African Union

An Integrated, Prosperous and Peaceful Africa

Startup Model Law Framework

REPUBLIC OF TÜRKİYE MINISTRY OF FOREIGN AFFAIRS

1 Foreward

The importance of innovation as a solution to some of our most pressing challenges, is not lost on the African Union. It is far more valuable to us today, than ever before, to ensure that we can leverage the innovative spirit of the African people. The continent's startup scene is expected to grow to USD 10 billion by 2056[1]. Accelerating nimble and agile businesses to thrive, will be crucial to the continent's productive transformation and is at the centre of Africa's agenda towards sustainable development, particularly in light of the major health crises, an unprecedented economic downturn, and growing constraints on fiscal resources.

The rapid growth in the tech sector is an indication of a positive shift towards the 4th Industrial Revolution (4IR) which the continent, if it prepares itself through adequate policies and readiness of the private sector, could enormously benefit from, through industrial development, digitalisation and greater integration, which in turn would result in greater opportunities for our growing youthful populations. Aspiration 1 of the continental development Agenda 2063 is to promote a "prosperous Africa, based on inclusive growth and sustainable development" that can only be achieved through the active participation of African nations, Regional Economic Communities (RECs) and key stakeholders such as the Private Sector, to harness the full benefits of the 4IR.

Over the years, the African Union has worked closely with the private sector to define the role and contributions that the private sector plays in driving the continent's economic development agenda. These efforts culminated in a landmark agreement signed at the 13th African Private Sector Forum in August 2022, to accelerate digital transformation across the continent. This objective is closely tied to our belief that startups are the agents of change in a global knowledge economy which prioritises innovating to solve the most knotty problems that societies face.

Still, the stark reality is that the vast majority of startups fail, and this is further exacerbated by the fact that the global economy is in the grips of the aftereffects of the COVID-19 pandemic and an economic downturn. The 3.6% growth projected for Sub-Saharan Africa over 2023, and expected to rise to 3.9% in 2024 will depend on many things, but most critically on how our businesses perform. However, we cannot simply innovate our way out of crisis. Our attitude to attaining the goals so cleverly devised by

[1] McCarthy, N., Funding for Africa's Startups Is at a Record High – This Is Where It's Going, World Economic Forum, 28 May 2021

those that have come before us cannot be of attachment to any one destination, but to a series of refined, determined efforts to improve our collective outcomes. The tech talent market has become much more global, but even then, African startups hired more than half of local developers, so supporting these startups will be crucial to attaining those outcomes.

The turbulence that the world has seen play out in the tech ecosystem over the past year has reset capital funding conditions and is driving a back to basics approach: focusing on fit, efficiency and solving real problems. This Policy Framework with its model law is therefore timely, by paying heed to those crucial areas we can control for: funding, governance, regulatory and policy interventions which are core areas we can support African startup businesses to grow and thrive, against this backdrop of resource accountability and in spite of those risks we cannot fully control for, such as conflict.

A necessary and proper part of this ambition is inclusive prosperity. The African Union has extensive analyses on women and youth participation in regional and continental value chains, which is why a core aspiration of the Union's 2063 Agenda, the African Youth Charter and the AfCFTA Protocol on Women and Youth is an Africa whose development is people driven, relying on the potential offered by African people, especially our women and our youth.

Through this model framework, African countries agree to put in place the mechanisms and interventions to harness the potential of our innovation ecosystem to empower our people, businesses and future-proof our economic prosperity. Our efforts now are designed to bring the continent closer to The Africa We Want. For the African continent, there has never been a time of greater promise or greater peril. To shift the balance in our favour, we must bolster our most vulnerable businesses and reinforce our communities as competitive investment destinations.

H.E Albert Muchanga, African Union Commissioner, Economic Development, Trade, Tourism, Industry and Minerals

2 Acknowledgements

The Startup Policy Framework with its model law was prepared under the supervision of H.E Albert Muchanga, African Union Commissioner for Economic Development, Trade, Tourism, Industry and Minerals through the Division of Entrepreneurship and Investment, Directorate of Industry, Minerals, Entrepreneurship and Tourism. The framework was developed in cooperation with Google in line with its Memorandum of understanding with the African Union Commission.

Technical expertise in the development of the framework was received from Chiza Charles Chiumya, Acting Director of Industry, Minerals, Entrepreneurship and Tourism, and Mr Islam Swaleh, Head of Entrepreneurship and Investment. At various stages of preparation, including during the consultation meetings, the strategy benefited from extensive advice from Mr Islam Swaleh and Marie Wilke and technical expertise from Ngozichukwuamaka Onyemenam, Ujunwa Umeokeke, Judy Muriuki, Oluwadunsin Adebayo, and Bukola Akinsulere of Africa Practice Ltd. The Draft Framework was also enriched by comments received at various stages of production from experts in Regional Economic Communities, African Union Specialised Institutions, Technical Experts from African Union Member States. The Draft Framework also immensely benefited from an African Union Sensitisation Workshop for the Implementation and Domestication of a Continental Strategy for Quality and Sustainable Investment in Africa held 13-15 June 2023 in Nairobi, Kenya.

Senior Officials and Ministers at the Specialised Technical Committee (STC) on Trade, Tourism, Industry and Minerals reviewed and further improved the framework, which was adopted by the 4th Ordinary Session of the STC on Trade, Tourism, Industry and Minerals on 17 May 2024 in Malabo, Equatorial Guinea.

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4 Executive summary

The African Union is guided by its vision to build an integrated, prosperous and peaceful Africa, using the best of the continent's human and material resources. Small and medium-sized enterprises, including startups, represent the vast majority of businesses in all sectors and are the primary source of job creation. For instance, as at 2021, African startups were responsible for hiring more than half of local developers[2]. It is in this context that this model framework seeks to unlock the transformative potential of Africa's startups.

On a national, regional and continental level, startups play a significant role in strengthening the innovation ecosystem; creating innovative products and services and interacting closely with the most pressing gaps faced by local communities. The World Bank projects 3.6% growth for the sub-Saharan African region in 2023. This remains insufficient to meet the expected annual growth rate of 7% to achieve aspirations of the African Union Agenda 2063. And despite recent sustained growth performance, challenges remain, particularly as it relates to job creation and wealth creation. The continent has also not been able to leverage the opportunities of the past industrial revolutions to achieve economic growth.

[2] Africa Developer Ecosystem 2021

Much has been written about the Africa funding trickle down; the continent witnessed a funding frenzy over the past decade, with capital flowing into the most innovative solutions being designed by and for the very challenges the continent faces. With the great crypto winter and the global economic slowdown, that flow may have slowed, but it will return, and it will require that African Union Member States are prepared. In terms of innovating to meet this challenge, less has been said about how the Union can adopt a cohesive approach.

Startups are designed to create new product or services, under conditions of extreme uncertainty[3]. Put more simply, they are disruptive innovators. And yet, innovation is as much about culture, leadership, finance, governance and people as it is about technology and data.[4] This demonstrates that beyond the ideas and talent and drive, the promise of Africa's small and new businesses will depend on our collective and decisive action to make concerted efforts to support them. Government policies are critical enablers for startups, and broadly

[3] Is Entrepreneurship a Management Science?

[4] OECD: SME and entrepreneurship policy frameworks across OECD countries: An OECD Strategy for SMEs and Entrepreneurship, ME and Entrepreneurship Papers, No. 29, OECD Publishing.

— innovation[5]. While there is no single formula to promote innovation and startups, principles can be gleaned from successful models, as outlined in this framework. Concrete policy and legislative measures and investments at a national and continental level are needed to ensure that these businesses — particularly those led by women and youth who account for the majority of the population — can be better served.

As will be discussed, countries use a wide variety of policy instruments to promote scaling enterprise, including direct or indirect support measures.[6] But understanding that not all businesses will survive, is crucial. Startups will flourish in ecosystems that enable and accept their business success as well as their failures; simplifying procedures for winding down failed startups. This framework also highlights and affirms the important roles startups play, spotlighting some of the challenges to reaching their potential. In anticipation of renewed focus on accelerating the AfCFTA targets, a number of legislative and policy interventions to facilitate supporting sustainable innovation in Member States are proposed. These fall into three broad areas: governance mechanisms, structural enablements (including financing and incentives) and regulatory enablements; each of which must be robust, to achieve effective ecosystem support.

The critical issues around governance are linked closely to formation. The questions considered include: *How should startups be labelled? How might startups organise themselves and how can Member States enable that choice? What oversight mechanisms might be most appropriate? What considerations are important in determining any of these? Are there benefits to situating oversight authorities within any particular segment of government?*

Funding alone does not enable startups, but it is a crucial element of the structural enablements the African Union Commission believes can accelerate startups. 564 startups raised over USD 2 billion in 2021[7] and in 2022 633 startups raised a combined USD 3 billion in VC funding — more than ever before.[8] And yet, Africa receives less than 3% of global venture capital flows.[9,10] Funding flows are also skewed towards certain sectors, exacerbating the financing challenge across other equally vital areas; in 2021, more than half the sums raised from local and international investors went to fintech

[5] Market conditions and access, existence of supportive infrastructure and access to financing are also important. See generally ASEAN Guidelines on Fostering A Vibrant Ecosystem for Startups Across Southeast Asia Jakarta, ASEAN Secretariat, December 2020

[6] OECD: SME and entrepreneurship policy frameworks across OECD countries: An OECD Strategy for SMEs and Entrepreneurship, ME and Entrepreneurship Papers, No. 29, OECD Publishing.

[7] Africa Tech Startup Funding Report 2021

[8] Africa Tech Startup Funding Report 2022

[9] Startup Genome: The Global Startup Ecosystem Report GSER 2021.

startups[10]. The same skew also presents itself in what destination funding flows to: 81% of funds raised in 2021 went to Kenya, Nigeria, Egypt and South Africa, necessitating an urgent look at mechanisms to diversify capital flows, to ensure that other Member States can drive investments into their countries. Of particular note, is the gender disproportionality in financing flows. A report on 1,112 companies in Africa which received venture capital funding between 2013 and 2021, revealed that only 9% were all-female founding teams and just 3% of funding went to all-female teams[11].

There are of course several other enablements, as will be detailed in this framework. Still, the starting point to establishing an enabling environment, must be listening to what startups say they need and ensuring they are part of the process of shaping priorities[12]. The ecosystem's participation in the policymaking process offers several advantages. One such advantage is that it develops a sense of ownership, which is crucial to strengthening commitment to the enactment and implementation of such law.

Startup laws are only a piece of the puzzle for effective reforms that drive thriving startup ecosystems. As a baseline, there must be consistency in the application of various legislation, the absence of which could undermine the objectives of a startup act. Member States should therefore consider an integrated approach that balances support dedicated to startups, with general business reforms.

All said, having a Policy Framework with a model law is one thing, and political will is quite another. The challenges facing the African Union require common policy responses from Member States, through a collective approach to legislation; across borders and sectors. This framework acknowledges the various options, having regard to what is considered best practice in relation to funding and investment enablements, what has worked, where, consistently. Member States such as Nigeria and Senegal have adopted tax holidays excluding the application of income tax on eligible entities. Tunisia operates a tax allowance that entitles investors to fully deduct amounts invested in startups from their tax assessments. Algeria's startup financing fund has disbursed DZD 510 million (USD 3.7 million) to 390 tech project holders since its launch in early 2021.[13] Looking across the globe, in OECD countries, venture capitals have benefited from tax incentives, stimulating investment in startups and SMBs.

It is recognised that different Member States have different economic and technical capabilities, and varying fiscal requirements, and the recommendations and actions must be read in this light.

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10 Max Cuvellier, The Big Deal; 2. Estimated VC funding per country based on data available from Max Cuvellier, The Big Deal and Partech Partners

11 Investors still favour male startup founders in Africa by a wide margin

12 Transforming Africa's Tech Ecosystem: Five Lessons for Leaders from Leaders

13 Algeria: A Good Year for the Startup Financing Fund

While critical issues like tax undoubtedly require more complex scrutiny to cascade into African Union Member States than this framework can deliver at continental level, attempts have been made to provide comprehensive recommendations and key actions to guide the additional work that all Member States must embark on.

Local startups face competition for technical talent from international startups and even large tech companies outside Africa[14]. Consequently, policies for retaining and attracting talent should be on the front burner for a thriving startup ecosystem. Africans will account for four out of every ten humans on the planet by 2100 and this is either the greatest threat, or opportunity. A crucial element of this framework's approach includes support for- and recommendations around advancing labour migration-mobility amongst Member States, with the belief that a robust startup regulatory ecosystem promotes the free movement of data and resources, but also people[15].

This Policy Framework with its model law set out guiding principles, a common vision, key recommendations and, going further, specific sample clauses which can guide African Union Member States in developing their national startup legislative and regulatory systems and capabilities to derive maximal value from the innovation ecosystem. This Policy Framework with its model law aims to harmonise approaches to enabling startups and innovation and intensify productivity outcomes, while ensuring that new legislation does not compromise harmonisation efforts and the African Union's broader objectives.

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[14] From Continued Capital Crunch to Shortage of IT Talent, What Does 2023 Hold for African Startups?

[15] A key objective of the Digital Transformation Strategy for Africa (2020-2030) is to build a secured Digital Single Market in Africa by 2030 where free movement of persons, services and capital is ensured and individuals and businesses can seamlessly access and engage in online activities in line with the African Continental Free Trade Area (AfCFTA).

5 Mandate

This Policy Framework with its model law derives from the outcomes of the 17th Extraordinary Summit of the African Union Heads of State and Government that was dedicated to Africa's Industrialisation and Economic Diversification.[16] This Summit among others, served as a forum for cross-sector consultation to develop an implementable Africa-Industrialisation Policy Framework and agree on a Compact to bring about aligned policy decisions, investment financing, institutional and human capital dedicated to Africa-Industrialisation and economic diversification.

It also draws upon the Digital Transformation Strategy[17] adopted by the African Union in 2020 to transform Africa's economies in a manner which allows Member States to harness digital technologies for local innovation. In addition, existing and draft startup laws and policy frameworks from African Union Member states were reviewed as part of the design phase which included, but was not limited to, the Senegalese Startup Act, Tunisan Startup Act, Nigerian Startup Act, Togo Startup Bill, Kenyan Startup Bill, Ghanaian Startup Bill, Mali Startup Bill, Malta Enterprise Act, and the American Jumpstart Our Business Startups Act.

The Policy Framework with its model law also pay homage to— and builds on existing instruments and initiatives, including the Africa Continental Free Trade Agreement (AfCFTA), the draft African Union E-Commerce strategy, which is anticipated to accelerate startup activities in the context of youth, women and communities, the African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention),[18] the African Union Data Policy Framework[19], the Smart Africa Vision to Transform Africa into a Single Digital Market by 2030, and the African Union Free Movement of Persons Protocol [20].

[16] African Union Summit on Industrialisation and Economic Diversification

[17] Digital Transformation Strategy for Africa (2020-2030)

[18] African Union, Convention on Cybersecurity and Personal Data Protection (Malabo Convention).

[19] African Union Data Policy Framework

[20] African Union Protocol on Free Movement of Persons, Right of Residence and Right of Establishment

6 Context

6.1 The important role of startups in Africa's economies

6.1.1 First, not all small businesses are startups

Startups are often small businesses, **but not all small businesses are startups.** Small and Medium Businesses (SMBs) are typically defined as a business with fewer than 1,000 employees. These businesses will often operate within an already determined paradigm, serving local markets and may not necessarily be tech-focused. By contrast, startups begin small, but the expectation is that they scale and expand quickly to become bigger companies. They may not necessarily be market-agnostic, but will usually be tech-driven or tech-enabled. As a consequence, startups will often have high capital costs with low revenue.

Startups are characterised not only by their notable capital investments but also by their strategic focus on research and development (R&D) to support the research-innovation pipeline; foster the creation of innovative products, services, or technologies. Startups play a crucial role in the knowledge industry, continuously exploring and innovating to develop valuable intellectual property (IP) assets, including patents, trademarks, and proprietary technologies.

6.1.2 The startup promise

By virtue of their nature, startups look to disrupt an existing market, and are essential because they break moulds, fix problems, and empower individuals to build the future. Just over USD3 billion in Venture Capital funding was raised by 633 African startups in 2022 — a 55.1% increase from 2021[21]. The majority of this funding went to startups in financial services, logistics, e-commerce, healthcare and education.[22] Sources which also take non VC-funding into account indicate that as much USD5.4 billion in disclosed and undisclosed deals was invested in the continent in 2022[23]. While investment in Africa's startups is lagging behind other regions, funding for tech startups on the continent is growing at an impressive rate — six times faster than the global average.[24]

In 2022, 633 startups on the continent employed over 34,000 people — an average of 54 people per startup.[25] Egypt was the largest employer, with the 131 funded startups employing over 11,000

[21] Africa Tech Startup Funding Report 2022
[22] Africa Tech Startup Funding Report 2022
[23] Africa Investment Report 2022 by Briter Bridges
[24] Partech: Africa Tech Venture Capital Report
[25] Africa Tech Startup Funding Report 2022

people and Nigeria's 180 funded startups created over 6500 jobs. There have been a raft of similarly inspiring outcomes. In April 2019, Jumia made history by becoming the first African startup to list on the New York Stock Exchange.[26] In 2020, Stripe acquired Nigeria's payment startup Paystack for over USD 200 million — the largest exit of an African startup.[27]

Startups in Africa are positioned at the forefront of the continent's economic and technological transformation. In the financial services sector, startups are leading the African fintech revolution. Startups like Wave, Chippercash, Jumo, Flutterwave are driving the expansion of financial services to underserved communities and across borders. E-commerce startups are increasingly providing access to products and services that were unavailable in the region, and developing or leveraging solutions to severe infrastructural challenges[28]. Startups like Copia Global are using agent and platform-led business models to link manufacturers with remote households, facilitating direct delivery of goods to these locations. Agtech startups, including WeFarm, Twiga Foods and Hello Tractor, are leveraging technology to connect smallholder farmers with vendors and suppliers. On the other hand, edtech startups like uLesson and healthtech startups such as mPharma are utilising digital platforms to facilitate the delivery of top-notch education and healthcare services.

6.1.3 The power of a harmonised agenda

While Africa's startup scene is expected to grow to USD 10 billion by 2056[29], it is important to note that Africa is still at the nascent stages of its startup journey. For instance, of the over 1000 unicorns[30] found globally, only seven are found in Africa.[31] Cumbersome regulations, limited funding, lack of skilled labour and fragmented markets mean that Africa accounts for just 0.2% of the value of global startups.[32]

Member States have a critical opportunity to create the regulatory enablement that will drive greater investment in Africa's innovation ecosystem. This Policy Framework with its model law is intended to support a continental approach to creating a conducive high-growth startup environment. For instance, available data suggests a 72% increase in funding secured by startups in Tunisia between 2019 to 2021 after the enactment of the Tunisian Startup Act.[33] Additionally, the Act accelerated startup growth with over 75% increase in labelled startups. Conversely in 2021, startups in DRC raised less than USD

[26] Jumia officially lists on the New York Stock Exchange

[27] Stripe acquires Nigeria's Paystack for $200M+ to expand into the African continent

[28] African Union E-Commerce Strategy. Draft as of 15/11/2022

[29] McCarthy, N., Funding for Africa's Startups Is at a Record High – This Is Where It's Going, World Economic Forum, 2021

[30] Startups valued at USD1 billion

[31] Afridigest: The complete list of Africa's unicorn

[32] Global startup ecosystem report 2022

[33] Statista Research Department 2022

1 million compared to USD 353 million raised by startups in Senegal which had passed a startup act in 2019.[34]

6.1.4 Realising the African startup agenda

By 2030, African youth will constitute 42% of the global population[35], presenting an opportunity to leverage youth entrepreneurship for high economic growth. The 'African youth bulge' has gained recognition as a pivotal lever for transforming the continent's economy[36]. Following the impact of the COVID-19 pandemic on African economies, there has been a notable surge in youth-led startups.[37] Despite this, many young African innovators face challenges accessing credit from formal financial institutions due to a lack of traditional collateral, making borrowing funds from banks risky[38].

Moreover, the strain on African governments' fiscus caused by the pandemic further limits their capacity to sustainably support young entrepreneurs with startup funding and other entrepreneurial challenges[24]. However, the African Youth Charter[39], particularly Article 1, obligates State Parties to adopt the necessary legislative processes to realise the Charter's provisions in accordance with their respective constitutional processes. Therefore, it is imperative for Member States to unite and define necessary steps, such as establishing a pan-African fund of funds for African startup support. Collaborating to devise strategies for funding youth-led startups in Africa aligns with the African Youth Charter's Article 15, focusing on Sustainable Livelihoods and Youth Employment. This includes promoting youth entrepreneurship by providing access to credit, entrepreneurship training in school curricula, business development skills training, mentorship opportunities, and facilitating access to information about market opportunities[26], all of which are achievable by incorporating the proposals outlined in this document.

[34] Partech: 2021 Africa Tech Venture Capital Report

[35] World Economic Forum. Why Africa's youth hold the key to its development potential, 19 September 2022.

[36] Maria Immanuel. Youth Entrepreneurship in Africa: A beacon of hope for the continent, 01 July 2020.

[37] Partech: 2021 Africa Tech Venture Capital Report

[38] African Union. Promoting Youth Entrepreneurship in Africa: A Policy Brief - 2020

[39] African Union Commission. African Youth Charter. 02 July 2006.

6.2 Challenges facing startups in Africa

Startups on the continent frequently encounter challenges to their ability to scale and remain viable in the long term. The most obvious of these, is a difficulty in raising capital outlined above. However, Member States are at varying phases of readiness in respect of some of the factors which influence the growth trajectory of countries' startup ecosystems: infrastructure, government support, technology readiness, internet penetration, affordability, funding, ease of starting and doing business, ease of access to electricity, urbanisation, tech hubs, amongst others. The figure below spotlights the growth trajectory of sixteen Member States based on many of the aforementioned factors. While emerging and nascent countries struggle to attract funding despite being critical employers of tech talent, maintaining and advancing countries appear to be leading destinations for startup investment, as discussed elsewhere in this framework.

For context, investors are often deterred by restrictive policies, infrastructure gaps, foreign currency control issues coupled with fluctuating local exchange rates and ambiguous operating environments:

- **Funding**: Some African countries have attempted to bridge the funding gap through government financing. For instance, in late 2020, Algeria launched its first fund[40] for startups to address the gap in accessing financing in the market. South Africa launched the SA SME Fund[41] which invests in scalable SMBs, and Senegal also launched the Délégation de l'Entrepreneuriat Rapide (DER)[42], which invests in innovative tech startups. However, growing fiscal pressures have meant that African governments cannot afford a broad array of financial incentives, but require more robust intervention to support innovation.

- **Ambiguous operating environments:** A limited legal and regulatory framework for startups and SMBs results in an oftentime complex and uncertain regulatory landscape, impacting investment decisions. The Tony Blair Institute for Democratic Change notes that the cost of ambiguous regulatory policies in African countries is especially high for startups, particularly for tech startups looking to scale,[43] with the unintended consequence of disrupting the extent of capital inflow.[44]

- **Infrastructure:** For startups to thrive, the basic infrastructural

[40] Algerian Startup Fund

[41] SA SME Fund

[42] Délégation de l'Entrepreneuriat Rapide

[43] Tony Blair Institute for Global Change: Supercharging Africa's Startups: The Continent's Path to Tech Excellence

[44] OECD- Africa's Urbanisation Dynamics 2022: The Economic Power of Africa's Cities

issues must be addressed: roads, connectivity, and power supply. As of 2021, nearly 770 million people on the continent lacked access to electricity — more than two-thirds of the global population that remains without power.[45] African countries also suffer the effects of a relatively wider connectivity gap, limiting the full potential of citizens and businesses to participate in the digital economy — although this is changing. Still, reports indicate that while broadband coverage and internet penetration substantially increased in SSA, the region still records the highest coverage gap at 17%.[46]

[45] Mckinsey Report 2020- Solving Africa's Infrastructure Paradox

[46] GSMA State of Mobile Internet connectivity 2022

6.3 Overview of legislative and policy trends

6.3.1 African policy context

Legislative and policy interventions aimed at small businesses have a history pre-dating the digital revolution. For comparison, in 1953 the United States[47] enacted the Small Business Act, recognising small businesses as the heart of the economy, with the need to ensure their success. African governments have also similarly recognised the importance of small, agile businesses, which explains the early focus on enabling policies for small businesses.[48] In Africa, Ghana is hailed as among the first to legislate on small and medium businesses through its National Board for Small Scale Industries Act (1981), with Zambia[49] and South Africa[50] following in 1996 and Morocco[51], at the turn of the 20th century. Other Member States followed suit with similar legislation in the 2000s.[52] Common among these was the recognition of the importance of small businesses as well as their plight and needs for the sake of their continuing contribution to the economies.

Since then, coupled with the flow of funding into an evolving continent, governments have begun exploring policies which support a unique type of business, the new startup ecosystem. Overall, dedicated startup legislation has been enacted or is underway in at least thirty-five Member States.[53] Even then, there are no umbrella laws that can regulate every aspect of startup ecosystems. Entrepreneurial activity is enshrined in broader policy and legislative frameworks including trade, investment, export and currency controls.

As a result, extant startup frameworks on the continent, seeks to tailor-make solutions for the startup community, while recognising that wider reform for entrepreneurial activity may still be needed. Where available on the continent, efforts to legislate for startups have focused on encouraging entrepreneurs through grant funding, incentives, financing startups through tax and social security exemptions, guarantee funds, facilitating the free movement of cash and labour via forex accounts and mobility incentives, and simplifying business formation; via startup portals, and improving the regulatory environment for business.

[47] Small Business Act, 1. USC1953

[48] ICR: An Emerging Instrument to foster the development of innovative high-growth firms.

[49] Enterprise Development Act, 1996

[50] National Small Business Act, 1996

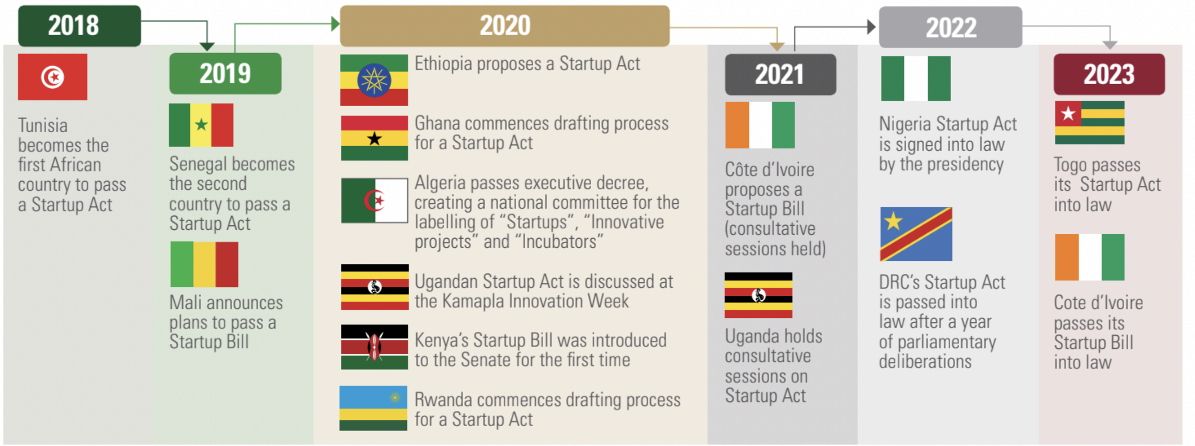
[51] Since 2002 it has had an operational SME Law

[52] "Startup Acts: An emerging Instrument to foster the development of innovative high growth firms", ICReport, September 2021, Pg 5.

[53] Supercharging Africa's Startups: The Continent's Path to Tech Excellence. Nigeria has since passed its startup law.

6.3.2 Legislative trends

Figure: Continental progress on startup legislation



The currently emerging 'Startup Acts' are being hailed as the digital transformation equivalent of the small business acts. Recognising the economic impact that African startups have brought to economies in the recent past, these acts represent the manner in which nation states are choosing to support the growth and development of tech-startups and the ecosystem surrounding them, with good reason. The mechanism and approaches patterned in startup acts around the world reveal certain legislative and policy trends:

- **Implementing bodies:** Most startup acts provide for an implementing body by either creating it or by empowering an existing ministry or department. Where new bodies have been created, they are established as corporate bodies, an approach that empowers them to organise and implement approaches that public entities are usually prohibited from, such as fund raising, formal agreements with private sector, and more dynamism in its operation and the delivery of their mandates.

- **Labelling and identification:** In line with traditional SMB legislation, most startup acts provide for labels that allow qualifying businesses to pursue various programmes to their advantage. However, countries have approached labelling from different perspectives. Common among the criteria is how long a company has been in operation, number of employees, and annual turnover limits.

- **Tax incentives:** Startup acts often recognise the burden of taxes and make attempts to relieve the startups of tax obligations; a matter that usually requires careful balancing against the reality of a government's need to raise taxes. Countries have adopted different methods to accomplish this, including:
    - **Exemptions**: Tunisia offers corporate tax exemptions

for the duration of the startup label.[54] Elsewhere, the US offers a Corporate Gains Tax (CGT) exclusion[55] for shares held for five years or longer at the point of sale.
    - **Credits**: Malta[56] and the US[57] offer research and development credits.

- **Startup visas and residency:** Member States have used startup legislation to create residency terms unique to the startup objective. Tunisia[58] for example grants one-year leave to set up a startup. Elsewhere, Malta grants a three-year residence permit, extendable for an additional five years.

6.3.3 Policy trends

Not all outcomes are attainable through hard legislation. As a consequence, softer policy instruments are often used to realise supportive programmes. The following are among the most common:

- **Digital economy strategies:** With Africa's internet economy estimated to be worth USD 180 billion by 2025[59] Tech startups have come to occupy an important place in digital economy policies. Countries have coalesced their ambitions, visions and strategy in digital economic plans and vision statements, locating startups within.

- **Financing programs:** Some Member States' laws declare financial interventions, but this is not the only way. In others, the mechanisms through which the government is to provide financial intervention to startups is left to the mandated body to design and launch. These initiatives have been broad and far reaching as in the case of Malta, which provides for a very high degree of customisation.

- **Business support programmes:** The importance of supporting businesses cannot be overstated. Often this comprises training on business development, operations and business management, mentorship and networking, as well as investor preparedness. Such ecosystem building is often provided for by accelerators, tech hubs and incubators as part of their core offering. Governments such as Tunisia, provide ecosystem building through their respective agencies in partnership with the private sector by providing targeted funding to the various

[54] Article 14, Tunisia Startup Act.
[55] United States Internal Revenue Code, section 1202
[56] Aid for Research and Development Projects, Aid for Research and Development Projects (Tax Credits) | Malta Enterprise
[57] Tax Credits for your Business, Aid for Research and Development Projects (Tax Credits) | Malta Enterprise
[58] Article 8, Tunisia Startup Act.
[59] e-Conomy Africa 2020

programmes offered in the country.

Accelerating nimble and agile businesses will be crucial to the productive transformation and sustainable development of the continent. The journey has already begun. In December 2022, African Member States agreed to a continental roadmap on startups at the African startup conference in Algeria.[60] The roadmap provides guidance on the implementation of policies and harmonisation of efforts at the continental level. This policy framework is aligned with the same. African countries can leverage this Policy Framework with its model law, to emplace the mechanisms and interventions urgently required to harness Africa's innovation ecosystem, and future-proof our economic prosperity.

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[60] African ministers map first continental startup roadmap

7 Guiding principles

This model legislative framework aligns with African Union values and international best practice. In the spirit of coordinating continental efforts, and promoting growth and regional prosperity, the framework's guiding principles that will ultimately enhance the attainment of the objectives above, are as follows:

- **Inclusivity**: Member States will ensure all mechanisms and approaches deployed are inclusive and equitable, deliberately offering opportunities for youth and women, in line with the Africa 2063 agenda for at least one in five women to have access to and control of productive assets.

- **Free movement and labour mobility**: this framework pays specific regard to the African Union's goal to advance labour migration-mobility amongst Member States, in view of the crucial objective to facilitate the African Continental Free Trade Area (AfCFTA). In addition, it is cognisant of the African Union's belief that the free movement of persons will enhance science, technology, education, and research and facilitate the mobilisation and utilisation of Africa's human resources to achieve self-reliance and development.

- **Predictable policy environments**: this framework is premised on creating a predictable, structured mechanism to enable startups to do business on the continent. While agile regulatory protocols and mechanisms which can adapt to rapidly changing conditions are crucial, the parameters upon which these are built can be determined. This framework offers granular recommendations, actions and model provisions in that regard while creating room for Member States to assume responsibility for initiating the appropriate processes.

- **Endorsement of extant principles and frameworks**: concepts and recommendations included in this framework align with extant frameworks, African Union conventions and international obligations deemed aligned with the goals of the African Union: including but not limited to, the African Union Cyber Security and Personal Data Protection (Malabo Convention), African Youth Charter, Algiers Ministerial Declaration on Startups, African

Union Data Policy Framework, African Union Free Movement of Persons Protocol, Berne Convention, amongst other reference documents.

❖ **Evidence-based and forward-looking:** this framework is guided by best practice and makes reference to tried and tested provisions supporting loss mitigation and minimising disincentivising mechanisms; to enable the creation of an environment which encourages investment and innovation.

8 The framework

8.1 Governance of the startup ecosystem

8.1.1 Context

Governance mechanisms use rules, principles and standards to ensure coherence, predictability and central coordination in policy development and implementation. Broadly speaking, countries set up organisational arrangements among ministries, regulators, and other mandated actors at national level (horizontal governance), and/or across different levels of government (vertical governance) to ensure coherence.

Specifically, some countries organise coordination through units within the ministries that are primarily responsible for policy oversight and coordination of industrial development such as South Africa's Ministry of Small Business Development, or across the globe in Korea with a Ministry of SMBs and Startups (MSS), where the cabinet Minister has the exclusive and dedicated responsibility for the SMB and start-up portfolios. Others exercise oversight of the innovation ecosystem via agencies overseen by ministries, such as in Nigeria and the US and Nigeria, where there is a National Information Technology Development Agency (NITDA) and a Small Business Administration (SBA) agency respectively. Looking beyond the startup ecosystem, in many countries, the responsibility for SMB policies[61] resides within the ministry for the economy, enterprise, business, industry, innovation and/or trade. Still, several countries have one or more agencies in place to implement and execute, among other tasks, SMB and entrepreneurship policies. Although functions vary, in most cases these agencies of government focus on trade and investment, innovation and the execution of financial and

[61] OECD (2021), "SME and entrepreneurship policy frameworks across OECD countries: An OECD Strategy for SMEs and Entrepreneurship", OECD SME and Entrepreneurship Papers, No. 29, OECD Publishing, Paris

non-financial support instruments. By and large, government agencies are not exclusively focused on SMBs but on the broader business community (for instance, Austria, Chile, Czech Republic). In addition to leveraging scale across support areas and business categories, these kinds of agencies also aim to provide one-stop-shops for business, both physically and virtually, which are open to SMBs and other businesses as well.[62]

The approach taken by African countries with startup acts tends to be to enable agencies overseen by ministries, or else, split across both options. Tunisia for instance leans towards a vertical governance approach for oversight of its startup ecosystem. Under it, the Tunisia Startup Technical Assessment Committee is responsible for reviewing applications for the startup label. However, the country's ministry of digital Economy is responsible for managing the Startup Portal, collating requests and applications for the startup label, and management of incentives granted under the act. The Ministry also assumes the direct and indirect costs of intellectual property registration for startups in order to facilitate access to IP registration. The Nigerian approach is similarly blended; Nigeria's National Council for Digital Innovation and Entrepreneurship is overseen by the Minister of Communications and Digital Economy. Its role includes formulating and providing general policy guidelines, giving overall direction for the harmonisation of laws and regulations that affect startups, and ensuring the monitoring and evaluation of the regulatory framework to encourage the development of startups in Nigeria. Whereas, the National Information Technology Development Agency (NITDA) serves as the Secretariat to the Council and has the responsibility of implementing the provisions of the act.[63]

In contrast, Togo is one of the fastest Member States to start a business in. It takes just four procedures and five days to formalise a business in Togo, compared to other Member States, which generally take about 7.3 procedures on average, and more than 23 days.[64] While the startup bill has not yet been passed, the agency remains able to exercise oversight of the nascent ecosystem via its national agency[65] for the development of micro, small, and medium enterprises.

8.1.2 Governance options

This framework recognises that the choice of governance mechanism will depend on existing structures across Member States and leaves to their discretion in determining how to organise oversight of the ecosystem. A number of crucial points to note, however, are highlighted below:

- One benefit of situating startup concerns within ministries and

[62] Ibid.

[63] Ugo Onwuaso, NITDA to address challenges in the technology ecosystem through NIIEV, last modified 16 November 2018.

[64] Ayi Renaud Dossavi, Doing Business 2020: Togo is the 15th place where starting a business is easiest worldwide, last modified 25 October 2019.

[65] Entrepreneurship: Togo now has a development agency for MSMEs

within ministerial portfolios, is that concerns become elevated to the level of the cabinet. In the case where a cabinet minister has the exclusive and dedicated responsibility for the startup portfolio, there is a strong case for increased visibility of startup issues, and for those issues to be represented explicitly during government cabinet meetings.

- While administrative procedures are often burdensome, agencies allow for the administration of an extremely large and complex system of regulations and exist to regulate an area of conduct in a manner that protects the public interest. However, since smaller businesses are often less well informed on government support measures, an important challenge for such generic enterprise agencies is to be sufficiently accessible to SMBs, including startups.

Policy Framework Recommendation on Governance of the Startup Ecosystem

By virtue of their primary startup legislation, Member States should consider creating a startup agency that exclusively focuses on supporting coherence and fostering startups, overseen by the ministry responsible for business and industrial economic development.

Model provision

The designated agency shall:

- give due attention and deploy actions to support diversity and inclusion, whilst protecting democratic values and supporting coherence;
- proactively approach and engage startups for the sharing of knowledge and best practices regarding digitalisation;
- act as a one-stop-hub for information and support to startups, including facilitating (over overseeing, depending on the legal system of the Member State) the administration of available support, benefits, and incentives for startups in accordance with this act;
- make use of the synergies in other government portfolios to bring forward the startup agenda, for instance work with the ministries responsible for skills, research and development, and innovation;
- facilitate market development to provide market expansion assistance to startups using international events, trade fairs, and roadshows;
- provide zoning rights for startups (develop districts for startups);
- ensure the participation of entrepreneurs and other ecosystem players in the policy making process (through engagements and consultations).

8.2 Institutionalising support for startups at the regional and continental levels

The efforts outlined in this document are ambitious and complex. Member States should consider that the task demands consolidation of endeavours via a mechanism or network of mechanisms to coordinate the effort to foster a startup culture across the continent. While the challenge of supporting startups must primarily lie with sovereign Member States, the continental digital market is fragmented, which could hinder our competitiveness on the global stage. It was resolved at the ministerial African Startup Conference held in Algeria in December 2022, that “to concretely materialise the outcomes meeting, national contact points and a permanent secretariat for the African Startup Conference would be established, to activate and monitor the implementation of the roadmap.” Further, that an African Ministers Council should “serve as a formal exchange venue for African ministers in charge of startups, to be held periodically in one African country, to discuss continental issues related to the startup ecosystem.

Per the Declaration, “the council will be responsible for evaluating the implementation of the commitments of the Algiers Ministerial Declaration and for proposing new initiatives in this area.” There are lessons to draw on from successful regional startup initiatives, which can inform the design and implementation of a cohesive pan-African startup effort. Taking inspiration from the EU-co-funded European Institute of Innovation and Technology Digital (EIT Digital), a pan-European network of innovation and entrepreneurship centres supporting early startups and scaleups, we can envision a Pan-African startup agency capable of providing similar backing to the continent's burgeoning businesses. The success of initiatives like StartUp Europe, initiated by the European Commission to bridge high-tech government-backed startups with investors, corporate networks, and the media, may also provide a useful blueprint. It is crucial to note that these central agencies coexist harmoniously alongside regional and national startup entities, creating a comprehensive and robust support system for the entrepreneurial ecosystem. The African model does not need to exist independently of extant structures. The Asia-Pacific Economic Cooperation (APEC) exists to facilitate trade across the Asia-Pacific, but plays a central role in supporting the startup ecosystem across the region through initiatives like the Asia-Pacific Innovation Network. The African Union Youth Startup Programme is an indication of what functions a permanent secretariat for the African Startup Conference might evolve into responsibility for. Ultimately and regardless of scope, the immediate and urgent objective for the continent must be to establish national enabling startup legislation in each Member State.

Policy Framework Recommendation on institutionalising support for startups at the Regional and continental levels

Member States, through the designated startup authority, are encouraged to collaboratively and consultatively pursue bilateral, regional and continental integration with the designated coordinating mechanisms, and relevant frameworks.

Model Provision

The designated startup authority shall:

a. collaboratively and consultatively pursue bilateral, regional and continental integration with the designated continental coordinating mechanisms and frameworks for startup coordination.

b. support the development of initiatives on a regional and continental level to facilitate access to market and opportunity for labelled startups.

8.3 Startup formation

A core purpose of this framework is to ease and enable the ideation, establishment, operations, and scale of startups. A necessary prerequisite, therefore, is a reliable, predictable, efficient, and robust system for business formation and conduct. Given the homogeneity of 'startups', the first prerequisite is identifying a suitable approach to define startups and those who are deemed eligible for startup support under the relevant laws and regulations.

8.3.1 Defining startups

Understandably, there is no single agreed-upon definition for startups. Some practitioners define a startup as "a human institution designed to create a new product or service under conditions of extreme uncertainty.[66]" Other sources[67] refer to a startup as "a company in the first stages of operations and founded by one or more entrepreneurs who want to develop a product or service for which they believe there is demand." Ultimately, these definitions most commonly centre around **innovation**, **research and development, high-capital**, **high-uncertainty** and make reference to the **age of business**.

This Policy Framework with its model law considers that a continental definition of startups is significant, to ensure there is a unified and clear understanding of the defining attributes of these enterprises; to help policymakers, investors, stakeholders align their efforts and support mechanisms appropriately. The latter three characteristics are covered sufficiently in this Policy Framework with its model law. More specificity is required for terms like "innovation" and "research and development", as outlined further below.

[66] Is Entrepreneurship a Management Science?
[67] Investopedia

The OECD defines innovation[68] as the implementation of a new or significantly improved product (good or service), or process, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations. These improvements or modifications leverage technology in the process, production or delivery of said products or services. Research and Development[69] are further defined as consisting of any creative work that is undertaken on a systematic basis with the aim of increasing the stock of knowledge (including knowledge of man, culture and society) and the use of this knowledge to devise new applications. The OECD definition considers that R&D is often composed of three essential activities:

- Basic research: any general theoretical or experimental research that is carried out with the sole purpose of acquiring new knowledge of the underlying foundation of phenomena and observable facts.
- Applied research: original investigation conducted with a specific objective.
- Experiment development: systematic work that uses knowledge from previous studies and/or practical experience to produce new materials, products, or devices, install new systems, processes, and services, or significantly improve those that have already been created or installed.

Taking the above into consideration, this Policy Framework with its model law defines startups as **innovative capital-intensive businesses, which dedicate substantial resources to researching and developing technology-enabled/driven products and/or services in response to perceived or anticipated market demand; in the process generating valuable intellectual property assets.**

Note however, startup legislation, where available, makes reference to a series of considerations rather than a single legal definition. This is important because the incentives, exemptions, opportunities available to startups necessarily turn on certain nuances, given that government resources to support these nascent businesses are not infinite. Among the most common factors considered are age, growth, revenue and risk exposure; explored in the following section.

8.3.2 Labelling criteria

Given the difficulty in defining startups, most countries delineate criteria to be met by any businesses looking to leverage the benefits created by startup acts. These requirements vary by country, but generally fall under the following broad categories:

1. **Incorporation:** Any business looking to be labelled under a startup act must first possess the legal right and capacity to conduct its business in that Member State.

[68] Inspired by the OECD's Oslo Manual 1992
[69] Inspired by the OECD Frascati Manual

This implies that all startups must be incorporated either as a sole proprietorship, partnership, company limited by liability or a cooperative.

2. **Duration:** This tends to vary by member state. The common maximum duration across startup legislation appears to be ten years, which commences from the point of formal incorporation. In particular, this does not include any time spent in research and development before the formal incorporation, but includes any activities — including any research and development activities undertaken post-incorporation.

3. **Nature of the business:** Startups are largely industry agnostic. The most successful startups on the continent have operated across financial technology, health, transportation, logistics, food, energy, amongst others. The unifying feature however, is that they leverage technology and/or innovative practices to deliver value. By and large, the preference is for such businesses to have innovation, development, production, improvement or commercialisation of digital technology, innovative products or processes as its business objective. Put more simply, eligible companies should ideally be agile, innovative, technological or technology-enabled.

4. **Staff / employee strength:** Within and outside the continent, there has been effort to link human capital[70] strength to scale, and thus, startup status. For instance, Tunisia stipulates a minimum of 100 employees and Malta prescribes between 10 - 250 employees, depending on the startup label sought. In contrast, countries like Nigeria and Senegal do not stipulate any minimums. This Policy Framework with its model law does not make any recommendation on this factor, as the benefit of either approach is wholly dependent on the peculiarities of each country.

5. **Turnover**: There is a prudent recognition that beyond a given level of revenue and profitability, a business exists startup status and becomes established. As a matter of necessity, the threshold for this will differ. On the continent, the Tunisian threshold is similar to Italy at around EUR 4.9 million, although its startup label lasts around eight years. Malta sets this threshold at EUR 2 million and as high as EUR 50 million depending on the startup

[70] The volume of researchers, technicians, and support staff (skilled and unskilled) who are directly engaged in the ideation and creation of new knowledge, products, processes, methods and systems. Human capital is measured in thousands and is determined based on the number of project-related hours. For instance, a full-time employee is equal to 1 person/year, while a part-time employee (half-time) is calculated as 0.5 person/year.

label issued, while Italy considers EUR 5 million prudent, where startup labels only last five years. This Policy Framework with its model law leaves the threshold to Member State discretion, but it is advised that due consideration is given to label duration, the nature of the business, ownership and incentive structures, amongst other factors.

6. **Ownership**: A unique feature of startup legislation is in the stipulation of minimum capital and shareholding structures: at least two-thirds of ownership by individuals, venture capitalists, foreign startups, collective investment schemes, or other regulated investment body. Going further, some startup legislation contains provisions stipulating some extent of indigenous ownership. Member States are advised to pay heed to the execution of indigenous policies in various forms across the African Union and abroad, in determining their own path. This Policy Framework with its model law supports promoting and enabling the free movement of material and human resources across the continent.

As can be expected the presence of just one or two of these requirements is unlikely to be sufficient for shortlisting companies. Member States are advised to choose a combination of any of the above, alongside any metrics relevant to local contexts, in determining their eligibility criteria for labelling.

8.3.3 Labelling process

For ease and speed, which are crucial to supporting businesses, the labelling process is typically digital. The majority of extant startup legislation prescribes some form of portal, wherein online applications can be filed. This Policy Framework with its model law leaves implementation details to the discretion of Member States.

8.3.4 Label duration

A company cannot bear the startup label in perpetuity. Inherent to the objective of a startup is the goal to scale. In any event, businesses cannot enjoy the myriad benefits, funds and incentives associated with startups in perpetuity, they must be sustainable. Nevertheless, it is well acknowledged that startups require a unique approach to their incentivisation. As noted elsewhere in this Policy Framework with its model law, startups do not often turn a profit until their eligibility period has lapsed. As such, the benefits of certain incentives and exemptions such as tax holidays, may be redundant if granted prematurely. It is proposed therefore that Member States consider a phased labelling approach, such that incentives such as tax holidays or tax breaks are not withdrawn before entering profitability.

Member States should consider formulating labelling criteria for startups with reference to their innovative, capital intensive nature, and in recognition of their contributions to research and development, and generation of valuable intellectual property. In developing its criteria, Member States shall consider whether the country intends to legislate most if not all policy mechanisms by virtue of the primary law, or whether subsidiary legislation will be used. Where a labelling model is to be used, the primary law shall endeavour to define startups as outlined herein, with the labelling mechanism hedging against over-inclusivity.

Model provision
Labelling criteria: The designated authority shall define labelling criteria for startups to access available incentives and support. In so doing, the authority shall consider the following criteria: incorporation, duration, nature of business, staff/ employee strength, turnover, and ownership, informed by the AU Startup Model Policy Framework.

Labelling process: The designated authority shall:

a. Establish an online registration platform to simplify the registration process in the form of reduced registration fees and timeframe;
b. Establish a technical assessment committee to review applications for the startup label;
c. Provide that where the review has been completed successfully, the committee shall communicate the report of its review to both the designated authority and the startup; and
d. Provide that where a startup has successfully completed the process for labelling, the committee shall issue it a labelling certificate which shall empower it to enjoy the benefits accruing under the startup act.

Duration of the label: The designated authority shall determine a timeline for the validity of every label granted, provided, however that the validity period does not exceed the time frame stated under the labelling requirement

Obligations of a labelled startup: Every startup labelled in accordance with this act must:

a. Comply with all the laws governing incorporated companies
b. Prepare and maintain complete and accurate financial statements
c. Prepare and file periodic* reports detailing its growth within that period.
d. Notify the designated authority of any changes in the information submitted at the point of labelling within a stated period
e. Comply with any other obligations imposed by the designated authority

**The designated authority has the responsibility for determining the meaning of periodic as stated above. It could be quarterly, biannually, annual.*

8.3.5 One-Stop Shops (OSS)

The entrepreneurial journey in Africa often encounters significant challenges, exacerbated by bureaucratic hurdles, limited access to capital, and a lack of streamlined support structures. These challenges are exacerbated by the multi-regulator requirements that startups encounter while seeking to expand or even at times at the very start of their operations given the reach of their products and services. The results commonly include lengthy and multiple regulatory engagements that increase operational costs for startups and at times, a failure to launch. To address these obstacles and foster a conducive environment for startups, a One-Stop Shop (OSS) for startups at Member State level emerges as a strategic solution with the potential to significantly enhance the efficiency of starting and operating businesses on the continent.

At its core, an OSS for startups serves to centralise and simplify the necessary procedures associated with business formation. By offering an efficient platform that facilitates tasks such as business registration, licence procurement, access to funding, and mentorship and networking resources, an OSS aims to reduce the bureaucratic red tape that often hinders startups.

The OSS model has been successfully implemented in various forms across different countries, with Tunisia and Mauritius serving as noteworthy examples. The Tunisian Startup Act introduced an OSS designed to simplify and streamline administrative procedures, enabling startups to navigate regulatory hurdles more smoothly. This OSS, achieved through effective inter-agency collaboration, provides startups with a range of essential services, including business registration, facilitation of market access, and business development counsel. The Mauritius approach employs an OSS portal operating under the purview of the Economic Development Board (EDB). Functioning as an autonomous entity, the EDB falls under the jurisdiction and financial backing of the country's Ministry of Finance, Economic Planning, and Development. Similarly, the U.S. Small Business Administration (SBA), provides a comprehensive online resource centre tailored to the needs of startups. The SBA not only aids businesses during the initial setup stages but also provides access to loans and grants, offers educational resources and training materials, and guides firms through legal and regulatory compliance.

Member States should engage experts and relevant stakeholders during the design and structuring of the OSS, to ensure it addresses the needs and pain-points of startups. In the pursuit of efficiency, Member States should also transfer responsibilities and accountability for the specified services from external agencies to the OSS. This can take a consolidated approach, where relevant functions are centralised within the OSS, or a distributed model where representatives from various relevant agencies collaborate under the OSS' purview. This strategic alignment of responsibilities aims to enhance coordination, effectiveness, and responsiveness, ensuring that startups experience an optimally supportive ecosystem. The OSS should be empowered to receive inquiries from startup founders, talent, potential investors and other stakeholders about services and investment opportunities in the startup ecosystem.

Policy Framework Recommendation on One Stop Shop

Member States should consider establishing a robust digital infrastructure under the oversight of the designated authority with specific responsibility for managing the platform, and capable of efficiently delivering the one-stop shop's (OSS) services. The resulting digital infrastructure shall be user-friendly, accessible, and streamlined to enhance the ease of doing business for start-ups. The relevant authority shall regularly evaluate the OSS's effectiveness, identifying areas for enhancement, and adapting to the evolving needs of startups. Continuous improvement will ensure that the OSS remains relevant and impactful in supporting startup growth and innovation.

Model Provision

In collaboration with other relevant authorities, there shall be established a One-Stop Shop, with specific responsibility to take all necessary steps to facilitate the processing of business-forming, licensing and multi-regulator compliance for startup founders and employees.

8.4 Taxation

It is by now trite knowledge that tax policy can influence the decision to undertake entrepreneurial activity. For instance, high corporate taxes may be seen as recurring costs that decrease the financial resources available to startups.[71] Risk-taking and commitment to invention and innovation can be similarly affected by personal income tax rates. Still, it is for governments to determine when and how much tax, if at all, to impose. Policymakers looking to drive innovation must identify opportunities within existing tax systems to promote innovative activity.

Within the framework of startup acts and related legislative interventions, tax incentives present a readily accessible tool to promote economic goals. Targeted tax incentives lower the cost of capital for small businesses, startups, and those that invest in intellectual property.[72] In designing incentives, it is important to make allowance for evaluation to gauge their effectiveness. The OECD issued a guide[73] to enhance the transparency and governance of tax incentives in developing countries. These include a recommendation for periodic review by assessing the extent to which tax

[71] Darnihamedani, P., Block, J.H., Hessels, J. et al. Taxes, start-up costs, and innovative entrepreneurship

[72] Joseph Rosenberg, Donald Marron, 2015 Tax Policy and Investment by Startups and Innovative Firms

[73] OECD, Principles to Enhance the Transparency and Governance of Tax Incentives for Investment in Developing Countries

incentives meet the stated objectives; systematic collection of data to track tax expenditure i.e. revenue losses attributable to tax incentives; and overall effect of incentives frameworks. These monitoring and evaluation costs could be mitigated by setting out explicit goals and rules for a given tax incentive at the outset.

In preparing a startup framework, taxation is only one of the parameters to be considered. Tax incentives should be combined with improvements in the business environment. Among other factors, investors value political stability and transparency and policy predictability. International economic agreements may also facilitate cross-border investments by providing regulatory clarity as per the below. [74]Additionally, if startups are to benefit from tax policies, those policies have to be simple and accessing them has to be subject to minimal cost.

8.4.1 Corporate income tax

Corporate income tax incentives are commonplace in legislative interventions aimed at improving investment inflows. Startup acts are no exemption to this. One approach has been to adopt a tax holiday excluding the application of income tax on eligible entities. Member States such as Nigeria,[75] Tunisia,[76] and Senegal[77] have adopted this method. A separate approach has been to reduce the corporate tax rate for eligible firms. Spain[78] has taken this route in its new startup law which is expected to come into effect in 2023. Under the law, startups are eligible for a reduced corporate tax rate from 25% to 15%.

Innovation and a focus on growth are core features[79] of startups and these characteristics mean startups are unlikely to be focused on profitability after incorporation. Member States contemplating tax holidays or tax rate reductions should consider that these incentives may be redundant for startups that do not turn a profit until after their eligibility period. This may be accentuated where the relevant startup legislation grants just a relatively short label period. Not all tax incentives are equally effective,[80] and countries should consider adopting other forms of incentives which may be more appropriate for their objectives and economic structure. Alternatives include the following:

[74] Gómez-Mera, Laura, Thomas Kenyon, Yotam Margalit, José Guilherme Reis, and Gonzalo Varela. 2015. *New Voices in Investment: A Survey of Investors from Emerging Countries*. World Bank Studies. Washington, DC: World Bank.

[75] The Nigeria Startup Act 2022

[76] Startup Tunisia: Boosting the startup constellation

[77] Senegal Approves A-Three Year Tax Exemption For Its Startups

[78] Spain: Corporate - Taxes on corporate income

[79] What Is A Startup? The Ultimate Guide

[80] Vito Tanzi, Howell Zee, 2021, Tax Policy for Developing Countries

8.4.1.1 Tax credits and allowance

Incentives in the form of credits that can be used against to offset a business's tax bill or allowances which can be deducted in computing the tax bill. In the context of startups, which have innovation as an essential feature, this is usually targeted to stimulate research and development activities especially from a technology standpoint. Countries that have adopted this incentive include Italy, which has had a startup law since 2012, and an accompanying research and development tax credit incentive.[81] Algeria has taken the tax allowance route which allows eligible startups to deduct expenses for research, subject to a cap on the amount that may be deducted.[82] The tax allowance approach has also been adopted in Nigeria, but without a cap on the amount that may be deducted and subject to the expenses being wholly incurred in Nigeria.

8.4.1.2 Net Operating Losses (NOLs) utilisation

NOLs may also be considered as an incentive for startups. Many businesses run losses at different points in time, particularly during the start-up phase which can last for 5 to 10[83] years. These losses mean that the businesses would generally not be subject to corporate income tax which is levied on profits. Losses may then be carried forward and used to offset future profits. This helps to level the field between stable and more volatile businesses,[84] such as startups. Treatment of NOLs vary globally[85] but carry forwards are generally allowed — albeit with some time limitations or a cap on the amount of losses that may be carried forward.[86] In Tunisia,[87] NOLs can be carried forward for five years, starting from the year in which they were booked. In contrast, NOLs can be carried forward indefinitely in Nigeria.[88] During the COVID-19 pandemic, several countries announced temporary NOL reforms for businesses,[89] reflecting the value of NOLs for volatile contexts or businesses that are susceptible to greater loss rates. Subject to economic realities and existing tax policies, especially tax rules on business acquisitions, Member States may consider adopting policies that enable startups to utilise NOLs indefinitely.

8.4.1.3 Exemptions on importation tax

The reality of competitive advantage means that startups may require equipment and goods from external sources. As such, some countries have established incentives tied to importation

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[81] Italy: Corporate - Tax Credits and Incentives

[82] EY, Algeria Introduces Finance Law 2023 | Key Measures Applicable to Companies

[83] Different Startup Acts take different approaches. 10 years is the cutoff in Nigeria, 5 years in Togo, and 8 years in Tunisia and Senegal

[84] Elke Asen, Net Operating Loss Policies in the OECD

[85] See DLA Piper Intelligence (Loss Utilisation) for a summary of tax utilisation policies in several countries

[86] Ibid at 29

[87] Tunisia: Corporate - Deductions

[88] Nigeria: Corporate - Deductions

[89] OECD, Country Tax Measures in Response to COVID-19 Pandemic

of such equipment. This treatment may be beneficial for countries with foreign exchange controls. Member States such as Togo, which has proposed exemptions from customs duties on the importation of approved mobile terminals, computer software and equipment, and Algeria which already has a VAT exemption for imported equipment,[90] have taken this approach. Additionally, whilst it does not amount to either a VAT or import duty exemption, reduction on withholding taxes on fees for management and technical services provided by non-resident companies to startups could also be explored as a potential incentive.[91]

8.4.1.4 Investor targeting schemes

Rwanda's Investment Promotion and Facilitation law (2020)[92] which targets particular investors, investment types and sectors painting clearly the hope of a holistic and well rounded investor supported startup ecosystem.[93] Under the law, innovation infrastructure and licensed entity operators are both eligible for a preferential CIT rate of 15% where it usually stands at 30%. The innovation infrastructure developer is also eligible for a CIT tax holiday for a five year period from the year it first makes a positive net income. Other incentives include a preferential withholding tax rate of 0% if you are an investor qualifying for the 15% CIT rate. In India, through its categorisation scheme for alternative investment funds, eligible companies (that is PE/VC companies holding an investor certificate) will receive pass-through tax status whereby tax is not charged at the fund level but at the level of distribution to investors.[94] It also exempts foreign investment funds from the 10% withholding tax levy.[95]

While it may be challenging to measure the all-round impact of startup focused investor schemes such as those in India and Rwanda, their immediate impact does not go unnoticed. The Rwanda Development Board reported an increase in investments from USD 1.3 billion in 2020 to USD 3.7 Billion in 2021.[96] The outlook remains largely optimistic and off to a strong start, yet there is much to be discovered about investor centric approaches to develop startup ecosystems.

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[90] Algeria: A New Set of Laws in Algeria to Attract Foreign Investors

[91] Analysis of the Key Tax, Fiscal & Regulatory Incentives Available Under the Nigeria StartUp Act 2022

[92] Investment Promotion and Facilitation Law N° 006/2021 Investment-code-2021.pdf (rdb.rw)

[93] Rwanda gazettes new Investment Promotion and Facilitation Law | EY - Global

[94] Private equity in India: market and regulatory overview | Practical Law (westlaw.com)

[95] Private equity in India: market and regulatory overview | Practical Law (westlaw.com)

[96] RDB records highest investment registration amid COVID-19 pandemic - Official Rwanda Development Board (RDB) Website

8.4.2 Personal income tax

Unlike corporate taxes, tax holidays and rate reductions for startups tend not to be applied to personal income. The Nigerian Startup Act initially included provision for a personal income tax exemption of up to 35% for startup employees which would have been applicable for a two year period after employment. This provision was excluded from the final version of the act that is now in force.[97] Similarly, startup legislation in Tunisia and Senegal do not make provision for personal income tax exemptions. Nevertheless, other means of incentivising entrepreneurial activity have been deployed.

8.4.2.1 Capital gains

Capital gains are a major route by which investors, including founders, achieve returns on their investments in startups. Hence, for countries that operate a capital gains tax regime,[98] the capital gains tax is a key consideration for potential investors and entrepreneurs looking to make an investment decision.[99] Capital gains taxes may also affect the ability of a startup to attract preferred talent as startup firms are typically unable to offer stable salaries provided by established businesses, and therefore often recruit managers using equity stakes. As capital gains taxes reduce the returns these managers receive, it diminishes the startup's ability to attract required talent.[100] Several countries, including Nigeria and Tunisia, provide for either a capital gains tax exemption or a reduction in the amount that would be charged on such gains. As in Nigeria, such exemption may be coupled with a minimum holding period requirement for the investment.[101]

Apart from wholesale exemption of capital gains tax, alternative options in crafting capital gains policy could be considered. These include a reduction of the capital gains tax rate or providing allowance for an exemption on capital gains taxes if investment proceeds are reinvested in similar businesses within a timeframe.

8.4.2.2 Investment tax credits/allowances

Tax credits and tax allowances offer another route of incentivising investors and entrepreneurs at the individual income level. As indicated elsewhere within this framework,[102] access to funding can be a major challenge for startups. At the early stage of the startup lifecycle, entrepreneurs use personal funds, sometimes supplemented by capital from angel investors, to bootstrap their

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[97] The Nigerian Startup Act 2022

[98] See Capital Gains Tax (CGT) Rates - Worldwide Tax Summaries - PwC for a list of global capital gains tax regimes

[99] Alexander Edwards, Maximilian Todtenhaupt (2018), Capital Gains Taxation and Funding for Start-Ups

[100] Demographics and Entrepreneurship Blog Series: Spurring Entrepreneurship through Capital Gains Tax Reform

[101] Thailand also has a similar capital gains tax exemption for investments in startups. See Thailand to Waive Tax on Investment Gains in Startup Businesses

[102] See paragraph 4.1.1 for a discussion on funding as a structural requirement for startups.

startups. These funding sources come at a high cost as the contributed capital is subject to higher chances of loss than in more traditional or mature businesses. Tax credits and tax allowances help to reduce the cost associated with investing in startups, by reducing the tax bill or the taxable income required to arrive at a tax bill.

Under the Nigerian Startup Act, angel investors who invest in a labelled startup are qualified to an investment tax credit equivalent to 30% of the invested amounts. This tax credit is limited to any taxable gains made on investments. On the other hand, Tunisia operates a tax allowance that entitles investors to fully deduct amounts invested in startups from their tax assessments.

Tax allowances are also available under startup legislations in Turkey[103] and Spain.[104] Turkey's approach is combined with a formal accreditation framework for angel investors which is required in order to benefit from the incentive. Utilising an accreditation option may be helpful to the state, in gathering and computing data on the cost and impact of tax allowances and credits. However, such options should not create procedural burdens that may also discourage large scale participation in such programs.[105]

103 Incentives for Angel Investment Activities

104 Tax incentives in the new Start-up Act in Spain

105 Google: The Digital Sprinters: Driving Growth in Emerging Markets

8.4.2.3 Stock options

Stock options are commonplace in compensation structures of startups,[106] and are critical for attracting talent to startups. To that extent, tax rules that facilitate employee stock options and ownership may advance the alignment of employee-employer interests towards technological innovations.[107] Incentives on stock options may be implemented by way of a tax exemption on stock option grants. Spain,[108] for example, allows an exemption for stock options worth EUR 50,000 per year.

8.4.3 Digital services tax and VAT on services exports

Digital service taxes (DSTs) or equalisation levies are taxes imposed on gross revenues of multinational firms based on their digital activities in a particular jurisdiction.[109] A large number of developed and developing countries around the world have indicated that imposing unilateral DSTs creates trade barriers and inhibits competition, resulting in lower quality and increased prices for goods and services. Several countries,[110] have implemented, or signalled an intention to implement DSTs. These include

106 Carta: Annual Equity Report 2022

107 Ibid at 44

108 Osborne Clarke: Main Tax Measures Included in Spain's Start-up Law

109 Understanding digital services tax and the OECD; Gordon Gray, Jennifer Huddleston Digital Services Taxes: A Primer

110 Digital Services Taxes DST – Global Tracker

countries such as Nigeria, Kenya and Italy, which have startup legislations.

Advocates for DSTs emphasise their role as a fiscal tool for the taxation of digital platforms operating in certain countries by attributing taxes based on physical presence. The central question is less about how much tax companies pay, than where they pay it, as international tax treaties currently require companies to pay the bulk of taxes in their home countries rather than the market countries where they have a presence. The logic is that DSTs seek to tackle this issue by targeting the location-specific profits[111] generated by these digital platforms within a country. Proponents argue that the goal is to ensure that digital platforms make a proportional tax contribution to the countries where they conduct business.

In view of the tax challenges arising from the digitalisation of the global economy,[112] the OECD, under the aegis of the OECD/G20 Inclusive Framework on Base Erosion and Profit Sharing (BEPS), has led the negotiation of a multilateral agreement on digital taxation that restrains signatories from imposing DSTs and establishes a global minimum tax of 15% on multinationals. These new rules are yet to be finalised, post a consultation process, but are currently expected to come into force by 2024.[113] However, not all African Union Member States have participated and/or endorsed these negotiations and in 2020, the African Tax Administration Forum (ATAF) published an approach to DST on the continent, which has since been used to guide African states in their efforts to explore and implement DSTs. Related to this is also the current global moratorium for duties on electronic transfers.[114]

The purpose of this Policy Framework with its model law is not to further or even end the debate that continues on the basis of the above and additional instruments. Rather, it spotlights startup specific considerations that Member States need to be cognisant of when exploring their preferred options within these frameworks.

DSTs can operate as trade barriers[115] and drive up costs for startups that depend on the services provided by companies subject to DSTs.[116] The same applies to the application of value added tax (VAT) on the exportation of services as it makes customers liable for double taxation, thus

[111] Location-specific rent is the excess profit a company earns from its activities in a location, over and above what it would earn if it operated in another location. This rent can come from a number of factors, such as access to users, data, and infrastructure that a platform can obtain in a particular location.

[112] OECD (2021), Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy

[113] OECD (2022), OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors, Indonesia

[114] Extension of Moratorium on the 1998 Declaration on Global Electronic Commerce

[115] Google: The Digital Sprinters: Driving Growth in Emerging Markets

[116] Digital Services Taxes Will Harm Startups Across the World

reducing the competitiveness of technically enabled services providers/software as a service (SaaS) companies that seek to cater to international markets. As with the global harmonisation of the treatment of taxation of goods and services, Member States should thus strive to support the coordination of the tax regime for digital goods and services at the regional level.[117]

Secondly, on a national level, startups in jurisdictions subject to DSTs may find that the benefit of tax exemptions delineated elsewhere in this framework is negated. Taxes such as VAT or Goods and Services Tax (GST)[118] may not fall within the definition of DSTs but could have an impact on startups. Whilst these taxes are usually charged on the services provided by non-resident suppliers, they are consumption taxes borne by customers, and may lead to higher business costs for startups who depend on the services.

Taxes charged on cloud technology services or products accessed via the cloud are relevant to this discourse. As digitalisation has progressed, cloud technology is increasingly crucial to delivery for startups. Cloud computing technology reduces costs for early-stage startups by providing affordable outsourced infrastructure that allows startups to focus on their core business, and scale faster. A 2021 study revealed that 75% of the 89 African companies surveyed confirmed that they use cloud services.[119] Taxes on cloud technology would drive up operational costs for startups. As part of an incentives framework, Member States may thus consider tax exemptions for eligible startups who **use** or **provide** cloud services, including the physical infrastructure elements.[120] Carve-outs on cloud taxes can be provided for startups that meet eligibility criteria under the startup law. An example can be seen in Chicago where startups that have been in existence for less than five years and have no more than USD 25 million in annual revenue are exempted from a cloud services tax.[121] Alternatively, or in addition, research and development tax reliefs that allow firms to claim credits or deduct expenditure on cloud computing costs, can be pursued.[122]

8.4.4 Tax exemptions for gender equity

Tax exemptions can be considered as the most generous form of incentive as they serve to remove the entire tax base from the scope of tax.[123] However, implementation of these benefits can be flawed if gender bias is disregarded, as the

117 African Union Data Policy Framework (2022)

118 Global VAT & GST on Digital Services to Consumers

119 Cloud Services Take Nigeria and Africa by Storm

120 Exemptions have been applied in Colombia (see SaaS Business: Why You Should Care about Colombia's VAT Exemption for Cloud Services)

121 Cloud Tax gives Startups Sticker Shock

122 Cloud Computing and Data Costs to be Covered Under Expanded Tax Credit

123 Effectiveness of Tax Incentives for Venture Capital and Business Angels to Foster the Investment of SMEs and Start-ups

structure and administration of tax systems can have different impacts on women and men.[124] Such bias may be implicit or explicit.[125] Correspondingly, tax systems can also be used to promote gender equity. This section highlights potential considerations for exemptions in the context of startups and measures to improve gender equality.

First, from a corporate taxation point of view, corporations globally are more likely to be owned, managed and staffed by men, while women's businesses are more often likely to be unincorporated.[126] Additionally, female founders are underrepresented in business sectors that attract the most startup financing.[127] From a policy perspective, one response to close these gaps could be the grant of larger capital gains tax exemptions to women-led, labelled startups. This would encourage the incorporation of businesses that would otherwise have remained unincorporated, and incentivise potential investors to allocate more resources to women-led firms. Additionally, lower corporate tax rates can be offered to firms that employ more women.

Tax systems are often evaluated in terms of ability to pay, equity, efficiency, and adequacy of revenues. When gender equality, among other objectives, is added to the list of tax policy criteria, the principle of ability to pay becomes of central concern.[128] An equitable tax system would be one that matches tax burdens with an individual's actual financial ability to pay taxes. Member States could consider the adoption of progressive tax policies under which the average tax rate would rise with income. With a more progressive system, individuals with lower income, the majority of which are women, face lower marginal tax rates and, hence, have stronger incentives to work.[129] As in Senegal, governments may also consider providing exemptions for social security contributions for persons who are disadvantaged.[130]

The adoption of progressive tax policies would likely require a medium-term perspective, especially in single-tax rate systems. However, Member States can begin with the treatment of items such as reduced personal income tax rates for individuals with lower annual incomes who establish startups within the definition of relevant legislation.

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124 Gender differences in taxation: Why do they matter?

125 Gendered Taxes: The Interaction of Tax Policy with Gender Equality

126 Katheleen Lahey, Gender, Taxation and Equality In Developing Countries: Issues and Policy Recommendations

127 In Search of Equity: Exploring Africa's Gender Gap in Startup Finance

128 Ibid at 100.

129 Ibid at 99.

130 Senegal Approves A-Three Year Tax Exemption for its Startups

Policy Framework Recommendation on Taxation

(a) Member States should consider providing for supportive tax policies, including tax incentives within their financial means to encourage startup development in their jurisdiction, to be implemented by virtue of the startup act or adjacent finance laws, as provided for by their legal systems. In so doing, careful consideration must be given to the interplay of labelling requirements and tax incentives.

Specifically, Member States shall consider:

- assessing various corporate tax incentives taking into account the maximum labelling period for startups, and existing tax laws;
- adopting sunset clauses in tax legislation which would limit the duration of tax regimes, and allow extensions as required. This action would assist in limiting the costs of ineffective incentive programmes;
- the purpose of the proposed incentive scheme e.g. would the focus be to incentivise citizens for pursuit of more innovative activities or rather attract investments from potential investors to underfinanced sectors; and
- identify existing personal income tax incentives and assess their impacts against stated objectives.

(b) Member States should consider enhancing regional and continental cooperation, including regarding the development of multilateral frameworks, to avoid harmful tax harmonisation and support the collective competitiveness of the African continent. Specifically regarding digital services taxes, Member States are encouraged to:

- assess the potential impact of proposed digital services taxes before implementation, including through the review of studies and public consultations with consumers, tax payers, digital service providers, and sector-specific regulatory authorities;
- prefer an income, rather than revenues or sales based approach, which would only be passed down to the consumer;
- Provide for a clear definition of "digital services" to simplify compliance and administration;
- consider the development of a unified regional digital tax policy, which would, among other benefits, reduce regulatory uncertainty and compliance costs for startups in different African markets.

(c) Member States need to pay particular attention to the position of women, and, towards that end:

- conduct surveys on the demographics of existing startups;
- assess existing barriers and factors that could impose greater tax burdens on certain categories of startup founders and employees and deliberately work to remove them in designing new incentives.

Model provision

Notwithstanding the provisions of other legislation, and in accordance with the details provided hereunder, an eligible startup shall be entitled to:

a. deduction of its expenses on research and development;
b. favourable treatment for its directors and employees regarding their personal income tax in relation to capital gains, their personal investments in the business, and stock options as per the follows: *To be determined by Member States;*
c. the option to carry forward net-operating-losses as per the following terms: *To be determined by Member States;*
d. VAT exemptions on imported goods as follows: *To be determined by Member States;*
e. other VAT and other sales related taxes as follows: *To be determined by Member States .*

The designated agency shall develop a mechanism to monitor expenditure against the formal tax expenditure budget and startup related incentives shall be given priority within the industrial development expenditure book.

The designated agency shall:

a. provide assistance to eligible startups in accessing tax incentives through the mandated revenue authority, through business support and coordination between both authorities;
b. consult with participants in the ecosystem particularly existing founders and angel investors to monitor impact and provide insights into emerging needs, and facilitate cost-benefit analyses on the proposals;
c. establish a seamless reporting mechanism for beneficiaries of incentives;
d. conduct a periodic review of existing tax incentives for assessment against outcome.

8.5 Structural enablement

8.5.1 Funding

A well documented challenge faced by startups is access to financing. Funding allows startup businesses to hire, train and retain talent, build and launch products, build a customer base and eventually develop cash flow, all of which enable the startups to gain access to greater financing should the need arise. The African technology startup scene has been a beneficiary of private funding activities with figures rising above USD 3 billion in 2022.[131] In spite of such high deal flow and volume, there still remains an access to capital challenge given the competitive nature of the venture financing environment which essentially avails these funds to the best performing and most promising businesses globally, their aim being to generate a return in multiples. This automatically precludes a great majority of early and growth stage businesses that do not meet the cut from a venture financing perspective.[132] Further, venture funding is greatly susceptible to the global economic environment. The realities of which have been faced most

[131] Disrupt Africa Annual Report 2022.

[132] Africa: number of startups by country | Statista (confirm primary data source)

recently in the COVID-19 pandemic period as well as the 2022 global market downturn where foreign funding runs dry and businesses large and small are left vulnerable and at great risk of massive losses, lay offs, and even business failure.

This section will explore methods and approaches that governments have taken to ensure that their startups can access funds in a sustainable manner and environment. It also takes full cognizance of the realities of women facing disproportionately lower levels of finance.[133] This section will look into government funding, pension and insurance scheme financing regulation, credit guarantee schemes, and government procurement.

8.5.1.1 Government funding of startups

In 2022, tech-enabled businesses that raised money from venture capital, raised over 80% from foreign funds.[134] At the downturn of the global economy, with the majority of the VCs active in Africa being foreign firms, VC fund access declined rapidly, so that the tail end of Q3 and Q4 were reported as the slowest in a year when African startups managed to raise over USD 4 billion,[135] a similar funding slowdown having been experienced in the 2020-2021 period with the global pandemic.[136] This served as a critical time for startup businesses with a change in consumer behaviours and demand affecting cash flows and an all round financial difficulty. Governments intervened in a variety of ways such as tax holidays for qualifying businesses and access to emergency funding which gave the continent an opportunity to witness the possibility of the government stepping in to support private financial markets gaps.[137]

Funds are a common means through which states are able to ensure and support access to core financing for startups, filling the financing gap and helping to unlock the startup potential. The structure, operation and strategy of such funds is subject to varying regulatory and policy objectives and as such may be approached differently. Uniquely, in the case of startup legislation, is the set up of funds for seed investment and loan guarantees as in Nigeria, and providing grants and venture investing as in Tunisia, explored further below.

Such macroeconomic realities strengthen the case for national readiness to structure government funding interventions for businesses. Governments have taken different approaches to making funds available to startups as follows:

133 African Union Launches Initiative to unlock USD20 billion for Financial and Economic Inclusion of African Women and Youth | African Union

134 Africa Private Capital Activity Report, H1, 2022, Africa Private Capital Activity

135 Africa Private Capital Activity Report, H1, 2022

136 Africa Venture Capital Association, pg 10

137 Small businesses receive Sh4bn funding under state's credit guarantee scheme | Nation

a. **Government loans**: Government-originated loans can play a significant role in responding to the difficulty in accessing finance that startups face. Governments are often capable of providing loans with more favourable terms such as lower interest rates, and offering flexibility around collateral. Nigeria operates a Youth Investment Fund which allows entrepreneurs to access loans upon successful completion of an entrepreneurship training program.[138] This loan is accessible to businesses domiciled and in operation in Nigeria, with a term of 5 years maximum at an inclusive interest rate of 5% per annum, with loan amounts varying dependent on the registration status. In addition, this loan does not require collateral in order to access, but instead approaches collateralisation by requiring that any assets purchased while a business is under the scheme be registered with the National Collateral Registry. Kenya[139] runs a similar initiative dubbed "Vuka loans" where youth can access loans from the Youth Enterprise Development Fund. In contrast to the approach in Nigeria, loans past a given limit (KSH 100,000 or ~ USD 799.38) require regular security with a graduated repayment schedule where the highest amounts available are repayable within six years. This loan attracts a 6% interest rate and a 1% management fee payable at the point of disbursement. Malta through the Malta Enterprise has also made available to Maltese startups, a wide variety of loans issued from funds allocated by the state.[140] In the UK, the government offers loans to businesses at a lower interest rate than the free credit market (6%) and creates a scheme for repayment complete with repayment periods of 1-5 years through a government-owned bank (British Business Bank).[141] Common among these loan initiatives are lower interest rates, loan packages targeted at tailored startups' needs such as starting, expansion and growth, and overhead expenses. This allows the loan offeror to determine the best combination of loan terms and features while catering specifically for a need that otherwise a startup would be hard pressed to get a loan for.

b. **Grants**: Tunisia operates different grant programs targeted at different opportunities. For example the "AIR" grant[142] is a part subsidy (60%)part repayable advance (40%) to support startups in the proof of concept and

[138] Nigeria Youth Investment Fund - Federal Ministry of Youth and Sports Development

[139] VUKA LOANS – Youth Enterprise Development Fund

[140] Start in Malta | Startup Finance

[141] British Business Bank, Start Up Loans

[142] AIR | Startup Tunisia

prototyping an initial product going into market. The repayment terms are uniquely crafted as they only require the interest free repayment of the repayable advance (40%) which depends on a startup acquiring funding that is at least five times the repayable advance. Malta also provides a comprehensive case study of the variety of methods that grants have been used to support startups.[143] The grants are designed as short term initiatives with a budgeted amount available to run for a limited period of time, and are concluded periodically either at the funds' end or the exercise of government discretion. The government of India through the Startup India Seed Fund Scheme[144] runs a rolling grant fund where startups can apply year round to receive a grant to build their concept beyond the proof of concept level. [145]

c. **Fund of Funds (FoF):** These deploy capital through funds, in this case venture funds, which then take on the burden of managing, distributing and exiting the funds. Tunisia, through its Startup Tunisia regime, set up the ANAVVA Fund[146] which is seeking to work with over thirteen investment funds for this purpose. This Fund is set up as a core part of the startup ecosystem strategy under Tunisia's Startup Act that raises funds in order to deploy them to startups at different stages of the life cycle (seed, growth series and late stage) through other investment funds. The Algerian Startup Fund is set up as a public venture company that provides financing in exchange for equity shares. The fund is financed by other agencies including public banks and has disbursed over DZD 510 million (USD 3.7 million) to 390 tech project holders since its launch in early 2021.[147] Angola has approached this issue by establishing a public venture capital company, FACRA (Angolan Venture Capital Active Fund), set up to raise and deploy capital, but also empowered to develop capacity to manage the investments full term.[148]

At the ministerial African Startup Conference held in Algeria in December 2022, it was resolved that a pan-African FoF would be established to enable startups on the continent. Participants resolved that national contact points within Member States, and a permanent Secretariat for the fund were necessary for the implementation and monitoring of a pan-African

143 Start in Malta | Startup Finance

144 Startup India Seed Fund Scheme

145 Guidelines-FundScheme-Startup

146 The Fund of Funds | Startup Tunisia

147 Algeria: a good year for the Startup Financing Fund - Resilient Digital Africa (digital-africa.co)

148 Article 3, Regulation for the Management of the Angolan Venture Capital Active Fund - FACRA

FoF mandate. To bring this resolution to fruition, there are useful lessons to draw from existing FoF structures and tailor-making each lesson to align with each respective member state's constitutional processes. The unique country contexts within which each of these Funds operate as well as the management of the Funds could provide useful lessons to how African Union Member States could establish a pan-African Fund of Funds. For instance, Tunisia's ANAVVA Fund delineates startup funding depending on whether startups are at Seed, Early or Late Stage; providing a model for criteria to employ in determining the scope of funding for any given stage of a startups lifecycle. The Venture Capital Fund of Funds operating under the SA SME Fund, on the other hand, only provides funding to late stage startups.

Still, the feasibility of a continental option must first be explored. One of the resolutions contained in the draft Algiers Ministerial Declaration on Startups in Africa by the African Union indicated the importance of this careful consideration; with a call to engage "African financial institutions, funds active in the region, and African experts to evaluate ... the feasibility of creating a fund of funds dedicated to the financing of African startups active on the continent.

Ultimately, we acknowledge that the decision regarding scope and feasibility of government support must be the result of a broad consideration of economic, financial, political and administrative realities unique to each Member State.

8.5.1.2 Pension and insurance schemes regulation

Africa's investor landscape of particular relevance to tech startups includes pension and insurance schemes.[149] Such institutional funds are often constituted as an "authority", governed on the basis of a framework of boards and committees, separately focusing on risk and investment management. It is also common to find guidelines for the authorities on permissible asset classes and allocations per class. For instance, both Nigeria[150] and Kenya[151] regulate "unquoted shares" in their respective insurance regulations while explicitly naming private equity and venture capital in their pension regulations. Both countries permit up to 10% investment in PE/VC as an asset class but still stand at an allocation reality of between 0-5%. This information is

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[149] Why institutional investors in Africa must increase their investment in private markets - FSD Africa, 16 March 2021.

[150] National Insurance Commission, NAICOM Prudential Guidelines, Guideline 3.4; National Pension Commission, Regulation on Investment of Pension Fund Assets, Reg 4.7.

[151] Insurance Regulatory Authority, Guideline on Investment Management, Guideline 5.6.3 ; Retirement Benefits Authority,

presented as representative of the regulatory approach and allocation realities across most of the continent. The low allocation realities are often the consequence of one or more of the following impediments: low capacity, high risk and lack of effective risk mitigation, liquidity requirements, high management cost for PE/VC investment, and an unregulated PE/VC environment.[152] It is also worth noting that asset allocations across the surveyed regulations shows a policy position that prefers and incentivises fixed income assets such as government bonds and real estate.[153]

Given their high volume of assets under management and long holding periods, institutional investors are considered a great candidate for the long term/patient capital that early and growth stage startups require. The EU created an investment vehicle known as the European Long Term Investment Fund (ELTIF) to plug this gap, with the following characteristics:[154]

- As a fund-of-fund (see above), ELTIF transfers significant costs and performance obligations to a more specialised fund manager dependent on investment sectors.
- To spread risk, ELTIF structures are allowed to diversify their assets as well as investment sectors within their portfolio as a risk management strategy.
- Although a fund has an expected minimum lock period for five years within which to invest the money, managers can offer redemption anywhere after the five year mark. This means that an investor may set their redemption term depending on their appetite for risk.
- ELTIF has access to higher risk assets such as derivatives and options but is limited to using them only for hedging purposes. This offers greater security around fund manager decision making and ensures that the fund does not have higher than necessary risk exposure.

Since its introduction, multiple amendments have been made including to the minimum ticket size, minimum capital requirements, and allowable assets.[155] In spite of the many changes and improvements, however, ELTIF has not received the uptake or attracted capital volumes and this has been attributed to awareness, independent financial education and most importantly trust.[156] Insurers and pension schemes prioritise benefit security and build investment policy around ensuring that they are able

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152 South African Venture Capital Association, Pension Funds, Private Equity and Private Debt in Southern Africa, Research Report 2022.

153 East African Venture Capital Association, Private Equity Investing for Pension Funds in East Africa, Market Study Report, , Chapter 2, Oct 2019

154 Regulation EU 2015/760

155 Amending the European Long-Term Investment Funds (ELTIFs) Regulation (europa.eu)

156 Report on the proposal amending Regulation EU 2015/780

to deliver on the promises made to policyholders.[157] As such this framework does not make attempts to recommend a different investment philosophy but looks to propose the creation of mechanisms that allow greater exercise and deployment of the already permissible allocations to the private equity and venture capital asset category.

8.5.1.3 Credit guarantee schemes

Startup businesses, particularly in the early stages, will often find it difficult to take debt financing in their own capacity due to lack of acceptable forms of collateral. As a key issue barring startups from accessing bank loans, government-backed guarantee schemes have emerged in solving this challenge. India announced the establishment of a Credit Guarantee Scheme for Startups (CGSS) dubbed a "scheme to act as a key enabler and risk mitigation measure for lending institutions, enabling collateral free funding to startups'.[158] The USA has its own guarantee scheme under the Small Business Administration where the government agrees to guarantee loans within limit when taken from pre-qualified partner banks.[159] Credit Guarantee schemes (CGS) targeted at SMEs are also operational in Kenya[160] and in Nigeria.[161] While in Kenya the Central Bank works with already licenced financial institutions that register to participate, the Apex Bank in Nigeria approaches the regulation through the licensing of credit guarantee companies. Tunisia has created a unique Startup Guarantee Fund by virtue of its Act that is designed to protect the investment of non-bank investors i.e. private equity, venture capital and seed funds.

Available literature on credit guarantee schemes presents mixed positions on their contribution to businesses,[162] with much less focus on technology startups which are often reported on within the operational definition of SMEs. This lack of data is greatly attributed to the variety in policy evaluation methods, rigour and performance indicators being tested by any such undertaking. That being said, credit guarantees seem to have a generally positive impact on retaining employees and sustained operation with little to be said about their contribution to productivity and market competitiveness. CGS have been credited with shielding

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[157] Blome, S. et al. (2007), "Pension Fund Regulation and Risk Management: Results from an ALM Optimisation Exercise", OECD Working Papers on Insurance and Private Pensions, No. 8, OECD

[158] Department for Promotion of Industry and Internal Trade (DPIIT) notifies establishment of Credit Guarantee Scheme for Startups (CGSS)

[159] Loans (sba.gov)

[160] The Public Finance Management (Credit Guarantee Scheme) Regulations 2020 PFM-Credit-Guarantee-Scheme-Regulations-2020.pdf (treasury.go.ke)

[161] Guidelines for the Regulation and Supervision of Credit Guarantee Companies in Nigeria, March 2022, CircularGuidelinesCGCfinal.pdf (cbn.gov.ng)

[162] Evaluating Publicly Supported Credit Guarantee Programmes For SMEs OECD 2017

small businesses from complete failure i.e market exits and closure, particularly during times of crisis as has been the case in Kenya (COVID19 CGS)[163] and the UK (great recession and COVID-19).[164] CGS schemes have also been criticised for not offering holistic business support that would contribute to the longevity and productivity metrics earlier mentioned and to deploy a singular focus on loan repayment.

This framework remains cognizant of the financial implications and diverse constraints and realities facing Member States that would impact the development of CGS and as such develops the following recommendations.

8.5.1.4 Government procurement

Public procurement frameworks: With the increasing need for digitisation, government procurement is a good opportunity to promote business with startups to supply their digitisation and innovation needs. Public procurement legal frameworks are designed to enable and promote open, transparent and fair access to government contracting opportunities. However, often they include criteria on prior experience, tendering process and proof of prescribed turnover, which startups can find difficult to meet due to the nature of their business. As a consequence, countries have increasingly evolved legal and policy frameworks to make room for doing business with startups. Member States can also consider how to increase efficiency, accountability, and transparency concerning public procurement, as this will increase competition for public sector contracts. For instance, the European Union through its Public Procurement directives has innovated a Public Procurement of Innovative Solutions (PPI) framework.[165] PPI is invoked where public bodies acquire innovative solutions, acting as early adopters or the early launch customer for the innovation.

The Startup India initiative, on the other hand, created the Government e-Marketplace (GeM) where startups can reach out to state-owned agencies and government bodies to offer their services. India has also made legislative and regulatory changes to support startup participation in public procurement such as:[166]

- Relaxation of prior experience and turnover requirements for labelled and recognised startups when bidding for consultancy and other services.

[163]The Annual Performance report for the MSMEs credit guarantee scheme.pdf (parliament.go.ke), Treasury and National Planning, 2021/22 Financial Year,

[164] The Effects of Small Firm Loan Guarantees in the UK: Lessons for the COVID-19 Pandemic Crisis, J, Gonzalez-Uribe, S Wang, 2022

[165] Frequently Asked Questions on PCP and PPI, https://ec.europa.eu/newsroom/dae/redirection/document/5207 , published on 23 April 2014.

[166] Rule 170(i), General Financial Rules, India, 2017, GFR amendment2 (startupindia.gov.in)

- Permission for departments to award contracts to unsolicited proposals.[167]

Some Member States may choose to require that a certain percentage of ownership in companies bidding for government contracts is held by local individuals or entities. If choosing to introduce such local content requirements, Member States are well advised to ensure that the measure's design contributes to local economic development and job creation, as intended, while startups benefit by gaining access to procurement opportunities that may be more readily available to locally owned businesses. Other governments may choose to give preference to startups which source their products and services from local suppliers, to encourage startups to build and strengthen their relationships with local suppliers, supporting the growth of the local supply chain. To this end, startups which engage local suppliers would qualify for preference points in the procurement process, giving them a competitive edge. There are risks to consider, however. For instance, mandating local ownership or suppliers could prioritise local businesses over others with better expertise and quality, or prevent governments from accessing global expertise and specialised solutions that could address specific challenges more effectively. Whichever approach Member States select, it is pertinent to weigh the risks of mandatory localisation against the benefits sought to be actualised.

Modernising government services: Cloud provides organisations with leading infrastructure, platform capabilities and industry solutions, along with expertise, to reinvent their business with data-powered innovation on modern computing infrastructure. The same is also true for public services. Most Member States are pursuing some form of public service digitisation, in line with the drive to move the continent towards more efficient delivery. One critical element of this is through the adoption of cloud technology, which brings to bear various advantages, including increased efficiencies and cost savings in service delivery. A great example is Rwanda, where the government used cloud-based technologies to triage and track COVID-19 patients and free up strained health worker resources.[168] As a major service provider, Member States' commitment to their innovation agenda presents great opportunities to engage with startups from concept to prototyping and launch. Combining government digitisation and regulatory strategy to unlock procurement opportunities for startups can deliver massive value at scale, and positively impact local startups' access to commercially valuable opportunities, achieving both digitisation and a strengthening of the relationship and goodwill between government and the startup ecosystem.

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[167] Policy on Unsolicited Non-Fare Revenue Proposals, Commercial Circular No 2 of 2017, CC_02_2017.PDF (indianrailways.gov.in)

[168] Cloud Services Advance Digital Transformation for Governments (worldbank.org)

Policy Framework Recommendation for Structural enablement

(a) Member States should consider designing and implementing a means to supply funds and financial support to startups in order to provide safety against harsh global and macro-economic factors and low funding periods with the objective of protecting the progress made by startups, diversifying funding options for startups, and providing more accessible funds options.

(b) Member States need to adopt a blended approach to create an environment that accommodates and supports the safe, secure and productive participation of institutional investors in startup investing towards greater deployment of allowed institutional assets.

Model provision

Government funds: The designated authority shall develop and implement funding mechanisms tailored to the different stages of the startup lifecycle given the divergence in their needs, and in so doing, shall:

a. design and deploy a broad and diversified criteria under the labelling regime for qualifying startups in order to diversify the sorts of funds available;
b. provision for the most affordable repayment interest rate in order to make the loans affordable and design an effective repayments and follow up mechanism;
c. make available simple and accessible information and digital portal to access the same.

Institutional investors: The designated authority shall:

a. coordinate a process whereby existing regulations governing institutional investor bodies are amended as necessary to mandate and require hiring board members with private equity and venture capital experience;
b. develop an institutional investor long-term investment strategy for startup investing to guide the early participation of institutional investors in startups as an asset class;
c. develop prudential and any other necessary guidelines aimed at the operation of PE/VC entities investing institutional funds;
d. consider financial aid to subsidise the high cost of management services where institutional investors engage with professional fund management service providers and tax credit for other related management expenses;
e. constitute a national investment advisory body to develop a special asset class office to serve as the key liaison of institutional investors and other public bodies on matters private equity and venture capital, which shall:
    - develop standard institutional investor capacity,
    - develop and availing publication, reporting and any other documentation necessary for the information of institutional investors,
    - conduct and provide a report on situational and risk analysis for institutional investors with long term investment projections.

Credit guarantees: The mandated monetary and fiscal authority (Central Bank) shall, under its supervisory and oversight mandate:

a. develop and implement a credit guaranteeing framework for startups through amendment to existing mechanisms, establishment of a fund for guarantees, or licensing of guarantee companies, as relevant,based on the principles of this law, and with consideration of/ for:
    - credit/debt from private VC/PE funds and seed investing requiring guarantees,
    - an investment guarantee scheme for institutional investors implemented as against determined ticket sizes,

b. collaborate with the designated startup authority (Startup Agency) to align labelling requirements with the objectives and mechanisms for the credit guarantee scheme and implement assessment and due-diligence procedures through the agency's one-stop-shop.

The designated startup authority, shall implement programmes to:

a. promote pre and post loan guarantee support in business operations and development;
b. promote the development of targeted loan performance and loan recovery tactics that enable loan performance and increase repayment rates.

Public procurement: The relevant authority(s) shall implement a combination of legislative and initiative reform to create an environment where startups are placed in a better position to secure government contract opportunities.

a. Specifically, public procurement legislation shall provide for criteria and threshold relaxation rules such as prior experience, high annual turnovers, unsolicited proposals and direct contact with public bodies while remaining cognisant of national constitutional principles and the broader legal framework;
b. Access to procurement opportunities shall be digitised and democratised through unique mechanisms such as expedited processes and opportunity matching platforms targeting startups;
c. Local content quotas in the general procurement environment shall be reserved for startups in competitive sectors/ sub-sectors.

8.5.2 Alternative funding sources

There are well established formal investment structures, including, for example, equity, debt, and convertible debt. To bridge the gap, startups often turn to alternative funding options. There are a range of less obvious semi- or informal investment structures available to support startups in the foundational stages of their life cycle; whether establishing their proof of concept, product research and development or acquisition of key personnel, amongst others. Amongst these are bootstrapping, crowdfunding and family and friend investments.

- **Bootstrapping**. Within the realm of foundational investment approaches, bootstrapping refers to startups relying solely on internal or existing funds and resources to launch and sustain their businesses. While this approach allows founders to maintain complete control, it also places the entire financial risk on them, potentially limiting growth due to a lack of liquidity. Member States must necessarily have a responsibility to educate founders on the importance of establishing their business as a legal entity and complying with relevant legal and regulatory frameworks.

- **Crowdfunding**, an increasingly common collective investment method in today's interconnected digital landscape, involves raising funds from a large number of individuals through various mechanisms including donation-based[169], rewards-based, loan-based[170], or pre-selling-based[171], or equity-based crowdfunding[172]. Currently, the first two categories constitute the largest percentage of crowdfunding, it is however expected that the latter two will play an increasing role in defining startups in the future. There are other types of crowdfunding, including, but not limited to securities-based crowdfunding; where startups offer securities such as bonds, in exchange for investment. This type of crowdfunding is yet to be legalised in many markets. Despite the growing popularity, there is a need for comprehensive legislation at the African Union level to address risks, ensure transparency, and protect both entrepreneurs and investors from legal uncertainties and potential fraud. In the absence of harmonised instruments on the topic, Member States may choose to encourage the industry to impose self-regulation, principles and guidelines, to safeguard investors while encouraging crowdfunding investments.

  Note also, that at both national and regional level, there have been

[169] Receiving donations from members of the public for a specific purpose or project. These donations are made in good faith with no expectation of a return on investment.

[170] Investors lend their finances to the company in exchange for an interest, and are thus entitled to both their interest and principal upon the expiration of a specified tenure. In some other instances, they receive a return on their investment through a defined revenue-sharing formula, which could include an agreed percentage of the earnings

[171] Investors donate towards the execution of a specific project in exchange for early access to the product or service, or a discount on the cost of the product or service upon release. This is also known as pre-ordering-based crowdfunding.

[172] Investors receive a share of the company in exchange for their investment. The cost of each unit share may be determined by an internal or third-party valuation. Equity may be divided into various classes and may possess voting rights. Startups experiencing difficulty in raising funds through traditional channels can leverage equity based crowdfunding as a complement or substitute for seed financing.

efforts to recognise the growing importance of crowdfunding as a veritable investment mechanism. For instance, Kenya's Capital Markets Authority published the Draft Capital Markets Investment Based Crowdfunding Regulations in 2021; designed to regulate crowdfunding and protect investors using such platforms. In Cape Verde, both crowdfunding activity and platforms are required to notify the PROEMPRESA (Institute for Support and Business Promotion) which is also tasked with incentivising crowdfunding activity with an aim to boost this approach within the country. [173]A useful resource for Member States to consider is the African Crowdfunding Association (ACfa); established to foster the African crowdfunding industry. In 2018, with support from FSD Africa, ACfA developed a regulatory framework for crowdfunding in Africa, the "ACfA Label Framework", and evolved into a Self-Regulatory Organization (SRO). The ACfA Label Framework may be formally recognised by any African regulatory authority seeking to advance crowdfunding as a capital markets tool in their jurisdiction. Regulation / self-regulation around crowdfunding must keep sight of- and control for the main risks including, amongst others:

  - Given the relative novelty of crowdfunding, there is a higher risk of fraudulent schemes and scams targeting unsuspecting investors;
  - Crowdfunding platforms may not conduct due diligence on startups, exacerbating the risk of investing in high-risk or unsustainable ventures;
  - Crowdfunded startups may lack liquidity, making it challenging for investors to exit or realise returns quickly.

- **Family and friends investments** present another alternative — often informal — funding source for startups, involving investments made by a group of individuals related by blood, marriage or friendship. While these investments can be a means to pool resources and access opportunities collectively, they also carry significant risks, particularly as they are less likely to be formalised, or if they are, there is heightened pressure for returns even in the lossmaking stages of the startup's lifecycle. National laws must consider the possible means to support startups which go this route, by ensuring for instance that model contract templates which stipulate standard equity, repayment and dispute terms for such specific instances, providing

[173] Crowdfunding, PROEMPRESSA

security to all parties, are widely known and accessible.

Policy Framework Recommendation on Alternative funding Sources

The designated authority shall among others, establish processes to mitigate the risk of fraud, default and dispute in the context of informal and formal collective investment initiatives including but not limited to: bootstrapping, donations, crowdfunding, and investments by family and/or friends. The designated authority shall have regard to the following:

- Set minimum financial management and corporate governance standards for companies seeking to operate as labelled startups.
- Compel labelled startups to conduct adequate due diligence in their contractual relationships with operators, industry partners, contractors, and agents.
- Collaborate with relevant authorities to emplace a whistle-blowing structure for employees and investors to report erring founders of labelled startups.
- Collaborate with relevant authorities, including a designated One-Stop Shop, to design and avail easily understandable and accessible model contractual templates relevant to collective investment structures. Amongst other things, such model contracts shall reference investment and repayment terms, duration, protections, additional financial liabilities and dispute mechanisms.

8.5.3 Dispute resolution

8.5.3.1 Investor-state dispute resolution

International investments in Africa are often protected by virtue of foreign investment laws and bilateral investment treaties. One important component of these instruments is the provision of dispute settlement mechanisms specifically designed to facilitate the settlement of disagreements between investors and their host governments. International treaties have long been hailed as the global best practice standard in this regard, and International investors attach great importance to the existence of such treaties. And in fact, on the basis thereof, the continent has experienced an increasing number of claims by African investors and/or against African states. In accordance with international trends triggered by a series of controversial cases and judgements in the early 2010s, however, African governments have also been in the process of renegotiating and/or redesigning their treaties and laws to protect general policy objectives and hedge against the undue use of dispute resolution mechanisms offered under these instruments.[174] There has also been

[174] Investment Treaty Protection: How to safeguard foreign investments in Africa, *Whael and others*.

an increasing number of African arbitrators under international tribunals, such as the International Centre for the Settlement of Investment Disputes (ICSID), further evincing the continent's growing confidence in designing international instruments according to its needs and expectations.

Domestication of the treaties is often coupled with specific provisions in national investment laws. In South Africa, for example, the foreign investor is provided with mediation recourse within the laws of South Africa.[175] Nigeria's approach prioritises amicable settlement as the mandatory first step after which the choice is dependent on the nationality of the investor and the scheme of international agreements and treaties that apply to the parties and in the event of a disagreement as to precedence, the final resort being the ICSID rules.[176] Rwanda also prioritises amicable settlement, then the agreed institution or procedure as provided for in agreements, in the absence of which both parties are required to refer to the competent court.[177] The collective position of the African Union — as documented in the Pan African Investment Code (non-binding) — has been that investor-state disputes are to be resolved amicably first before resorting to arbitration in a public or private alternative dispute resolution centre and that in the event of arbitration, the United Nations Commission on International Trade Law (UNCITRAL) Rules are to be preferred.[178]

With the coming into force of the AfCFTA Investment Protocol, Member States are apprised of the aspiration of the framework and its vision for state-investor disputes. The Protocol requires Member States to devise dispute prevention and grievance management processes and mechanisms within competent bodies with the aim of de-escalating and resolving challenges and avoiding full blown disputes.[179] In the case of a dispute, the Protocol calls on the use of amicable resolution mechanisms available within the host state before pursuing resolution beyond one's borders[180]. The Protocol and Rules Annex are now poised as the continental standard for intra-African state-investor disputes while allowing its proposition for third parties such as disputes involving foreign investors.

8.5.3.2 Contractual dispute resolution

Alternative dispute resolution (ADR) may also be provided for under domestic law, available to any and all parties who provide for the same as part of their contractual agreements, which can increase certainty for international

[175] Section 13, Protection of Investment Act, No 22 of 2015

[176] Nigerian Investment Promotion Commission Act, Chapter N117, Decree No 16 of 1995.

[177] Article 13, Investment Promotion and Facilitation Act.

[178] Article 42, Pan African Investment Code, 2016.

[179] Article 45, Protocol To The Agreement Establishing The African Continental Free Trade Area on Investment 2023, hereafter Investment Protocol.

[180] Article 46, Investment Protocol.

investors while reducing costs for other involved parties, including startups.

ADR comes highly preferred among the investment community with a range of mechanisms available from low cost, voluntary and non-binding methods (mediation, negotiation) to arbitration as parties pursue finality and conclusion of the dispute and enforcement of dispute awards. While the onus on providing for strong ADR lies with the contracting parties, Member States can facilitate these mechanisms by providing for specific processes under national law. Mauritius[181] and South Africa[182] are some of Africa's leading destinations for international commercial arbitration, despite adopting very different approaches. For instance, while South Africa allows intervention regarding the appointment of arbitrators, Mauritius does not. South Africa has further adopted the closed list under Article 5 of the UNCITRAL model law where courts can also intervene in resolving the challenge of an arbitrator, terminating their mandate, as well as determining jurisdiction of the arbitrator. Both Member States also provide for clear arbitration rules of procedure with great flexibility for the parties to make decisions about the preferred procedure. From 2016 to 2021 Mauritius ran a joint venture with the London Centre for International Arbitration (LCIA) which saw a rise in referrals and preference of Mauritius as a destination. It is argued that these factors have greatly contributed to the high prevalence of local arbitration in these countries.

Such processes can significantly reduce cost, shorten dispute timelines, increase predictability and provide for sector specific expertise to be involved in disputes. The latter is provided for by virtue of the system of arbitration which allows (or mandates) for the appointment of arbitrators familiar with the sector and subject matter. Especially for innovation-driven sectors where startups tend to play, such technical knowledge can be critical in ensuring a swift and appropriate dispute resolution outcome.

The second element in the context of contractual dispute resolution concerns the choice of governing law and jurisdiction (where no ADR has been chosen).[183] The governing law impacts the rights and obligations of parties as well as interpretation and remedies awarded, and stipulating the applicable law is particularly crucial in the case of cross-border contracts. Member States are encouraged to allow for choice of law clauses in commercial contracts, including in procurement contracts to incentivise international investments.

[181] International Arbitration 2022, Mauritius Comparisons | Global Practice Guides | Chambers and Partners

[182] International Arbitration 2022, South Africa, Comparisons | Global Practice Guides | Chambers and Partners

[183] Joint ventures: choice of law and choosing the right dispute resolution forum, Norton Rose Fulbright

Policy Recommendation on Dispute Resolution

Member States should consider creating a consistent, organised and harmonised international investment environment capable of offering consistent protections for local and international investors. To implement this recommendation, Member States shall negotiate and ratify regional and continental agreements to enable investors access to regional and continental dispute resolution mechanisms of the Member States' choice.

Model provision

The relevant authority (Startup Authority) shall:

a. In collaboration with national investment promotion authorities, include/ refer to the definition of startups and investing proffered under this framework as a qualifying investment under national investment legislation, to streamline and ease access to protections and remedies for investors,
b. Delineate relevant sectors for purposes of startup investment, as aligned with national interest and law, under the relevant national investment legislation,
c. Develop a model contract that provides for strong use of ADR and clear clauses regarding choice of law and jurisdiction for startups to use in managing their contractual obligations;
d. Collaborate with other relevant authorities to promote the use of ADR by:
    - promoting the organisation, training and development of ADR professionals through stimulating and supporting their associative and organising bodies;
    - providing financial support for professionals looking to obtain the necessary accreditation to practise ADR;
    - promoting the appointment of local and national ADR professionals and practitioners in local and international Arbitrations involving their Member States;
    - adopt regional and international ADR treaties in a manner that harmonises as far as possible the provisions therein;
    - evolve, adopt, amend and harmonise policies and laws that strengthen and effect the fast, simple and efficient enforcement of ADR awards;
    - promote the use of arbitration rules from chambers and centres most preferred by investors active in their countries to increase the attractiveness of their nations as destinations for arbitration as far as possible;
    - develop arbitration rules and bilateral agreements with the relevant arbitration centres where high volumes of startup investment are flowing from;
    - setting competitive prices and providing financial aid as far as allowable in law to parties taking up ADR within Member States;
    - promoting increased efficiency in national mechanisms for ADR enforcement.

8.5.4 Insurance

Business operations present plenty of liabilities; even more so businesses operating in the digital environment. A startup is faced with at least five insurance obligations that it needs to meet in order to lawfully operate within a jurisdiction, ranging from labour-related insurance obligations (such as health and social security remittances) to operations-related insurance such as cybersecurity, business interruption, product liability, and directors and officers covers. While exploring the horizons of digital technologies and the opportunities they present, startups are likely to find themselves exposed to newer, unknown and yet to be quantified risks.

By nature these risks open startups up to major costs while facing greater possibilities of high insurance premium costs, litigation and other claims. While there exists a need to regulate their operation, an over exposed regulatory environment can serve to stifle innovation. Regulators have here an opportunity to reduce legal exposure and risks through the adoption of frameworks that approach such liability reasonably and predictably, including safeguards against abuse. Examples include safe-harbour standards and bright-line limits on platform and intermediary liability. Intermediary liability has been more broadly explored through content platforms.[184] However, host, platform and intermediary business models exist in other sectors such as finance, health and e-commerce, as startups seek to offer the sort of intermediation and facilitation that has become so resonant with the digital economy. It can be expected that newer risks - and as such exposure,- will similarly emerge. Governments have the opportunity to safeguard the operating environment affecting tech startups by updating their liability frameworks, encouraging compliance, adherence to legal requirements to promote online safety and security, while limiting exposure to such risks.

It is common for startups to organise themselves in a manner that externalises some of these costs, but the risks remain and grow with the business, further exposing the business to future liabilities. One such risk with a high cost of delay or postponement is cybersecurity insurance. To illustrate, in 2022 Africa experienced the highest volume of cyberattacks in the world.[185] According to the Communications Authority of Kenya (CAK), the period between July and September 2022 saw a 199.478% increase in threats detected.[186] A Kaspersky report further detailed that there was a 201% increase in cyberattacks in Africa between quarter 1 and 2 of 2022, with the largest share of attacks being directed at e-commerce sites (58%), banks

[184] Association for Progressive Communication, The liability of internet intermediaries in Nigeria, South Africa, Kenya and Uganda, READY - Intermediary Liability in Africa_FINAL_0.pdf (apc.org)

[185] Check Point Software 2022 Security Report, 2022 Cyber Security Report | Check Point Software

[186] Cyber Security Report July - September 2022, Communications Authority of Kenya, Q1 2022 Cybersecurity Report (ca.go.ke), pg 12.

(21%), and payment systems (21%). Nigeria reported a 79% increase in the same time with the largest attacks directed at e-commerce sites (52%) with payment systems and banks following at 42% and 6%, respectively. More often than not, these attacks originate outside of the targeted countries, orchestrated by organised crime syndicates or even foreign powers, as confirmed most recently by the UN Security Council Sanctions Monitor. Due to the evolving nature of cybersecurity risks, underwriters find them difficult to price, with premiums in East Africa ranging from USD 650 - USD 120,000.[187] A failure to stimulate and attract sufficient investment from service providers as well as a high risk perception can be directly correlated to the low level of product diversification and resulting high insurance premium costs.

Little literature exists on government intervention to address these challenges specifically for startups; which is consistent with the 3% continental penetration rate of insurance.[188] However, it is possible to glean best practices from experience in other sectors[189] and from policy innovations in the funding space.

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[187] Why Kenyan underwriters are struggling to price cyber insurance | Business News Africa 2021.

[188] Africa_Insurance_Pulse_Growth_e_2020.pdf

[189] Sessional Paper No. 05 of 2020 on Kenya Micro and Small Enterprises Policy for Promoting Micro and Small Enterprises (MSEs) for Wealth and Employment Creation

Policy Recommendation Framework on Insurance for Startups

Member States need to develop and implement measures designed to assist startups in accessing insurance in accordance with relevant national laws as well as international best practice.

The designated authority shall:

a. promote the establishment of policy and regulations that address liabilities emergent from newer business models and technologies in order to support the regulatory derisking of such business as far as is possible in law;
b. partner with necessary ecosystem and private sector parties to provide risk mitigation strategies and enable the startups to become insurer-ready at no extra cost;
c. design an insurance-targeting financial aid scheme within any established fund under this framework to enable startups purchase quality insurance and meet their obligations. The scheme will serve to support insurance costs for eligible startups (criteria determined by mandated body) on a predetermined basis. The scheme shall include financial relief schemes to enable startups meet its labour related insurance obligations;
d. promote, incentivise and stimulate the diversification of insurance offerings with an emphasis on customisation for innovation and digital economy related risks;
e. collaborate to develop and utilise any regional schemes in order to deliver on its obligations under this section.

8.5.5 Foreign exchange and exports

General domestic economic health, political uncertainty and volatility, global markets for commodities and sovereign debt are documented as some of the most significant factors affecting currency volatility and depreciation.[190] The effect they have on African currencies affects both startups and investors. For startups, currency volatility and devaluation present a changing and often downturning effect on the value of their assets, affecting valuation. This effect on valuation means valuing a business in local currency or otherwise containing monetary loss at the point of buying and selling the business or assets of the business. Other effects include increased cost of doing business with foreign partners as well as trading cross-border and globally in general.

The African regulatory landscape is divergent in the Member States' approach to this matter. Tunisia included in its Startup Act the express provision that startups could open and do business in foreign currency.[191] In Kenya both resident and non-resident persons are allowed to invoice for services in local or foreign currency, hold foreign currency, as well as buy and sell the same from authorised dealers. Restrictions exist past set transaction volumes for due diligence as

[190] Currency Risk Management Practices in African Private Equity and Venture Capital, 2022

[191] Article 17, Tunisia Startup Act, 2020.

aligned with anti-money laundering laws and the broader legal framework.[192] Such provisions make it easy for startups to conduct cross-border and international business and to appropriately manage currency risk.

For investors, investment treaties and laws often stipulate investors' right to transfer their funds freely out of the local country where their investment is held. Such acts[193] commonly spell out funds to include capital, dividends, profits (net of taxes), proceeds of sale or liquidation. The main caveat of permissible transfer is the meeting of all tax obligations placed upon an investor. Lastly, this protection includes the right to transfer the funds in the currency of choice.

While this is seemingly straightforward, forex repatriation is governed on the other end by exchange controls, as per the above. Where Member States chose to implement forex restrictions for the purpose of prudential monetary and fiscal policies, they may choose to provide for exceptions to investors who have invested in labelled startups. Exceptions may concern prescribed thresholds, limits in authorised dealing of foreign exchange, and restrictions as to holding and trading in foreign exchange.

[192] Central Bank of Kenya Guideline on Foreign Exchange, Clause 2.8

[193] Refers to Acts from Nigeria, Kenya, Rwanda, Senegal

Policy Recommendation on Foreign Exchange Control and exports

Cognisant of the realities and constraints uniquely facing each nation, Member States are encouraged to review and re-evaluate the constraints on foreign currency treatment to create faster, more convenient and more efficient mechanisms for investors to exercise this protection while remaining compliant with national laws. To effect this recommendation Member States may need to:

- **Enable access to foreign currency accounts:** Amend national laws and policy to permit the opening of local foreign currency accounts for startup investors and businesses operating within the member state.
- **Ease restrictions:** Evolve policies to remove any excessively restrictive forex control measures that do not serve the national interest of Member States while serving to detract startup investing in the countries.
- **Facilitate compliance:** Provide expedited compliance procedures to enable a more efficient experience with compliance requirements that Member States deem necessary after policy and regulatory changes have taken place to create a friendlier environment.

8.5.6 Research & development incentives

Less than 1.3% of research and development (R&D) funding globally is spent in Africa.[194] In 2006, the African Union Executive Council resolved to establish a target expenditure and investment in R&D at 1% of each state's GDP with more than half of it internationally funded.[195] Innovation is considered one of the major drivers, with emphasis on new technologies to sustain and accelerate development. Within the highest R&D spend countries, R&D mandates have sought innovative ways to direct funding towards business-related research. Such an expansion within the R&D funding context is set to provide African startups with funding to execute on the call to invest in new technologies and knowledge generation.

R&D support and incentives may be approached from the investors or from the startups point of view. Rwanda in its Investor Promotion law offers a 0% corporate income tax rate for registered investors conducting R&D activities.[196] The Nigerian Startup Act empowers the Fund Manager of the Seed Investment Fund to create an innovation grant budget for research and development projects.[197] Cape Verde, through its State Budget Law 2023, [198]allows technology companies

[194] Coalition for African Research And Innovation

[195] Science, Technology and Innovation Strategy for Africa,2021

[196] Annex To Law N° 006/2021 Of 05/02/2021 On Investment Promotion And Facilitation

[197] Section 20, Startup Act Nigeria

[198] Cabo Verde, Law No 16/X/2022

based within their Special Economic Areas to be exempt from taxes on profits being reinvested into the research and development initiatives where companies meet specified criteria. These include profits being at least 7.5% of the previous year's revenue and the company having at least three years of activity in the country and being incubated in a certified incubator or a state recognised one.[199] Elsewhere in the world, Malta periodically runs funding initiatives aimed at startups to access funding for research and development in the form of grants.[200] It also has incentivised R&D through providing tax credits on research and intellectual property registration related expenses. The United Kingdom[201] supports this through its national innovation agency, Innovate UK, within the UK Research and Innovation office, that supports business-led innovation by helping business growth through the development and commercialisation of new products, services and processes. Its initiatives include funding the businesses with stage-dependent funding opportunities in order to meet their research and development needs. It allocates funds to supply the early stage, growth stage and late stage. Funds are distributed not only as loans but also as grants.[202] The EU created a pre-contractual procurement process to enable contracting of startups that can offer R&D services for the government's innovation needs. This allows startups to participate and support government related business and operational innovation needs. Similar innovations to public procurement have also been created in India, enhancing the methods and the opportunities for startups to secure government opportunities. There is much to be anticipated for the future of R&D on the continent if mandated by startup legal frameworks, even as Africa's startups lead the charge in Africa's digital transformation.

In particular, emerging technologies, including cloud and artificial intelligence (AI) will receive significant R&D investments. The European Union's recently adopted "Artificial Intelligence Act" provides interesting practices in that regard. The regulation, unprecedented in its nature and scope, establishes the concept of "regulatory sandboxes" and "real-world testing environments" to allow startups and other SMEs to experiment and refine AI solutions. The real-world testing environment includes real-world data lakes which affords startups the rare opportunity to develop AI solutions in a fashion similar to large developers thereby both competing and leading in AI innovation.

[199] Cabo Verde, Corporate tax credits and incentives

[200] Innovation Aid for SMEs

[201] Innovate UK – UKRI

[202] UKRI Strategy, Inspire, Involve, Invest - Innovate UK KTN

Policy Recommendation on Research and Development incentives

Member States should consider prioritising and incentivising innovation in digital technology, through a blend of financial and non-financial incentives and support structures tailored to encourage and enable research and development at all phases of a startup.

Model provision
An office dedicated to innovation funding reserved for business research development is hereby established in the mandated R&D body/ agency. in accordance with the funding provisions of this law, the office will support the development and implementation of a for the management of the research and development budgetary allocation.

In recognition of the central role of cloud technologies and AI as capable of improving living and working conditions and increasing productivity, the office shall collaborate with all relevant authorities to promote cloud technology and AI research funding, responsible data sharing, and constructive risk-based governance frameworks, and prioritise opportunities to utilise these technologies in ways that are transparent, explainable, and fair. It shall further prioritise fostering public trust in cloud technologies and AI, building a cloud/AI-ready workforce, protecting IP, and promoting robust and flexible privacy regimes can help to achieve this.

In accordance with the funding provisions of this law, the office will support the development and implementation of a framework for the management of the research and development budgetary allocation.

In accordance with the procurement provisions of this law, the relevant ministry, supported by the office, shall initiate a process to ensure that all relevant policies and agencies reserve a portion of their innovation related R&D budget for contracting startups. Special consideration shall be given to gender parity requirements mandating that the budgetary allocation is spent as far as possible on both male and female owned businesses.

In accordance with the tax provisions of this law, provide input on the R&D credits, including evaluating its effectiveness.

8.5.7 A policy innovation approach to enabling Startups

Robust regulatory action requires creative solutions — particularly in the context of emerging technology. A policy innovation approach is useful in the context of startups, which are, by their very nature, innovative. To get it right, Member States will find that they must think outside the traditional policy-making box, explore novel ideas and adapt existing opportunities to suit their evolving circumstances.

One such approach is to explore mutual recognition of instruments or interventions established to be effective and efficient in other Member States. The principle of mutual recognition guides the agreements between two or more countries for recognising and accepting each other's regulations, standards, certifications, quality verification procedures and results thereof, in specific areas. This aims to facilitate market access, and the movement of goods and services between participating countries by eliminating the need for duplicate testing, certification, or conformity assessment procedures. This principle is not foreign to the African continent: the protocols on trade in goods and services under the African Continental Free Trade Area (AfCFTA) promote mutual recognition arrangements and encourage Member States to afford others the opportunity of negotiating the same.

To put it in practical terms, in the context of financial services, mutual recognition agreements might allow fintech startups from one Member State to offer their services in another, without the need for extensive re-licensing processes — as long as the relevant regulatory standards are met. Applying this concept more creatively to the startup question requires creative thinking. For instance, this approach could be extended to Special Economic Zones (SEZs): the products or services of startups in Member State A which are licensed under certain minimum standards could automatically be recognised in Member State B. Regulatory sandboxes are also another useful approach to consider: several Member States have pioneered creative regulatory sandboxes to enable domestic innovation in various sectors. In Kenya for instance, the Capital Markets Authority (CMA) recorded success; graduating six firms within a year of launching its blockchain regulatory sandbox.[203] The input from the program, along with lessons learned from Pezesha, a crowdfunding platform and the first company to exit the sandbox, led to the drafting of the Capital Markets (Investment-Based Crowdfunding) Regulations 2022.[204] This can serve as guidance for regulation in other Member States — based on mutual recognition.

[203]Kenya Capital Markets Authority, Regulatory Sandbox Policy Guidance Note, 2019

[204]Kenya Capital Markets Authority, Capital Markets Investment Based Crowdfunding Regulations, 2022

Policy Framework recommendation on innovative approaches to enabling Startups
Member States are encouraged to actively pursue the adoption of innovative policy approaches from across the region, in line with the imperative to enable startups, particularly in the context of emerging technology. These approaches shall aim to streamline regulatory processes in Member States by adopting a mutual recognition framework for innovative regulatory approaches that have proven effective in other Member States.

Model provision

a. The designated startup authority shall:
    i. Endeavour to negotiate mutual recognition agreements in regards to Special Economic Zones (SEZs) and regulatory sandboxes, allowing products or services of startups and businesses licensed under specified minimum standards in other Member States to be automatically recognized and accepted.
    ii. outline the process for assessing, approving, and implementing regulatory innovations from other Member States while ensuring alignment with the local regulatory context and objectives.
    iii. encourage the establishment of regulatory sandboxes that facilitate innovative experimentation by startups and businesses.
    iv. collaborate with the designated startup authority in other Member States to share information, best practices, and lessons learned related to innovative regulatory approaches and mutual recognition.
b. Startups, fintech companies, and businesses engaged in innovation shall be eligible to participate in the mutual recognition program, subject to compliance with relevant regulatory standards.
c. Alongside the trade authority, the designated startup authority shall encourage the participation of pertinent stakeholders, including startups, industry representatives, and experts, in the policy innovation approach to be adopted.
d. In the spirit of the African Continental Free Trade Area (AfCFTA) goal of economic integration, the relevant authorities shall work towards the harmonisation of regulations and the mutual recognition of qualifications, certifications, and standards, which will contribute to a more unified and competitive market.

8.6 Regulatory enablement

8.6.1 Data protection principles

Data is the key driver of the digital economy. Without credible and interoperable data, there would be little availability of the essential information needed to make decisions and drive innovation and entrepreneurship. The inclusion of specific data protection provisions, is designed to provide the regulatory framework and infrastructure necessary for startups to safely collect, process, store and use data in accordance with the laws of the Member States. The AU Data Policy Framework acknowledges that consent and legitimacy; limitations on collection; purpose specification; use limitation; data quality; security safeguards; accountability; and data specificity are key ingredients of an effective data protection framework. Given the importance of data regulation and the still often nascent stage of data protection policies on the continent, the African Union, through this model framework recognises its inclusion in startup legislation as vital, guided by existing efforts to harmonise data regulation.

A review of the attitudes, preparedness and compliance levels of startups in the European Union to the General Data Protection Regulation (GDPR)[205] revealed unique challenges that established businesses may not experience due to their size and ability to attract experts. Startups often experience difficulty in applying basic data protection rules around consent and erasure. For example, startups involved in the use of blockchain technology report challenges with assuraging their data subjects the right to erasure, as the very structure of the blockchain technology prevents users from tampering with the details of a past transaction. Other challenges highlighted by these startups include; poor understanding of the regulation and lack of knowledge of or access to the relevant authority.

Where data protection policies and regulations already exist in a Member State, it is advised that those regulations be relied on for safeguarding the data of startups and their customers. This is to avoid a multiplicity of regulations. Where however there is no data protection law and regulations existing, such Member States are encouraged to adopt the Malabo Convention[206] as an effective foundation for their data protection framework. The model provision below takes account of this approach. Security can move hand-in-hand with digital transformation, as modern cloud services take much of the burden of cybersecurity off of defenders.

[205] Data protection and tech startups: The need for attention, support, and scrutiny - Norval - 2021 - Policy

[206] Ratifying countries: Angola, Cape Verde, Congo, Côte d'Ivoire, Ghana, Guinea, Mauritania, Mauritius, Mozambique, Namibia, Niger, Rwanda, Senegal, Togo, Zambia. Mauritania (15th country) deposited instruments of ratification on 9 May 2023, with the convention coming into force 30 days after the date of the last ratification, i.e., 8 June 2023. The following have signed but not ratified: Bénin, Cameroon, Chad, Comoros, Djibouti, Gambia, Guinea-Bissau, South Africa, Sierra Leone, São Tomé and Principe, Sudan, and Tunisia.

Policy Recommendation on Data protection principles

(a) Member States are encouraged to promulgate data protection laws or regulations in accordance with the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) and/ or harmonise existing laws with the same.

(b) The National Protection Authority (NPA) responsible for supervising the implementation of the data protection laws is encouraged to have gender parity.

Model provision

In strengthening the data protection rights, the relevant authority shall collaborate with the National Protection Authority to:

a. work towards promoting and adopting secure cloud services as a key enabler for enhanced security and resilience in Africa.
b. provide data protection training for labelled companies, and instruct them on the application of data protection regulations on their products, services and business operation.
c. specially instruct labelled startup data collectors and processors about their responsibility for securing and protecting the information of their data subjects through the effective utilisation of privacy enhancing methods and data redactive tools such as anonymisation and tokenization,
d. design enforcement systems that prescribe the regulation of audits, issuing of warnings, enforcement and award of compensation for for the unauthorised access, alteration, use, mismanagement and breach of personal and public data by data controllers, processors and unauthorised third parties specific to startups, considering that where a startup of its own volition reports its actions and inactions to the NPA, such startups shall not be found guilty of a breach of the data protection laws. They shall however be instructed on the appropriate steps to remedy the situation, and given a timelines for the rectification.

8.6.2 Cross-border data transfer

The world's interconnectivity through the internet and digital revolution, technological advancements in areas such as big data, artificial intelligence, machine learning and blockchain, motivate for a high degree of data interoperability. As determined by the AU Data Policy Framework, "in the African context, international and regional frameworks that facilitate cross-border transactions and personal data flow across countries are essential for the creation of common markets and particularly for the realisation of the African Free Trade Area".[207] This concerns both data flows between entities and across borders but also within entities (e.g. intra-company transfer).[208] To determine proportionality of data, in particular for personal and sensitive data, protection awarded by the sovereign data protection laws of the receiving country need to be considered

[207] AU Data Policy Framework, p. 54,

[208] *Ibid.*

adequate and/or data transfer contracts need to stipulate applicability of the minimum standards awarded in the originating country. In particular, harmonised/synchronous data protection regulation creates trust and encourages responsible and compliant cross-border transfers.

Both the Malabo Convention and the AU Data Policy Framework provide considerable best practice in this regard, which place the NPAs at the centre. This, however, creates a series of challenges, which are acutely felt by startups.

Currently under the Malabo Convention, general responsibility for startups in this regard include:

- Notification of a data subject of the startup's intention to transfer their data to another country, as well as the purpose for such data transfer,
- Obtain the data subject's consent prior to such transfers,
- Obtain the approval of the NPA before executing a data transfer agreement with a third party,[209]
- Prepare a contract detailing the terms and conditions under which the data is being transferred; with the terms aligning with the local data protection principles;
- Ensure that the receiving entity possesses the ability to provide adequate levels of data protection by the execution of a binding agreement with all third parties involved in the transfer of the data.

While the Malabo Convention and a number of national data protection laws provide for minimum standards and recognise an exhaustive list of countries as adequate data recipient destinations, this is not always the case. Moreover, neither provides for reciprocity whereby transfers are enabled on the basis of recipient country recognition as a safe destination. This creates additional steps in enabling startups to determine whether an intended transfer is compatible with the national laws. In addition to providing for minimum standards, Member States should regularly publish lists of recognised territories while enabling a process based on reciprocity. Startups would benefit from a model contract that may be used to regulate data transfers, including into non-compliant jurisdictions.

Moreover, neither of the two frameworks, nor various national laws, currently detail data specificity. Rather, data is generally categorised into personal and non-personal data. As a consequence, unintended restrictions are often placed on what the Data Policy Framework coins "productive transfers". In the absence of detailed rules regarding the types of data and transfers (intra-company, contractual basis etc) that may be permitted for transfer between jurisdictions with adequate levels of protection, Article 12 ((2)(k)) of the Convention currently empowers the National Protection Authority to authorise trans-border transfer of personal data on case by case basis.

[209] Article 12 ((2)(k)) of the Malabo Convention empowers the National Protection Authority to authorise trans-border transfer of personal data.

Startups, as a consequence of their nature and operation, are poised within a dynamic and evolving data protection environment being faced with both increased and non-harmonious regulatory obligations. At the same time, they possess and represent current and growing potential as collectors and processors of data, activities that are recognised and regulated in the different jurisdictions.[210] Viewed in this way, and in alignment with the AU's e-commerce strategy, regulators and policy makers are faced with the balancing act of protecting citizens, with enabling African startups by reducing the regulatory blockers to their existence. [211]

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[210] African Union E-Commerce Strategy. Draft as of 15/11/2022, pg 73.
[211] AU Data Policy Framework, pg 7.

Policy Framework Recommendation on Cross-border data transfer

Member States are encouraged to include data protection frameworks that provide for minimum standards for cross-border data flows that establish reciprocity as a central principle in permitting transfers.

Model provision

With a view to enabling secure and proportionate productive transfer of data, the National Protection Authority shall:

a. develop data categories to which the regime shall apply, with sufficient specificity regarding different types of data and transfer, with the aim of avoiding unnecessary inclusion,
b. develop and maintain a white list of countries to whom data can be transferred freely, further supported by the principle of reciprocity,
c. develop a conditional transfer regime in accordance with the AU Data Policy Framework which provides for a list of technical standards, ethics, governance, best practice guidelines and other key considerations that constitute the minimal level of data security which must be in place for cross border data transfers to be conducted by startups to a receiving country,
d. develop regulations for the execution of bilateral obligations which the receiver of data in a country which fails to meet the minimum level of data protection must execute before the transfer of data can occur, including by providing a model contract that may be adopted by transferring startups,
e. develop and execute capacity development programmes which will equip regulators and law enforcement agents with the knowledge and skill set required for supervising and ensuring compliance with the data transfer policies prescribed by the NPA,
f. develop and execute capacity development programmes for startups specific to the enablement of compliant cross-border transfers,
g. adopt a cloud-first policy and work with the relevant authorities to invest in national and regional cloud strategies for enabling the use of AI and other emerging technologies.

8.6.3 Competition

Competition is generally deemed to be a driving force for economic growth. Free and fair competition promotes dynamic markets, allowing innovation to thrive. Despite these, global markets are often characterised by anticompetitive practices.[212] A balanced framework to promote the commercial imperative while preventing anti-competitive conduct is important for startups and emerging businesses to participate in the digital economy.[213] By and large, most competition legislation seeks to prohibit abuse of a dominant market position, regulate mergers and acquisitions and prohibit anti-competitive agreements such as between cartels, to enable all

[212] International Monetary Fund- Competition, Competitiveness, and Growth in Sub-Saharan Africa

[213] Google: The Digital Sprinters: Driving Growth in Emerging Markets

businesses within a given market to play fairly.

Anti-competitive mergers and acquisitions (M&A): Mergers and acquisitions can be a critical part of the startup lifecycle. On the one hand, it is important to enable M&A, to stimulate investment by facilitating investor exit through acquisitions. On the other, there is a need to prevent M&A which undermines competition and eliminates future rivals. The OECD[214] notes that some large businesses acquire startups or nascent businesses with the sole intention of discontinuing the product development. Those "killer acquisitions" are executed for the purpose of strengthening or creating a dominant player, while pre-empting potential competition. Member States control for these situations by instituting M&A conditions which require regulatory notice and approval. Nigeria's Federal Competition and Consumer Protection Act (FCCPA)[215] imposes merger control provisions. Section 95 and 96 distinguishes between small and large mergers, provides the condition for merger and the requirement to notify the relevant agency. Angola and Mozambique also impose a merger control regime. It is proposed that Member States include merger competition mechanisms to prevent anti-competitive M&A activities which may be detrimental to startup growth.

Abuse of dominant market position: A dominant business may undertake actions intended to eliminate rivals or deter potential competition. Such actions can include predatory pricing, leveraging dominant position to coerce retailers into exclusive purchase agreements or implementing discount schemes aimed at forcing competitors out of the market.[216] A negative consequence of this is that startups can be forced out of the market on the basis of an inability to compete with the dominant player. Some Member States have an established system to curtail abuse of dominance and generally appear to be cognisant of the impact of competition on domestic markets, particularly on smaller, less well established businesses. In the absence of comprehensive competition legislation across all Member States, provisions specific to abuse of dominant positions are necessary inclusions in any startup legislation.

[214] OECD- Start-ups, Killer Acquisitions and Merger Control

[215] Federal Competition and Consumer Protection Act (FCCPA)

[216] Abuse of Dominant Position under the Federal Competition and Consumer Protection Act

Policy Framework Recommendation on Competition

Member States should consider developing robust merger and acquisition control mechanisms within a balanced competition framework and/or startup legislation, including robust notification and approval merger control mechanisms which support competitive local markets, while cautiously balancing the desire to stimulate investment and the imperative to protect competitive advantage. Any such mechanism must be clear, unambiguous and reasonable.

Model provision
The mandated authority shall work with the relevant authorities to promote effective competition having regard to interoperability principles (open APIs and data sharing and open platforms).

8.6.4 Intellectual property

Intellectual Property (IP) protection has become increasingly salient as the world moves towards a knowledge based economy. IP strengthens the competitiveness of startups by providing protection against imitators in addition to managing risks.[217] It is not enough for a startup to develop a product to solve a problem, it must also create a distinctive identity for the product protected under IP rights. According to the World Intellectual Property Organisation (WIPO), startups that apply for patents, trademarks or designs are likely to succeed and grow more quickly than those who do not.[218] The EU Intellectual Property office estimates that startups with at least one registered trademark have a 21% chance of experiencing a high growth period and a 10% chance of becoming a high growth business.[219] Startups can leverage IP rights to attract investors, scale up activities and establish collaboration agreements. Unfortunately, registration and enforcement of IP rights can be very difficult, expensive and time consuming which can be challenging for startups. It is estimated that the process for registration of IP in most African countries varies between 9-24 months.

8.6.4.1 Intellectual property rights

IP rights (IPRs) - patents, copyright, trademarks and trade secrets - are private and territorial in nature, with the implication that rights granted are often limited to the territories of the granting state.[220] Thus, conditions for their acquisition, maintenance and enforcement are generally regulated in accordance with local laws. In addition, some countries

[217] World Intellectual Property (WIPO), A Guide to Intellectual Property for Startups

[218] IP Protection: building value and growth for small businesses

[219] European Union Intellectual Property Office, High Growth Firms and Intellectual Property Rights

[220] United Nations Policy Paper 2022, The Role of Intellectual Property Rights in Promoting Africa's Development

have made specific provisions for the protection and registration of IPRs under their startup laws, affording an extra layer of protection and support to these businesses.

Patents: A patent is granted exclusively for an invention which provides a new technical solution to a problem. The IPR prevents individual competitors and other businesses from commercially using the solution without the owner's consent. However, patents are generally expensive and complex to file. According to WIPO, not all patentable ideas must be patented, instead the business should conduct a cost benefit analysis to determine the likelihood of the commercial success of the invention.[221] A 2020 report indicated that Africa has some of the highest patent registration fees in the world, with fees in countries like Côte d'Ivoire, Kenya, or Senegal higher than fees in Canada, Japan or the United Kingdom.[222] This underscores the importance of governmental support for startups to lessen the financial burden and enable them to secure invention rights without going through a time consuming and expensive process. Under the Ghana Startup Bill[223] startups are eligible to receive financial support for the registration of patents at the national and international level within the limits of available resources. The exact amount is determined following an evaluation by the national agency in charge of IP registration. In Tunisia,[224] the government covers the cost of patent registration for startups at the national and international level under the Startup Act. Nigeria's Startup Act[225] also provides governmental support for filing and registration of patents.

Trademarks: Trademarks on the other hand extend protection to the distinctive signs that represent a business, individual, services or an organisation. For startups, they are a useful tool to support their competitive advantage. Businesses can obtain legal protection of their trademark rights either through registration or active use. Although some countries recognise unregistered trademarks used in the marketplace, these countries provide stronger protection to registered trademarks. WIPO suggests that best practice for trademarks requires registration by the startup irrespective of whether the country recognises unregistered but actively used trademarks.[226] A registered trademark is valid for ten years and usually takes between 3-24 months to fully register based on country requirements. To enable startups to benefit from registering their IP assets, countries like Nigeria have included provisions in its Startup Act that provide

[221] Inventing the Future: An Introduction to Patents for Small and Medium-sized Enterprises

[222] A continental strategy for economic diversification through the AfCFTA and intellectual property rights

[223] Ghana Startup Bill

[224] The Tunisian Startup Act: Creating A Legal Framework From Below

[225] Nigerian Startup Act

[226] Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises

that the mandated body shall facilitate assistance to startups for the filing and registration of their trademarks at the international level.

Copyright: Under the Berne Convention,[227] copyright lasts for the life of the author and subsists till 50 years after their death. However, duration for copyright protection varies across jurisdictions. In Europe, US and some African countries such as Benin Republic, Nigeria, Ghana and Burkina Faso, copyrights protection subsists for 70 years after the death of the author while in Cape Verde, The Gambia and Guinea Bissau, protection subsists for 50 years after death. Copyright is generally vested upon creation and is not contingent upon registration or any additional formalities. This is acceptable as best practice globally and in many African countries. Registration is desirable in countries such as Algeria and Brazil which require the registration to serve as an evidence of prior creation in the event of a dispute or infringement,[228] though neither of Africa's regional intellectual property right systems (OAPI and ARIPO), provide for such mandatory registration. Due to the nature of copyright, no specific protection is provided under extant Startup Acts. However, countries like Ghana, Nigeria and Kenya[229] offer filing and registration support for IP rights which necessarily include copyright.

[227] Berne Convention for the Protection of Literary and Artistic Works 1886

[228] Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises

[229] Kenyan Startup Bill

Trade secrets[230]: Trade secrets are granted to protect commercially valuable confidential information. Generally, any confidential information that provides a business with an edge against its competitors can be protected as trade secrets provided that reasonable steps have been taken to ensure its secrecy. Protection offered under trade secrets is considered essential for startups as it requires no registration and curtails unfair competition which may stifle business growth and innovation.[231] However, WIPO notes that trade secrets offer limited protection because they do not grant exclusive rights to the holder to exclude commercial use by third parties and it is oftentimes difficult to prove infringement.[232] For instance, trade secret protection can be circumvented through reverse engineering or discovery by fair and honest means. Also, many Member States, including South Africa, Nigeria and Kenya have no specific laws[233] relating to trade secret protection, but owners can seek redress under national anti-competition laws.

[230] Secrets rights are typically automatic and require no registration provided the criteria for protection has been fulfilled. However, holders can take preventive measures by including non-disclosure and non-compete clauses in contracts. Protection is indefinite provided the confidential information remains undisclosed unlike other IPRs.

[231] WIPO Magazine 2017-Trade secrets: the hidden IP right

[232] WIPO- Trade secrets

[233] A specific recommendation and model provision in relation to this gap is detailed further below

8.6.4 .2 Protection and enforcement of IP rights

The protection and enforcement of IPRs is a major source of concern despite local laws. A report from the European Commission suggests that IPR infringement remains widespread in African countries due to gaps in the legal framework on enforcement, limited enforcement capacities and weak coordination between enforcement authorities.[234] To ensure the protection of IPRs for startups, various countries on the continent and globally, have developed best practice principles, which this framework endorses.

Accelerated application: IPRs are typically granted on a first to file basis. This first to file rule is recognised globally and in African countries like Nigeria, Angola, Ghana, Algeria and Zambia.[235] Expedited filing thus ensures that the invention is not lost to subsequent applicants. However, all administrative requirements must be complied with prior to the application. Only Nigeria makes provision for accelerated registration in its Startup Act. Section 31(4) of the Nigeria Startup Act provides for collaboration between the mandated body and the National IP agency to ensure that registration and protection is expedited and seamless in accordance with the provisions of the Act. Recommendations to give effect to this intent are included as sample model provisions within this framework.

Facilitation of national and international registrations: IPRs are territorial rights which implies that the rights are recognised and protected only in the countries they have been issued. This means that IPRs will be unrecognised in countries where they are yet to be registered allowing competitors to make, use or commercialise those rights. Section 31 (3c) of the Nigeria Startup Act provides that the mandated agency shall facilitate assistance for patent and trademark registrations for startups at the national and international level. This includes the cost of making such applications. Similarly Ghana supports startups with registration at the international and national level, with the government bearing all indirect and direct costs incurred in the process. The Kenya Startup Act also provides that the mandated agency shall facilitate startups in the filing and registration of IP at the international level. Unlike Kenya, Ghana and Nigeria, Togo limits its registration support to just patent procedures with the costs incurred offered as a benefit to the startup. This can be offered as a tax credit or other type of fiscal credit, and is a prudent option to provide financial support while being cognisant of fiscal scope in Member States.

Institution of legal actions for IP infringement: Whereas, protection is offered to startups through filing and registration of IP, there can be instances of violation and infringement of protected rights. This could either be a third party

[234] European Commission, Report on the protection and enforcement of intellectual property rights in third countries

[235] World Intellectual Property Review (WIPR), Developing an effective Africa IP plan

infringing on a protected right or vice versa. In some instances, both can result in the institution of legal proceedings, demand to cease the use of the protected right or compensation payments. According to WIPO, IP litigation and enforcement is an expensive process and thus requires the government to establish institutions that can facilitate the enforcement of IPRs.[236] Some countries in Africa support startups in the institution of legal actions and enforcement of IP rights which insulates the startups from the potential cost implication of such a process. In Nigeria, the Startup Act provides for an enforcement process for IP rights infringement. Section 31 (3b) provides that the mandated body in collaboration with the national IP agency, will provide assistance to labelled startups with the institution of legal action for infringement of any IPR. Section 27 of the Kenya Startup Act also provides that the mandated agency shall facilitate the institution of legal proceedings for the infringement of IPRs. However, owing to the cost of instituting legal actions and the uncertainty around litigation, Member States can consider Alternative Dispute Mechanisms like mediation and arbitration as an alternative to infringement of Startup IPRs.

Protection of source codes and algorithms: Source codes and algorithms are considered the intellectual property of the creator. According to WIPO, source codes can be considered a readable literary work which expresses the idea of the engineer creating it and as such, are protected by copyright.[237] This means that protection vests automatically on the source code from the time of creation. Copyright protection prevents unauthorised copying or use of the source code but not the underlying ideas, function and processes which can additionally be protected as trade secrets or patents provided the criteria for each are met. For purposes of clarity, it is recommended that Member States specifically include provisions covering the same.

Establishment of strong enforcement tools to curb counterfeiting and piracy: The trade in counterfeit and pirated goods that infringe on IPRs is a major challenge for startups in an innovation driven economy. Counterfeiting and piracy have become a global phenomenon in recent years, leading to revenue losses, disenfranchisement of legitimate businesses, and erosion of brand value, in addition to safety concerns. For instance, the OECD and EU Intellectual Property Office estimate that trade in counterfeit and pirated goods stood at 3.3% of the total global trade in 2019[238], cost USD 4.2 million in economic loss, and put over five million legitimate jobs at risk.[239] Generally, criminal procedures can be initiated against an infringer in cases of trademark counterfeiting or piracy, particularly where it occurs on a commercial scale. Member States can impose harsher sentences to deter trading in counterfeit

[236] WIPO, Settling Disputes and Enforcing IP Rights

[237] Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises

[238] OECD- Trade in fake goods is now 3.3% of world trade and rising

[239] OECD 2019- Trends in Trade in Counterfeit and Pirated Goods.

and pirated goods and address the ever-growing threats presented by these activities. To provide an additional layer of protection, Member States can also cooperate in establishing anti-piracy and counterfeiting platforms to act as one-stop-shops that coordinate regional anti piracy and counterfeiting efforts and enhance cooperation between governments, private and public sector players and business organisations.

Prohibition of forced technology transfers and disclosure of trade secrets: Forced Technology Transfers (FTT) encompass a number of practices but are commonly used where domestic governments force foreign businesses or investors to share their technology in exchange for market access. This practice can weaken foreign businesses, putting them at risk of IP theft or dissemination of their trade secrets to local businesses.[240] While there have been no documented instances of this occurrence in African Union Member States, it is a common practice elsewhere, for instance, in China, and a source of hostility between the global West and China. Member States may cooperate with relevant authorities to include provisions in international investment protection treaties, prohibiting foreign countries from pressuring local startup companies to transfer their technology or intellectual property. This is particularly relevant for tech-companies looking to scale beyond their local markets.

Mutual protection: Member States can also make concerted efforts to ensure Startups are afforded full IP protection to promote growth and scalability, particularly in light of their economic benefits. These can be through signing treaties that allow for mutual protection across AU Member States. Member States can build on the protection offered by their national IP laws by joining regional systems such as African Regional Intellectual Property Organization (ARIPO)[241] and Organisation Africaine de la Propriété Intellectuelle (OAPI)[242]. ARIPO aims to develop, promote and harmonise IP policies and laws across its Member States,[243] although each member state retains its own national IP law. The Member States can choose to become parties to different protocols on varying IPRs like patent, trademarks, industrial design etc. On the other hand, the OAPI with its 17 Member States,[244] operates a unitary legislation and centralised procedures, granting IPRs over its entire jurisdiction. IP systems can be further

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[240] Understanding and managing "forced" technology transfer

[241] African Regional Intellectual Property Organization (ARIPO)

[242] Organisation Africaine de la Propriété Intellectuelle

[243] Botswana, Eswatini, the Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe

[244] Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, GuineaBissau, Mali, Mauritania, Niger, the Republic of the Congo, Senegal and Togo.

strengthened by the Patent Cooperation Treaty[245] and the Paris Convention for the Protection of Industrial Property.[246] This enables Startups to seek patent protection for an invention simultaneously in many countries by filing a single "international" patent application, rather than separate applications across multiple jurisdictions. Application through regional systems like ARIPO and OAPI offers IP protection to startups across all Member States, cutting down costs of multiple registration and enabling enforcement across several jurisdictions as opposed to the territorial nature of IPRs.

[245] WIPO: Patent Cooperation Treaty (PCT)

[246] Paris Convention for the Protection of Industrial Property

Policy Framework Recommendations on Intellectual property

Member States are encouraged to develop IP related support measures that align with the overall incentive policy scheme and take account of cost, process, and technical barriers to startups' protecting their valuable intellectual property. Member States shall also explore the option of automatic vesting of inventions created during the course of employment on the employer subject to the provisions of the employment contract.

Model provision

The designed startup authority shall collaborate with the designed IP authority/ies to:

a. maintain an online platform to facilitate intellectual property registrations, which shall contain relevant information on process, categories of registrable IP and registration requirements;
b. provide training in intellectual property requirements to labelled startups;
c. simplify registration processes and facilitate assistance for the registration of patents and trademarks at both national and international levels. This shall include support with searches on national and international databases to ensure that a similar IP is not registered;
d. make reasonable efforts to expedite IP registration procedures, particularly for patents and trademarks which require several components;
e. In accordance with the funding provisions of this law, design a financial support mechanism for labelled startups to support their registration of intellectual property at the national and international level;
f. develop model contracts for startups to use in their contractual relations with employees and contractors that detail IP rights and ownership, including for code and application development, and provide access to expert consultations with experienced examiners to ensure compliance with administrative requirements and assist with instituting legal actions for IP infringements and ensure speedy resolution of all IP disputes;
g. review and bring in accordance domestic copyright laws to clarify that copyright protects source code and algorithms;
h. cooperate with other relevant authorities to integrate prohibitions of forced technology transfer in bilateral investment and trade agreements with third parties and among Member States.

8.6.5 Labour relations

For Africa to achieve accelerated and sustainable economic growth, startups are key to driving innovation across key sectors. To maintain a thriving startup ecosystem, a skilled and talented workforce must be made available. Thus, labour market policies that accommodate a rapid pace of innovation and encourage market mobility are essential. Google's Digital Sprinter's Framework[247] emphasises that labour policies in emerging markets should accommodate more non-traditional employment models to make employees feel secure in the workplace and encourage startup growth. Some of the best practices that encourage recruitment of skilled talents and the

[247]Google: The Digital Sprinter: Driving growth in emerging markets

growth of the Startup ecosystem are highlighted below:

8.6.5.1 Regional labour mobility

A major challenge in Africa over the past five years has been the massive migration of skilled workers from their home countries in search of better opportunities, popularly known as "brain drain". This migration usually leaves many countries short of relevant skills needed to grow the economy. The African Union estimates that at least 70,000 Africans are lost annually to this phenomenon.[248] With Africa's youth population growing to outpace job creation in their home countries, skill or education based immigration as a path to citizenship has become increasingly appealing to many. Annually, it is estimated[249] that brain drain to countries like Canada, United Kingdom, the United States and Australia lead to an economic loss of about USD 2 billion per annum. Speaking at the G7 2017 summit, Akinwumi Adesina, president of the African Development Bank said[250], "The future of Africa's youth does not lie in migration to Europe; neither should it be at the bottom of the Mediterranean; instead it lies in a prosperous Africa.

To address this issue, Member States can encourage mobility of African nationals within the region by ratifying the AU Protocol relating to the Free Movement of Persons, Right of Resident and Right of Establishment. As of 2022, only five countries — Rwanda, Niger, São Tomé and Principe, and Mali have fully ratified[251] the protocol. Broadly, the protocol recognises the right of nationals to reside, seek employment and undertake economic activities in Member States.[252] Article 14 recognises the right to the free movement of workers. It provides that member state nationals have the right to seek and accept employment in Member States without any discrimination. Such nationals shall be issued residence and work permits in accordance with immigration procedures. Article 17 also provides for the right of establishment which includes the right to set up a business, trade, profession or vocation in the host member state. Free movement across Member States allows for the exchange of knowledge, access to relevant skills and retention of local talents.

8.6.5.2 Visa incentives

Globally and in Africa, countries are introducing programmes and incentives to attract and retain global expertise, one of which is the visa incentive. While terms and conditions vary across countries, the primary purpose is to position the host country as an ideal destination for startups and encourage non-nationals to migrate and set up businesses. A visa incentive

248 The AU Revised Migration Policy Framework for Africa and Plan of Action (2018-2027)

249 Brain drain: a bane to Africa's potential

250 Remarks by Akinwumi A. Adesina, President of the African Development Bank, at the G7 Summit, May 26-27, 2017, Taormina, Italy

251 African countries are stuck on the free movement of people. How to break the logjam

252 The AU Free Movement of Persons Protocol

affords a founder the opportunity to establish a business in a foreign country whose business environment offers a better opportunity for viability and growth.[253]It also offers the host countries economic benefits in terms of job creation, new services and a sustained culture of innovation. Through their Startup Acts, countries are providing visa incentives designed to attract an influx of skilled workers and build strong startup ecosystems. The visa incentive is usually provided for a period of three to five years and may be further extended.

Countries like Italy, Philippines[254] and Togo provide visa incentives for non-citizens interested in establishing Startups within their country. Section 13 of the Philippines Act provides visa incentives across three categories- i) the startup owner visa issued to a prospective or current foreign owner of startup registered in the country, ii) the startup employee visa issued to the foreign employee of a startup registered in the country and iii) the startup investor visa granted to prospective or current foreign investor of a startup registered in the country. Italy offers a one year Startup Visa to non-EU nationals interested in setting up a startup in the country. While the visa incentive is granted for only one year, founders have the opportunity to renew their visa at no cost provided the startup is up and running. A similar benefit is offered to investors for non-EU citizens who invest considerable amounts in assets of strategic value. The Investor Visa is granted for two years and the investment must be done within three months from issue date and maintained for the entire duration. The Togo Startup Act provides for support to founders and co-founders in obtaining visa and work permit and the US Entrepreneur visa also allows potential immigrant founders to set up businesses in the country.

8.6.5.3 Employment contracts

Employee rights are generally protected under the labour laws of various countries. These laws govern the relationship between the employer and employees and cover the issue of wage, leave, bonuses, termination of employment and other rights. For startups to hire and retain talents, they must be in compliance with the local laws and provide employees with the rights covered under the extant laws. However, some of these laws can become restrictive and burdensome on the startups, limiting their ability to hire and retain global talents. It is imperative that startups are able to hire skilled workers but at the same time, not be burdened by labour provisions which impact their ability to survive and scale. Most startups employ gig workers or temporary staff for specialised purposes labour and on a short term basis. In India, gig workers in the startup ecosystem are expected[255] to make up at least 4% of the country's total workforce by 2024. Evidence indicates that gig workers are a critical part of the system enabling companies to only hire people whose skills are relevant to their

[253] OECD Migration Policies: What are the risks and rewards of start-up visas?

[254] Philippines Innovation and Startup Act

[255] Why start-ups are set to give gig economy a big boost in 2023, The Print

operations.[256] For instance, if a startup needs a marketing specialist, it is ideal to hire a temporary worker for the duration of the project required and after the project is done, the contract expires. As such, full scale provisions of rights such as retirement, health insurance, paid holidays and other similar benefits will prove detrimental to the startups especially at the early stages. To circumvent this issue, Member States can allow startups to adopt private contracts which regulates the relationship between the parties and sets out the specific rights and obligations of the startup founder and the employer for the duration of the contract.

8.6.5.4 Capacitation

Skilling talent

For a startup to thrive, it requires skilled workers as well as a skilled founder. Skills are continual investments, with technology continually changing the way we work and communication. According to the OECD, training is critical for new businesses to succeed in the long-term.[257] Training programs specifically designed for startups and their employees have been proven to play a role in developing the talent and skills needed for a thriving startup ecosystem. In the US, the SBAs Office of Entrepreneurial Development[258] provides training and resources on starting and growing a business. The Nigerian government also launched[259] several capacity-building programmes for indigenous startups designed to drive revenue growth. Section 21 (1) of the Nigeria Startup Act provides that the mandated agency shall be responsible for the development and implementation of training and capacity building programs for startups. It is advisable for Member States to incorporate a similar provision in their Startup Acts as training and capacity building programs are crucial for the survival of a startup.

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[256] Workforce of the future: The competing forces shaping 2030, PwC

[257] OECD/European Commission (2014), The missing entrepreneurs: policies for inclusive entrepreneurship in Europe

[258] Office of Entrepreneurial Development

[259] FG begins capacity building for indigenous startups, Business Day

Policy Framework Recommendation on Visa Regimes to support Startups.

By virtue of their primary startup legislation as well as other relevant legislation, Member States are encouraged to create various incentives targeted at labour mobility for startups.

Model provision

Visa incentives: The designated agency shall create "startup visas" to encourage the immigration of non-citizens and the return of skilled migrants interested in establishing a startup within the country. The startup visa shall be granted for a period of three years and shall be extended or renewed for an additional two years provided the startup is up and running. Preference shall be given to prospective female founders to bridge the representation gap in the startup ecosystem.

Startup leave: Private or public sector employees shall be granted a one year renewable leave to launch their businesses with the right to return to their previous employment if the startup fails. The employee shall be entitled to a specified amount as grant for at least a year to cover living costs while the business is set up.

Skill development program: To maintain a vibrant startup ecosystem, the designated authority shall implement training programs on digital skills acquisition, marketing, management and entrepreneurship available to labelled startups.

Flexible payment scheme: legislation shall enable startups to reward their employees through stock options and work for equity to free startups from the obligation of paying high salaries and fixed benefits they may lack the resources to provide. The stock option shall be exercisable after a minimum of one year and if the employee leaves before that time, his right shall be voided.

Employee hiring grants: The designated authority shall design and implement hiring credits to offset the cost of hiring and onboarding skilled talents from tax. Preference shall be given to startups seeking to encourage diversity by employing women and people with disabilities.

Women training and mentorship program: The designated agency shall put in place a program for the training of women founders, with high quality mentoring and networking events to create links among women led businesses.

8.7 Education and fostering a culture of innovation

There is a role for education and training in cultivating a robust innovation ecosystem on the continent. The continent's people are, by nature, resilient, creative and enterprising. It stands to reason that entrenching these ideals is one crucial solution on the path to **building a startup continent**.

In practical terms, Member States can embed mandatory introductory entrepreneurship courses from the basic education level, to stimulate entrepreneurial behaviours as life skills, from the onset[260]. At higher education levels, encouraging courses of study[261] which emphasise business education, digital skills and entrepreneurship may be crucial. We must at this juncture distinguish between entrepreneurship and innovation, however. Recognition of the latter demands that curriculums also emphasise learning which fosters critical and innovative thinking, risk management, pitching to investors, and so on.

Some countries may find that a review and standardisation of existing curriculum is necessary, to ensure practices and curricula are fit for the digital age, and linked to real business and life challenges, promoting experiential learning.[262] This can involve drawing on best practices from other countries and working with organisations which specialise in entrepreneurship education. At the same time, these strategies must keep sight of the need for inclusion: encouraging greater women's participation, in light of the education gap which disproportionately affects women.

A strategy for building an innovation culture is only holistic if there is room for learning outside of formal education channels: through incubators, accelerators and/or other continuous professional development which enable access to training and mentorship opportunities as the norm. University incubators have emerged as potent catalysts for innovation. With access to resources, mentorship, networking opportunities, and often funding, university incubators bridge the gap between academic knowledge and practical, market-ready solutions. They provide a conducive environment for idea generation, prototyping, and market testing, thus acting as a breeding ground for startups. South African Stellenbosch University's LaunchLab is a tangible example of this. Beyond the private sector or academia, there are examples of strategic partnerships to foster an innovation culture, but we must normalise these examples. In 2022, Nigeria partnered with Japan to launch an incubation program for startups which provides training and mentorship opportunities to generate viable and scalable business models.[263] Egypt also launched a government-led accelerator to encourage startups[264] and Kenya's own business acceleration program to provide training and mentorship opportunities[265] was similarly launched.

Member States are also encouraged to educate citizens about the merits of entrepreneurship and the benefits of incorporation, such as improved access to finance, legal protection, growth potential, and eligibility for government support

260 The missing entrepreneurs 2021: policies for inclusive entrepreneurship in Europe
261 Entrepreneurship in Higher Education, especially within non- business studies
262 Entrepreneurship in higher education: what, why, when, how

263 Nigeria partners Japan to launch startup incubation programme
264 Egypt launches first government led accelerator
265 Kenya's industrialisation ministry launches "Savanna", a business acceleration programme for early-stage startups.

programs. This awareness can stimulate the transition from informal enterprise to formal entrepreneurship. It is by now well established that the innovation landscape is intrinsically dynamic, characterised by rapid and constant change. As a consequence, to be sustainable, efforts to support the startup ecosystem must also create room for regulatory and legislative frameworks to remain responsive to this dynamic environment. As such, capacity building specifically for policymakers across the most relevant issues are relevant to this framework, and to building a startup continent.

None of this is without significant cost. The alternative however is more dire: that the efforts put into shoring up the regulatory environment are not maximised or sustainable. The potential benefits of building a robust innovation ecosystem in Africa are immense, but so too are the risks of failing to do so. The alternative is a future where efforts put into shoring up the regulatory environment are not maximised or sustainable, perpetuating further stagnation and missed opportunities. Therefore, when we speak of building a startup continent, we speak of investing in sustained collaboration across sectors and stakeholders, and of prioritising the development of innovation ecosystems in all the ways already outlined elsewhere in this document. The time for action is now, and failure to act is not an option.

Policy Framework Recommendation on Education and fostering a culture of innovation

Member States are encouraged to establish a mechanism for developing training programs in the formal and informal education sectors to promote a startup culture, focusing on innovation, research, development, intellectual property, entrepreneurship, and business management specifically. By virtue of their primary startup legislation as well as other relevant legislation, Member States shall create various incentives targeted at skills development for startups.

Model provision

The designated authority shall be responsible for designing and implementing a training and capacity building program relevant to entrepreneurial pursuits. If an agency is established for these purposes, such agency shall also be mandated to collaborate with education institutions and the education regulators, to develop appropriate learning curricula.

The designated authority for startups shall prioritise capacity-building initiatives aimed at policymakers to ensure regulatory and legislative frameworks remain adaptable in the dynamic startup ecosystem. These initiatives shall encompass the following components:

- Startup ecosystem awareness
- Emerging technologies
- Flexible and best practice regulatory approaches, including regulatory coordination and harmonisation

- Data protection and intellectual property rights
- Investment and funding
- Public-Private collaboration

Annex 1: Consolidated model law provisions

	AREA	POLICY FRAMEWORK RECOMMENDATION	MODEL LAW PROVISIONS
1	**Governance of the startup ecosystem**	By virtue of their primary startup legislation, Member States should consider creating a startup agency that exclusively focuses on supporting coherence and fostering startups, overseen by the ministry responsible for business and industrial economic development.	The designated agency shall: ● give due attention and deploy actions to support diversity and inclusion, whilst protecting democratic values and supporting coherence; ● proactively approach and engage startups for the sharing of knowledge and best practices regarding digitalisation; ● act as a one-stop-hub for information and support to startups, including facilitating (over overseeing, depending on the legal system of the Member State) the administration of available support, benefits, and incentives for startups in accordance with this act; ● make use of the synergies in other government portfolios to bring forward the startup agenda, for instance work with the ministries responsible for skills, research and development, and innovation; ● facilitate market development to provide market expansion assistance to startups using international events, trade fairs, and roadshows; ● provide zoning rights for startups (develop districts for startups); ● ensure the participation of entrepreneurs and other ecosystem players in the policy making process (through engagements and consultations).

2	**Institutionalising support for startups at the Regional and continental levels**	Member States, through the designated startup authority, are encouraged to collaboratively and consultatively pursue bilateral, regional and continental integration with the designated coordinating mechanisms, and relevant frameworks.	The designated startup authority shall: Collaboratively and consultatively pursue bilateral, regional and continental integration with the designated continental coordinating mechanisms and frameworks for startup coordination. support the development of initiatives on a regional and continental level to facilitate access to market and opportunity for labelled startups.
3	**Startup formation**	Member States should consider formulating labelling criteria for startups with reference to their innovative, capital-intensive nature, and in recognition of their contributions to research and development, and generation of valuable intellectual property. In developing its criteria, Member States shall consider whether the country intends to legislate most if not all policy mechanisms by virtue of the primary law, or whether subsidiary legislation will be used. Where a labelling model is to be used, the primary law shall endeavour to define startups as outlined herein, with the labelling mechanism hedging against over-inclusivity.	**Labelling criteria:** The designated authority shall define labelling criteria for startups to access available incentives and support. In so doing, the authority shall consider the following criteria: incorporation, duration, nature of business, staff/ employee strength, turnover, and ownership, informed by the AU Startup Model Policy Framework. **Labelling process:** The designated authority shall: a. Establish an online registration platform to simplify the registration process in the form of reduced registration fees and timeframe; b. Establish a technical assessment committee to review applications for the startup label; c. Provide that where the review has been completed successfully, the committee shall communicate the report of its review to both the designated authority and the startup; and d. Provide that where a startup has successfully completed the process for labelling, the committee shall issue it a labelling certificate which shall empower it to enjoy the benefits accruing under the startup act.

			Duration of the label: The designated authority shall determine a timeline for the validity of every label granted, provided, however that the validity period does not exceed the time frame stated under the labelling requirement **Obligations of a labelled startup:** Every startup labelled in accordance with this act must: a. Comply with all the laws governing incorporated companies b. Prepare and maintain complete and accurate financial statements c. Prepare and file periodic* reports detailing its growth within that period. d. Notify the designated authority of any changes in the information submitted at the point of labelling within a stated period e. Comply with any other obligations imposed by the designated authority **The designated authority has the responsibility for determining the meaning of periodic as stated above. It could be quarterly, biannually, annual.*
3.1	**One-Stop Shops**	Member States should Consider establishing a robust digital infrastructure under the oversight of the designated authority with specific responsibility for managing the platform, and capable of efficiently delivering the one-stop shop's (OSS) services. The resulting digital infrastructure shall be user-friendly, accessible, and streamlined to enhance the ease of doing business for start-ups. The relevant authority shall regularly evaluate the OSS's	In collaboration with other relevant authorities, there shall be established a One-Stop Shop, with specific responsibility to take all necessary steps to facilitate the processing of business-forming, licensing and multi-regulatory compliance for startup founders and employees.

		effectiveness, identifying areas for enhancement, and adapting to the evolving needs of startups. Continuous improvement will ensure that the OSS remains relevant and impactful in supporting startup growth and innovation	
4	**Taxation**	Member States should consider providing for supportive tax policies, including tax incentives within their financial means to encourage startup development in their jurisdiction, to be implemented by virtue of the startup act or adjacent finance laws, as provided for by their legal systems. In so doing, careful consideration must be given to the interplay of labelling requirements and tax incentives. Specifically, Member States shall consider: • Assess in various corporate tax incentives taking into account the maximum labelling period for startups, and existing tax laws; • adopting sunset clauses in tax legislation which would limit the duration of tax regimes, and allow extensions as required. This action would assist in limiting the costs of ineffective incentive programmes; • the purpose of the proposed incentive scheme e.g. would the	Notwithstanding the provisions of other legislation, and in accordance with the details provided hereunder, an eligible startup shall be entitled to: a. deduction of its expenses on research and development; b. favourable treatment for its directors and employees regarding their personal income tax in relation to capital gains, their personal investments in the business, and stock options as per the follows: *To be determined by Member States;* c. the option to carry forward net-operating-losses as per the following terms: *To be determined by Member States;* d. VAT exemptions on imported goods as follows: *To be determined by Member States ;* e. other VAT and other sales related taxes as follows: *To be determined by Member States .* The designated agency shall develop a mechanism to monitor expenditure against the formal tax expenditure budget and startup related incentives shall be given priority within the industrial development expenditure book. The designated agency shall: a. provide assistance to eligible startups in accessing tax incentives through the mandated revenue authority, through business support and coordination between both authorities;

		focus be to incentivise citizens for pursuit of more innovative activities or rather attract investments from potential investors to underfinanced sectors; and • identify existing personal income tax incentives and assess their impacts against stated objectives. Member States should consider enhancing regional and continental cooperation, including regarding the development of multilateral frameworks, to avoid harmful tax harmonisation and support the collective competitiveness of the African continent. Specifically regarding digital services taxes, Member States are encouraged to: • assess the potential impact of proposed digital services taxes before implementation, including through the review of studies and public consultations with consumers, tax payers, digital service providers, and sector-specific regulatory authorities; • prefer an income, rather than revenues or sales based approach, which would only be passed down to the consumer;	b. consult with participants in the ecosystem particularly existing founders and angel investors to monitor impact and provide insights into emerging needs, and facilitate cost-benefit analyses on the proposals; c. establish a seamless reporting mechanism for beneficiaries of incentives; conduct a periodic review of existing tax incentives for assessment against outcome.

		• Provide for a clear definition of "digital services" to simplify compliance and administration; • consider the development of a unified regional digital tax policy, which would, among other benefits, reduce regulatory uncertainty and compliance costs for startups in different African markets. Member States need to pay particular attention to the position of women, and, towards that end: • conduct surveys on the demographics of existing startups; • assess existing barriers and factors that could impose greater tax burdens on certain categories of startup founders and employees and deliberately work to remove them in designing new incentives.	
5	**Structural enablement**	Member States should consider designing and implementing a means to supply funds and financial support to startups in order to provide safety against harsh global and macro-economic factors and low funding periods with the objective of protecting the progress made by startups, diversifying	**Government funds:** The designated authority shall develop and implement funding mechanisms tailored to the different stages of the startup lifecycle given the divergence in their needs, and in so doing, shall: a. design and deploy a broad and diversified criteria under the labelling regime for qualifying startups in order to diversify the sorts of funds available;

		funding options for startups, and providing more accessible funds options. Member States need to adopt a blended approach to create an environment that accommodates and supports the safe, secure and productive participation of institutional investors in startup investing towards greater deployment of allowed institutional assets.	b. provision for the most affordable repayment interest rate in order to make the loans affordable and design an effective repayments and follow up mechanism; c. make available simple and accessible information and digital portal to access the same. **Institutional investors:** The designated authority shall: a. coordinate a process whereby existing regulations governing institutional investor bodies are amended as necessary to mandate and require hiring board members with private equity and venture capital experience; b. develop an institutional investor long-term investment strategy for startup investing to guide the early participation of institutional investors in startups as an asset class; c. develop prudential and any other necessary guidelines aimed at the operation of PE/VC entities investing institutional funds; d. consider financial aid to subsidise the high cost of management services where institutional investors engage with professional fund management service providers and tax credit for other related management expenses; e. constitute a national investment advisory body to develop a special asset class office to serve as the key liaison of institutional investors and other public bodies on matters private equity and venture capital, which shall: ● develop standard institutional investor capacity, ● develop and availing publication, reporting and any other documentation necessary for the information of institutional investors, ● conduct and provide a report on situational and risk analysis for institutional investors with long term investment projections.

			Credit guarantees: The mandated monetary and fiscal authority (Central Bank) shall, under its supervisory and oversight mandate: a. develop and implement a credit guaranteeing framework for startups through amendment to existing mechanisms, establishment of a fund for guarantees, or licensing of guarantee companies, as relevant, based on the principles of this law, and with consideration of/ for: ● credit/debt from private VC/PE funds and seed investing requiring guarantees, ● an investment guarantee scheme for institutional investors implemented as against determined ticket sizes, b. collaborate with the designated startup authority (Startup Agency) to align labelling requirements with the objectives and mechanisms for the credit guarantee scheme and implement assessment and due-diligence procedures through the agency's one-stop-shop. The designated startup authority, shall implement programmes to: a. promote pre and post loan guarantee support in business operations and development; b. promote the development of targeted loan performance and loan recovery tactics that enable loan performance and increase repayment rates. **Public procurement:** The relevant authority(s) shall implement a combination of legislative and initiative reform to create an environment where startups are placed in a better position to secure government contract opportunities.

			a. Specifically, public procurement legislation shall provide for criteria and threshold relaxation rules such as prior experience, high annual turnovers, unsolicited proposals and direct contact with public bodies while remaining cognisant of national constitutional principles and the broader legal framework; b. Access to procurement opportunities shall be digitised and democratised through unique mechanisms such as expedited processes and opportunity matching platforms targeting startups; Local content quotas in the general procurement environment shall be reserved for startups in competitive sectors/ sub-sectors.
5.1	**Alternative funding sources**	The designated authority shall among others, establish processes to mitigate the risk of fraud, default and dispute in the context of informal and formal collective investment initiatives including but not limited to: bootstrapping, donations, crowdfunding, and investments by family and/or friends. The designated authority shall have regard to the following: ● Set minimum financial management and corporate governance standards for companies seeking to operate as labelled startups. ● Compel labelled startups to conduct adequate due diligence in their contractual relationships with operators, industry partners, contractors, and agents.	

		• Collaborate with relevant authorities to emplace a whistle-blowing structure for employees and investors to report erring founders of labelled startups. • Collaborate with relevant authorities, including a designated One-Stop Shop, to design and avail easily understandable and accessible model contractual templates relevant to collective investment structures. Amongst other things, such model contracts shall reference investment and repayment terms, duration, protections, additional financial liabilities and dispute mechanisms.	
5.2	**Dispute Resolution**	Member States should consider creating a consistent, organised and harmonised international investment environment capable of offering consistent protections for local and international investors. To implement this recommendation, Member States should negotiate and ratify regional and continental agreements to enable investors access to regional and	The relevant authority (Startup Authority) shall: a. In collaboration with national investment promotion authorities, include/ refer to the definition of startups and investing proffered under this framework as a qualifying investment under national investment legislation, to streamline and ease access to protections and remedies for investors, b. Delineate relevant sectors for purposes of startup investment, as aligned with national interest and law, under the relevant national investment legislation, c. Develop a model contract that provides for strong use of ADR and clear clauses regarding choice of law and jurisdiction for startups to use in managing their contractual obligations;

		continental dispute resolution mechanisms of the Member States' choice.	d. Collaborate with other relevant authorities to promote the use of ADR by: ● promoting the organisation, training and development of ADR professionals through stimulating and supporting their associative and organising bodies; ● providing financial support for professionals looking to obtain the necessary accreditation to practise ADR; ● promoting the appointment of local and national ADR professionals and practitioners in local and international Arbitrations involving their Member States; ● adopt regional and international ADR treaties in a manner that harmonises as far as possible the provisions therein; ● evolve, adopt, amend and harmonise policies and laws that strengthen and effect the fast, simple and efficient enforcement of ADR awards; ● promote the use of arbitration rules from chambers and centres most preferred by investors active in their countries to increase the attractiveness of their nations as destinations for arbitration as far as possible; ● develop arbitration rules and bilateral agreements with the relevant arbitration centres where high volumes of startup investment are flowing from; ● setting competitive prices and providing financial aid as far as allowable in law to parties taking up ADR within Member States; ● promoting increased efficiency in national mechanisms for ADR enforcement.

5.3	**Insurance**	Member States need to develop and implement measures designed to assist startups in accessing insurance in accordance with relevant national laws as well as international best practice.	The designated authority shall: a. promote the establishment of policy and regulations that address liabilities emergent from newer business models and technologies in order to support the regulatory derisking of such business as far as is possible in law; b. partner with necessary ecosystem and private sector parties to provide risk mitigation strategies and enable the startups to become insurer-ready at no extra cost; c. design an insurance-targeting financial aid scheme within any established fund under this framework to enable startups purchase quality insurance and meet their obligations. The scheme will serve to support insurance costs for eligible startups (criteria determined by mandated body) on a predetermined basis. The scheme shall include financial relief schemes to enable startups meet its labour related insurance obligations; d. promote, incentivise and stimulate the diversification of insurance offerings with an emphasis on customisation for innovation and digital economy related risks; e. collaborate to develop and utilise any regional schemes in order to deliver on its obligations under this section.
5.4	**Foreign exchange and exports**	Cognisant of the realities and constraints uniquely facing each nation, Member States are encouraged to review and re-evaluate the constraints on foreign currency treatment to create faster, more convenient and more efficient mechanisms for investors to exercise this protection while remaining compliant with national laws. To effect this	

		recommendation Member States may need to: • **Enable access to foreign currency accounts:** Amend national laws and policy to permit the opening of local foreign currency accounts for startup investors and businesses operating within the member state. • **Ease restrictions:** Evolve policies to remove any excessively restrictive forex control measures that do not serve the national interest of Member States while serving to detract startup investing in the countries. **Facilitate compliance:** Provide expedited compliance procedures to enable a more efficient experience with compliance requirements that Member States deem necessary after policy and regulatory changes have taken place to create a friendlier environment.	
5.5	**Research and Development incentives**	Member States should consider prioritising and incentivising innovation in digital technology, through a blend of financial and non-financial incentives and support structures tailored to encourage and enable research and development at all phases of a startup.	An office dedicated to innovation funding reserved for business research development is hereby established in the mandated R&D body/ agency. in accordance with the funding provisions of this law, the office will support the development and implementation of a for the management of the research and development budgetary allocation.

			In recognition of the central role of cloud technologies and AI as capable of improving living and working conditions and increasing productivity, the office shall collaborate with all relevant authorities to promote cloud technology and AI research funding, responsible data sharing, and constructive risk-based governance frameworks, and prioritise opportunities to utilise these technologies in ways that are transparent, explainable, and fair. It shall further prioritise fostering public trust in cloud technologies and AI, building a cloud/AI-ready workforce, protecting IP, and promoting robust and flexible privacy regimes can help to achieve this. In accordance with the funding provisions of this law, the office will support the development and implementation of a framework for the management of the research and development budgetary allocation. In accordance with the procurement provisions of this law, the relevant ministry, supported by the office, shall initiate a process to ensure that all relevant policies and agencies reserve a portion of their innovation related R&D budget for contracting startups. Special consideration shall be given to gender parity requirements mandating that the budgetary allocation is spent as far as possible on both male and female owned businesses. In accordance with the tax provisions of this law, provide input on the R&D credits, including evaluating its effectiveness.
5.6	**A policy innovation approach to enabling Startups**	Member States are encouraged to actively pursue the adoption of innovative policy approaches from across the region, in line with the imperative to enable startups, particularly in the context of emerging	a. The designated startup authority shall: i. Endeavour to negotiate mutual recognition agreements in regards to Special Economic Zones (SEZs) and regulatory sandboxes, allowing products or services of startups and businesses licensed under

		technology. These approaches shall aim to streamline regulatory processes in Member States by adopting a mutual recognition framework for innovative regulatory approaches that have proven effective in other Member States.	specified minimum standards in other Member States to be automatically recognized and accepted. ii. outline the process for assessing, approving, and implementing regulatory innovations from other Member States while ensuring alignment with the local regulatory context and objectives. iii. encourage the establishment of regulatory sandboxes that facilitate innovative experimentation by startups and businesses. iv. collaborate with the designated startup authority in other Member States to share information, best practices, and lessons learned related to innovative regulatory approaches and mutual recognition. b. Startups, fintech companies, and businesses engaged in innovation shall be eligible to participate in the mutual recognition program, subject to compliance with relevant regulatory standards. c. Alongside the trade authority, the designated startup authority shall encourage the participation of pertinent stakeholders, including startups, industry representatives, and experts, in the policy innovation approach to be adopted. d. In the spirit of the African Continental Free Trade Area (AfCFTA) goal of economic integration, the relevant authorities shall work towards the harmonisation of regulations and the mutual recognition of qualifications, certifications, and standards, which will contribute to a more unified and competitive market.
5.7	**Regulatory enablement**	Member States are encouraged to promulgate data protection laws or	In strengthening the data protection rights, the relevant authority shall collaborate with the National Protection Authority to:

		regulations in accordance with the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) and/ or harmonise existing laws with the same. The National Protection Authority (NPA) responsible for supervising the implementation of the data protection laws is encouraged to have gender parity.	a. work towards promoting and adopting secure cloud services as a key enabler for enhanced security and resilience in Africa. b. provide data protection training for labelled companies and instruct them on the application of data protection regulations on their products, services and business operation. c. specially instruct labelled startup data collectors and processors about their responsibility for securing and protecting the information of their data subjects through the effective utilisation of privacy enhancing methods and data redactive tools such as anonymisation and tokenization, d. design enforcement systems that prescribe the regulation of audits, issuing of warnings, enforcement and award of compensation for for the unauthorised access, alteration, use, mismanagement and breach of personal and public data by data controllers, processors and unauthorised third parties specific to startups, considering that where a startup of its own volition reports its actions and inactions to the NPA, such startups shall not be found guilty of a breach of the data protection laws. They shall however be instructed on the appropriate steps to remedy the situation, and given a timelines for the rectification.
5.8	**Cross-border data transfer**	Member States are encouraged to include data protection frameworks that provide for minimum standards for cross-border data flows that establish reciprocity as a central principle in permitting transfers	With a view to enabling secure and proportionate productive transfer of data, the National Protection Authority shall: a. develop data categories to which the regime shall apply, with sufficient specificity regarding different types of data and transfer, with the aim of avoiding unnecessary inclusion, b. develop and maintain a white list of countries to whom data can be transferred freely, further supported by the principle of reciprocity,

			c. develop a conditional transfer regime in accordance with the AU Data Policy Framework which provides for a list of technical standards, ethics, governance, best practice guidelines and other key considerations that constitute the minimal level of data security which must be in place for cross border data transfers to be conducted by startups to a receiving country, d. develop regulations for the execution of bilateral obligations which the receiver of data in a country which fails to meet the minimum level of data protection must execute before the transfer of data can occur, including by providing a model contract that may be adopted by transferring startups, e. develop and execute capacity development programmes which will equip regulators and law enforcement agents with the knowledge and skill set required for supervising and ensuring compliance with the data transfer policies prescribed by the NPA, f. develop and execute capacity development programmes for startups specific to the enablement of compliant cross-border transfers, g. adopt a cloud-first policy and work with the relevant authorities to invest in national and regional cloud strategies for enabling the use of AI and other emerging technologies.
5.9	**Competition**	Member States should consider developing robust merger and acquisition control mechanisms within a balanced competition framework and/or startup legislation, including robust notification and approval merger control mechanisms which support competitive local markets, while cautiously	The mandated authority shall work with the relevant authorities to promote effective competition having regard to interoperability principles (open APIs and data sharing and open platforms).

		balancing the desire to stimulate investment and the imperative to protect competitive advantage. Any such mechanism must be clear, unambiguous and reasonable.	
5.10	**Intellectual property**	Member States are encouraged to develop IP related support measures that align with the overall incentive policy scheme and take account of cost, process, and technical barriers to startups' protecting their valuable intellectual property. Member States shall also explore the option of automatic vesting of inventions created during the course of employment on the employer subject to the provisions of the employment contract.	The designed startup authority shall collaborate with the designed IP authority/ies to: a. maintain an online platform to facilitate intellectual property registrations, which shall contain relevant information on process, categories of registrable IP and registration requirements; b. provide training in intellectual property requirements to labelled startups; c. simplify registration processes and facilitate assistance for the registration of patents and trademarks at both national and international levels. This shall include support with searches on national and international databases to ensure that a similar IP is not registered; d. make reasonable efforts to expedite IP registration procedures, particularly for patents and trademarks which require several components; e. In accordance with the funding provisions of this law, design a financial support mechanism for labelled startups to support their registration of intellectual property at the national and international level; f. develop model contracts for startups to use in their contractual relations with employees and contractors that detail IP rights and ownership, including for code and application development, and provide access to expert consultations with experienced examiners to ensure

			compliance with administrative requirements and assist with instituting legal actions for IP infringements and ensure speedy resolution of all IP disputes; g. review and bring in accordance domestic copyright laws to clarify that copyright protects source code and algorithms; h. cooperate with other relevant authorities to integrate prohibitions of forced technology transfer in bilateral investment and trade agreements with third parties and among Member States.
5.11	**Visa regimes to support startups.**	By virtue of their primary startup legislation as well as other relevant legislation, Member States are encouraged to create various incentives targeted at labour mobility for startups.	**Visa incentives**: The designated agency shall create "startup visas" to encourage the immigration of non-citizens and the return of skilled migrants interested in establishing a startup within the country. The startup visa shall be granted for a period of three years and shall be extended or renewed for an additional two years provided the startup is up and running. Preference shall be given to prospective female founders to bridge the representation gap in the startup ecosystem. **Startup leave**: Private or public sector employees shall be granted a one year renewable leave to launch their businesses with the right to return to their previous employment if the startup fails. The employee shall be entitled to a specified amount as grant for at least a year to cover living costs while the business is set up. **Skill development program**: To maintain a vibrant startup ecosystem, the designated authority shall implement training programs on digital skills acquisition, marketing, management and entrepreneurship available to labelled startups. **Flexible payment scheme**: legislation shall enable startups to reward their employees through stock options and work for equity to free

			startups from the obligation of paying high salaries and fixed benefits they may lack the resources to provide. The stock option shall be exercisable after a minimum of one year and if the employee leaves before that time, his right shall be voided. **Employee hiring grants**: The designated authority shall design and implement hiring credits to offset the cost of hiring and onboarding skilled talents from tax. Preference shall be given to startups seeking to encourage diversity by employing women and people with disabilities. **Women training and mentorship program:** The designated agency shall put in place a program for the training of women founders, with high quality mentoring and networking events to create links among women led businesses.
6	**Education and fostering a culture of innovation**	States are encouraged to establish a mechanism for developing training programs in the formal and informal education sectors to promote a startup culture, focusing on innovation, research, development, intellectual property, entrepreneurship, and business management specifically. By virtue of their primary startup legislation as well as other relevant legislation, Member States shall create various incentives targeted at skills development for startups.	The designated authority shall be responsible for designing and implementing a training and capacity building program relevant to entrepreneurial pursuits. If an agency is established for these purposes, such agency shall also be mandated to collaborate with education institutions and the education regulators, to develop appropriate learning curricula. The designated authority for startups shall prioritise capacity-building initiatives aimed at policymakers to ensure regulatory and legislative frameworks remain adaptable in the dynamic startup ecosystem. These initiatives shall encompass the following components: ● Startup ecosystem awareness ● Emerging technologies ● Flexible and best practice regulatory approaches, including regulatory coordination and harmonisation

			● Data protection and intellectual property rights ● Investment and funding Public-Private collaboration

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