

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 522 Cape Town, 22 December 2008 No. 31745
Kaapstad, 22 Desember 2008

THE PRESIDENCY

No. 1402 22 December 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 51 of 2008: Intellectual Property Rights from Publicly Financed Research and Development Act, 2008.

LIHHOVISI LEMENGAMELI

No. 1402 22 December 2008

Ngaloku kwentiwa satiso sekutsi uMengameli uwuvumile lomTsetfo lola-ndzelako, lekungumTsetfo lokhishwako lapha kutsi watiwe ngumphakatsi wonkhe:—

No. 51 wa 2008: ngeMTsetfo weMalungelo Emphahla yeBuhlakani levela kuLucwaningo nekuTfutukisa lokuKhokhelwe nguHulumende, 2008.

Act No. 51, 2008 INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY
FINANCED RESEARCH AND DEVELOPMENT ACT, 2008

(English text signed by the President.)
(Assented to 17 December 2008.)

ACT

To provide for more effective utilisation of intellectual property emanating from publicly financed research and development; to establish the National Intellectual Property Management Office and the Intellectual Property Fund; to provide for the establishment of offices of technology transfer at institutions; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
 - 5 **“BBBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
 - “commercialisation”** means the process by which any intellectual property emanating from publicly financed research and development is or may be adapted or used for any purpose that may provide any benefit to society or commercial use on reasonable terms, and **“commercialise”** shall have a corresponding meaning; 10
 - “Department”** means the Department of Science and Technology;
 - “disclosure”** means the provision of full details of potential intellectual property contemplated in section 5 of this Act;
 - “funding agency”** means the State or an organ of state or a state agency that funds research and development; 15
 - “institution”** means—
 - (a) any higher education institution contemplated in the definition of **“higher education institution”** contained in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997); 20
 - (b) any statutory institution listed in Schedule 1; and
 - (c) any institution identified as such by the Minister under section 3(2);
 - “intellectual property”** means any creation of the mind that is capable of being protected by law from use by any other person, whether in terms of South African law or foreign intellectual property law, and includes any rights in such creation, but excludes copyrighted works such as a thesis, dissertation, article, handbook or any other publication which, in the ordinary course of business, is associated with conventional academic work; 25

NGEMTSETFO WEMALUNGELO EMPHAHLA Act No. 51, 2008
 YEBUHLAKANI LEVELA KULUCWANINGO NEKUTFUFUKISA
 LOKUKHOKHELWE NGUHULUMENDE, 2008

(English text signed by the President.)
 (Assented to 17 December 2008.)

UMTSETFO

Kuniketa kusetjentiswa lokunemphumelelo kwemphahla yebuhlakani letfolwe ngekwelucwaningo lolukhokholwe nguhulumende kanye nekutfufukisa; kusungulwa kwelihhovisi leKuphatfwa kweMphahla yeBuhlakani Velonkhe kanye neSikhwama seMphahla yeBuhlakani kubuye kuniketwe kusungulwa kwe-mahhovisi ekudluliswa kwetebuchwepheshe etikhungweni; nekuniketela kutindzaba letichumene naloko.

N GAKO UTAWUMISWA yiPhalamende yeRiphabhulikhi yeNingizimu afrika, ngalendlela:—

Kuchazwa kwemagama

1. KuloMtsetfo, ngaphandle kwekutsi ingcikitsi ikubeke ngaleny indlela—
 - “**BBBEE**” kushiwo kuniketwa emandla kutemnotfo walabamnyama lokubuketwe mhlaba wonkhe njengoba kuchaziwe kusigaba 1 we *Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)*; 5
 - “**inchubo yetekutsengiselana**” kushiwo inchubo lapho khona noma ngabe nguyiphi imphahla yebuhlakani levela kulucwaningo nekutfufukisa lokukhokhelwe nguhulumende ingaguculwa noma isetjentiswe nganoma ngabe nguyiphi injongo lenganiketa noma ngukuphi kuhlomula kummango noma isetjentiswe kutekutsengiselana ngendlela levakalako; 10
 - “**tekutsengiselana**” titawuba nenchazelo lehambisanako;
 - “**Litiko**” Kushiwo Litiko leteSayensi neBuchwepheshe noma lokungaphasi kwalo; 15
 - “**kuveta**” kusho kuniketa imininingwane legcwele yalokungenteka kumphahla yebuhlakani levetwe kusigaba 5 waloMtsetfo;
 - “**sikhungo lesiniketa lusito kutetimali**” kushiwo hulumende, umbuso noma incenye, noma inhlango lesungulwe nguhulumende ngetinjongo tekusekela ngekwetimali lucwaningo kanye nekutfufuka; 20
 - “**sikhungo**” kushiwo—
 - (a) noma ngabe ngusiphi sikhungo semfundvo lephakeme lesivetwe kulenchazelo ye “**sikhungo semfundvo lephakeme**” lecuketfwe kusigaba 1 we *Higher Education Act, 1977 (Act No. 101 of 1997)*;
 - (b) noma ngabe ngusiphi sikhungo lesisemtsetfweni lesibhalwe kuloluhla lwe 1; kanye 25
 - (c) nanoma ngabe ngusiphi sikhungo lesibonwe nguNgcongcoshe njengalesinjalo ngaphasi kwesigaba 3(2);
 - “**imphahla yebuhlakani**” “imphahla yebuhlakani” kushiwo noma ngabe ngukuphi lokubunjiwe ngekwebuhlakani lokufanele kuvikeleke ngekwemtsetfo kutsi kusetjentiswe ngunoma ngabe ngubani, noma ngekyuya kwemtsetfo waseNingizimu Afrika noma umtsetfo wemphahla yebuhlakani wemave angaphandle, ubuye ufake ekhatsi noma ngabe nguwaphi emalungelo aloko lokubunjiwe, kodvwa awufaki ekhatsi umsebenti walokushicilelwe njengalokubhalwe ngesifundvo lesitsite ngenhloso yekutfolelele sicu enyuvesi, lokubhalwe ngebuhlakani ngendzaba letsite, emabhuku lanemininingwane 35

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- “intellectual property creator”** means the person involved in the conception of intellectual property in terms of this Act and identifiable as such for the purposes of obtaining statutory protection and enforcement of intellectual property rights, where applicable;
- “intellectual property transaction”** means any agreement in respect of intellectual property emanating from publicly financed research and development, and includes licensing, assignment and any arrangement in which the intellectual property rights governed by this Act are transferred to a third party; 5
- “Minister”** means the Minister responsible for the Department;
- “Nett revenues”** means the revenue less the expenses incurred for intellectual property protection and commercialisation of the intellectual property, as may be prescribed; 10
- “NIPMO”** means the National Intellectual Property Management Office established by section 8;
- “offshore”** means outside the borders of the Republic; 15
- “prescribed”** means prescribed by regulation;
- “publicly financed research and development”** means research and development undertaken using any funds allocated by a funding agency but excludes funds allocated for scholarships and bursaries;
- “recipient”** means any person, juristic or non-juristic, that undertakes research and development using funding from a funding agency and includes an institution; 20
- “regulation”** means any regulation made in terms of section 17 of this Act;
- “revenue”** means all income and benefits, including non-monetary benefits, emanating from intellectual property transactions, and includes all actual, non-refundable royalties, other grant of rights and other payments made to the institution or any other entity owned wholly or in part by an institution as a consideration in respect of an intellectual property transaction, but excludes a donation and **“gross revenues”** shall have a corresponding meaning; 25
- “small enterprise”** means a small enterprise as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996); 30
- “this Act”** includes the regulations made in terms of this Act.

Objects of Act

2. (1) The object of this Act is to make provision that intellectual property emanating from publicly financed research and development is identified, protected, utilised and commercialised for the benefit of the people of the Republic, whether it be for a social, economic, military or any other benefit. 35
- (2) This Act furthermore seeks to ensure that—
- (a) a recipient of funding from a funding agency assesses, records and reports on the benefit for society of publicly financed research and development;
 - (b) a recipient protects intellectual property emanating from publicly financed research and development from appropriation and ensures that it is available to the people of the Republic; 40
 - (c) a recipient identifies commercialisation opportunities for intellectual property emanating from publicly financed research and development;
 - (d) human ingenuity and creativity are acknowledged and rewarded; 45
 - (e) the people of the Republic, particularly small enterprises and BBBEE entities, have preferential access to opportunities arising from the production of knowledge from publicly financed research and development and the attendant intellectual property;
 - (f) following the evaluation of a disclosure, researchers may publish their research findings for the public good; and 50

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- ngalokutsite noma ngabe ngukuphi lokushicilelwe, kulesikhatsi nje sekusebenta, kufaka ekhatsi umsebenti nje lojwayelekile wetemfundvo;
- “sivumelwano ngemphahla yebuhlakani”** kushiwo noma ngusiphi sivumelwano lesifaka ekhatsi imphahla yebuhlakani levela kulucwaningo nekutfufukisa lokukhokhelwe nguhulumende ibuye ifake ekhatsi kuniketa 5
 imvume, umsebenti kanye nanoma ngabe ngusiphi sivumelwano lapho khona emalungelo emphahla yebuhlakani lalawulwa ngekwaloMtsetfo adluliselwa kuwesitsafu;
- “umbumbi wemphahla yebuhlakani”** kushiwo umuntfu lofake sandla ekwakheni imphahla yebuhlakani ngekwaloMtsetfo wabuye wabonwa njenge- 10
 muntfu lonjalo ngetinhloso tekutfoa kuvikeleka ngalokusemtsetfweni nekuniketwa emalungelo emphahla yebuhlakani lapho kufaneleke khona;
- “Ngcongcoshe”** kushiwo Ngcongcoshe lophetse Litiko;
- “Inzuzo lesele nasekukhishwe konkhe”** kushiwo inzuzo lengaphansi kwale- 15
 tindleko letibe khona ekuvikeleni imphahla yebuhlakani kanye nalenchubo yekutsengiselana ngalemphahla yebuhlakani, njengoba kutawube kubekiwe;
- “NIPMO”** kushiwo Lihhovisi laVelonkhe letekuPhafwa kweMphahla yeBu-
 hlakani, njengoba lisungulwe ngekwesigaba 8 waloMtsetfo;
- “phesheya”** kushiwo ngaphandle kweRiphabhulikhi;
- “lokubekiwe”** kushiwo lokubekwe ngermtsetfo lohayiwe; 20
- “lucwaningo kanye nekutfufukisa lokukhokhelwa nguhulumende”** kushiwo lucwaningo kanye nekutfufukisa lokwentiwe kusetjentiswa noma ngutiphi timali letiphakelwe sikhungo setimali kodvwa akufaki ekhatsi timali letiniketwe emaskolashiphu kanye nemifundzate;
- “umamukeli”** kushiwo noma ngubani, lofundzele temtsetfo noma longa- 25
 kafundzeli temtsetfo, lowenta lucwaningo nekutfufukisa asebantisa timali letivela kusikhungo lesiniketa lusito kutetimali lokufaka ekhatsi sikhungo;
- “umtsetfosimiso”** kushiwo umtsetfosimiso lowentiwe ngekwesigaba 17 salo-
 Mtsetfo;
- “imali letfolwa ngetindlela tonkhe”** kushiwo wonkhe umholo kanye nenzuzo 30
 kufaka ekhatsi inzuzo lengasiyo imali, lezuzwe ngulowo lowamukelako kusivumelwano ngemphahla yebuhlakani ibuye ifake ekhatsi konkhe lokuliciniso, lokuzuziwe lokungeke kwasetjentiswa futsi, lokunye kuniketwa kwemalungelo, kanye nalokunye lokukhokhelwe kulesikhungo noma ngabe ngukuphi kutse-
 ngiselana lokuphetfwe ngalokugcwele noma incenye yaso sikhungo njengendlela 35
 yekumakwa kwesivumelwano semphahla yebuhlakani kubuye kungafaki ekhatsi imali yekuphiwa **kanye nenzuzo yonkhe yalokutfolakele** itawuba nenchazelo lefanako;
- “ibhizinisi leyiseyincane”** kushiwo “ibhizinisi leyiseyincane” njengoba ichaziwe kusigaba 1 we*National Small Enterprise Act, 1996 (Act No. 102 of 1996)*; 40
- “loMtsetfo”** ufaka ekhatsi lemsetfo lemisiwe lekhishwe ngekwaloMtsetfo.

Tinjongo taloMtsetfo

2. (1) Tinjongo taloMtsetfo kugunyata kutsi imphahla yebuhlakani levela kulucwaningo kanye nekutfufukisa lokukhokhelwe nguhulumende ibonwe, ivikelwe isetjentiselwe ibuye itsengiselwe kuhlomulisa ummango, noma kungaba bantfu 45
 beRiphabhulikhi, kutemnotfo, temphi noma ngabe nguyiphi indlela yekuhlomula.
- (2) LoMtsetfo ubuye ufune kucinisekisa kutsi—
- (a) umamukeli lotfoa lusito lwetimali kusikhungo lesiniketa lusito lwetimali ubuketa, arekhode abuye abike kute ahlomulise ummango ngelucwaningo nekutfufukisa lokukhokhelwe nguhulumende; 50
- (b) umamukeli uvikela imphahla yebuhlakani levela kulucwaningo neku-
 tufukisa lolukhokhelwe nguhulumende kutsi isetjentiswe futsi acinisekise kutsi iyatfolakala kubantfu baseRiphabhulikhi;
- (c) umamukeli uvikela imphahla yebuhlakani levela kulucwaningo neku-
 tufukisa lolukhokhelwe nguhulumende kutsi isetjentiswe futsi acinisekise 55
 kutsi iyatfolakala kubantfu baseRiphabhulikhi
- (d) lapho kufanele khona, Umbuso ungasebantisa lemiphumela yelucwaningo nekutfufukisa lokukhokhelwe nguhulumende kanye nakubasiti betemphahla yebuhlakani ngekwenshisekelo yebantfu beRiphabhulikhi.
- (f) kulandzela lukubuyeketwa kwalokuvetiwe, bacwaningi bangakhipha 60
 imiphumela yelucwaningo lwabo kwentela kutiveta kahle kummango; kanye

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- (g) where necessary, the State may use the results of publicly financed research and development and the attendant intellectual property in the interest of the people of the Republic.

Application of Act

3. (1) This Act applies to intellectual property emanating from publicly financed research and development. 5

(2) (a) Subject to paragraph (b), the Minister may, in addition to the institutions to which this Act applies, by notice in the *Gazette*, identify any other institution to which this Act applies if he or she is satisfied that the institution may develop intellectual property from publicly financed research and development. 10

(b) Any identification contemplated in paragraph (a) must be done with the concurrence of the Minister responsible for the institution concerned.

Choice in respect of intellectual property

4. (1) Subject to section 15(2), intellectual property emanating from publicly financed research and development shall be owned by the recipient. 15

(2) A recipient that prefers not to retain ownership in its intellectual property or not to obtain statutory protection for the intellectual property must—

- (a) make the choice in accordance with the regulations and any guidelines published by NIPMO by notice in the *Gazette*; and
 (b) within the period set out in section 5(1)(e), notify NIPMO of the decision and the reasons therefor. 20

(3) NIPMO may, within the prescribed period, after considering the reasons provided by the recipient in terms of subsection (2)(b) and any prejudice that may be suffered by the State if no statutory protection for the intellectual property is obtained, acquire ownership in the intellectual property and, where applicable, obtain statutory protection for the intellectual property. 25

(4) (a) Should NIPMO decide not to acquire ownership in the intellectual property in terms of subsection (3), NIPMO must, in writing, notify the recipient of its decision.

(b) Subject to the reasons given in terms of subsection (2)(b), and on notification contemplated in paragraph (a), the recipient must give the intellectual property creator the option to acquire ownership in the intellectual property and to obtain statutory protection for the intellectual property, provided that in the case where a private entity or organisation had provided some funding, such private entity or organisation shall subject to section 10 first be offered such option before the intellectual property creator. 30

Management obligations and disclosure duties 35

5. (1) A recipient must—

- (a) put in place mechanisms for the identification, protection, development, management of intellectual property, intellectual property transactions and, where applicable, the commercialisation of intellectual property and appropriate capacity-building relating thereto; 40
 (b) provide effective and practical measures and procedures for the disclosure of intellectual property and ensure that intellectual property emanating from any publicly financed research and development is appropriately protected before results of such research and development are published or publicly disclosed by other means; 45
 (c) ensure that personnel involved with the research and development make a disclosure to it within 90 days or such longer period as may be prescribed, of identification by such personnel of possible intellectual property and before the intellectual property is made public; 45
 (d) assess the intellectual property to determine whether it merits statutory protection and, where appropriate, apply for and use best efforts to obtain statutory protection in its name; 50

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- (g) nalapho kufanele khona, Umbuso ungasebentisa lemiphumela yelucwaningo nekutfufukisa lokukhokhelwe nguhulumende kanye nalempahla yebuhlakani lenakiwe ngekuhambisana nenshisekelo yebantfu basRiphabhulikhi.

Kusetjentiswa kweMtsetfo

3. (1) LoMtsetfo usebenta kumphahla yebuhlakani levela kulucwaningo nekutfufukisa lokukhokhelwe nguhulumende. 5

(2) (a) Ngekuya ngendzima (b), Ngcongcoshe anga, kungetela kulesikhungo le loMtsetfo usebenta kuso, ngekwesatiso ku*Gazethi*, khomba noma ngabe ngusiphi sikhungo le loMtsetfo usebenta khona uma ngabe anetiseka kutsi lesikhungo singasungula imphahla yebuhlakani levela kulucwaningo nekutfufukisa lokukhokhelwe nguhulumende. 10

(b) Noma ngabe ngukuphi lokukhonjiwe kundzima (a) kufanele kwentiwe ngemvumo yaNgcongcoshe lophetse lesi sikhungo.

Kukhetsa kumphahla yebuhlakani

4. (1) Ngekuya kwesigaba 15(2) imphahla yebuhlakani levela kulucwaningo kanye nekutfufukisa lokukhokhelwe nguhulumende kufanele ibe yemamukeli 15

(2) mamukeli lobona kuncona kutsi angabugcini buniyo kumphahla yakhe yebuhlakani noma angatfoli kuvikeleka ngekwemtsetfo kumphahla yakhe yebuhlakani kufanele—

(a) akhetse ngekuhambisana nemitsetfo lemisiwe kanye nanoma ngabe nguyiphi imihlahlandlela lekhishwe yiNIPMO ngekwesatiso ku*Gazethi*; futsi 20

(b) ngaleso sikhatsi lesibekiwe atise i-NIPMO ngesincumo kanye netizatfu taloko.

(3) i-NIPMO inga, ngesikhatsi lesibekiwe, ngemva kwekutsi seyibukete letizatfu letibekwe ngumamukeli ngekwesigatjana (1) futsi noma ngabe ngukuphi kulimala lokungavelela Umbuso uma ngabe kungenakuvikeleka ngekwemtsetfo lokutfolakele kwaleyo mphala yebuhlakani, funa buniyo balemphahla yebuhlakani futsi, lapho kufanele khona, itfole kuvikeleka ngekwemtsetfo kwaleyo mphahla yebuhlakani. 25

(4) (a) uma i-NIPMO ingancuma kungabutsatsi lobunikati balemphahla yebuhlakani ngekwesigatjana (3), i-NIPMO kufanele, ngalokubhaliwe, inikete umamukeli satiso ngesincumo sayo. 30

(b) ngekuya ngaletizatfu letiniketwe ngekwesigatjana (2)(b), kanye nangesatiso lesivetwe kundzima (a), umamukeli kufanele anikete umbumbi walemphahla yebuhlakani kutsi akhetse kutfola buniyo balemphahla yebuhlakani futsi atfole kuvikeleka ngekwemtsetfo kwalemphahla yebuhlakani. ngaphandle kwalapho khona umtimba lotimele noma inhlango inikete lusito kutimali, lowo mtimba lotimele noma inhlango itawuniketwa ngekuya kwesigaba 10 kucala kutsi ikhetse ngembi kwalombumbi wemphahla yebuhlakani. 35

Imisebenti yalabaphetse kanye nemisebenti lekufanele ivetwe

5. (1) Umamukeli kufanele: 40

(a) abe netindlela latibekako tekuphatfwa, tekubonwa, kuvikelwa nekutfufukiswa kwemphahla yebuhlakani, tivumelwano ngemphahla yebuhlakani, futsi, lapho kunesidzango khona, lokutsengiswa kwemphahla yebuhlakani kanye nekuniketa emandla ngendlela lefanele lokuhambisana nako; 45

(b) anikete tindlela letinempumelelo naleticacile kanye netinchubo tekuvetwa kwemphahla yebuhlakani abuye acinisekise kutsi imphahla yebuhlakani levela kulucwaningo nekutfufukisa lokukhokhelwe nguhulumende luvi-keleke ngendlela lefanele ngembi kwekutsi imiphumela yalolo lucwaningo ishicilelwe noma ivetwe kubantfu ngato tonkhe tindlela; 50

(c) acinisekise kutsi basebenti labatsintsekako kulokucwaninga nekutfufukisa bayayiveta kungakadluli tinsuku letingema 90 noma lesi sikhatsi lesidze njengoba kutawube kubekiwe, sekuveta kwalabo basebenti imphahla yebuhlakani lengaba khona nangembi kwekutsi lemphahla yebuhlakani ivetwe kubantfu; 55

(d) abukete lemphahla yebuhlakani kute ancume kutsi ngabe ifanele kuvikelwa ngekwemtsetfo nekutsi, lapho kufanele khona, afake sicelo noma asebentise imizamo yakhe yonkhe kutfola kuvikeleka ngekwemtsetfo egameni layo;

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- (e) refer disclosures for which it elects not to retain ownership or not to obtain statutory protection to NIPMO within 30 days or such longer period as may be prescribed, of it making such an election;
- (f) in the case of an institution, manage revenues due to it from intellectual property transactions and the commercialisation thereof, including managing the benefit-sharing arrangements with intellectual property creators at the institution; 5
- (g) negotiate and enter into intellectual property transactions with third parties on intellectual property belonging to the recipient;
- (h) report to NIPMO twice a year and as provided for in this Act, on all matters pertaining to the intellectual property contemplated in this Act, including all intellectual property from which it elects to obtain statutory protection and the state of commercialisation thereof, in a manner stipulated by NIPMO; 10
- (i) provide NIPMO with full reasons in respect of any intellectual property that is not commercialised; and 15
- (j) in respect of an institution, put in place mechanisms to annually assess, record and report to NIPMO on the benefits for society of publicly financed research conducted in that institution.

Establishment of office of technology transfer at institutions

6. (1) Unless determined otherwise by the Minister in consultation with the Minister responsible for higher education, or any other Cabinet minister to which an institution reports, any institution must, within 12 months of the coming into effect of this Act— 20
- (a) establish and maintain an office of technology transfer; or
 - (b) designate persons or an existing structure within the institution to undertake the responsibilities of the office of technology transfer. 25
- (2) An office of technology transfer is responsible for undertaking the obligations of the institution in terms of this Act.
- (3) Two or more institutions may with the concurrence of NIPMO establish a regional office of technology transfer.
- (4) (a) NIPMO may, on terms and conditions determined by it, provide assistance to institutions for the establishment of offices of technology transfer. 30
- (b) The assistance contemplated in paragraph (a) may include—
 - (i) financial assistance;
 - (ii) co-ordinating the establishment of a regional office of technology transfer, where applicable; and 35
 - (iii) development of appropriately skilled personnel for the offices of technology transfer.

Functions of office of technology transfer

7. (1) The functions of an office of technology transfer must be performed by appropriately qualified personnel whom, when considered collectively, has interdisciplinary knowledge, qualifications and expertise in the identification, protection, management and commercialisation of intellectual property and in intellectual property transactions. 40
- (2) An office of technology transfer must, in respect of publicly financed research and development— 45
- (a) develop and implement, on behalf of the institution or region, policies for disclosure, identification, protection, development, commercialisation and benefit-sharing arrangements;
 - (b) receive disclosures of potential intellectual property emanating from publicly financed research and development; 50
 - (c) analyse the disclosures for any commercial potential, the likely success of such commercialisation, the existence and form of the intellectual property rights, the stage of development thereof and the appropriate form for protecting those rights;
 - (d) attend to all aspects of statutory protection of the intellectual property; 55
 - (e) refer disclosures to NIPMO on behalf of an institution;

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- (e) adlulise kuveta kwaloko lekakhetsa kutsi agcine buniyo kuko noma le kangadzingi kuvikeleka ngekwemtsetfo kuNIPMO kungakadluli emalanga lange 30 noma lesi sikhatsi lesidze njengoba kungabe kubekiwe, kutsi kwentiwe loko kukhetsa;
- (f) endzabeni yesikhungo, utawuphatsa timali letitfolakala ngetindlela letihlukene lekakolodwa tona tetivumelwano temphahla yebuhlakani kanye nekutsengiselana ngayo, kufaka ekhatsi letinhlelo tekuhlephulelana nekuhlomula nebabumbi bemphahla yebuhlakani esikhungweni; 5
- (g) utawucocisana angene esivumelwaneni ngemphahla yebuhlakani nebesitsatfu ngebuniyo bemphahla yebuhlakani kulotayamukela; 10
- (h) utawubika ku-NIPMO kabili ngemnyaka nanjengoba kubekiwe kuloMtsetfo, tonkhe tindzaba letiphatselene nalemphahla yebuhlakani levetwe kuloMtsetfo, ngendlela letawubekwa yiNIPMO;
- (i) anikete i-NIPMO ngetizatfu letiphelele uma ngabe imphahla yebuhlakani ingakatsengiswa; kanye 15
- (j) eludzabeni lwesikhungo, bani netindlela tekuhlola minyaka yonkhe, urekhode ubuye ubike kuNIPMO ngalokuhlomula kwemmango kwalolucwaningo lolukhokhelwe nguhulumende lolwentiwe kuleso sikhungo.

Kusungulwa kwelihhovisi lekudluliselwa kwetebuchwepheshe etikhungweni

6. (1) Ngaphandle kwekutsi kuncunye ngalenywe indlela nguNgcongcoshe ngekutsintsana naloNgcongcoshe lophetse temfundvo lephakeme, noma ngabe nguliphi lilunga labongcongcoshe labakuKhabhinethi lapho sikhungo sibika khona, noma ngabe ngusiphi sikhungo kufanele, etinyangeni leti 12 kwekucala kusebenta kwaloMtsetfo—
- (a) kusungulwe kubuye kugcinwe lihhovisi lekudluliselwa kwetebuchwepheshe; noma 25
- (b) babeke bantfu noma sakhiwo lesiphilako ngekhatsi kulesikhungo kutsi sente umsebenti walelihhovisi wekudluliselwa kwetebuchwepheshe.
- (2) Lihhovisi lekudluliselwa kwetebuchwepheshe litawuba nemsebenti wekutsatsa tidzingo tesikhungo ngekwaloMtsetfo.
- (3) Tikhungo letimbili noma letidlula leto ngekuvumelana neNIPMO tingasungula lihhovisi lesigodzi lekudluliselwa kwetebuchwepheshe. 30
- (4) (a) INIPMO inga, ngemibandzela lencunye ngayo, niketa lusito kutikhungo kutsi kusungulwe emahhovisi ekudluliselwa kwetebuchwepheshe
- (b) Lolusito loluvelwe kundzima (a) lungafaka ekhatsi—
- (i) lusito kutimali; 35
- (ii) nekuhlela lokusungulwa kwelihhovisi lesigodzi lekudluliselwa kwetebuchwepheshe, lapho kunesidzingo khona.
- (iii) kutfutukiswa kwebasebenti lebanemakhono ngalokwanele kwentelwe lamahhovisi ekudluliselwa kwetebuchwepheshe.

Imisebenti yelihhovisi lekudluliselwa kwetebuchwepheshe 40

7. (1) Umsebenti welihhovisi lekudluliselwa kwetebuchwepheshe kufanele wentiwe basebenti labacecheshiwe, le uma ngabe babuketwa njengelicembu, banelwati letifundvo leticubile, ticu kanye nemakhono ekubona, kuvikela, kuphatsa kanye nekutsengisa ngemphahla yebuhlakani kanye nekwenza tivumelwano ngemphahla yebuhlakani.
- (2) Lihhovisi lekudluliselwa kwemphahla yebuhlakani kufanele, ngekwelucwaningo nekutfutukisa lokukhokhelwe nguhulumende— 45
- (a) Litfutukise libuye lente, ngekumela sikhungo noma sigodzi, tinchubomgomo tekuveta, tekukhomba, tekuvikela, tekutfutukisa, tekutsengiselana kanye netekuhlela kuhlomula-nekuhlephulelana;
- (b) Litfole lokuvetiwe ngemphahla yebuhlakani letsembisako levela kulucwaningo lokukhokhelwe nguhulumende kanye nekutfutukisa; 50
- (c) Licacise loku lokuvetiwe kunoma ngutiphi temabhezini letitsembisako, lokuphumelela kwaloko kutsengiselana, lesimo kanye nebunjalo balamalungelo alemphahla yebuhlakani, lelizinga lekutfutukiswa kanye nalesimo lekungiso sekuvikela lawo malungelo; 55
- (d) Lingenelele kuto tonkhe tintfo letifaka ekhatsi kuvikeleka ngekwemtsetfo kwemphahla yebuhlakani;
- (e) Lidlulise lokuvetiwe kuNIPMO ngekumela sikhungo;

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- (f) attend to all aspects of intellectual property transactions and the commercialisation of the intellectual property;
- (g) conduct evaluations on the scope of statutory protection of the intellectual property in all geographic territories subject to commercialisation potential of the intellectual property; and
- (h) liaise with NIPMO as provided for in this Act.

Establishment of National Intellectual Property Management Office

8. (1) There is hereby established an office within the Department, called the National Intellectual Property Management Office (NIPMO).

(2) The Minister may, by notice in the *Gazette*, assign the operation of NIPMO to any public entity whose objects are consistent with NIPMO's functions.

Functions of NIPMO

9. (1) NIPMO must promote the objects of this Act, which includes the statutory protection, management and commercialisation of the intellectual property referred to it by a recipient in terms of section 4.

(2) NIPMO must ensure that it has the capacity to consider any intellectual property referred to it by a recipient in terms of section 4, and to deal with it in accordance with this Act.

(3) NIPMO must liaise with the recipients or any other party it deems fit to determine the viability of—

- (a) obtaining statutory protection for the intellectual property referred to it, if it is in the national interest;
- (b) concluding any intellectual property transactions; or
- (c) commercialisation of such intellectual property.

(4) NIPMO must, furthermore—

- (a) manage information in respect of intellectual property contemplated in this Act, including data concerning the recipients;
- (b) provide incentives to recipients and their intellectual property creators, to reward them for proactively securing protection for intellectual property and commercialising it and, generally, for promoting innovation;
- (c) provide assistance to institutions with—
 - (i) the establishment of offices of technology transfer and related capacity-building;
 - (ii) intellectual property transactions;
 - (iii) commercialisation of intellectual property; and
 - (iv) any other matter provided for in this Act;

(d) provide appropriate standards and best practices in consultation with a recipient, without limiting the power of the recipient to act in its own interests in terms of this Act;

(e) develop guidelines for intellectual property transactions involving non-South African entities and persons, and manage the implementation of such guidelines; and

(f) monitor, evaluate and review the obligations of recipients in terms of this Act.

(5) In addition to its other functions, NIPMO may do anything necessary to meet the objects of this Act and to carry out any other function consistent with those objects that may be prescribed.

(6) Any administrative decision of NIPMO that adversely affects a recipient must be dealt with in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

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- (f) Lingenelele kuko konkhe lokufaka ekhatsi tivumelwano ngemphahla yebuhlakani kanye nekutsengiselana ngemphahla yebuhlakani;
- (g) Lente luhlolo ngelizinga lekuvikeleka kwemphahla yebuhlakani ngalokusemtsetfweni kulo lonkhe live ngekuya ngekutsembisa kutekutsengiselana kwemphahla yebuhlakani; libuye 5
- (h) Litsintsane neNIPMO njengoba kubekiwe kuloMtsetfo.

Kusungulwa kweliLihhovisi leliPhetse teBuhlakani Velonkhe

8. (1) Ngako ke kutawusungulwa lihhovisi kuleLitiko, libitwa ngeLihhovisi lekuPhatfwa kweMphahla yeBuhlakani Velonkhe (NIPMO).

(2) Ngcongcoshe anga, ngekwesatiso ku*Gazethi*, niketa lokusebenta kweNIPMO kunoma ngabe ngumuphi umtimba wahulumende letinhloso tawo tihambisana nemsebenti weNIPMO. 10

Imisebenti yeNIPMO

9. (1) I-NIPMO kufanele itfutukise tindhloso taloMtsetfo, letifaka ekhatsi kuvikeleka ngekwemtsetfo, kuphatfwa kanye nekutsengiselana ngemphahla yebuhlakani leletfwe kuyo ngumamukeli ngekwesigaba 4. 15

(2) I-NIPMO kufanele icinisekise kutsi inemandla ekutsatsa noma nguyiphi imphahla yebuhlakani leletfwe kubo ngumamukeli ngekwesigaba 4, nekutsi isebente ngayo ngekuhambisana nalomtsetfo.

(3) I-NIPMO kufanele isebentisane nebamukeli noma nabani leyimbona alungele kutsi angaveta ematfuba— 20

- (a) ekutfola kuvikeleka ngekwemtsetfo kwemphahla yebuhlakani lecondziswe kuyo, uma ngabe iyinshisekelo yavelonkhe;
- (b) ifinyelelise emaphetselweni noma ngutiphi tivumelwano ngemphahla yebuhlakani; noma 25
- (c) kutsengiswa kwaleyo mphahla yebuhlakani.

(4) i-NIPMO kufanele, ngekugetelela—

- (a) iphatse lwati ngeke mphahla yebuhlakani loluvetwe kuloMtsetfo, kufaka ekhatsi lwati loluphatselene nebamukeli;
- (b) inikete inkhutsatakwenta kubamukeli kanye nakubabumbi bemphahla yebuhlakani, kubaniketa umklomelo ngekuvikela ngekutikhandla imphahla yebuhlakani kanye nekuyitsengisa, ngekwenta tingucuko;
- (c) kuniketa lusito kutikhungo nge— 35
- (i) kusungulwa kwemahhovisi ekudluliselwa kwetebuchwepheshe kanye naletinye tindlela tekuniketa emandla;
- (ii) tivumelwano ngemphahla yebuhlakani;
- (iii) kutsengiselana ngenphahla yebuhlakani; kanye
- (iv) naletinye tindzaba letifakwe kuloMtsetfo;

(d) kuniketa emazinga lafanele kanye nekusebenta lokuhambembili ngeku-tsintsana nemamukeli, ngaphandle kwekukala emandla emamukeli kutsi asebente ngekwenshisekelo yakhe ngekwaloMtsetfo; 40

(e) kutfutukisa imihlahlandlela yetivumelwano temphahla yebuhlakani kufaka ekhatsi imitimba nebantfu lebangasibo base Ningizimu Africa, nekuphatfwa kwekusungulwa kwaleyo mihlahlandlela; kanye

(f) nekuhlola, kubuyeketa kanye nekuhlola kwalemisebenti yebamukeli ngekwaloMtsetfo. 45

(5) kungetelela kuleminyane imisebenti yayo, i-NIPMO ingenta noma ngabe yini ledzingekile kufinyelela kuletinjongo taloMtsetfo yente nalomunye umsebenti lohambisana naletinjongo letingabekwa.

(6) Noma ngabe ngusiphi sincumo sekulawula seNIPMO lesitsintsa kabuhlungu umamukeli kufanele sisetjentwe ngeke *Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)*. 50

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Rights of intellectual property creators in institutions to benefit-sharing

- 10.** (1) Intellectual property creators at an institution and their heirs are granted a specific right to a portion of the revenues that accrue to the institution from their intellectual property in terms of this Act until such right expires.
- (2) Intellectual property creators at an institution and their heirs are entitled to the following benefit-sharing: 5
- (a) at least 20 per cent of the revenues accruing to the institution from such intellectual property for the first one million rand of revenues, or such higher amount as the Minister may prescribe; and
 - (b) thereafter, at least 30 per cent of the nett revenues accruing to the institution from such intellectual property. 10
- (3) The benefits contemplated in subsection (2) must be shared in equal proportions between the qualifying intellectual property creators or their heirs unless otherwise agreed between those creators and the recipient or determined in accordance with institutional policies. 15
- (4) The benefits to intellectual property creators and their heirs contemplated in subsection (2)(a) must be a first call on the applicable revenue ahead of any institutional distribution.
- (5) The recipient may distribute the balance of the revenues generated by intellectual property as it deems fit, but must apportion part of it for funding, among other things— 20
- (a) more research and development;
 - (b) the operations of the office of technology transfer; and
 - (c) statutory protection of intellectual property.
- (6) (a) This section prevails over a provision of a law mentioned in the second column of Schedule 1 existing at the commencement of this Act to the extent that it is inconsistent with such a provision. 25
- (b) Despite paragraph (a), any arrangement relating to benefit-sharing that existed at the commencement of this Act by virtue of a provision contemplated in that paragraph continues in terms of that provision as if this section had not been enacted.

Conditions for intellectual property transactions 30

- 11.** (1) The recipient determines the nature and conditions of intellectual property transactions relating to any intellectual property held by it, but must take into account the following:
- (a) Preference must be given to non-exclusive licensing;
 - (b) preference must be given to BBEE entities and small enterprises; 35
 - (c) preference must be given to parties that seek to use the intellectual property in ways that provide optimal benefits to the economy and quality of life of the people of the Republic;
 - (d) exclusive licence holders must undertake, where feasible, to manufacture, process and otherwise commercialise within the Republic; 40
 - (e) each intellectual property transaction must provide the State with an irrevocable and royalty-free licence authorising the State to use or have the intellectual property used throughout the world for the health, security and emergency needs of the Republic;
 - (f) if a holder of an exclusive licence is unable to continue with the commercialisation of the intellectual property within the Republic during the duration of the licence and the recipient wishes to retain the exclusive licence, the recipient must furnish NIPMO with full reasons for retaining exclusivity; 45
 - (g) a recipient must supply the reasons contemplated in paragraph (f) within 30 days of it becoming aware that the holder of the licence is unable to continue commercialising the intellectual property, or such extended time as may be agreed upon with NIPMO; and 50

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Emalungelo ebabumbi bemphahla yebuhlakani etikhungweni kute bahlomule kulokuhlephulelana

10. (1) Babumbi bemphahla yebuhlakani kusikhungo kanye netindlalifa tabo baniketwa lilungelo kuncenye yaletimali letitfolwe sikhungo kulemphahla yabo yebuhlakani ngekwaloMtsetfo uma ngabe leto timali tivala kuleyo mphahla yebuhlakani, kute kuphele lawo malungelo. 5

“(2) Babumbi bemphahla yebuhlakani kutikhungo kanye netindlalifa tabo bafanele batfole kuhleshulelwa kulokuzuziwe ngalendlela—

(a) lukungenani emaphesenti la 20 alokuzuziwe lokutawutalela sikhungo lokuvela kuleyo mphahla yebuhlakani kulemiliyoni yemarandi yekucala kulokuzuziwe, noma lelo linani lelingetulu lelingancunyuwa nguNgococosh; futsi 10

(b) ngemuva kwaloko, lokungenani emaphesenti lange 30 alenzuzo lesele nasekukhishwe konkhe letawutalela sikhungo ngaleyo mphahla yebuhlakani”

(3) Lokuhlomula lokuvetwe kusigatjana (2) itawuhleshulwa ngalokulinganako emkhatsini wembumbi wemphahla yebuhlakani lophumelele noma tindlalifa takhe ngaphandle kwekutsi mhlawumbe kuvunyelwane emkhatsini walabo babumbi kanye nehamukeli noma kuncunye ngekuhambisana netinchubongomo tesikhungo. 15

(4) Lokuhlomula kwebabumbi bemphahla yebuhlakani kanye netindlalifa tabo lokuvetwe kusigatjana 2(a) kufanele kube ngulokuhambibili ekuhlephulelani ngaletimali letitfolakele letikhona kunoma ngabe ngutiphi tikhungo. 20

(5) Umamukeli angaba lelinani lelisele laletimali letitfolakale tivala kumphahla yebuhlakani letibonakala tifanele, kodwa incenye lenye yayo ibe yekuniketa lusito kutimali uma, kuletinye tintfo—

(a) kulolunye lucwaningo nekutfutukisa lokungetiwe; 25

(b) kusebenta kwelihhovisi lwekudluliselwa kwetebuchwepheshe; kanye

(c) nekuvikela ngekwemtsetfo imphahla yebuhlakani.

(6) (a) Lesigaba sitawuma ngetulu kwembandzela wemtsetfo lobalwe kukholamu yesibili yeLuhla lwe I lokhona uma kucala kusebenta loMtsetfo kute kube sezingeni lekutsi ungahambisani nalowo mbandzela. 30

(b) Noma indzima (a), noma ngabe ngukuphi kuhlela lokuhambisana nekuhlephulelana kulokuhlomula lebekukhona ekucaleni kwaloMtsetfo ngekwemandla embandzela lovetwe kuleyo ndzima uyachubeka ngekwalowo mbandzela kube shengatsi lesigaba asikamiswa ngekwemtsetfo.

Imibandzela ngetivumelwano ngemphahla yebuhlakani 35

II. (1) Umamukeli uncuma ngesimo kanye nemibandzela ngetivumelwano temphahla yebuhlakani lefaka ekhatsi noma ngabe nguyiphi imphahla yebuhlakani lephetfwe nguye, kodwa kufanele anake naku lokulandzelako:

(a) ematfuba kufanele aniketwe kulabanetimvumo letingenalikhetselo;

(b) ematfuba kufanele aniketwe imitimba yema-BBBEE kanye nemabhizinisi lamancane; 40

(c) ematfuba kufanele aniketwe emacembu lafuna kusebentisa imphahla yebuhlakani ngetindlela letitawuhlomulisa kancono umnotfo kanye nemazinga emphilo lancono kubantfu base Riphabhulikhi;

(d) Labanetimvumo telikhetselo batawukhucita, bente noma batsengiselane eRiphabhulikhi; 45

(e) Sivumelwano lesisodwa ngemphahla yebuhlakani kufanele sinikete Umbuso sibopho kanye nemvumo yekutsengisa lengenanzuzo levumela Umbuso kutsi usebentise noma basebentise lemphahla yebuhlakani mhlabawonkhe kutemphilo, kuvikeleka kanye netidzingo letiphutfumako teRiphabhulikhi; 50

(f) uma lonemvumo lenelukhetselo angakhoni kuchubeka nalokutsengiselana ngemphahla yebuhlakani eRiphabhulikhi ngalesikhatsi lesibekiwe sale-mvumo bese lomamukeli abe asatimisele kugcina lemvumo lenelukhetselo, umamukeli kufanele anikete iNIPMO tizatfu letigcwele tekugcina lemvume yelukhetselo; 55

(g) umamukeli kufanele anikete letizatfu letivetwe kundzima (f) kungakadluli emalanga lange 30 ngembi kwekutsi bati kutsi lomgcini wemvume sewuyahluleka kuchubeka nekutsengisa lemphahla yebuhlakani, noma lesi sikhatsi lekungavunyelwana ngaso neNIPMO; futsi

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- (h) NIPMO may request that the exclusive licence contemplated in paragraph (f) be converted to a non-exclusive licence if a recipient fails to furnish the reasons within the period contemplated in paragraph (g), or if NIPMO is not satisfied with such reasons.

(2) Each intellectual property transaction must contain a condition to the effect that, should a party fail to commercialise the intellectual property to the benefit of the people of the Republic, the State is entitled to exercise the rights contemplated in section 14. 5

(3) (a) Each intellectual property transaction involving assignment of intellectual property by an institution to a small enterprise in return for shareholding as a consideration must contain a condition providing that in the event of the liquidation of that small enterprise, the intellectual property shall revert to the institution. 10

(b) The Minister may prescribe the terms and conditions for other intellectual property transactions involving assignment of intellectual property by a recipient.

Restrictions on offshore intellectual property transactions

12. (1) Offshore intellectual property transactions are subject to the following conditions: 15

- (a) A recipient must advise NIPMO of its intention to conclude an intellectual property transaction offshore;
- (b) subject to paragraph (c), offshore intellectual property transactions may occur only in accordance with prescribed regulations and any guidelines contemplated in section 9(4)(e); and 20
- (c) any intellectual property transaction which does not comply with the regulations and guidelines requires prior approval of NIPMO.

(2) A recipient wishing to undertake an intellectual property transaction offshore in the form of an assignment or exclusive licence must satisfy NIPMO that— 25

- (a) there is insufficient capacity in the Republic to develop or commercialise the intellectual property locally; and
- (b) the Republic will benefit from such offshore transaction.

Intellectual Property Fund

13. (1) There is hereby established an Intellectual Property Fund to be managed by NIPMO. 30

(2) The purpose of the Intellectual Property Fund is to—

- (a) provide financial support to institutions for the statutory protection and maintenance of intellectual property rights, subject to subsection (3);
- (b) finance any costs incurred by NIPMO for obtaining statutory protection of the intellectual property; and 35
- (c) finance any costs incurred by NIPMO when acting in terms of section 14.

(3) An institution may recover the costs incurred in obtaining statutory protection for the intellectual property contemplated in this Act from the Intellectual Property Fund—

- (a) to the extent determined by NIPMO; and 40
- (b) on such terms as may be determined by NIPMO.

Acquisition of intellectual property rights by State

14. (1) The rights acquired by the State in terms of this section are additional to the rights granted to the State in terms of any other legislation in the Republic.

(2) NIPMO must conduct reviews of non-commercialised intellectual property in consultation with the recipients. 45

(3) If a review contemplated in subsection (2) shows that the intellectual property in question can be commercialised, NIPMO must engage in further consultations

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(h) iNIPMO ingacela kutsi lemvumo yelukhetselo levetwe kundzima (f) iguculwe ibe yimvume lengenalukhetselo uma umamukeli ahluleka kuniketa tizafu ngalesikhatsi lesibekwe kundzima (g), noma iNIPMO ayeneliseki ngaletu tizafu.

(2) Sivumelwano semphahla yebuhlakani ngasinye kufanele sibe nemandzela wekutsi uma kungenteka lelo cembu lihluleke kutsengisa ngalemphahla yebuhlakani kute kuhlomule bantfu base Riphabhulikhi, Umbuso utawucindzeteleka kutsi usebentise emalungelo awo lavetwe kusigaba 14. 5

(3) (a) Sivumelwano semphahla yebuhlakani ngasinye kufaka ekhatsi umsebeni wemphahla yebuhlakani lowentiwa sikhungo kumabhizinisi lekasemancane ngekutsi hazuze ngekuhlephulelana umsebeni kufanele kube nemandzela loniketa kutsi ngalesikhatsi sekuwa kwaleyo bhizinisi lencane, lempahla yebuhlakani itawubuyela emuva kusikhungo. 10

(b) Ngecongoshe angabeka imibandzela yaletinye tivumelwano ngemphahla yebuhlakani letifaka ekhatsi umsebeni wemphahla yebuhlakani kumamukeli. 15

Imincele ngetivumelwano temphahla yebuhlakani lephesheya

12. (1) Tivumelwano temphahla yebuhlakani lephesheya titawuya ngalemibandzela lelandzelako:

(a) Umamukeli utawutjela iNIPMO ngetinhloso takhe tekufinyelelisa esiphethweni sivumelwano ngemphahla yebuhlakani lephesheya; 20

(b) ngekuya ngendzima (c), tivumelwano ngemphahla yebuhlakani lephesheya tingenteka kuphela ngekwemtsetfo lomisiwe kanye nemihlahlandlela levetwe kusigaba 9(4)(e); futsi

(c) Noma ngabe ngusiphi sivumelwano ngemphahla yebuhlakani lesingahambisani nalomtsetfo lomisiwe kanye nalemihlahlandlela idzinga kuniketwa imvume kucala yiNIPMO. 25

(2) Umamukeli lofise kutsatsa sivumelwano ngemphahla yebuhlakani lephesheya njengeluhlelo lwemsebeni noma ngekwemvumo yelukhetselo utawufanele anelise iNIPMO ngekutsi—

(a) akunamandla lekanele eRiphabhulikhi ekutfufukisa noma kutsengisa lempahla yebuhlakani kulelive; futsi 30

(b) iRiphabhulikhi itawuhlomula ngekuba nemvumo yekusebentela phesheya.

Sikhwama semphahla yebuhlakani selusito kutimali

13. (1) Kutawusungulwa sikhwama sekukhokhelwa kwemphahla yebuhlakani lesitawuphatfwa yiNIPMO. 35

(2) Injongo yalesikhwama selusito kutetimali kumphahla yebuhlakani kutsi—

(a) kuniketwe lusito kutetimali kutikhungo ekuvikeleni ngekwemtsetfo kanye nekuphatfwa kwemalungelo emphahla yebuhlakani, ngekuya ngesigatjana (3);

(b) kukhokhelwe noma ngutiphi tindleko letidalwe yiNIPMO ngekutfola kuvikeleka ngekwemtsetfo kwemphahla yebuhlakani; sibuye 40

(c) sikhokhele noma ngutiphi tindleko letidalwe yiNIPMO ngalesikhatsi isebenta ngekwesigaba 14.

(3) Sikhungo singabuye sibuyise futsi leto tindleko letentiwe ngibo kute batfolo kuvikeleka ngekwemtsetfo kwalemphahla yebuhlakani levetwe kuloMtsetfo levela kuleSikhwama seMphahla yebuhlakani— 45

(a) njengoba kutawuncunywa yiNIPMO;

(b) ngaletikhawu letitawuncunywa yiNIPMO;

(c) uma ngabe leyo mphahla yebuhlakani ayikaniketwa kumtimba lowungasiso sikhungo. 50

Kutfola emalungelo emphahla yebuhlakani nguMbuso

14. (1) Emalungelo latfolwe nguMbuso ngekwalesigaba angetelela kulamalungelo laniketwe Umbuso ngekwano noma ngabe ngumuphi umtsetfo lomisiwe eRiphabhulikhi.

(2) I-NIPMO kufanele ibukete futsi imphahla yebuhlakani lengakatsengiswa ngekubambisana nebamukeli. 55

(3) uma lokubuyeketa lokutfolwe kusigatjana (2) kubonisa kutsi lempahla yebuhlakani lekukhulunywa ngayo ingatsengiswa, iNIPMO kufanele ingenelele futsi

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with the recipient in an endeavour to ensure that the intellectual property is commercialised.

(4) NIPMO may require a recipient to grant a licence in any field of use to any person on reasonable terms if, after the consultations contemplated in subsection (3)—

- (a) the intellectual property is still not being commercialised; or
- (b) no agreement can be reached with the recipient.

(5) NIPMO may, on behalf of the State, demand the assignment of rights to any intellectual property if a recipient fails to make a disclosure to NIPMO as provided for in this Act.

Co-operation between private entities or organisations and institutions

15. (1) A private entity or organisation may become an exclusive licensee of intellectual property emanating from publicly financed research and development undertaken at an institution if such private entity or organisation has the capacity to manage and commercialise the intellectual property in a manner that benefits the Republic.

(2) Any private entity or organisation may become a co-owner of the intellectual property emanating from publicly financed research and development undertaken at an institution if—

- (a) there has been a contribution of resources, which may include relevant background intellectual property by the private entity or organisation;
- (b) there is joint intellectual property creatorship;
- (c) appropriate arrangements are made for benefit-sharing for intellectual property creators at the institution; and
- (d) the institution and the private entity or organisation conclude an agreement for the commercialisation of the intellectual property.

(3) Should the private entity or organisation mentioned in subsection (1) or (2) not commercialise the intellectual property, the provisions of section 14 of this Act shall apply with the changes required by the context.

(4) (a) Any research and development undertaken at an institution and funded by a private entity or organisation on a full cost basis shall not be deemed to be publicly financed research and development and the provisions of this Act shall not apply thereto.

(b) For the purposes of paragraph (a) “full cost” means the full cost of undertaking research and development as determined in accordance with international financial reporting standards, and includes all applicable direct and indirect cost as may be prescribed.

(5) For the purposes of this section, private entity or organisation includes a private sector company, a public entity, an international research organisation, an educational institution or an international funding or donor organisation.

Confidentiality

16. Employees of NIPMO and the offices of technology transfer may not disclose any information in regard to any matter which may come to their knowledge in terms of this Act, or any work arising from the implementation of this Act, or by virtue of the office held by them to any person, except—

- (a) in so far as the provisions of the Constitution of the Republic of South Africa, 1996, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and this Act require or provide for the publication of or access by the public or any interested person to information relating to such matter;
- (b) in so far as it may be necessary for the effective governance and management of NIPMO or the offices of technology transfer, or for the purpose of due and proper performance of any function in terms of this Act; or
- (c) upon an order of a competent court.

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kulingcogo nemamukeli kute izame kucinisekisa kutsi lempahla yebuhlakani iyatsengiswa.

(4) INIPMO ingacela lomamukeli kutsi anikete invumo yekusebenta kunoma nguluphi lizinga lekuyisebentisa kunoma ngubani ngendlela levisisekako, ngemva kwekutsi letingcogo letivetwe kusigatjana (3)—

- (a) lempahla yebuhlakani solo ingakatsengiswa; noma
- (b) akunasivumelwano lekungavunyelwana ngaso nemamukeli.

(5) INIPMO inga, ngekumela Umbuso, funa kuniketwa emalungelo kunoma ngabe nguyiphi imphahla yebuhlakani uma umamukeli ahluleke kuyiveta kuNIPMO njengoba kubekiwe kulomtsetfo.

Kubambisana emkhatsini wemitimba letimele noma tinhlango kanye netikhungo

15. (1) Untimba lotimele noma inhlango ingaba nemvumo lenelukhetselo yempahla yebuhlakani levela kulucwaningo nekutfufukisa lokukhokhelwe nguhulumende lolwentiwe kusikhungo uma ngabe leso sikhungo lesitimele noma inhlango inemandla ekuphatsa ibuye itsengise lempahla yebuhlakani ngendlela lehlomulisa iRiphabhulikhi;

(2) Noma ngabe ngumuphi umtimba lotimele noma inhlango ingaba nebukati ngekubambisana ngempahla yebuhlakani levele kulucwaningo kanye nekutfufukisa lokukhokhelwe nguhulumende lolwentiwe kusikhungo uma—

- (a) kube nekunikela ngetinsita, lokungafaka ekhatsi lingemva leliphatsekako lwempahla yebuhlakani loluvela kumtimba lotimele noma inhlango;
- (b) kube nekubambisana kubabumbi lempahla yebuhlakani;
- (c) tinhlelo letifanele tentiwe kutsi kube nekuhlomula kulokuhlephulelana kubabumbi lempahla yebuhlakani esikhungweni; kanye
- (d) nesikhungo nemitimba lotimele noma inhlango ube nesivumelwano lekuvunyelwana ngaso sekutsengiswa kwempahla yebuhlakani.

(3) uma lomtimba lotimele noma lenhlango lebalwe kusigatjana (1) noma (2) ungayitsengisi lempahla yebuhlakani, lemibandzela lekusigaba 14 waloMtsetfo itawusebenta naletingucuko letitawudzingwa ngulokucukettwe.

(4) (a) Noma ngabe nguluphi lucwaningo kanye nekutfufukisa lolwentiwe kusikhungo lwaniketwa timali ngumtimba lotimele noma inhlango ngemali legcwele angeke ufanele kutsi ube lucwaningo kanye nekutfufukisa lokukhokhelwe nguhulumende nemibandzela yaloMtsetfo angeke wasebenta kuyo.

(b) ngekwetinjongo tendzima (a) **“tindleko letigcwele”** kushiwo tindleko letigcwele tekwenta lucwaningo nekutfufukisa njengoba kuncunyiwe ngekuhambisana nemazinga labekiwe ekubika ngetetimali mhlaba wonkhe, ibuye ifake ekhatsi tindleko ngo kanye naletiseceleni njengoba titawube tibekiwe.

(5) ngekwetinjongo kulesigaba, umtimba lotimele noma inhlango ifaka ekhatsi inkhapani letimele, umtimba wahulumende, benhlango yelucwaningo yasemaveni angaphandle, sikhungo setemfundvo lephakeme noma labasekela ngetimali bemave angaphandle noma tikhungo letisekela ngelusito kutimali.

Lokuyimfihlo

16. Basebenti beNIPMO kanye nemahhovisi ekudluliselwa kwetebuchwepheshe angeke bavele noma ngabe nguluphi lwati nganoma ngabe nguluphi ludzaba lelwatiko ngekwaloMtsetfo, noma ngabe ngumuphi umsebenti lotawuvela ngekusungulwa kwaloMtsetfo, noma ngemandla elihhovisi leliphettwe ngibo kunoma ngabe ngubani, ngaphandle—

- (a) kwaloku lokwamiswa kuMtsetfosisekelo wase Riphabhulikhi yeNingizimu Afrika, 1996, *i-Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)*, futsi loMtsetfo uzinga noma uniketa kutsi kukhishwe noma kufinyelelwe kubantfu noma ngabe ngumuphi umantfu lonenshisekelo kutfolo lwati lolucondzene nalolo ludzaba;
- (b) uma ngabe kungaba nesidzingo sekuphatsa ngempumelelo kanye neku-phatfwa kweNIPMO noma emahhovisi ekudluliselwa kwetebuchwepheshe, noma ngetinhloso tekusebenta lokusilele emuva noma kwentiwa kahle kwanoma ngumuphi umsebenti ngekwaloMtsetfo, noma
- (c) ngesincumo senkhantolo lenelwati.

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Regulations

- 17.** The Minister may make regulations regarding—
- (a) any matter that may or must be prescribed in terms of this Act; and
 - (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 5

Short title and commencement

- 18.** This Act is called the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008, and takes effect on a date determined by the President by proclamation in the *Gazette*. 10

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Imitsetfosimiso

17. Ngcongcoshe angamisa imitsetfo mayelana—
- (a) noma nguluphi ludzaba lolunga noma lolufanele lubekwe ngekwalo-Mitsetfo;
 - (b) noma ngabe ngukuphi kuphatsa lokungangetela noma lokungenteka noma ludzaba lolungahanjiswa ngendlela lolufanele kubekwa kute kusungulwe ngendlela noma kuphatfwe kahle loMitsetfo. 5

Sihloko lesifushane kanye nekusungula.

18. LoMitsetfo ubitwa ngeMitsetfo weMalungelo Emphahla yeBuhlakani levela kuLucwaningo nekuTfufukisa lokuKhokhelwe nguHulumende, 2008, utawucala kusebenta ngelusuku lolutawuncunywa nguMongameli ngekumemetela *kuGazethi*. 10

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SCHEDULE 1

(Section 1: Paragraph (b) of definition of "institution")

Institution	Founding law	
Human Sciences Research Council	Human Sciences Research Act, 1968 (Act No. 23 of 1968)	5
Water Research Commission	Water Research Act, 1971 (Act No. 34 of 1971)	
Council for Scientific and Industrial Research	Scientific Research Council Act, 1988 (Act No. 46 of 1988)	10
Council for Mineral Technology	Mineral Technology Act, 1989 (Act No. 30 of 1989)	
Agricultural Research Council	Agricultural Research Act, 1990 (Act No. 86 of 1990)	15
South African Medical Research Council	South African Medical Research Council Act, 1991 (Act No. 58 of 1991)	
South African Bureau of Standards	Standards Act, 1993 (Act No. 29 of 1993)	20
Council for Geoscience	Geoscience Act, 1993 (Act No. 100 of 1993)	
National Research Foundation	National Research Foundation Act, 1998 (Act No. 23 of 1998)	25
South African Nuclear Energy Corporation, Limited	Nuclear Energy Act, 1999 (Act No. 46 of 1999)	

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LUHILA

(Sigaba 1: Indzima (b) wenchazelo ye "sikhungo")

Sikhungo	Umtsetfo lotfolakalako	
<i>Human Sciences Research Council</i>	Human Sciences Research Act, 1968 (Act No. 23 of 1968)	5
<i>Water Research Commission</i>	Water Research Act, 1971 (Act No. 34 of 1971)	
<i>Council for Scientific and Industrial Research</i>	Scientific Research Council Act, 1988 (Act No. 46 of 1988)	10
<i>Council for Mineral Technology</i>	Mineral Technology Act, 1989 (Act No. 30 of 1989)	
<i>Agricultural Research Council</i>	Agricultural Research Act, 1990 (Act No. 86 of 1990)	
<i>South African Medical Research Council</i>	South African Medical Research Council Act, 1991 (Act No. 58 of 1991)	15
<i>South African Bureau of Standards</i>	Standards Act, 1993 (Act No. 29 of 1993)	
<i>Council for Geoscience</i>	Geoscience Act, 1993 (Act No. 100 of 1993)	
<i>National Research Foundation</i>	National Research Foundation Act, 1998 (Act No. 23 of 1998)	
<i>South African Nuclear Energy Corporation, Limited</i>	Nuclear Energy Act, 1999 (Act No. 46 of 1999)	20