

New Bill

Draft: Digital Innovation and Entrepreneurship Bill, 2024

(Subject to change)

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DIGITAL INNOVATION AND ENTREPRENEURSHIP BILL, 2024

MEMORANDUM

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DIGITAL INNOVATION AND ENTREPRENEURSHIP BILL, 2024

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A BILL

entitled

An Act to make provision for the creation and development of an enabling environment for information and communication technology-enabled startups in Malawi; to encourage growth and sustainable technological development and new entrepreneurship employment; to create a more favourable environment for innovation; to attract Malawian talent and capital; and for matters ancillary thereto or connected therewith.

ENACTED by the Parliament of Malawi as follows —

PART I — PRELIMINARY

Short title and commencement

1. This Act may be cited as the Digital Innovation and Entrepreneurship Bill, 2024, and shall come into force on a date as the Minister may appoint by notice published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires —

Cap. 68:01

“Authority” has the meaning ascribed thereto in the Communications Act;

“crowdfunding” means the use of small amounts of money, obtained from a large number of individuals or organizations, to fund a project or business, through an online based web-platform;

“digital entrepreneur” means a person who identifies and exploits business opportunities in the digital realm, leveraging technology to create, market, and sell products or services;

“Fund” means the Digital Innovation and Entrepreneurship Fund established under section 166A of the Communications Act;

“incubation” means the maintenance of enabling environmental conditions for the purpose of facilitating growth or development of infant technologies’ ideas or industries;

“incubator” means a company, partnership, non-governmental organization or limited liability partnership, whose principal object is to support the establishment and development of a startup, promotion of innovation, and related activities through the offer of dedicated physical spaces and services;

“innovation” means the implementation of technology driven ideas which leads to the creation or development of a new product, process, or service with the aim of improving efficiency, effectiveness, or competitive advantage;

“labelled startup” means a startup labelled under this Act and issued a digital certificate by the Coordinator;

“startup” means an entity with a unique digital innovative product, service or process;

“startup ecosystem” means an environment comprising of digital entrepreneurs, startups, venture capital providers, stock markets, Government and other stakeholders that interact to aid a startup; and

“venture capitalist” means a person or company that provides capital to a startup that is exhibiting high growth potential in exchange for equity.

- (a) provide a legal and institutional framework for the development of digital innovation and entrepreneurship in Malawi;
- (b) provide an enabling environment for the establishment, development and operation of startups in Malawi;
- (c) provide for the development and growth of technology-related talents;
- (d) foster a culture of innovative thinking and entrepreneurship;
- (e) provide for the linkage of startups with the Malawi Stock Exchange, private investors, financial institutions, the private sector, research institutions and such other institutions at the national and international level;
- (f) provide for the establishment of incubation facilities; and
- (g) facilitate the provision of fiscal and non-fiscal support to startups in Malawi.

PART II – THE DIGITAL INNOVATION AND ENTREPRENEURSHIP FUND

Establishment of the Digital Innovation and Entrepreneurship Fund

4. There is hereby established a fund to be known as the Digital Innovation and Entrepreneurship Fund, which shall be managed by the Authority.

Purpose of the Fund

5. – (1) The Fund shall be used to support and promote digital innovation and entrepreneurship in Malawi.

(2) Without prejudice to the generality of subsection (1), the Fund shall -

- (a) support the commercialization of local digital innovations that are graduating into small and medium enterprises;
- (b) support research and development activities relating to digital innovation and entrepreneurship in Malawi;
- (c) foster synergy between startups and the Malawi Stock Exchange, investors, venture capitalists, private equity firms, private investors, development finance institutions, global asset management firms, financial institutions, research institutions, and other related institutions at the national and international level; and

- (d) support the growth and expansion of private sector-led incubator and accelerator programmes.

Powers, functions and duties of the Fund

6. - (1) The Fund shall -

- (e) manage the process of labelling a startup;
- (f) set up public online platforms and other platforms to provide access to information on matters pertaining to the establishment and development of a startup, incubation and acceleration programmes, access to fiscal and non-fiscal support;
- (g) collaborate with relevant Government Ministries, Departments and Agencies and other stakeholders to promote innovation in digital technology and enterprise development for a startup in Malawi;
- (h) set up an online startup portal for facilitating the registration of startup proposals;
- (i) enter into partnerships with individuals, private entities, local and international business incubators, accelerators and digital innovation hubs to promote the establishment and growth of a startup in Malawi, subject to the approval of the Authority;
- (j) maintain a directory of startups, incubators, and accelerators; develop mechanisms for pre-incubation of entities and, provide training and capacity building programmes for a startup;
- (k) develop, establish, support and incentivize digital innovation villages, hubs and centres in Malawi;
- (l) develop, implement, and monitor guidelines for setting up digital innovation villages, hubs and centres in Malawi;
- (m) enter into partnerships to promote startup development with the Malawi Stock Exchange, investors, venture capital firms, private equity firms, development financial institutions, and other relevant funding organizations;

- (n) review digital innovation and entrepreneurship proposals, policies and programmes addressed to the Authority;
- (o) collaborate with institutions of higher learning accredited by the National Council for Higher Education, Technical, Entrepreneurial and Vocational Education and Training Authority and other tertiary institutions regulatory bodies, to provide adequate facilities for research, and promote multi-disciplinary collaboration among universities, polytechnics, and research institutions;
- (p) advise the Authority on issues relating to digital innovation and entrepreneurship in Malawi, and matters connected with the implementation of this Act; and
- (q) discharge any other duties as may be required by the Authority.

Establishment of
the Digital
Innovation and
Entrepreneurship
Fund Committee

7. - (1) There is hereby established a committee to be known as the Digital Innovation and Entrepreneurship Fund Committee which shall have the following functions —

- (a) implementing the strategic direction provided by the Authority;
- (b) evaluating and reviewing research and innovation proposals;
- (c) reviewing all proposed research and innovation programmes and budgets, as well as activity plans submitted by the Fund;
- (d) providing written comments and specific recommendations for improving the proposed research and innovation programmes and budgets, and the activity plans of the Fund; and
- (e) reviewing and providing recommendations on the operations and performance of the programmes and activities of the Fund.

(2) The Digital Innovation and Entrepreneurship Fund Committee shall comprise -

(a) one representative nominated by -

(i) an institution of higher learning accredited by the National Council for Higher Education;

(ii) each of the communication services sectors;

(iii) financial institutions; and

(iv) information and communications technologies practitioners;

(b) the Registrar General;

(c) the Director General of the Authority; and

(d) the Director General of the National Commission for Science and Technology.

(3) The members nominated under subsection (2) (a) shall be appointed by the Authority.

Financing of the Digital Innovation and Entrepreneurship Fund

8. The Digital Innovation and Entrepreneurship Fund shall be financed through -

(a) funds made available by the Authority;

(b) a percentage of the operators' levy as prescribed in the licence;

(c) moneys appropriated by Parliament; and

(d) grants, subsidies, bequests, donations, gifts and subscriptions from Government or any other person.

Appointment of Fund Administrator and other staff

9. — (1) The Director General shall appoint a Fund Administrator on such terms and conditions as the Authority shall determine.

(2) The Fund Administrator shall be responsible for the day to day management of the Fund and shall be subject to the general supervision of the Director General.

(3) The Director General shall, on such terms and conditions as the Authority shall determine, appoint other members of staff below the Fund Administrator.

Functions of the Fund Administrator

10. The Fund Administrator shall –
- (a) coordinate activities of the Fund in accordance with its Strategic Plan;
 - (b) manage the implementation of the functions of the Fund; and
 - (c) perform such other functions as may be necessary for the implementation of this Act.

PART III – REGISTRATION OF STARTUP PROPOSALS, AND INCUBATION PROGRAMME

Startup proposals

11. – (1) A person who has a unique digital innovative idea, product, service or process may submit to the Fund a written proposal in the manner prescribed by the Fund.

(2) The Fund may receive submissions under subsection (1) in the following instances-

- (a) after the Fund publishes a call for the proposals;
- (b) after a walk-in submission from a participant;
- (c) upon receipt of a request from various stakeholders interested in digital innovation and entrepreneurship; or
- (d) any other instances based on demand.

(3) The Fund shall publish –

- (a) the call for proposals under paragraph (a) of subsection (2) on an annual basis; and
- (b) calls for proposals under paragraphs (c) and (d) of subsection (2) when need arises.

Incubation programme

12. – (1) The Fund shall set up an incubation programme which shall –

- (a) promote digital innovation;

- (b) create and develop a sustainable, globally competitive digital innovation sector that contributes towards the accelerated growth of the economy;
- (c) promote talent and wealth creation; and
- (d) provide fiscal and non-fiscal incentives.

(2) The Fund shall, for purposes of subsection (1) –

- (a) facilitate the development of the business incubation sector and startup ecosystem;
- (b) support any research and development activities undertaken by startups;
- (c) put in place mechanisms for pre-incubation of unique and innovative ideas;
- (d) put in place mechanisms to enable access to entities from marginalized groups through the use of mechanisms that match them to unused capacity in existing programmes; and
- (e) put in place facilitative structures that ensure the protection of the innovations of startups at the national and international level for the protection of intellectual property.

Information to be submitted

13. A person who has qualified to be considered for admission into the incubation programme under this Part shall, within fourteen days of receipt of communication on his qualification, submit to the Fund the following information -

- (a) a brief description of the innovation demonstrating the novelty of the innovation;
- (b) business plan comprising a technical plan and a financial plan; and
- (c) such other information concerning the proposed startup as the Fund may prescribe.

Assessment of digital innovation proposals

14. - (1) The Fund shall assess proposals submitted for consideration for admission into the incubation programme.

(2) When assessing the proposals, the Fund shall consider -

- (a) uniqueness of the innovation proposal;
- (b) scalability and bankability of the innovation proposal;
- (c) the socio-economic benefits of the innovation proposal;
- (d) the potential of the proposal to comply with the written laws of Malawi; and
- (e) any other consideration as the Fund may deem appropriate.

Communication of assessment outcome

15. The Fund shall, within thirty days of conducting the assessment under section 14, communicate in writing the results of the assessment to the successful applicant.

Refusal to admit an entity into an incubation programme

16. - (1) The Fund may reject an application for the admission of an entity where –

- (a) the entity has submitted false or misleading information in its application;
- (b) the application does not comply with the provisions of this Act;
- (c) the idea does not meet the criteria of the registration of the proposal for innovation specified under this Act; and
- (d) the objects of the entity are unlawful or against public interest.

(2) The Fund shall notify the applicant, in writing, of the decision to reject an application for admission within fourteen days of such rejection and shall give reasons for the rejection.

Obligations of a person admitted into an incubation programme

17. A person who has been admitted into the incubation programme shall, in the minimum, comply with the following obligations –

- (a) participate and fully commit to the activities scheduled by the Fund;
- (b) adhere to deadlines set by the Fund;
- (c) provide progress reports at such intervals as the Fund prescribes;
- (d) effectively make use of the resources provided by the Fund; and
- (e) any other obligation as prescribed by the Fund.

Appeal against a decision of refusal or de-registration

18. - (1) A person who is aggrieved by the decision of the Fund under this Part may, within thirty days of being notified of the decision, appeal to the Authority for a review of the decision.

(2) The Authority shall determine the appeal under subsection (1) within sixty days of the receipt of the appeal and may confirm, vary or reverse the decision.

Withdrawal
from an
incubation
programme

19. The Fund may, where a person admitted into the incubation programme fails to adhere to or meet the obligations under this Act or any terms of engagement entered in accordance with this Act revoke the admission of the incubation programme.

Support to
startups

20. The Fund shall provide fiscal and non-fiscal incentives to a person admitted into the incubation programme.

Fiscal
incentives
Act No. 4 of
2022

21. - (1) The Fund shall, subject to the Public Finance Management Act, put in place measures for the grant of fiscal incentives, including tax incentives, seed money or any other incentive to persons admitted into the incubation programme as the Fund shall consider necessary for the development of startups in Malawi.

(2) Notwithstanding the generality of subsection (1), the fiscal incentives that the Fund may administer may include-

- (a) funding for prototype development; and
- (b) any other fiscal support as prescribed by the Fund.

Non-fiscal
incentives

22. - (1) The Fund shall put in place measures for the grant of non-fiscal incentives to persons admitted into the incubation programme as the Fund shall consider necessary for the development of startups in Malawi.

(2) Notwithstanding the generality of subsection (1), the non-fiscal incentives that the Fund may administer may include-

- (a) training and capacity building;
- (b) innovator proposal pitching;
- (c) intellectual property rights support;
- (d) legal support; and
- (e) any other non-fiscal support that the Fund may deem necessary

Successful completion of incubation

23. - (1) Where a person admitted into the incubation programme under this Part-

- (a) has fulfilled, to the satisfaction of the Fund, the obligations imposed on him during incubation phase; and
- (b) has attained the maximum timeframe for being in the incubation phase, within a period prescribed by the Fund,

he shall be deemed to have successfully completed the incubation programme.

(2) Where a person admitted into the incubation programme under this Part fails to meet any of the requirements under subsection (1), he shall be deemed to have failed to successfully complete the incubation programme.

PART IV – ACCELERATION PROGRAMME

Eligibility for acceleration programme

24. A person who has successfully completed the incubation programme shall be admitted into the acceleration programme.

Requirement for registration Cap. 46:03

25. – (1) Subject to subsection (2), where a person has been admitted into the acceleration programme, the Fund shall initiate the incorporation of an entity as a limited liability company under the Companies Act.

(2) The limited liability company incorporated under subsection (1) shall be co-owned by the Fund and the person who has been admitted into the acceleration programme.

Signing arrangements

26. The Fund and a person who has been admitted into an acceleration programme shall jointly sign or authenticate documents related to the company incorporated under section 25.

Obligations under acceleration programme

27. A person admitted into the acceleration programme shall have the following obligations-

- (a) enter into, and adhere to, the terms and conditions of an agreement with the Fund;
- (b) adhere to the terms and conditions of the agreements to which he may enter with investors, venture capitalists and other financiers;
- (c) permit the Fund to initiate the listing of the joint company on the alternative stock market; and
- (d) any other obligations that the Fund may consider appropriate.

Withdrawal
from
acceleration
programme

28. – The provisions of section 19 shall apply mutatis mutandis to the withdrawal of a person from the acceleration programme.

De-registration

29. Where the Fund has withdrawn a person from the acceleration programme, the Fund shall initiate the de-registration process of the company that was registered pursuant to this Act.

Notice of non-
compliance

30. - (1) The Fund shall, before de-registering a startup under section 29, issue to the entity a notice of non-compliance in the prescribed form.

(2) A notice of non-compliance specified under subsection (1) shall –

- (a) be in writing;
- (b) notify the startup of the non-compliance and the steps it is required to take in order to ensure compliance; and
- (c) inform the entity of the period within which it is required to comply with the notice.

(3) The Fund may, upon request by the entity and where there are sufficient grounds shown by the entity, extend the period of compliance for such period as the Fund may consider necessary to ensure compliance.

Appeal against a decision of refusal or de-registration

31. - (1) A person who is aggrieved by the decision of the Fund made pursuant to this Part may, within thirty days of being notified of the decision, appeal to the Authority for a review of the decision.

(2) The Authority shall determine the appeal under subsection (1) within sixty days of receipt of the appeal and may confirm, vary or reverse the decision.

32. The Fund shall provide fiscal and non-fiscal incentives to a person admitted into the acceleration programme.

Fiscal incentives Act No. 4 of 2022

33. - (1) The Fund shall, subject to the Public Finance Management Act, put in place measures for the grant of fiscal incentives, including tax incentives or any other incentive to persons admitted into the acceleration programme as the Fund shall consider necessary for the development of startups in Malawi.

(2) Notwithstanding the generality of subsection (1), the fiscal incentives that the Fund may administer may include-

- (a) initial capital for the joint company to be incorporated pursuant to section 25;
- and
- (b) any other fiscal incentive as prescribed by the Fund.

Non-fiscal incentives

34. - (1) The Fund shall put in place measures for the grant of non-fiscal incentives to persons admitted into the acceleration programme as the Fund shall consider necessary for the development of startups in Malawi.

(2) Notwithstanding the generality of subsection (1), the non-fiscal incentives that the Fund may administer may include-

- (a) listing of the joint company on alternative stock market;
- (b) intellectual property rights support;
- (c) crowdfunding;
- (d) public showcasing of innovative product or service;

- (e) legal support; and
- (f) any other non-fiscal support that the Fund deems necessary.

Successful completion of acceleration programme

35. - (1) Where a person admitted into the acceleration programme under this Part-

- (a) has fulfilled, to the satisfaction of the Fund, the obligations placed on him during acceleration phase; and
- (b) has attained the maximum timeframe for being in the acceleration phase, within a period of time prescribed by the Fund,

he shall be deemed to have successfully completed the acceleration programme.

(2) Where a person admitted into the acceleration programme under this Part fails to meet any of the requirements under subsection (1), he shall be deemed to have failed to successfully complete the acceleration programme.

(3) A person who has successfully completed the acceleration programme as envisaged under subsection (1) shall exit the acceleration phase.

Refund of capital and profits

36. – (1) Subject to subsection (2), a person who is exiting an acceleration programme shall, prior to the exit, refund any investment received from the Fund.

(2) The refund made under subsection (1) shall only be made if the person who is exiting the acceleration programme has met the targeted capital.

PART V - INNOVATION VILLAGES, HUBS AND CENTRES

Establishment of innovation villages, hubs and centres

37. — (1) The Authority shall issue a framework for the establishment and operation of innovation villages, hubs and centres.

(2) The role of the innovation villages, hubs and centres shall include —

- (a) connecting, fostering collaboration and generating businesses between a startup and large companies;
- (b) collating expertise, ideas, and perspectives;

(c) providing innovators with access to resources and professional services; and

(d) promoting collaboration and innovation between innovators.

Functions of innovation villages, hubs and centres

38. Innovation villages, hubs and centres shall provide —

(a) a dedicated team, help desk and contact to provide support to a digital entrepreneur;

(b) assistance for an innovator to understand the regulatory framework and its applicability;

(c) assistance in registration and application for admissions; and

(d) work spaces for free or at a subsidized rate.

PART VI — MISCELLANEOUS PROVISIONS

Collaboration

39. The Fund shall collaborate with relevant persons, bodies and institutions in achieving the objectives of the Act.

False statements

40. A person who makes a false statement in relation to matters submitted to the Fund under this Act commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and imprisonment for five years.

Regulations

41. — (1) The Minister may, on recommendations from the Authority, make regulations for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for -

- (a) forms and other information required under this Act;
- (b) the procedure to obtain any information required under this Act;
- (c) the fees payable under this Act;
- (d) registration, de-registration and re-registration of a startup;
- (e) the transition of a startup to a small and medium enterprise or a scale up; and
- (f) any other matter that the Minister considers necessary or expedient to give effect to the objectives of this Act.

Cap. 1:01

(3) Notwithstanding the provisions of section 21 (e) of the General Interpretation Act, the regulations made under this Act may provide for offences whose penalties shall not exceed K5,000,000 and imprisonment for five years.

OBJECTS AND REASONS