

**NOTICE 999 OF 2007**

**DEPARTMENT OF SCIENCE AND TECHNOLOGY  
NOTICE OF INTRODUCTION OF BILL INTO PARLIAMENT**

The Minister of Science and Technology intends introducing the Bill set out below into Parliament during 2007:

Draft Technology Innovation Agency Bill

Written comments must be received not later than 31 August 2007 and must be addressed to:

**The Director-General**

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REPUBLIC OF SOUTH AFRICA

TECHNOLOGY INNOVATION AGENCY BILL

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(As introduced in the National Assembly (proposed section 75); explanatory summary  
of Bill published in Government Gazette No.        of        ) (The English text is the  
official text of the Bill)  
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(MINISTER OF SCIENCE AND TECHNOLOGY)

[B - 2007]

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## B I L L

**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; 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:—

### ARRANGEMENT OF SECTIONS

#### Sections

1. Definitions
2. Establishment of Agency
3. Objects of Agency
4. Powers and duties of Agency
5. Board of Agency
6. Disqualifications from Membership
7. Removal from Office
8. Term of office of members
9. Remuneration of Members

10. Meetings of Board
11. Chief Executive Officer of Agency
12. Employees of Agency
13. Committees of Board
14. Governance Committees
15. Funding of Agency
16. Liquidation of Agency
17. Regulations
18. Repeal of Law
19. Transitional provisions
20. Short title and commencement

### **Definitions**

1. In this Act, unless the context indicates otherwise—

**"Agency"** means the Technology Innovation Agency established under section 2;

**"Board"** means the Board 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;

**"innovation"** means the application in practice of creative new ideas, which includes the processes by which new products and services enter the market (social or economic) and the creation of new businesses;

**"Minister"** means the Minister of Science and Technology;

**"Invention"** means any discovery or invention 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;

**"this Act"** includes the regulations.

### **Establishment of Agency**

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

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

### **Objects of Agency**

3. The objects of the Agency are 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.

## **Powers and duties of Agency**

4. (1) The Agency may—
- (a) on such conditions as the Board may determine—
    - (i) provide financial 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;
    - (iii) acquire any interest in any consortium or enterprise undertaking the development or exploitation of any technological innovation or invention;
    - (iv) draw together and integrate the management of disparate technological innovation, invention, incubation and diffusion initiatives in South Africa;
    - (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 to institute any action in respect of any infringement of patents;
  - (c) acquire any right in or to any technological innovation, invention, or patent from any person, consortium, or enterprise; and 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, to 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 may, in consultation with the Minister, determine;
- (f) purchase, take 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;
- (h) do all such other things as are necessary or incidental to the performance of its functions.

(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 Department is represented in the Board of such person, consortium, enterprise or company.

(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 been assigned by the Agency to any person, consortium, or enterprise, the Agency or person, consortium, or the enterprise, as the case may be, is for the purposes of the Patents Act, 1952 (Act 37 of 1952), deemed to be the assignee of the discoverer or inventor of such technological innovation or invention.

**Board of Agency**

5. (1) The Agency is managed and controlled by the Board consisting of—

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

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

(3) The members of the Board must be appointed on the grounds of their knowledge and experience in technological innovation, technology management, intellectual property management and commercialisation thereof, and business skills, which, when considered collectively, should enable them to attain the objectives of the Agency.

(4) The Minister may dissolve the Board on grounds of mismanagement.

(5) When the Minister dissolves the Board in terms of subsection (4), the Minister may appoint an interim structure for the continued governance and control of the affairs of the Agency on such interim measures as be prescribed by the Minister.



### **Disqualification of from membership**

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

- (a) is declared by a competent court to be mentally ill, as defined in the Mental Health Act, 1973 (Act No. 18 of 1973);
- (b) is 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) is 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) is not a South African citizen or ceases to be a South African citizen;
- (e) is removed from a position of trust by a competent court of law; or
- (i) is 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) A decision to remove a member of the Board from office in terms of subsection 1 must be based on a finding of an independent tribunal appointed by the Minister.

(3) 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 in that member's place for the remaining part of the term of office.

(4) 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 his or her resignation.

#### **Term of office of members of Board**

8. (1) Members of the Board are appointed for a period of four years and are eligible to re-appointment on expiry of their term.

(2) When the Minister re-appoints the members of the Board, the Minister must ensure that not all members of the Board retire at the same time.

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

#### **Remuneration of members of Board**

9. The chairperson and other 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 the meeting must elect from amongst themselves a member to preside at the meeting.
- (3) The Board must meet at least four times a year at such times and places 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 convene such a meeting within 14 days of receipt of a written request signed by at least two thirds of the members of the Board to convene such a meeting.
- (6) The quorum for a meeting of the Board is two thirds of its voting members.
- (7) A decision of the Board must be taken by resolution of the majority of the members present at any 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 her or his 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 members of the Board if, in relation to any matter before the Board, she or he 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.

(9) Subject to the approval of the chairperson, any person may attend or take part, but may not vote, in the meeting of the Board.

### **Chief Executive Officer of Agency**

11. (1) The Board must, with the approval of the Minister, appoint 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.

(3) The Chief Executive Officer is responsible for the administration and the general management and the 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 activities of the Agency.

(5) The Chief Executive Officer must be appointed for a term not exceeding five years and is eligible for re-appointment on expiry of his or her term of office.

(6) The Chief Executive Officer holds office on such terms and conditions including those relating to remuneration and allowances as the Minister may determine in consultation with the Minister of Finance on the recommendation of the Board.

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

(8) Whenever for any reason the Chief Executive Officer is absent for a period of over 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 Board may, with the concurrence of the Minister, appoint any person 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.

(9) If the chief executive officer is absent for a period of less than two months the Board may, without the concurrence of the Minister, appoint any person to act as a chief executive officer during that period.

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

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

### **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.

(2) The Agency must pay the employees of the Agency out of its funds such remuneration, allowances, subsidies and other benefits as the Minister, in consultation with the Minister of Finance, determines.

(3) The chief executive officer is responsible for the administrative control, organisation and discipline of 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 other Pension Funds for its employees.

### **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) members of the Board;
- (b) employees of the Agency; or
- (c) other persons with suitable skills or experience who must be paid such 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.

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

### **Governance Committee**

14. (1) The Board may establish a governance committee to assist it to perform its functions and to advise it in connection with any matter relating to the proper governance of the Agency.

(2) The governance committee is appointed by the Board and consists of—

- (a) a chairperson, who is a member of the Board; and
- (b) at least two other persons who are members of the Board.

(3) An employee of the Agency may not be appointed as a member of the governance committee.

(4) The committee must establish policies and guidelines on Board practices.

(5) The committee must monitor and evaluate the performance of the Board using appropriate instruments and must provide these results to the Board annually.

### **Funding of Agency**

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

- (a) money appropriated by Parliament to the Department for the Agency;
- (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 or powers of the Agency; and
- (e) donations and contributions.

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

(3) The Agency may, in the prescribed manner, establish and maintain reserve funds the aggregate of the amounts of which may not at any time exceed such amount as may be approved by the Minister in consultation with the Minister of Finance.

### **Liquidation of Agency**

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

### **Regulations**

17. The Minister may make regulations with regard to—

- (a) any matter that may or must be prescribed in terms of this Act;
- (b) interim measures for the continued governance and control of the Board as contemplated in section 5(5);
- (c) the establishment of a maintenance of reserve funds of the Agency contemplated in section 15(3);
- (d) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

### **Repeal of law**

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



**Transitional provisions and savings**

19. (1) The South African Inventions Development Corporation established under section 2 of the Inventions Development Act, 1962 (Act No. 31 of 1962), is hereby disestablished.

(2) The Director-General of the Department must do the necessary to deregister the 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 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**

20. This Act is called the Technology Innovation Agency Act, 2007 and shall come into operation on a date fixed by the President by proclamation in the Gazette.