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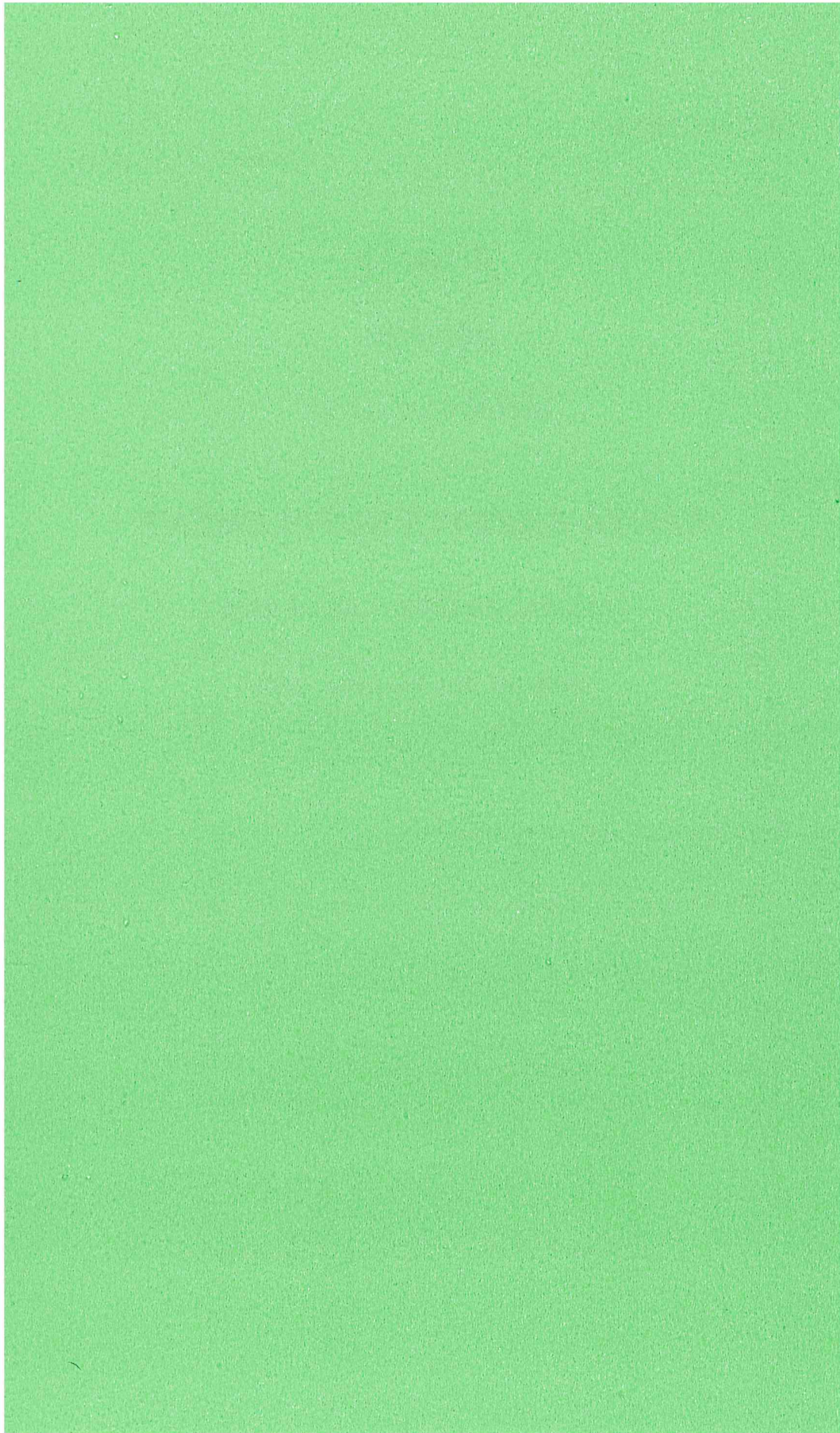
NAIROBI, 20th November, 2020

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THE KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT INSTITUTE BILL, 2020

A Bill for

AN ACT of Parliament to establish the Kenya Industrial Research and Development Institute; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kenya Industrial Research and Development Institute Act, 2020, and shall come into operation on the date appointed by the Cabinet Secretary by notice in the *Gazette*.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to industrial research and development;

“Board” means the Board of Directors of the Institute established under section 8; and

“Institute” means the Kenya Industrial Research and Development Institute established under section 4.

3. The objects of this Act shall be to provide for—

Objects of the Act.

(a) the promotion of research, development, technology and innovation in industrial and allied technologies; and

(b) the initiation and support of industrial development.

PART II—KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT INSTITUTE

4.(1) There shall be established an institute to be known as the Kenya Industrial Research and Development Institute which shall be the successor to the Kenya Industrial Research and Development Institute specified in paragraph 3 of the Fourth Schedule to the Science, Technology and Innovation Act, 2013.

Establishment of the Institute.

No. 28 of 2013.

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

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) entering into contracts;
- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts necessary for the performance of its functions, and which may lawfully be done or performed by a body corporate.

5.(1) The Institute shall undertake research, development and innovation in industrial and allied technologies in—

Functions of the Institute.

- (a) civil engineering;
- (b) mechanical engineering;
- (c) electrical engineering;
- (d) chemical engineering;
- (e) textile technology;
- (f) industrial chemistry;
- (g) food technology;
- (h) ceramics and clay technology;
- (i) power resources;
- (j) mining technology;
- (k) natural products technology;
- (l) leather technology; and
- (m) emerging technologies.

(2) Without prejudice to the generality of subsection (1), the Institute shall also—

- (a) advise the government on all aspects of industrial research, innovation, development, technology and policy;

- (b) develop an industrial research agenda based on indigenous technical knowledge, and contemporary and emerging issues;
- (c) collaborate with institutions of higher learning, professional and industrial associations, government agencies and industrial research institutions to advance technology, innovation and development;
- (d) disseminate and facilitate the application and commercialisation of research findings and technological developments;
- (e) facilitate the implementation of government policies on industrial research and development;
- (f) establish industrial research and technology transfer centres;
- (g) collaborate with other organisations and institutions of higher learning in the development of industrial research training programmes;
- (h) establish and maintain an industrial technology depository; and
- (i) perform any other function related to industrial research, innovation, technology and development.

6. The Institute shall have power to—

Powers of the Institute.

- (a) manage, control and administer the assets of the Institute in the manner and for the purposes that best promote the purpose for which the Institute is established;
- (b) create, develop, apply for and hold rights in intellectual property, and enter into agreements for the commercial exploitation of such rights or otherwise as may be appropriate; and
- (c) do any other thing which is necessary or convenient to be done in connection with or incidental to its functions.

7.(1) The headquarters of the Institute shall be in Nairobi.

Headquarters of the Institute.

(2) Notwithstanding the provisions of subsection (1), the Institute may establish branches at any place in Kenya.

(3) The Institute shall ensure access to its services in all parts of Kenya to the extent that is practicable to do so.

8. (1) The Institute shall be managed by a Board of Directors which shall consist of—

Board of Directors
of the Institute.

- (a) a chairperson who shall be appointed by the President;
- (b) the Principal Secretary in the ministry responsible for matters relating to industrial research and development or the Principal Secretary's representative;
- (c) the Principal Secretary in the ministry responsible for matters relating to finance or the Principal Secretary's representative;
- (d) five other persons, not being public officers, appointed by the Cabinet Secretary; and
- (e) the Director-General of the Institute.

(2) The appointment of the chairperson under subsection (1) (a) and members under subsection (1) (d) shall be by name and by notice in the *Gazette*.

(3) The members appointed under subsection (1) (d) shall consist of persons possessing skills and competencies that may be required for the achievement of the objects of the Institute.

9. (1) A person shall be eligible for appointment as the chairperson or a member of the Board under subsection (8) (1) (d) if that person—

Qualifications of
directors.

- (a) holds a degree in a relevant field from a university recognised in Kenya;
- (b) has proven management or other relevant professional experience;
- (c) has served in a position of senior management for a period of at least six years;
- (d) has not served in the Institute as an employee in the preceding five years; and
- (e) meets the requirements of Chapter Six of the Constitution.

(2) A person is not qualified to be appointed as the chairperson or member of the Board under section (8) (1) (d) if that person—

- (a) is declared to be of unsound mind;
- (b) is undischarged bankrupt; or
- (c) has been found in accordance with any law to have misused or abused a State office or public office or in any way to have contravened the provisions of Chapter Six of the Constitution.

(3) In appointing persons as members of the Board, the Cabinet Secretary shall ensure that—

- (a) not more than two-thirds of the members are of the same gender;
- (b) the membership reflects the regional and ethnic diversity of Kenya; and
- (c) there is representation of the youth and persons with disabilities.

10. The Board shall—

- (a) review and approve the research programmes of the Institute;
- (b) determine the provisions to be made for capital, recurrent expenditure and for reserves of the Institute;
- (c) with the advice of the State Corporations Advisory Committee, draw up a scheme of service for employees of the Institute and administer the approved scheme of service;
- (d) employ such number of employees on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine;
- (e) in consultation with the Cabinet Secretary responsible for matters relating to finance, establish pension, gratuity, superannuation, provident or other funds for the Institute's employees and the employees' dependants; and
- (f) undertake any other activity that may be appropriate in carrying out its functions under this Act.

Functions of the Board.

11. The Board shall have power to—

Powers of the Board.

- (a) in consultation with the Cabinet Secretary and, subject to the approval of the Cabinet Secretary responsible for matters relating to finance, borrow money for the purposes of the Institute;
- (b) receive any grants, gifts, donations or endowments on behalf of the Institute and make legitimate disbursements therefrom;
- (c) monitor and evaluate the Institute's performance;
- (d) appoint, discipline and remove employees of the Institute;
- (e) delegate any of its powers; and
- (f) do any other thing which is necessary or convenient to be done in connection with or incidental to its functions.

12. The chairperson and a member of the Board appointed under section 8 (1) (d) shall hold office for a term not exceeding three years and shall be eligible for reappointment for one other term not exceeding three years.

Tenure of office.

13. A member of the Board may be removed from office only for—

Removal from office.

- (a) violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the member's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) being an undischarged bankrupt;
- (e) being convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (f) being absent from three consecutive meetings of the Board without reasonable explanation; or
- (g) incompetence or neglect of duty.

14. The office of chairperson or member of the Board shall fall vacant if the holder of the office—

- (a) resigns;
- (b) dies; or
- (c) is otherwise removed from office.

Vacancy of office.

15. Where a vacancy occurs in the membership of the Board, the appointing authority shall appoint a new member in accordance with the provisions of this Act.

Filling of vacancies.

16. (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

Meetings of the Board.

(2) Without prejudice to subsection (1), the Board may regulate its own procedure.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

17. The quorum at the meetings of the Board shall be two-thirds of the members of the Board.

Quorum.

18. The Board may, by resolution, either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Institute, the exercise of any of its powers or the performance of any of its functions.

Delegation by the Board.

19. The chairman and members of a Board, other than the chief executive, shall be paid out of the funds of the Institute such allowances or other remuneration as the Cabinet Secretary may, on the advice of the Salaries and Remuneration Commission, determine.

Remuneration of directors.

20. (1) There shall be a Director-General of the Institute who shall be competitively recruited and appointed by the Board.

Director-General of the Institute.

(2) The Director-General shall hold office on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

21. A person is qualified to be appointed as the Director-General of the Institute if that person—

Qualifications for appointment as the Director-General.

- (a) possesses a Masters degree in a relevant field from a university recognized in Kenya;

- (b) has ten years' experience in the relevant field;
- (c) has five years' professional experience in a senior management position; and
- (d) meets the requirements of Chapter six of the Constitution.

22. The Director-General shall—

Functions of the
Director-General.

- (a) be responsible to the Board for the day-to-day operations of the affairs of the Institute;
- (b) prepare the annual budgets of the Institute for the approval of the Board;
- (c) develop and recommend to the Board the annual business plans for the Institute;
- (d) ensure that all Board papers are accurately written, are relevant and are availed to members of the Board in good time;
- (e) be responsible for the achievement of the objectives of the Institute;
- (f) provide regular, thorough and prompt communication to the Board on key technical, financial and administrative matters; and
- (g) perform of such other duties as may be assigned by the law and the Board.

23. The Director-General shall hold office for a period not exceeding three years and shall be eligible for re-appointment for one further period not exceeding three years.

Tenure of the
Director-General.

24. The Director-General may be removed from office for—

Removal of
Director-General
from office.

- (a) violation of the Constitution;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) inability to perform the functions of the office arising out of physical or mental incapacity; or
- (e) any other ground that would justify removal from office.

25. There shall be a Corporation Secretary who shall be appointed by the Board on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

Corporation Secretary.

26. A person qualifies for appointment as the Corporation Secretary if that person—

Qualifications of Corporation Secretary.

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) has at least five years' experience as a corporation secretary or a similar governance role;
- (c) is a member in good standing of the Institute of Certified Public Secretaries of Kenya; and
- (d) meets the requirements of Chapter Six of the Constitution.

27. The Corporation Secretary shall, subject to the direction of the Board—

Functions of the Corporation Secretary.

- (a) assist the members of the Board in their duties and responsibilities;
- (b) assist the members of the Board in—
 - (i) Board inductions and training;
 - (ii) preparation of Board work plans;
 - (iii) Board evaluations;
 - (iv) governance audits; and
 - (v) implementation of the code of conduct and ethics;
- (c) ensure the timely preparation and circulation of documents and minutes of the Board;
- (d) be the custodian of the seal of the Institute and account to the Board for its use;
- (e) maintain and update the register of conflicts of interest;
- (f) ensure that members of the Board are aware of all relevant laws affecting the Institute;

- (g) ensure that annual returns are promptly filed with the relevant authorities;
- (h) except in exceptional circumstances, ensure that Board papers are circulated in advance of any meeting; and
- (i) perform any other function that may be assigned by the Board.

PART III—INVENTIONS AND INNOVATIONS BY EMPLOYEES

28. (1) Where the rights to any invention or innovation have been vested in the Institute, the Board may award to the inventor or innovator such bonus as it deems fit, or make provision for financial participation by the inventor or innovator in the profits derived from the invention or innovation.

Award to inventor or innovator.

(2) The Institute may apply for a patent in respect of any invention or innovation contemplated in subsection (1) and shall, for the purposes of the Copyright Act, 2001, and the Industrial Property Act, 2001, be regarded as the assignee of the inventor or innovator of the invention or innovation.

No. 12 of 2001.
No. 3 of 2001.

29. (1) The rights to an invention or innovation made by the Institute for or on behalf of another person or entity shall vest in the Institute unless there is an agreement to the contrary.

Rights to vest in Institute.

(2) Any publication relating to work carried out on behalf of the Institute shall be published only on the approval of the Board.

30. Any information on intellectual property that may not be required to be included in any statement of corporate intent, annual report or financial statements by the Institute may be properly withheld upon request in accordance with the provisions of the Access to Information Act, 2016.

Withholding intellectual property information.
No. 31 of 2016.

PART IV—FINANCIAL PROVISIONS

31. The funds of the Institute shall comprise of—

Funds of the Institution.

- (a) monies allocated by Parliament for the purposes of the Institute;
- (b) monies accruing to or vesting in the Institute in the course of the exercise of its powers or the performance of its functions;
- (c) fees and royalties from registered patents, inventions or improvements; and
- (d) monies from any other source provided for or donated or loaned to the Institute.

32. The financial year of the Institute shall be the period of twelve months ending on the 30th June in each year.

Financial year.

33. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Institute for that year which shall be submitted to the Cabinet Secretary for approval.

Annual estimates.

(2) The annual estimates shall make provision for all the estimated expenditure of the Institute for the financial year, and in particular, the estimates shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the employees of the Institute;
- (b) the payment of pensions, gratuities and other charges in respect of the employees of the Institute;
- (c) monies to fund basic and applied industrial research programmes; and
- (d) the proper maintenance of the buildings and grounds of the Institute.

34. (1) The Board shall cause to be kept proper books of accounts of all the income and expenditure, assets and liabilities, undertakings, funds, activities, contracts, transactions and other business of the Institute.

Accounts and audit.

(2) The Board shall ensure that all money received is properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and

liabilities.

(3) The accounts of the Institute shall be audited in accordance with the Public Audit Act, 2015. No. 34 of 2015.

35. The Board shall, within three months after the end of each financial year, submit to the Cabinet Secretary a report on the operations of the Institute for the immediately preceding financial year. Annual reports

PART V—MISCELLANEOUS PROVISIONS

36. (1) The affixing of the common seal of the Institute may be authenticated by the signature of the chairperson or Director-General of the Institute. Common seal.

(2) A document that is not required by law to be made under seal and all decisions of the Institute may be authenticated by the signature of the chairperson or Director-General of the Institute.

(3) If both the chairperson and Director-General of the Institute are absent, the Board may nominate a member of the Board to authenticate the common seal on behalf of the chairperson or Director-General of the Institute.

(4) The Corporation Secretary shall be the custodian of the common seal of the Institute and be accountable to the Board for its use.

37. (1) No matter or thing done by a member of the Board or an officer, employee or agent of the Institute shall, if the matter or thing was done in good faith in the execution of the functions or powers of the Board, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever. Protection from personal liability.

(2) Subsection (1) shall not absolve the Institute from liability for any injury, damage or harm caused to any person or property due to any matter or thing done by a member of the Board or an officer, employee or agent of the Institute done in good faith in the execution of the functions or powers of the Board.

PART VI—PROVISIONS ON DELEGATED POWERS

38. (1) The Cabinet Secretary may make Regulations generally for the better carrying out the Regulations.

provisions of this Act and, in particular, to—

- (a) prescribe the procedures to be followed in the development of research programmes;
- (b) prescribe information management systems for the Institute; and
- (c) prescribe anything which is required to be prescribed for the better giving effect of the provisions of this Act.

(2) For the purposes of Article 9 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

(3) The principles and standards applicable to the delegated power referred to under this Act are those found in—

- (i) the Statutory Instruments Act, 2013;
- (ii) the Interpretation and General Provisions Act;
- (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
- (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

No. 23 of 2013.

Cap 2.

PART VII—TRANSITIONAL PROVISIONS

39. In this Part—

Interpretation of Part.

- (a) “appointed day” means the day appointed by the Cabinet Secretary for the coming into operation of this Act; and
- (b) “former Institute” means the Kenya Industrial Research and Development Institute existing immediately before the commencement of this

Act.

40. The Fourth Schedule to the Science, Technology and Innovation Act, 2013, is amended by deleting paragraph 3.

Amendment of
No. 28 of 2013

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

Transitional
matters.

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

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

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

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

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

42. Any person who was a member of the former Institute immediately before the commencement of this Act shall remain in office for the unexpired period of that person's tenure.

Board of the
former Institute.

43. (1) Any person who immediately before the appointed day was the chief executive officer or employee of the former Institute shall remain in office for the remaining period of his or her term of office.

Staff of the former
Institute.

(2) Any person who was an officer or employee of the former Institute immediately before the appointed day shall be deemed to be an officer or employee of the Institute subject to such terms of service as the Board may, on the

advice of the Salaries and Remuneration Commission, determine.

SCHEDULE (s. 16 (1))

1. (1) The Board shall hold not less than four meetings in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings

(2) The notice for a meeting of the Board shall be in writing, and shall be for a period of fourteen days.

(3) The chairperson shall preside over all meetings and in the absence of the Chairperson, by a person elected by the Board at the meeting for that purpose.

(4) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

(5) No meeting of the Board shall be held at any place other than the principal office of the Institute except with the prior written approval of the State Corporations Advisory Committee.

2. (1) If a person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest.

Conflict of interest and disclosure

(2) The person making the disclosure of interest under subsection (1) shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) No member of the Board or officer, employee or

agent of the Institute shall enter into a service contract or trade with the Institute.

3. (1) The quorum for the conduct of business at a meeting of the Board shall be two-thirds of the total number of members of a Board or the number nearest to but not less than two-thirds of all the members of the Board. Quorum

(2) Where there is a vacancy in the Board, the quorum of the meeting shall not be less than three appointed members.

4. A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a casting vote. Voting

5. Subject to this Act, the Board shall determine procedure for the conduct of its business and cause to be kept records of minutes of its proceedings and decisions. Rules of procedure and minutes

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to establish the Kenya Industrial Research and Development Institute; and for connected purposes. It is divided into seven Parts and 43 clauses.

Part I of the Bill (clauses 1 to 3) provide for preliminary matters including the short title of the Bill; the definition of key terms; and the objects of the Act, including the promotion of research, technology and innovation in industrial and allied technologies, and the initiation, development and support of industrial development.

Part II of the Bill (clauses 4 to 27) provides for the establishment of the Institute; its functions; its powers; its headquarters; the composition of its Board; the qualifications of members of the Board; the functions of the Board; the tenure of members of the Board; removal of members of the Board from office; vacancies and the filling of vacancies in the Board; meetings of the Board; quorum at the meetings of the Board; delegation by the Board; and remuneration of members of the Board.

Part II also provides for the appointment of the Director-General; the qualifications of the Director-General; the functions of the Director-General; the tenure of the Director-General; and the removal of the Director-General from office. It also provides for the appointment of the Corporation Secretary; the qualifications of the Corporation Secretary; and the functions of the Corporation Secretary.

Part III of the Bill (clauses 28 to 30) provides for inventions and innovations by employees of the Institute including awards to inventors or innovators; the vesting of Intellectual Property rights in the Institute; and the kinds of intellectual information that may be withheld by the Institute with reasons for such withholding of information.

Part IV of the Bill (clauses 31 to 35) provides for financial provisions including the funds of the Institute; the financial year of the Institute; the annual estimates of the Institute; the accounts and audit of the Institute; and the annual reports of the Institute.

Part V of the Bill (Clauses 36 to 37) provides for miscellaneous matters including the common seal of the Institute and the protection of members of the Board, officers, employees and agents of the Institute from personal liability for matters or things done in good faith in the execution of the functions or powers of the Institute.

Part VI of the Bill (clause 38) provides for the delegated powers of the Cabinet Secretary to make Regulations under the Act.

Part VII of the Bill (clauses 39 to 43) provides for transitional matters including amendments to the Science, Technology and Innovation Act, 2013; and the treatment of the assets, liabilities, Board and staff of the former Institute.

The **Schedule to the Bill** provides for the conduct of the business and affairs of the Board of the Institute.

The enactment of the Bill shall occasion additional expenditure of public funds which shall be provided for through estimates.

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of county governments. It only affects the powers and functions of the national government set out in Part 1 of the Fourth Schedule.

AMOS KIMUNYA,
Leader of the Majority Party