

Tunisia StartupAct

English translation
by i4policy (24/5/18)
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Chapter I General Provisions

Article One: The objective of this law is to set up an incentive framework for the creation and development of Startups based, in particular, on creativity, innovation and the use of new technologies and achieving a strong added value and competitiveness at the national and international levels.

Chapter II Definition and creation of Startups

Article 2. For the purposes of this law, Startup is defined as any commercial company, established in accordance with the legislation in force, having obtained the Startup label in accordance with the conditions laid down in this Law.

Article 3. The Startup label is granted to the company which fulfills the following conditions:

1. Its legal existence does not exceed eight (08) years from the date of its constitution,
2. Its human resources, its total balance sheet and its annual turnover do not exceed the ceilings set by government decree,
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 according to the legislation in force or by foreign Startups,
4. Its business model is highly innovative, utilizing cutting-edge technology,
5. Its activity has strong potential for economic growth.

The Startup label entitles, during its validity, the support and incentives provided by this law. The validity of the Startup label can not exceed eight (08) years from the date of incorporation of the company.

Article 4. Any natural person wishing to create a Startup may apply for the Startup label provided that he meets the conditions set out in points 4 and 5 of Article 3 of this law. In this case, he is granted a Pre-Startup label for a period of six (06) months. A Pre-Startup obtains the Startup label if the company is formed and upon satisfaction of the other conditions of article 3 of this law, and before the expiry of the duration of the Pre-Startup label. In the case where the natural person wishing to create a Startup is an employee, that person's employer, public or private, is not entitled to oppose the incorporation of the company.

Article 5. The competent services of the Ministry responsible for the digital economy shall perform the following tasks:

1. The receipt and sorting of applications for the Startup label, while verifying that applications from companies meet the conditions 1, 2 and 3 of Article 3 above,
2. The management of the e-government portal for Startups, as sole contact for Startups for the related administrative procedures,
3. The provision of support for Startups and the monitoring of the impacts of the support and incentives provided under this law.

The Minister responsible for the digital economy may confer all of the tasks and responsibilities mentioned above to an entity having the necessary technical expertise under an agreement concluded for this purpose.

Article 6. A technical committee called the "Startup Identification Committee", set up by the Ministry in charge of the digital economy, shall decide upon the achievement of conditions mentioned in points 4 and 5 of Article 3, above.

The Pre-Startup label and the Startup label are granted by decision of the Minister in charge of the digital economy on the assent of said technical committee.

The attributions, the organization and the functioning of the committee are fixed by governmental decree.

In the case of a company that files an application for a Startup label while satisfying the conditions 1, 2 and 3 of Article 3 above and who succeeds in raising funds from venture capital investment companies, venture capital funds, seed funds or any other investment body, according to the legislation in force, which has concluded agreements to that effect with the Ministry in charge of the digital economy, said company is deemed to verify conditions 4 and 5 of the aforementioned Article 3 without seeking the opinion of that committee. If necessary, the Minister in charge of the digital economy makes the decision to award the company the Startup label. The conditions, procedures and deadlines for awarding the label are set by government decree.

Article 7. The Startup is required, during the validity of the label, to the following:

1. Achievement of growth objectives inherent to its human resources, its total balance sheet and its annual turnover, as set by government decree,
2. The keeping of accounts in accordance with the legislation and regulations in force and the provision of its financial statements to the Ministry in charge of the digital economy no later than March 31 of the year following that of the exercise concerned,
3. Notification of the Ministry in charge of the digital economy in the event of any change to the elements mentioned in Article 3 of this law, within one (1) month of the date of said change.

The Startup label is withdrawn in the event of a breach of the provisions of paragraph 1, above, on the basis of a written statement and after hearing the legal representative of the Startup or their authorized representative recorded in a written statement drawn up at this effect. The non-appearance of the legal representative of the Startup does not affect the continuation of the withdrawal procedure.

The label is also removed from the company that no longer meets the conditions of Article 3 above.

The Startup label is withdrawn by decision of the Minister responsible for the digital economy with the assent of the technical committee.

The procedure for removing the Startup label is set by government decree.

Chapter III **Encouraging the creation of Startups**

Article 8. Any individual promoter of a Startup, 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 one year renewable once.

This right may be granted to no more than three (03) shareholders and full-time employees in the relevant Startup.

The employer, whether public or private, is not entitled to oppose the departure of the agent who is on leave for creation of Startup. However, the agent must obtain prior written authorization from the private employer if the employer has less than one hundred (100) employees.

The conditions and procedures for obtaining startup leave for Startup are set by government decree.

Article 9. The public official or the employee of a private enterprise benefiting from Startup Leave shall maintain their contractual and regulatory relationship with their employer, without, however, receiving any remuneration or benefits in respect of their original employment. Moreover, he is not entitled to paid leave in respect of their original job during the startup leave period.

At the end of Startup Leave, the public official or the employee of a private company has the right to return to their job or to their original body, even if all positions at the organization are full. The excess is resolved at the next vacancy opening in the body or job considered.

The promoter has the right to request the termination of the Startup Leave, on their own initiative, during said leave.

The procedures for terminating Startup Leave are set by government decree.

Article 10. Any promoter of a Startup may benefit from a Startup scholarship for a duration of one (01) year. Only three (03) shareholders and full-time employees in the relevant Startup may benefit from the scholarship awarded.

A shareholder of several Startups is not eligible to benefit from more than one Startup scholarship over the same period.

The funds allocated for the Startup scholarship will come from the National Employment Fund resources, donations and any other resources provided for by the legislation and regulations in force.

The value of the stock exchange and the terms and conditions of its scholarship and management are set by government decree.

Article 11. Any young graduate legally eligible for the employment programs provided for by the regulations in force and who creates a Startup retains the right to benefit from these programs for a maximum period of three (03) years from the date of award of the Startup label.

Any young graduate who is legally eligible for the aforementioned employment programs and who concludes a work contract with a Startup, has the right to choose between the immediate enjoyment of these programs or their postponement. If need be, the promoter may claim this right at the end of their contract of employment with the associated Startup within a maximum period of three (03) years from the date of the beginning of associated said employment contract.

Article 12. The Ministry in charge of the digital economy shall assume the direct and indirect costs of intellectual property registration for Startups at the national level. It also handles the direct and indirect costs of international intellectual property registration within the limits of available resources and in compliance and conformity with the rules and norms of justice and equity.

This responsibility is guaranteed after a preliminary evaluation and following the solicitation of the opinion of the agency in charge of intellectual property. The ministry may mobilize scientific research experts to assist in the evaluation process.

The necessary resources will come from the budget for development and investment in ICTs, donations and any other resources provided for by the legislation and regulations in force.

Chapter IV

Financing and incentives for Startups

Article 13. Notwithstanding the provisions of Articles 12 and 12 bis of Law No 89-114 of 30 December 1989 on the promulgation of the Code on personal income tax and corporation tax, 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 Startups.
- 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 according to the legislation in force which undertake to use at least 65% of the paid-up capital, in the capital participation of Startups or in the subscription to interest-free convertible bonds or into all other forms of interest-free quasi-fund issued by Startups.

The conditions for the benefits mentioned above are set by government decree after the opinion of the Minister in charge of finance.

Article 14. The profits from the sale of the securities relating to the shares in the Startups are exempt from the capital gains tax.

Article 15. Notwithstanding the provisions of Articles 100 and 173 of the Commercial Companies Code and in the case of a contribution in kind, the shareholders of a Startup are entitled to choose the auditor to evaluate their contribution.

Article 16. Notwithstanding the provisions of Article 344 of the Commercial Companies Code, Startups are legally entitled to issue convertible bonds, are authorized to issue multiple convertible bonds, regardless of the option periods for conversion.

Article 17. Subject to the provisions of the Exchange and Foreign Trade Code, any Startup has the right to open a special account in foreign currency with approved intermediaries, without capital controls on funds raised in accordance with regulations in force.

A Startup manages, freely and without authorization, the assets of this account in the framework of current operations or investment operations in order to develop its activities, in particular as regards the acquisition of tangible and intangible assets, the creation of subsidiaries abroad and the acquisition of shares in foreign companies. The rules and operating procedures of the said account are fixed by a circular of the Central Bank of Tunisia.

Article 18. This law creates a guarantee mechanism called "Startup Guarantee Fund" which aims to guarantee the participations of private equity firms, venture capital funds, seed funds and from any other investment body according to the legislation in force, to the capital of

Startups within the limit of a rate fixed by an agreement concluded for this purpose between the Minister for the digital economy and the Minister in charge of finance. This mechanism intervenes only in case of amicable liquidation of Startups.

The benefit of this guarantee can not be combined with that of the National Guarantee Fund.

The aforementioned guarantee mechanism is financed by an allocation from the resources of the budget for development and investment in ICTs, donations and any other resources provided for by the legislation and regulations in force.

The management of this guarantee mechanism is entrusted to the Tunisian Guarantee Company under an agreement concluded between the Ministry in charge of the digital economy, the Ministry in charge of finance and the Tunisian Guarantee Company.

Article 19. A Startup benefits, during the period of validity of the Startup label, from the exemption from corporation tax and the assumption by the State of employers' and employees' contributions to the statutory social security scheme which are imputed from the resources of the National Employment Fund.

Article 20. Every Startup shall be deemed to be an authorized economic operator within the meaning of the provisions of the Customs Code.

Learn more about the Tunisian StartupAct, which i4policy is adopting as a template:

<https://i4policy.org/2018/05/25/tunisian-startupact-is-a-template/>