ENTREPRENEURSHIP POLICY TOOLKIT

PART 3. UNDERSTANDING THE LEGAL SIDE

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Supported by:

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Make-IT in Africa

Part 3

Part 3 - Understanding the Legal Side

What will I learn?

Part 3 - Understanding the Legal Side

In this section, you will:

- Explore the similarities and differences between Startup Acts and Small Business Acts (SBAs);
- Learn about the history and content of Startup Acts in Africa and around the world;
- Deep dive into case studies on entrepreneurship policies adopted in Senegal, Nigeria and the Democratic Republic of Congo;
- Learn how to draft a Startup Act yourself.

Introduction

Now that you can identify and assess your country's ecosystem, we will explore the legislative tools and framework that are best suited to tackle its challenges.

This part of the toolkit will answer the following questions:

- What are the main legislative instruments related to entrepreneurship?
- What is the history behind them?
- How are they defined?
- And most importantly, what do they consist of?

To give you a little spoiler: we will focus heavily on Startup Acts and Small Business Acts, as we believe these are the legislative instruments best suited to address the needs of an ecosystem. When well targeted, broadly supported and informed by a proper ecosystem analysis, these instruments have the potential to create an enabling environment for innovation and growth.

By the end of this section, you will be equipped to choose the instrument that is best suited to meet *your* country's need. Put your seatbelt on, and let's go together on this journey through the legal side of entrepreneurship policies!

3.1 Recap: Legislative Instruments

Recap: Legislative instruments

- Let's start with a quick recap. Do you remember the role of legislative instruments? They work hand in hand with strategic instruments. As a matter of fact, legislative instruments are the tools enabling strategic instruments to be enforceable. They turn the big dreams and plans that strategic instruments design into applicable and binding realities.

- Strategic instruments, such as National Plans and National Strategies, contain high-level objectives, not obligations that national citizens must abide by.

- Legislative instruments, in contrast, do contain obligations. They create legal duties for the government and for the beneficiaries, of these legislative instruments.

For a more detailed overview of Strategic Instruments please revert to Part 1 of the Toolkit.

Recap: Legislative instruments

- Legislative instruments contain obligations because they are laws. As such, they have binding force and effect. They are prescribed, recognized, and enforced by implementation authorities. As these are instruments with legal power, courts (whether judicial or arbitration) can also come into play when settling disputes.

- It is universally accepted that laws are made by a person or body authorised to do so by the relevant enabling legislation (i.e. Parliament, Assembly etc.). However, there is no standard or predetermined model of law adoption. The way in which a law is adopted varies depending on the country, its legal system and the type of legislation at play.

- Most countries around the world abide by one of two legal systems. And, following colonisation, many African governments retained the legal system of the country they were colonized by:
    - Common law (applied in most Anglophone countries)
    - Civil law (applied in French speaking countries)

- Why is this relevant for entrepreneurship policy? To learn from the laws that your peers have introduced, you need to have a basic understanding of the legal context in which those instruments apply. The next slide will give you a quick overview.

Recap: Legislative instruments

- The **civil law system** is the oldest and most dominant legal system in the world. Roughly 150 countries in the world prescribe to it. In a civil law system, governments create complete and written codes of law. These are continuously updated to keep a recent account of matters that can and cannot come before courts. Only written legislative enactments are considered binding for all. This makes it more prescriptive than a common law system.

- Under **common law**, while legislation exists, it is not codified and it relies heavily on court interpretation. The law is developed through court decisions, rather than through legislative statutes alone. Judges' decisions as to the meaning and application of legislation then become the law: it is called the theory of "precedent."
    - ➔ When ruling a case, under common law, judges are bound by the written law, but also by previous cases relating to said law (precedents). Under civil law, court decisions are not binding for third parties. Therefore, common law is more flexible for changing circumstances and cases.[1]

[1] See for more information on the differences between common law and civil law: World Bank's Public-Private Partnership Legal Resource Center.

Recap: Legislative instruments

- Whether your country belongs to the common law or civil law family, the written law you are working on is binding. It has full legal power and effect. Both civil law and common law countries have adopted laws on entrepreneurship (e.g. Benin, Senegal, Nigeria and Ghana).

- One of the most important implications of the different legal systems for entrepreneurship policy, is the *terminology* that is used. We will discuss this in more detail in section 3.2, illustrating the differences with the help of the cases of Nigeria and Senegal.

- Lastly, if you belong to the common law system, you need to be aware of the fact that courts also play an important role throughout the lifespan of your law. They will interpret the law based on the cases presented to them, and their decision will be binding.
    - ➔ If you want your Small Business Act (SBA) or Startup Act to be understood the way you intend it to, the clarity of your text is of the utmost importance. Try and write the law in a way that is understandable to the layman, make it concise and create mechanisms for ecosystem actors to become familiar with it (for example, by co-creating it!).
    - ➔ Does your country belong to the civil law system? Be aware that when you are studying legislation from your peers from the common law system, it can also be wise to have a look at related judicial rulings (the precedents).

3.2 Terminology

Terminology

1. Business or Enterprise?

We concluded in the previous section that terminology is one of the main differences between common law and civil law. Therefore, it is important to clarify some terminology around Small Business Acts and Startup Acts before we dive deeper into their content.

- Firstly, Small Business Acts have different identities… or names. They are sometimes also referred to as “Small and Medium Enterprise Acts," “Small Enterprise Development Acts” or “Small Enterprise Promotion Acts" or any other variant similar to this terminology. These names are quite interchangeable: small businesses are sometimes called “small enterprises," hence the difference in the law’s name.

- What matters most is that “small businesses” or “small enterprises” are defined by various criteria and thresholds. As seen in Part 1 of this toolkit, there is however no universal definition of what a small business or enterprise is. Each country sets the criteria that an entity has to meet to be considered as one, such as annual turnover and the number of employees, itself.

Terminology

2. Act or Bill?

Startup Acts may also be called Startup Bills.

- Remember the common law and civil law systems? Under common law, the terminology used varies depending on the stage of law adoption: when a law is in the process of being discussed before Parliament, it is called a Bill.
- Once a law has been voted into power or has received Presidential assent, it becomes an Act. These lexical nuances do not exist in civil law countries.
- For example, In Nigeria, the Startup Bill became the Startup Act once it received presidential assent on October, 19th 2022.

Tip: You can find the Nigeria Startup Act here.

Try and familiarize yourself with its structure and content, as we will discuss it later!

Terminology

3. Ordonnance-loi

- Law adoption processes can be quite lengthy. After being drafted, a law has to be discussed, approved and voted in Parliament. To save time, some countries have adopted mechanisms to bypass Parliament, such as the "ordonnance-loi".
- While this may be time-efficient, it is an exceptional way of passing a law. Your National Constitution will state the fields in which laws can be implemented without being presented to the legislature, plus the conditions under which this is possible.
- Keep in mind though that involving the members of your National Assembly in your policy process, by debating and voting on the law, allows for broader support, which can be beneficial to your ecosystem!

In the DRC, a civil-law country, the Startup Act was adopted via the "ordonnance-loi" mechanism, to speed up the process.

Tip: You can find the DRC Act (ordonnance-loi) on the promotion of entrepreneurship and startups here (in French).

Terminology

Questions for reflection

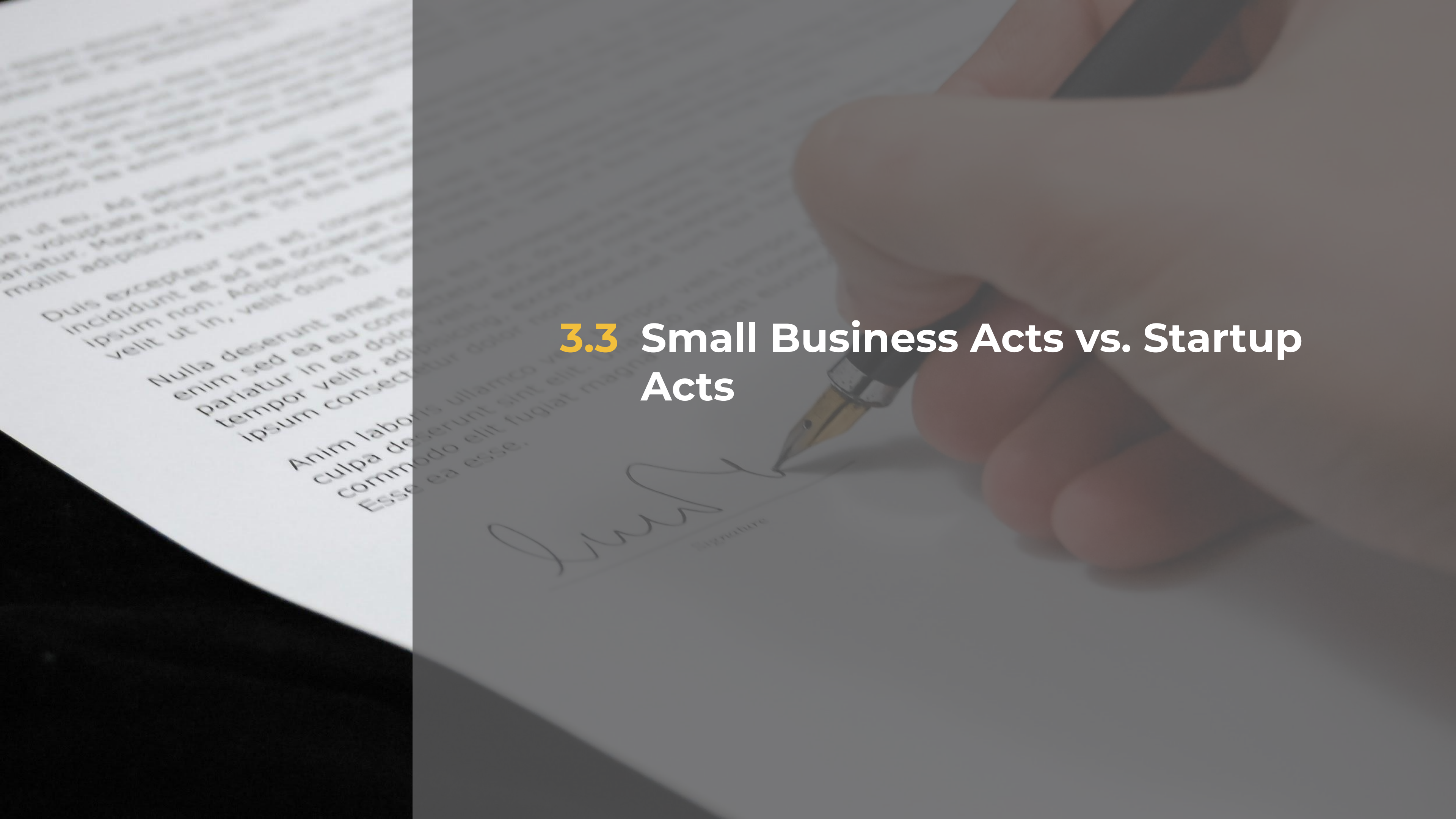
How does this apply to your country?

1. Does your country belong to the common law or civil law legal family?

2. Is there a law about small business/enterprise in your country?

3. If so, have a look at its name! Is it called a Small Business Act, a Small and Medium Enterprise Act, a Small Enterprise Development Act, or even something else?

3.3 Small Business Acts vs. Startup Acts



Small Business Acts vs. Startup Acts

As mentioned earlier, let's now focus on Small Business Acts and Startup Acts. The reason why we've chosen to spotlight these two legislative instruments is because we believe that they are the best suited to address the needs of an entrepreneurial ecosystem in a targeted and effective way.

We will discover why throughout the next few slides, by doing an in-depth comparison of the two, touching on the following elements:

- Their history, and how they've gradually appeared in the African landscape;
- Their legal definition; and
- The companies they apply to, plus the key criteria they set to target their beneficiaries.

After comparing these elements, they will all come together in a case study of Senegal, a country that has chosen to adopt both a Small Business Act and a Startup Act. Finally, we will conclude by asking you some questions for reflection, just like we did in the previous section.

Section 3.4 will present you with a practical guide on how to draft a Startup Act!

Small Business Acts vs. Startup Acts

1. History | Context

Startup Acts

The first growth entrepreneurship policies appeared in the early 1990s in countries such as Finland and the Netherlands. Since then, other countries have also adopted startup-specific legislation, such as Italy with its Startup Act in 2012.

In Africa, the first Startups Acts to be adopted were in Tunisia (2018) and Senegal (2019). Startup Acts are under development or consideration in many other countries such as Benin, Egypt, Ethiopia, Ghana and Rwanda. Many of these processes have been developed under joint leadership from startup communities and senior government champions.

Small Business Acts

The first African SBA was adopted in Ghana in 1981. SBAs generally embrace a traditional classification of firms, based mostly on their size, the rationale that these firms are disadvantaged due to their limited scale and the perception that entrepreneurship is a substitute for employment.

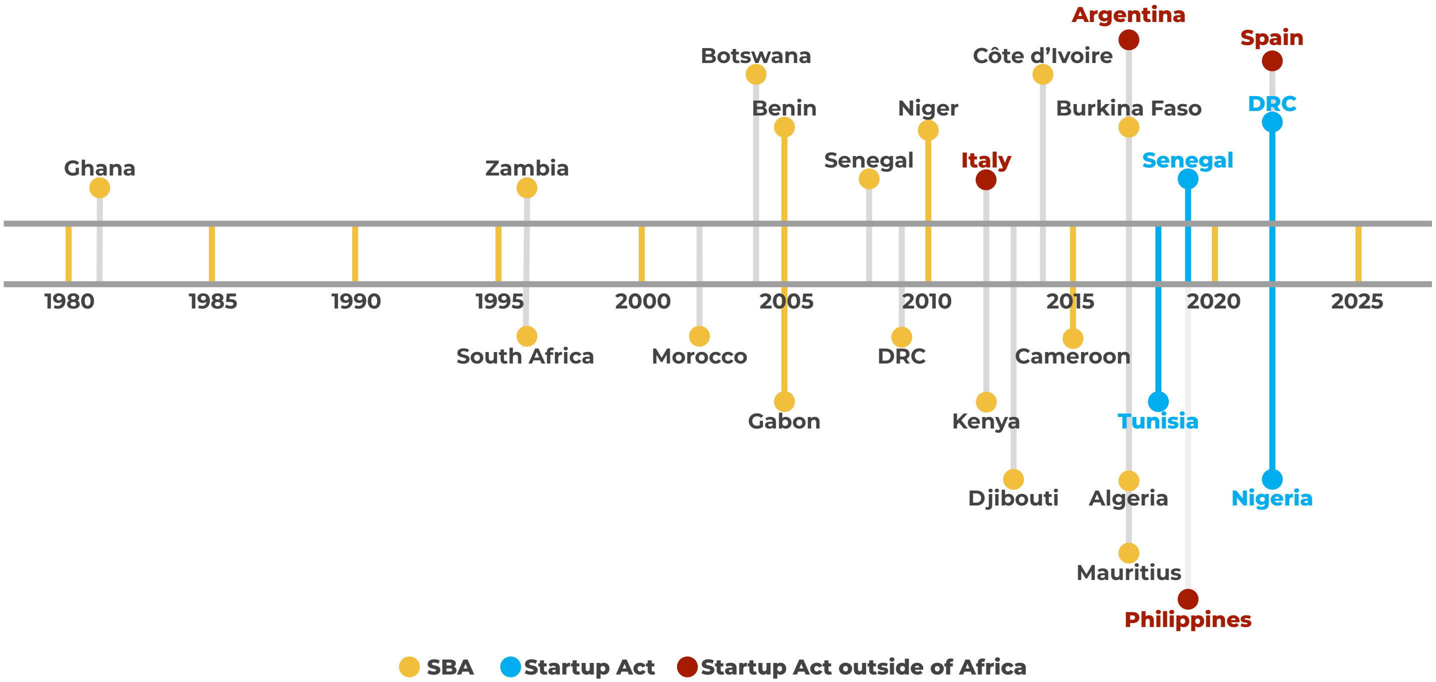
Some SBAs have been used to establish bodies responsible for implementation, specifying little about specific interventions accorded to SMEs. Surprisingly, that is the case for one of the most advanced entrepreneurial ecosystems in Africa: in South Africa, the National Small Business Act (1996) only aimed to establish the Small Business Council and Enterprise Promotion Agency.

Small Business Acts vs. Startup Acts

1. History | Timeline

The timeline on the right shows the development of SBAs and Startup Acts on the continent, as well as the Startup Acts of Italy, Argentina, Spain and the Philippines.[1]

We will analyse the development of these instruments in more detail in the next few slides.



[1] Innovation for Policy Foundation (2023). *Benchmarking Small Business Acts and Startup Acts in Africa.* https://ecosystem.build/

Small Business Acts vs. Startup Acts

1. History | Development of SBAs & Startup Acts

- Looking at the timeline, you'll notice that the first countries on the continent to adopt entrepreneurship-related instruments were Ghana (1981), Zambia and South Africa (both in 1996). Despite their "early start," the Small Business Acts in Ghana and South Africa were adopted with the sole purpose of establishing agencies responsible for SME development. Zambia brought novelty, by addressing ecosystem challenges and introducing new incentives.

- Since the 2000s, 14 more African countries have adopted Small Business Acts. This rise seems to coincide with the the economic recessions of the early 2000s, during which small businesses have had an important role in supporting African economies. It was also at that time that the World Bank published its first report in the impactful *Doing Business* series, calling for the easing of business regulations.[1]

- When it comes to Startup Acts, the timeline illustrates that they have started to appear just a decade later, outside of the African continent. The first ever Startup Act was passed in Italy (2012), Argentina adopted one in 2017 and the Philippines followed in 2019.

[1] World Bank Group (2003). *Doing Business in 2004: Understanding Regulation.* https://archive.doingbusiness.org/en/reports/global-reports/doing-business-2004

Small Business Acts vs. Startup Acts

1. History | Development of SBAs & Startup Acts

- Africa jumped on the bandwagon not too long after, and African Startup Acts have started multiplying: the first ones appeared in Tunisia and Senegal, and 2022 seems to have been a prosperous year for startups, with two Acts passing on the continent (DRC and Nigeria) and one being adopted in Spain.

- The reason why Startup Acts are so popular in Africa is that the continent is experiencing a massive technology leapfrogging. Innovators on the continent are creating scalable and tailored solutions to the various challenges they face, in agriculture, education, healthcare and many other sectors. In response, governments have adopted new tools to provide a legal and institutional framework for the development of these innovations.

- Moreover, most African Startup Acts are adopted via a **participatory process**. It's a unique way of bringing the private and public sectors together and of involving entrepreneurial ecosystems in the actual writing of the law. This in itself creates tremendous value by creating avenues of exchange between the government and the ecosystem.

Small Business Acts vs. Startup Acts

1. History | Co-existence with former instruments

- Small Business Acts and Startup Acts both appeared on the legal scene quite recently. Yet, before these laws appeared, and even after they were introduced, the challenges faced by entrepreneurs were not left unattended. They were tackled in existing sector-specific legislation, for example in laws related to education, employment or intellectual property.

- An effective and well designed entrepreneurship policy will take existing laws into account and fit right in with them, such that the new and existing legislation form a unified legal framework.

- Nevertheless, in some cases, existing laws can be outdated or unable to meet the ecosystem's needs effectively. In that case, it is also possible for new legislation to effectively replace them.

How does this apply to your country?

1. Does your country have a legal instrument related to labour, intellectual property or education?
2. Would it be beneficial to your ecosystem to have new measures gathered under one instrument?

Let's see how SBAs and Startup Acts do this in practice!

Small Business Acts vs. Startup Acts

2. Definitions

Startup Acts and Small Business Acts are both legislative instruments. They are enforceable laws, with legal power. However, they do not serve the same goal, as they apply to different companies. Startup Acts put in place fundamental provisions that set a framework for startup promotion, while SBAs define a framework for SME development and aim to forge an enabling business climate. A quick overview is provided below, as well as some real-life examples on the next slides.

Startup Acts

Legislative instruments aimed at fostering entrepreneurship and enabling the development of new high growth firms.

Most Startup Acts create incentives tailored to the needs of startups (such as tax exemptions, subsidies and trainings), according to their respective definitions, which are mostly based on the perceived potential for growth and innovation.

Small Business Acts

Legislative instruments with a transversal scope, aiming to boost the creation and development of SMEs and to forge a conducive and enabling business climate.

SBAs promote entrepreneurship and create incentives to improve SMEs' access to finance, reduce the regulatory burden, improve access to markets and aid businesses with internationalization.

Small Business Act: Morocco

- The Moroccan SME Act enacts the SME Charter of 23 July 2002, which is a framework for the promotion of SMEs.

- The SME Act targets small business and medium businesses and defines eligibility criteria related to size, annual turnover and sets a cap on the percentage of capital or voting rights owned by external parties.

- The following incentives are specified in the Act:
  - Establishment of various venture capital instruments for SME financing;
  - Support for Public Procurement;
  - Support for the development of land, business incubators and technology parks;
  - Tax deductions and exemptions for SMEs in key sectors and for investors.

Points of Interest

This Act is outdated and limited to a few measures that are not reflective of multiple programs implemented in support of SMEs.

Consecutive SME policies were set out in the National Pact for Industrial Emergence (2009-2015) and the Industrial Acceleration Plan (2014-2020), as well as a "Contractual Framework" adopted by the Moroccan SME Agency for 2015-2020. The definition of SMEs however has remained unchanged.

Small Business Act: Benin

- The Beninese Small Business Act (2020) establishes a system for recognising and categorising MSMEs that can benefit from specific measures and state incentives:
  - Micro enterprises must employ less than 10 people and have an annual turnover below 30 million FCFA;
  - Small enterprises must employ less than 50 people and have an annual turnover below 150 million FCFA;
  - Medium enterprises must employ less than 200 people and have an annual turnover between 150 million FCFA and 2 billion FCFA.

- Incentives include:
  - Protection against late payment of invoices by the State in public contracts;
  - Encouragement of co-contracting and subcontracting with large companies;
  - Tax deductions for the purchase of professional equipment, for SMEs that transform local raw materials and for incubators.

Points of Interest

In 2005, Benin enacted a Charter for SMEs that was unenforceable and void of legal power.

This much-anticipated SBA Act was adopted unanimously in Parliament.

Startup Act: Tunisia

- The 2018 Tunisian Startup Act had a primary objective of creating an incentive framework for startups that was based on “creativity, innovation and the use of new technologies.”

- 20 measures include reforms such as:
  - Startup Leave to co-founders with option to return to employer without penalty,
  - Startup Scholarship for co-founders,
  - Intellectual property registration help for licensing and patents,
  - Multiple tax and finance incentives,
  - Amicable liquidation through Guarantee Funds, exemption from corporate tax.

- The process was collaborative and participatory. Tunisia’s Startup ecosystem lobbied policymakers on their priorities for the Act in what has been called “bottom-up policy making.” [1]

Points of Interest

Tunisia was the first African country to pass such an Act. One of the primary objectives was to attract investment and make the country a destination of choice for international startups as well as local.

Impact in Numbers

- 818 labels awarded between March 2019 and February 2023.
- 3,222 jobs created by startups by 2020.
- In 2020, 82 startups raised a total of $8.2 million.[2]

[1] https://carnegieendowment.org/sada/76685

[2] Startup Tunisia Annual Report (2020). https://startup.gov.tn/en/annual-reports

Startup Act/SBA: DRC

- In June 2022, DRC adopted the ordinance-law on the promotion of entrepreneurship and startups. The law creates a legislative framework and incentives for SMEs and Startups. It can therefore be seen as a Startup Act and as a Small Business Act.

- Micro, small and medium enterprises are defined as enterprises employing between 1-200 people, with annual turnover between 10,000 - 600,000 USD, capping investments of medium enterprises at 350,000 USD. Incentives include facilitated access to credits and public procurement for SMEs, as well as tax relief.

- Startups are defined as enterprises less than 7 years old, evolving in an innovative field, with a high growth potential and a strong need of venture capital. The startup must employ less than 50 workers, its annual turnover and registered capital must not be higher than a billion francs congolais, and 2/3 of its capital should be owned by Congolese citizens.

- Incentives for labeled startups include tax exemptions, preferential access to public procurements and subcontracting, the leave for the creation of a startup and priority access to the Entrepreneurship Guarantee Fund.

Points of Interest

- The DRC Act has been adopted through a participatory process involving more than 60 entrepreneurs.

- The Act also introduces the concept of "national entrepreneur" which encompasses all nationals owning a business in DRC. National entrepreneurs benefit from specific incentives, even if they are not SMEs or don't benefit from the Startup label, such as access to the Entrepreneurship Guarantee Fund and exemptions from various taxes.

Small Business Acts vs. Startup Acts

3. Key eligibility criteria

- As we mentioned before, Startup Acts and Small Business Acts apply to different types of companies, i.e. startups and small businesses.

- Both are primarily defined by their size: they are “smaller companies,” although, as seen earlier, the threshold used to define them varies.

- Nevertheless, startups are usually perceived as a “unique” type of small business, for which additional criteria are defined. This is in line with the definition of startups: “companies in their first stage of operations with the **ability to scale** and **grow rapidly** by utilising **new technologies**.”

- In the next slides, we will have a closer look at the key criteria used to define these businesses.

Remember when you learned in Part 1 that all startups are small businesses, but not all small businesses are startups?

Now you see why this important!

Not all small businesses meet the innovation and growth criteria to be seen or labeled as ‘startup’.

Small Business Acts vs. Startup Acts

3. Key eligibility criteria: SBAs

Based on an analysis of 20+ SBAs, we find that three criteria are most commonly used to define eligibility. These criteria are either related to the **size** of a company or to its **finances**.

They specify limits with respect to A) the number of employees, B) the annual turnover and C) the amount of capital held or investments done by the company.

A. Employee requirements

The most common criterion to categorize SMEs is the number of employees the business employs. Exact limits on the number of employees vary between countries (see the tables in the next slides), but the upper limit found throughout the 20+ instruments gives us a clear picture of the cut-off points. Most instruments distinguish three categories of SMEs:

- Micro and Very Small Enterprises (VSE), that do not exceed 10 people.
- Small Enterprises, that do not exceed 50 people.
- Medium Enterprises, that do not exceed 250 people.

[1] Innovation for Policy Foundation (2023). *Benchmarking Small Business Acts and Startup Acts in Africa*. https://ecosystem.build/

Small Business Acts vs. Startup Acts

3. Key eligibility criteria: SBAs

B. Annual turnover requirements

More than 70% of SBAs also specify an annual turnover cap for SMEs. These caps vary widely from one country to another. For example, maximum turnover requirements for Micro and VSEs ranged from 6 times GDP per capita in Kenya to 89 times GDP per capita in Algeria.[1]

The turnover caps are differentiated by size, meaning that the maximum annual turnover for a medium business is higher than for a micro or small business. Often, these caps are multiplied by a fixed number from one category to the next. For example, the SME Act in Algeria multiplies the cap by 10 from one category to the next (from 40M for VSE, to 400M for Small to 4B Dinar for Medium). Generally, this number (or: multiplication factor) varies between 5 and 15 in the analyzed SBAs.

C. Capital requirements

Lastly, many SBAs also specify capital requirements for SMEs. They contain limits on the amount of registered capital, the value of investments or on (foreign) ownership. Kenya for example caps the amount of registered capital and investments made by a SME, Burkina Faso and Morocco limit the percentage of shares held by large companies to 25% and Cameroon demands that a minimum of 51% of capital benefit should be held by Cameroonians.

[1] Small Business Acts specify their limits in local currency. Plus, they are enacted in different years. This makes direct comparison of the caps complicated. Therefore, we expressed the caps in GDP per capita to allow for a proper comparison (based on the GDP in the year in which the Act was enacted).

Small Business Acts vs. Startup Acts

3. Key eligibility criteria: SBAs

Country	Instrument	Categorization	Size (# of employees)			Annual Turnover	Capital Requirements
SBA		Types	Micro/ Very Small	Small	Medium	Cap	Paid-In Capital / Capital Investments
Algeria	SME Act (2017)	Very Small Enterprise (VSE), Small Enterprise, Medium Enterprise	1-9	10-49	50-250	VSE < 40 M Dinar Small < 400 M Dinar Medium < 4 B Dinar	Cannot be held up to 25% by one or more large companies. Not owned by private equity by more than 49%
Cameroon	SME Act (2010) *Nb. Definitions amended in 2015*	Very Small Enterprise (VSE), Small Enterprise, Medium Enterprise	1-5	6-20	21-100	VSE < 15 M CFA Francs Small < 250 M CFA Francs Medium < 3 B CFA Francs	Cameroonians hold 51% of capital benefit
Kenya	Small and Micro Enterprises Act (2012)	Micro-enterprise, small enterprise	1-9	10-50	*n/a*	Micro < 500K Shillings Small < 5M Shillings	The Kenyan SME Act specifies different capital requirements for businesses in the Manufacturing and Farming + Service sector. The caps shown below are identical for registered capital and investments in equipment. For small enterprises the Act specifies a range in which the registered capital and investments should be. *Micro enterprises* Manufacturing < 10M KSh Farming or Service < 5M KSh *Small business (range)* Manufacturing 10 - 50M KSh Farming or Service 5 - 20M KSh

[1] Innovation for Policy Foundation (2023). *Benchmarking Small Business Acts and Startup Acts in Africa.* https://ecosystem.build/

Small Business Acts vs. Startup Acts

3. Key eligibility criteria: Startup Acts

- Now that we have seen which eligibility criteria SBAs use and how they commonly categorize SMEs, this begs the question how Startup Acts differ in this respect.

- The main differentiating element in Startup Acts is that, on top of size and capital criteria, startups are often also defined by their **i) age and ii) growth/innovation criteria**.

- This signifies the main thinking behind Startup Acts. Because these businesses are inherently different from 'regular' SMEs, they have different needs. Startup founders often venture into untapped markets, while needing substantial financial support at early stages. Due to their innovative nature, they also require better access to intellectual property rights and research and development capacities. It is exactly those needs that Startup Acts aim to cater to.

- The table on the next slide illustrates how these criteria for startups are specified in practice. For example, the Startup Acts of Tunisia and DRC specify a maximum number of employees for a startup, while the Nigerian Act does not. It also becomes apparent that all three acts contain a cap on number of years in existence, as well as criteria related to the growth potential and the innovativeness of the product or service that the startup offers.

Small Business Acts vs. Startup Acts

3. Key eligibility criteria: Startup Acts

Country	Instrument	Categorization			Annual Turnover	Capital Requirements
Startup Act		Size (# of employees)	Age of company	Growth/Innovation Criteria	Cap	Paid-In Capital / Capital Investments
DRC	Startup Act (2022)	< 50	< 7 years	"An innovative venture with a strong potential for exponential economic growth"	< 1 B CDF Francs	Congolese citizens hold 2/3 of capital and Total Assets < 1 billion CDF Francs.
Tunisia	Startup Act (2018)	< 100	< 8 years	"The company's business model must be innovative i.e. provide an interesting and differentiated solution to a given problem"	< 15 M TND Dinar	More than 2/3 of the company's capital must be held by individuals, regulated investment organizations (investment funds, etc.) or foreign startups.
Nigeria	Startup Act (2022)	*n.a.*	< 10 years	"Its objects are innovation, development, production, improvement, and commercialisation of a digital technology innovative product or process." "It is a holder or repository of a product or process of digital technology, or the owner or author of a registered software."	*n.a.*	At least 1/3 local shareholding, held by one or more Nigerians as founder or co-founder of the startup.

[1] Innovation for Policy Foundation (2023). *Benchmarking Small Business Acts and Startup Acts in Africa.* https://ecosystem.build/

Small Business Acts vs. Startup Acts

4. The case of Senegal

Let me ask you this: what do you think happens when a country adopts both an SBA and a Startup Act? We will compare the Senegalese SME Act of 2008 and the Senegalese Startup Act of 2019 to get an answer.

SPOILER ALERT

In the case of Senegal, one Act does not cancel out or override the other. Remember: both legislative instruments apply to different types of companies.

- ➔ Therefore, a Senegalese SME that meets the requirements of the SME Act, will abide by that law.
- ➔ For Startups, things get a bit trickier: a startup is, by definition, also an SME. It could logically, also benefit from the SME Act. And most Senegalese startups probably did between 2008 and 2019. But, once the Startup Act passed, they likely shifted towards the new law, simply because it targeted them specifically, and created incentives designed for their unique needs.

Tip:

- ➔ The Senegal Startup Act can be found here.
- ➔ The Senegal SME Act can be found here.

NB. Both are in French.

Small Business Acts vs. Startup Acts

4. The case of Senegal

	Senegal SME Act (2008)	**Senegal Startup Act** (2019)
Type of instrument	Legislative Acts	
Objective	To promote the **creation, development and growth of SMEs**	To promote the **creation and promotion of startups** based on **creativity, innovation, the use of new technologies**
Beneficiary targeting	**Any professional activity**, civil, commercial, artisanal, agricultural, industrial or of service provider, **whose annual turnover declared without taxes is lower or equal to 2.000.000.000 FCFA** (the law creates different sub-categories)	An **innovative and agile company** with **strong growth potential** incorporated less than **8 years ago**, looking for a **disruptive business model**

Small Business Acts vs. Startup Acts

4. The case of Senegal

- The comparison table on the previous slide shows that the objectives of the Senegalese SME Act and Startup Act are different. Whereas the SME Act sets out to promote the creation and growth of SMEs in general, the Startup Act specializes in the creation and promotion of startups that use new technologies.

- This conclusion aligns well with the explanation that we provided before. SME Acts aim to create a wide enabling framework for businesses, whereas Startup Acts specialize in certain businesses (i.e. startups) that have a certain growth potential because of the technological advantages that they possess or work with.

- This is also illustrated by the different beneficiaries that the Acts target. Whereas the SME Act casts a very wide net (focusing on any professional activity in Senegal with an annual turnover below or equal to 2 billion Francs), the Startup Act, again, specializes and specifically targets "innovative and agile companies with strong growth potential that were incorporated less than 8 years ago and are looking for a disruptive business model."

Small Business Acts vs. Startup Acts

4. The case of Senegal

	Senegal SME Act (2008)	**Senegal Startup Act** (2019)
Finance	Guarantee fund and loans for young entrepreneurs	Guarantees for credit; direct granting of public & private funding
Market Access	Facilitated access to public contracts	Facilitated access to public contracts: 5% preference margin
Support	Facilitation of product certification processes	Intellectual property, R&D-support, access to incubators
Governance	Development of agencies reserved for SME	Support and coordination commission
Culture	Promotion of female entrepreneurship	-
Infrastructure	-	-
Human Capital	Tax-deductible trainings	Creation of a training platform

Small Business Acts vs. Startup Acts

4. The case of Senegal

- Besides differing in their objectives and beneficiaries, the Senegalese SME Act and Startup Act also contain different incentives. The comparison table on the previous slide summarized those incentives, structured along the typology of 7 key challenges for ease of comparison.

- An obvious difference is visible for the first key challenge area: Finance. Whereas both acts provide credit guarantees, the Startup Act goes a step further and includes provisions that allow for direct subsidization of startups, for example for the formalization of the company.

- Other key differences can be observed in the challenge areas Support and Governance. For instance, the Startup Act establishes a support and coordination commission (which is responsible for setting up an online platform for the labeling process) and specifies incentives related to intellectual property, offers support for R&D and provides startups access to incubators that the SME Act does not contain.

- Lastly, it is also noteworthy that the SME Act contains specific incentives to promote female entrepreneurship (which fits under the challenge area Culture), that did not make the Startup Act.

Summary: Small Business Acts vs. Startup Acts

Startup Acts	Small Business Acts
Legislative Instruments (laws)	
Targets firms based on perceived potential for growth and innovation in addition to size criteria	Targets firms by criteria like size, employees, annual turnover.
Aiming to foster an ecosystem for high-growth firms, with general enabling environment support combined with comprehensive support for firms to reach scale	Transversal scope
	Aiming to boost new firm creation and survivability
Create incentives: tax exemptions, subsidies, procurement, etc.	Create support: financial, business, market, etc.

Small Business Acts vs. Startup Acts

Questions for reflection

How to choose between a Small Business Act and a Startup Act?
After reading this section, you might be wondering how you can choose between an SBA and a Startup Act. Let's start by asking ourselves two questions:

- Does your country currently have either of these legislative instruments in its legal landscape?
- And if so, does it create incentives for your ecosystem or does it simply set up an institution?

Your answers to these questions will fall into one of two scenarios:

Scenario 1. Your country does not have an entrepreneurship related instrument, or one that only establishes an institution without creating specific incentives.

➔ Go to Slide 40

Scenario 2. Your country has already adopted an entrepreneurship legislative instrument.

➔ Go to Slide 41

Small Business Acts vs. Startup Acts

Questions for reflection

Scenario 1. Your country does not have an entrepreneurship related instrument, or one that only establishes an institution without creating specific incentives.

The main factor that you need to consider in this scenario is your overall objective. Are you trying to design an overall framework for SME development, addressing all-encompassing challenges to doing business, or are you looking to stimulate the creation and growth of high growth firms, such as startups, in order to stimulate innovation adoption and a multiplier effect on economic growth?

You've probably guessed it: If SME development promotion is your goal, then you should look at an SBA. However, if you're trying to target Startups, then a Startup Act might be the right way to go.

Small Business Acts vs. Startup Acts

Questions for reflection

Scenario 2. Your country has already adopted an entrepreneurship legislative instrument.

Two follow-up questions need to be answered in this scenario. First, can you identify when the legislative instrument was adopted? And second, building on the learnings from Part 2, can you assess whether the instrument is still suited to address the needs of your ecosystem?

❖ If the instrument is **no longer suited** to address the ecosystem's needs, perhaps it is outdated. It might need to be amended, or a new law is needed. Which of these do you feel is the case?

➢ Example: In Cameroon, the law on the promotion of SMEs of 2010 was amended in 2015, to introduce new provisions on the definition of SMEs.[1]

❖ If the existing instrument **does not address your objectives**, perhaps you need to shift your focus to a better-suited instrument.

➢ Example: In Nigeria, the Startup Act was adopted in October 2022. But to remove bottlenecks for MSMEs in general, the Business Facilitation Act was introduced in 2023.

[1] See for all documents related to the regulatory framework on SMEs in Cameroon: https://www.minpmeesa.cm/site/en/sound-normative-framework-for-small-and-medium-sized-enterprises-in-cameroon/

Small Business Acts vs. Startup Acts

Questions for reflection

Take some time to reflect on the questions and scenarios that you just examined. In order to decide which instrument is best suited for the ecosystem in your country, you need to know your ecosystem, the challenges it faces and the instruments and incentives that are already at work.

If you feel a Startup Act fits best, the next section will be of special interest to you. There, we walk you through a step-by-step guide on how to draft a Startup Act. Why have we chosen to dedicate a whole section to Startup Acts? Primarily because we believe they are a great instrument. They send a strong message, showing a country's intention to support its ecosystem. In addition, the added value of Startup Acts also lies in the participatory process they employ, involving the ecosystem in the design, creation and evaluation of the Acts (co-creation).

But, even though Startup Acts are increasingly popular, it is crucial to note that they are not the only tool in your toolbox to support entrepreneurship. We don't want you to get the wrong idea and conclude that you need to adopt a Startup Act. Always consider which instrument is best for your context.

3.4 How to draft a Startup Act?

How to draft a Startup Act?

You have learned about the main differences between SBAs and Startup Acts and discovered why Startup Acts are so popular nowadays. It is now time for us to take a more hands-on approach. This section provides you with the knowledge and tools to start drafting your own Startup Act.

We will discuss six building blocks that form the core of every Startup Act:

1. Determine objectives
2. Define startups
3. Target beneficiaries
4. Institutionalize a dialogue with the ecosystem
5. Design incentives
6. Include a Monitoring & Evaluation clause

Of course, this does not mean that your Act cannot include related elements or paragraphs. You will become acquainted with several examples of Startup Acts in this section that also include ample other paragraphs and clauses on top of the six core building blocks that we present here.[1]

[1] This section showcases examples from the Startup Acts of Nigeria, Tunisia, Senegal, DRC and Italy as well as the publicly available draft versions of the Startup Acts of Kenya and Ethiopia. Please refer to the Entrepreneurship Policy Library (https://library.ecosystem.build/) for all source materials.

How to draft a Startup Act?

1. Determine objectives

The first building block is the most crucial one. Ask yourself, **what are you trying to achieve?** This question might look straightforward, but you'll find that putting your objectives into precise writing is not an easy task.

- Start by thinking back of your participatory ecosystem assessment (Part 2). Recognize and acknowledge the importance of the ecosystem and the interconnections and interdependencies that exist between policy challenges and policy interventions.

- Don't stop there though. Involve entrepreneurs and other ecosystem actors in the process of creating and evaluating your act.[1] This will help you better understand their needs and incorporate their knowledge into your decision making, while strengthening social capital.

- Remember how in nature plants, animals, insects and their surroundings work together to form a bubble of life? Entrepreneurs flourish in an entrepreneurial ecosystem where multiple factors and ecosystem actors work together. It is therefore imperative that your act employs a holistic, well-coordinated and long-term perspective.

[1] See Part 2 of the toolkit for some examples of Methods of Engagement that you can make us of. Also, keep an eye out at our platform ecosystem.build for a forthcoming Policymaking Handbook.

How to draft a Startup Act?

1. Determine objectives

- We stress the importance of supporting and strengthening the entrepreneurial ecosystem. Why? Because trying to directly target growth potential as the core policy goal is fraught. Future growth of companies is inherently difficult (if not impossible) to predict.
  - ➔ Thus, a reorientation is needed away from actively searching for high-potential firms towards addressing framework conditions. Think for example about encouraging business-to-business spillovers, strengthening firm capabilities and making it easier for businesses to find the right employees.

- Lastly, have a look at the key challenge areas that your ecosystem assessment identified as policy priorities. Did you color any of the key challenge areas or sub-challenges red or orange? If so, it is advisable to address those and as such, consider integrating them into the objectives of your Act.

The next slides showcase the objectives that were formulated in the Startup Act of **Senegal** as well as the draft Startup Act of **Kenya**. Use these as source of inspiration and learn from them, but make sure that the objectives that you determine for your Startup Act suit your country's legal context and entrepreneurial ecosystem.

How to draft a Startup Act?

Objectives Startup Act: Senegal

“The purpose of this bill is to put in place a specific incentive framework for the creation and promotion of start-ups in Senegal. To this end, it brings, among others, the following innovations:

- the creation of a specific support and governance framework for Senegalese startups;
- the establishment of a legal regime for the registration and labeling of Senegalese startups;
- the creation of a resource center dedicated to Senegalese startups, with a view in particular to facilitating labeling procedures as well as the effectiveness of the support mechanisms put in place;
- the introduction of a package of relevant incentive measures that align with the imperative of promotion and support for the development of Senegalese startups.” [1]

[1] Note: the original text is in French. This is our own translation.

How to draft a Startup Act?

Objectives Startup Act: Kenya

“The object of this Act is to provide a framework —

(a) that fosters a culture of innovative thinking and entrepreneurship;

(b) for the registration of startups and the linkage of such startups with financial institutions, the private sector research institutions and such other institutions at the National and county level of government;

(c) to facilitate investments in and the provision of fiscal and non-fiscal support to startups in Kenya;

(d) that promotes an enabling environment for the establishment, development, conduct of business and regulation of startups;

(e) for the establishment of incubation facilities at the National and county levels of government and environment that promotes the establishment of startups; and

(f) for the monitoring and evaluation of the legal and regulatory framework and the mechanisms put in place to encourage the development of startups.”

How to draft a Startup Act

2. Define startups

The key eligibility criteria of Startup Acts and Small Business Acts were extensively discussed in section 3.3. Now it is time to construct **your definition of startups**.

➔ As a quick reminder, the main differentiating elements of startups that we found before were **i) age** and **ii) growth/innovation criteria**. Aside from these elements, most definitions of startups also contain criteria related to size (number of employees), turnover (annual cap) and capital requirements (cap on registered capital and/or investments made by the business). As you know, these last three are also commonly used to define businesses in SBAs.

How do you go about constructing a definition of startups? That depends to a large extent on the objectives you formulated before. Because remember, your definition determines which businesses will be eligible (and which won't) for the support measures that your Act will contain.

Your considerations are likely going to be both technical and political in nature. Criteria related to size, turnover, capital requirements and age are mostly technical in nature, and used to restrict the number of businesses that are eligible for support. Innovation and growth criteria, on the other hand, are more visionary in nature (and thus political), and often align with strategic instruments that have set the stage for long-term development in your country.

How to draft a Startup Act?

2. Define startups | Growth criteria

Growth criteria

- The **Senegalese** Startup Act defines the growth criteria as follows: startups must have a “strong growth potential in search of a disruptive business model.”
- In **Tunisia**, startups must have “an activity with strong growth potential.”
- **DRC** includes “high growth potential with a significant need of investment funds for its activity and the replication of its business model.”
- It is also worth mentioning the **Italian Startup Act** here, as it provides an interesting description of the growth criteria. The Italian Act also emphasizes startups with “high technological value,” but it makes one provision the African Acts do not:
    - The Italian act allows an innovative startup to transition to “innovative SME” status given certain conditions for maturity and experience. An “innovative SME” is defined as any small and medium enterprise operating in the field of technological innovation, irrespective of its date of incorporation, its company purpose, and its stage of maturity.

How to draft a Startup Act?

2. Define startups | Innovation criteria

Innovation criteria

- **Tunisia** requires that startup's business models must be "highly innovative," and must "utilize cutting-edge technology."
- **Nigeria** specifies that the startup's "objects must be related to the innovation, development, production, improvement and commercialisation of a digital technology innovative product or process." In addition, a startup needs to be "a holder or repository of a product or process of digital technology, or the owner or author of a registered software."

Now that you've read these definitions of the growth and innovation criteria, something must have stood out: all of these examples are written quite vaguely. Think about it. What exactly does "disruptive business model" or "high growth potential" mean?

This is left to the interpretation of the applicants and/or the selection institution. It is precisely for this reason that the method for selecting the Act's beneficiaries is crucial. Effectively targeting the startups that will benefit from your law determines its future impact. To see how you can do that, let's move on to building block 3.

How to draft a Startup Act?

3. Target beneficiaries

The third building block of your Startup Act is **the beneficiary targeting mechanism**. Once the startup's defining criteria have been written down in the law, they have to be applied in practice. Most Startup Acts create labels or certificates that startups must apply for in order to enjoy the Act's incentives. But out of all the applicants, how do you determine which businesses meet the growth and innovation criteria?

To answer this question, a selection process is often put in place. Traditionally, this selection process either takes a discretionary or objective approach. However, at the end of this building block, together, we will also try and design a process that mixes both options (a "hybrid process").

- **Discretionary Selection**
  Beneficiaries are selected by a Committee that assesses their growth and innovation potential (for example based on a pitch). The process might include comparing and ranking applicants.

- **Entitlement-based Selection**
  Beneficiaries selected by means of an objective, rules-based selection process.

How to draft a Startup Act?

3. Target beneficiaries | Discretionary selection

Discretionary selection

- Discretionary selection targets firms based on **perceived growth potential** or **strategic priority**. This process is often modelled on Venture Capital selection to pick ‘outsize’ growth (= very large).
- A discretionary selection process is often overseen by a **selection committee** composed of both public and private actors (we’ll take an in-depth look at this in the next building block).
- The goal of a discretionary selection method is to ensure due diligence, value for money of offered incentives and/or to establish a startup brand.

The difficulty of a discretionary selection process is that it can perpetuate biases and is prone to elite capture, if accountability measures are not put in place. Moreover, the technical design of a discretionary selection process tends to be problematic, as developing, assessing and administering qualitative selection criteria, usually associated with “desirable” characteristics that are unobservable turn them into a complex subject for laws.

An example of a Startup Act that utilizes a discretionary selection mechanism is the Act from Tunisia. The next two slides describe the process that it employs.

How to draft a Startup Act?

Discretionary selection: Tunisia

The Tunisia Startup Act specifies five eligibility criteria:

- **Age:** No more than 8 years in existence.
- **Size:** No more than 100 employees and 15M TND in total assets or annual turnover.
- **Independence:** More than two-thirds of capital held by natural persons or investors.
- **Innovation [Discretionary]:** Strong innovative character, defined as "providing an interesting and differentiated solution to a given problem".
- **Scalability [Discretionary]:** Perceived growth potential, product-market fit, proof of concept and team capabilities.

Upon verification of the first three criteria (age, size and independence), Tunisian startup applications are reviewed by the Startup College for innovation and scalability. The next slide details the full application process.

Points of interest

- The Startup College, in essence a labeling committee, is made up of a President and eight members. These are all volunteers from the public and private sector, with a connection to the subject matter.
- The Startup College is equipped with a permanent Secretariat and all its activities are online. Applications are sent through an online Portal and members meet online.

How to draft a Startup Act?

Application Process Startup College Tunisia

1. Preparation

- Register via the startup portal
- Fill out the online application form
- Upload related legal documents

2. Submission

- Submission is only possible when a labeling session is open
- Submission is done online via the Portal
- Application fee of 100TND payable at time of submission
- Candidate may submit only one application every 6 months

3. Examination

- Verification of submitted documents
- Verification of eligibility for the first 3 criteria (age, size, independence)

4. Reviewing

- Exploration of files: concept, business model, pitch and demo of the product (* POC is a minimum requirement)
- Innovation and scalability assessment
- Voting: accepted, rejected or called to pitch

5. Labeling

- Any project that has obtained a minimum of 5 favorable opinions obtains the Label

Between March 2019 (start) and February 2023 the Tunisian Startup College received 1590 applications via the Portal. Startup Labels have been granted to 818 applicants, with 361 Pre-labels granted but not yet transformed. Startup Tunisia, Results of Labeling sessions. https://startup.gov.tn/fr/startup_act/results

How to draft a Startup Act?

3. Target beneficiaries | Entitlement-based selection

Entitlement-based selection

- In an entitlement-based selection procedure, firms are selected based on objective, rule-based criteria. Every firm that proves that it matches the stated criteria qualifies for the incentives provided by the Act.
- Entitlement-based selection helps to avoid regulatory uncertainty, reduces oversight expenditure and mitigates perverse incentives such as elite capture.
- Just like under a discretionary mechanism, a labelization process is often put in place to determine which entrepreneurs meet the criteria to benefit from the incentives in the Act.

The Nigerian Startup Act is an example that employs an entitlement-based selection process. The next slide provides some details on the labeling process that was put in place there.

How to draft a Startup Act?

Entitlement-based selection: Nigeria

- A startup desiring to acquire the Startup label in Nigeria must submit an application on the Startup Portal. When the Coordinator from the Council for Digital Innovation and Entrepreneurship (see building block 4) is satisfied that an applicant has complied with the requirements below, the label is issued.

- Under the provisions of the Nigerian Startup Act, the conditions for acquiring a Startup label are:
  - Be registered as a LLC not incorporated for more than 10 years;
  - Have innovation, development, production, improvement and commercialisation of a digital technology innovative product or process as part of its objects;
  - Be a holder or repository of a product or process of digital technology, or the owner or author of a registered software;
  - Have at least 1/3 percent of its shares held by one or more Nigerians.

Points of Interest

- The label is valid for ten years and sufficient evidence that the startup has complied with all the requirements set out by the Act.
- When a labeled startup defaults in any of its obligations, the Coordinator will notify it and the startup is required to correct the issue within 30 days. If it does not, the label will be withdrawn. Note that a startup can always reapply after correcting the default.

How to draft a Startup Act?

3. Target beneficiaries | Hybrid selection

Let's try and imagine what a **"hybrid" selection process** could look like. Ideally, such a process safeguards the objectivity that entitlement-based selection offers, while also preserving an element of tailorization that discretionary selection mechanisms are built on.

Integrating both these elements into a single selection process could work as follows, and is also worth consideration, particularly if you are interested in an element of tailorization:

I. Target beneficiaries send their application to an institution, which objectively verifies if the requirements set out in the Act are met. If they are, the institution issues the startup label.

➔ This part of the process is entitlement-based.

II. When the startup is refused access to the label (because it does not meet the growth and innovation requirements), it can make a request to a second institution/committee (composed of members of the ecosystem) for specifically those criteria to be reviewed again.

➔ This part of the process is "discretionary". Since growth and innovation criteria may need more than facts and figures to be duly appreciated, this second institution would assess the products/services offered by the applicant in detail before making a labeling decision.

How to draft a Startup Act?

3. Target beneficiaries | Conclusion

Which of these selection methods should you pick? Ultimately, that is for you to decide.

We favour the entitlement-based and hybrid processes though, because:

- It offers clear-cut, objective criteria for being considered as a beneficiary or not;
- There is less need to establish separate selection/labeling committees, which can be ill-positioned to accurately determine whether a firm has growth potential or is innovative;
- It reduces the red tape surrounding the selection/labeling process, which means fewer bureaucratic bottlenecks, fewer delays (which could occur if the administration has to handle a sizable amount of applicants) and less potential for corruption and political ambiguity.[1]

[1] Internationally, entitlement processes are widely used to deploy tax incentive programs. In Africa, 56% of entrepreneurship-related policies and legislations reviewed employ an entitlement-based labeling process (often through registration schemes), while 16% contain a discretionary process. More information to be found in Innovation for Policy Foundation (2023). *Benchmarking Small Business Acts and Startup Acts in Africa*. https://ecosystem.build/

How to draft a Startup Act?

4. Institutionalize a dialogue with the ecosystem

Our fourth building block delves deeper into **institutionalizing a dialogue with the ecosystem**.

While creating your beneficiary targeting mechanism (building block 3), you may have noticed that an institution always comes into play at some point. Actually, all Startup Acts around the continent introduce new institutions or assign additional tasks to existing institutions.

- The primary role of these institutions is to implement the Act, which is why they bear the responsibility of determining whether applicants fulfill the criteria of the label or certificate, and hence are awarded access to incentives or not.

- Other duties, however, vary from one country to another. In some countries (like **Tunisia**) the institution's role is limited to receiving and reviewing applications. In others (like **Nigeria** and **Ethiopia**) it has a bigger role to play. The institutions there are, for example, tasked with the design of detailed policy guidelines for the realization of the Act, or have to provide annual reports on the condition of the ecosystem, including obstacles that it might face, as well as other factors that hamper growth and innovation in the country.

How to draft a Startup Act?

4. Institutionalize a dialogue with the ecosystem

These institutions, whether they are called a college, committee or council, provide you with the perfect way to keep ecosystem actors involved.

You could, for example, structure the way in which entrepreneurs and other ecosystem actors can provide **feedback** and prescribe how their feedback should be processed, presented and shared with relevant policymakers and decision makers.

This role could be passive (e.g. providing a form on a portal) or active (e.g. tasking the institution to organize regular meetings with the ecosystem).

In both cases, the implementing institution has a significant role to play, as it functions as **liaison between you and the entrepreneurial ecosystem**.

Before we present some examples (of **Ethiopia** and **Nigeria**), do you recall why building block 1 advised you to involve entrepreneurs and other ecosystem actors in the process of designing and creating your act?

The reason was that co-creating the Act will help you better understand the ecosystem's needs and allow you to use the knowledge of ecosystem actors in your decision making.

That same reasoning applies to evaluating the effectiveness of the Act after its implementation!

The National Startup Business Council - Ethiopia

The Ethiopian Startup Proclamation was published in 2020. As mentioned before, it has not been enacted yet. The draft Act establishes two institutions: the National Startup Business Council and a Technical Advisory board.

- The Council's objective is "to foster economic growth by creating an ecosystem which is conducive to the development of innovation and technology, and the creation of new jobs."
- The Act assigns several powers and duties to the Council, including the mobilisation of resources, providing support to entrepreneurs, ensuring that an enabling environment is put in place as well as guiding and reviewing decisions of the Technical Advisory Board.
- The Technical Advisory Board is responsible for the application process and decides on the merits of applicants. The Board is composed of members of the public and private sector (appointed by the Minister).

Points of interest

- The Council will have between seven and nine members, in addition to the Minister who serves as chairperson and the Commissioner (secretary).
- The Ethiopian Startup Proclamation includes a pre-labeling process.
- Like the Italian Startup Act, the Ethiopian Act does not just define startups; it also labels innovative SMEs.

Council for Digital Innovation and Entrepreneurship - Nigeria

- The Nigeria Startup Act creates the Council for Digital Innovation and Entrepreneurship. The Council:
  - formulates and provides general policy guidelines for the realization of the objectives of the Act;
  - gives overall direction for the harmonisation of laws and regulations that affect a startup;
  - ensures the monitoring and evaluation of the regulatory framework to encourage the development of startups in Nigeria.

- Members include the President and Vice President, the Minister for Communications and Digital Economy, representatives from the Startup Consultative Forum and from the Nigeria Computer Society.

- The Startup Consultative Forum referred to above, is a consultative body that the Secretariat (see Points of Interest) is tasked with setting up. The Forum is to be a platform for information sharing and collaboration in the Nigerian startup ecosystem.

Points of interest

The National Information Technology Development Agency (NITDA) performs the secretarial functions for the Council. It “manages the process of labeling a startup” by establishing public online platforms to provide access to registration and labeling.

How to draft a Startup Act?

5. Design incentives

After establishing the fundamentals of our Startup Act (objectives, definition, beneficiary targeting and institution) we can finally start to **design incentives**. This is the moment to revert to your ecosystem assessment and see which key challenge areas and sub-challenges are slowing or halting firm growth, and need to be addressed to create an all-round enabling environment.

The slides hereafter provide a few examples of incentives for each challenge area.[1] But remember: one size does not fit all. You need to design incentives that are relevant to your country's ecosystem and legal context.

Make sure that you always analyze potential incentives with a cost-benefit perspective in mind and be ambitious. It's likely that the incentives you propose will be heavily debated, both by your colleagues, ecosystem actors and, later in the process, by the responsible politicians. Remember, removing articles is always easier than adding new ones.

[1] See also Part 5 of the Toolkit for an extensive menu of policy options! This part of the toolkit follows the structure of the key challenge areas and presents case studies and examples of policy interventions for each separate sub-challenge.

Incentives: Finance

Financing incentives are very popular in Startup Acts and can take different shapes and forms. For example, governments can opt to directly channel funds to firms (via grants or soft loans), or to provide indirect support through guarantee funds and by creating regulatory environments that are conducive to equity financing. Tax incentives targeting (potential) investors are also commonly found.

Examples

- **DRC**: introduces a special support fund for direct financing to startups, a 0% financing rate for the first 12 months for bank capital and priority access to a leasing mechanism set up by the state.
- **Ethiopia**: introduces an Innovation Fund aiming to finance startups and innovative businesses, for example by covering costs for administrative support and fees that apply to the registration of IP, as well as the provision of guarantees.

Incentives: Market Access

Incentives related to Market Access ease access to the domestic market and foster competition and economic growth, while creating bigger markets through the facilitation of imports and exports as well as providing (better) access to public procurements.

Examples

- **Senegal**: a 5% preference margin is granted to any labeled startup participating in a call for tenders for a public contract.
- **Nigeria**: startups are entitled to export incentives and financial assistance.
- **Ethiopia**: introduces a bonus clause in tenders for foreign contractors that subcontract to startups.
- **Italy**: the Italian Trade Agency provides assistance in legal, corporate and fiscal activities, as well as real estate and credit matters to stimulate internationalization of startups.

Incentives: Support

These incentives target business support providers and services (such as incubators, coworking spaces and accelerators) that help startups improve their productivity and quality of service.

Examples

- **DRC**: establishes an incubator program, providing specific (financial) incentives to entrepreneurship support organizations.
- **Kenya**: introduces a certification scheme for incubators to safeguard quality and tasks the National and county governments to support certified incubators through fiscal and non-fiscal support.

Incentives: Governance

Governance-related incentives aim at simplifying the administrative procedures required throughout the life of a business by streamlining operational regulations, improving access to information and clarity of rules.

Examples

- **Tunisia**: provides for an online platform allowing startups to complete the registration and labeling formalities.
- **Senegal**: introduces facilitation measures and customs procedures that are more favorable to startups.
- **Nigeria**: labeled startups are entitled to apply to regulatory sandboxes via a fast-track process.

Incentives: Culture

These incentives aim to promote entrepreneurship as a viable career path, including amongst others the promotion of women entrepreneurship.

Examples

- **DRC**: introduces a specific bank loan scheme with more favourable conditions for women's projects. *Note that this is a cross-cutting example which also relates to Finance.*
- **Italy**: creates a “fail fast” procedure. In case of business failure startups can rely on faster and less burdensome procedures. The explicit goal of this measure is to reduce costs associated with bankruptcy, including its stigmatisation.
- **Tunisia, Nigeria, DRC and Ethiopia**: introduce a “startup leave”, allowing entrepreneurs to take temporary leaves from their job to launch a startup.

Incentives: Infrastructure

Infrastructure incentives relate to both the physical and digital infrastructure required to foster entrepreneurship.

Startup Acts create incentives for the latter element, but do not address physical infrastructure (i.e. electricity, water, internet and logistics). This is because physical infrastructure goes beyond the scope of entrepreneurship legislation, as it requires more structural and cross-cutting interventions that are the responsibility of a different department.

Examples

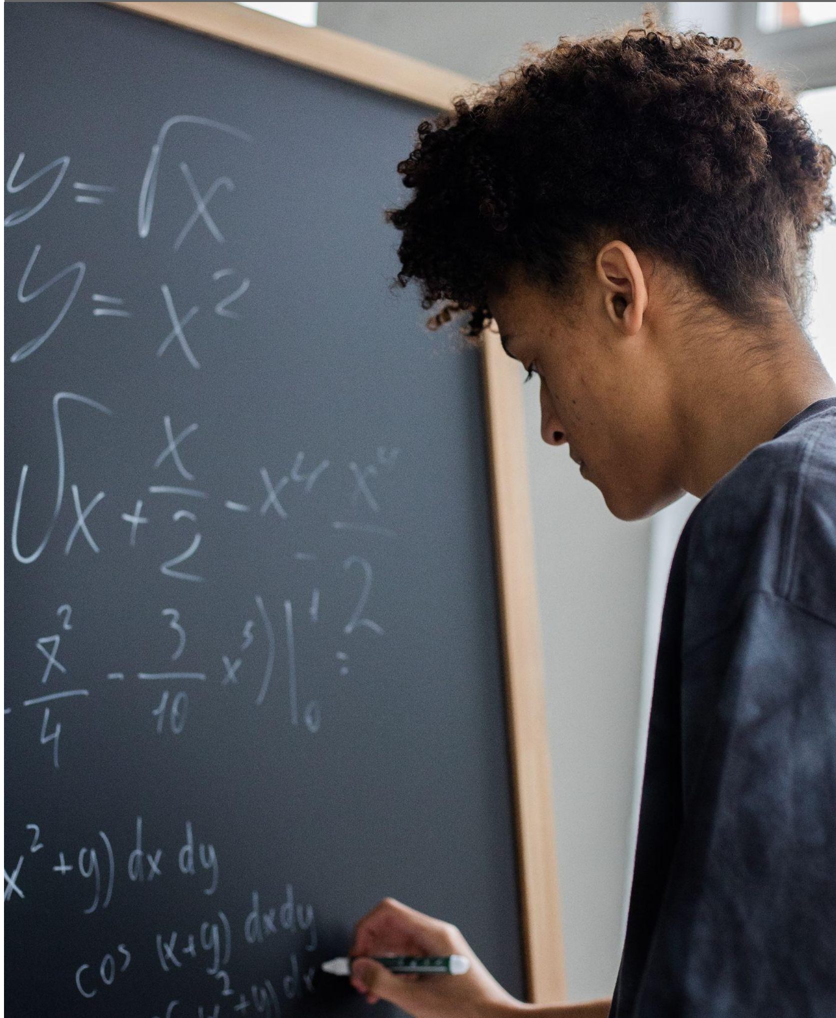
- **Senegal**: access to national domains (."sn")
- **Nigeria**: specifies the establishment of a Technology Development Zone to spur growth and development of startups, accelerators and incubators.

Incentives: Human Capital

Incentives in the sphere of Human Capital aim to stimulate the acquisition of theoretical and practical skills needed by entrepreneurs to increase productivity. Adjustments to labor market regulation to foster business growth and job creation also fall in this category.

Examples

- **Nigeria**: NITDA will collaborate with ecosystem actors and tertiary education and research institutions to develop modules, programs and hold workshops to improve business skills of Nigerians.
- **Italy**: tailors labour regulations to startups' needs. While startups are subject to standard regulations on fixed-term contracts, they are allowed to provide (very) short contracts that can be renewed an indefinite number of times (whereas general rules limit this number to 4).



How to draft a Startup Act?

6. Include a Monitoring & Evaluation clause

The last building block of your Startup Act is **a Monitoring and Evaluation clause**. Measuring the success of policy is often overlooked or neglected. But, you can only truly strengthen the entrepreneurial ecosystem when you are able to determine the impact of your interventions.

We discuss the practice of Monitoring and Evaluation in detail in Part 4 of this Toolkit. For now, we view it purely from a legal perspective: what should you include in your Act? You don't need to develop a complete evaluation framework in your legislation, but there are definitely clauses that can (and should) be included in your Act to ensure proper monitoring and evaluation.

You could, for example:

- Underline the importance of monitoring and evaluation;
- Ensure that each incentive and activity are clearly linked to an objective;
- Prescribe the publication of a report;
- Define a frequency of reporting;
- Assign responsibility for data collection and the monitoring and evaluation process.

Let's have a look at two examples from **Ethiopia** and **Italy**.

Monitoring & Evaluation: Ethiopia

The Ethiopian draft Startup Proclamation contains a separate article on Monitoring & Evaluation (Art. 38).

It specifies the following:

(1) The Council shall **at least once in every three years, conduct an evaluation** of start-ups and innovative businesses which have enjoyed support through the mechanisms of this Proclamation.

(2) For purposes of sub-Article (1) of this Article, the Council may appoint a qualified person to act as its agent.

(3) In undertaking monitoring and evaluation under sub-Article (1) of this Article, the agent of the Council shall have the **power to inquire** into any of the activities of the start-up or innovative business.

(4) An officer or employee of start-up or innovative business which is the subject to the process of monitoring and evaluation under this Article shall supply such documents, reports or information as the agent of the Council may request.

Monitoring & Evaluation: Italy

The Italian Startup Act aspires to be fully evidence-based. It creates a structured monitoring and evaluation system. The Act contains prescriptions on annual reporting (by the Minister to Parliament) and a series of quarterly reports (in-depth by the Ministry).

- The Annual Report should contain i) the state of the art of regulations, ii) demographics and growth dynamics of innovative companies and iii) evidence of the performance of support measures.

- The quarterly reports, published by the Ministry, will each focus on different aspects of the Act:
    - Demographic, economic and financial trends of innovative startups;
    - Use of the new, digital and free procedure for startup incorporation;
    - Access to credit with the support of the SME Guarantee Fund;
    - Results of the Italia Startup Visa and Italia Startup Hub programmes.

Points of interest

The reporting system formulated in the Italian Startup Act benefited considerably (for example in terms of statistical sources) from the support of the administrations part of a Monitoring and Evaluation Committee, which was established in Italy in 2014.

How to draft a Startup Act?

Conclusion

In conclusion, this section has presented six building blocks that form the core of a Startup Act.

After you have performed your participatory ecosystem assessment (see Part 2), these building blocks will function as a guiding mechanism when you develop a first draft of your own Startup Act.

Let us reiterate that, while we believe Startup Acts are great because they send a strong message of intent to support the ecosystem and are an incredible participatory instrument, they are not the only tool in your toolbox!

Always consider your own context, and determine which instrument is most appropriate for the goal you are trying to achieve.

Six core building blocks of a Startup Act:

1. Determine objectives
2. Define startups
3. Target beneficiaries
4. Institutionalize a dialogue with the ecosystem
5. Design incentives
6. Include a Monitoring & Evaluation clause

WHAT TO EXPECT NEXT...

You have explored the differences between Small Business Acts and Startup Acts and learned the six building blocks that form the core of a Startup Act.

In this next section (Part 4) you will continue down the path that building block 6 has introduced you to; the practice of Monitoring and Evaluation. You will learn how to measure the success of your policies, discover why an evidence gap exists in entrepreneurship policy and how to draft your own M&E Plan.

FURTHER READING

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- Startup Proclamation v(02.06.2020). https://ictet.org/wp-content/uploads/2020/08/Laws_ETH_Start-ups-English-2020-06-02.pdf

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Annex. Benchmark of Startup Acts

This Annex contains a benchmark of Startup Acts of Senegal, Tunisia, Nigeria, DRC and Italy. The following thirteen slides provide the exact startup definitions that the Acts contain as well as an overview of the incentives that the Acts provide, structured along the 7 key challenge areas.

Contents of benchmark (by slide number)

Annex. Benchmark of Startup Acts

Key Criteria: Startup Definitions

	Senegal	Tunisia	Italy	Nigeria	DRC
Startup Definitions	**1)** Be legally incorporated for less than eight (8) year **2)** must have strong growth potential in search of a disruptive business model and financing mechanisms adapted to its specific characteristics in order to deploy its exceptional capacity for value creation.	**1)** The human resources do not exceed the ceilings set by government decree (less than 100) **2)** Total balance sheet and its annual turnover do not exceed the ceilings set by government decree ($5.3M) **3)** More than two-thirds (2/3) of its capital is held by natural persons, venture capital investment companies, collective investment funds investment, seed money and any other investment body **4)** Its activity has strong potential for economic growth **5)** Its business model is highly innovative, utilizing cutting-edge technology.	**1)** A company with shared capital **2)** Must be newly incorporated or have been operational for less than 5 years (not before 18-12-2012)) **3**) Do not distribute profits **4)** have a yearly turnover lower than €5 million **5)** Have their headquarters in Italy or in another EU country, but with at least a production branch in Italy **6)** Have as exclusive or prevalent company object the production, development and commercialization of innovative goods or services of high technological value **7)** Not result of a merger, split-up or selling-off of a company or branch.	**1)** Be registered as a limited liability company and be incorporated for a period of not more than 10 years **2)** Its objects are innovation, development, production, improvement and commercialisation of a digital technology innovative product or process. **3)** It is a holder or repository of a product or process of digital technology, or the owner or author of a registered software **4)** It has at least one-third local shareholding held by one or more Nigerians as founder or co-founder of the startup	**1)** Be legally incorporated for not more than 7 years **2)** Have a high growth potential with a significant need of investment funds for its activity and the replication of its business model. **3)** Its human resources should not exceed 50 workers **4)** Its annual turnover and balance sheet should not exceed one billion francs congolais.

Annex. Benchmark of Startup Acts

Key Criteria: Startup Definitions

	Senegal	Tunisia	Italy	Nigeria	DRC
Age	Be legally incorporated for less than eight (8) year	More than two-thirds (2/3) of its capital is held by natural persons, venture capital investment companies, collective investment funds. investment, seed money and any other investment body	Must be newly incorporated or have been operational for less than 5 years (not before 18 December 2012)	Be registered as a limited liability company and be incorporated for a period of not more than 10 years	Be in activity for less than seven (7) years old
Employees		The human resources do not exceed the ceilings set by government decree (less than 100)	> 1/3 of the workforce has a PhD, is PhD student or researcher (or, alternatively 2/3 of the workforce must hold a Master's degree)		The human resources should not exceed 50 workers
Financials		Total balance sheet and its annual turnover do not exceed the ceilings set by government decree ($5.3M)	• A company with shared capital • Have a yearly turnover lower than €5 million • Do not distribute profits • Are not the result of a merger, split-up or selling-off of a company or branch	Has at least one-third local shareholding held by one or more Nigerians as founder or co-founder of the startup	Annual turnover should not exceed one billion francs congolais Total assets should not exceed one billion francs congolais

Annex. Benchmark of Startup Acts

Key Criteria: Startup Definitions

	Senegal	Tunisia	Italy	Nigeria	DRC
Business Model		Its business model is highly innovative, utilizing cutting-edge technology	Exclusive/ prevalent company object is production, development and commercialization of innovative goods or services. This is identified by at least one of these criteria: • > 15% of the company's expenses can be attributed to R&D; • > 1/3 of the workforce has a PhD, is PhD student or researcher (or, alternatively 2/3 has a Master's); • firm is holder, depositary or licensee of a patent (IP), or owner and author of registered software	• Its objects are innovation, development, production, improvement, and commercialisation of a digital technology innovative product or process; • It is a holder or repository of a product or process of digital technology, or the owner or author of a registered software	Must have a high growth potential with a significant need of investment funds for its activity and the replication of its business model
Growth Potential	Must have strong growth potential in search of a disruptive business model and financing adapted to its specific characteristics to deploy exceptional capacity for value creation	Its activity has strong potential for economic growth			Its activity has strong potential for economic growth
Location			Have their headquarters in Italy or in another EU country, but with at least a production site branch in Italy		

Annex. Benchmark of Startup Acts

Incentives: Finance (fiscal)

	Senegal	Tunisia	Italy	Nigeria	DRC
Incentives Finance (fiscal)	• Special tax advantages as provided for in the General Tax Code	The following are fully deductible and within the limit of income or profit subject to tax: • Income and profits reinvested in the underwriting of the initial capital or increased capital of Startup • Income or profits reinvested in the capital subscription of venture capital companies, or placed with them in the form of venture capital funds, seed funds or any other investment body The profits from the sale of the securities relating to the shares in the Startups are exempt from the capital gains tax. Exemption from corporation tax and the assumption by the State of employers' and employees' contributions to the statutory social security scheme.	• Exemption from the duty to affix the compliance visa for compensation of VAT credit • Tax incentives for corporate and private investments in startups, both by individuals and by legal entities • Exempted from fiscal penalties applied to so-called "dummy companies" ***Referenced in the law but from other regulations:*** • Transfer of startup fiscal losses to listed sponsor companies • R&D Tax credit • Patent box (exclude from taxation 50% of the income deriving from commercial use of intangible assets)	• Under the Pioneer Status Incentive Scheme tax reliefs may be granted for labeled startups that fall within the industries captured by PSI • A labeled startup may be entitled to exemption from the payment of income tax or any other tax chargeable on its income or revenue for an initial period of three years and an additional period of two years	• Banks will be granted tax exemptions of loans and seed funds allocated to startups • A tax exemption for the entire period of validity of the label on amounts invested in a labeled startup by any investor, either as a donation or as a shareholding

Annex. Benchmark of Startup Acts

Incentives: Finance (non-fiscal)

	Senegal	Tunisia	Italy	Nigeria	DRC
Incentives Finance (non-fiscal)	• The State may subsidize the formalization of the company • Labeled startups benefit from funds, in particular in the form of loans, from public and private sources, intended mainly to finance eligible startups • Alternative strategies and mechanisms for financing startups are defined and implemented	• Startups are legally entitled to issue convertible bonds, are authorized to issue multiple convertible bonds, regardless of the option periods for conversion • The right to open a special account in foreign currency with approved intermediaries, without capital controls on funds raised • Any promoter of a Startup may benefit from a Startup scholarship for a duration of one (01) year	• Possibility to collect capital through equity crowdfunding authorized online portals • Flexible corporate management • Extension of terms for covering losses • Remuneration through stock options and work for equity schemes • Fast-track, simplified and free-of-charge access for innovative startups and certified incubators to the SME Guarantee Fund • Subsidized financing scheme for innovative startups based in Italy	• Labeled startups have access to to grants and loan facilities administered by the Central Bank of Nigeria (CBN), the Bank of Industry or other bodies statutorily • A credit guarantee scheme has been established to provide accessible financial support to labeled startups • Startups may raise funds through crowdfunding intermediaries and commodities investment platforms (“platforms”)	• Priority access to the Entrepreneurship Guaranty Fund and any other state funds • The direct granting of private fundings under the supervision of public authorities • The establishment of a preferential rate for credits + a deferred repayment period of 6 months • Incentives measures from the Investment Code

Annex. Benchmark of Startup Acts

Incentives: Market Access

	Senegal	Tunisia	Italy	Nigeria	DRC
Incentives Market Access	• A 5% preference margin is granted to any labeled startup participating in a call for tenders for a public contract • Applicants for a public contract, delegation or partnership contract who agree to subcontract 30% of the services covered by the contract startups or who submit a group offer with startups may benefit from a 5% preference margin		• Conversion to innovative SME status (extending the incentives at the stage of maturity)	• Startup Portal to provide opportunities for a startup to enter into contracts with the Federal Government, through public procurement or other engagement processes • The Secretariat shall ensure that a labeled startup is entitled to export incentives and financial assistance from the Export Development Fund, Export Expansion grant and the Export Adjustment Scheme Fund	• Priority access to the State's and decentralized bodies' public markets

Annex. Benchmark of Startup Acts

Incentives: Business Support

	Senegal	Tunisia	Italy	Nigeria	DRC
Incentives Business Support	• Public or private support structures can benefit from incentives to facilitate the support of startups. • Startups are supported in research and development activities	•	• Italian Trade Agency provides assistance in legal, corporate and fiscal activities, as well as real estate and credit matters • Access to an online portal (opportunity to manage a public profile)	• The National Information Technology Development Agency (NITDA) would implement a training and capacity building program for startups. • Creation of an accelerator and incubator program for startups.	• Priority access at a reduced cost to the National Agency for the Development of Congolese Entrepreneurship • Personalised import-export assistance services including any material related to new information and communication technologies • Startups can be supported in their development by specific business creation support structures called "incubators."

Annex. Benchmark of Startup Acts

Incentives: Governance

	Senegal	Tunisia	Italy	Nigeria	DRC
Incentives Governance	• A platform, accessible online, allowing any startup to complete the formalities related to registration and labeling • Facilitation measures and customs procedures that are more favorable to them in accordance with the laws and regulations in force • Startups are supported in the protection of startup innovations by national and international intellectual property protection bodies	• The Ministry in charge of the digital economy shall assume the direct and indirect costs of intellectual property registration for Startup • Startup Guarantee Fund" which aims to guarantee the participations of private equity firms, venture capital funds, seed funds and any other investment body	• Incorporation and following statutory modifications by means of a standard model with digital signature • Cuts to red tape and fees • “Fail fast” procedure • Certified incubators have a special track to use the Italia Startup Visa program	• Establish a Startup Support and Engagement Portal ("Startup Portal") which shall serve as a platform through which a startup conducts registration process with relevant Ministries, Departments and Agencies (''MDAs") • Support the protection of intellectual property rights and assist startups in internationalising and commercialising their rights	• Access at half the cost to the one-stop shop for business creation for all registration formalities on presentation of a pre-labeling certificate

Annex. Benchmark of Startup Acts

Incentives: Culture

	Senegal	Tunisia	Italy	Nigeria	DRC
Non-Fiscal incentives Other remarks			***Referenced in the law but from other regulations:*** • Italia Startup Visa program • Italia Startup Hub program • A pilot project for the creation of Contamination Labs		

Annex. Benchmark of Startup Acts

Incentives: Infrastructure

	Senegal	Tunisia	Italy	Nigeria	DRC
Non-Fiscal incentives Infrastructure	• Startups benefit from support in reserving the domain name ."sn"				

Annex. Benchmark of Startup Acts

Incentives: Human Capital

	Senegal	Tunisia	Italy	Nigeria	DRC
Non-Fiscal incentives Human Capital	• The support and coordination commission sets up a training and capacity building platform reserved for legally registered startups	• Any young graduate legally eligible for the employment programs, and who creates a Startup, retains the right to benefit from these programs for a maximum period of three (03) years • Any public agent or employee of a private company, may benefit from the right to Startup Leave for creation of a Startup for a period of (01) year renewable once	• Tailor-made labor law • Flexible remuneration system	• NITDA shall collaborate with the National Universities Commission, universities, and polytechnics within Nigeria to develop modules, programs and hold workshops aimed at impacting knowledge necessary for the establishment and running of a startup in Nigeria	• Every creator of a startup is entitled to a 12-months leave for the creation of a company

Annex. Benchmark of Startup Acts

Sources: Original legislative texts

	Senegal	Tunisia	Italy	Nigeria	DRC
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CREATIVE COMMONS

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Slide 48. Innovation for Policy Foundation
Slide 54. Image from UniversNews (https://universnews.tn/startup-tunisia-composition-du-nouveau-college-des-startups/)
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Slide 62. Image from The Reporter (https://www.thereporterethiopia.com/26274/)
Slide 63. Image from Nigeria Startup Act Newsletter (https://nigeriastartupact.ng/)
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Slide 74. Image from Italian Startup Act (https://www.mise.gov.it/images/stories/documenti/Slides%20innovative%20startups%20and%20SMEs%2007_2019.pdf)

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