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SCIENCE, TECHNOLOGY AND INNOVATION ACT

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NO. 28 OF 2013

SCIENCE, TECHNOLOGY AND INNOVATION ACT

[Date of assent: 14th January, 2013.]

[Date of commencement : 24th June, 2013,
Parts VI and VII: 1st October, 2014.]

An Act of Parliament to facilitate the promotion, co-ordination and regulation of the progress of science, technology and innovation of the country; to assign priority to the development of science, technology and innovation; to entrench science, technology and innovation into the national production system and for connected purposes

[Act No. 28 of 2013, L.N. 94/2013, Act No. 18 of 2014, L.N. 129/2014.]

PART 1 – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Science, Technology and Innovation Act, 2013, and shall come into force on such date as the Cabinet Secretary may, by notice in the *Gazette* appoint, and different dates may be appointed for the coming into force of different provisions.

2. Interpretation

In this Act, except where the context otherwise requires—

“**acquisition**” means the process by which the rights to use, employ and exploit a technology for the purpose of improving or renewing processes, products or services are acquired;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to science, technology and innovation;

“**Commission**” means the National Commission for Science, Technology and Innovation established under section 3;

“**Director-General**” means the Director-General of the Commission appointed under section 8;

“**eminent scientist**” means person who has made distinguished contributions in the field of science;

“**Fund**” means the National Research Fund established under section 32;

“**incubation**” means the maintenance of enabling environmental conditions for the purpose of facilitating the growth or development of infant technologies ideas or industries;

“**industrial park**” means an area designed and zoned for manufacturing and associated activities;

“**innovation**” includes—

- (a) a technovation model, utility model or industrial design within the meaning of the Industrial Property Act, 2001 (No. 3 of 2001);
 - (b) a product, process, service or idea which is novel;
 - (c) an improved use of a new product, service or method in industry, business or society; or
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- (d) indigenous or traditional knowledge by community of beneficial properties of land, natural resources, including plant and animal resources and the environment;
- (e) any other non-patentable creations or improvements which may be deemed as deserving promotion and protection or *sui generis* intellectual property rights and “innovator” shall be construed accordingly;

“**innovation park**” means an area designed and zoned for innovation;

“**institution**” means a research institution registered under this Act;

“**invention**” means a new and useful art, process, machine, manufacture or composition of matter, living or inanimate, or any invention or discovery which is or may be patentable or otherwise protectable or any novel variety of plant which is or may be protectable;

“**research system**” means research, science, technology or innovation

“**research institution**” means any organization, centre or place whether public or private in which research of any kind is conducted or undertaken by any person, consortium or institute, and which is registered under this Act;

“**scheduled science**” means one of the groups referred to in section 9;

“**science park**” includes a technology park, science fair, and any other area designed and zoned for scientific or technological research and related activities;

“**technology**” means the application of knowledge to meet the goals, goods and services for sustainable development;

“**traditional knowledge**” means the wisdom developed over generations of holistic traditional scientific utilization of the lands, natural resources, and environment;

“**University**” has the meaning assigned it under the Universities Act, 2012 (No. 42 of 2012).

[Act No. 18 of 2014, Sch.]

PART II – THE NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

3. Establishment of the Commission

(1) There is established a Commission to be known as the National Commission for Science, Technology and Innovation.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of

- (a) suing and being sued;
 - (b) taking, purchasing and otherwise acquiring, holding, charging or disposing of movable or immovable property;
 - (c) borrowing, lending and receiving money;
 - (d) entering into contracts; and
 - (e) doing or performing all such other things or acts necessary for or incidental to the proper performance of its functions under this Act.
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(3) The Commission shall be the successor to the National Council for Science and Technology existing immediately before the commencement of this Act, and subject to this Act, all rights, obligations, assets and liabilities of that Council existing at the commencement of this Act shall be automatically and fully transferred to the Commission, and any reference to the National Council for Science and Technology shall be deemed to be a reference to the Commission established under subsection (1).

4. Objective of the Commission

The objective of the Commission shall be to regulate and assure quality in the science, technology and innovation sector and advise the Government in matters related thereto.

5. Board of the Commission

(1) The Commission shall be governed by a Board which consist of nine persons appointed by the Cabinet Secretary as follows—

- (a) the Chairperson, who shall be an eminent scientist in any of the scheduled sciences set out in the Second Schedule;
- (b) the Principal Secretary in the Ministry for the time being responsible for research, science and technology;
- (c) the Principal Secretary in the Ministry for the time being responsible for finance;
- (d) the Director of the Kenya National Innovation Agency established under section 28;
- (e) the Director of the National Research Fund established under section 32;
- (f) three persons, appointed by virtue of their knowledge and experience in science, technology and innovation.
- (g) one person nominated by the body currently recognised as representing the private section;
- (h) the Director-General, who shall be an *ex officio* member and the Secretary to the Board.

(2) The members of the Commission, other than *ex officio* members, shall hold office for a period of three years and shall be eligible for reappointment for one further term.

(3) The members of the Commission shall be appointed at different times so that their terms of office expire at different times.

(4) In appointing members under this section, the Cabinet Secretary shall have regard to the objectives and need of development of science, technology and innovation and ensure that there are balanced competencies, gender equity, inclusion of persons with disabilities, the marginalised and other minority groups.

(5) A member of the Commission, other than an *ex officio* member, shall vacate office if the member—

- (a) resigns by notice in writing to the Cabinet Secretary;
 - (b) is unable to perform the functions of the office by reason of prolonged physical or mental incapacity;
 - (c) is adjudged bankrupt by a court of competent jurisdiction; or
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- (d) is convicted of an offence and sentenced to imprisonment for a period of six months or more;
- (e) is guilty of misconduct; or
- (f) fails to meet the requirements of Chapter Six of the Constitution.

(6) Where the office of a member of the Commission becomes vacant, the Cabinet Secretary may, subject to the provisions of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

(7) Notwithstanding the generality of the foregoing, the Board shall ensure that any member suspected to have committed an offence under Chapters Six or Thirteen of the Constitution, or any other written law, vacates office to pave way for investigations.

(8) The chairperson and the members of the Commission under subsection (1)(f) shall be appointed by the Cabinet Secretary only from a list of, in case of the chairperson, three names, and in case of other members, nine names, submitted by a selection panel appointed by the Cabinet Secretary in accordance with subsection (8).

(9) The selection panel referred to in subsection (8) shall comprise of a chairperson and six other persons appointed by the Cabinet Secretary as follows—

- (a) a representative of the Public Service Commission;
- (b) a representative of the Attorney-General;
- (c) a representative of the Principal Secretary of the Ministry for the time being responsible for finance;
- (d) one person to represent the body currently recognised as representing the interests of the private sector;
- (e) one person to represent research institutions;
- (f) one person to represent universities.

(10) The selection panel shall regulate its own procedure.

(11) The selection panel shall advertise for the vacancies and publicize the applicants and shortlisted candidates in at least two newspapers with a wide national circulation.

(12) The selection panel shall stand dissolved after the appointment of the members of the Commission.

(13) A person shall be qualified for appointment as a chairperson or member of the Commission, if the person—

- (a) in the case of the chairperson—
 - (i) holds a doctorate degree from a university recognised in Kenya;
 - (ii) has at least fifteen years' experience in leadership and management of public or private institutions;
- (b) in the case of a member of the Commission, holds a Master's degree from a university recognised in Kenya.

(14) The chairperson or member of the commission shall be a person of high moral character and integrity in accordance with Chapter Six of the Constitution and capable of contribution to science, technology and innovation.

(15) All appointments under this section shall be by notice in the *Gazette*.

6. Functions of the Commission

(1) The functions of the Commission shall be to—

- (a) develop, in consultation with stakeholders, the priorities in scientific, technological and innovation activities in Kenya in relation to the economic and social policies of the Government, and the country's international commitments;
 - (b) lead inter-agency efforts to implement sound policies and budgets, working in collaboration with the county governments, and organisations involved in science and technology and innovation within Kenya and outside Kenya;
 - (c) advise the national and county governments on the science, technology and innovation policy, including general planning and assessment of the necessary financial resources;
 - (d) liaise with the National Innovation Agency and the National Research Fund to ensure funding and implementation of prioritized research programmes;
 - (e) ensure co-ordination and co-operation between the various agencies involved in science, technology and innovation;
 - (f) accredit research institutes and approve all Scientific research in Kenya;
 - (g) assure relevance and quality of science, technology and innovation programmes in research institutes;
 - (h) advise on science education and innovation at both basic and advanced levels;
 - (i) in consultation with the National Research Fund Trustees, sponsor national scientific and academic conferences it considers appropriate;
 - (j) advise the Government on policies and any issue relating to scientific research systems;
 - (k) promote increased awareness, knowledge and information of research system;
 - (l) co-ordinate, monitor and evaluate, as appropriate, activities relating to scientific research and technology development;
 - (m) promote and encourage private sector involvement in scientific research and innovation and development;
 - (n) annually, review the progress in scientific research systems and submit a report of its findings and recommendations to the Cabinet Secretary;
 - (o) promote the adoption and application of scientific and technological knowledge and information necessary in attaining national development goals;
 - (p) develop and enforce codes, guidelines and regulations in accordance with the policy determined under this Act for the governance, management and maintenance of standards and quality in research systems; and
 - (q) undertake, or cause to be undertaken, regular inspections, monitoring and evaluation of research institutions to ensure compliance with set standards and guidelines.
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(2) In the performance of its functions under this Act, the Commission shall have powers to—

- (a) apply for the grant or revocation of patents;
- (b) institute such action in respect of the patent as it may deem appropriate for the security of the country;
- (c) acquire from any person the right in, or to, any scientific innovation, invention or patent of strategic importance to the country;
- (d) collaborate with similar scientific institutions or organizations operating outside Kenya; and
- (e) demand and receive annual reports from research institutions.

(3) For avoidance of doubt, only the Commission shall have the powers to perform the functions set out in this section.

(4) The First Schedule shall apply with respect to the conduct of the business and affairs of the Commission.

7. Guiding principles

In the performance of its functions under this Act the Commission and other implementing authorities shall be guided by the following principles—

- (a) the promotion of socio-economic development in line with the country's development agenda;
- (b) achievement of manpower development and skills acquisition;
- (c) promotion of knowledge creation, storage and dissemination;
- (d) development of research, and innovation and the application of innovation to development; and
- (e) contribution to community service.

8. Commission Director-General

(1) There shall be a Director-General to the Commission who shall be appointed by the Cabinet Secretary on the recommendation of the Commission after a competitive recruitment process.

(2) A person shall be qualified for appointment as a Director-General if the person—

- (a) holds a doctorate degree from a university recognised in Kenya;
- (b) has at least fifteen years experience in management of public or private institutions; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Director-General shall be the chief executive officer of the Commission and shall be responsible for the day-to-day management of the affairs of the Commission.

(4) The Director-General shall hold office for a period of five years renewable for one further term.

(5) The Commission may employ such other officers and staff as may be necessary for the performance of the functions of the Commission.

[Act No. 18 of 2014, Sch.]

PART III – ADVISORY RESEARCH COMMITTEES

9. Establishment of Advisory Research Committees

(1) The Commission may establish Advisory Research Committees for the scheduled sciences set out in the Second Schedule.

(2) The members of the committees established under subsection (1) may include persons employed as consultants from outside the Commission.

(3) The Cabinet Secretary may, on recommendation of the Commission and from time to time by Order in the *Gazette* amend the Second Schedule.

10. Functions of the Committees

An Advisory Research Committee shall, within its area of responsibility, undertake the following functions and advise the Commission—

- (a) analyse and advise the Commission on the programmes and projects required to implement the priorities arising from the national science, technology and innovation policy and the concomitant budget requirement arising therefrom;
- (b) encourage, promote and co-ordinate all types of research;
- (c) assess and maintain a database of programmes and projects, and any research facilities in use in the country;
- (d) survey and maintain a database of any programmes and projects in research systems which may be appropriate to the country being carried out outside the country and make recommendations to the Commission; disseminate information on such programmes both inside and outside Kenya;
- (e) advise the Commission on such organizational changes, including the creation of research institutions, as may be required to implement, or to further the efficiency of, the research required in the country;
- (f) encourage general education in science and technology and innovation and advise the commission on the sponsorship of postgraduate training, and manpower development requirements for each Scheduled Science; and
- (g) carry out such other activities as may further the advancement of research and its application to development.

11. Reports of Advisory Research Committees

(1) Every Advisory Research Committee shall, at the end of each financial year, compile and submit a report to the Commission giving details of—

- (a) the activities of the Committee during that year; and
- (b) the major achievements within its sector.

(2) The Third Schedule shall apply with regard to a Advisory Research Committee established under this Part.

PART IV – LICENSING OF RESEARCH

12. Requirement for licence to undertake research

(1) Subject to the provisions of any other law, a person shall not undertake scientific research in Kenya without obtaining a licence under this Act.

(2) Subsection (1) shall not apply to a person conducting scientific research within a university or an academic research institution programme.

(3) Any person undertaking or intending to undertake research in science and technology in the country, or who accesses, handles, or transfers any material or technology or moves it within, from or into the country, shall apply to the Commission for the grant of a licence in accordance with this Act

(4) Notwithstanding the generality of subsection (2), the Cabinet Secretary may, on recommendation of the Commission, by notice in the *Gazette*, exempt any research from the requirements of subsection (1).

(5) Notwithstanding the provisions of subsection (1), no licence shall be granted for any research involving activities which—

- (a) may adversely affect the culture of any community in Kenya;
- (b) may adversely affect the environment;
- (c) may result in the exploitation of intellectual property rights of communities to their traditional knowledge.
- (d) may, in the view of the Commission, adversely affect the lives of Kenyans.

[Act No. 18 of 2014, Sch.]

13. Grant of licence

(1) The Commission shall, upon receipt of an application under section 12, evaluate the application, and if satisfied that the conduct of the research is beneficial to the country, and, that the research shall not adversely affect any aspect of the nature, environment or the security of the country, issue to the applicant a licence in the prescribed form.

(2) The licence issued under this section shall be under the seal of the Commission and shall indicate the commencement and expiry date:

Provided that a holder of a licence may apply for the extension of the licence period on proof that the completion of the research was delayed for a justifiable cause, and such extension shall not be withheld unreasonably.

(3) The Commission shall keep a register of all persons granted licence under this Part, which register shall be available for public inspection during normal working hours free of charge.

14. Procedures, standards, ethics and guidelines

Any person issued with a licence pursuant to this Part shall adhere to such procedures, standards, code of ethics and guidelines as may be prescribed by regulations made under this Act.

15. Offences

(1) Any person who—

- (a) accesses, handles, transacts, transfers or moves any specified technology or any material necessary for scientific research within, into or from Kenya without a licence issued under this Act; or
- (b) contravenes the provisions of section 12,

commits an offence and shall, in addition to any other penalty which may be provided for in this Act or any other written law, be liable

on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding four years, or both.

(2) The Court convicting a person under subsection (1) may in addition to any penalty imposed thereunder, order the confiscation of the materials in respect of which the offence is committed, and may bar the person so convicted from undertaking any further research in the country or transferring or moving any substance or material in or out of the country.

(3) For the avoidance of doubt, the technologies or materials imported into or exported out of Kenya and declared under—

- (a) the Industrial Property Act (No. 3 of 2001);
- (b) the Seeds and Plant Varieties Act (Cap. 326);
- (c) the Wildlife (Conservation and Management) Act (Cap. 376);
- (d) the Customs and Excise Act (Cap. 472);
- (e) the Biosafety Act (No. 2 of 2009);

or any other written law shall be deemed to be technologies or materials to which this section applies.

PART V – REGISTRATION OF RESEARCH INSTITUTES

16. Establishment of research institutions

(1) The Cabinet Secretary may, on the recommendation of the Commission, by notice in the *Gazette* establish a research institute and grant a Certificate of Registration in accordance with the provisions of this Act.

(2) Notwithstanding subsection (1), the research institutes set out in the Fourth Schedule and any other research institute established under any other law shall be deemed to be established under this section.

(3) An order under this section may specify—

- (a) that the institute to which it relates shall have corporate personality;
- (b) the duties, powers and functions of the institute;
- (c) the manner in which the institute shall be governed; and
- (d) such other matters with respect to the conduct and management of the institute, as the Minister may find it necessary or desirable to provide for.

17. Application to the Commission to establish research institutes

(1) A person intending to establish a research institution in Kenya shall make an application to the Commission in the prescribed manner for the grant of a Certificate of Registration.

(2) In the case of a public research institution, the Cabinet Secretary for the time being responsible for the scheduled science within which the proposed institution lies shall cause an application to be made under this section.

(3) An application under this section shall contain—

- (a) the scheduled science within which the institution lies;
 - (b) the governance structure of the proposed institution;
 - (c) any intended affiliations, centers or branches of the institution;
 - (d) the functions of the institution in addition to such functions as may be set out under this Act; and
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- (e) any other matter which the Commission may from time to time prescribe.

(4) The Commission shall, within thirty days from the date of receipt of the application under subsection (1)—

- (a) record the application;
- (b) assess the application against criteria specified under this Act; and
- (c) notify the applicant in writing of the preliminary decision of the Commission.

18. Commission to examine application

(1) Upon notifying the applicant under section 17(4)(c), the Commission shall, within ninety days—

- (a) examine the documentation submitted and other relevant information available in respect of that application;
- (b) evaluate and assess the quality of facilities available or intended for use in respect of the proposed institution; and
- (c) prepare detailed comments, including any comments for improvements, to the facilities and advise the applicant accordingly.

(2) Where the Commission is satisfied that the application is in accordance with the provisions of this Act and that it meets the standards set out by the Commission, it shall submit a report and its recommendation to the Cabinet Secretary.

(3) The Cabinet Secretary shall consider a report submitted in accordance with subsection (2) and, if satisfied that the establishment of the proposed institution may be of benefit to the country, establish the institution by grant of a Certificate of Registration.

(4) The Cabinet Secretary shall by a notice in the *Gazette* give notice of the registration and mandate of an institute granted a Certificate of Registration.

19. Effect of registration

A research institute established in accordance with this Part shall be a body corporate with perpetual succession and shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for its own purposes.

20. Appeal against decision of Commission

Any person aggrieved by the decision of the Commission under this Part may, within sixty days of receiving the notification thereof, appeal to the Cabinet Secretary or to any other authority appointed by the Cabinet Secretary in that behalf.

21. Offence to establish or operate research institutes without authority

(1) Any person who establishes or operates a research institute without obtaining a Certificate of Registration commits an offence under this Act and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of not exceeding two years or to both.

(2) Any property, equipment, material or other facilities used in a research institution in contravention of this Act shall be liable to be confiscated by the Commission and disposed of in the manner deemed appropriate by the Commission.

22. Maintenance of ethics and standards

(1) A research institution established under the provisions of this Act shall maintain the standards and ensure compliance with the code of conduct or other regulations prescribed by the Commission.

(2) The Commission may take any action against a research institute which is in breach of subsection (1), including—

- (a) by notice in writing requiring the institution to remedy the breach; or
- (b) closing the institution.

23. External monitoring and evaluation

(1) The Commission shall at least once in every three years, conduct an evaluation of each research institute established under this Act for purposes of assessing and evaluating the quality of activities and products of such an institution.

(2) The Commission may appoint a suitably qualified person or body to act as its agent for purposes of subsection (1).

(3) In undertaking monitoring and evaluation under subsection (1), the Commission shall have the power to inquire into the programmes, management or any other relevant matter concerning the institution, and may interview any employee, call for or impound, examine and review any documents, reports or information held or kept by the institute, and access any facilities affiliated to the institution, or utilise such methods or modalities of monitoring and evaluation as may be prescribed under this Act.

(4) An officer or employee of research institution which is the subject to the process of monitoring and evaluation under this section shall supply such documents, reports or information as the Commission or its agent may request.

(5) The Commission shall prepare a report of its findings and submit a copy to the Cabinet Secretary, and may take such further action as it may deem necessary or as the Cabinet Secretary may advise.

(6) The cost of any evaluation or monitoring shall be borne by the respective institution.

24. Notice to rectify and sanctions

(1) The Commission, may after evaluation of an institution under this Act, by notice in writing require the research institutions which is the subject of the evaluation to comply with such standard or such instruction as the Commission may specify within a prescribed time and in a prescribed manner.

(2) If any institution fails to comply with a notice served under subsection (1) the Commission may recommend to the Cabinet Secretary that such institution be closed either permanently or until compliance.

25. Rights of Institutes to research findings and discoveries

(1) All rights in any discoveries, inventions and improvements in respect of processes, products, apparatus and machines made on behalf of an institution shall vest in the institution but may be made available for use in the public interest.

(2) Any publication arising from research work carried out by a researcher for or on behalf of an institution shall be subject to approval by that institute.

[Act No. 18 of 2014, Sch.]

26. Storage and dissemination of research findings

Research, findings and information regarding research systems shall be stored or disseminated, utilised or applied in such a manner as may be prescribed by the Commission from time to time.

27. Power to establish committees

The Commission may set up committees or affiliations with research institutions or such other bodies as it may deem appropriate for the better carrying out of its functions under this Act.

PART VI – THE KENYA NATIONAL INNOVATION AGENCY**28. Establishment of the Agency**

(1) There is established an agency to be known as the Kenya National Innovation Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) purchasing, holding and disposing of movable and immovable property; and
- (c) doing all such other things as may be done by a body corporate.

(3) The Agency shall be governed by a Board which shall consist of nine members to be appointed by the Cabinet Secretary as follows—

- (a) a chairperson, being a person with knowledge and experience in matters related to science, technology or innovation;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters related to research, science and technology;
- (c) the Commission Secretary;
- (d) the Director of the National Research Fund;
- (e) four persons appointed by virtue of their knowledge and experience in science, technology and innovation; and
- (f) one person nominated by the body currently responsible for linking the industry with institutions for higher learning.

(4) The Director of the Agency shall be the Secretary to the Board of the Agency.

(5) The provisions relating to the appointment of members of the Commission set out in section 5 shall apply *mutatis mutandis* to the members of the Agency.

29. Functions of the Agency

(1) The functions of the Agency shall be to develop and manage the Kenya National Innovation System, and for that purpose to—

- (a) institutionalise linkages between universities, research institutions, the private sector, the Government, and other actors in that System;
 - (b) cause the creation of science and innovation parks, institutes or schools or designate existing institutions as centres of excellence in priority sectors;
 - (c) develop and continuously benchmark national innovation standards based on international best practices;
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- (d) scout for and nurture innovative ideas from individuals, training institutions, the private sector and similar institutions;
- (e) establish and regularly update a database on innovation in collaboration with other relevant institutions;
- (f) monitor, forecast and maintain a database of the latest and future global technology;
- (g) increase awareness of intellectual property rights among innovators;
- (h) ensure the inclusion of science, technology and innovation in the country's programs and policies at all levels;
- (i) establish and maintain a Presidential or other award system for novel innovations, subject to prescribed conditions;
- (j) implement the national innovation and commercialization policy;
- (k) disseminate scientific knowledge or technology through any medium;
- (l) recommend provision of financial and any other assistance to any person, for the purpose of enabling that person to develop any technological innovation;
- (m) acquire rights or interests in or to any technological innovation supported by the Agency from any person or assign any person any rights in or to such technological innovation;
- (n) create synergies among different technological innovations, incubations initiatives for diffusion of technology in Kenya;
- (o) develop the national capacity and infrastructure to protect and exploit intellectual property derived from research or financed by the Agency;
- (p) facilitate the application for grant or revocation of patents and institution of legal action for infringement of any intellectual property rights;
- (q) recommend the provision of financial and any other assistance to any person for the purpose of encouraging the person to develop any technological innovation;
- (r) identify strategic fields of innovation; and
- (s) provide incubators for innovative ideas;
- (t) perform other functions incidental to the above.

(2) The Agency may for purposes of its functions under this Act establish such offices in the counties as it may deem necessary for the purpose of its functions under this Act.

30. Director of the Agency

(1) There shall be a Director of the Agency who shall be employed by the Agency through a competitive process on such terms and conditions as the Agency may, with the advice of the Salaries and Remuneration Commission, determine.

(2) The Director of the Agency shall be the chief executive officer of the Agency and responsible to the Board of the Agency for the day-to-day running of the affairs of the Agency.

(3) The Board of the Agency may employ such other staff as may be necessary for the performance of the functions of the Agency.

31. Funds of the Agency

(1) The funds of the Agency shall consist of—

- (a) monies provided by Parliament;
- (b) such monies or assets as may accrue to the Agency in the course of the performance of its functions under this Act;
- (c) all monies from any other source provided, donated or lent to the Agency.

(2) The financial provisions set out in Part VIII of this Act shall apply *mutatis mutandis* to the Agency.

PART VII – THE NATIONAL RESEARCH FUND**32. Establishment of the Fund**

(1) There is established a Fund to be known as the National Research Fund.

(2) The Fund shall consist of—

- (a) a sum of money amounting to two per cent of the country's gross domestic product, provided by the Treasury every financial year;
- (b) such sums of money as may be specifically designated for the Fund by Parliament; and
- (c) such other sums of money as may be received in the form of donations, endowments, grants or gifts from whatever source designated for the Fund;
- (d) such other sums of money levied on for licences for research.

(3) Any donations made to the Fund under subsection (2)(c) shall where the income is derived from Kenya, be zero-rated.

(4) The Fund shall be managed by a Board of Trustees which shall consist of nine members to be appointed by the Cabinet Secretary as follows—

- (a) a chairperson, being a person with knowledge and experience in matters related to finance, investment and fundraising;
- (b) the Principal Secretary in the Ministry responsible for finance;
- (c) the Principal Secretary in the Ministry responsible for science and technology;
- (d) one person nominated by the Kenya Private Sector Alliance;
- (e) two persons with knowledge and experience in finance and investment nominated by the Kenya Bankers Association;
- (f) one person from a body with functions similar to those of the Fund in Kenya;
- (g) the Director of the Kenya Innovation Agency; and
- (h) the Secretary to the Commission.

(5) For purposes of appointing the members of the Board of the Trustees referred to under subsections (4)(a), (d), (e) and (f), the Cabinet Secretary shall appoint a selection panel in the manner set out under section 5(8), which shall compile through an open and competitive process a shortlist of not more than nine names.

(6) The selection panel shall compile the shortlist after following a transparent and competitive nomination process.

33. Objects of the Fund

(1) The object of the Fund shall be to facilitate research for the advancement of science, technology and innovation.

(2) Without prejudice to the generality of the foregoing, monies out of Fund may be applied for—

- (a) the award of contracts, grants, scholarships or bursaries or any other award determined by the Commission to persons or institutions;
- (b) financial support for the acquisition or establishment of research facilities;
- (c) the development of appropriate human resources and research capacity in the areas of science technology and innovation;
- (d) financing research systems in all sectors and all levels of education;
- (e) funding the co-operation and sharing of research information and knowledge, including supporting conferences, workshops, seminars, meetings and other symposia.

(3) The Board of Trustees shall compile and maintain a national database of research and innovations financed out of the Fund and undertake any other function assigned by the Government through the Commission.

34. Director and staff of the Fund

(1) There shall be a Director of the Fund.

(2) The provisions relating to the appointment of the Secretary of the Commission set out in section 8 shall apply *mutatis mutandis* to the appointment of the Director of the Fund.

(3) The provisions relating to the appointment of staff of the Commission set out in section 8 shall apply *mutatis mutandis* to the appointment of staff of the Fund.

35. Provisions relating to the Fund

The financial provisions set out in Part VII of this Act shall apply *mutatis mutandis* to the Fund.

36. Functions of the Board of Trustees

(1) The Board of Trustees shall—

- (a) mobilize resources for the Kenya National Innovation Agency from the Government, the private sector, venture capital, development partners and other sources;
 - (b) prudently manage and invest the funds so mobilized;
 - (c) support the development of human resources through grants to persons or research institutions or universities pursuing postgraduate programs in prioritized areas of science, technology and innovation with priority being given to marginalised indigent communities;
 - (d) support the development of research capacities in the national priority areas of science, technology and innovation;
 - (e) allocate funds for research and promote multi-disciplinary collaboration among Universities and research institutions, including the innovation delivery agencies established under section 29;
 - (f) evaluate the needs, status and results of research financed through the Fund;
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- (g) provide financial support for the development of research facilities by universities, research institutions and other bodies identified by the Commission;
- (h) provide financial support for participation in international scientific activities through maintaining membership to appropriate international science organizations;
- (i) provide financial support for collaboration, co-operation and sharing of research information and knowledge, including supporting conferences, workshops, seminars, meetings and other symposia;
- (j) promote the provision of an information infrastructure linking research institutions to facilitate co-operation and sharing of research information and knowledge;
- (k) initiate liaison with bodies involved in the protection of intellectual property rights;
- (l) compile and maintain a national database of research and innovation funded by the Fund as well as those funded by other agencies.

(2) The Board of Trustees may from time to time cause the monitoring and evaluation of the results and impact of the research activities financed out of the Fund.

PART VIII – FINANCIAL PROVISIONS

37. Funds of the Commission

The funds of the Commission shall consist of—

- (a) fees and charges for services rendered;
- (b) such monies as may be lawfully earned from income generating activities; and
- (c) monies granted, donated or lent to the Commission from any other source, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance.

38. Financial year

The financial year of the Commission, the Agency and the Fund shall be the period of twelve months ending on the thirtieth day of June in each year.

39. Annual estimates

(1) At least three months before the commencement of each financial year, the respective Boards shall each cause to be prepared estimates of the revenue and expenditure of the Commission, the Agency and the Fund for that year.

(2) The annual estimates shall make provision for the estimated expenditure of each body for that year, including—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Commission, the Agency and the Fund;
- (b) the proper maintenance of the buildings and grounds of the Commission, the Agency and the Fund;
- (c) the maintenance, repair and replacements of the equipment of the Commission, the Agency and the fund.

(3) Each body shall cause to be kept all proper books of accounts of the income and expenditure and assets.

(4) Within three months from the end of each financial year, the Commission, the Agency and the Fund shall each submit to the Auditor General, the accounts of each body together with—

- (a) the statement of income and expenditure during that year; and
- (b) a statement of assets and liabilities of each body on the last day of that year.

(5) The accounts of each body shall be audited and reported upon by the Auditor General in accordance with the Public Audit Act, 2003 (No. 12 of 2003) and any other law relating to the management of public finances.

PART IX – MISCELLANEOUS

40. Museum of Science and Technology

The National Museums of Kenya may, on the recommendation of the Cabinet Secretary, by notice in the *Gazette*, establish a museum of science and technology.

41. Common seal

The Common seal of the Commission shall be kept in the custody of the Director-General and used in the manner the Commission shall direct.

[Act 18 of 2014, Sch.]

42. Disclosure of interest

Where a member of a body set up under this Act is directly or indirectly interested in any contract or other matter before that body and is present at a meeting at which the contract or such other matter is the subject of discussion, the person shall disclose the nature of the interest at the meeting as soon as reasonably practicable after the commencement thereof and shall, in addition to any other appropriate action, not take part in the discussion or voting on the contract or such matter.

43. Protection from personal liability

(1) No matter or thing done by a member, officer, employee or agent of the Commission shall, if the matter or thing is done *bona fide* while executing the functions, powers or duties assigned by the Commission, render the member, officer, employee or agent liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Commission of any liability to pay compensation or damages to any person for an injury to the person or property or any the interests of any person adversely affected by the exercise of the powers conferred by the body in accordance with this Act or any other written law or by failure, whether wholly or partially or any works.

44. General penalties

Any person who commits an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

45. Regulations

(1) The Cabinet Secretary may make Regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations shall prescribe—

- (a) standards, guidelines and codes to ensure and maintain standards and ethics in research;
- (b) the forms to be used in connection with the issuance of licences under this Act;
- (c) the manner and form of the registers to be kept; and
- (d) any other matter for the better carrying into effect of the provisions of this Act.

PART X – REPEALS AND TRANSITIONAL PROVISIONS

46. Interpretation of Part

In this Part—

“**appointed day**” means the day appointed by the Cabinet Secretary for the coming into operation of this Act;

“**Council**” means the National Council for Science and Technology existing immediately before the commencement of this Act.

47. Repeal of Cap. 250

(1) The Science and Technology Act (Cap. 250) is repealed.

(2) Notwithstanding subsection (1), the following transitional provisions set out in this Part shall apply.

48. Assets and liabilities

(1) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the Council shall, by virtue of this paragraph, vest in the Commission.

(2) On the appointed day, all rights, powers and liabilities which immediately before such day were vested in, imposed on or enforceable against the Council shall by virtue of this subsection, be vested in, imposed on or enforceable against the Commission.

(3) Any reference in any written law or in any document or instrument to the Council shall, on and after the appointed day, be construed to be a reference to the Commission.

(4) The annual estimates of the Council for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Commission for the remainder of that financial year:

Provided that such estimates may be varied by the Commission in such manner as the Cabinet Secretary may approve.

(5) The administrative directions made by the Council or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have effect as if they were directions made by the Commission or the Cabinet Secretary under this Act.

49. Members of the Council

Any person who is a member of the Council immediately before the commencement of this Act shall remain in office for a period not exceeding three months.

50. Staff

(1) Any person who immediately before the appointed day is the Secretary to the Council shall remain in office for the remaining period of his or her term of office.

(2) Any person who is an officer of the Council immediately before the appointed day shall be deemed to be an officer of the Commission subject to such terms and conditions of service as the Commission may determine.

51. Preservation of registration

Any register kept, registration effected, certificate, permission, license, authority issued and or granted, notice or information given, return made or other thing done under the repealed Act which, immediately before the appointed day, was in force or effect, shall continue in force and have effect as if kept, effected, issued, given, made or done under the corresponding provision of this Act.

52. Preservation of contracts and licences

Any form used and any requirement as to the particulars to be entered in any form used for the purposes of the Science and Technology Act (Cap. 250) (now repealed) which was in force immediately before the date of commencement of this Act shall continue in force and have effect as though prescribed under this Act until forms or particulars are so prescribed.

53. Research institutes under the former Act

The research institutes set out in the Fourth Schedule which were established under the repealed Act shall continue to operate as if they had been accredited under this Act and shall forthwith each be issued with a Certificate of Registration by the Commission.

54. Act to prevail

Where any conflict arises between the provisions of this Act and the provisions of any other written law in relation to accreditation, co-ordination of research institutions or any function of the Commission, the provisions of this Act shall prevail.

FIRST SCHEDULE

[Section 6(3).]

**PROVISIONS AS TO THE CONDUCT OF THE
BUSINESS AND AFFAIRS OF THE COMMISSION**

- 1.** The Commission shall meet as often as necessary for the transaction of business, but not more than four months shall elapse between the date of one meeting and that of the next meeting.
 - 2.** The Chairperson may at any time, and shall upon written request by a majority of the members, call a special meeting of the Commission.
 - 3.** The Chairperson shall preside at every meeting of the Commission at which he is present, but in the absence of the Chairperson the members present may elect one from among their number to preside.
 - 4.** The quorum for a meeting of the Commission shall be seven members, who shall include five appointed members.
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5. Unless a unanimous decision is reached, a decision on any matter before the Commission shall by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.

6. A member who has a direct or indirect interest in a matter being considered or to be considered by the Commission shall, as soon as the relevant facts regarding the matter come to knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.

7. The Commission shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.

8. Save as provided in the Schedule the Commission may regulate its own procedure.

SECOND SCHEDULE

[Section 9(1).]

SCHEDULED SCIENCES

- (a) Agricultural and Natural Resource Sciences;
- (b) Physical, Industrial and Energy Sciences;
- (c) Biological and Health Sciences;
- (d) Infrastructure, Information and Communication Sciences;
- (e) Humanities and Social Sciences;
- (f) Earth and Space Sciences; and
- (g) Such other sciences as the Commission may determine from time to time.

THIRD SCHEDULE

PROVISIONS AS TO ADVISORY RESEARCH COMMITTEES

1. In this Schedule—

“Cabinet Secretary responsible” means the Cabinet Secretary responsible for matters relating to the subject of the scientific research;

“Research Committee” means a committee established under section 9 and includes a sub- committee;

2. A Research Committee shall consist of the following members appointed by the Cabinet Secretary—

- (a) a chairman who shall be an eminent scientist in the sector of scientific responsibility of the Committee;
 - (b) not more than ten members who are research scientists or technologists representing that sector of scientific responsibility; and
 - (c) not more than three members who have close association with the development and use of the scheduled sciences included in that sector of scientific responsibility.
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3. Save as hereinafter provided—

- (a) the chairperson of a Research Committee shall hold office for a period of five years and shall be eligible for reappointment, provided that no person shall hold such office for more than two such periods consecutively;
- (b) a member, other than the chairperson, of a Research Committee, shall hold office for a period of three years and shall be eligible for reappointment for one further term.

4. If a Research Committee so recommends, the Cabinet Secretary responsible may by notice in writing addressed to a member of that Committee, terminate the appointment of such member without assigning any reason therefor, and such termination shall have effect from the date of receipt of the notice by the member or from such later date as the Cabinet Secretary responsible may specify.

5. Where the Cabinet Secretary responsible for a Research Committee is satisfied that, owing to illness, absence or other reasonable cause, the chairperson or any other member of the Committee is temporarily unable to exercise the functions as such, may appoint a suitably qualified person to act as chairperson or as a member, as the case may be, during the period of such disability and may at any time revoke such temporary appointment.

6. The quorum of a Research Committee shall be not less than one-half of its membership.

7. Where the chairperson of a Research Committee is unable for any reason to attend a meeting of the Committee, the members present may elect one of their number to preside at that meeting.

8. The following persons shall be entitled to attend a meeting of a Research Committee and to take part in the deliberations thereat, but not to vote—

- (a) representatives of the Cabinet Secretary responsible;
- (b) a Director or other head of a Government Research Department;
- (c) a member of the Commission or of its secretariat;
- (d) representatives of any other Cabinet Secretary who has sought the advice of the Committee on any matter which is being considered at that meeting.

9. After consultation with a Research Committee the Cabinet Secretary responsible shall appoint a public officer to be the secretary to the Committee, who shall manage the affairs of the Committee under its direction.

10. (1) A Research Committee may appoint such standing or other sub-committee as it may consider necessary for the more efficient performance of its functions.

(2) A sub-committee appointed under this section shall consist of a chairperson who shall be one of the members of the Research Committee and such other persons, whether or not members of the Committee, as the Committee may deem fit.

(3) A Research Committee may at any time dissolve, or vary the composition of, any sub-committee appointed by it.

11. Save as provided in this Schedule, a research Committee may regulate its own procedure.

FOURTH SCHEDULE

[Section 53.]

EXISTING RESEARCH INSTITUTES

1. The Kenya Agricultural Research Institute;
 2. The Kenya Forestry Research Institute;
 3. Kenya Industrial Research and Development Institute;
 4. Kenya Marine and Fisheries Research Institute;
 5. Kenya Medical Research Institute;
 6. Kenya Trypanosomiasis Research Institute.
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