African Union

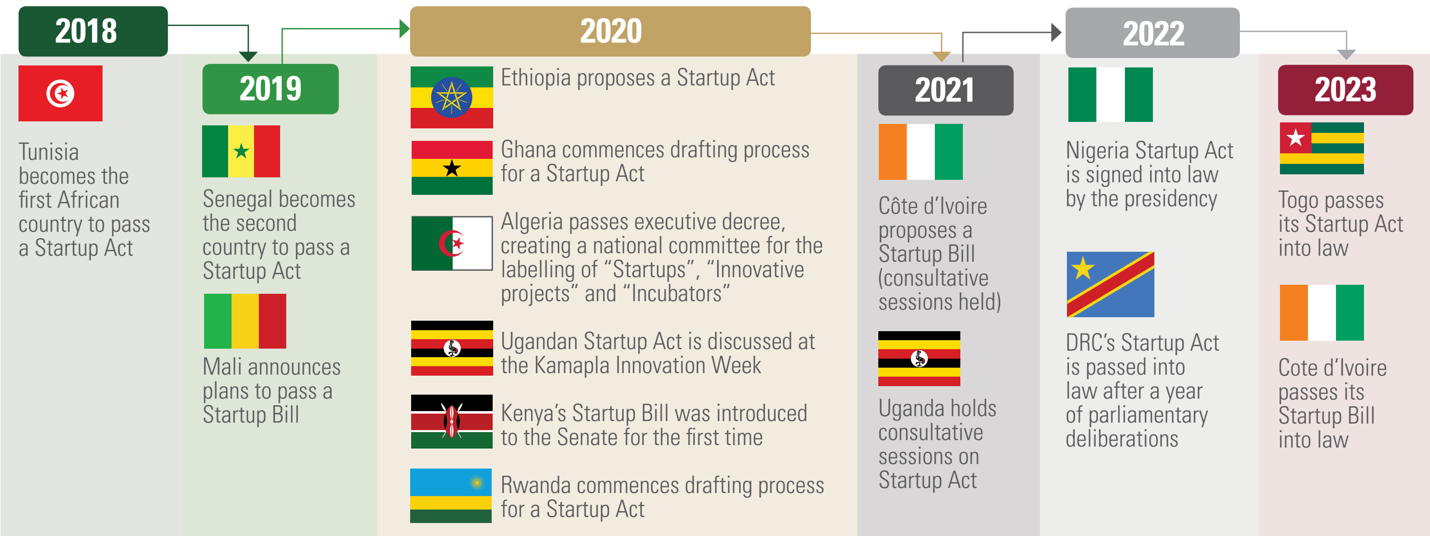
STARTUP MODEL LAW FRAMEWORK

THE CASE FOR STARTUP BILLS

THE STARTUP POTENTIAL

Five (5) billion dollars in funding flowed into 5,200 African startups in 2022[1]. Yet, across the continent, enabling legislation is scant, high compliance costs and regulatory uncertainty often hinder these businesses' ability to scale. The internet economy can contribute USD 180 billion to Africa's GDP by 2025, but African nations must also be creators - not just consumers of technology. Startups spur development by creating jobs in the digital economy and driving the research-innovation pipeline. They may not necessarily be market-agnostic, but will usually be tech-focused or tech-enabled. As a consequence, startups will often have high capital costs with low revenue.

Fig. 1 The Startup Act Timeline



WHY DOES STARTUP LEGISLATION MATTER?

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 turbulence 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. Member States have a critical opportunity to create the regulatory enablement that will drive greater investment in Africa's innovation ecosystem.

1: Africa: The Big Deal.

CONTINENTAL PROGRESS ON STARTUP LEGISLATION

Figure 3 below maps continental progress on startup-specific legislation. We find that most countries which have advanced, maintained or cultivated their growth trajectories (Fig. 2), have made some progress on startup legislation: either an act is in force, a draft is being considered, or governments have made some sort of public commitment to putting enabling legislation in place.

Fig. 2 TRAJECTORY CATEGORIES

MAINTAINING - Preserving steady growth (South Africa)
Largest developer population, investment in leading technologies, strong education, and robust startup and technology ecosystem dominated by larger companies

ADVANCING - Sprinting ahead as fast followers (Egypt, Nigeria & Kenya)
Large developer population, strong startup ecosystem with a strong funding environment, and stable socio-economic environment

CULTIVATING - Fostering landscape for growth (Morocco, Rwanda & Ghana)
Moderate-to-large developer population, mid-to-late startup and technology ecosystem and moderately stable socio-economic environment

EMERGING - Establishing the foundation for growth (Tunisia, Algeria & Ivory Coast)
Small-to-moderate developer population, early-stage startup ecosystem, and an improving technology ecosystem

NASCENT - Tackling challenges to enable growth (Ethiopia, Cameroon & Uganda)
Small developer population, early stage startup ecosystem and basic technology and low-to-moderately stable economic environment

For instance, Tunisia and Senegal, which were among the first Member States to enact startup legislation are “emerging countries” which are establishing the foundation for growth. Thus, there is some link between serious action around a regulatory environment for startups, and innovation ecosystem advancement.

Fig. 3

PASSED	PASSED, NO ASSENT	DRAFT, NOT PASSED	DRAFTED, STAKEHOLDER ENGAGEMENT PHASE	NO BILL, BUT GOVERNMENT COMMITMENT
Senegal Togo DRC Tunisia Nigeria Côte d’Ivoire		Algeria Ethiopia Mali Rwanda South Africa Kenya		Uganda Egypt Mauritius Zambia Namibia

CASE STUDIES

TUNISIA - Prior to the passage of the Tunisian Startup Act, women were 61% of graduates of higher-level tech programs, but somehow still made up 31% of the “not in employment, education or training ‘NEET’ section of the country”. This, coupled with the economic downturn exacerbated by COVID-19 made funding and the survival of startups and SMEs difficult. The Act’s passage provided a unique opportunity for the country to resolve the potential challenges faced by startups and SMEs; unfavourable legal and regulatory frameworks, limited access to finance and business development support and underdeveloped infrastructure to name a few. Consequently, investments in Tunisian startups increased by 31% between 2017 - 2021[2]. Additionally, the World Bank launched a EUR 66.90 million (USD 75 million) fund for innovative startups and SMEs[3].

ITALY - An OECD evaluation[4] of the impact of Italy’s Startup Act revealed that the country saw a positive cost-benefit balance after only six years of passing the act. Registered startups were found to have increased their revenues, assets and value-add by margins of between 10 - 15% when compared to counterparts who could not benefit from the Act. The Act also increased access to finance as enrolled startups were more likely to receive credit from banks and also experienced an increased inflow of venture capitalist deals into the country. Lastly, the Ministry of Economic Development closely monitored the implementation of the Act, thus allowing it to achieve effectiveness.

STARTUP LABELLING

It is generally agreed that startups are disruptive innovators which often begin small and look to scale quickly. However, not every small business is a startup, and not every startup is a small business. Given this absence of homogeneity, it is important to identify an approach to labelling startups, particularly to ascertain which businesses are eligible for the support and incentives available to startups by law. From a comparative review of available startup legislation on the continent and elsewhere, startups are not defined by a single legal definition, but with reference to a series of criteria which take their entire lifecycle into consideration. For instance, the most common factors considered are age, ability to scale, turnover, amongst other things. Tabled below is a cross-section of some of the most common elements to keep in view when defining the eligibility of businesses for startup status. The inclusion of any criteria must be with regard to the unique features of each Member State.

2: Tunisia: Startup Tunisia, for the emergence of a nation of entrepreneurs – ANA.
3: From education to job growth: Supporting a startup surge in Tunisia.
4: The evaluation of the Italian “Start-Up Act”.

CRITERIA	DEFINITION	REFERENCED BY
INCORPORATION	Member States are at liberty to determine eligible class(es) of incorporation; sole proprietorship, partnership, company limited by liability or a cooperative, but typically, businesses interested in enjoying the benefits accruing to startups must often be incorporated in the relevant country.	TUNISIA, NIGERIA, SENEGAL, TOGO
LABEL DURATION	Member States must consider how long businesses should enjoy startup labelling, or perhaps, how long they will require to exit the riskier phases of their lifecycle. This will necessarily vary by national circumstance, including such considerations as a country's prevailing tax regime. Still, the common maximum duration appears to be ten years, which commences from the point of formal incorporation.	SENEGAL, NIGERIA
NATURE OF BUSINESS	Startups are industry agnostic. The unifying feature, however, is that they leverage technology and/or innovative practices to deliver value. Eligible businesses should ideally be agile, innovative, technological or technology-enabled.	ALL
STAFF STRENGTH	Within and outside the continent, there has been an effort to link staff strength to scale, and thus, startup status. In some cases, on the continent this can be up to 100 employees. Outside the continent, even relatively larger organisations can be considered startups, with up to 250 staff. Ultimately Member States are at liberty to determine a figure based on considerations of population size, unemployment rates, etc.	TUNISIA
TURNOVER	There is a revenue threshold after which businesses can be considered to be established; particularly crucial for startup labelling. In contemplating what threshold is relevant to each Member State, due consideration must be given to other factors including duration, and the nature of the business, amongst others.	TUNISIA
OWNERSHIP	Another means through which Member States seek to facilitate startup operations and financing, is by stipulating an ownership structure that accommodates external investors including individuals, venture capitalists, foreign investors, etc., while other Member States prioritise the imperative to promote indigenous ownership.	TUNISIA, NIGERIA, SENEGAL, TOGO

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.

FUNDING FOR STARTUPS

A well documented challenge faced by startups is access to financing. 564 startups raised over USD 2 billion in 2021[5] and in 2022, 633 startups raised over USD 5 billion - more funding than ever before.[6] And yet, Africa receives less than 3% of global venture capital flows.[7]

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 startups[8]. 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.

WHAT FUNDING OPTIONS CAN WE CONSIDER?

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.

THE ALGERIAN STARTUP FUND: public venture company providing financing in exchange for equity shares.

ANAVVA FUND: a core part of the startup ecosystem strategy under Tunisia's Startup Act; raising funds to deploy at different stages of the startup life cycle (seed, growth series and late stage) through other investment funds.

GOVERNMENT LOANS

Governments are often capable of providing loans with more favourable terms such as lower interest rates, and flexibility around collateral.

THE YOUTH INVESTMENT FUND: provisioned to be accessible to businesses domiciled 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.

VUKA LOANS require regular security with a graduated repayment schedule where the highest amounts are repayable within 6 years. This loan attracts a 6% interest rate and a 1% management fee payable at the point of disbursement.

GRANTS

Typically designed as short-term initiatives with a budgeted amount available for a limited period of time, and are concluded periodically either at the funds' end or the exercise of government discretion.

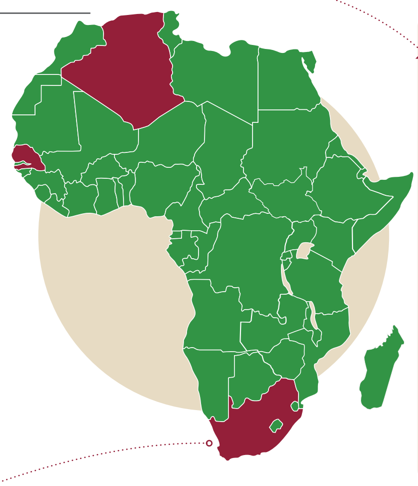
THE TUNISIA AIR GRANT: supports the Proof-Of-Concept development of very early stage startups. This grant, which amounts to 30 000 TND (USD 9426) is composed of 60% grant and 40% refundable grant.

INDIA, through the Startup India Seed Fund Scheme, 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.

5: Disrupt Africa Annual Report 2021.
6: Disrupt Africa Annual Report 2022.
7: Startup Genome: The Global Startup Ecosystem Report GSER 2021.
8: Max Cuvellier, The Big Deal; 2. Estimated VC funding per country based on data available from Max Cuvellier, The Big Deal and Partech Partners.

CASE STUDIES: REAL IMPACT ON THE CONTINENT

SENEGAL - Founded in 2019, the Délégation de l'Entrepreneuriat Rapide (DER), is an annual allocation of 30 billion West African CFA franc (USD 47,85 million) to fund innovative tech startups. The DER was set up to remove funding constraints faced by women and young people in the development of their activities. To date, over 106,000 women and young people have already benefited from the Fund.



ALGERIA - In late 2020, Algeria launched its first fund for startups, called the "Algerian Start-Up Fund". This Fund aimed at addressing the gap in accessing financing in the market. The new financing mechanism is based on investment in capital and not on classic financing mechanisms based on credit, because investment in capital induces a notion of risk. The Algerian Start-Up Fund has raised DA 1 billion (USD 7,2 million) to fund 65 startups, since its inception in October 2020.

SOUTH AFRICA - Launched in 2015, the SA SME Fund is a ZAR 1,4 billion (USD 75,19 million) partnership between the government and corporate South Africa to invest in scalable SMBs and to respond to the current needs of society. The Fund also seeks to remedy the lack of funding experienced by township-based small businesses.

TAXING STARTUPS

It is by now well known 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.[9] 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. Targeted tax incentives lower the cost of capital for small businesses, startups, and those that invest in intellectual property.[10] Corporate income tax incentives are commonplace in interventions aimed at improving investment inflows. One approach has been to adopt a tax holiday excluding the application of income tax on eligible entities. Member States such as Nigeria,[11] Tunisia,[12] and Senegal[13] have adopted this method. 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. For instance, Tunisia offers corporate tax exemptions for the duration of the startup label.[14]

DIGITAL SERVICES TAX (DSTs) AND THE POSSIBLE EFFECTS ON GENDER EQUITY

DSTs are imposed on gross revenues of firms based on their digital activities in a particular jurisdiction.[15] A number of developed and developing countries around the world have found that imposing unilateral DSTs creates unnecessary trade barriers and inhibits competition, resulting in lower quality and increased prices for goods and services. The harsh reality is that DSTs can operate as trade barriers[16] and drive up costs for startups that depend on the services provided by companies subject to DSTs.[17] Startups in jurisdictions subject to DSTs may find that the benefit of tax exemptions delineated elsewhere in the model framework is negated.

This is especially true when the impact of these taxes on female entrepreneurs and other marginalised groups are considered. Member States generally recognise the need to promote gender equity, reflecting in gender-based quotas and targeted support for women's initiatives. However this has yet to translate into tax policy, specifically in relation to startups, in light of the peculiar socio-economic challenges women face. For example, women receive less funding than men (only 2.2% of the USD 150 billion invested by venture capitalists in 2022[18]), have fewer uptakers and support, and are cumulatively taxed higher[19], often as a result of poor financial knowledge[20], pink tax[21], bearing the burden of household obligations and the multiple taxes imposed on the informal sector where they form the majority. As a result, Member States may consider that DSTs risk double taxation for all businesses, but also form an additional barrier to the success of startups driven by women. This is an especially important consideration, given that women have been found to recruit more workers, be more stable, and generate ten times more revenue than male-led startups.[22]

The adjustment of income (personal/corporate) and VAT provide veritable avenues for achieving gender equity in taxation. Eg. member states may consider the application of gender-based tax exemptions and rebates for female-led startups and their investors; reduce tax rates for startups meeting a threshold of female corporate leaders, etc.

9: Darnihamedani, P., Block, J.H., Hessels, J. et al. Taxes, start-up costs, and innovative entrepreneurship.
10: Joseph Rosenberg, Donald Marron, 2015. Tax Policy and Investment by Startups and Innovative Firms.
11: The Nigeria Startup Act 2022.
12: Startup Tunisia: Boosting the startup constellation.
13: Senegal Approves A-Three Year Tax Exemption For Its Startups.
14: Article 14, Tunisia Startup Act.
15: Understanding digital services tax and the OECD; Gordon Gray, Jennifer Huddleston Digital Services Taxes: A Primer.
16: The Digital Sprinters: Driving Growth in Emerging Markets.
17: Digital Services Taxes Will Harm Startups Across the World.
18: US VC female founders dashboard | PitchBook.
19: Gender-conscious tax policy to promote equality - Academia - The Jakarta Post.
20: Tax saving guide for women salaried employees in 2023 | Mint.
21: Guittar et al. defines the term as the practice of taxing women's products more harshly than men's for comparable goods.
22: Challenges Women Entrepreneurs Face - businessnewsdaily.com.

CASE STUDIES

TAX ALLOWANCES: Algeria allows eligible startups to deduct expenses for research, subject to a cap on the amount that may be deducted.[23] The 2021 Finance Act also exempted labelled startups from tax on professional activity (TPA) and Impôt sur le Bénéfice des Sociétéss[24] (IBS) payments for 2 years commencing from the date of labelling. It exempts incubators from the above taxes and the Global Income Tax (IRG) for the same term[25] and, Article 8, Paragraph 2, of the Algerian Code on Turnover Taxes (P9) excludes startups with a total turnover of less than or equal to 30,000,000 DA (USD 227 million) from the scope of value-added tax.

In Nigeria, the tax allowance approach has also been adopted, but without a cap on the amount that may be deducted, and subject to the expenses being wholly incurred in Nigeria. The Act exempts labelled startups from the payment of Corporate Income Tax (CIT)) for an initial period of three years, and an additional two years if the company is still labelled.[26] Investors in startups are also exempted from Capital Gains Tax (CGT) and will receive an investment tax credit equivalent to 30% of their investments[27].

NET OPERATING LOSSES: In Tunisia,[28] NOLs can be carried forward for four years, starting from the year in which they were booked. This allows startups to offset any tax payments that should ordinarily have accrued in those fiscal years. It is however important to note that they cannot be carried back[29].

IMPORT TAX EXEMPTIONS: By law, innovation infrastructure entities and licensed operators are eligible for a preferential Corporate Income Tax (CIT) rate of 15% where it usually stands at 30%. The innovation infrastructure developer is also eligible for a CIT holiday for a five-year period from the year it first makes a positive net income. Other incentives include a preferential withholding tax (WHT) rate of 0% if an investor qualifies for the 15% CIT rate. While it may be challenging to measure the all-round impact of such startup-focused investor schemes, 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.[30] The outlook remains largely optimistic and off to a strong start, and there is much to be discovered about investor-centric approaches to developing startup ecosystems.

TAX EXEMPTIONS FOR GENDER EQUITY: Where a wholly female-owned startup was not formed by the transfer, reconstitution, reconstruction, or splitting up of an existing business, and was established on or after July 2001, Pakistan laws offer such businesses income and capital gains tax rebates of up to 25%.

In 2022, Korean tax laws offered tax credits of up to 30% and 15% of labour costs to SMEs and medium-scale companies respectively who hire female employees within three to 15 years of their retirement from an SME of the same classification as a result of pregnancy, childcare or other personal reasons.

The America Jumpstart Small Business Act provides grants and export incentives to businesses that have been certified to be Woman-owned Small Businesses (WOSB). To receive this certification, 51% of such businesses must be directly owned and controlled by females who are U.S. citizens. Additionally, New York offers certified WOSB in the field of research and development a 90% corporate tax credit[31].

In a bid to increase female participation in the MSME sector, India's 2019 finance budget offered tax incentives of 3% to female-owned businesses[32].

IP IN STARTUP LEGISLATION

Intellectual Property (IP) protection is increasingly salient as the world moves towards a knowledge-based economy. IP protection strengthens startup competitiveness by providing protection against imitators, and helping them manage risks.[33] 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. Startups which apply for patents, trademarks or designs are likely to succeed and grow more quickly than those that do not[34] and 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.[35] Startups can leverage IP rights to attract investors, scale activities and establish collaboration agreements. However, the registration and enforcement of IP rights can be difficult, expensive and time consuming which can be challenging for startups. Based on a comparative analysis of ten African countries,[36] the process for IP registration in Africa takes between 9-24 months.

THE CASE FOR IP IN STARTUP LEGISLATION

Proprietary materials are among a business' valuable assets - and for a tech startup in particular, its IP is typically the most valuable asset. This includes copyright[37], patents[38], trademarks and trade secrets[39]. Failing to protect IPs and, - in the case of patents, - protect early, risks jeopardising a startup's entire business model.

23: EY, Algeria Introduces Finance Law 2023 | Key Measures Applicable to Companies.
24: Translated as tax on corporate profits.
25: Algeria's Tax Laws For 2021 Grant Startups, Incubators A Range of Exemptions.
26: S. 25(2) of the Nigerian Startup Act (NSA).
27: S. 28 of the NSA.
28: Tunisia: Corporate - Deductions.
29: Analysis of the Tunisian Tax Incentives Regime.
30: RDB records highest investment registration amid COVID-19 pandemic - Official Rwanda Development Board (RDB) Website.
31: Woman Owned Business Tax Benefits: What's Out There?
32: Budget 2019: Women entrepreneurs welcome 3% tax benefit for women owned MSMEs | Zee Business.
33: World Intellectual Property (WIPO), A Guide to Intellectual Property for Startups.
34: IP Protection: building value and growth for small businesses.
35: European Union Intellectual Property Office, High Growth Firms and Intellectual Property Rights.
36: South Africa, Angola, Nigeria, Zambia, Zimbabwe, Gambia, Côte d'Ivoire, Mali, Guinea, Benin Republic.
37: Software is protected by copyright as a "literary work".
38: If the right sought is for software-enabling inventions.
39: Once a patent is issued, trade secrets in the part of the code protected by the patent becomes disclosed and is no longer protected by trade secret law.

Ownership rights are a vital tool to help startups secure market share and differentiate from competitors - particularly more established ones.

Similarly, investors prefer to invest in startups whose IP assets are protected because it assures the chances of a lucrative exit. The possibility of a lucrative exit is one of the main determinants of whether or not to invest in any venture. Registration deadlines, complex registration procedures and cost, are factors which may cause or exacerbate non-registration, and are largely within Member State control.

If not already available, and without interfering into private contracts, Member States should clearly stipulate governance of the various IP mechanisms as they relate to the proprietary assets dealt with by startups and their employees. "Work made for hire" i.e., the automatic transfer of IP ownership from a contractor or employee to a hiring party is already prevalent in labour law discourse; ensuring that employers own the innovation created by employees within the scope of their employment. However, this application is not always uniform in all jurisdictions, particularly with respect to literary work, such as software code, created by contractors.

MEMBER STATES

- Should carefully consider the balance of rights between labour (individuals, employees) and their employers (startups), alongside the imperative to promote startup success.
- Should clarify and stipulate application of IP mechanisms to proprietary assets.
- Should determine and specify the extent of support for factors which contribute to failure to seek IPR protection eg.: awareness building, cost subsidies for registration and/or enforcement, etc.

STARTUPS

- Should ensure thay have a signed agreement assigning rights to the company prior to the start of any work.
- May include a clause in that agreement that waives any "moral rights" to the work.

WHAT RIGHTS NEED TO BE CONSIDERED?

PATENT

Granted exclusively for inventions which provide a new technical solution to a problem, preventing individual competitors and other businesses from commercially using the solution without the owner's consent. Patents can be generally expensive and complex to file; 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.[40] There has been a marked increase in patent applications, with over 3.6% growth between 2020 and 2021 alone, compared to Africa which witnessed the same growth rate between 2011-2021[41]. In 2015, South Africa granted a patent to a local startup for its innovation,"Fingermate", a shopping bag carrier, with the startup seeking additional investment to scale up its idea.[42] In 2021, South Africa granted a patent to a food and beverage container created by an AI, "DABUS", becoming the first country to grant a patent to an AI invention.[43]

TRADEMARK

These 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. WIPO suggests that best practice for trademarks requires registration by the startup irrespective of whether the country recognises unregistered but actively used trademarks.[44]

COPYRIGHT

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,[45] though neither of Africa's regional intellectual property right systems (OAPI and ARIPO), provide for such mandatory registration. While there are limited instances of infringement suits against African startups, in 2020, *Apple* lost a copyright action instituted against a cyber security startup, *Corellium*.[46]

As a subset of copyright, 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.[47] This means that protection vests automatically on the source code from the time of creation and due consideration will need to be given for whether automatic assignments of these rights need be created under labour law, as part of efforts to support startups' risk management. Source codes can also be protected as trade secrets or patents provided the criteria for each are met. The main intellectual property risks a startup faces in relation to source code, stem from a failure to clarify ownership and usage rights. One of the most common mistakes made by startups is failing to obtain proper assignment or licences of IP rights prior to incorporation of the startup - a costly, often fatal mistake to resolve.

TRADE SECRETS

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 growth and innovation.[48]

40: A continental strategy for economic diversification through the AfCFTA and intellectual property rights.
41: World Intellectual Property Indicators 2022.
42: Patented shopping bag carrier wins Startup Weekend Tshwane.
43: SA becomes the first country in the world to award a patent to an AI-generated invention.
44: Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises.
45: Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises.
46: Apple loses copyright suit against security startup.
47: Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises.
48: WIPO Magazine 2017-Trade secrets: the hidden IP right.

DATA, CLOUD AND STARTUPS

Data is the lifeblood of the digital economy. Without credible data, people, governments and companies would be devoid of key material for critical decision-making. As technology runs on data and data supports scalability, many startups would fail without the ability to retrieve, use, store or otherwise handle it.

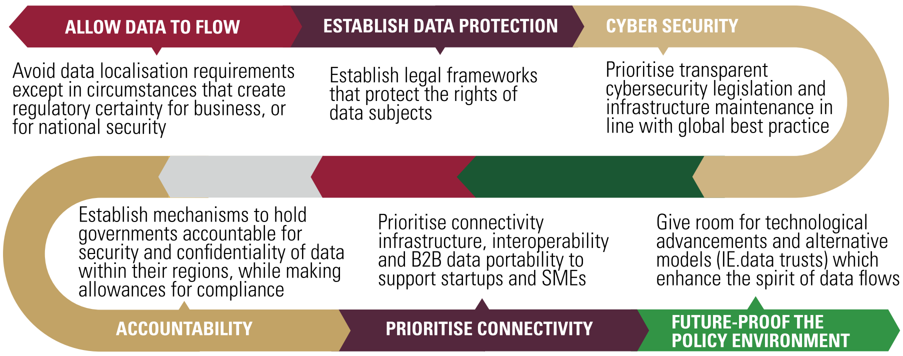
> Given the importance of data regulation and the still often nascent stage of data protection policies on the continent, its inclusion in startup legislation is vital, guided by existing efforts to harmonise data regulation.

Startups often face difficulty in meeting basic data protection rules around storage[49], consent and erasure. For example, startups involved in the use of blockchain technology have reported[50] challenges with assuring their data subjects the right to erasure[51]. Other challenges include poor understanding of regulations or lack of knowledge of- or access to the relevant authority. The inclusion of specific data protection provisions in the model framework is therefore 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. Where no data protection law or regulations are applicable, such Member States are encouraged to adopt the Malabo Convention as an effective foundation for their data protection framework.

CROSS-BORDER DATA TRANSFERS: WHY IS THE FREE FLOW OF DATA RELEVANT?

Of equal importance to data collection and protection is the need for free and safe movement of data between countries and regions. Cross-border transactions and personal data flow across countries underpin common markets, and are particularly essential for the realisation of the African Continental Free Trade Area (AfCFTA).[52]



At present, the Malabo Convention and some Member States' data legislation provides for minimum standards, and importantly, whitelists of adequate data recipient countries. However, there is currently no provision for reciprocity, to enable transfers on the basis of recipient country recognition as a safe destination. This creates additional compliance steps for startups to determine whether an intended data transfer is compatible with national laws. More than 18 Member States also have limiting data residency provisions[53]. The inclusion of data localisation provisions which are not specific to security or sensitive government data, may prove limiting for innovation and economies of scale, as businesses are cut off from global internet services or precluded from building on technological advancements like cloud computing platforms. Data centres also require significant electricity, and nearly 600 million Africans currently have no access to electricity[54]. By contributing to power supply scarcity and driving up the cost of power, localisation requirements could have other unintended consequences for Member States. Member States should thus include data protection frameworks that provide for minimum standards for cross-border data flows that establish reciprocity as a central principle in permitting transfers.

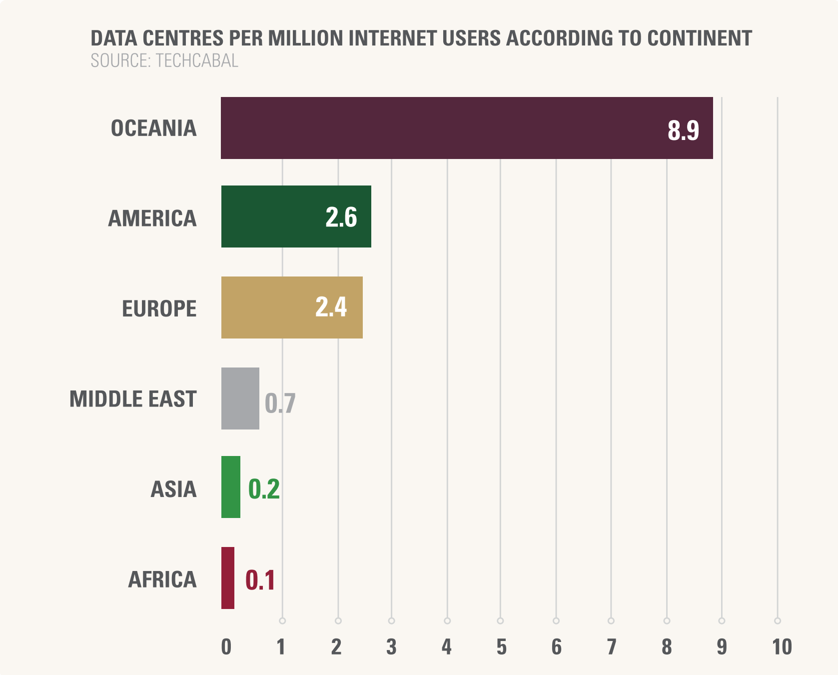
WHY DOES CLOUD MATTER FOR STARTUPS?

As digitalisation has progressed, cloud technology is increasingly crucial to delivery for startups. Continental cloud penetration is at 15% and continued participation in the 4th industrial revolution will result in an increased demand for online data storage - as an essential ingredient for achieving digital transformation. Consequently, 69% of businesses have indicated a willingness to increase their cloud technology investments in 2023, having seen a return on investments of 44% in customer service, 41% in business efficiency and improved scalability at 40%[55].

> **90%** of companies reported business growth since the adoption of cloud storage with
>
> **43%** experiencing strong growth.

Cloud computing allows bootstrapping[56] startups to effectively perform their business and administrative functions despite lean teams. Currently, over 60% of the continent's cloud storage capacity is located within South Africa, Nigeria, Kenya, Egypt and Morocco.

49: Data breaches suffered by businesses like Experian, Standard Bank, ABSA, Shoprite in SA in 2021 and 2022 are indicative that even long-established businesses are susceptible to cybersecurity threats.
50: Data protection and tech startups: The need for attention, support, and scrutiny - Norval - 2021 - Policy
51: The nature of blockchain platform design prevents users from tampering with the details of a past transaction.
52: AU Data Policy Framework, p. 54,
53: Where is Africa in the cloud? | NTU-SBF Centre for African Studies (CAS) | NTU Singapore
54: World Economic Forum.
55: Spend on cloud expected to increase in 2023 across Africa - htxt.
56: Bootstrapping: i.e. to use personal savings or existing resources like personal computing equipment, to start and grow a company.



This creates a unique opportunity for other Member States to leverage the benefits of this technological boom[57], quicken the growth of local technology companies, build resistance to cyberattacks and increase foreign direct investments[58] by creating a conducive environment for the establishment, use and operation of cloud technology.

Security can move hand-in-hand with digital transformation, as modern cloud services take much of the burden of cybersecurity off of companies. Continental data capacity is estimated to grow to 54MW by 2025.[59,60]

Taxes charged on cloud technology services or products accessed via the cloud are relevant to this discourse. 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 African companies surveyed confirmed that they use cloud services.[61] As part of an incentives framework, Member States may consider tax exemptions for eligible startups who use or provide cloud services, including the physical infrastructure elements.[62] 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.[63] 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.[64]

AI AND STARTUPS

HOW IS ARTIFICIAL INTELLIGENCE (AI) RELEVANT TO THE STARTUP DISCOURSE?

The potential for AI to transform various industries is attracting significant investment from venture capitalists and other investors. AI is deployed in manufacturing to automate tasks, in entertainment to personalise movie recommendations, for safety purposes to predict traffic trends and detect objects near autonomous vehicles - among several other uses.

The application of AI is deepening our ability to automate, detect, predict and personalise across multiple sectors. Ultimately, AI provides nations with a promise: that advances in technology can improve economic outcomes meaningfully. For instance, in Cameroon, a local start-up Agrix Tech developed an AI-based app to diagnose and treat infested crops[65], in Egypt, Swvl, uses AI to coordinate its fleet of private buses and bypass the overwhelmed transit network[66] and in Nigeria, an edtech startup, Gradely, leverages AI to identify learning gaps and recommend solutions.[67]

AI also provides businesses with a competitive edge. Studies estimate that 70% of global companies will adopt at least one type of Artificial Intelligence (AI) technology by 2030, translating into a potential economic output of USD 136 billion by 2030 for Ghana, Kenya, South Africa, and Nigeria.[68] Institutional technology companies and newly emerging startups have announced record investments into AI - including the proliferation of at least 150 AI-focused startups and hundreds of millions invested into generative AI companies globally. This acceleration in research and development is especially important for startups, and is expected to drive transformational change in various fields, from fintech to frontline health[69]. This makes it critical for Member States to begin contemplating a risk-based approach to dealing with issues that may arise as AI becomes more mainstream.

Given AI's emerging adoption and its potential contribution to the African economy, thoughtful AI regulation is key to realise the potential economic and technological gains. Policy responses are emerging with Egypt, Rwanda, Kenya and Mauritius developing comprehensive strategies to guide adoption and mitigate risks.[70] As of 2022, China, France, Germany, Brazil, Canada, and the UK have developed strategies to address the use of AI technologies and mitigate potential risks.[71] In January 2023, the US National Institute of Standards and Technology (NIST) released its Artificial Intelligence Risk Management Framework (AI RMF)[72], a multi-tool for organisations to design and manage responsible AI. The AI RMF provides a roadmap for identifying general types and sources of risks and offers a set of processes for assessing and managing risks. This may provide a useful benchmark for Member States. Most recently, the EU passed its Artificial Intelligence Act on 13 April 2024. The Act classifies AI technologies according to level of risk, ranging from minimal to unacceptable[73].

57: Cloud Computing and Virtualization in Developing Countries
58: The largest continental investments in cloud technology has been made by firms such as Huawei, Microsoft, Amazon AWS and Google.
59: Where is Africa in the cloud? (3) - Businessday NG.
60: Next Wave: A data centre roadmap for Africa | TechCabal.
61: Cloud Services Take Nigeria and Africa by Storm.
62: Exemptions have been applied in Colombia (see SaaS Business: Why You Should Care about Colombia's VAT Exemption for Cloud Services).
63: Cloud Tax gives Startups Sticker Shock.
64: Cloud Computing and Data Costs to be Covered Under Expanded Tax Credit.
65: Cameroon's Agrix Tech uses AI to help farmers prevent crop disease.
66: Humanising the daily commute.
67: Nigerian AI-based ed-tech startup Gradely secures Microtraction funding.
68: AI in Africa: Unlocking Potential, Igniting Progress
69: Artificial Intelligence in Society.
70: Nigeria, Ethiopia, Ghana, Morocco, Rwanda, South Africa, Tunisia, and Uganda are also taking steps to facilitate AI adoption.
71: AI regulatory updates from around the world.
72: Artificial Intelligence Risk Management Framework.
73: EU Artificial Intelligence Act: https://artificialintelligenceact.eu/the-act/

HOW CAN MEMBER STATES APPROACH REGULATING AI?

Member States should use the opportunity to lean into developing regulation that keeps pace with the new innovation; through risk-based frameworks or national strategies that promote flexibility and proportionality. They can ensure relevant laws are updated and designed to deal with emerging AI regulatory issues, particularly in relation to data, compliance, trust and safety, competition, amongst others. For instance, Member States have a duty to promote and enshrine mechanisms to protect user privacy.

However, regulations which seek to restrict data sets may create the undesirable outcome of bias against underrepresented populations: women[74], young people[75], etc; also diminishing the potential for startups to target and support these groups. Viewed from another dimension, startups which prioritise responsible AI will be more attractive to investors and customers who are concerned about the potential risks of AI, attracting much needed funding. In 2022, the African Union held a consultative meeting with policy makers and key stakeholders for a continental strategy for Artificial Intelligence,[76] setting the foundation for regional cooperation.

It is estimated that AI will contribute over USD 15.7 trillion to the global economy by 2030, although African countries are expected to experience the least gains therefrom, without further intervention.

A coordinated approach to AI governance promotes interoperability, and ensures that there is greater certainty for startups and other businesses in the use, cross-border sale or transfer of AI applications across Member States, removing compliance and cost barriers for AI-generative startups or other startups which rely on AI to improve their competitive advantage. Cross-border regulatory cooperation may also create opportunities for knowledge-sharing among startups, driving the development of innovative AI applications to address unique African challenges, while also promoting responsible and ethical AI practices. Divergent or inconsistent AI regulation thus has direct implications for innovation, but also impacts our ability to solve African challenges and build the *Africa We Want*.

One approach to designing thoughtful regulation is to draw on existing sectoral expertise in solving for challenges that may emerge. Attempts to regulate AI will present novel challenges for Member States, which means they must leverage expertise, particularly from within the continent. For example: health authorities[77] may be best placed to assess AI-usage in medical settings and devices, and energy regulators can leverage their sectoral expertise to evaluate the use case for AI in energy generation and distribution. Member States should note that regulations which are too prescriptive or restrictive may discourage startups from developing new AI technologies or exploring innovative applications of AI.

THE CASE FOR EDUCATION IN PROMOTING STARTUP CULTURE

HOW DO WE FOSTER 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. The only question is how? 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[78]. At higher education levels, encouraging courses of study[79] which emphasise business education, digital skills and entrepreneurship may be crucial. 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.[80] 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. There are already several examples of strategic partnerships to foster an innovation culture, but we must normalise these examples. In 2022, Nigeria partnered Japan to launch an incubation program for startups which provides training and mentorship opportunities to generate viable and scalable business models.[81] Egypt also launched a government-led accelerator to encourage startups[82] and Kenya's own business acceleration program to provide training and mentorship opportunities[83] was similarly launched.

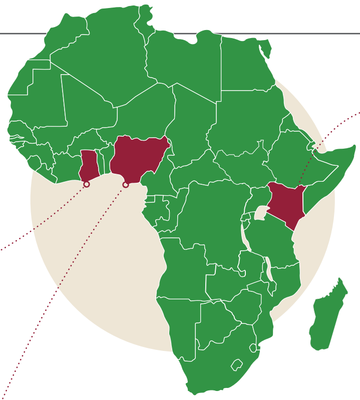
None of this is without significant cost. The alternative however is more dire: that the efforts put into shoring up the regulatory environment are not maximised or sustainable. The potential benefits of building a robust innovation ecosystem in Africa are immense, but so too are the risks of failing 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.

74: Amazon scraps secret AI recruiting tool that showed bias against women.
75: An algorithm used to determine the final exam grade of students resulted in almost 40% of students receiving lower grades than previously issued by teachers.
76: The African Union Artificial Intelligence Continental Strategy for Africa.
77: In the US, the FDA proposed a framework to regulate AI-powered medical devices.
78: The missing entrepreneurs 2021: policies for inclusive entrepreneurship in Europe.
79: Entrepreneurship in Higher Education, especially within non- business studies.
80: Entrepreneurship in higher education: what, why, when, how.
81: Nigeria partners Japan to launch startup incubation programme.
82: Egypt launches first government led accelerator.
83: Kenya's industrialisation ministry launches "Savanna", a business acceleration programme for early-stage startups.

CASE STUDIES

WHAT LESSONS CAN WE LEARN FROM AFRICA?

Some African countries in their startup act recognise the importance of training and skills development for the promotion of the startup culture.



KENYA - Section 26 provides that the mandated agency shall emplace programs for the training and capacity building of startups. This is in addition to establishing a platform setting out details of existing incubators, available training programs and available fiscal and non-fiscal support services at the national and county level.

GHANA - Startups are eligible to access free business support and capacity building through government approved incubators, accelerators and ecosystem enablers. They are also eligible for curated training on intellectual property, export requirements and procedures, sales negotiations, marketing, pricing strategy, international certifications, etc.

NIGERIA - Section 21 (1) provides that the mandated agency shall be responsible for the design and implementation of training and capacity building programs for startups. This includes collaborating with the regulatory bodies of tertiary institutions to design programs for university students aimed at inculcating the necessary knowledge for the establishment of a startup. Section 38 of the act also provides for the establishment of accelerators and incubators to grow the startup ecosystem. In addition to regulating the relationship and promoting collaboration between accelerators, incubators and startups.

ANNEX: COMBINED MODEL LAW

1. GOVERNANCE OF THE STARTUP ECOSYSTEM

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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.

3. STARTUP FORMATION

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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.

4. TAXATION

POLICY FRAMEWORK RECOMMENDATION

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 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;
- 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.

MODEL LAW PROVISIONS

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.

5. STRUCTURAL ENABLEMENT

POLICY FRAMEWORK RECOMMENDATION

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.

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 LAW PROVISIONS

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;

Local content quotas in the general procurement environment shall be reserved for startups in competitive sectors/ sub-sectors.

5.1. - ALTERNATIVE FUNDING SOURCES

POLICY FRAMEWORK RECOMMENDATION

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

POLICY FRAMEWORK RECOMMENDATION

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 continental dispute resolution mechanisms of the Member States' choice.

MODEL LAW PROVISIONS

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.

5.3. - INSURANCE

POLICY FRAMEWORK RECOMMENDATION

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.

MODEL LAW PROVISIONS

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

POLICY FRAMEWORK RECOMMENDATION

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

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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.

5.7. - REGULATORY ENABLEMENT

POLICY FRAMEWORK RECOMMENDATION

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.

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

MODEL LAW PROVISIONS

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 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

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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).

5.10. - INTELLECTUAL PROPERTY

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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

POLICY FRAMEWORK RECOMMENDATION

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 LAW PROVISIONS

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

POLICY FRAMEWORK RECOMMENDATION

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.

MODEL LAW PROVISIONS

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.