

# NATIONAL RESEARCH FOUNDATION ACT 23 OF 1998

[ASSENTED TO 24 JUNE 1998]

[DATE OF COMMENCEMENT: 1 APRIL 1999]

*(English text signed by the President)*

## as amended by

Science and Technology Laws Amendment Act 16 of 2011

Science and Technology Laws Amendment Act 7 of 2014

## Regulations under this Act

**[NB:** The Act was amended by the substitution of the expression 'chief executive officer' for the expression 'president' wherever it occurred, except where it refers to the President of the Republic or the president of the FRD by s. 24 of the Science and Technology Laws Amendment Act 16 of 2011.]

## ACT

**To provide for the promotion of research, both basic and applied, and the extension and transfer of knowledge in the various fields of science and technology and indigenous technology; and for this purpose to provide for the establishment of a National Research Foundation; and to provide for incidental matters.**

### 1 Definitions

In this Act, unless the context otherwise indicates-

**'Board'** means the Board referred to in section 6;

**'chairperson'** means the person appointed as chairperson of the Board under section 6 (1) (a) (i);

**'chief executive officer'** means the person appointed as the chief executive officer of the Foundation under section 10;

[Definition of 'chief executive officer' inserted by s. 19 (b) of Act 16 of 2011.]

**'division'** means a division of the Foundation established under section 12;

**'executive management committee'** means the executive management committee referred to in section 9;

**'Foundation'** means the National Research Foundation, established by section 2;

**'FRD'** means the Foundation for Research Development, established by section 2 of the Research Development Act, 1990 (Act 75 of 1990);

**'HSRC'** means the Human Sciences Research Council, established by section 2 of the Human Sciences Research Act, 1968 (Act 23 of 1968);

**'Minister'** means the Minister responsible for science and technology;

[Definition of 'Minister' substituted by s. 19 (c) of Act 16 of 2011.]

**'national facilities'** means facilities contemplated in section 5;

**'president'** .....

[Definition of 'president' deleted by s. 19 (d) of Act 16 of 2011.]

**'regulation'** means a regulation made under this Act;

**'research'** means the generation, preservation, augmentation and improvement of knowledge by means of scientific investigations and methods in the field of science and technology;

**'research institution'** means any organisation practising research, as recognised by the Minister with primary emphasis on institutions in the public higher education sector;

[Definition of 'research institution' substituted by s. 19 (e) of Act 16 of 2011.]

**'science'** includes any system of knowledge attained by verifiable means and the

organised body of knowledge humans have gained by research;

[Definition of 'science' substituted by s. 19 (f) of Act 16 of 2011.]

**'technology'** includes indigenous technology, and means knowledge accumulated through research or observation, and the practical application thereof;

**'this Act'** includes the regulations.

[Definition of 'this Act' substituted by s. 19 (g) of Act 16 of 2011.]

## 2 Establishment of Foundation

There is established, as from a date fixed by the President of the Republic of South Africa by proclamation in the *Gazette*, a juristic person to be known as the National Research Foundation.

## 3 Object of Foundation

The object of the Foundation is to support and promote research through funding, human resource development and the provision of the necessary research facilities in order to facilitate the creation of knowledge, innovation and development in all fields of science and technology, including indigenous knowledge and thereby to contribute to the improvement of the quality of life of all the people of the Republic.

## 4 Functions, powers and duties of Foundation

(1) The functions of the Foundation are to-

- (a) promote the development of appropriate human resources and research capacity in the areas of science and technology;
- (b) stimulate, promote, support and protect research in the field of indigenous technology;
- (c) obtain funds for research, both locally and abroad;
- (d) allocate funds for research and promote multi-disciplinary collaboration through the divisions;
- (e) promote and support research by the awarding of contracts, grants, scholarships or bursaries to persons or research institutions;
- (f) evaluate the status and needs of research;
- (g) provide financial support for the acquisition or establishment of research facilities by research institutions;
- (h) review research proposals and results promoted by the Foundation;
- (i) promote the transfer of technology and the implementation of research results and findings;
- (j) facilitate and promote nationally and internationally liaison between researchers and research institutions;
- (k) promote participation in international scientific activities through maintaining membership of appropriate international science organisations;
- (l) make available scientific knowledge or technology through any medium;
- (m) administer, support and monitor the operation of national facilities;
- (n) promote the provision of an information infrastructure linking research institutions to facilitate co-operation and sharing of research information and knowledge;
- (o) compile and maintain a national registry of research funded by the Foundation;
- (p) initiate liaison with structures involved in the protection of intellectual property rights.

(2) In order to achieve its object the Foundation may-

- (a) make grants to persons or research institutions for research, research infrastructure and the development of human resources;
- (b) co-operate or enter into agreements with any person, institution, government or administration;
- (c) subject to section 5 (3), purchase or otherwise acquire or possess, hire,

alienate, let, pledge or otherwise encumber movable and, with the approval of the Minister, granted with the concurrence of the Minister of Finance, also immovable property;

- (d) with the approval of the Minister, granted with the concurrence of the Minister of Finance, raise money by way of loans from any source, on such terms and conditions and against such security as may be agreed upon;
  - (e) generally, do everything which is necessary to achieve its object.
- (3) In addition to its other functions in terms of this Act the Foundation must-
- (a) undertake or procure the undertaking of such investigations and research relating to its object as the Minister may assign to it;
  - (b) advise the Minister and, if so required, the Minister responsible for higher education and training through the Minister, with regard to research relating to its object.

[Para. (b) substituted by s. 20 of Act 16 of 2011.]

(4) The Foundation may not itself conduct research other than research regarding the efficient and effective execution of its functions referred to in subsection (1).

## 5 National facilities for research

(1) The Minister may by notice in the *Gazette* determine a research facility as a national facility under the control of the Foundation.

(2) Any researcher or research institution may, subject to such conditions as the Foundation may determine, apply to utilise a national facility for research or instruction.

(3) The Foundation may not acquire, or manage the operation of, any research facility other than a national facility placed under the control of the Foundation under subsection (1).

## 6 Board of Foundation

(1) The Foundation acts through a board consisting of-

(a) subject to subsection (2)-

- (i) a chairperson, appointed by the Minister;
- (ii) not fewer than nine and not more than 11 other members nominated by the public and appointed by the Minister, after consultation with the Minister responsible for higher education and training; and

[Sub-para. (ii) substituted by s. 21 (a) of Act 16 of 2011 and by s. 4 (a) of Act 7 of 2014.]

(iii) one member appointed by the Minister, after nominations from the National Advisory Council on Innovation; and

[Sub-para. (iii) added by s. 4 (b) of Act 7 of 2014.]

(iv) one member appointed by the Minister, after nominations from the Council on Higher Education; and

[Sub-para. (iv) added by s. 4 (b) of Act 7 of 2014.]

(b) the chief executive officer, by virtue of his or her office.

(2) For the purposes of appointing the members of the Board referred to in subsection (1) (a), the Minister must-

- (a) publish a notice in the *Gazette* and three newspapers with due regard to the Use of Official Languages Act, 2012 (Act 12 of 2012), calling upon members of the public to nominate persons contemplated in subsection (1) (a) (i) and (ii);
- (b) by written notice, call upon the National Advisory Council on Innovation and the Council for Higher Education to nominate persons contemplated in subsection (1) (a) (iii) and (iv); and
- (c) appoint an independent panel which must compile a shortlist of persons from the nominees referred to in paragraph (a).

[Sub-s. (2) substituted by s. 4 (c) of Act 7 of 2014.]

(2A) If the Minister receives no nominations or an insufficient number of nominations within the period specified in the notice referred to in subsection (2) (a), the Minister may,

after consultation with the panel referred to in subsection (2) (c), either readvertise or in any other transparent manner, appoint the required number of qualified persons.

[Sub-s. (2A) inserted by s. 4 (d) of Act 7 of 2014.]

(3) The members of the Board must all be persons who have achieved distinction in the field of research, technology, technology management, business or civil society.

[Sub-s. (3) substituted by s. 4 (e) of Act 7 of 2014.]

(4) The members referred to in subsection (1) (a) are appointed in their personal capacities, but the Minister must ensure that they are broadly representative of higher education, broad scientific disciplines, the business sector and civil society.

[Sub-s. (4) amended by s. 21 (b) of Act 16 of 2011 and substituted by s. 4 (f) of Act 7 of 2014.]

(5) The Board must be reconstituted every four years in accordance with the process referred to in subsection (2).

[Sub-s. (5) substituted by s. 21 (c) of Act 16 of 2011.]

(5A) .....

[Sub-s. (5A) inserted by s. 21 (d) of Act 16 of 2011 and deleted by s. 4 (g) of Act 7 of 2014.]

(5B) A member may not serve more than two consecutive terms.

[Sub-s. (5B) inserted by s. 21 (d) of Act 16 of 2011.]

(5C) Despite subsection (5), the Minister may, after consultation with the Board, extend the period of office of any or all of the members of the Board for a period of not more than six months or until a new Board has been appointed, whichever comes first.

[Sub-s. (5C) inserted by s. 4 (h) of Act 7 of 2014.]

(6) A member of the Board ceases to hold office if-

(a) he or she resigns;

(b) the Minister terminates his or her period of office due to misconduct, incapacity, incompetence, or any other reasonable ground;

[Para. (b) substituted by s. 4 (j) of Act 7 of 2014.]

(c) he or she is absent from three consecutive meetings of the Board without the permission of the chairperson;

(d) he or she is in terms of the Electoral Act, 1998, (Act 73 of 1998), or the Local Government: Municipal Electoral Act, 2000 (Act 27 of 2000), nominated as a candidate for election as a member of Parliament, a provincial legislature or a municipal council; or

[Para. (d) substituted by s. 4 (k) of Act 7 of 2014.]

(e) he or she ceases to meet the requirements for appointment as a member of the Board in terms of this Act.

[Para. (e) added by s. 4 (l) of Act 7 of 2014.]

[Sub-s. (6) amended by s. 4 (i) of Act 7 of 2014.]

(7) (a) If a member of the Board, appointed by the Minister, ceases to hold office, the Minister may-

(i) if the appointment was made in terms of subsection (1) (a) (i) and (ii), consider the shortlist of candidates referred to in subsection (2) (c); or

(ii) if the appointment was made in terms of subsection (1) (a) (iii) and (iv), consider the nominations received in terms of subsection (2) (b) (ii); or

in any other transparent manner, appoint a person who meets the requirements set out in subsection (3) and (4).

[Para. (a) substituted by s. 4 (m) of Act 7 of 2014.]

(b) A person appointed under paragraph (a) must occupy his or her office for the unexpired portion of the term of office of his or her predecessor.

(8) A member of the Board, other than the chief executive officer or a person who is in the full-time employment of the State, must be appointed on such conditions of service and must receive such remuneration or allowances, or remuneration and allowances, as the Minister may, with the concurrence of the Minister of Finance, determine.

(9) A person may not be appointed as a member of the Board if that person-

(a) is not a citizen or permanent resident of the Republic;

- (b) is an unrehabilitated insolvent;
- (c) has been convicted of-
  - (i) a crime and sentenced to a term of imprisonment without the option of a fine; or
  - (ii) fraud, corruption or any other crime involving dishonesty, within a period of 10 years preceding the date of nomination in terms of subsection (2) (a);
    - [Para. (c) substituted by s. 4 (n) of Act 7 of 2014.]
- (d) has, as a result of improper conduct, been removed from a position of trust; or
  - [Para. (d) substituted by s. 4 (o) of Act 7 of 2014.]
- (e) is not fit and proper to hold office.
  - [Para. (e) added by s. 4 (p) of Act 7 of 2014.]
  - [Sub-s. (9) added by s. 21 (e) of Act 16 of 2011.]

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

[Sub-s. (10) added by s. 4 (q) of Act 7 of 2014.]

## 6A Dissolution of Board

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

(2) In exercising his or her powers in terms of this section, the Minister must comply with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

(3) Within 21 days of the dissolution of the Board, the Minister must appoint an interim Board consisting of a minimum of three persons, to assume the responsibilities of the Board, until a new Board is constituted, in accordance with the procedure referred to in section 6.

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

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

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

[S. 6A inserted by s. 5 of Act 7 of 2014.]

## 7 Meetings of Board

(1) The chairperson or, in his or her absence, a member of the Board elected by the members present, must preside at a meeting of the Board.

(2) The Board meets at the times and places determined by itself. However, the first meeting of the Board must be held at a time and place determined by the chairperson.

(3) The chairperson may at any time convene a special meeting of the Board, and he or she must determine the time and place of the meeting.

(4) The quorum for a meeting of the Board is the majority of its members.

(5) A decision of the Board must be taken by resolution of the majority of the members present at any meeting of the Board, and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

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

## **8 Committees of Board**

(1) The Board may nominate one or more committees which may, subject to the instructions of the Board, perform those functions of the Board which the Board may determine.

(2) A committee must consist of such number of members of the Board and of the staff of the Foundation (if any) as the Board may consider necessary, and the Board may at any time dissolve or reconstitute the committee.

(3) If a committee consists of more than one member, the Board must designate a member of that committee as chairperson thereof.

(4) The Board is not absolved from the performance of any function entrusted to any committee in terms of this section.

## **9 Executive management committee**

(1) The executive management committee of the Foundation must consist of-

- (a) the chief executive officer, as chairperson;
- (b) the heads of the divisions; and, if necessary,
- (c) any other member of the staff of the Foundation appointed by the chief executive officer.

(2) The executive management committee is responsible for the management of the affairs of the Foundation in accordance with the object, policy and instructions of the Board.

## **10 Chief executive officer of Foundation**

(1) The Board must appoint a suitably skilled and qualified person as the chief executive officer of the Foundation, after following a transparent and competitive selection process.

[Sub-s. (1) substituted by s. 22 of Act 16 of 2011 and by s. 6 (a) of Act 7 of 2014.]

(2) The chief executive officer must report to the Board on those affairs which the Board may require.

(3) The chief executive officer must be appointed or reappointed for such period, but not exceeding five years, and subject to such conditions, including conditions relating to the payment of remuneration and allowances, as the Board may, in consultation with the Minister, determine.

[Sub-s. (3) substituted by s. 6 (b) of Act 7 of 2014.]

(3A) The chief executive officer must enter into a performance agreement with the Board within three months of taking up his or her post.

[Sub-s. (3A) inserted by s. 6 (c) of Act 7 of 2014.]

(4) (a) Whenever the chief executive officer-

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

the Board may appoint any senior person in the service of the Foundation, in consultation with the Minister, who meets the requirements determined in terms of subsection (1) to act as chief executive officer.

[Para. (a) substituted by s. 6 (d) of Act 7 of 2014.]

(b) The acting chief executive officer has all the powers and performs all the duties of the chief executive officer.

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

[Sub-s. (5) added by s. 6 (e) of Act 7 of 2014.]

## **11 Accounting officer**

(1) The chief executive officer is the accounting officer responsible for the accounting of all money received by the Foundation, the utilisation thereof and the property of the Foundation.

(2) (a) The accounting officer may-

- (i) delegate to an employee of the Foundation a power conferred upon the accounting officer by or under this Act; or
- (ii) authorise such employee to perform a duty assigned by or under this Act to the accounting officer.

(b) Any delegation or authorisation under paragraph (a) does not prohibit the exercise of the power in question or the performance of the duty in question by the accounting officer himself or herself.

## 12 Divisions of Foundation

The Board may, after consultation with the Minister, establish or disestablish organisational divisions for different research fields. However, as soon as possible after the commencement of this Act there must at least be established separate divisions for-

- (a) the natural sciences and engineering;
- (b) the social sciences and humanities;
- (c) the health sciences;
- (d) the agricultural and environmental sciences; and
- (e) national facilities.

## 13 Staff of Foundation

(1) Subject to subsection (2)-

- (a) the chief executive officer may on such conditions as the Board may determine appoint such employees, or receive on secondment such persons, as are necessary to enable the Foundation to perform its functions, but
- (b) the Board must on such conditions as it may determine appoint, or receive on secondment, a head for each division.

(2) The Foundation must pay to its staff out of its funds such remuneration, allowances, subsidies and other benefits as the Board may determine in accordance with a system approved for that purpose by the Minister with the concurrence of the Minister of Finance.

(3) (a) The Board may with the consent of an employee on such conditions as the Board may determine second the employee either for a particular service or for a period of time to the service of a department of State, the government of any province, territory or country, or a person in or outside the Republic.

(b) That employee's rights, privileges and benefits by virtue of his or her conditions of service as an employee of the Foundation may not be adversely affected by the secondment.

## 14 Particular powers of Foundation regarding employee benefits

The Foundation may on such conditions and against such security as it may consider fit-

- (a) provide collateral security, including guarantees, to a registered financial institution in respect of a loan granted to an employee by that financial institution, to enable that employee to acquire or improve immovable property for residential purpose;
- (b) establish or institute bursary schemes for purposes of study or other similar undertakings or schemes which in its opinion may be beneficial to its employees;
- (c) provide money to an employee to enable him or her to become a member of a pension fund approved by the Board or to have a break in service on account of approved leave without full pay reckoned as pensionable service.

## 15 Pensions

## (1) The Foundation-

- (a) must for purposes of the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963), be regarded as being an associated institution, but
- (b) may, under the Pension Funds Act, 1956 (Act 24 of 1956), establish any other pension fund for its employees.

(2) The amount a person in the service of the Foundation is entitled to receive from a pension fund contemplated in subsection (1) (b) on the date on which he or she becomes a member thereof, may not be less than the amount which he or she was entitled to receive as a member of any pension fund of the Foundation immediately before joining the new pension fund.

(3) For the purposes of this section and of item 1 and, unless the context otherwise indicates, item 2 of the Schedule to this Act '**pension fund**' means any pension or provident fund or scheme established in terms of any pension law.

## 16 Staff of FRD and of Centre for Science Development

The Schedule to this Act applies to all employees of the FRD and of the Centre for Science Development of the HSRC transferred to the Foundation as contemplated in that Schedule.

## 17 Funds of Foundation

## (1) The funds of the Foundation consist of-

- (a) money appropriated by Parliament;
- (b) money paid to the Foundation by users of the national facilities and of products of national facilities;
- (c) donations or contributions made to the Foundation;
- (d) fees paid to the Foundation in terms of subsection (4);
- (e) interest on investments of the Foundation; and
- (f) income derived from any other source.

(2) (a) The Foundation must utilise its funds to cover costs in connection with the performance of its functions in terms of this Act.

(b) The Foundation must utilise any money contemplated in subsection (1) (a) in accordance with the statement referred to in subsection (3) (a).

(c) The Foundation must utilise any donations or contributions contemplated in subsection (1) (c) in accordance with the conditions imposed by the donor or contributor in question.

(3) (a) The Foundation must in each financial year, at a time determined by the Minister, submit a statement of the Foundation's estimated income and expenditure projected over the following three financial years to the Minister for his or her approval, granted with the concurrence of the Minister of Finance.

(b) The Foundation may in any financial year submit supplementary statements of the Foundation's estimated expenditure for that financial year, to the Minister for approval, granted with the concurrence of the Minister of Finance.

(c) The Foundation may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(4) The Foundation may, in respect of any work completed or service rendered by it under this Act, or for the use of rights consequent upon any discoveries, inventions or improvements, charge such fees or make such other financial arrangements as it may deem fit. However, the Foundation must recover the full cost of the use of its facilities in respect of such work or service.

(5) The Foundation may invest any unexpended portion of its funds with the Corporation for Public Deposits or, with the approval of the Minister, granted with the concurrence of the Minister of Finance, dispose thereof in any other manner.

(6) The Foundation may establish such reserve funds, and deposit therein such



amounts, as the Minister may with the concurrence of the Minister of Finance approve.

## **18 Audit, annual report and financial report**

- (1) The Auditor-General must audit the financial statements of the Foundation.
- (2) The Foundation must-
  - (a) furnish to the Minister the information which he or she may require in connection with the activities and financial position of the Foundation; and
  - (b) submit to the Minister an annual report containing a balance sheet, a statement of income and expenditure certified by the Auditor-General and such other particulars as the Minister may require.
- (3) The Minister must table the annual report in Parliament within 14 days after the receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its following ordinary session.

## **19 Intellectual property rights**

- (1) The rights in respect of any invention, discovery or improvement by a person in the course of studies or research in respect of which he or she received any financial support from the Foundation, must be determined by agreement between the Foundation and that person or his or her employer, or both that person and the employer.
- (2) The Foundation must, with regard to studies or research supported by the Foundation-
  - (a) acknowledge any invention, discovery or improvement in respect of indigenous knowledge and technology held by any person or community; and
  - (b) protect any rights of that person or community arising from the invention, discovery or improvement.

## **20 Losses and damage**

- (1) The accounting officer must determine the amount of loss or damage if a person who is or was in the service of the Foundation caused the Foundation any loss or damage because that person-
  - (a) failed to collect money due to the Foundation for the collection of which he or she is or was responsible;
  - (b) is or was responsible for an irregular payment of money of the Foundation or for a payment of such money not supported by a proper voucher;
  - (c) is or was responsible for fruitless expenditure of money of the Foundation owing to failure to carry out his or her duties;
  - (d) is or was responsible for a deficiency in, or the destruction of, or any damage to, the Foundation's money, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the Foundation;
  - (e) is or was responsible for a claim against the Foundation owing to failure to carry out his or her duties.
- (2) The accounting officer may-
  - (a) enter into an agreement with the person who caused the loss or damage for the repayment to the Foundation of the whole or any part of the amount determined in terms of subsection (1); or
  - (b) by notice in writing order the person who caused the loss or damage to pay to the Foundation, within 30 days from the date of the notice, the whole or any part of the amount determined in terms of subsection (1).
- (3) If a person fails to pay in accordance with the agreement contemplated in subsection (2) (a) or to comply with a notice contemplated in subsection (2) (b), the Foundation may recover the amount by legal process.

## 21 Delegations

- (1) The Board may-
- (a) delegate to the chairperson, the chief executive officer or any other member of the staff of the Foundation any power conferred upon the Board by or under this Act, on such conditions as the Board may determine; or
  - (b) authorise the chairperson, the chief executive officer or such other member of the staff to perform any duty assigned to the Board by or under this Act.
- (2) The chief executive officer may-
- (a) delegate to a member of the staff of the Foundation any power conferred upon the chief executive officer by or under this Act; or
  - (b) authorise such member of the staff to perform any duty assigned to the chief executive officer by or under this Act.

(3) Any delegation or authorisation under subsection (1) or (2) does not prohibit the exercise of the power or performance of the duty in question by the Board or the chief executive officer, as the case may be.

## 22 .....

[S. 22 repealed by s. 23 of Act 16 of 2011.]

## 23 Regulations

- (1) The Minister may, after consultation with the Board, make regulations regarding-
- (a) .....

[Para. (a) deleted by s. 7 (b) of Act 7 of 2014.]

- (b) the procedure at meetings of the Board;
- (c) the method and frequency of reports on Board meetings to be submitted to the Minister; and
- (d) in general, any matter in respect of which the Minister deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

[Sub-s. (1), previously s. 23, renumbered by s. 7 (a) of Act 7 of 2014.]

(2) Regulations made in terms of subsection (1) (d) must be submitted to Parliament at least 30 days before promulgation.

[Sub-s. (2) added by s. 7 (c) of Act 7 of 2014.]

## 24 Repeal of law, and saving

(1) The Research Development Act, 1990 (Act 75 of 1990), is hereby repealed.

(2) Anything done under the Act referred to in subsection (1) must be regarded as having been done under the corresponding provision of this Act.

## 25 Short title and commencement

This Act is called the National Research Foundation Act, 1998, and takes effect on a date fixed by the President of the Republic by proclamation in the *Gazette*.

### Schedule TRANSITIONAL PROVISIONS

#### 1 Staff of FRD and of Centre for Science Development

(1) (a) Every person who was in the service of the FRD and the Centre For Science Development of the HSRC immediately before the commencement of this Act and who was then engaged in functions now vested in the Foundation must, as from the commencement, be transferred to the service of the Foundation.

(b) Every person so transferred must be regarded as being appointed in terms of section 13 (1).

(2) If, for the purposes of this item, the question arises whether any person was engaged in functions now vested in the Foundation, that question must be decided by the Minister or, if that person feels aggrieved by the decision, in terms of the Arbitration Act,

1965 (Act 42 of 1965).

(3) The remuneration and other terms and conditions of service of any person transferred as contemplated in subitem (1) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before the commencement of this Act and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including-

- (a) membership of a pension fund;
- (b) membership of a medical aid scheme;
- (c) employer contributions in connection with such membership;
- (d) accrued pensionable service;
- (e) accrued leave benefits; and
- (f) retirement at a specific age.

(4) (a) Every person transferred as contemplated in subitem (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the commencement of this Act.

(b) Any proceedings against such a person which were instituted immediately before the commencement of this Act, must be disposed of as if this Act had not been enacted.

(5) (a) The person who was president of the FRD immediately before the commencement of this Act must be transferred to the service of the Foundation as the interim chief executive officer of the Foundation until a chief executive officer is appointed in terms of section 10 (1).

(b) Subitem (4) is also applicable to the interim chief executive officer with the changes required by the context.

## **2 Pension matters**

(1) Any person transferred to the service of the Foundation in terms of item 1 (1) who is a member of the Human Sciences Research Council Pension Fund, must before a date determined by the Board after consultation with the HSRC, in writing exercise an option to-

- (a) remain a member of that fund, and from the date of exercising the option that person must, notwithstanding any other law, be regarded as being a dormant member of that pension fund and become a member of any existing pension fund of the Foundation; or
- (b) become a member of any pension fund established under section 15.

(2) In the case where a person elects under subitem (1) (b) to become a member of a pension fund established under section 15, and his or her pension benefits are transferred to any pension fund of the Foundation-

- (a) that person's membership of the pension fund from which his or her benefits are transferred terminates and he or she has no further claim against that pension fund;
- (b) the pension fund from which the person's benefits are transferred must pay to the pension fund of which he or she becomes a member, an amount equal to the full actuarial liability of that fund in respect of that person as on the date of the transfer, plus interest calculated at the bank rate from the date of the transfer to the date of payment thereof;
- (c) the pension fund from which the person's benefits are transferred must cede any claim which it may have against the person to the pension fund of which he or she becomes a member.

(3) For the purposes of this item-

- (a) the actuarial liability of a pension fund in respect of a specific member or group of members of the fund, means the actuarial liability, as determined by an actuary instructed by the HSRC, with regard to the said member or group of members of the fund; and
- (b) bank rate means the rate determined under section 10 (2) of the South African Reserve Bank Act, 1989 (Act 90 of 1989).

(4) For the purposes of the Income Tax Act, 1962 (Act 58 of 1962), no change of employer must be regarded as having taken place when employment is taken up at the Foundation by persons in terms of item 1 (1) and (5), and the position of those persons in respect of the phasing-in of tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, must be regarded as remaining unchanged.

### **3 Passing of certain assets and liabilities to Foundation**

(1) All assets, rights, liabilities and obligations which, immediately prior to the commencement of this Act vest in the FRD, and all assets, rights, liabilities and obligations which, in the opinion of the Minister after consultation with the HSRC, immediately prior to the commencement of this Act vest in the Centre for Science Development of the HSRC, or to which the FRD or the said Centre are then subject in connection with functions which after the said commencement are entrusted to the Foundation, pass to the Foundation.

(2) Upon the coming into force of this Act, the HSRC must pay to the Foundation the net current value of all accumulated leave standing to the credit of each person who was in the service of the Centre for Science Development of the HSRC immediately before the commencement of this Act and who is transferred to the service of the Foundation in terms of item 1 (1).

(3) The registrar of deeds must make the necessary entries or endorsements for the transfer of any property in terms of subitem (1), and no office fee or other charge is payable in respect of that entry or endorsement.

(4) Any reference to the FRD in any other Act must be interpreted as a reference to the Foundation established by this Act.

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