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THE PRESIDENCY

No. 1259

24 November 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 26 of 2008: Technology Innovation Agency Act, 2008.



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*(English text signed by the President.)
(Assented to 17 November 2008.)*

ACT

To provide for the promotion of the development and exploitation in the public interest of discoveries, inventions, innovations and improvements, and for that purpose to establish the Technology Innovation Agency; to provide for its powers and duties and for the manner in which it must be managed and controlled; and to repeal an Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1.	In this Act, unless the context indicates otherwise—	25
	“ Agency ” means the Technology Innovation Agency established by section 2;	
	“ Board ” means the Board of the Agency contemplated in section 5;	
	“ Chief Executive Officer ” means the person appointed as such in terms of section 11;	
	“ Department ” means the Department of Science and Technology;	30
	“ intellectual property ” means an invention, including any patent applications and registered patents as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any copyright works as defined in the Copyright Act, 1978 (Act No. 98 of 1978), plant breeders rights or designs as defined in the Designs Act, 1995 (Act No. 195 of 1993), or trademarks as defined in the Trademark Act, 1993 (Act No. 194 of 1993);	35

“Minister” means the Minister responsible for Science and Technology;
“prescribed” means prescribed by regulations made in terms of section 16;
“technological innovation” means the application in practice of creative new ideas, which includes inventions, discoveries and the processes by which new products and services enter the market and the creation of new businesses;
“this Act” includes the regulations.

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Establishment of Agency

2. (1) There is hereby established a juristic person known as the Technology Innovation Agency which is capable of suing and being sued in its own name and of performing, subject to this Act, such acts as are necessary for or incidental to the carrying out of its objects. 10

(2) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Agency.

Object of Agency

3. The object of the Agency is to support the State in stimulating and intensifying technological innovation in order to improve economic growth and the quality of life of all South Africans by developing and exploiting technological innovations. 15

Powers and duties of Agency

4. (1) The Agency may—

(a) on such conditions as the Board may determine— 20

(i) provide financial and any other assistance to any person, for the purpose of enabling that person to develop any technological innovation;

(ii) establish a company contemplated in the Companies Act, 1973 (Act No. 61 of 1973), or in collaboration with any person, establish such a company for the purpose of developing or exploiting any technological innovation; 25

(iii) acquire any interest in any person undertaking the development or exploitation of any technological innovation supported by the Agency;

(iv) draw together and integrate the management of different technological innovations, incubation and diffusion initiatives in South Africa; 30

(v) develop the national capacity and infrastructure to protect and exploit intellectual property derived from research financed by the Agency; and
 (vi) acquire rights in or to any technological innovation supported by the Agency from any person, or assign any person any right in or to such technological innovation; 35

(b) apply for patents or the revocation thereof and institute any legal action in respect of any infringement of intellectual property rights;

(c) purchase or hire land or buildings or erect buildings and alienate such land or terminate or assign any such hire and, in the case of buildings in which the business of the Agency is being conducted, let such portions as are for the time being not required for the business of the Agency; 40

(d) establish such offices, including regional offices, as the Board in consultation with the Minister may determine;

- (e) purchase, take on lease, hire out or alienate any movable property;
- (f) take such security as it may deem fit, including special mortgage bonds over movable property, notarial bonds over movable property, pledges of movable property, cessions of rights and in general any other form of cover or security; and
- (g) generally deal with any matter necessary or incidental to the performance of its functions in terms of this Act.

(2) Where the Agency enters into a transaction with a person as contemplated in subsection (1)(a)(ii) and (iii), the Agency may, after consultation with the Minister, elect to be represented in the Board of such person.

(3) Where a right in or to any technological innovation has, in terms of subsection (1)(a)(vi), been acquired by the Agency or assigned by the Agency to any person, the Agency or such person, as the case may be, must for the purposes of the Patents Act, 1978, be regarded as the assignee of the discoverer or inventor of such technological innovation.

Board of Agency

5. (1) There is hereby established a Board, known as the Board of the Agency, consisting of—

- (a) a chairperson;
- (b) not less than six and not more than nine members; and
- (c) the Chief Executive Officer of the Agency, as an *ex officio* member.

(2) The Board is responsible for the management and control of the Agency.

(3) The Board must prepare an Investment Framework Policy, as prescribed, and review such policy on an annual basis.

(4) The Minister must appoint a panel which must compile a shortlist of candidates for members of the Board, and such shortlist must be compiled after a transparent and competitive nomination process.

(5) The members of the Board contemplated in subsection (1)(a) and (b) are appointed by the Minister, in consultation with the National Assembly, on the grounds of their knowledge and experience in technological innovation, technology management, intellectual property and commercialisation thereof and business skills which, when considered collectively, should enable them to attain the objects of the Agency.

(6) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may dissolve the Board on the grounds of mismanagement.

(7)(a) When the Minister dissolves the Board in terms of subsection (6), the Minister may appoint an interim body for the continued governance and control of the affairs of the Agency, on such conditions as the Minister may determine.

(b) Such a body must be appointed for a period not exceeding six months or until the new Board is appointed in terms of subsection (5), whichever is the lesser.

Disqualification from membership

6. A person may not be appointed or continue as a member of the Board if such person is—

- (a) declared by a competent court to be mentally ill, as defined in the Mental Health Act, 1973 (Act No. 18 of 1973);
- (b) convicted of an offence and sentenced to imprisonment without the option of a fine, or in the case of fraud, to a fine or imprisonment;
- (c) elected as a member of National Assembly, a provincial legislature or the council of a municipality, or is appointed as a delegate to the National Council of Provinces by a provincial legislature;
- (d) not a South African citizen or ceases to be a South African citizen;
- (e) removed from a position of trust by a competent court of law; or
- (f) an unrehabilitated insolvent.

Removal from office and vacation of office

7. (1) The Minister may, after consultation with the members of the Board, remove a member of the Board from office on account of—

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently; 5
- (c) absence from three consecutive meetings of the Board without the leave of the Board, except on good cause shown.

(2) If a member of the Board ceases to hold office or is removed from office in terms of subsection (1), the Minister may appoint a person who meets the criteria contemplated in section 5(5) in that member's place for the remaining part of the term of office. 10

(3) A member must vacate his or her office if—

- (a) he or she is disqualified in terms of section 6; or
- (b) he or she tenders his or her resignation to the Minister and the Minister accepts the resignation. 15

Term of office of members of Board

8. (1) Members of the Board hold office for a period of four years and are eligible for reappointment on expiry of their term.

(2) When reappointing members of the Board, the Minister must ensure that the term of office of members of the Board will not expire at the same time. 20

(3) A member may not serve more than two consecutive terms.

Remuneration of members of Board

9. Members of the Board receive such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

Meetings of Board 25

10. (1) The chairperson must preside at a meeting of the Board.

(2) If the chairperson is not present at the meeting of the Board, the members of the Board present at that meeting must elect from amongst themselves a member to preside at such a meeting.

(3) The Board must meet at least four times a year at such time and place as the Board may determine. 30

(4) The Board may determine the procedure for its meetings.

(5) The chairperson—

- (a) may convene a special meeting of the Board; and
- (b) must, within 14 days of receipt of a written request signed by at least two thirds of the members of the Board to convene a special meeting, convene such a special meeting. 35

(6) A quorum for a meeting of the Board is two thirds of the members eligible to vote at that meeting.

(7) A decision of the Board must be taken by resolution of the majority of the members present at a meeting of the Board, and, in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote. 40

(8) A member of the Board may not vote or in any manner be present during or participate in the proceedings at any meeting of the Board if, in relation to any matter before the Board, he or she has any interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner. 45

Chief Executive Officer of Agency

11. (1) The Minister must, on the recommendation of the Board, appoint a suitably skilled and qualified person as the Chief Executive Officer who must be responsible for the management of the affairs of the Agency. 50

(2) The appointment must be made after following a transparent and competitive selection process.

(3) The Chief Executive Officer is responsible for the administration, general management and control of the day-to-day functioning of the Agency, subject to the directions and instructions issued by the Board.

(4) The Chief Executive Officer is accountable to the Board on the matters referred to in subsection (3). 5

(5) The Chief Executive Officer holds office for a period not exceeding five years and is eligible for reappointment on expiry of his or her term.

(6) The Chief Executive Officer may not serve more than two consecutive terms.

(7) The Chief Executive Officer holds office on such terms and conditions, including those relating to remuneration and allowances, as the Minister, after considering the recommendations of the Board and in consultation with the Minister of Finance, may determine in writing. 10

(8) The Chief Executive Officer must enter into a performance agreement with the Board within three months of taking up his or her post as Chief Executive Officer.

(9) Whenever for any reason the Chief Executive Officer is absent from office for a period of more than two months, or unable to carry out his or her duties, or whenever there is a vacancy in the office of the Chief Executive Officer, the Minister may, with the concurrence of the Board, appoint any person who meets the requirements determined in terms of subsection (1) to act as Chief Executive Officer, until the Chief Executive Officer is able to resume those functions or until the vacant position of the Chief Executive Officer is filled. 15 20

(10) The acting Chief Executive Officer has all the powers and performs all the duties of the Chief Executive Officer.

Employees of Agency

12. (1) The Chief Executive Officer must, on such terms and conditions as the Board may determine, appoint employees of the Agency or receive on secondment such persons as are necessary to enable the Agency to perform its functions. 25

(2) The Agency must pay the employees of the Agency such remuneration, allowances, subsidies and other benefits as the Minister, in consultation with the Minister of Finance, may determine. 30

(3) The Chief Executive Officer is responsible for the administrative control, organisation and discipline of the employees of the Agency and for ensuring compliance with applicable labour legislation.

(4) The Agency may, under the Pension Funds Act, 1956 (Act No. 24 of 1956), establish any pension fund for its employees. 35

Committees of Board

13. (1) The Board may establish one or more committees to perform such functions as the Board may determine.

(2) The Board may appoint as members of such committees—

(a) any member of the Board; 40

(b) any employee of the Agency; or

(c) any other person with suitable skills or experience, who must be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(3) The Board may at any time dissolve or reconstitute a committee. 45

(4) The Board is not absolved from the performance of any function assigned to any committee under this section.

Funding of Agency

14. (1) The funds of the Agency consist of—

(a) money appropriated by Parliament; 50

(b) revenue, including interest derived from its investments;

(c) money raised or borrowed by the Agency;

(d) money obtained from such other sources as the Board may, from time to time, determine and as may be consistent with the objects and functions of the Agency; and 55

(e) donations and contributions.

(2) Subject to this section, all income and property and all the proceeds of the Agency must be applied exclusively to the promotion of the object of the Agency.

(3) The Agency may, in the prescribed manner, establish and maintain reserve funds, the aggregate of which may not exceed an amount approved by the Minister in consultation with the Minister of Finance.

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Liquidation of Agency

15. The Agency may not be wound up except by or under the authority of an Act of Parliament.

Regulations

16. The Minister may make regulations with regard to— 10

(a) the establishment and maintenance of reserve funds of the Agency as contemplated in section 14(3);

(b) the Investment Framework Policy contemplated in section 5(3);

(c) any matter that may or must be prescribed in terms of this Act;

(d) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act. 15

Repeal of law

17. The Inventions Development Act, 1962 (Act No. 31 of 1962), is hereby repealed.

Transitional provisions and savings 20

18. (1) The South African Inventions Development Corporation (herein after referred to as the Corporation) established by section 2 of the Inventions Development Act, 1962 (Act No. 31 of 1962), is hereby disestablished.

(2) The Accounting Officer of the Department must deregister the South African Inventions Development Corporation in terms of the Companies Act, 1973 (Act No. 61 of 1973). 25

(3) The board of directors of the Corporation contemplated in section 6 of the Inventions Development Act, 1962 (Act No. 31 of 1962), (herein after referred to as the Inventions Development Act), is hereby dissolved.

(4) At the commencement of this Act— 30

(a) all the rights, assets, obligations and liabilities of the Corporation vest in the Council for Scientific and Industrial Research, (herein after referred to as the CSIR);

(b) the personnel of the Corporation contemplated in section 5 of the Inventions Development Act must be transferred to the CSIR in accordance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995); and 35

(c) anything done in terms of the Inventions Development Act prior to such commencement and which may be done in terms of this Act, must be deemed as having been done in terms of this Act.

Short title and commencement 40

19. This Act is called the Technology Innovation Agency Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.