



CEST

Centro de Estudos Sociedade e Tecnologia



Universidade de São Paulo

Bulletin - Volume 6, Number 02, March/2021

The Startup Act as the Insertion of the Company in the Brazilian Innovation Law

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The analysis of the public policies driven to technological development and innovation in Brazil indicates, since its onset in the 70s, a focus on innovation activities. The approval of the Complementary Bill (PLP) No. 146/2019, which intends to enact the Brazilian Startup Act, will break away from this paradigm, to complement the existing public policies with an instrument centered on the innovative agent.

The economic literature has already gathered strong evidence on the need for State intervention to compensate for market failures that affect the innovative process and the innovative companies. Startups, which are young companies established around an innovation - whether a product, a service, a process, or a business model - are subject to such distortions that require the corresponding policy measures.

Startups are affected by various externalities, such as knowledge externalities, learning externalities, and network externalities. Information asymmetry leads to credit restrictions. Bureaucratic and compliance costs affect disproportionately small businesses such as startups.

To address such market failures and to stimulate the creation, survival, growth, and impact of startups on national economies, countries have introduced several measures aimed at these companies. These stimulus programs gained momentum after 2011, in the wake of the North American Startup America initiative, prompting legal frameworks for startups to flourish all over the world. These measures can be categorized under five broader objectives: optimization of the regulatory environment; enhancement of technical and management capabilities; exchange of technology and

innovation; encouragement of domestic and international entrepreneurship; and access to capital.

The measures for optimization of the regulatory environment range from the flexibilization of labor market regulations to debureaucratization measures for opening and closing companies. Tax and regulatory costs are particularly hindering for startups, inhibiting their innovative investments and operation. Thus, some relevant measures tailored to these companies are R&D tax incentives which are more generous than those offered to other enterprises, as granted by Canada through the SR&ED Tax Incentive Program, and the experimental *regulatory sandboxes*, along the lines offered by Bahrain to the Fintech segment.

The policies for enhancing technical and management capabilities are implemented by the supply of technical assistance, mentoring, and training of startups and their teams. An example is the UK's Digital Business Academy program, through which entrepreneurs are

trained via an online platform to establish themselves in the digital economy.

Policies designed to promote the exchange of technology and innovation focus on the systemic dimension of the innovative process. Here stand out measures aimed at structuring innovation ecosystems, which provide actors' integration in environments dedicated to entrepreneurship and innovation. Within such clusters and technology parks, incubators, accelerators, and co-working spaces offer material and immaterial infrastructure for the establishment and development of startups. Examples of programs with this profile are the Canadian Innovation Superclusters Initiative and the French Station F.

Incentive programs for domestic and international entrepreneurship focus on the free enterprise culture and the attraction of entrepreneurs and human capital. Typical programs of this nature grant special residence visas to qualified entrepreneurs who immigrate to the country, such as the Spanish regime Rising Up in Spain and its Italian counterparts Italia Startup Visa, and Italia Startup Hub. Another measure geared towards

The hypothesis of proposing an innovation in the form of a company finds its epitome in startups.



encouraging the attraction of human capital by startups is to grant tax incentives for *stock options*.

Capital and liquidity limitations are amongst the most burdensome vulnerabilities of startup companies, whose neutralization involves both debt and equity instruments. A widely used mechanism to provide startups access to capital is the grant of tax relief linked to capital inputs, whether via angel investment, private equity, or venture capital: The United Kingdom grants through the Seed Enterprise Investment Scheme a tax credit corresponding to 50% of the amount invested. Other schemes provide for contributions from the State itself in the company's capital structure, as is the case of Hong Kong's Innovation and Technology Venture Fund program, which made HK\$2 billion available for investment in local startups. Among the programs aimed at financing startup companies are those that, like the Korean Korea Technology Credit Fund, provide collaterals for loan operations to be closed with private banks. Finally, among the public funding mechanisms for innovative activities, it is worth mentioning the Chinese Technology Innovation Guiding Fund, which has resources equivalent to €15 billion directed to startups, small and medium-sized innovative companies.

Brazil intends to adhere to these trends with its own Startup Act, which when approved by Congress will bring into force a set of measures with different scopes.

In the context of the optimization of the regulatory environment comes the interesting initiative to establish a *regulatory sandbox* applicable to all regulated sectors of the Brazilian economy. This experimental regulatory environment regime gives industry regulators the power to temporarily suspend regulatory requirements for companies to test innovative products, processes, or business models.

The exchange of knowledge and technology is stimulated by the possibility of hiring, by the public administration, entrepreneurs to test innovative solutions aimed at meeting public demands. By the flexibilization of government procurement rules and administrative contracts, this form of collaboration between the public sector and startups opens a space for the promotion of innovative entrepreneurship and puts it at the service of society.

Among the measures to stimulate the access to capital, three deserve mentioning. The first aims to increase the legal certainty of those investors who inject capital into startups without acquiring equity shares. In addition to the angel investor, already regulated by Complementary Law No. 155/2016, other modes of capital contribution are now expressly excluded from the liability risks arising from startup debts, which for normal companies

in Brazil can be quite tricky. The second measure allows mandatory investments in RD&I, required by grants or sectoral regulations, to be complied with by injecting capital into startups. Finally, the bill proposes an income tax deduction for the amounts invested in Equity Investment Funds (FIP - Seed Capital).

As can be seen, the measures that make up the proposed bill of the Brazilian Startup Act comprise a set of rules that not only are specific to this type of companies but also aim to give them an appropriate legal treatment. Thus, the importance to contextualize PLP No. 146/2019 in Innovation Law as a field of regulation. This should ensure that the Startup Act, when enacted into law, embodies the purpose which drives this particular area of law, i.e., of countering the market failures that affect the innovative process and enterprises in the economy. And this should be carried out by efficiently implementing stimuli designed to neutralize market distortions without creating additional ones.

The perspective of the Brazilian Startup Act gaining congressional approval is on the one hand straightforwardly positive, as it reduces the gap in our policies vis-à-vis those implemented in other countries. On the other hand, it puts great pressure on our policymakers to design mechanisms that leverage the accumulated international experience and place the country at the forefront of the best practices in the field.



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This article is a result of the author's ascertainment and analysis, without compulsorily reflecting CEST's opinion.