**NATIONAL RESEARCH FOUNDATION AMENDMENT BILL [B23–2017]  
WORKING DOCUMENT (VERSION 1)**

Amendments as Tabled  
Amendments presented by NRF  
Additional Amendments Proposed by Support Staff

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| **Principal Act (read with Bill as Tabled)** | **Principal Act & Bill (with additional NRF inputs)** | **Additional Proposed Amendments** |
| To provide for the promotion of research, both basic and applied, and ~~the extension and transfer of knowledge~~ human capital development in the various fields of science and technology, ~~and indigenous technology~~ including humanities, social science and indigenous knowledge; and for this purpose to provide for the establishment of a National Research Foundation; to support and promote science engagement; to develop, support and maintain national research facilities; to promote the development and maintenance of the national science system and support of Government priorities; and to provide for incidental matters.  BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:–  **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;  **‘Department’** means the Department of Science and Technology;  **'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;  **~~'national facilities'~~** ~~means facilities contemplated in section 5;~~  **‘national research facilities’** means an institution that provides unique and substantial infrastructure capabilities and services for competitive research, innovation and human capital development in science, engineering and technology, and has been determined as such under section 5;  **'president'** ....  **'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;~~  **‘research institution’** means the institution contemplated in section 5A;  **'science'** includes any system of knowledge attained by verifiable means and the organised body of knowledge humans have gained by research;  **‘science engagement’** means participation by the targeted groups of society in a programme aimed at generating public response to science, which includes but is not limited to awareness, accumulation of knowledge, enjoyment, opinion formulation and scientific literacy;  **~~'technology'~~** ~~includes indigenous technology, and means knowledge accumulated through research or observation, and the practical application thereof;~~  **‘technology’** means the manner through which knowledge accumulated through research or observation finds practical application;  **'this Act'** includes the regulations.  **2. Establishment of the Foundation**  (1) 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.  (2) The Public Management Act, 1999 (Act No. 1 of 1999), applies to the 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.~~  The object of the Foundation is to contribute to national development by–  *(a)* supporting and promoting research and human capital development, through funding and the provision of the necessary research infrastructure, in order to facilitate the creation of knowledge, innovation and development in all fields of science and technology, including humanities, social sciences and indigenous knowledge;  *(b)* developing, supporting and maintaining national research facilities;  *(c)* supporting and promoting public awareness of, and engagement with science; and  *(d)* promoting the development and maintenance of the national science system and support of Government priorities.  **3A. Powers of the Minister to issue policy guidelines**  (1) In pursuit of the Government’s objectives and those of the Foundation, the Minister may, after consultation with the Foundation and any other relevant Minister, determine national policies for research and funding to be implemented by the Foundation.  (2) The Minister may, after consultation with the Foundation, issue national policy guidelines for the implementation of the policies referred to in subsection (1).  **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;  *(aA)* implement the policies referred to in section 3A;  *~~(b)~~*~~stimulate, promote, support and protect research in the field of indigenous technology;~~  *(b)* promote and support research;  *(c)*    obtain funds for research, both locally and abroad;  *~~(d)~~*~~allocate funds for research and promote multi-disciplinary collaboration through the divisions;~~  *(d)* allocate funds for research and promote multi-disciplinary and trans-disciplinary collaboration;  *(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;~~  *(g)* provide financial support for the acquisition or establishment of research infrastructure at research institutions and national research facilities;  *(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;~~  *(j)* facilitate and promote national and international scientific exchange and collaboration between researchers and research institutions;  *(l)* disseminate scientific knowledge or technology through any medium;  *(m)*  manage, support and monitor the operation of national research facilities;  *(mA)* investigate and assess the need for new or additional national research facilities or the withdrawal of an existing national research facility, and make recommendations to the Minister;  *(mB)* incubate qualifying national research facilities prior to its declaration as a national research facility;  *(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;~~  *(a)* award grants to individual or juristic persons, national research facilities or research institutions –  (i) for research;  (ii) for research infrastructure;  (iii) for human capital development or related activities; and  (iv) to promote science engagement;  *(aA)* coordinate relevant research institutions and target science advancement and outreach activities;  *(aB)* coordinate science engagement by–  (i) supporting the involvement of targeted groups of the society in science engagement;  (ii) designing and implementing science engagement initiatives and activities; and  (iii) managing the Department supported science engagement programme;  *(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.  ~~(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).~~  (4) Apart from the research conducted by the national research facilities, the Foundation may not itself conduct research other than research relating to the efficient and effective execution of its functions referred to in subsection (1), or unless requested by the Minister.  **4A. Exercise of powers of Foundation outside Republic**  (1) The Foundation may, subject to legislation and other formal agreements regarding international cooperation and at the request or with prior approval of the Minister, undertake research in any territory outside the Republic on behalf of any person (including any government department or administration).  (2) Subject to the provision of subsection (3), the provisions of this Act shall, in so far as they can be applied, apply with the necessary changes in connection with the exercising by the Foundation of its powers in terms of this section as if the territory in which it so exercises its power was part of the Republic.  (3) Notwithstanding anything to the contrary in this Act contained, the terms and conditions on which the Foundation may undertake research in terms of subsection (1), shall be such as may be agreed upon by the Foundation and the person (including any government department or administration) on whose behalf research is to be undertaken, and approved of by the Minister.  **5.  National facilities for research**    (1) The Minister may, after consultation with the Foundation, by notice in the *Gazette*, determine a research facility as a national research 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 research facility for research or instruction.  (3) The Foundation may not acquire~~,~~ or manage the operation of~~,~~ any research facility other than a national research facility placed under the control of the Foundation under subsection (1), without the written approval of the Minister.  (4) The Minister may make regulations relating to the determination of national research facilities, including the requirements and process for their determination.  (5) The Minister may, after consultation with the Foundation, and subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), by notice in the *Gazette* withdraw the determination of a national research facility or transfer a national research facility to another public entity or department.  (6) The Foundation is responsible for–  *(a)* determining the functions of a national research facility;  *(b)* determining the management and funding for national research facilities;  *(c)* determining the criteria for access to a national research facility; and  *(d)* any other ancillary or procedural matter relating to national research facilities.  (7) The Foundation may, when it deems it necessary, use the national research facilities to conduct research.  **5A.  Research institutions**  (1) The Minister may, after consultation with the Foundation, declare by notice in the *Gazette* an institution conducting research, as a research institution and eligible to receive grant funding from the Foundation.  (2) The Minister may, after consultation with the Foundation, and subject to the provisions of the Promotion of Administrative Justice Act, 2000, by notice in the *Gazette*, withdraw a declaration of an institution as a research institution.  **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  (iii)   one member appointed by the Minister, after nominations from the National Advisory Council on Innovation; and  (iv)   one member appointed by the Minister, after nominations from the Council on Higher Education; and  *(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)*.  (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.  (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.  (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 the demographics of the Republic, higher education, broad scientific disciplines, the business sector and civil society.  (5) The Board must be reconstituted every four years in accordance with the process referred to in subsection (2).  (5A) ......  (5B) A member may not serve more than two consecutive terms.  (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.  (6) A member of the Board ceases to hold office if-  *(a)*   he or she resigns by written notice to the Minister;  *(b)*   the Minister, after consultation with the Board, terminates his or her period of office due to misconduct, incapacity, incompetence, or any other reasonable ground;  *(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  *(e)*    he or she ceases to meet the requirements for appointment as a member of the Board in terms of this Act.  (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 subsections (3) and (4).  *(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 or a member of a committee 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)*;  *(d)*   has, as a result of improper conduct, been removed from a position of trust~~; or~~ by a court of law.  *~~(e)~~*~~is not fit and proper to hold office.~~  (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~~ Parliament relating to such appointment or reappointment.  **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~~ Parliament, setting out the reasons for the dissolution of the Board.  **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~~ must meet at least four times a year at the times and places determined by itself~~. However,~~ and 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.~~  (3) The chairperson–  *(a)* may, at any time, convene a special meeting of the Board; or  *(b)* must, within 14 days of a request to convene a special meeting of the Board signed by at least one thirds of the members of the Board convene such a meeting,  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.  (7) The Board must make rules regarding the procedure at its meetings.  (8) A member of the Board–  *(a)* must, upon appointment and thereafter annually, disclose to the Minister by way of a written statement, any interest which could reasonably compromise the Board in the performance of its functions;  *(b)* may not vote or in any manner be present during or participate in the proceedings of any meeting of the Board if, in relation to any matter before the Board, he or she has an interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner.  (9) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason–  *(a)* of a vacancy on the Board; or  *(b)* that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.  **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.~~  (2) *(a)* A committee may consist of such number of members of the Board and of the staff of the Foundation and any other person with suitable skills and experience as the Board may consider necessary.  *(b)* The Board may at any time dissolve or reconstitute the committee.  (3) ~~If a committee consists of more than one member, the~~ 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.  (5) A member of the Board may not serve on more than two committees at a time.  **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, after consultation with the Minister, appoint a suitably skilled and qualified person as the chief executive officer of the Foundation, after following a transparent and competitive selection process.  (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.  (3A) The chief executive officer must enter into a performance agreement with the Board within three months of taking up his or her post.  (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 until the chief executive officer is able to resume those functions or until the vacant position of chief executive officer is filled.  *(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.  (6) The chief executive officer may not serve for more than two terms.    **~~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 Foundation may, after consultation with the Minister, establish or disestablish organisational divisions for different research fields or functions consistent with the objects of the Act.  ~~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~~ chief executive officer, 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~~ organisation or institution within 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~~ to be used for the national research facilities, ~~and of~~ their products ~~of national facilities~~ and services;  *(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 intellectual property rights emanating from any study or research that is funded or undertaken by the Foundation are regulated in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008), as well as other relevant Acts governing the management of intellectual property or indigenous knowledge.  ~~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 delegate to the chairperson, any member or committee of the Board or the chief executive officer any power conferred upon the Board by or under this Act, on such conditions as the Board may determine.  (2) The chief executive officer may delegate to a member of the staff of the Foundation any power conferred on the chief executive officer by or under the Act.  ~~(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) must be in writing, and does not prohibit the exercise of the power or performance of the duty ~~in question by~~ conferred upon the Board or the chief executive officer, as the case may be.    **22.  ......**  **22A. Liquidation of Foundation**  The Foundation may not be wound up except by or under the authority of an Act of Parliament.  **23. Regulations**    (1) The Minister may, after consultation with the Board, make regulations regarding-  *(a)*   ......  *~~(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.  ~~(2) Regulations made in terms of subsection (1)~~ *~~(d)~~* ~~must be submitted to Parliament at least 30 days before promulgation.~~    **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*. | To provide for the promotion of research, both basic and applied, and ~~the extension and transfer of knowledge~~ human capacity development in the various fields of science and technology, ~~and indigenous technology~~ including humanities, social science and indigenous knowledge; and for this purpose to provide for the establishment of a National Research Foundation; to support, advance and promote science engagement; to develop, support and maintain national research facilities; to promote the development and maintenance of the national science system and support of Government priorities; and to provide for incidental matters.  BE IT ENACTED by the Parliament of the Republic of South Africa, as follow:–  **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;  **~~‘Department’~~** ~~means the Department of Science and Technology;~~  **~~'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;  **~~'national facilities'~~** ~~means facilities contemplated in section 5;~~  **‘national research facilities’** means an institution that provides unique and substantial infrastructure, capabilities and services for competitive research, innovation and human capacity development in science, engineering and technology, and has been determined as such under section 5;  **'president'** ....  **'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;~~  **‘research institution’** means the institution contemplated in section 5A;  **'science'** includes any system of knowledge attained by verifiable means and the organised body of knowledge humans have gained by research;  **‘science engagement’** means participation by the targeted groups of society in a programme aimed at generating public response to science, which includes but is not limited to awareness, accumulation of knowledge, enjoyment, opinion formulation and scientific literacy;  **~~'technology'~~** ~~includes indigenous technology, and means knowledge accumulated through research or observation, and the practical application thereof;~~  **‘technology’** means the manner through which knowledge accumulated through research or observation finds practical application;  **'this Act'** includes the regulations.  **2. Establishment of the Foundation**  (1) 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.  (2) The Public Management Act, 1999 (Act No. 1 of 1999), applies to the 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.~~  The object of the Foundation is to contribute to national development by–  *(a)* supporting and promoting research and human capacity development, through funding and the provision of the necessary research infrastructure, in order to facilitate the creation of knowledge, innovation and development in all fields of science and technology, including humanities, social sciences and indigenous knowledge;  *(b)* developing, supporting and maintaining national research facilities;  *(c)* supporting and promoting public awareness of, and engagement with science; and  *(d)* promoting the development and maintenance of the national science system and support of Government priorities.  **3A. Powers of the Minister to determine national policy**  (1) In pursuit of the Government’s objectives and those of the Foundation, the Minister may, after consultation with the Foundation and any other relevant Minister, determine national policies for research and funding to be implemented by the Foundation.  ~~(2) The Minister may, after consultation with the Foundation, issue national policy guidelines for the implementation of the policies referred to in subsection (1).~~  **4. Functions, powers and duties of Foundation**  (1) The functions of the Foundation are to–  *(a)*   promote the development of appropriate human resources, research infrastructure, and research capacity in the areas of science and technology;  *(aA)* implement the policies referred to in section 3A;  *~~(b)~~*~~stimulate, promote, support and protect research in the field of indigenous technology;~~  *(b)* promote, support and advance research;  *(c)*    obtain funds for research, both locally and abroad;  *~~(d)~~*~~allocate funds for research and promote multi-disciplinary collaboration through the divisions;~~  *~~(d)~~* ~~allocate funds for research and promote multi-disciplinary and trans-disciplinary collaboration;~~  *~~(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;~~  *(g)* provide financial support for the acquisition or establishment of research infrastructure at research institutions and national research facilities;  *~~(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;~~  *(j)* facilitate and promote national and international scientific exchange and collaboration between researchers and research institutions;  *(l)* disseminate scientific knowledge or technology through any medium;  *~~(m)~~*~~manage, support and monitor the operation of national research facilities;~~  *~~(mA)~~* ~~investigate and assess the need for new or additional national research facilities or the withdrawal of an existing national research facility, and make recommendations to the Minister;~~  *~~(mB)~~* ~~incubate qualifying national research facilities prior to its declaration as a national research facility;~~  *(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;~~  *(a)* award grants to individual or juristic persons, national research facilities or research institutions –  (i) for research;  (ii) for research infrastructure;  (iii) for human capacity development or related activities; and  (iv) to promote science engagement;  *(aA)* coordinate relevant research institutions and target science advancement and outreach activities;  *~~(aB)~~* ~~coordinate science engagement by–~~  ~~(i) supporting the involvement of targeted groups of the society in science engagement;~~  ~~(ii) designing and implementing science engagement initiatives and activities; and~~  ~~(iii) managing the Department supported science engagement programme;~~  *(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.  ~~(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).~~  (4) Apart from the research conducted by the national research facilities, the Foundation may not itself conduct research other than research relating to the efficient and effective execution of its functions referred to in subsection (1), or unless requested by the Minister.  **4A. Exercise of powers of Foundation outside Republic**  (1) The Foundation may, subject to legislation and other formal agreements regarding international cooperation and at the request or with prior approval of the Minister, undertake research in any territory outside the Republic on behalf of any person (including any government department or administration).  (2) Subject to the provision of subsection (3), the provisions of this Act shall, in so far as they can be applied, apply with the necessary changes in connection with the exercising by the Foundation of its powers in terms of this section as if the territory in which it so exercises its power was part of the Republic.  (3) Notwithstanding anything to the contrary in this Act contained, the terms and conditions on which the Foundation may undertake research in terms of subsection (1), shall be such as may be agreed upon by the Foundation and the person (including any government department or administration) on whose behalf research is to be undertaken, and approved of by the Minister.  **5.  National facilities for research**  (1) The Minister may, after consultation with the Foundation, by notice in the *Gazette*, determine a research facility as a national research 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 research facility for research or instruction.  (3) The Foundation may not acquire~~,~~ or manage the operation of~~,~~ any research facility other than a national research facility placed under the control of the Foundation under subsection (1), without the written approval of the Minister.  (4) The Minister may make regulations relating to the determination of national research facilities, including the requirements and process for their determination.  (5) The Minister may, after consultation with the Foundation, and subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), by notice in the *Gazette* withdraw the determination of a national research facility or transfer a national research facility to another public entity or department.  (6) The Foundation is responsible for–  *(a)* determining the functions of a national research facility;  *(b)* determining the management and funding for national research facilities;  *(c)* determining the criteria for access to a national research facility; and  *(d)* any other ancillary or procedural matter relating to national research facilities.  (7) The Foundation may, when it deems it necessary, use the national research facilities to conduct research.  **5A.  Research institutions**  (1) The Minister may, after consultation with the Foundation, declare by notice in the *Gazette* an institution conducting research, as a research institution and eligible to receive grant funding from the Foundation.  (2) The Minister may, after consultation with the Foundation, and subject to the provisions of the Promotion of Administrative Justice Act, 2000, by notice in the *Gazette*, withdraw a declaration of an institution as a research institution.  **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  (iii)   one member appointed by the Minister, after nominations from the National Advisory Council on Innovation; and  (iv)   one member appointed by the Minister, after nominations from the Council on Higher Education; and  *(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)*.  (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.  (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.  (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 the demographics of the Republic, higher education, broad scientific disciplines, the business sector and civil society.  (5) The Board must be reconstituted every four years in accordance with the process referred to in subsection (2).  (5A) ......  (5B) A member may not serve more than two consecutive terms.  (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.  (6) A member of the Board ceases to hold office if-  *(a)*   he or she resigns by written notice to the Minister;  *(b)*   the Minister, after consultation with the Board, terminates his or her period of office due to misconduct, incapacity, incompetence, or any other reasonable ground;  *(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  *(e)*    he or she ceases to meet the requirements for appointment as a member of the Board in terms of this Act.  (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 subsections (3) and (4).  *(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 or a member of a committee 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)*;  *(d)*   has, as a result of improper conduct, been removed from a position of trust~~; or~~ by a court of law.  *~~(e)~~*~~is not fit and proper to hold office.~~  (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~~ Parliament relating to such appointment or reappointment.  **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~~ Parliament, setting out the reasons for the dissolution of the Board.  **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~~ must meet at least four times a year at the times and places determined by itself~~. However,~~ and 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.~~  (3) The chairperson–  *(a)* may, at any time, convene a special meeting of the Board; or  *(b)* must, within 14 days of a request to convene a special meeting of the Board signed by at least one thirds of the members of the Board convene such a meeting,  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.  (7) The Board must make rules regarding the procedure at its meetings.  (8) A member of the Board–  *(a)* must, upon appointment and thereafter annually, disclose to the Minister by way of a written statement, any interest which could reasonably compromise the Board in the performance of its functions;  *(b)* may not vote or in any manner be present during or participate in the proceedings of any meeting of the Board if, in relation to any matter before the Board, he or she has an interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner.  (9) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason–  *(a)* of a vacancy on the Board; or  *(b)* that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.  **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.~~  (2) *(a)* A committee may consist of such number of members of the Board and of the staff of the Foundation and any other person with suitable skills and experience as the Board may consider necessary.  *(b)* The Board may at any time dissolve or reconstitute the committee.  (3) ~~If a committee consists of more than one member, the~~ 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.  ~~(5) A member of the Board may not serve on more than two committees at a time.~~  **9.  Executive management committee**  (1) The executive management committee of the Foundation must consist of-  *(a)*   the chief executive officer, as chairperson; and  *~~(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, after consultation with the Minister, appoint a suitably skilled and qualified person as the chief executive officer of the Foundation, after following a transparent and competitive selection process.  (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.  (3A) The chief executive officer must enter into a performance agreement with the Board within three months of taking up his or her post.  (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 until the chief executive officer is able to resume those functions or until the vacant position of chief executive officer is filled.  *(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.  (6) The chief executive officer may not serve for more than two terms.  **~~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 Foundation may, after consultation with the Minister, establish or disestablish organisational divisions for different research fields or functions consistent with the objects of the Act.~~  ~~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~~ chief executive officer, 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~~ organisation or institution within 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 to be used for the national research facilities, and of their products of national facilities and services;~~  *(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 intellectual property rights emanating from any study or research that is funded or undertaken by the Foundation are regulated in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008), as well as other relevant Acts governing the management of intellectual property or indigenous knowledge.  ~~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 delegate to the chairperson, any member or committee of the Board or the chief executive officer any power conferred upon the Board by or under this Act, on such conditions as the Board may determine.  (2) The chief executive officer may delegate to a member of the staff of the Foundation any power conferred on the chief executive officer by or under the Act.  ~~(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) must be in writing, and does not prohibit the exercise of the power or performance of the duty ~~in question by~~ conferred upon the Board or the chief executive officer, as the case may be.  **22.  ......**  **22A. Liquidation of Foundation**  The Foundation may not be wound up except by or under the authority of an Act of Parliament.  **23. Regulations**  (1) The Minister may, after consultation with the Board, make regulations regarding-  *(a)*   ......  *~~(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.  ~~(2) Regulations made in terms of subsection (1)~~ *~~(d)~~* ~~must be submitted to Parliament at least 30 days before promulgation.~~  **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*. | *[Comment: “advance” preliminarily inserted as potential consequential amendment based on the NRF presentation that the foundation promotes, supports and advances research. The relevance of the insertion will have to be tested during deliberations by the Committee.]*  **‘Department’** means the Department ~~of Science and Technology~~ responsible for science and technology;  *[Comment: Normal drafting conventions provide that if a term is only used once it is not defined in the definitions clause but only in the section, and similarly if a word is not used anywhere in the legislation it is not defined at all. The in section definition convention is however more prevalent in Commonwealth country drafting styles due to practical reasons as their legislation is voluminous and more inclined to use chapters than a new bill per subject matter.*  *The NRF argues that the definition of ‘Department’ be deleted as it is only used once in the principal Act. In recent litigation (in which Parliament was involved where a string of amendments resulted in the definition of ‘department’ and ‘minister’ over the years being deleted due to said rule), the court had to make a determination as to who is responsible for the administration of a particular piece of legislation, as there was insufficient guidance in the definition section. To avoid such ambiguity and future (costly) interpretative obstacles, a definition of Department as set out above should be retained as an exception to the normal drafting convention, which is a guide not an absolute rule.]*  *[Comment: This NRF proposed deletion is dependent on the outcome of deliberations on section 12 of the principal Act]*  *[Comment: the rationale for the inclusion of the phrase “targeted groups of society” instead of simply “society” or “public” is not clear.]*  *[Comment: for consistency in the use of language/terminology, it can be argued that “human resources” must also be changed to “human capacity”.*  *[Comment: (b) could be redrafted to include the scope of (e), which the NRF proposes be deleted if the Committee finds that the intent reflected in (e) should be retained.]*  *(o)*   compile and maintain a national registry of research funded by the Foundation; and  *(b)*   co-operate or enter into agreements with any person, institution, government or administration; and  (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; and  (1) The Foundation may, subject to legislation and other formal agreements regarding international cooperation and at the request or with prior approval of the Minister, undertake research in any territory outside the Republic on behalf of any person, ~~(~~including any government department or administration~~)~~.  (2) Subject to the provision of subsection (3), the provisions of this Act ~~shall~~ applies to the Foundation, in so far as possible, when it exercises its powers in terms of this section outside the territory of the Republic~~, in so far as they can be applied, apply with the necessary changes in connection with the exercising by the Foundation of its powers in terms of this section as if the territory in which it so exercises its power was part of the Republic~~.  (3) Notwithstanding anything to the contrary contained in this Act ~~contained~~, the terms and conditions on which the Foundation may undertake research in terms of subsection (1), ~~shall be such as may~~ must be–  *(a)* agreed upon by the Foundation and the person (including any government department or administration) on whose behalf research is to be undertaken, and  *(b)* approved of by the Minister.  (3) The Foundation may not acquire~~,~~ or manage the operation of~~,~~ any research facility, other than a national research facility placed under the control of the Foundation under subsection (1), without the written approval of the Minister.  *[Comment: The NRF proposed the insertion of the word “office”, however the tabled Bill (as well as the principal Act, already contains the word “office”.]*  (3) The chairperson–  *(a)* may, at any time, convene a special meeting if the Board; ~~or~~  *(b)* must, within 14 days of a request to convene a special meeting of the Board signed by at least one thirds of the members of the Board convene such a meeting~~,~~; and  *(c)* ~~and he or she~~ must determine the time and place of the meeting convened in terms of paragraphs *(a)* or *(b).*  *(b)* the head of the divisions, if any, and if; and  *(c)* if necessary, any other member of the staff of the Foundation.  *[The above proposed redraft is linked to the section 12 comment below.]*  *[Comment: Section 12 uses the term “may”, and as such grants the Foundation a discretion to put in place Divisions if so required (and similarly remove any that are unnecessary). The NRF argument that section 12 creates an obligation that is never met therefore does not stand. The DST proposed amendment correctly allows for the Foundation to address future needs.]*  (3) *(a)* The ~~Board~~ chief executive officer may–  (i) with the consent of an employee; and  (ii) 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~~ organisation or institution within or outside the Republic.  *[Comment: the above is merely a proposal of alternative drafting to obtain the same effect as the insertion of a comma after the first use of the word “may” and before the word “second”. The intent is merely to propose a style that may read easier]*  *[Comment: it can be argued that (1)(f) is wide enough in its catch-all phrasing to include the “money paid” referred to in (1)(b). Furthermore, (1)(b) is also not clear by whom the money is paid, which could further justify the deletion on that basis. However, as it refers to money paid to the NRF for national research facilities this could refer to a designated grant from the Department. It is for the Committee to decide during deliberations whether deletion or further clarification will be best.]* |