addressing taxes, the imposition of charges on a public fund, the appropriation of public money or raising or guaranteeing of any loan or its repayment.
 - (c) While the implementation of the Bill will involve the appropriation of public funds, these are not the sole provisions of the Bill as it contains other salient provisions on the devolved county function of trade development and can therefore not be constituted to be a Money Bill.

CHAPTER FOUR: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1. Observations by the Committee

From the submissions made by stakeholders and its deliberations on the Bill, the Committee makes the following observations -

- (i) **THAT**, with respect to definition of “Startup”, the term “disruptive model” is ambiguous. There is therefore need to amend the definition to set out a less ambiguous definition.
- (ii) **THAT**, Clause 4 (1) (b) does not provide clarity on transfer of innovative technology. There is need to amend the clause in order to provide clarity on knowledge transfer and protecting innovation by regulating the exchange of knowledge between parties.
- (iii) **THAT**, the Bill requires provisions addressing inclusion of marginalized categories of citizens in registration and admission to incubation programmes.
- (iv) **THAT**, the time frame for qualification as a startup as provided for under Clause 8 (1) (b) is too narrow and constraining. In reality, startups may take longer to set up their businesses, obtain needed registrations and licenses and set up effective corporate governance structures. It is therefore reasonable to extend the threshold for registration under the Bill for a period of up to five years;
- (v) **THAT**, the limitation of registration to entities wholly owned by Kenyan citizens as provided in Clause 8 (1) (g) is a deterrent to foreign investors with potentially valuable fiscal and non-fiscal contributions to Kenyan startups. This might discourage foreign direct investment as well as technology transfer in cutting edge sciences;
- (vi) **THAT**, clause 8(1) (i) requires an entity to have ownership of patents or owner of a registered software to be eligible to be registered as a startup. The cost of registering a patent or to register software is too high most startups may not afford it. Therefore, this requirement is stringent and will be an impediment to the registration of a significant number of startups.
- (vii) **THAT**, there is ambiguity in Clause 13(1)(d) of the Bill as to what actions are incompatible with or prejudicial to public interest which could engender interference with creative interests and create bias thereby stifling the startups;
- (viii) **THAT**, the specific grounds for deregistration of a startup under clause 14 (2) are not necessary as the same are provided under clause 8(1). An entity that ceases to fulfil the eligibility criteria under clause 8(1) ceases to be a startup. In any event, more grounds may be specified under subsidiary legislation within a year from the date of enactment of the Bill.

- (ix) **THAT**, sections 7(2)(j), 9(1)(r), 33(2)(f) and 53(6) of the Public Procurement and Asset Disposal Act provides preferential treatment of procurement by youth, women, persons with disabilities among others. The incentives provided under clause 27 are therefore sufficient for this purpose and amending the Bill further would not be necessary.

4.2 Recommendations by the Committee

From the above observations, the Committee proposed the following amendments- **THAT**;

1. Clause 8 (1) (b) of the Bill be amended to increase the period that an entity may be in existence to be eligible for registration as a startup to a maximum period of five years from the date of incorporation.
2. Clause 8(1)(g) of the Bill be amended to provide that entities seeking registration must have at least ninety percent (90%) of the company's shares owned by one or more citizens of Kenya to be eligible for registration as startups.
3. Clause 8(1)(i) of the Bill be deleted.
4. Clause 26 of the Bill be amended to mandate incubators to provide online and remote services to startups.
5. The Bill be amended to include the provision of registration and incentive services to marginalized groups.

4.3 Committee Stage Amendments

From the consideration of the Startup Bill (Senate Bills No. 14 of 2022, the Committee intends to move the following amendments at the Committee Stage-

CLAUSE 2

THAT Clause 2 of the bill be amended by—

Deleting the following words under the definition of a Startup “and a disruptive economic model” appearing immediately after the word “potential” and substituting thereof the following words “to develop and deliver innovative products or services that solve a specific problem or fulfil a market need”.

CLAUSE 3

THAT clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph f—

“to ensure that all the youth in the country irrespective of gender, status and ethnicity are afforded an equal opportunity to establish and benefit from their innovations”

CLAUSE 4

THAT clause 4 of the Bill be amended by—

- a) inserting the following words immediately after the words “technology innovation” in sub-clause 4(1)(b) —
“developed in one entity registered under this Act to another entity registered under this Act to achieve increased innovation, economic growth and better access to new technologies”
- b) Deleting the word “incubators” appearing immediately after the words “admission of” in sub-clause 4(2)(c) and substituting thereof with the word “Startups”
- c) Deleting the words “to entities” appearing immediately after the words “enable access” in sub-clause 4(2)(h).

CLAUSE 5

THAT Clause 5 of the Bill be amended by—

- a) Deleting the word “entities” appearing immediately after the words “evaluation of” and substituting thereof with the word “Startups” in Sub-Clause 5 (2)(c)
- b) Inserting the word “incubation” immediately before the words “programmes and structures” in Sub-Clause 5 (2)(c)
- c) Inserting the following new sub-clause immediately after Sub-clause 5(2):
“The Cabinet Secretary shall prescribe regulations on evaluation of Startups. incubation programmes and structures set up for implementation of the Act.”

CLAUSE 8

THAT clause 8 of the Bill be amended—

- (a) In sub-clause 1(i) by deleting the entire sub-clause;
- (b) in sub-clause (1)(g) by deleting the words “ is wholly ” immediately before the words “owned by one or more citizens of Kenya” and substituting therefor the words “has a minimum of ninety percent of its shares”.
- (c) inserting the following new sub-clauses immediately after sub-clause 8(2)
“The provisions of section 8(1)(a) notwithstanding, the registrar of Startups shall cause an entity that has not been formally registered and that does not have a certificate of incorporation or registration to be registered as a Startup under the Act where —

- (i) the innovators within the entity do not have the financial capability to register the entity and;
- (ii) the registrar is satisfied that the innovation is suitable for incubation and will benefit from admission into an incubation programme ”

“The Cabinet Secretary shall prescribe regulations on the registration of entities and admission into incubation programmes under this section.”

CLAUSE 12

THAT Clause 12 of the Bill be amended by—

Deleting the words “admission into an incubation programme” appearing immediately after the words “The Certificate of” and substituting thereof with the words “registration” in subsection 12 (1).

CLAUSE 13

THAT clause 13 of the Bill be amended—

in sub-clause 13(1)(d) by deleting the word “an unlawful purpose or used for a purpose incompatible with public interest” and substituting thereof with the words “a purpose contravening any written law for the time being applicable in the Republic of Kenya”

CLAUSE 22

THAT clause 22 of the Bill be amended by—

- a) deleting the word “accounting” appearing immediately after word maintaining and substituting thereof the words “financial records” under paragraph (b).
- b) Inserting the words “annual financial records and” immediately before the words “annual financial budgets” in paragraph (b).

CLAUSE 23

THAT clause 23 of the Bill be amended by—

- a) Inserting the words “Physical and virtual” immediately before the word “facilities” in paragraph (c) (i)
- b) inserting the following new sub-clause immediately after paragraph f—
“has met conditions for decent work, safety work conditions, with no history of consistent violation of human rights.”

CLAUSE 24

THAT clause 24 of the Bill be amended by—

Inserting the words “respectively owned by the incubator and the startups admitted to its incubation programme” in subclause 2 (j)

CLAUSE 26

THAT clause 26 of the Bill be amended by —

(a) deleting paragraph (a) in its entirety and substituting thereof with the following paragraph—

“Support Startups that are developing and delivering innovative products or services that solve a specific problem or fulfil a market need”

(b) deleting paragraph (f) in its entirety and substituting thereof with the following paragraph—

“Equip Startups with skills in raising capital and product marketing”

(c) inserting the following new sub-clause immediately after sub-clause (i) —

“provide remote support services to Startups in rural areas” ; and

(d) re-numbering the existing sub-clause (j) as sub-clause (k).

CLAUSE 27

THAT clause 27 of the Bill be amended by —

a) renumbering the existing clause 27 to read Clause 27(1) and inserting a new paragraph immediately after paragraph e—

“target women, persons with disability and marginalized groups in providing fiscal and non-fiscal incentives under this Act”

b) inserting a new sub-clause immediately after the existing sub-clause 27 to read Sub-Clause 27(2) —

“the Cabinet Secretaries for matters finance and ICT shall prescribe regulations on the provision and administration of incentives under this section within one year from the date of commencement of the Act”.

CLAUSE 28

THAT clause 28 of the Bill be amended by—

a) Deleting the word “and” appearing immediately after the semi-colon in paragraph (b);

- b) Inserting the word “and” immediately after the semi-colon in paragraph (c);
and
- c) Inserting the following new paragraph immediately after paragraph (c) —
“target women, marginalized groups and rural populations who have no
access to financial market instruments.”

CLAUSE 30

THAT clause 30 of the Bill be amended by—

Inserting the words “relating to the Startup’s product or service” immediately after the
words “intellectual property rights”.

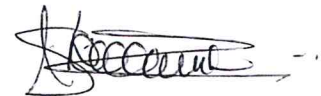
CLAUSE 32

THAT clause 32 of the Bill be amended by —

Inserting a new sub-clause immediately after Sub-clause 32 (2) —

“the Cabinet Secretary shall prescribe regulations under this section within one year
from the date of commencement of the Act”

Dated.....27/4.....2023.



Sen. Seki Lenku Ole Kanar,

Chairperson,

Committee on Trade Industrialisation and Tourism.

APPENDICES

Appendix 1: Minutes of the sittings of the Committee on the Bill

Appendix 2: The Startup Bill, 2022 (Senate Bills No.14 of 2022)

Appendix 3: Advertisement published in the *Daily Nation* and *Standard* Newspapers on Tuesday, 21st February, 2023

Appendix 4: Copies of submissions from stakeholders



MINUTES OF THE SIXTEENTH MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM HELD ON TUESDAY, 25TH APRIL, 2023, AT 8.00 AM VIA ZOOM

PRESENT

- | | |
|---|------------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | -Chairperson |
| 2. Sen. Esther Okenyuri, MP | -Vice-Chairperson (Chairing) |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | -Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH. MP | -Member |
| 5. Sen. Paul Karungo Thang'wa, MP | -Member |
| 6. Sen. Crystal Kegehi Asige, MP | - Member |
| 7. Sen. Betty Batuli Montet, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|-----------------------------------|----------|
| 1. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 2. Sen. Hezena M. Lemaletian, MP | -Member |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. Ms. Annette Kwamboka | - Legal Counsel |
| 4. Ms. Hamun Mohamud | - Research Officer |
| 5. Ms. Felistus Mutune | - Media Relations Officer |
| 6. Mr. Joseph Otieno | - Audio Officer |

MIN/SEN/SCTIT/100/2023

PRELIMINARIES

The Chairperson called the meeting to order at 8:09 am followed by a word of prayer.

MIN/SEN/SCTIT/101/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Crystal Asige, MP, and seconded by Sen. Esther Okenyuri, MP, as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the fifteenth sitting held on 20th April, 2023;
4. Matters Arising from Minutes of the fifteenth sitting;

5. Consideration of the Report on the Startup Bill, 2022 (Senate Bills No.14 of 2022);
6. Any Other Business; and
7. Adjournment/Date of the Next Meeting.

MIN/SEN/SCTIT/102/2023

**CONFIRMATION OF MINUTES OF THE
FIFTEENTH SITTING HELD ON 20TH APRIL,
2023**

Minutes of the fifteenth Sitting held on Thursday, 20th April, 2023 were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Paul Karungo Thang'wa, MP and seconded by Sen. Betty Batuli Montet, MP.

MIN/SEN/SCTIT/103/2023

**MATTERS ARISING FROM THE MINUTES OF
THE FIFTEENTH SITTING**

There were no matters arising from the Minutes of the Fifteenth Sitting held on Thursday, 20th April 2023.

MIN/SEN/SCTIT/104/2023

**CONSIDERATION OF THE REPORT ON THE
STARTUP BILL, 2022 (SENATE BILLS NO.14 OF
2022)**

The secretariat took the Committee through Committee Paper No.19 on the consideration of the draft report on the Startup Bill (Senate Bills No. 14 of 2022). The additional submissions had been received from the National Gender and equality Commission (NGEC), the University of Nairobi Women Empowerment Hub; The Bhub; the Council of Governors and the Association of Startup and SME Enablers of Kenya (ASSEK).

Ms. Annete Kwamboka, Legal Counsel took the Committee through the Report and explained that whereas the report had been considered and adopted on 30th march, 2023, the secretariat had incorporated the additional submissions that were received beyond the set timelines. The Committee was then taken through chapter three of the report.

Observations by the Committee

The Committee made the following observations-**That**;

- a) with respect to definition of “Startup”, the term “disruptive model” in is ambiguous. There is therefore need to amend the definition to set out a less ambiguous definition;
- b) Clause 4 (1) (b) does not provide clarity on transfer of innovative technology. There is need to amend the clause in order to provide clarity on knowledge transfer and protecting innovation by regulating the exchange of knowledge between parties;

- c) the bill requires provisions addressing inclusion of marginalized categories of citizens in registration and admission to incubation programmes;
- d) the time frame for qualification as a startup as provided for under Clause 8 (1) (b) is too narrow and constraining. In reality, startups may take longer to set up their businesses, obtain needed registrations and licenses and set up effective corporate governance structures. It is therefore reasonable to extend the threshold for registration under the Bill for a period of up to five years;
- e) the limitation of registration to entities wholly owned by Kenyan citizens as provided in Clause 8 (1) (g) is a deterrent to foreign investors with potentially valuable fiscal and non-fiscal contributions to Kenyan startups. This might discourage foreign direct investment as well as technology transfer in cutting edge sciences;
- f) clause 8(1) (i) requires an entity to have ownership of patents or owner of a registered software to be eligible to be registered as a startup. The cost of registering a patent or to register software is too high most startups may not afford it. Therefore this requirement is stringent and will be an impediment to the registration of a significant number of startups.
- g) there is ambiguity in Clause 13(1)(d) of the Bill as to what actions are incompatible with or prejudicial to public interest which could engender interference with creative interests and create bias thereby stifling the startups;
- h) the specific grounds for deregistration of a startup under clause 14 (2) are not necessary as the same are provided under Clause 8(1). An entity that ceases to fulfil the eligibility criteria under clause 8(1) ceases to be a startup. In any event, more grounds may be specified under subsidiary legislation within a year from the date of enactment of the Bill.
- i) sections 7(2)(j), 9(1)(r), 33(2)(f) and 53(6) of the Public Procurement and Asset Disposal Act provides preferential treatment of procurement by youth, women, persons with disabilities among others. The incentives provided under clause 27 are therefore sufficient for this purpose and amending the Bill further would not be necessary.

Recommendation by the Committee

From the above observations, the Committee proposed the following amendments- **THAT**;

- a) Clause 8 (1) (b) of the Bill be amended to increase the period that an entity may be in existence to be eligible for registration as a startup to a maximum period of five years from the date of incorporation;
- b) Clause 8(1)(g) of the Bill be amended to provide that entities seeking registration must have at least ninety percent (90%) of the company's shares owned by one or more citizens of Kenya to be eligible for registration as startups;
- c) Clause 8(1)(i) of the Bill be deleted;

- d) Clause 26 of the Bill be amended to mandate incubators to provide online and remote services to startups; and
- e) The Bill be amended to include the provision of registration and incentive services to marginalized groups.

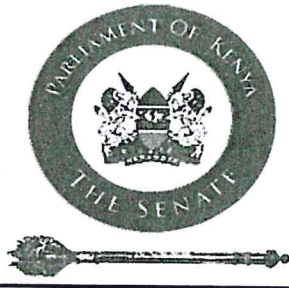
Committee Resolutions

From the above recommendation on the proposed amendments, the Committee unanimously adopted the Report on the Startup Bill, 2022 (Senate Bills No. 14 of 2022) after having been proposed by Sen. Jackson Kiplagat Mandago, EGH. MP and seconded by Sen. Betty Batuli Montet, MP.

MIN/SEN/SCTIT/ 105/2023: ADJOURNMENT

There being no other business, the meeting adjourned at 9.24 am. The next meeting would be by notice.

SIGNATURE.......... DATE:27/4/2023.....
(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



MINUTES OF THE ELEVENTH MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON TUESDAY, 28TH MARCH, 2023, AT KICC CAUCUS 110 AT 8.00 AM

PRESENT

- | | |
|-----------------------------------|--------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | -Chairperson |
| 2. Sen. Esther Okenyuri, MP | -Vice –Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi | - Member |
| 4. Sen. Betty Batuli Montet, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|---|---------|
| 1. Sen. Jackson Kiplagat Mandago, EGH. MP | -Member |
| 2. Sen. Hezena M. Lemaletian, MP | -Member |
| 3. Sen. Paul Karungo Thangwa, MP | -Member |

SECRETARIAT

- | | |
|-------------------------|--------------------------|
| 1) Mr. Peter Mulesi | - Clerk Assistant |
| 2) Mr. David Ngamate | - Clerk Assistant |
| 3) Mr. Mitchell Otoro | - Legal Counsel |
| 4) Ms. Annette Kwamboka | - Legal Counsel |
| 5) Ms. Sharon Rotino | - Research Officer |
| 6) Ms. Hamud Mohamud | - Research Officer |
| 7) Mr. William Wambiru | - Fiscal Analyst |
| 8) Ms. Felistus Mutune | -Media Relations Officer |
| 9) Mr. Joseph Otieno | -Audio Officer |
| 10)Mr. Abdalah Mbore | - Sergeant-At-Arms |

MIN/SEN/SCTIT/65/2023

PRELIMINARIES

The Chairperson called the meeting to order at 8:09 am followed by a word of prayer. He welcomed the Members and staff present and asked for a round of introductions.

MIN/SEN/SCTIT/66/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Crystal Kegehi Asige, MP, and seconded by Sen. Esther Okenyuri, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the previous Sittings –
 - a) Minutes of the ninth Sitting held on 21st March, 2023 at 8.00 am; and
 - b) Minutes of the tenth Sitting held on 23rd March, 2023 at 8 .00 am;
4. Matters Arising from Minutes;
5. Adoption of Committee Reports on -
 - a) The Startup Bill (Senate Bills No. 14 of 2022); and
 - b) The County Licensing (Uniform Procedure) Bill (Senate Bills No. 9 of 2022).
6. Any Other Business; and
7. Date of the Next Meeting/Adjournment.

MIN/SEN/SCTIT/67/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the Ninth Sitting held on Tuesday, 21st March, 2023 were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Esther Okenyuri, MP.
- b) Minutes of the Tenth Sitting held on Thursday, 23rd March, 2023 were deferred to the subsequent sitting.

MIN/SEN/SCTIT/68/2023

MATTERS ARISING FROM MINUTES OF THE PREVIOUS MEETINGS

There were no matters that arising from the Minutes of the Ninth Sitting held on Tuesday 21st March, 2023.

MIN/SEN/SCTIT/69/2023

ADOPTION OF COMMITTEE REPORTS

The Committee considered the Reports on the Bills before the Committee as follows

- a) The Report on the Startup Bill,2022 (Senate Bills No. 14 of 2022)
The Report on the Startup Bill, 2022 (Senate Bills No. 14 of 2022) was adopted unanimously having been proposed by Sen. Esther Okenyuri, MP and seconded by Sen. Betty Batuli Montet, MP.

b) The County Licensing (Uniform Procedure) Bill (Senate Bills No. 9 of 2022).
The Report on County Licensing (Uniform Procedure) Bill, 2022 (Senate Bills No. 9 of 2022) was adopted unanimously after having been proposed by Sen. Esther Okenyuri and seconded by Sen. Betty Batuli Montet, MP.

It was resolved that the secretariat processes the adopted Committee Reports for Tabling in the Senate.

MIN/SEN/SCTIT/ 70/2023:

ANY OTHER BUSINESS

- a) The Committee was informed that a response to the statement requested Sen Samson Cherarkey, MP, on the status of Kenyatta International Conference Centre had been received and shared with the Senator. It was resolved that the response be presented at the next meeting.
- b) The Committee was informed that Sen. Samson Cherarkey, MP, had requested for a statement from the Committee on the state of Foreign Direct Investment (FDI) in Kenya. The statement was being processed for a response from the relevant respondents.
- c) The Committee was informed that the Cabinet Secretary, Ministry of Cooperatives and MSMEs had been invited to a meeting of the Committee on Thursday, 30th March, 2023. The agenda of the meeting is to respond to supplementary issues arising from the statement sought by Sen. Agnes Muthama, MP, on the liquidation of Drumvale Farmers' Cooperative Society Ltd in Machakos County.

MIN/SEN/SCTIT/71/2023

- ADJOURNMENT

There being no other business for consideration, the meeting adjourned at 10.40 am. The next meeting was scheduled for Thursday, 30th March, 2023 at 8.00 am at KICC, Caucus 110.

SIGNATURE.....

DATE: 30/3/2023

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



MINUTES OF THE TENTH MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON THURSDAY, 23RD MARCH, 2023, AT KICC CAUCUS 110 AT 8.00 AM

PRESENT

- | | |
|---|--------------------------------|
| 1. Sen. Esther Okenyuri, MP | - Vice –Chairperson (Chairing) |
| 2. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 3. Sen. Paul Karungo Thangwa, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|---------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. (Dr.) Lelegwe Ltumbesi | - Member |
| 3. Sen. Betty Batuli Montet, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |

IN- ATTENDANCE

- | | |
|-------------------------------------|---------------------------|
| 1. Sen. Alexander Munyi Mundigi, MP | - Friend of the Committee |
|-------------------------------------|---------------------------|

DELEGATION FROM MBEEREMBU MIRAA FARMERS COOPERATIVE UNION

- | | |
|----------------------------------|---------------------------|
| 1. Mr. Jerevasious Nyumba Ekothe | - Chairman |
| 2. Mr. Nelson Kariuki Magara | - Vice-Chairman |
| 3. Mr. Silas N.J Ngerenua | - Secretary General |
| 4. Mr. Ezekiel Njiru | - Treasurer |
| 5. Mr. Benjamin Njeru Joshua | - Chairman, Kuthema Sacco |
| 6. Mr. John Mwaniki Nyaga | - supervisory Member |

SECRETARIAT

- | | |
|-------------------------|--------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. Mitchelle Otoro | - Legal Counsel |
| 3. Ms. Annette Kwamboka | - Legal Counsel |
| 4. Mr. Eric Ososi | - Research Officer |

5. Ms. Hamud Mohamed
6. Ms. Khadija Jumale
7. Ms. Felistus Mutune
8. Mr. Joseph Otieno
9. Ms. Fariya Ali
10. Mr. Abdalah Mbore

- Research Officer
- Protocol Officer
- Media Relations Officer
- Audio Officer
- Sergeant-At-Arms
- Sergeant-At-Arms

MIN/SEN/SCTIT/59/2023

PRELIMINARIES

The Chairperson called the meeting to order at 8:09 am. This was followed by a word of prayer and thereafter a round of introductions.

The Chairperson welcomed the Members and Secretariat staff present.

MIN/SEN/SCTIT/60/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. Paul Karungo Thangwa, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Previous Minutes;
4. Consideration of Draft Reports on-
 - (i) The Start-Up Bill (Senate Bills No. 14 of 2022); and
 - (ii) the County Licensing (Uniform Procedure) Bill (Senate Bills No. 9 of 2022).
5. Consideration of Paper No. 13: Consideration of response to statement sought by Sen. Alexander Munyi Mundigi, MP
6. Any Other Business;
7. Adjournment/Date of the Next Meeting

MIN/SEN/SCTIT/61/2023

CONFIRMATION OF PREVIOUS MINUTES

Confirmation of the Minutes of the ninth Sitting that was held on Tuesday, 21st March, 2023 were deferred.

MIN/SEN/SCTIT/62/2023

CONSIDERATION OF RESPONSE TO STATEMENT SOUGHT BY SEN. ALEXANDER MUNYI MUNDIGI, MP

The Chairperson welcomed Sen. Alexander Mundigi, MP and the delegation from Mbeerembu Miraa Farmers' Cooperative Union in Embu County.

Submissions by Mbeerembu Miraa Farmers Cooperative Union in Embu County

Mr. Jerevasius Nyumba Ekothe thanked the Committee for giving Miraa farmers the opportunity to make their submissions on the statement. He informed the committee as follows -

- a) Muguka is a variety of miraa that is grown in Embu County, predominantly in the lower part of Embu covering Mbeere North and South sub-counties, respectively;
- b) The farmer population is between 128,000- 150,000 and the number is growing every day;
- c) The origin of the Muguka variety in Embu County is Kiang'ombe Hills in Mbeere and has since spread to 21 counties in Kenya; Embu, Nyeri, Kirinyaga, Murang'a, Kiambu, Tharaka Nithi, Meru, Isiolo, Laikipia, Machakos, Kitui, Makueni, Tana River, Kilifi, Taita Taveta, Kajiado, Nakuru, Busia, Kwale Samburu and Nyandarua.
- d) In the year 2010, a number of Muguka Societies came together and formed MBEEREMBU Miraa (Muguka) Farmers' Cooperative Union whose current Chairman is Mr. Jerevasius Nyumbi Ekothe.
- e) The vehicles transporting Muguka from Embu to other destinations on daily basis are as follows-
 - 1) 6 lorries to Mombasa;
 - 2) 464 Proboxes; and
 - 3) 27 Pickups.
- f) The Committee was informed that Muguka farming is a lucrative business and had accrued a number of benefits such as high economic improvement especially in the lower Embu, parents have been able to educate their children; food security; nutrition, family health and revenue for the County.

In spite of the above benefits, levies charged by other counties are as follows-

- a) Mombasa where every lorry is charged Ksh. 60,000 per day for all the 365 days per year
- b) Garissa county charges Ksh.3, 500 per Proboxes per day;
- c) Embu charges Ksh. 300 per Proboxes per day;
- d) Nairobi charges Ksh. 400 per Proboxes per day

The Chairperson requested the Committee to intervene on the following-

- a) the levies could be lowered to Ksh. 10,000 per lorry and Ksh, 2,000 per Pick-up respectively in Mombasa; and Ksh. 200 per Pick-up in Nairobi;
- b) Explore international markets from regions in Europe, Asia and Africa;
- c) Provide pesticides and water to the farmers; and
- d) Provide designated places for vendors of miraa farmers to enhance hygiene.

Deliberations by the Committee

- 1) The Committee sought a number of clarifications on the Muguka variety and its biggest markets to which they were informed Mombasa, Nairobi and Garissa were the biggest markets;

- 2) The products for value addition to which the Committee was informed that initially the Cooperative had begun producing yoghurt, chewing gums and nutrition drinks.
- 3) The speed of the vehicles transporting Muguka cargo in view of the safety of the motorists and if the farmers could invest in aircrafts and further if the county government could develop an airstrip in Embu County ;
- 4) Investments in refrigerated trucks.

Resolutions by the Committee

From the deliberations, the committee made the following resolutions-

- 1) To undertake an inspection visit to Mbeere North and South in Embu County to engage with the affected farmers;
- 2) To organize stakeholder engagement involving County Executive Committee Members (CECMs) for Trade and Finance from Mombasa, Nairobi, Garissa, Embu and other Counties to deliberate on the levies charged on Muguka;
- 3) To encourage farmers to submit a petition to Parliament with prayers for the National Government to secure external markets for Muguka.

MIN/SEN/SCTIT/ 63/2023:

**CONSIDERATION OF PAPER NO. 11:
SUBMISSIONS ON PUBLIC
PARTICIPATION ON BILLS BEFORE
THE COMMITTEE**

The secretariat reported that the draft Reports had been finalized for consideration and adoption by the Committee. However, the reports could not be adopted due to lack of quorum.

Resolution by the Committee

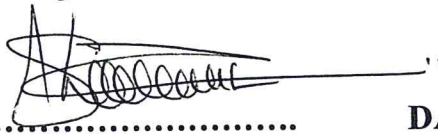
It was resolved that the reports be scheduled for adoption during the subsequent meeting on Tuesday, 28th March, 2023.

MIN/SEN/SCTIT/64/2023

- ADJOURNMENT

There being no other business for consideration, the meeting adjourned at 10.40 am. The date of the next meeting was scheduled for Tuesday, 28th March, 2023 at 8.00 am at KICC, Caucus 110.

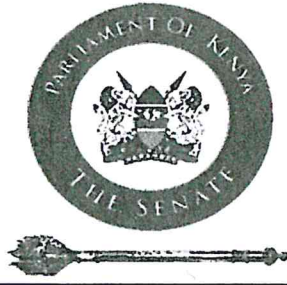
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DATE:

30/3/2023

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



MINUTES OF THE NINTH MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON THURSDAY, 21ST MARCH, 2023, AT KICC CAUCUS 110 AT 8.00 AM

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | -Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. Jackson Kiplagat Mandago, EGH. MP | -Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. (Dr.) Lelegwe Ltumbesi | - Member |
| 2. Sen. Paul Karungo Thangwa, MP | - Member |
| 3. Sen. Betty Batuli Montet, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--------------------------|
| 1) Mr. Peter Mulesi | - Clerk Assistant |
| 2) Mr. Mitchelle Otoro | - Legal Counsel |
| 3) Ms. Annette Kwamboka | - Legal Counsel |
| 4) Ms. Khadija Jumale | - Protocol Officer |
| 5) Ms. Felistus Mutune | -Media Relations Officer |
| 6) Mr. Joseph Otieno | -Audio Officer |
| 7) Ms. Fariya Ali | - Sergeant-At-Arms |
| 8) Mr. Abdallah Mbore | - Sergeant-At-Arms |

MIN/SEN/SCTIT/54/2023:

PRELIMINARIES

The Chairperson called the meeting to order at 8:09 am. This was followed by a word of prayer and thereafter a round of introductions.

The Chairperson welcomed the Members and Secretariat staff present.

MIN/SEN/SCTIT/55/2023:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Crystal Kegehi Asige, MP, and seconded by Sen. Jackson Kiplagat Mandago, MP as follows-

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Previous Minutes
4. Consideration of Paper No. 11 (b): Resumption of Submissions on the Public Participation on-
 - i) The Start-Up Bill (Senate Bills No. 14 of 2022); and
 - ii) The County Licensing (Uniform Procedure) Bill (Senate Bills No. 9 of 2022)
5. Date of the Next Meeting
6. Adjournment.

MIN/SEN/SCTIT/56/2023

CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Eighth Sitting that was held on Thursday, 16th March, 2023 were adopted after having been proposed by Sen Jackson Kiplagat Mandago, MP and seconded by Sen. Esther Okenyuri, MP.

Matters arising out of the Minutes

On Ex. Min /SEN/SCTIT/ 51/2023 on the submissions to a statement on the liquidation of Drumvale Farmers's Cooperative Society Ltd

- i) The committee had resolved to invite both the current and immediate former Commissioners of Cooperatives. This was noted for inclusion in the invitation letters.
- ii) The name of the Cooperative was misspelled as Dumvale. This was noted for correction

MIN/SEN/SCTIT/ 57/2023:

**CONSIDERATION OF PAPER NO. 11:
SUBMISSIONS ON THE PUBLIC
PARTICIPATION ON BILLS BEFORE
THE COMMITTEE-**

The Chairperson invited the secretariat to the presentation on committee Paper No. 11 on public participation on Bills before the Committee. Members were informed that the Start-Up Bill, 2022 had been considered halfway, the secretariat were to present brief observations on the 2 Bills.

The legal Counsels took the Committee through the observations and findings as had been captured by the secretariat-

1) Consideration of the Start-Up Bill (Senate Bills No.14 of 2022)

Observations by the Committee

From the submissions that considered, the Committee made the following observations-

- (i) **THAT**; the time frame for qualification as a start-up as provided for under Clause 8 (1) (b) is too narrow and constraining as entities that have formally existed for more than three years are no longer eligible to register as start-ups or get into incubation programs. In reality, start-ups may take longer to set up their businesses, obtain needed registrations and licenses and set up effective corporate governance structures. It is therefore reasonable to extend the threshold for registration under the Bill for a period between five to eight years.
- (ii) **THAT**, the limitation of registration to entities wholly owned by Kenyan citizens as provided in Clause 8 (1) (g) is a deterrent to foreign investors with potentially valuable fiscal and non-fiscal contributions to Kenyan startups. The committee further noted that this might discourage foreign direct investment as well as technology transfer in cutting edge sciences.
- (iii) **THAT** the requirement provided in Clause 8(1)(i) may result in the exclusion of entities as most start-ups do not have enough capital to fulfil this condition.
- (iv) **THAT**; Clause 9 (2)(b)(i) sets out that an applicant for admission into an incubation programme shall submit the application together with a letter of recommendation or support which may include a patent or trademark registered in Kenya. The provision is not mandatory and there is therefore no justification for deleting it.
- (v) **THAT**; there is ambiguity in Clause 13(1)(d) of the Bill as to what actions are incompatible with or prejudicial to public interest could engender interference with creative interests and create bias thereby stifling the startups.
- (vi) **THAT**; what is being proposed for amendment in clause 14 (2) can be specified under subsidiary legislation within a year from the date of enactment of the Bill.
- (vii) **THAT**; Clause 27(a) that gives the specification of subsidies and the provision of shorter set up timelines will be beneficial for startups.
- (viii) **THAT**; that Clause 32 that provides for the growth objectives will be best addressed through subsidiary legislation.
- (ix) **THAT**; the Act has set adequate provisions on incentives under section 27; The Public Procurement Act has provided for enabling provisions in respect to procurement by youth, persons with disabilities etc; and stipends have been covered under incentives under section 27. These could be provided for under subsidiary legislation

- (x) **THAT**; clause 27(a) gives the specification of subsidies and the provision of shorter set up timelines will be beneficial for startups.

Recommendations by the Committee

From the above observations, the Committee proposed the following amendments- **THAT**;

- 1) Clause 8 (1) (b) of the Bill be amended to provide that an entity shall be in existence for a maximum period of five years from the date of its incorporation to be eligible for registration as a start-up.
- 2) Clause 8(1)(g) of the Bill be amended to provide that entities seeking registration must have ninety percent (90%) of the company's shares owned by one or more citizens of Kenya.
- 3) That the proposal for deletion of Clause 8(1)(i) be carried
- 4) That clause 13(1)(d) of the Bill be amended to provide that the registrar of startups or the County Executive Committee may reject an application for the admission into an incubation programme if the objects of the entity are likely to contravene the provisions of any written law for the time being effective in the Republic of Kenya.
- 5) That; that clause 27(a) of the Bill to amended to provide that the Cabinet Secretaries for ICT and Treasury will subsidize the formalization of startups; and
- 6) While the stakeholders proposed for the Bill to be amended under clause 22, the committee resolves that the Bill instead be amended under section 26 as it's the rightful function of incubation programs to provide for online and remote services to startups.

Resolutions by the Committee

Further, the Committee observed there were other additional submissions that had been received from the University of Nairobi Women Economic Empowerment Hub.

It was resolved that consider all the amendments and including those from the additional submissions and consolidates them into the Report to be presented for consideration and adoption.

- 2) Consideration of the County Licensing (Uniform Procedure) (Senate Bills No. 9 of 2022)

Observations by the Committee

From the submissions that were received, the Committee made the following observations-

- (i) **THAT**; it is only fair that all parties are protected by county licensing regimes. The Clause 6 (a), of the Bill should be amended to include producers of goods and services among the entities whose rights are to be protected by county governments when administering a license regime.

- (ii) **THAT**; the provision of clause 6 (c) does not empower Counties to perform functions of the Kenya Bureau of Standards but rather perform their Constitutional functions under paragraph 7 of Part 2 of the Fourth Schedule to the Constitution. The provision also doesn't disenfranchise manufacturers by adding regulatory burdens as the regulation by counties is already provided for in the Constitution as stated above.
- (iii) **THAT**; the three years is sufficient time as provided for in clause 7(2) because one year is too short for all counties to adopt an electronic system of processing licenses.
- (iv) **THAT**; the licensing Contemplated under Clause 24 in the Bill is a County function as provided under Part 2 of the Fourth Schedule to the Constitution. Enacting specific provisions on avoidance of multiplicity for county licenses in National legislation would be infringing on functions that are wholly devolved. Only county governments can enact legislation with specific provisions on avoidance of multiplicity of licences. The Bill could however amended to ensure the involvement of the Council of Governors in ensuring the harmonization of licensing regimes and fees in counties to avoid multiplicity of licences by respective counties.
- (v) **THAT**; further, the sharing of information by different counties has to ensure the protection of the data of the licensees in accordance with the Data Protection Act. Clause 23 of the Bill be amended to stipulate that counties ensure that the license register is posted and accessible online/via the internet; and
- (vi) **THAT**; Article 6(2) of the Constitution, counties are distinct and interdependent governments. Different county governments cannot therefore be compared to different agencies of the same government.

Recommendations by the Committee

From the foregoing observations, the Committee proposed the following amendments-
THAT-

- 1) Clause 6 (a) be amended to provide for the protection of the rights of consumers and the manufacturers/producers of goods and services in the respective counties;
- 2) Clause 24 of the Bill be amended to ensure the involvement of the Council of Governor in ensuring the harmonization of licensing regimes and fees in counties to avoid multiplicity of licenses by respective counties;
- 3) Clause 23 of the Bill be amended to stipulate that counties ensure that the license register is posted and accessible online/via the internet;
- 4) Clause 4, 16(3)(a), 23(2) and 28(2) be amended to mandate counties to formulate and apply a coding system for the all categories of licences issued in the respective county governments; and
- 5) The Bill be further amended to stipulate that each county posts in an online platform a list of all licenses issued, their categories and fess paid or owed.

Resolution by the Committee

The Committee observed that all the submissions from the stakeholders had been considered and resolved that the secretariat finalize the Report for adoption by the Committee during the subsequent sitting.

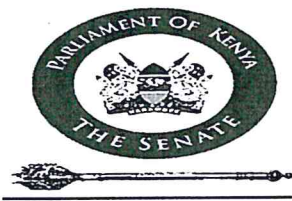
MIN/SEN/SCTIT/58/2023

- ADJOURNMENT

There being no other business for consideration, the meeting adjourned at 09.43 am. The date of the next meeting was scheduled for Thursday, 23rd March, 2023 at 8.00 am at KICC, Caucus 110.

SIGNATURE: 
(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)

DATE: 28/3/2023



MINUTES OF THE SIXTH MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON THURSDAY, 23RD FEBRUARY, 2023, AT 11.00 AM COMMITTEE ROOM 4, MAIN PARLIAMENT.

PRESENT

- | | |
|---|--------------------------------|
| 1. Sen. Esther Okenyuri, MP | - Vice –Chairperson (Chairing) |
| 2. Sen. Jackson Kiplagat Mandago, EGH. MP | -Member |
| 3. Sen. Paul Karungo Thangwa, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|--------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | -Chairperson |
| 2. Sen. (Dr.) Lelegwe Ltumbesi | - Member |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |
| 4. Sen. Betty Batuli Montet, MP | - Member |
| 5. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--------------------------|
| 1) Mr. Peter Mulesi | - Clerk Assistant |
| 2) Mr. Mitchell Otoro | -Legal Counsel |
| 3) Ms. Annette Kwamboka | - Legal Counsel |
| 4) Mr. Eric Osoi | - Research Officer |
| 5) Mr. William Wambiri | - Fiscal Analyst |
| 6) Ms. Khadija Jumale | - Protocol Officer |
| 7) Ms. Felistus Mutune | -Media Relations Officer |
| 8) Mr. Joseph Otieno | -Audio Officer |
| 9) Mr. Alex Mutuku | -Snr. Sergeant-At- Arms |

MIN/SEN/SCTIT/34/2023:

PRELIMINARIES

The Chairperson, Sen. Esther Okenyuri, MP, called the meeting to order at 11:29am. This was followed by a word of prayer and thereafter a round of introductions.

The Chairperson welcomed Members present and called for introduction.

MIN/SEN/SCTIT/35/2023:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Jackson Kiplagat Mandago, EGH. MP, and seconded by Sen. Karungo Thangwa, MP as follows-

1. Prayer;

2. Adoption of the Agenda;
3. Confirmation of Previous Minutes
4. Consideration of Committee Paper No. 8: A Report on the Induction Retreat for the Committee.
5. Consideration of Committee Paper No. 9-
 - a) Legal brief on the Start- Up Bill (Senate Bills No. 14 of 2022) ;and
 - b) Legal brief on the County Licensing (Uniform Procedure) Bill, (Senate Bills No. 9 of 2022)
6. Date of the Next Meeting and Adjournment.

MIN/SEN/SCTIT/036/2023:

CONFIRMATION OF PREVIOUS MINUTES

- (i) The minutes of the fourth sitting of the Committee that was held on Thursday, 24th November, 2022 were deferred to the next meeting as there was no seconder.
- (ii) The minutes of the fifth sitting of the Committee that was held on Thursday, 23rd February, 2023 were confirmed as a true record of the deliberations after having been proposed by Sen. Karungo Thangwa, MP and seconded by Sen. Jackson Kiplagat Mandago, MP.

There were no matters arising.

MIN/SEN/SCTIT/037/2023:

CONSIDERATION OF COMMITTEE PAPER NO. 8: A REPORT ON THE INDUCTION RETREAT FOR THE COMMITTEE

The Paper No. 8 was deferred to the next meeting to allow the committee to consider the Bills before the Committee.

MIN/SEN/SCTIT/038/2023:

CONSIDERATION OF COMMITTEE PAPER NO. 8: THE LEGAL BRIEFS ON BILLS BEFORE THE COMMITTEE

- A) Legal brief on the County Licensing (Uniform Procedure) Bill, (Senate Bills No. 9 of 2022)

The Chairperson invited the secretariat to make a presentation on the legal brief on the County Licensing (Uniform Procedure) Bill, (Senate Bills No. 9 of 2022). Mr. Mitchell Otoro, legal Counsel informed the Committee as follows- **That;**

- i. The County Licensing (Uniform Procedure) Bill, (Senate Bills No. 9 of 2022 Bill is an ordinary Members' Bill, sponsored by Sen. Mariam Omar, MP. The Bill was published on 29th November, 2022 and Read a first time on 16th February, 2023. It was thereafter referred to the Standing Committee on Tourism, Trade and Industrialization for consideration;

- ii. The purpose of the Bill is to provide a national legislative framework for uniform procedures for the licensing of various activities by county governments. This will ensure certainty in the licensing processes in all counties and encourage private sector players to do business in the counties;
- iii. The Bill seeks to establish uniform framework which will form the basis of licensing processes in counties. A uniform framework for licensing will guarantee certainty and predictability for business owners trading within counties and is vital to the ease of doing business in counties;
- iv. The legislative mandate regarding the objectives of the Bill is drawn from the Fourth Schedule (Part 2) Paragraphs 2(d), 4(c), 6(a) and 7(b) of the Constitution that sets out trade development as a devolved function of County Governments.
- v. In operationalizing these various licensing functions, it has become apparent that there are varied procedures in applying for licenses in different counties which have had a negative impact on the ease of doing business in the counties.
- vi. This Bill therefore aims to establish uniform procedures for licensing in counties to ensure certainty in the process and ultimately encourage private sector investment in all counties.
- vii. The lack of uniform licensing procedures has discouraged private sector players from engaging in activities within some counties due to the requirement for multiple licences, one for each relevant county, when undertaking a single activity across more than one county.
- viii. The Bill also aims to arrest this issue to ensure that private sector players carry out their business activities seamlessly without unnecessary impediments.
- ix. The Committee was taken through the overview of the Bill with respect to the following
 - a) mandates County Governments;
 - b) the Licensing Procedures, the Role of County Governments,
 - c) administration of licensing schemes; and
 - d) the Role of the Cabinet Secretary
- x. On the status of the Bill, the Committee was informed that pursuant to standing order 145 (1) and (5) of the Senate Standing Orders, the Bill was undergoing public participation in order to take into account the views and recommendations of the public when the Committee submits its report to the Senate.

Reactions by the Committee

Members sought clarifications on a number of Clauses of the Bill as follows-

Reasons why the Bill was not concluded in the 12th Parliament and if there were any challenges that could affect the processing of the Bill;

Harmonization or setting of uniform standards for licensing in the various counties;.

It was recommended that the Bill was timely in as far as it provides a uniformity dashboard on county licensing;

The revenue raising measures by counties and if the targets by various counties would impede the operationalization of the Act;

B) Legal brief on the Start- Up Bill (Senate Bills No. 14 of 2022)

The Chairperson invited the secretariat to make a presentation on the legal brief on the County Licensing (Uniform Procedure) Bill, (Senate Bills No. 9 of 2022). Ms. Annete Kwamboka, legal Counsel informed the Committee as follows- **That;**

- 1) The Start-Up Bill, (Senate Bills No. 14 of 2022 Bill is an ordinary Members' Bill, sponsored by Sen. Crystall Asige, MP. The Bill was published on 30th December, 2022 and Read a first time on 14th February, 2023. It was thereafter referred to the Standing Committee on Tourism, Trade and Industrialization for consideration;
- 2) the Bill was drafted to provide a legislative framework to among others- foster a culture of innovative thinking and entrepreneurship, to facilitate investments in and the provision of fiscal and non-fiscal support to start-ups in Kenya, promote an enabling environment for the establishment, development, conduct of business and regulation of start-ups and for the establishment of incubation facilities at the National and county levels of government and environment that promotes the establishment of start-ups;
- 3) **Part II** of the Bill provides for the establishment of incubation programmes for purposes of setting up and maintaining enabling conditions for the purpose of facilitating the growth or development of infant technologies ideas or industries;
- 4) **Part III** of the Bill provides that the Agency shall be responsible for the registration of start-ups and, in consultation with the Public Service Commission, appoint a Registrar of start-ups. The Bill further provides for the appointment of a Deputy Registrar and the deployment of county registrars in counties as is necessary for the performance of the functions of the registrar;
- 5) **Part IV** of the Bill provides a framework for admission into incubation programmes, certification of incubators and outlines the obligation of incubators. In particular, an entity may be certified as an incubator if it's a registered entity with objectives of supporting the establishment of start-ups and has the facilities, equipment, human resource, networks and experience to achieve these objectives;
- 6) **Part V** of the Bill sets out that the Agency and the respective county executive committee members shall put in place measures to incentivise start-ups such as facilitating the protection of Intellectual Property and providing fiscal and non-fiscal support. The Bill also seeks to establish a Credit Guarantee Scheme for the provision of accessible financial support, credit information and capacity building on financial and risk management to start ups;
- 7) Miscellaneous provisions- The Bill confers on the Cabinet Secretary, the power to make regulations on the exemption of start-ups from registration fees, protection of intellectual property rights, relationship between founders and employees and reporting and accountability of start-ups.

The Bill further amends the Science and Technology Act to provide for financial support of technological innovations, representation of start-ups in the National Research Fund and allocation of monies to provide financial support to technological innovations

8) Status of the Bill

The Committee was informed that pursuant to standing order 145 (1) and (5) of the Senate Standing Orders, the Bill was undergoing public participation in order to take into account the views and recommendations of the public when the Committee submits its report to the Senate.

Reactions and Resolution of the Committee

- 1) Members sought clarifications on a number of Clauses of the Bill specifically-
- 2) Noting that the Bill was tech-based, what was the role of the Ministry of ICT in the processing of the Bill;
- 3) Whether the roles assigned to the CECM could be realized in the context of County Executive headed by the Governor;
- 4) There was no clear understanding of what a start-up was and if it was just any business idea;
- 5) The clear role of the Kenya Innovation agency in the Bill; and
- 6) Why the Bill was not concluded in the 12th Parliament.

It was recommended that the Bill proceeds for public participation.

MIN/SEN/SCTIT/039/2023: ANY OTHER BUSINESS

The following draft Reports were due for consideration by the Committee-

- (i) The Committee's participation to the 22nd EAC Trade Fair, 2022 held in Kampala, Uganda;
- (ii) The Committee's participation to the Committee's participation to the Integrated Agro- Processing Industrial Parks study in Ethiopia, in February, 2023; and
- (iii) Committee's Induction Retreat held from 5th to 8th February, 2023 in Mombasa County.

It was resolved that the draft reports be included in the subsequent agenda for the Committee

MIN/SEN/SCTIT/040/2023: ADJOURNMENT

There being no other business for consideration, the meeting adjourned at 12.58 pm. The date of the next meeting was scheduled for Thursday, 9th March, 2023 at 11.00 am at a venue to be communicated.

SIGNATURE:

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP

DATE:

S

9th March/2023

SPECIAL ISSUE

Kenya Gazette Supplement No. 207 (Senate Bills No. 14)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2022

NAIROBI, 30th December, 2022

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**THE STARTUP BILL, 2022
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- 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
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- 7—Functions of the registrars.
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34—Amendment of No. 28 of 2013.

THE STARTUP BILL, 2022

A Bill for

AN ACT of Parliament to provide a framework to encourage growth and sustainable technological development, new entrepreneurship employment; create a more favourable environment for innovation; 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, 2022.

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 recognised private limited company, partnership 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;

“county executive committee member” means the county executive committee member responsible for matters relating to science, technology and innovation;

“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;

No. 28 of 2013.

“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;

No. 28 of 2013.

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

No. 19 of 1990.

“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 related activities related to the transfer of technological and research, and development and innovation processes, through the offer of dedicated physical spaces and services advice; 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 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 investments 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 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 and create an enabling environment for the promotion of business incubators including fiscal and non-fiscal incentives to incubators and startups;

- (e) establish 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 and for this purpose, keep and maintain a directory of startups and incubator;
- (f) support any research and development activities undertaken by startups;
- (g) 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;
- (h) 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
- (i) 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, for purposes of subsection (1), be a Registrar who shall be competitively recruited by the Public Service Commission and 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 Deputy Registrar and 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, inspect, regulate, monitor, investigate and supervise startups registered under this Act to ensure compliance with the provisions of this Act;
- (c) issue, renew and cancel, with the approval of the Board of the Agency, certificates of registrations issued under this Act;
- (d) maintain a register of all registered startups in the country;

- (e) keep all documents and records of registered startups;
- (f) enforce the decisions of the Board of the Agency with respect to the registration, regulation and supervision of startups under this Act;
- (g) co-ordinate the functions of county registrars under this Act;
- (h) 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, vet and process applications 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) private limited company under the Companies Act; or No. 17 of 2015.
- (ii) partnership firm under the Partnership Act; or No. 16 of 2012.
- (iii) limited liability partnership under the Limited Liability Partnership Act; or No. 42 of 2011.
- (iv) non-governmental organization under the Non-Governmental Organizations Co-ordination Act; No. 19 of 1990.

(b) is newly registered or has been in existence for a period of not more than three 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 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 human resources, total assets, and annual turnover number shall not exceed an amount prescribed by the Cabinet Secretary;
 - (e) has its headquarters is in Kenya;
 - (f) does not distribute profits;
 - (g) is wholly owned by one or more citizens of Kenya;
 - (h) at least fifteen percent the entity's expenses can be attributed to research and development activities; and
 - (i) it 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, –

- (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 respective county executive committee member.

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

Application for admission into an incubation programme.

- (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 office of the entity;
 - (v) the entity's place of incorporation or registration;
 - (vi) the entity's registration number; and
 - (vii) the registered office of the entity to which all communications may be addressed;
 - (b) a letter of recommendation or support which may include a letter —
 - (ii) a patent or trademark registered in Kenya;
 - (iii) statement on information regarding the elements inherent in the economic model of said entity including—
 - i. innovation aspects;
 - ii. factors differentiating the factors of realization of the strong potential of economic development;
 - iii. scientific and technical qualifications and the experience of the project team;
 - iv. 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 or county executive committee member, 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 executive committee member, 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 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 executive committee member is satisfied that an applicant meets the requirements for registration under this Act, the registrar or the county executive committee member 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 executive committee member, 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 by the registrar or county executive committee member 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 executive committee member 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.

(2) The registrar or county executive committee member, 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) The registrar or county executive committee member, as the case may be, may, subject to the provisions of section 15, de-register a startup registered under this Act where —

Grounds for de-registration.

- (a) the registrar or county executive committee member has reasonable cause to believe that the startup has among its objects the pursuit of an unlawful cause or purpose prejudicial to public interest;
- (b) the startup fails to comply with any directive issued by the registrar to ensure compliance with the provisions of this Act;
- (c) the members of the startup fail to comply with the provisions of their constitution or rules or the provisions of this Act;
- (d) the startup fails to submit any information required under this Act or requested by the Registrar in order to ensure compliance with this Act; or

(e) the registrar determines that the startup submitted false information or statements at the time of registration of the startup.

(2) The Registrar shall de-register a startup which has ceased to be a startup under this Act.

15. (1) The registrar shall, before de-registering a startup under section 14 issue to the entity a compliance notice in the prescribed form.

Notice of non-compliance.

(2) A compliance notice specified under subsection (1) shall—

- (a) be in writing;
- (b) notify the startup of the noncompliance and the steps it is required to take in order to ensure compliance; and
- (c) inform the entity of the period within which it is required to comply with the notice.

(3) The registrar may, upon request by the startup and where there are sufficient grounds shown by the startup, extend the period of compliance for such period as the Registrar may consider necessary to ensure compliance.

16. (1) Where a startup which receives a notice under section 15 fails to comply with such notice, the registrar shall de-register that startup by—

De-registration.

- (a) cancelling its certificate of registration;
- (b) notifying the startup in writing of—
 - (i) the cancellation and the reasons for it; and
 - (ii) the date on which the certificate of registration was cancelled; and
- (c) amend the register accordingly.

(2) Where a startup is de-registered under subsection (1), all the rights and benefits that accrue to it by virtue of being registered shall cease to accrue to the startup.

(3) For purposes of this Act, de-registration of a startup under this section takes effect on the date on which the certificate of registration is cancelled by the Registrar.

17. (1) A person who is aggrieved by the decision of the registrar under this Part may, within thirty days of being

Application from an order of refusal or de-registration.

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.

18. (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.

19. (1) The registrar or county executive committee member, 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.

20. If an application made under section 8 contains any matter which is false in any material fact known to any person signing it, that person commits an offence.

False statements.

21. (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.

22. A startup registered under this Act shall—

Obligations of registered startups.

- (a) 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

23. 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, such as reserved spaces to be able to install test, test, verification or research equipment; and
 - (ii) adequate equipment for startup activities innovation, such as ultra-wideband network access systems internet, meeting rooms, machinery for testing, testing or prototyping;
- (d) 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;
- (e) 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

- (f) has experience in supporting innovative start-ups with such indicators as may be prescribed by the Agency in consultation with county executive committee members including—
- (i) number of applications for establishment or incubation projects innovative start-ups received and evaluated during the year;
 - (ii) number of innovative start-ups launched and hosted during the year;
 - (iii) number of innovative start-ups that exited during the year;
 - (iv) total number of collaborators and hosted staff;
 - (v) percentage of variation in the total number of employees compared to the previous year;
 - (vi) average growth rate of the production value of start-ups innovative incubated;
 - (vii) venture capital or financing received for innovative incubated start-ups; and
 - (viii) the number of patents registered by incubated innovative start-ups, taking into account the relevant product sector.

24. (1) An entity that meets the criteria specified under section 23 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 executive committee member.

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

- (a) address of the incubator;

Certification of incubators.

- (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.

25. (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).

26. 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 startup industry; and
- (j) enhance entrepreneurship in Kenya.

PART V—INCENTIVES FOR STARTUPS

27. 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.

28. (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) availing of financial and credit information to startups; and

(c) 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.

29. 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.

30. (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.

31. The Cabinet Secretary shall, in accordance with the appropriate law, and in consultation with the Cabinet Secretary responsible for finance, put in place measures for

Fiscal incentives

the granting of fiscal incentives including tax incentives as shall be considered necessary for the development startups in the country.

32. A startup shall, during the period of validity of the registration, cumulatively achieve growth objectives inherent to the workforce, the total balance sheet and the annual turnover as set out by the Cabinet Secretary in resolutions.

Growth objectives

(2) The annual turnover or the total balance sheet shall be calculated taking into account the financial statements of the startup for the past year and more recent reports, if any.

PART VI - MISCELLANEOUS PROVISIONS

33. 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) to exempt startups from registration fees;
- (b) on workplace and labor 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) to attract foreign startups into the country;
- (i) to promote national awareness of startups;
- (j) for advertising and impact assessment of the measures of startups;
- (k) for incentives to invest in innovative startups;

34. 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 subsection (4) of section 32 by inserting the following new paragraphs immediately after paragraph (e)—
 - (ea) two people with knowledge and experience in the fields of innovation, technology and entrepreneurship;
 - (eb) one person representing startups in the country nominated by an organisation representing startups;
 - (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.

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.

Currently, there is no regulatory framework for startups in Kenya.

PART I of the Bill has preliminary provisions on the short title, definitions and object of the Bill. The object of the Bill is 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 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 on the Registrar 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. The Registrar shall be competitively recruited by the Public Service Commission and appointed 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 three 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 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) 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 is on 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 provision on regulations and consequential amendments of 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

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

CRYSTAL KEGEHI ASIGE.
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;

- (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.

vidence

edly stolen from Ms Tebbutt and their connection to Kololo and the offence of robbery with violence that he faced.

Owing to these reasons, the DPP has urged Malindi High Court Judge Stephen Githinji to find it unnecessary to use the additional evidence in the case, noting that Kololo's appeal can fairly be re-

in rebuttal, but which process is unnecessary, given that the appeal has been conceded without reaching the new evidence. Reasons whereof the appeal is allowed, the conviction is quashed, the sentence set aside and the appellant set free," the prosecution said.

Yesterday, Mr Olaba told the court that the new evidence indicates that his client did not put on the tanga shoes that allegedly connected him to the crime.

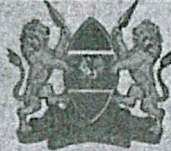
"The complainant did not identify Kololo as the perpetrator. The

were not recovered from Kololo," said Olaba.

Kololo's jailing was based on evidence as the trial magistrate ruled that the tanga shoes worn by his and the impressions found at the scene were made by them. However, evidence produced in court by an expert witness from the UK indicated there was no evidence the shoes belonged to Kololo.

The judge allowed Kololo's application for bond pending appeal, setting it at Sh100,000 with one surety of a similar amount.

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At a sitting of the Senate held on Tuesday 15th February and Thursday, 16th February, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Senate Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills:

The representations may be made by way of written memoranda on email to the Clerk of the Senate on the address clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 3rd March, 2023 at 5.00 p.m.**

| Bill | Committee Referred To | Email Address |
|---|--|--|
| a) The Konza Technopolis Bill (Senate Bills No. 2 of 2023) | Standing Committee on Information, Communication and Technology. | ictcommittee.senate@parliament.go.ke |
| b) The Office Of the County Printer Bill (Senate Bills No. 10 of 2022) | Standing Committee on Information, Communication and Technology. | ictcommittee.senate@parliament.go.ke |
| c) The Tea (Amendment) Bill (Senate Bills No. 1 of 2023) | Standing Committee on Agriculture, Livestock and Fisheries. | agriculturecommittee.senate@parliament.go.ke |
| d) The Agricultural Livestock Extension Services Bill (Senate Bills No. 12 of 2022) | Standing Committee on Agriculture, Livestock and Fisheries. | agriculturecommittee.senate@parliament.go.ke |
| e) The Mung Beans Bill (Senate Bills No. 13 of 2022) | Standing Committee on Agriculture, Livestock and Fisheries. | agriculturecommittee.senate@parliament.go.ke |
| f) The Start-Up Bill (Senate Bills No.14 of 2022) | Standing Committee on Trade, Industrialization and Tourism | tradeindtourismcomm.senate@parliament.go.ke |

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

07 MAR 2023

KAM/10/14/rl /mb/jw/AM/2023

3rd March 2023

Mr. Jeremiah M. Nyegenye
The Clerk, Senate
Parliament of Kenya, Parliament Buildings
P.O Box 41842 - 00100
NAIROBI

① DSFC
DHS

Kindly deal

Dear Sir,

RE: SUBMISSION OF KAM MEMORANDUM ON THE STARTUP BILL, 2022

08/03/23

The Kenya Association of Manufacturers (KAM) presents its compliments and appreciates the continued support.

Following the call for views on the Startup Bill, 2022, we wish to submit our Memorandum.

The purpose of this letter is to therefore submit the Kenya Association of Manufacturers' Memorandum on the Startup Bill, 2022.

Feedback may be communicated to us via our physical address and advance feedback email to ceo@kam.co.ke on mobile +254 721 303335/+254 723 443363.

Your early feedback will be appreciated.

② DSSEC

Kindly deal

Yours sincerely,

Office

Anthony Mwangi
CHIEF EXECUTIVE
Encl.

08/03/2023

③ Mr. Mwangi
You are clearing
AB
09/03/23

THE SENATE
RECEIVED
08 MAR 2023
DEPUTY CLERK



MEMORANDUM ON THE START UP BILL 2022

Submitted to

**THE CLERK,
SENATE
PARLIAMENT BUILDING
NAIROBI**

Presented By

**ANTHONY MWANGI, CHIEF EXECUTIVE,
KENYA ASSOCIATION OF MANUFACTURERS (KAM)**

MARCH 2023 – NAIROBI, KENYA

1.0 INTRODUCTION

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through her strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value add industries.

KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya Playing a critical role. The EAC region integration is expected to spur the manufacturing sector enhancing intra-EAC trade in value added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Service ranging from **Food and Beverage, Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood, and Furniture; Electric and Electronic; Building, Mining and Construction; Agro-Processing.**

2.0 THE START UP BILL 2022

In response to the call for public participation in the afore-referenced Bill, we propose the following amendments to be considered before the draft Bill is enacted:

2.1 Eligibility Criteria

While the overall goal of the Bill is commendable, the eligibility requirements are simply too stringent and restrictive. It ignores the fact that many start-ups in Kenya have only been successful because of foreign investment and some foreign ownership, for instance, as very few start-ups even have the funds to register a patent in the first place. Unfortunately, Kenyan start-ups have not always been able to rely on Kenyan investors and have frequently been forced to turn elsewhere, therefore the Bill should try not to discourage foreign investment.

We therefore propose for the inclusion of a wider pool of startups that are eligible for incubation. This will encourage an increase in the foreign direct investment as well as technology transfer in the cutting-edge sciences. It will also solidify Kenya's position as the

startup capital of Africa.

2.2 Regulatory Sandboxes

A regulatory sandbox is a framework set up by a financial sector regulator to allow small-scale, live testing of innovations by private firms in a controlled environment under the regulator's supervision. The Capital Markets Authority already has a regulatory framework in place via its Regulatory Sandbox Policy Guidance Note, released in March 2019. The sandbox has had notable successes as well as allowed the regulator and the startups to be aware of the challenges and areas of improvement.

We therefore propose for a regulatory sandbox approach be considered for inclusion in the current Bill. This will also provide an alternative to the incubation model, which may not be ideal for all startups.

2.3 Trademarks not registered in Kenya

The expression under clause 9(2)(b)(i) of the Bill may be interpreted as locking out startups whose trademarks are not registered in Kenya. This might be a direct bottleneck for startups that have already registered their trademarks in other jurisdictions that they consider more favorable in terms of IP protection. Such action may hinder growth of the start-up sector locally, as companies may opt out of the safeguards and benefits of local registration in favour of preservation of their IP right.

2.4 Comparative analysis

In the last few years, Startup Acts have emerged in the African continent as the comprehensive legal instruments which aims to foster the creation and development of startups. Besides Tunisia and Senegal, which adopted a Startup Act respectively in 2018 and 2019, at least 16 more African countries are in the process of adopting one.

Some of the key differences are:

- a) [A 360-degree incentive for the startups, entrepreneurs and even investors](#)

Unlike the Kenyan Bill, the Tunisian Startup Act has provided a definite all-round incentive for entrepreneurs, startups and even investors. The entrepreneurs have the advantage of startup leaves, startup stipend/allowance, assisted and free patenting process, professional programmes, and even good failure in case of liquidation. A one-year startup scholarship has

also been set for Tunisian entrepreneurs who aren't employees to start off their projects. The investors have tax reliefs, tax exemptions on capital gains, valuation of contributions in kind, and even a guaranteed programme that protects their investments thereby promoting the concept of good failure. For startups, they have been exempted from corporate income tax, social charges, and they can open accounts in foreign currencies at their inception. Additionally, the startups are considered authorized economic operators and thereby given a 'technology card' exempting them from homologation on their exports and imports. The Kenyan Bill just mentions that incentives will be provided later. It is however important to include the above-mentioned incentives as they are primarily pertinent to the growth of startups.

b) Access to public procurement preferential regime

The Senegalese startup Act of 2020 gives startups an upper hand when bidding. Through this incentive, the startups have priority when accessing public and/or private procurement opportunities. This can be inculcated into the Kenyan Bill by giving the Cabinet Secretary together with the Agency powers to make regulations that promote the same.

c) Startup stipends, leave, and amicable liquidation

Borrowing from the Tunisian Startup Act, the Kenyan Bill should have included a startup leave, startup stipend, and even an amicable liquidation process for startups, noting that there isn't a liquidation process for startups in the Bill as the same has been left to the regulation of the Cabinet Secretary or by default the rigorous process in the Companies Act shall apply. Employees who wish to begin a startup are entitled to a one-year startup leave from their employers. The leave is only given to employees with at least three years' experience with their employers. This leave, with justifiable cause, can be extended by a further one year. Moreover, up to a maximum of three founders per a startup are entitled to a stipend. The stipend shall be computed based on the previous median income as employees and a fixed allowance for those who are unemployed at that time. Lastly, the Tunisian Act guarantees good failure of startups. It promotes amicable liquidation procedures for startups through a combination of measures including but not limited to corporate tax exemption and the guarantee fund. The Kenyan Bill, apart from the guarantee fund it creates, it does not have other measures to promote the simplicity of a good failure for the startups, for instance exemption from corporate tax and State support for salary costs and employers. The foregoing measures can be enjoined into the Bill as they are primarily pertinent to the evolution of startups instead of leaving their regulation to the Cabinet Secretary.

| CLAUSE | PROPOSAL | JUSTIFICATION |
|---|--|--|
| <p>1. Clause 7 (1)</p> <p>Functions of the Registrars</p> <p>1) The Registrar shall register and supervise startups registered under this Act to ensure compliance with the provisions of this Act;</p> | <p>We propose to amend this clause to simplify the registration process under the Bill.</p> | <p>We make this proposal based on the following justifications:</p> <ul style="list-style-type: none"> • One of the eligibility criteria for acceptance into the incubation programme under clause 8 of the Bill is for an entity to be registered in Kenya as either a company, a partnership, a limited liability partnership or a non-governmental organization. • The introduction of further registration with the Registrar of Startups is therefore an added regulatory step that increases the cost of compliance for the startups. • We therefore propose the simplification of this step of registration to decrease bureaucracy and the time taken for eligible startups to be onboarded into the programme. |
| <p>2. Clause 22</p> <p>Obligations of an incubator</p> <p>New provision</p> | <p>We propose to amend this clause to mandate the incubators to provide online and remote support services such as cloud services and data centers.</p> | <p>We make this proposal based on the following justifications:</p> <ul style="list-style-type: none"> • The current landscape in terms of startups has moved mostly online and remote; with most startups relying on data centers and cloud servers to store their data and operate. • This move was further encouraged by the Covid-19 pandemic which forced major cities to shut down. • We therefore propose for the incubators to be mandated to offer these critical online |

| | | | |
|----|---|--|---|
| | | | <p>services.</p> <ul style="list-style-type: none"> This will go a long way in encouraging the growth of startups. |
| 4. | <p>Clause 8 Eligibility for admission into incubation programme (e) is at least one third owned by one or more citizens of Kenya;</p> | <p>We propose to amend this clause by deleting paragraph (e) in its entirety.</p> | <p>We make this proposal based on the following justifications:</p> <ul style="list-style-type: none"> Mandating that one third of every startup be locally owned will decrease and discourage foreign direct investment into Kenya. This will lead to a loss of revenue for the government as well as a loss in technology transfer that may have happened otherwise. Furthermore, technology startups require massive amounts of capital that Kenyan investors simply do not have. We therefore propose for the deletion of this paragraph. |

To: Clerk of the Senate of Kenya

Cc: Standing Committee on Trade, Industrialization and Tourism



From: Granville Wafula, CEO TheBhub (Blockchain Cybertech Limited)

① DSEC

Kindly Sent

22/03/2023

March 21, 2023

② DDSEC Kindly Deal
3/3/2023

SUBJECT: RESPONSE TO INVITATION TO SUBMIT MEMORANDUM ON SENATE BILL NO. 14 OF 2022

I am writing in response to the invitation to submit a memorandum on Senate Bill No. 14 of 2022. As CEO of TheBhub, a Kenyan-based startup incubator, agile-based software development and staff augmentation company that supports startup growth by providing web and mobile app development services on credit, I appreciate the Senate's efforts to support startups in Kenya.

I would like to provide my comments and recommendations on some of the sections and clauses of the bill.

Regarding Section 8.1 (b), I suggest that the restriction on the period of existence for startups be based on the time of product launch rather than registration on the entity. This is because the time it takes for product development is typically around six months to one year, and startups that incorporate when ready for market would have an unfair advantage over others.

Furthermore, in Section 8.1 (g), I propose that we allow minority shareholding by foreign entities or individuals to encourage investment flow into these startups, especially as we hope to spur local investor appetite for startups, which is currently low. It would also encourage talent flow from technologically advanced nations into the country.

In Section 8.1 (h), I suggest that the requirement for at least fifteen percent (15%) of the entity's expenses to be attributed to research and development activities be restricted to startups in specific domains such as AI, biotech, and any other whose competitive edge relies on R&D. I am willing to provide further input if needed.

Concerning Section 8.1 (i), verifying whether a startup is a holder, depositary or licensee of a registered patent or the owner and author of a registered software might be challenging for the Agency. Therefore, I recommend partnering with incubators to help with the verification process.

Moreover, in Section 9.1 (b), where an incubation program is managed by a county government, I propose that we have support from an agency in processing applications from the county level in case the committee member is overwhelmed by the applications.

In Section 4 (a), establishing an online platform for the submission of documents and information specified under subsection (1) is crucial for ensuring efficiency in the process. Therefore, my recommendations when developing the platform would be to adopt onboarding procedures from well-established local incubators and involve them in the development process. Additionally, I suggest providing access to the platform to local incubators to help manage portfolio submissions.

Regarding Section 22 (b), most startups struggle with maintaining their books of account, mostly because of the focus on product development and launch at the early stages and the cost of accounting. Therefore, I recommend allocating accountants paid by the agency to each of the startups to ensure proper accountability when the startup fund is actualized. Another alternative is to extend the responsibility of proper accounting to incubators.

Concerning Part IV - Certification of Incubators, there is no requirement on where the incubator is domiciled (local or foreign). Therefore, my recommendation would be to have both foreign and preferably local incubators, with foreign majority shareholding by a Kenyan citizen or entity.

Finally, in Part V - Incentives for Startups, I suggest adding the following incentives as they contribute highly to the failure of most startups:

1. Provision of tax incentives to startups, including tax exemption on profits for seven years, taxation of goods and services supplied at a reduced value-added tax rate of 3%, and tax credit to startups that create a minimum number of jobs, which the minister or agency would determine.
2. Provision of tax incentives to employees of startups and investors in startups.
3. Procurement of technology-related goods and services by government parastatals, whereby ministries, departments, and agencies of the government can set a 15% margin of preference in favor of startups when procuring technology-related products.
4. Expedition of license applications for fintech startups (or any other startups that require licenses) by the relevant regulatory bodies to support their ability to operate and grow.

In conclusion, I would like to express my gratitude for the opportunity to provide feedback on the Startup Bill. If the Senate requires any further clarity on the issues raised in my feedback, I am more than willing to provide additional information. Thank you once again for considering my comments.

Sincerely,



Granville Wafula

CEO, TheBhub





COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/50/1A Vol.14 (49)

21st December, 2022

Hon. Simon Chelugui
Cabinet Secretary
Ministry of Co-operatives & Micro, Small and Medium Enterprises
NAIROBI

Dear *CS,*

LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE DRAFT START-UP BILL, 2021

The above matter refers.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article (6) (2) and Article 189 of the Constitution are inevitable.

Based on these principles the Council of Governors have extensively reviewed the draft Memorandum Bill which seeks to govern the interactions and relationships between the governments, incubators, startups, investors, and the ultimate consumers of innovative products.

The Council therefore wishes to forward for your consideration the legislative memorandum.

Yours

Sincerely,

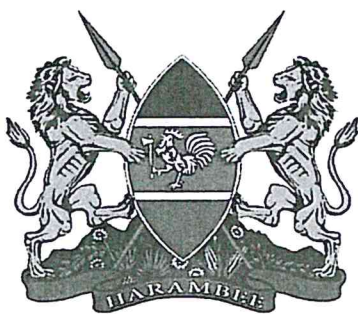
Mary Mwiti
Chief Executive Officer



COUNCIL OF GOVERNORS

191 (0207/2408) A. CARROLL
Bahamas

Westlands, P.O. Box 1401, Nassau, Bahamas
191 (0207/2408) A. CARROLL



COUNCIL OF GOVERNORS

MEMORANDUM

ON

THE START-UP BILL, 2021

TO

**THE MINISTRY OF COOPERATIVES AND MICRO, SMALL & MEDIUM ENTERPRISES
(MSME) DEVELOPMENT**

FROM

THE COUNCIL OF GOVERNORS

1. INTRODUCTION

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on the **Start -Up Bill, 2021:-**

1.1 General Comments

- a) The proposed law seeks to govern the interactions and relationships between the governments, incubators, startups, investors, and the ultimate consumers of innovative products. Therefore, for the law to be inclusive and effectively implementable in achieving the intended purpose, the Council proposes that :-
 - i. The Bill needs to be clear and specific on the roles of the two levels of government. This is premised on Article 6 (2) of the Constitution of Kenya which states that the national and county levels of governments are distinct and further premised on the Fourth Schedule of the Constitution which outlines the functions and powers of the two levels of government. In addition, the mandate and functions of Kenya National Innovation Agency and County Executive Committee Members (CECMs) needs to be clear and distinct as provided for in Science, Technology & Innovation (STI) Act, No. 28 of 2013 and the Article 183 of the Constitution of Kenya.
 - ii. Trade development is a devolved function. Therefore, the function of the National Innovation Agency should be restricted to the trade and enterprise development functions of the National Government. Part 1 of the Fourth Schedule of the Constitution provides the role of National Government as foreign affairs, foreign policy and international trade.
 - iii. The Bill to be clear on the incentives of the startup introduced by the Government. The incentives should be enhanced to facilitate realization of the object of the law.

1.2 Comments on Specific Provisions

| Clause | Provision of Clause in the Regulation | Proposed Amendment | Rationale for Amendment and Recommendation |
|---|--|---|---|
| Interpretation Clause | “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to science, technology and innovation | Amend to read Cabinet Secretary means “the Cabinet secretary responsible for matters relating to Micro, Small & Medium Enterprises (MSME) Development ” | <i>The Cabinet secretary responsible for matters relating to Micro, Small & Medium Enterprises (MSME) Development is best suited to deal with startups</i> |
| Section 4 (1) Role of National and County Government | 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. | Separation of the functions of the two levels of governments However, where some functions are concurrent indicate that the two levels of government will execute the functions as provided for in Article 6 (2) and 189 of the Constitution of Kenya. | <i>The functions of the two levels of governments (National and County Governments) needs to be distinct as per the Fourth Schedule of Constitution of Kenya. Further, provide the mechanism for the relationship between the two levels of government. Determine whether the Authority is a national entity and therefore an entity of the two levels of government or it is a national government entity. This will ensure that there is no duplication of efforts</i> |
| Section 4 (2) Roles of Agency and County Executive | (2) The Agency and the County Executive Committee members shall, for purposes of subsection (1): - | Separation of the roles of County Executive Committee Members and the | <i>The functions of the Agency and CECMs are distinct. There is need to align the role of Agency as provided for</i> |

| Clause | Provision of Clause in the Regulation | Proposed Amendment | Rationale for Amendment and Recommendation |
|--|---|---|---|
| Committee Members (CECMs) | <ul style="list-style-type: none"> 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 | mandate of the Agency | <p><i>in Science, Technology & Innovation (STI) Act, No. 28 of 2013, and the roles of CECMs as provided for in Article 183 of the Constitution of Kenya.</i></p> <p><i>For instance, the role of the Agency should align with national functions of setting up policies and standards while the County Government does the registration and all the work currently assigned to the Registrar.</i></p> |
| Section 8(1) Eligibility for admission | 8. (1) An entity shall be eligible to be registered as a startup and for | That fulfillment of section 8(1) of the Act, guarantees | <i>The Bill complicates the registration process by requiring that an entity</i> |

| Clause | Provision of Clause in the Regulation | Proposed Amendment | Rationale for Amendment and Recommendation |
|--|--|--|--|
| into incubation programme | admission into an incubation programme if the entity:- a. is registered in Kenya as a – i. Company under the Companies Act (No.17 of 2015); or ii. Partnership firm under the Partnership Act (No.16 of 2012); or iii. Limited liability partnership under the Limited Liability Partnership Act (No.42 of 2011); or v. Non-governmental organization under the non-governmental organization's coordination Act; | registration of a startup. Proposed amendment: Delete section 9 (2) to avoid repetition of the registration process underwent in the fulfilment of section 8(1). | <i>be first registered as either a company, partnership, limited liability partnership or non-governmental organization for an entity to be eligible for registration as a startup. This implies an introduction of a double registration process which neither simplifies the process nor reduces the cost of setting up a start-up.</i> |
| Part V – Incentives for Startups Section 24 (b) 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) Subsidize the formalization of startups; b) Facilitate the protection of the intellectual property of innovations by startups in Kenya and with international organizations 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 | Separate the role of the Agency and the County Government. Trade development is a devolved function. Provide the provisions of incentivizing fulfilment of patent and trademark registration i.e., the cost of acquiring the patent or trademark registration for startup be waived. Amend section 24 (b) by introducing the statement that reads' " Facilitate | <i>The Bill disregards the fact that the requirement for a startup to have a patent of trade-mark registered in Kenya may result in exclusion of entities as most start-ups do not have sufficient capital to fulfil this condition.</i> <i>Case example 1: Tunisia – where the Ministry in charge of the digital and economy covers the direct and indirect costs of intellectual property registration for startups in order to facilitate access to IP registration.</i> |

| Clause | Provision of Clause in the Regulation | Proposed Amendment | Rationale for Amendment and Recommendation |
|---|---|--|--|
| | e) Provide such other support to enable the development and growth of startups registered under this Act. | and subsidize the cost of protection of intellectual property of innovations by startups in Kenya and with international organizations". | <i>Case example 2 : Senegal – where startups are supported in accessing national and international property protection bodies</i> |
| Section 27 (1) 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. | Amend section 27 (1) (b) by introducing the word national to read as follows, "Filing and registration of intellectual property at the national and international level". | <i>Facilitation of registration and promotion of intellectual property rights needs to be done both nationally and internationally.</i> |
| Section (4) – Board of Trustees of the National Research Fund established under the Science, Technology and Innovation Act, 2013. | (4) The Fund shall be managed by the Board of Trustees which shall consist of members to be appointed by the Cabinet Secretary as follows:- a) Chairperson, being a person with knowledge and experience in matters related to finance, investment and fundraising related to science, innovations 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 | The board of trustees to have the representation of the National and County Governments. Add the statement "A person nominated by the Council of County Governors to represent the County Governments" | <i>County Governments representation is required in the spirit of consultation and cooperation as seen under Article 6 of the Constitution of Kenya. Further, to align with Section 193 (1) of the PFMA, 2012.</i> |

| Clause | Provision of Clause in the Regulation | Proposed Amendment | Rationale for Amendment and Recommendation |
|--------------------|--|--|---|
| Section 25 (2) (a) | Where the Cabinet Secretary establishes a credit guarantee scheme under sub section (1), it shall have as its objectives: - a) The provision of accessible financial support to startups; | Amend to read, "the provision of affordable and accessible financial support to startups". | <i>Considering most startups face financial constraint, the role of government in providing affordable financial support needs to be clear.</i> |

1.3 Recommendation

The Council requests the Ministry of Cooperatives and Micro, Small & Medium Enterprises (MSME) Development to incorporate the proposals to ensure an inclusive and implementable law.

Subject Submission of Memoranda of the Start-Up Bill (Senate Bill 14 of 2022)

From Mercy Kimalat <Mercy.Kimalat@assek.ke>

30 MAR 2023

To clerk senate <clerk.senate@parliament.go.ke>

Cc

Irene Odenyi <dodenyi@gmail.com>, info@crystalasige.com <info@crystalasige.com>, tradeindtourismcomm senate <tradeindtourismcomm.senate@parliament.go.ke>, david.cheboryot <david.cheboryot@e4impact.org>, Rachel - Biashara Africa <Rachel@biashara.africa>

Date Wednesday March 29, 2023 10:22:15 PM

Dear J.M. Nyegenye, CBS,

Greetings from the Association of Startup and SMEs Enablers of Kenya (ASSEK), that is an umbrella body that brings together and represent the interests of Entrepreneur Support Organizations who support the development and growth of startups and SMEs in Kenya.

Since 2018, ASSEK has been working on the Startup Bill as a private sector initiative to champion for an enabling and conducive environment to support the creation and acceleration of startups - high impact and high growth enterprises that as of 2022, contributed to \$1.1B coming into the ecosystem as investment into these startups.

We have reviewed the Senate Bill 14 of 2022 and we have provided our input as attached.

We are available for any consultation and we look forward to working with you in this process.

Best Regards,
Mercy Kimalat
Chief Executive Officer
ASSEK Association of Startup & SMEs Enablers of Kenya
T: + 254 (0) 729327218

[Website](#) | [LinkedIn](#) | [Twitter](#) | [YouTube](#)
[Become a Member](#)



Attachments
Matrix - Start Up Bill_ASSEK Contribution.pdf (243 kB)



① DSEC

Kindly Seal

30/03/2023

② HOD - Ms. Kibaki
Kindly deal

30/03/2023

③ Mr. Mulesi
Kindly deal.
30/03/2023



Association of Startup and SME Enablers of Kenya
 Pinetree Plaza, Kindaruma Road, Off Ngong Road
 P.O Box 1730 - 00606, Nairobi, Kenya.
www.assek.ke info@assek.ke

THE START UP BILL, 2022 PUBLIC PARTICIPATION

| NAME OF STAKEHOLDER | CLAUSE TO BE AMENDED | PROPOSED AMENDED | REASONS FOR AMENDMENT |
|--|--|---|---|
| Association of Startup and SME Enablers of Kenya (ASSEK) | PART I—PRELIMINARY 2. “startup incubator” means a recognised private limited company, partnership 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; | “startup incubator” means a recognised private limited company, partnership or limited liability partnership that provides resources, mentorship, and support to early-stage startups to help them grow and become successful. These resources may include funding, office space, networking opportunities, and access to expertise and advice. | The objective of a startup incubator is to help startups grow and become successful, in some cases a dedicated physical space may not add value. There is more support that is needed for a startup to succeed and so a general statement will suffice. |
| | “incubator” means a company, partnership, non-governmental organization or limited liability partnership, | adopt the startup incubator (above) definition. | as above. |



Association of Startup and SME Enablers of Kenya
 Pinetree Plaza, Kindaruma Road, Off Ngong Road
 P.O Box 1730 - 00606, Nairobi, Kenya.
www.assek.ke info@assek.ke

| NAME OF STAKEHOLDER | CLAUSE TO BE AMENDED | PROPOSED AMENDED | REASONS FOR AMENDMENT |
|---------------------|---|---|--|
| | <p>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;</p> | <p>“startup” refers to a company legally recognized by the laws of Kenya that is in its early operational stages and is typically founded by one or a few entrepreneurs. It is focused on developing and delivering innovative products or services that solve a specific problem or fulfill a market need.</p> | <p>A startup is always in search of a scalable and sustainable business model delivering innovative products or services that solve a specific problem or fulfill a market need.</p> |
| | <p>3 (e) for the establishment of incubation facilities at the National and county levels of government and environment that promotes the establishment of startups; and</p> | <p>(e) for the establishment of incubation facilities at the National and county levels of government and privately owned that promotes the establishment of startups; and</p> | <p>Include privately owned incubation facilities</p> |
| | <p>PART II – ESTABLISHMENT OF INCUBATION PROGRAMMES</p> | | |



Association of Startup and SME Enablers of Kenya
 Pinetree Plaza, Kindaruma Road, Off Ngong Road
 P.O Box 1730 - 00606, Nairobi, Kenya.
www.assek.ke info@assek.ke

| NAME OF STAKEHOLDER | CLAUSE TO BE AMENDED | PROPOSED AMENDED | REASONS FOR AMENDMENT |
|---------------------|---|--|---|
| | <p>4 (1) (b) facilitate the transfer of technology innovation;</p> <p>2 (c) establish programmes for the certification and admission of incubators into the incubation programmes;</p> <p>(h) 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</p> | <p>(b) facilitate transfer of innovative technology developed in one organization or county to another organization or county to achieve increased innovation, economic growth, and better access to new technologies;</p> <p>2 (c) establish programmes for the certification and admission of startups into incubation programmes;</p> <p>(h) put in place mechanisms to enable access by startups from marginalized groups through the use of quotas or mechanisms that match them to unused capacity in existing programmes; and</p> | <p>The initial clause does provide information on where technology innovation is being transferred.</p> <p>The initial clause seems to have a typo.</p> <p>The initial clause seems to have a typo.</p> |
| ASSEK | 5 (1) | (c) prescribe a criteria for supporting the establishment, management and | This will eliminate duplication of efforts as there are already incubators existing in some counties |



Association of Startup and SME Enablers of Kenya
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|---------------------|---|---|--|
| | <p>(c) prescribe a criteria for the evaluation of entities, programmes and structures set up for the purposes of implementing this Act.</p> <p>PART III – REGISTRAR OF STARTUPS AND ADMISSION INTO AN INCUBATION PROGRAMME</p> | <p>evaluation of incubation programmes evaluation of entities, programmes and structures set up for the purposes of implementing this Act.</p> | |
| | <p>7. (1) The Registrar shall – (a) keep an updated database of all registered startups and startups under review indicating-</p> <p>8 (1)</p> <p>(b) is newly registered or has been in existence for a period of not more than three 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 five years from the date of its incorporation or registration;</p> <p>(f) does not distribute profits;</p> | <p>7. (1) The Registrar shall – (a) keep an updated database of all registered startups under review indicating-</p> <p>(b) is newly registered or has been in existence for a period of not more than three years from the date of its incorporation or registration.</p> | <p>Repetition of the word ‘startup’</p> <p>Standardize the period to 3 years for inclusion</p> |
| | | <p>Remove the clause</p> | |

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|---------------------|--|--|---|
| | <p>(h) at least fifteen percent the entity's expenses can be attributed to research and development activities; and</p> <p>(i) it is a holder, depositary or licensee of a registered patent or the owner and author of a registered software.</p> | <p>Remove the clause</p> <p>Remove clause</p> | <p>for profit entities limited by shares have no limitations in distributing profits. Also provisions are provided in the companies act.</p> <p>This is too high for an enterprise. Other monitored parameters will inform budgets for research and development activities.</p> <p>Typically the patent registration process takes longer, even beyond 3 years.</p> <p>Most startups do not have patents or licenses to register/protect and therefore could be an exclusion criteria instead of encouraging a startup culture that is intended by the act.</p> |
| | <p>9 (2) b</p> <p>iii. scientific and technical qualifications and the experience of the project team;</p> | <p>iii. Business and entrepreneurial qualifications and skills of the founding team;</p> | <p>Business and entrepreneurial skills of the founding team are critical to the success of a startup.</p> |
| | <p>12. (1) The certificate of admission into an incubation programme issued by the</p> | <p>(1) The certificate of admission into the startup register issued by the registrar or</p> | |



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| | registrar or county executive committee member under section 11 shall be conclusive evidence that the startup— 22. A startup registered under this Act shall— (a) achieve growth goals related to the number of human resources, total assets and the annual turnover set by a regulations; | county executive committee member under section 11 shall be conclusive evidence that the startup— (a) create job opportunities as set out by regulations; | Replace ‘admission into an incubation programme’ with ‘admission into the startup register’. In a number of cases, startups may not need to acquire assets especially within a 3 year period. |
| | (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 | (b) maintain financial records in accordance with the legislation and submit its financial annual report to the Agency no later than thirty first day of March in each financial year; and | Replace ‘accounting’ with ‘financial records’ and ‘annual financial budgets’ with ‘financial annual report’. This is for clarity. |
| | PART IV—CERTIFICATION OF INCUBATORS (c) has in place – (i) facilities, suitable to accommodate innovative startups, such as reserved spaces to be able to install test, test, verification or research equipment; and | (i) facilities, suitable to accommodate innovative startups, such as reserved spaces to be able to install test, verification or research equipment; and | Repetition of the word ‘test’ |



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|---------------------|--|--|--|
| | <p>(ii) adequate equipment for startup activities innovation, such as ultra-wideband network access systems internet, meeting rooms, machinery for testing, testing or prototyping;</p> | <p>(ii) adequate equipment for startup activities innovation, such as ultra-wideband network access systems internet, meeting rooms, machinery for testing, or prototyping;</p> | <p>Repetition of the word 'testing'</p> |
| | <p>PART IV—CERTIFICATION OF INCUBATORS</p> <p>23.</p> <p>(c) has in place –</p> <p>(i) facilities, suitable to accommodate innovative startups, such as reserved spaces to be able to install test, test, verification or research equipment; and</p> <p>(ii) adequate equipment for startup activities innovation, such as ultra-wideband network access systems internet, meeting rooms, machinery for testing, testing or prototyping;</p> | <p>(i) facilities, suitable to accommodate innovative startups both physical and virtual, such as reserved spaces to be able to install test, verification or research equipment; and</p> <p>adequate equipment for startup activities innovation, such as ultra-wideband network access systems internet, meeting rooms, machinery for testing, or prototyping;</p> | <p>This is to encourage adoption of technology.</p> <p>The word testing is repeated.</p> |
| | <p>(f) percentage of variation in the total number of employees compared to the previous year;</p> | <p>Remove this clause</p> | <p>The clause is not necessary since there are other output measures being monitored - financial annual reporting, average growth rate of the production</p> |



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| | 24 (2) (h) the existence of professional relationships, of collaboration or commercial with other incubators, investors institutional and professional, universities and research centers; | Remove the clause | value of start-ups incubated; venture capital or financing received for innovative incubated start-ups; and the number of patents registered. This information does not add value to the certification of an incubator. Some of this information is likely to form a competitive edge of the incubator. |
| | (j) list of industrial property rights and intellectual property rights. | (j) list of industrial property rights and intellectual property rights for the incubator | specify whose rights - in this case it's for the incubator. |
| | 26. (a) support novice technological entrepreneurs at the earliest stage of technological entrepreneurship; | (a) support technological entrepreneurs that are developing and delivering innovative products or services that solve a specific problem or fulfill a market need at their early stage; | This will lock out many innovators as novice technology or innovations are rare. |
| | (f) raise capital and prepare marketing for startups; | (f) Support startups to raise capital; | An incubator can only support a startup to raise capital but is not mandated to do so. |



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| | (i) transfer technologies from research institutions and into the technological startup industry; and | (i) Where an incubator is not owned by a learning institution, an incubator may collaborate with such institutions with an aim to transfer technologies from research institutions and into the technological startup industry; and | This will only work through collaboration especially for private incubators. |
| | PART V—INCENTIVES FOR STARTUPS | | |
| | 30. (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. | 30. (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 relating to the startups' work. | add 'relating to the startups' work' to make it specific. |
| | PART VI - MISCELLANEOUS PROVISIONS 34. The Science, Technology and Innovation Act is amended - | Can a bill amend another bill? Are these amendments necessary in this startup bill? | Our recommendation is to have direct amendments to the science, Technology and Innovation Act? |

End.



UNIVERSITY OF NAIROBI
AFRICAN WOMEN STUDIES RESEARCH CENTRE
WOMEN'S ECONOMIC EMPOWERMENT HUB
P.O Box- 30197-00100 Tel: 0705 541746
Email: weehub@uonbi.ac.ke Web: weehub.uonbi.ac.ke



Date: 21.3.2023

To:
 Clerk of the Senate,
 P.O Box 41842- 00100
 Nairobi.



Dear Sir,

RE: RECOMMENDATIONS ON THE START UP BILL 2022

Greetings,

The African Women's Studies & Research Centre (AWSRC) is a multi-disciplinary institution of the University of Nairobi that focuses on bringing African women's knowledge on development, and socio-political and socio-economic issues to visibility. This is realized through action-oriented research and academic discourse.

The University of Nairobi's Women Economic Empowerment (UoN WEE) HUB is a programme of the AWSRC. The Hub aims to contribute to evidence-based decision-making and implementation of policies and programmes informed by what works for WEE in Kenya. The Hub is a Multi-disciplinary research Team comprising of Economists, Development Experts, Agriculturalists, Educationists, Gender Experts, Legal Experts and Population Experts, have researched and come up with suggestions and recommendations.

Researchers from AWSRC – UoN WEE Hub hereby make an input to the start-up Bill 2022. The recommendations are part of the Hub's process to engage and contribute to the economic welfare of women and men of all ages in the spirit of national development. It is with this in mind that the AWSRC-UoN WEE Hub has made recommendations on selected sectors.

It is our prayer that the Committee will consider these recommendations.

Yours sincerely,

Wanjiku

Wanjiku Mukabi Kabira EBS, CBS
 Prof. Emeritus Literature and African Women's Studies.
 UoN Women's Economic Empowerment Hub Leader
 Writer of "Time for Harvest: Women and Constitution Making in Kenya"
 "A Letter to Mariama"
 "In search of our Dreams "
 "Remember not every door that is closed is locked. Push."
 Tel: (+254-20) 3318262 Ext: 28075/070
 Mobile: (+254) 728 907 978
 Email: wkabira1@gmail.com; wkabira@uonbi.ac.ke
 Website: <https://profiles.uonbi.ac.ke/wkabira>

① DSEC
 Kindly deal
 23/03/2023

② DDSEC
 Kindly deal

③ Mr. Muriuki
 You are dealing
 23/03/2023



UNIVERSITY OF NAIROBI
AFRICAN WOMEN STUDIES CENTRE
WOMEN'S ECONOMIC EMPOWERMENT HUB
P.O Box- 30197-00100 Tel: 0705541746
Email: weehub@uonbi.ac.ke Web: weehub.uonbi.ac.ke



SUBMISSION OF MEMORANDUM BY THE UNIVERSITY OF NAIROBI WOMEN
ECONOMIC EMPOWERMENT HUB ON START UP BILL 2022

Contact person: Prof. Wanjiku Mukabi Kabira

Tel no: 0705541746

Email: wkabira1@gmail.com

21ST MARCH 2023

INTRODUCTION

The African Women Studies, UON WEE Hub takes a keen interest in Kenya's Fiscal Policy situation with the view of supporting the increased participation of women in the Kenyan Economy. The engagements of the African Women Studies, UON WEE Hub on Kenya's Fiscal Policy environment is a deliberate approach to support the policymakers (National Treasury, County Assemblies and Parliament) by providing alternative choices on matters that directly affect the plight of women in the country and their involvement in economic activities. The focus is on women's economic empowerment by pin-pointing the inclusion, omission, reduction and increment of the funds that have an impact on the economic empowerment and participation of women in the economy. The analysis and proposals given is in line with the critical areas that the AWSC UON WEE Hub attaches importance in uplifting the lives of women which are Health, Primary Education, Water and Sanitation, Clean and Affordable Energy and Unpaid Domestic and Care Work. Directing efforts on policies aimed at improving food security, Women's Economic Empowerment, childcare, financial inclusion, social protection among other issues would directly impact on the abilities of women to engage more in the economy and that would yield accelerated growth.

General Comments

1. The Africa Women Studies Centre, University of Nairobi Women Economic Empowerment Hub recognizes that the entry of Kenyan women into the innovation space has long been hampered by gender and social bias (patriarchal), a lack of commercialization knowledge, time constraints, a generally harsh business environment, low attainment levels and achievement levels compared to boys at basic education level, low transition levels of girl child to stem related fields, and a preference for caring for their families and loved ones over formal economy participation. The University of Nairobi Women Economic Empowerment Hub appreciates the introduction of such a bill to try and help solve systematic challenges and therefore requests the Committee to note the following.
 - 1.1. The desirable outcome for such bill should be to level the field for both men and women. **However, a search of the bill to see such nuances of providing equal support shows no mention of the word, “female”, “Women”.**
 - 1.2. We request the Honourable Committee to **take cognizance of the fact that women’s participation in the general economy and especially in firm/enterprise formation has been low due to public good they provide to the society which is to provide care to children and entire family and in doing so trade off participation in enterprise development and therefore the Honourable Senate Committee should take provide targeted incentives for them and mention it in the bill as a signal to policymakers** on what needs to be done to solve the systematic imbalance in contribution by the largest segment of Kenya’s population.
2. One feature that the Bill lacks is the protection of proprietary information from the key stakeholders that manage the incubation processes who include Government of Kenya officials and incubators who shall be appointed. For this to receive significant buy-ins and for people to opt in, people must trust the processes or the deterrents that the bill will put forward to protect their ideas and know-how. Here are some suggestions on how to protect proprietary information that could be addressed
 - 2.1. Sign NDAs with all parties involved in the incubation program, including government agencies and incubation managers. This agreement specifies the terms and conditions under which the proprietary information will be handled, including its use, disclosure, and protection.
 - 2.2. Only those who need to know about proprietary information should have access to it. This includes only granting access to those who have signed an NDA and have a legitimate need to know, such as investors or potential partners.
 - 2.3. Install a system for controlling the distribution of proprietary information, such as a secure document management system. This system should include access controls and the ability to track who has viewed, edited, or shared documents.
 - 2.4. Provide training and education on the importance of protecting proprietary information to all parties involved in the incubation program. This includes instruction on how to recognize and handle confidential information, as well as how to securely store and transmit it.
 - 2.5. Monitor the handling of proprietary information on a regular basis to ensure that all parties are adhering to the agreed-upon protocols. This includes auditing systems and processes and enforcing consequences for any violations of the NDA or other protocols.
3. An incubation process entails demonstrating the proof of concept, whether the idea is scalable, market analysis, and what kind of anticipatory commercial decisions the start-

ups will ask their investors at various stages, such as Angel Investors, etc. Given all of this, it is critical that this legislative proposal creates incentives from the idea development stage to demonstrating proof of concept and scaling up the idea. The majority of idea development occurs before a company is registered. Only formal firms will be able to participate if formal registration is required. Evidence from the MSME Survey shows that most of women led firms are not formally registered and adopting the stringent registration requirements will exclude them.

| Section of the Bill | New Proposal for Amendment | Justification of the Proposal |
|----------------------------|---|--|
| 9(2)e | Add new proposal: Where there are no registration documents such as certificate of incorporation, the description of innovation shall form a basis of eligibility for admission into incubation programme. To register the start-ups, the registrars will collaborate with the innovators through the business registration service. | Evidence from the MSME Survey shows that most of women led firms are not formally registered and adopting the stringent registration requirements will exclude them. |
| 23 | Add a new proposal: An entity shall an entity may be certified as an incubator, if the entity– if has met conditions for decent work, safety work conditions, with no history of consistent violation of women rights | Aside from physical facilities, it's imperative to have safe working conditions and no history of violating women rights. Women |
| 27 | Add a new proposal: Require the Agency and the county executive committee members to target women, persons with disability and marginalized groups in providing fiscal and non-fiscal incentives | Targeting women, persons with disabilities, and marginalized groups in providing fiscal and non-fiscal incentives is crucial for promoting inclusive economic growth and reducing inequality. These groups often face additional barriers to starting and growing businesses, such as limited access to capital, discrimination, and lack of access to networks and resources. By providing targeted incentives, the government can help level the playing field and support these groups in achieving their entrepreneurial goals. This, in turn, can lead to increased economic activity, job creation, and improved well-being for individuals and communities. Moreover, promoting entrepreneurship among these groups can have positive spill over effects on their families and communities, as they |

| | | |
|-------|--|--|
| | | are more likely to invest in education, healthcare, and other social services. Therefore, targeting women, persons with disabilities, and marginalized groups in providing fiscal and non-fiscal incentives is not only a matter of social justice but also a smart economic policy that can benefit society as a whole. |
| 28(2) | Add a new proposal after 28(2): Where the Cabinet Secretary establishes a credit guarantee scheme under subsection (1), it shall have as its objectives – to target women, marginalized groups and rural populations who have no access to financial market instruments | The policy of Credit Guarantee Scheme would be effective if it targets efficiently the groups that have been left behind in the creation of firms and start-ups. |

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