

REPUBLIC OF SOUTH AFRICA

TECHNOLOGY INNOVATION AGENCY BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No 30164 of 17 August 2007)
(The English text is the official text of the Bill)*

(MINISTER OF SCIENCE AND TECHNOLOGY)

[B 49—2007]

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BILL

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—
- “**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; 5
 - “**Department**” means the Department of Science and Technology;
 - “**innovation**” means the application in practice of creative new ideas, which includes the processes by which new products and services enter the market and the creation of new businesses; 10
 - “**Minister**” means the Minister responsible for Science and Technology;
 - “**invention**” means any discovery or improvement in respect of any process, apparatus or machine arising from research and which may be referred to the Agency from any other source for the development or exploitation under the provisions of this Act; 15
 - “**this Act**” includes the regulations.

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. 20
- (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 and invention in order to improve economic growth and the quality of life of all South Africans by developing and exploiting innovations and inventions. 25

Powers and duties of Agency

4. (1) The Agency may— 30
- (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; 35
 - (iii) acquire any interest in any consortium or enterprise undertaking the development or exploitation of any technological innovation or invention; 40
 - (iv) draw together and integrate the management of different technological innovation, invention, incubation and diffusion initiatives in South Africa; 45
 - (v) develop the national capacity and infrastructure to protect and exploit intellectual property derived from publicly financed research; and
 - (vi) finance and provide direction-setting capabilities;
 - (b) apply for patents or the revocation thereof, oppose the grant of patents and institute any action in respect of any infringement of patents; 50
 - (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;

- (d) 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;
 - (e) establish such offices, including regional offices, as the Board in consultation with the Minister may determine; 5
 - (f) purchase, take on lease, hire out or alienate any movable property;
 - (g) take such security as it may deem fit, including special mortgage bonds over immovable property, notarial bonds over movable property, pledges of movable property, cessions of rights and in general any other form of cover or security; and 10
 - (h) 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 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. 15
- (3) Where a right in or to any technological innovation or invention has, in terms of subsection (1)(c), been acquired by the Agency or assigned by the Agency to any person, consortium or enterprise, the Agency or such person, consortium or enterprise, as the case may be, must for the purposes of the Patents Act, 1978 (Act No. 57 of 1978), be regarded as the assignee of the discoverer or inventor of such technological innovation or invention. 20

Board of Agency

5. (1) There is hereby established a Board, known as the Board of the Agency, consisting of— 25
- (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. 30
- (3) 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.
- (4) The members of the Board contemplated in subsection (1)(a) and (b) are appointed by the Minister 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. 35
- (5) 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. 40
- (6) (a) When the Minister dissolves the Board in terms of subsection (5), 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 (3), whichever is the lesser. 45

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); 50
 - (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 Parliament, a provincial legislature or the council of a municipality, or is appointed as a permanent 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;
 - (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(4) in that member's place for the remaining part of the term of office.
- (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.

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.
- (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

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 among their number 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.
- (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.
- (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.
- (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.

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.
- (2) The appointment must be made after following a transparent and competitive selection process. 5
- (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). 10
- (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. 15
- (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. 20
- (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. 25
- (10) The acting Chief Executive Officer has all the powers and performs all the duties of the Chief Executive Officer.

Employees of Agency 30

- 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.
- (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. 35
- (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. 40

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— 45
- (a) any member of the Board;
 - (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. 50
- (3) The Board may at any time dissolve or reconstitute a committee.
- (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;
 - (b) revenue, including interest derived from its investments;
 - (c) money raised or borrowed by the Agency; 5
 - (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
 - (e) donations and contributions.

(2) Subject to this section, all income and property and all the proceeds of the Agency 10 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.

Liquidation of Agency 15

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—
- (a) the establishment and maintenance of reserve funds of the Agency as 20 contemplated in section 14(3);
 - (b) any matter that may or must be prescribed in terms of this Act;
 - (c) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act. 25

Repeal of law

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

Transitional provisions and savings

18. (1) The South African Inventions Development Corporation established by section 2 of the Inventions Development Act, 1962 (Act No. 31 of 1962), is hereby 30 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).

(3) At the commencement of this Act, anything done in terms of the Inventions 35 Development Act, 1962 (Act No. 31 of 1962), prior to such commencement and which may be done in terms of this Act, must be regarded as having been done in terms of this Act.

Short title and commencement

19. This Act is called the Technology Innovation Agency Act, 2007, and comes into 40 operation on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE TECHNOLOGY
INNOVATION AGENCY BILL, 2007**

1. OBJECTS OF BILL

- 1.1 The Technology Innovation Agency Bill provides for the establishment of the Technology Innovation Agency “(the TIA)” as a new public entity that is aimed at stimulating and intensifying innovation and inventions in order to improve economic growth as well as enhance the quality of life of all South Africans by developing and exploiting technological innovations and inventions and creating an enabling environment wherein these could be commercialised.
- 1.2 The Bill also provides for the objects, powers and functions of the Agency, and for the appointment of the TIA Board, Chief Executive Officer and staff.
- 1.3 It was initially envisaged that the TIA would be established through amendments to the Inventions Development Act (Act No. 31 of 1962). Due to the nature and proposed functions of the TIA, however, the matter extends beyond the scope of amendments to the Inventions Development Act, and it is therefore recommended that a new Bill be introduced that would provide for the subsequent repeal of the Inventions Development Act.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

- 2.1 Science councils and bodies: The National Research Foundation (NRF) and the Innovation Fund; the South African Bureau of Standards (SABS); the Human Sciences Research Council (HSRC); the Council for Scientific and Industrial Research (CSIR); the Medical Research Council (MRC); the Agricultural Research Council (ARC); the Council for Geosciences; Mintek; the Square Kilometer Array (SKA) project office; and the National Advisory Council on Innovation (NACI).
- 2.2 Departments: Trade and Industry (Dti); Education (DoE); National Treasury; Public Service and Administration (DPSA); Public Enterprises (DPE); Minerals and Energy (DME); Transport (DoT); Environmental Affairs and Tourism (DEAT); and the South African Police Services (SAPS).
- 2.3 Higher education institutions: Tshwane University of Technology (TUT); Stellenbosch University; University of Cape Town; University of the Western Cape (UWC); University of the Witwatersrand (Wits); Central University of Technology: Free State; University of Pretoria; Cape Peninsula University; University of Venda; University of the North West; University of Zululand; and the University of Johannesburg.
- 2.4 State-owned enterprises and related public bodies: The Industrial Development Corporation (IDC); the Pebble Bed Modular Reactor (PBMR); the Nuclear Energy Corporation of South Africa (NECSA); the National Empowerment Fund (NEF); the South African National Energy Research Institute (SANERI); the Centre for Public Service Innovation; Eskom; and Exxaro.
- 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.
- 2.6 Science and technology networking and collaboration bodies: The Global Research Alliance (GRA); the Innovation Hub; the Cooperation Framework on Innovation Systems between Finland and South Africa (COFISA); the Da Vinci Institute; and the Technology Top 100 Awards network.

3. FINANCIAL IMPLICATIONS FOR STATE

The TIA is a consolidation of existing initiatives and will therefore begin with a budget already allocated in the Medium Term Expenditure Framework of the Department of Science and Technology. This will be sufficient to achieve the goals of a conservative business plan. Further budget submissions will be made through the appropriate channels in order to realise a set of more ambitious goals to enable a much stronger technology base in the South African economy and improve the country's competitiveness rating as well as trade balance.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Science and Technology are of the opinion that this Bill must be dealt with in terms of the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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