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FROM THE GROUND UP:

ENHANCING KENYA'S ECONOMIC REBOUND THROUGH START-UPS

Introduction

According to the Association of Countrywide Innovation Hubs, Kenyan tech start-ups topped the continent as they raised an impressive KES 21.4 Billion of funding in 2020. This level of funding is attributed to a socio-professional environment that is conducive to work in, even though Kenya's start-up ecosystem remains unregulated. Whereas countries like South Africa, Tunisia, Senegal, and Nigeria have pegged regulatory policies to govern start-ups, Kenya has no government policy that caters for start-ups.

Things are now, however, steered towards change. In 2021, through the Start-Up Bill, 2021 (**the Bill**), Kenya took its first steps toward regulating the start-up ecosystem.

The Bill seeks to govern the interactions and relationships between the government, incubators, start-ups, investors, and the ultimate consumers of innovative products. To do this, the Bill has been modelled to attract talent and capital which will, in turn, create innovative thinking, jobs, entrepreneurial culture, and wealth. This article seeks to analyse the possible impacts of the proposed legislation.

It has been observed that cumbersome regulations, the digital-skills gaps, limited funding, and highly fragmented markets continue to hold back African start-ups. Against this backdrop, this article postulates that the proposed legislation would be good for start-ups if the aim is to encourage their growth by providing a legally conducive and enabling environment.

Start-Ups Defined

A start-up is a business entity formed to develop a new product or service which changes the normal way of doing business and becomes ingeniously irresistible for end-users and customers. The Bill defines a start-up to include a technology-based innovative entity, that is legally recognized under the laws of Kenya with strong growth potential and a disruptive economic model.

There is a definitional difference between start-ups and micro and small enterprises (**MSEs**). MSEs are generally profit-making businesses with a small annual turnover in any sector whereas start-ups, in addition to conventional business qualities, must have a novel and innovative edge with the potential to disrupt the usual manner of doing business in that industry.

A start-up must bring a novel business idea and thus the government's efforts at regulation should focus on assisting the innovator in developing and growing the idea into a business product or service. MSEs are focused primarily on profits only whilst start-ups are focused more on the growth and development of the idea into a business product or service. These differences determine the manner of raising funds, the level of legal protection that should be afforded, the nature of government support, and the latitude to allow international investors to inject into the economy. It is therefore not at all surprising to find that the provisions of the Micro and Small Enterprises Act, 2012 are fundamentally different from those contained in the Bill.

Key Objectives

The Bill aims to foster a culture of innovative thinking and entrepreneurship; link start-ups with private investors, financial institutions, the private sector, research institutions and other institutions at the county, national and international levels; facilitate the provision of fiscal and non-fiscal support to start-ups; promote an enabling environment for the establishment, development, conduct of business, and registration of start-ups; establishment of incubation facilities at the national and county levels of government; and entrench an environment that promotes the establishment of start-ups.

The overarching goal of the Bill is to set up an ecosystem where start-ups may be created and supported to enable them to grow and spill over into the various sectors of the economy. Noting that Kenya's national economic blueprint is heavily reliant on technology and innovation which thus far remains unregulated, the proposed law comes in handy insofar as it aims to support the digital and the knowledge-based sector of the economy.

Incubation Programmes

Incubation programmes are made up of incubators that are either companies, partnerships, non-governmental organisations, or limited liability partnerships, whose principal objective is to support the birth and development of start-ups, innovation, and activities related to the transfer of technological research, development, and innovation process, through the offer of dedicated physical spaces and services or advice. These programmes provide an enabling environment for infant technologies, ideas, and industries to grow.

As the country moves away from a resource-driven economy to a knowledge-driven economy, the government has a significant interest in setting up incubation programmes that would assist start-ups to grow, given that succesful start-ups ultimately create large-scale employment opportunities, thereby helping the government solve the unemployment problem.

Incubation is meant to support nascent ideas, innovations, and technologies ideologically. As such, incubators must be capable of giving such supportive infrastructure that can help start-ups access skillset talents, finances, and technological capacity. The Bill proposes certification of incubators as a prerequisite to ensure that incubators meet the required standards for technical capacity and technological know-how and that they possess the right conditions or environment to support start-ups.

Not all start-ups necessarily have the potential or ability to disrupt any sector of the economy, as such, there must be a means of identifying qualifying start-ups that are innovative, research-based, and have technological components. This would effectively prevent the admission of non-viable start-ups into incubation programmes.

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Likewise, an entity cannot remain in incubation indefinitely. There must be a means of exiting from incubation - either by attaining a certain capital threshold or by incubating for a specified number of years.

Fiscal Incentives

Innovative entrepreneurial activities do not happen randomly or in a vacuum hence, the Bill proposes to mandate the national and county governments to provide economic conditions such as incentives, opportunities, and to remove barriers to innovative businesses, thinking and ideas. This can be achieved by funding start-ups, tax exemptions, grants, and by reducing regulatory red tape in the registration processes.

As earlier indicated, unlike MSEs, start-ups are not necessarily started for profit-making, hence the mode of funding is fundamentally different from normal business associations. For instance, getting a loan to support a novel or innovative idea may prove to be challenging due to uncertainties attendant with developing new ideas. In that regard, section 31 of the Bill proposes to amend section 29(1) of the Science, Technology, and Innovation Act 2013 (**the STI Act, 2013**), to include innovative start-ups to receive financial support from the Fund created under the STI Act, 2013.

Further, the government needs to put in place measures for the granting of other fiscal incentives including tax incentives considered necessary for the development of start-ups in the country. Incentivization is crucial for start-ups since most of the time they lack capital and tax burdens make them dwindle in number instead of growing especially in the incubation stages.

Non-Fiscal Incentives

In addition to fiscal incentives, the government needs to enable access to markets, ease foreign investors' ability to get into the market, raise awareness about and encourage the use of start-up products, and encourage public procurement procedures that consider the application of start-up products and services.

Also, as noted above, start-ups are part of the migration to a knowledge-based economy that is embedded in science, technology, and innovation. As such, it is important to ensure continuous training and capacity-building to facilitate the acquisition and sustenance of skills that are innovative and novel. The government should thus support research and development activities undertaken by start-ups.

Conclusion

The uplifting of start-ups in the country enhances economic growth. Successful start-ups quickly transform the manner of doing business and the government should support innovative business culture by closing the funding gaps, building a flourishing business environment, and providing a link to institutions of growth. As observed by Dr. Jesper Vasell of KTH Royal Institute of Technology in Stockholm:

"Innovation is changing the business landscape across Africa and any entity that fails to adapt will eventually be phased out."