

Commentary on the Technology Innovation Agency Bill

To: The Department of Science and Technology

By: BioSA (South African Biotech SMME Organisation)

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Object of Agency

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

This clause is vague on method and may be interpreted such that the TIA must itself develop and exploit innovations and inventions, which would of course be a decidedly catastrophic state-as-entrepreneur situation and is assumedly not the intention of the DST. This clause should be reformulated to make it clear that the objective of the TIA is to support entrepreneurs and not to take their place. The following formulation is proposed:

The object of the Agency is to support the State in stimulating and intensifying technological innovation and invention in order to improve economic growth and the quality of life of all South Africans by providing financial and infrastructural support to both the private and public sectors in order to assist them in the development and exploitation of innovations and inventions.

It is essential that the TIA must not see itself as a super-entrepreneur. It must see itself as a facilitator and service-provider to entrepreneurs with a view to improving economic growth.

4. (1) The Agency may—

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

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

(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 or invention, and to that end acquire such interest in and such control over such company as it may be necessary;

The TIA should under no circumstances get involved in taking the place of entrepreneurs by establishing companies. It should rather support entrepreneurs to establish companies. Clause 4(1)(a)(ii) must be completely deleted.

(iii) acquire any interest in any consortium or enterprise undertaking the development or exploitation of any technological innovation or invention;

The TIA should under no circumstances take up equity in a private company. This is a counter-incentive to entrepreneurs and is not aligned with best international practice. If South Africa wants to build a thriving biotech industry, the TIA must offer biotech entrepreneurs at least the same contractual conditions as other countries' innovation support agencies. Demanding equity in return for government support is unacceptable to the South African biotech industry.

We challenge the proponents of this clause to provide supporting evidence of at least three countries in the world that have successfully built biotechnology

industries where the state innovation support agency takes equity in supported companies.

Further, if the TIA is allowed to acquire 'any interest' it sees fit to further the purpose of the Agency, it will do so from the government coffers. This will create an environment where the TIA (or its sub-organ) will be able to out-bid any and all private companies in the country to obtain the said interest. The situation will be untenable for the private industry in South Africa since it will be in direct competition with the government during the said acquisition processes.

Our recommendation: clause 4(1)(a)(iii) must be completely deleted.

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

This clause indicates that the TIA will have the mandate at the discretion of its Board (!) to amalgamate and re-structure the innovation and incubation entities in the country. The critical role of incubation in the embryonic private biotech sector in South Africa can not be underestimated.

(c) acquire any right in or to any technological innovation, invention or patent from any person, consortium or enterprise, or assign any person, consortium or enterprise any right in or to any technological innovation or invention or patent;

Such intervention in the market should be specifically limited to extreme and exceptional circumstances (that should be spelled out) where the entrepreneurs are clearly not proceeding to protect and exploit their intellectual property.

(2) Where the Agency enters into any transaction with any person, consortium, enterprise or company in terms of subsection (1) (a)(i),(ii) and (iii), the Agency must, with the concurrence of the Minister, ensure that the Agency is represented in the Board of such person, consortium, enterprise or company.

The TIA should under no circumstances be involved in the management of private companies. This is once again a counter-incentive to entrepreneurs and is not aligned with best international practice. The state should stay out of the management of private companies. This proposed clause will impede the effective running of the said private company and will hinder the company from obtaining further private funding. Demanding board representation in return for government support is unacceptable to the South African biotech industry. Good governance of companies in which the TIA has invested can be promoted in other ways.

In addition, the type of 'assistance' is vague. If this clause were to survive in this bill the private biotech industry in South Africa will be alienated from the TIA – a situation that we do not want, and assume that the government also wants to avoid.

We challenge the proponents of this clause to provide supporting evidence of at least three countries in the world that have successfully built biotech industries where the state innovation support agency gets board representation in supported companies.

Our recommendation: clause 4(2) must be deleted completely.

14. (1) The funds of the Agency consist of—
(b) revenue, including interest derived from its investments;

The return on investment by the TIA should be measured in terms of it reaching its primary objective, namely to stimulate economic growth (which will create jobs, generate tax income for the state, etc), not monetary returns to the TIA from its investments. At most, the TIA should recoup its investments at actual value (interest equal to the CPIX). This is already uncompetitive if compared to pure grant funding in many competing biotech economies.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

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2.5 Financial institutions, private sector and industry bodies: The South African Venture Capital Association (SAVCA); the Johannesburg Stock Exchange (JSE); Wholesale Venture Capital; Horizon Equity Partners; Triumph Venture Capital; Amplats; Sappi Limited; Anglo Platinum.

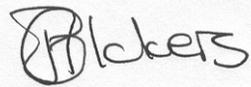
It is very disturbing that the DST did not consult with a single biotech SMME in the preparation of the TIA Bill. There are literally dozens of biotech SMMEs that are within the databases of the DST's current agencies. Yet, the DST has completely ignored the interests of the actual intended beneficiaries of the TIA. It is therefore no wonder that several clauses of the Bill, as highlighted above, are directly in conflict with the interests of biotech SMMEs and small businesses in general. It is our recommendation that these clauses are completely revised.

In summary, a clear distinction must be made between the main objective of the TIA which is to stimulate innovation and the exploitation thereof, and the involvement of the TIA in the very entities it wishes to stimulate. A paternalistic and/or intrusive role will be highly detrimental to the TIA's main objective (stated above). Furthermore, the TIA should not rely on returns from its investments to provide funding for itself. This will slow growth in the biotech sector (and other sectors that benefit from or rely on innovation), and will become a source of frustration and thus a permanent deterrent for entrepreneurs who wish to seek funding and other necessary support from the TIA for the creation of their businesses.

Signed on behalf of BioSA:



Prof Michael Pepper



Dr Antonel Olckers



Dr Viresh Ramburan



Adv Donrich Jordaan