

TECHNOLOGY INNOVATION AGENCY ACT NO. 26 OF 2008

[ASSENTED TO 17 NOVEMBER, 2008]
[DATE OF COMMENCEMENT: 24 APRIL, 2009]

(English text signed by the President)

This Act has been updated to *Government Gazette* 44333 dated 26 March, 2021.

as amended by

Science and Technology Laws Amendment Act, No. 7 of 2014

Science and Technology Laws Amendment Act, No. 9 of 2020
[with effect from 1 April, 2021]

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.

ARRANGEMENT OF SECTIONS

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

1. Definitions.—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;

“**Department**” means the Department of Science and Technology;

“**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);

“**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.

2. Establishment of Agency.—(1) There is hereby established a juristic person known as the Technology Innovation Agency.

[Sub-s. (1) substituted by s. 32 of Act No. 9 of 2020 with effect from 1 April, 2021.]

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

3. Object of Agency.—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.

4. Powers and duties of Agency.—(1) The Agency may—

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

4A. Performance of functions outside Republic.—(1) The Agency may, subject to legislation and other formal agreements regarding international cooperation and in order to achieve its objectives, perform any function in any territory outside the Republic.

(2) This Act must, as far as it can be applied with the necessary changes, apply in connection with the performance by the Agency of its functions under subsection (1) as if the territory in which it so performs its functions were part of the Republic.

[S. 4A inserted by s. 33 of Act No. 9 of 2020 with effect from 1 April, 2021.]

5. Board of Agency.—(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) Before appointing members of the Board referred to in subsection 1 (a) and (b), the Minister must—

- (a) publish a notice in the *Gazette* and three national newspapers, with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012), calling upon members of the public to nominate persons contemplated in subsection (1) (a) and (b); and
- (b) appoint an independent panel which must compile a shortlist of not more than 20 persons from the nominees referred to in paragraph (a).

[Sub-s. (4) substituted by s. 19 (a) of Act No. 7 of 2014.]

(4A) If the Minister receives no nominations or an insufficient number of nominations within the period specified in the notice referred to in subsection (4) (a), the Minister may, after consultation with the panel referred to in subsection (4) (b), either readvertise or in any other transparent manner, appoint the required number of qualified persons.

[Sub-s. (4A) inserted by s. 19 (b) of Act No. 7 of 2014.]

(5) 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.

[Sub-s. (5) substituted by s. 19 (c) of Act No. 7 of 2014.]

(6)

[Sub-s. (6) deleted by s. 19 (d) of Act No. 7 of 2014.]

(7)

[Sub-s. (7) deleted by s. 19 (d) of Act No. 7 of 2014.]

(8) The Board must be constituted in a manner that is broadly representative of the demographics of the country.

[Sub-s. (8) added by s. 19 (e) of Act No. 7 of 2014.]

(9) The Minister must, within 30 days of the appointment or reappointment of a member of the Board, submit a report to the National Assembly relating to such appointment or reappointment.

[Sub-s. (9) added by s. 19 (e) of Act No. 7 of 2014.]

6. Disqualification from membership.—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 within a period of 10 years preceding the date of nomination;

[Para. (b) substituted by s. 34 (a) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(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 permanent resident or ceases to be a South African citizen or permanent resident;

[Para. (d) substituted by s. 34 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(e) removed as a result of improper conduct from a position of trust; or

[Para. (e) substituted by s. 34 (c) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(f) an unrehabilitated insolvent.

7. Removal from office and vacation of office.—(1) The Minister may, after consultation with 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; or

[Para. (c) amended by s. 20 (b) of Act No. 7 of 2014.]

- (d) any other reasonable ground.

[Sub-s. (1) amended by s. 20 (a) of Act No. 7 of 2014. Para. (d) added by s. 20 (c) of Act No. 7 of 2014.]

(2) If a member of the Board ceases to hold office or is removed from office in terms of subsection (1), the Minister may, after consideration of the shortlist compiled by the panel referred to in section 5 (4) (b) or in any other transparent manner, 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.

[Sub-s. (2) substituted by s. 20 (d) of Act No. 7 of 2014.]

(3) The member ceases to hold office if—

- (a) he or she is disqualified in terms of section 6; or

- (b) he or she tenders his or her resignation by written notice to the Minister.

[Sub-s. (3) amended by s. 20 (e) of Act No. 7 of 2014. Para. (b) to be substituted by s. 35 of Act No. 9 of 2020 with effect from 1 April, 2021.]

(4) The Minister must, within 30 days, report on any decision taken in terms of this section, as well as confirm compliance with the requirements set out in this section, to the National Assembly.

[Sub-s. (4) added by s. 20 (f) of Act No. 7 of 2014.]

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

(2)

[Sub-s. (2) deleted by s. 21 (a) of Act No. 7 of 2014.]

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

(4) Despite subsection (1), the Minister may, after consultation with the Board, extend the period of office of any or all of the members of the Board for a period of not more than six months or until a new Board has been appointed, whichever comes first.

[Sub-s. (4) added by s. 21 (b) of Act No. 7 of 2014.]

(5) The Minister must, within 30 days of the appointment or reappointment of a member of the Board, submit a report to the National Assembly relating to such appointment or reappointment.

[Sub-s. (5) added by s. 21 (b) of Act No. 7 of 2014.]

9. Remuneration of members of Board.—A member of the Board or a member of a committee of the Board who is not in the full-time employment of the State, must receive such remuneration and allowances as the National Treasury may determine.

[S. 9 substituted by s. 36 of Act No. 9 of 2020 with effect from 1 April, 2021.]

10. Meetings of Board.—(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.

(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 one third of the members of the Board to convene a special meeting, convene such a special meeting.

[Para. (b) substituted by s. 37 (a) of Act No. 9 of 2020 with effect from 1 April, 2021.]

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

[Sub-s. (6) substituted by s. 37 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(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.

(7A) A decision taken by the Board or an act performed under the authority of the Board is not invalid if—

- (a) there is a vacancy on the Board; or

- (b) a person who is not a member of the Board was present at the meeting when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.

[Sub-s. (7A) inserted by s. 37 (c) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(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.

(9) A member of the Board must, upon appointment and thereafter annually, disclose to the Minister by way of written statement any interest which could reasonably compromise the Board in the performance of its functions.

[Sub-s. (9) added by s. 37 (d) of Act No. 9 of 2020 with effect from 1 April, 2021.]

10A. Dissolution of Board.—(1) The Minister may dissolve the Board if—

- (a) the Board is unable to perform its duties in terms of this Act or on the grounds of mismanagement;
- (b) there is a total breakdown in the relationship between the Board and the Minister; or
- (c) there is a breakdown in the relationship amongst the members of the Board, which renders the continued effective functioning of the Board impossible.

(2) In exercising his or her powers in terms of this section, the Minister must comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(3) Within 21 days of the dissolution of the Board, the Minister must appoint an interim Board, consisting of a minimum of three persons, to assume the responsibilities of the Board, consisting of a minimum of three persons, to assume the responsibilities of the Board, until a new Board is constituted in accordance with the procedure referred to in section 5 (4).

(4) A new Board must be constituted within 180 days of the dissolution of the previous Board.

(5) Any person who was a member of the Board that was dissolved in terms of this section may be reappointed to a new Board.

(6) The Minister must, within 30 days of the dissolution of the Board, submit a report to the National Assembly, setting out the reasons for the dissolution of the Board.

[S. 10A inserted by s. 22 of Act No. 7 of 2014.]

11. Chief Executive Officer of Agency.—(1) The Board must, in consultation with the Minister, appoint a suitably skilled and qualified person as the Chief Executive Officer of the Agency.

[Sub-s. (1) substituted by s. 23 (a) of Act No. 7 of 2014 and by s. 38 (a) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(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) 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 by the Board in consultation with the Minister.

[Sub-s. (5) substituted by s. 38 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(6)

[Sub-s. (6) deleted by s. 23 (b) of Act No. 7 of 2014.]

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

[Sub-s. (7) substituted by s. 23 (c) of Act No. 7 of 2014.]

(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—

- (a) is absent from office for a period of more than two months;
- (b) is unable to carry out his or her duties; or
- (c) ceases to hold office,

the Board may, after consultation with the Minister, appoint any senior person in the service of the Agency 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.

[Sub-s. (9) substituted by s. 23 (d) of Act No. 7 of 2014 and amended by s. 38 (c) of Act No. 9 of 2020 with effect

(9A) If the chief executive officer is absent for a period of less than two months, he or she must, after consultation with the Board, appoint any senior person in the service of the Agency to act as Chief Executive Officer during that period.

[Sub-s. (9A) added by s. 23 (e) of Act No. 7 of 2014.]

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

12. Employees of Agency.—(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 National Treasury may determine.

[Sub-s. (2) substituted by s. 39 (a) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(2A) (a) The Chief Executive Officer may, on such terms and conditions as the Board may determine, with the consent of an employee, second an employee either for a particular service or for a period of time to the service of a department of State, the government of any province, territory or country or an organisation or institution in or outside the Republic.

(b) The rights, privileges and benefits of the employee referred to in paragraph (a), by virtue of his or her conditions of service as an employee of the Agency, may not be adversely affected by such secondment.

[Sub-s. (2A) inserted by s. 39 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(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.

13. Committees of Board.—(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;
- (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 National Treasury may determine.

[Para. (c) substituted by s. 40 (a) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(2A) The Board must designate a member of the committee as the chairperson thereof.

[Sub-s. (2A) inserted by s. 40 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(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.

(5) A member of the Board may not serve on more than two committees at a time.

[Sub-s. (5) added by s. 40 (c) of Act No. 9 of 2020 with effect from 1 April, 2021.]

14. Funding of Agency.—(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;
- (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 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.

14A. Delegation.—(1) The Board may, subject to such conditions as it may determine, delegate to the chairperson, any member or committee of the Board or the Chief Executive Officer any function entrusted to the

Board by or under this Act.

(2) The Chief Executive Officer may, subject to such conditions as he or she may determine, delegate to an employee of the Agency any function entrusted to the Chief Executive Officer by or under this Act.

(3) A delegation in terms of subsection (1) or (2) must be in writing and does not preclude the performance of the function entrusted to the Board or the Chief Executive Officer, as the case may be.

[S. 14A inserted by s. 41 of Act No. 9 of 2020 with effect from 1 April, 2021.]

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

16. Regulations.—The Minister may, after consultation with the Board, make regulations with regard to—

(a)

[Para. (a) deleted by s. 42 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(b)

[Para. (b) deleted by s. 42 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

(c)

[Para. (c) deleted by s. 42 (b) of Act No. 9 of 2020 with effect from 1 April, 2021.]

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

[S. 16 amended by s. 42 (a) of Act No. 9 of 2020 with effect from 1 April, 2021.]

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

18. Transitional provisions and savings.—(1) The South African Inventions Development Corporation (hereinafter referred to as the Corporation) established by section 2 of the Inventions Development Act, 1962 (Act No. 31 of 1962), is hereby dis-established.

(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) 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—

(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

(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.

19. Short title and commencement.—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*.

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
24 April, 2009	The whole Act	25	32135	24 April, 2009