



# STARTUP LAWS IN AFRICA:

## HIGHLIGHTS AND COMPARISONS



# TECH HIVE

## ADVISORY

### About Tech Hive™

Tech Hive Advisory Limited is a technology advisory firm which provides advisory and support services to private and public organisations with regards to the intersection between technology, business, and law. We focus on how emerging and disruptive technologies are altering and influencing the traditional way of doing things while acting as an innovation partner to our clients. These new technologies often birth new challenges requiring regulations to balance the benefit of innovation and the rights and freedoms of users. Our experience and capability extends across Startup Advisory, Privacy and Data Protection, Data Ethics, Cybersecurity, Intellectual Property Management and Emerging Technologies. We ensure our advice serves our clients well by having an excellent understanding not only of their business, but of the markets in which they operate.

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### Usage of the Guide

*The Guide is general and educational in nature and is not intended to provide, and should not be relied on, as a source of legal advice. This information and material provided in the Guide may not be applicable in all (or any) situations and should not be acted upon without specific legal advice based on particular circumstances.*

## Introduction

In April 2018, Tunisia became the first African country to pass a Startup Act which officially began to take effect in October 2018.<sup>1</sup> The law seeks to provide a framework for the resurrection and development of emerging businesses that achieve high added value both at national and international level.

Following in Tunisia's steps, the Senegalese government, late last year, passed a new Startup Act cited as Law No. 2020-01 of January 6, 2020. This law is created to encourage the development of emerging enterprises. It establishes the modalities of creation and promotion of startups.<sup>2</sup>

Also due to the rapid growth in the Kenyan startup ecosystem, the Kenyan Startup Bill, 2020 was drafted. The Bill intends to provide a legal framework that fosters a culture of innovative thinking as well as establish an environment that promotes the establishment of startups, among other objectives.<sup>3</sup>

All of the foregoing makes it quite clear that national legislations that create clear frameworks and operational support for startups are one of the best ways to help Africa's Startups and Founders thrive through and improve the ecosystem in the long term. This is buttressed by the current deliberations by the governments of Rwanda, Mali and Ghana in connection with the creation of local startup legislations.

The aim of this Guide is to highlight the similarities and differences between the aforementioned and already existing Laws/Bills in order to help provide some clarity to their respective provisions.

<sup>1</sup> Nzekwe, H. (2020, April 6). "2 Years After Tunisia Startup Act: What's Changed & What Lessons Can Be Learnt?" Available at: <https://weetracker.com/2020/04/06/tunisia-startup-act/> Accessed: 12th October, 2020.

<sup>2</sup> Article 1 of Law No. 2020-01

<sup>3</sup> Section 3 of the Startup Bill, 2020.

## Tunisian Start-up Act (Law No. 20 Of 2018)

### Regulator:

The Ministry in charge of the digital economy has been tasked with enforcing the Act.<sup>4</sup> The Minister is permitted by the Act to delegate its duties to an institution with the appropriate technical expertise.

### Notable Provisions:

- **Incentives:**

Institutions considered as emerging institutions by the Act are so labelled and are entitled to benefit from encouragements and incentives stipulated under the Act during the validity of the label as an emerging institution. This label expires 8 years after its formation.

- **Establishment of a Technical Committee<sup>5</sup>:**

This technical committee is charged with deciding compliance with the conditions laid down for obtaining the mark of an emerging institution and assigning same. The committee also has other powers determined by governmental decree.

- **Penalties and Sanctions<sup>6</sup>:**

The mark of an emerging business shall be withdrawn in the event of violation of Article 7(1) as well as where a business no longer meets the requirements under Article 3.

- **Right to a Vacation to Resurrect a Fledgling Establishment<sup>7</sup>:**

An emitter of an emerging business, whether a public or private employee, is granted a right to vacation to resurrect a fledgling business for a period of one year which can be extended once. During this period, such an individual earns a government funded salary. The conditions and procedures for obtaining and terminating such a vacation are set by government order.

- **Access to Grants<sup>8</sup>**

- **Support from the State<sup>9</sup>:**

The Ministry is charged with covering the costs of filing procedures and patent registration fees for the benefit of emerging institutions both at national and international levels.

- **Tax Reliefs<sup>10</sup>**

### Comments:

Since the passing of the Act, there has been a significant growth in the number of startups across the country due to the business-friendly terms the Act offers. As of December 2019, 169 of more than 279 companies which applied under the Tunisia Startup Act had been granted the startup label. 37 (21.9%) of the 169 startups labelled were run by female founders. About \$18.5 million funding has been raised by all the startups so far.<sup>11</sup>

Data from the official website of Entrepreneurs of Tunisia (EOT) show that startup co-working spaces in Tunisia increased by 61.2% from 38 in 2018 to 62 in 2019.

<sup>4</sup> Article 5.

<sup>5</sup> Article 6.

<sup>6</sup> Article 7(4).

<sup>7</sup> Article 8 and 9.

<sup>8</sup> Article 10.

<sup>9</sup> Article 12.

<sup>10</sup> Chapter 4.

<sup>11</sup> Babatunde, G (2020, August). 'African Countries are Embracing the Startup Act to Build Solid Ecosystems, Will Nigeria be Left Behind?'. Available at: <https://technext.ng/2020/08/27/african-countries-are-embracing-the-startup-act-to-build-solid-ecosystems-will-nigeria-be-left-behind/> Accessed: 12th November, 2020

# The Senegal Startup Act (Law No. 2020-01 Of January 6, 2020)

## Scope:

This law extends to startups created in Senegal whose capital is owned at least 1/3 by natural persons of Senegalese nationality or resident in Senegal or by persons having their registered office in Senegal. It also includes startups created by Senegalese persons established abroad, the capital of which is at least 50% owned by Senegalese persons.<sup>12</sup>

## Notable Provisions:

- **Establishment of a Commission:**

The Commission set up is to evaluate, support and coordinate the development of startups. It is expected to create a platform (accessible online) dedicated to startup which will facilitate access to information as well as easy registration and labelling.<sup>13</sup>

- **Granting of Incentives to Startups<sup>14</sup>:**

Enterprises registered and/or ascribed as startups are entitled to benefit from certain incentives provided they meet the requirements provided by the law. The incentives available to startups are listed under Article 8.

- **Support from the Government<sup>15</sup>:**

Startups may also obtain support from the government with the aim of: subsidizing the formalization of society; reserving the .sn domain name; supporting research and development activities; among others.<sup>15</sup>

- **Access to Public and Private Funds<sup>16</sup>:**

Intended mainly to finance eligible startups.

- **Access to Public Order<sup>17</sup>:**

Any labeled startup will benefit from a preferential regime for access to public order up to 5%. This lasts throughout the entire validity of the label. Conditions for implementing specific order access are defined.

- **Penalties and Sanctions<sup>18</sup>:**

Failures of startups to perform their obligations will attract penalties and sanctions in proportion to such breach of obligation.

## Comments:

This law has largely been welcomed and embraced, having received about 90% of votes from members of the National Assembly. Senegal, being the second African country after Tunisia<sup>19</sup>, to pass a Startup Act has taken a step at promoting innovation and providing a framework for emerging businesses to excel. Hopefully, other African countries would follow suit.

<sup>12</sup> Article 2.

<sup>13</sup> Article 4 and 5.

<sup>14</sup> Chapter 3.

<sup>15</sup> Article 10.

<sup>16</sup> Article 12.

<sup>17</sup> Article 13.

<sup>18</sup> Article 15.

<sup>19</sup> Jackson, T (2019, December 30). "Senegal becomes 2nd African nation to pass Startup Act". Available at: <https://disrupt-africa.com/2019/12/senegal-becomes-2nd-african-nation-to-pass-startup-act/> Accessed: 12th October, 2020.

## The Kenyan Startup Bill, 2020

### Scope:

This Bill seeks to promote and sustain startups/emerging businesses based on creativity, innovation and the use of new technologies.

### Regulators:

The National and County governments have been charged with various functions with the aim of promoting innovation and encouraging the growth of startups<sup>20</sup>, specifically, the Kenya National Innovation Agency and the county executive committee.

### Notable Provisions:

- **Establishment of Incubation Programs<sup>21</sup> :**

Aimed at the development of the business incubation sector and startup system. Registered startups may be admitted into these programs provided they meet the criteria prescribed by the law.<sup>22</sup>

- **Incentives for Startups<sup>23</sup> :**

Support to startups shall be provided in the form of incentives such as subsidizing the formalization of startup; protecting the IP of innovations by startups; and fiscal and non-fiscal support. There is also provision for the establishment of a credit guarantee scheme where, if established, would provide accessible financial support to startups, among others.

- **Support from the Agency:**

Applications for grants as well as registrations and revocations for patents are to be facilitated by the Agency.

## 1. Scope:

### 1.1. Material Scope:

#### Similarities:

All three laws are designed to encourage and promote emerging businesses based on creativity, innovation and the use of new technologies.

**Tunisia - Law No. 20 of 2018**

Article 1

**Senegal - Law No. 2020-01**

Article 1

**Kenyan Startup Bill, 2020**

Section 3

#### Differences:

Not applicable.

### 1.2 Territorial Scope:

#### Similarities:

All three laws apply at both national and international levels.

#### Differences:

While all three laws apply at national and international levels, the Kenyan Startup Bill includes application at county level.

**Tunisia - Law No. 20 of 2018**

Article 1

**Senegal - Law No. 2020-01**

Article 1

**Kenyan Startup Bill, 2020**

Section 3(c)

## 2. Label and Governance:

#### Similarities

Startups under the Tunisian Law No. 20 of 2018 and the Senegalese Law No. 2020-01 are required to register as startups/emerging businesses under the relevant supervisory authority and as well acquire a label or mark distinguishing such business as a startup, provided the necessary conditions are met.

All three laws ensure an ease of doing business.

#### Differences:

While under the Tunisian Law No. 20 of 2018 and the Senegalese Law No. 2020-01, emerging businesses are required to obtain a label/mark, such provision is not available under the Kenyan Startup Bill. However, the Bill does require the maintenance of a directory of startups.

Tunisia's Law No. 20 of 2018 requires the establishment of a technical committee responsible for deciding on the compliance of the demands for obtaining the mark of the emerging enterprise, among other functions. Senegal's Law No. 2020-01, however, provides for a Commission established to set the organizational and operating procedures for the development of startups while Kenya's Startup Bill provides for the establishment of incubation programmes for startups.

It is also noteworthy to point out that the Kenyan Startup Bill provides for the appointment of a registrar of startups while no such provision exists in the other two laws.



**Tunisia - Law No. 20 of 2018**

Article 3; 6

**Senegal - Law No. 2020-01**

Article 4;5

**Kenyan Startup Bill, 2020**

Section 3(g); 5; 6

### 3. Incentives:

**Similarities:**

All three laws provide one form of incentive or the other for startups. Incentives common among the three include: tax reliefs/exemptions, guarantees for obtaining credit, and government support.

**Tunisia - Law No. 20 of 2018**

Article 13; 18

**Senegal - Law No. 2020-01**

Article 8; 10

**Kenyan Startup Bill, 2020**

Section 23; 24; 27

**Differences:**

Tunisia's Law No. 20 of 2018 grants a right to a paid vacation for both public and private employees to resurrect a fledgling business, a provision absent from the other two law/bills.

Tunisia's Law No. 20 of 2018 and Kenya's Startup Bill, 2020 both facilitate the protection (grant and revocation) of Intellectual Property i.e. patents. This is not a provision under Senegal's Law No. 2020-01.

Senegal's Law No. 2020-01 provides access to private funding and public order/procurement. It also provides for the implementation of capacity building measures along with the Kenyan Startup Bill, 2020.

**Tunisia - Law No. 20 of 2018**

Article 8; 10

**Senegal - Law No. 2020-01**

Article 6; 8; 12; 13

**Kenyan Startup Bill, 2020**

Section 25; 26

### 4. Enforcement:

**Similarities:**

All three laws make provisions for supervisory authorities charged with the responsibility of ensuring the promotion of growth of startups by easing businesses activities. For Tunisia – the Ministry in charge of the Digital Economy as well as the Technical Committee established; Senegal – the Ministry responsible for Digital Technology as well as the Commission established; and Kenya – the Kenya National Innovation Agency as well as national and county governments.

**Tunisia - Law No. 20 of 2018**

Article 13; 18

**Senegal - Law No. 2020-01**

Article 8; 10

**Kenyan Startup Bill, 2020**

Section 23; 24; 27

**Differences:**

Under Tunisia's Law No. 20 of 2018 and Senegal's Law No. 2020-01, there is the provision for the withdrawal of the label or mark identifying a business as a startup. While under Tunisia's law, the label/mark is withdrawn where there is a violation of the provisions or from a company that no longer meets the conditions necessary to be labelled a startup, Senegal's Law No. 2020-01 only provides for withdrawal of label/mark from the startup that no longer meets the eligibility criteria.

The Kenyan Startup Bill, 2020 makes no provision for the withdrawal of label/mark.

**Tunisia - Law No. 20 of 2018**

Article 7

**Senegal - Law No. 2020-01**

Article 16

**Kenyan Startup Bill, 2020**

# COMPARISON TABLE OF THE TUNISIAN STARTUP ACT (LAW NO. 20 OF 2018), SENEGAL STARTUP ACT (LAW NO. 2020-01 OF JANUARY 6, 2020) AND THE KENYAN STARTUP BILL, 2020.

SUBJECT	ISSUES	TUNISIA	SENEGAL	KENYA
Scope	Extra-territorial application	✔ (Applies to emerging institutions at both national and international levels)	✔ (Applies at both national and international levels)	✔ (Applies at International, national and county levels)
Accountability and Governance	Registration as an emerging business with the supervisory authority	✔ (An emerging institution must be assigned a mark upon registration)	✔ (Art. 5)	✔
	Ease of doing business	✔	✔	✔
	Establishment of a Technical Committee/ Commission	✔ (Art. 6)	✔ (Art. 4)	✘
	Establishment of Incubation programmes	✘	✘	✔ (Section 5)
	Appointment of a Registrar of Startups	✘	✘	✔ (Section 6)
Incentives and Grants	Right to a paid vacation (for public and private employees) to resurrect a fledgling establishment	✔ (Art 8)	✘	✘
	Tax relief	✔ (Art 13)	✔ (Art 8/10)	✔ (Section 27)
	Granting of guarantees for obtaining credit	✔ (Art 18)	✔ (Art 8)	✔ (Section 24)
	Government support (monetary or otherwise)	✔	✔ (Art 10)	✔ (Section 23)
	Access to private and public support/funding	✘	✔ (Art 6/8)	✘
	Access to public order/procurement	✘	✔ (Art 13)	✘
	Implementation of capacity building measures	✘	✔ (Art 8)	✔ (Section 25)
	Facilitating the grant or revocation of patents (Protection of IP)	✔ (Art 12)	✘	✔ (Section 26)
Enforcement	Supervisory authorities	✔	✔	✔
	Sanctions e.g. withdrawal of labels/marks	✔ (Art 7)	✔ (Art 16)	✘