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The National Innovation Act of 2008
[ACT [•] of 2008]

PREAMBLE

An Act to facilitate public, private or public- private partnership initiatives for building an Innovation support system to encourage Innovation, evolve a National Integrated Science and Technology Plan and codify and consolidate the law of confidentiality in aid of protecting Confidential Information, trade secrets and Innovation.

CHAPTER I

PRELIMINARY

1. Short Title, Extent, Commencement and Application

- (1) This Act may be called the National Innovation Act of 2008.
- (2) The Act applies to the whole of India.
- (3) The Act shall commence from the date of its notification.

CHAPTER II

DEFINITIONS

2. Definitions

In this Act, unless the context otherwise requires:

- (1) “*Angel Investor*” means a person, or entity that provides risk capital to start up ventures established for facilitating and encouraging Innovation (whether proprietorships, partnerships or cooperatives or companies or any other legal entity), not involved in the management, but adding value through association by providing access to commercialization of products and services through its social, professional or business networks and expertise.
- (2) “*Appropriate Government*” means either the Central Government or the State Government.
- (3) “*Confidential Information*” means information, including a formula, pattern, compilation, program device, method, technique, or process, that:
 - (a) is secret in that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

- (b) has commercial value because it is secret; and
 - (c) has been subject to reasonable steps under the circumstances by the person lawfully in control of the information, to keep it secret.
- (4) “*Innovation*” means a process for incremental or significant technical advance or change, which provides enhancement of measurable economic value, and shall include:
- (a) introducing new or improved goods or services
 - (b) implementing new or improved operational processes; and
 - (c) implementing new or improved organizational / managerial processes;

Explanation: measurable value enhancement or economic significance may include one or more of the following:

- (i) increase in market share;
- (ii) competitive advantage;
- (iii) improvement in the quality of products or services;
- (iv) reduction of costs.

Note: The definition of Innovation has intentionally been limited to processes directed towards achieving technical advance. Such processes are distinct from the new and innovative technology or advance achieved as a consequence of the Innovation. Although such technology may comprise a new product or even a new process, said new product or process could be protectable under the laws of intellectual property and are not to be confused with the “Innovation” process of this statute.

- (5) “*Innovation Park*” means any park set up in accordance with the Innovation Park Scheme.
- (6) “*Innovation Park Scheme*” means a scheme notified by the Government of India in the Ministry of Science and Technology.
- (7) “*Misappropriation*” means:
- (a) acquisition of a trade secret of another by a person who knows or has reason to know that the confidential information was acquired by improper means; or
 - (b) disclosure or use of confidential information of another without express or implied consent by a person who:
 - (i) used improper means to acquire knowledge of the Confidential Information; or

- (ii) at the time of disclosure or use knew or had reason to know that his knowledge of the confidential information was
 - (I) derived from or through a person who has utilized improper means to acquire it;
 - (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use;
 or;
- (iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Explanation: In relation to sub clause (ii) (II), attorney- client privilege in relation to Confidential Information gives rise to a duty to maintain secrecy.

- (8) “Misappropriator” means any person, who:
 - (a) willfully or knowingly commits any of the acts comprising Misappropriation as defined under Section 2 (6); or
 - (b) aids or abets any person described under clause (a); or
 - (c) receives Confidential Information from any person described under this sub-section (7) in circumstances that would to a reasonable person indicate the necessity to investigate ownership or claim of title of such Confidential Information, and who has, in such circumstances, omitted or neglected to conduct such investigation as may be reasonable in the circumstances and obtain appropriate representations regarding ownership and claim of title in respect of the Confidential Information in issue.
- (9) “*National Flagship Programmes*” shall include such programmes declared by the Central Government as of national public importance.
- (10) “*Special Innovation Zones*” mean zones notified by the Government of India in the Ministry of Science and Technology established for the purposes of clustering enterprises engaged in scientific, mathematical, technological or engineering research or services, for the purpose of innovation.

Explanation: An Appropriate Government to supplement private initiative may establish a government company or a corporation or a body corporate as public or public- private initiative for establishing Special Innovation Zones through a special purpose vehicle.

CHAPTER III

INTEGRATED SCIENCE AND TECHNOLOGY PLAN

3. National Annual Integrated Science and Technology Plan

The Ministry of Science and Technology of the Government of India shall, in February of each year, present an Integrated Science and Technology Plan, which inter alia presents collated information and policy initiatives and measures concerning any or all of the following:-

- (a) the needed resources for substantially stepping up support to basic research;
- (b) facilitating a national mechanism for continuously evolving policies for providing direction to basic research;
- (c) for enlarging the pool of scientific manpower and strengthening the science and technology infrastructure;
- (d) for identifying and nurturing bright young students who can take up basic and applied research in the sciences, technology, engineering or mathematics as a career;
- (e) for restructuring and revamping universities, institutions of the sciences, technology, engineering or mathematics for improving academic standards, curriculum, service conditions of scientists and researchers, and promoting public-private partnerships ;
- (f) for monitoring and implementing selected National Flagship Programmes having a bearing on the competitiveness of the country, in a mission mode so as to enable India to emerge as a leader in the fields of science, technology, engineering, mathematics or management, finance, law and legal services in support thereof;
- (g) for establishing globally competitive research facilities and centres of excellence and Special Innovation Zones, whether in the public sector, private sector or as public-private partnerships, within the territory of India, so as to facilitate research and discovery of products and services leading into scalable technologies which yield wealth generating products, processes and services;
- (h) identifying ways and means for catalyzing industry academia collaborations for development, application and flow of technologies, new processes and methods for achieving cost, efficiencies or market expansion from the lab to the market place and for the industry and

services to invest more in strengthening the science and technology infrastructure;

- (i) facilitating multi-lateral or bi-lateral cooperation and treaties with other countries in the fields of science, technology, mathematics and engineering, finance, management, law, and legal services in aid thereof, including participation in mega international science initiatives;
- (j) establishing and empowering the National Science and Technology Commission and bi-annually reviewing their performance for moulding their efficiencies and direction in aid of the Integrated Science and Technology Plan.

CHAPTER IV

MEASURES FOR SUPPORTING INNOVATION

4. Special measures for low cost technologies

- (1) The Appropriate Government shall take special measures for supporting public, private or public-private initiatives, which facilitate and encourage Innovation, including in low cost technologies, products and services for the benefit of the common man whether in urban or rural India.
- (2) Rules shall be made by the Appropriate Government for:
 - (a) waiver of any research and development fee;
 - (b) waiver of stamp duty on any conveyances of immovable or movable property within the State for establishing research and development facilities or licensing of technology or Innovation;
 - (c) long term benefits for tax either making special law or recommendations for amending the Finance Act;
 - (d) fiscal incentives including those set out in Schedule I;
 - (e) giving recommendations for the waiver of short term and long term capital gain through the Finance Act or other cognate Central Tax laws;

For the said purposes, the Central Government may amend through the Finance Act provisions of the Income Tax Act, 1961 or other cognate central tax laws, for matters provided in Schedule I, and other matters incidental thereto.

5. Incentives for Angel Investors

- (1) The Appropriate Government shall prescribe or recommend incentives for Angel Investors.
- (2) Such incentives would extend to:
 - (a) waiver of stamp duty on issue of equity capital whether shares are issued in physical or dematerialized form;
 - (b) waiver of stamp duty on transfer of physical shares;
 - (c) fiscal incentives including those set out in Schedule I; and
 - (d) giving recommendations for the waiver of short term and long term capital gain through the Finance Act and by the Central Government on:
 - (i) transfer of investments in securities made by Angel Investors or collective schemes of investments by or for Angel Investors in unlisted enterprises engaged in translating research and development leads into scalable technologies, collaboration for development application and flow of technologies from labs to market place,
 - (ii) investments in securities of unlisted companies established in Special Innovation Zone/Innovation Park or investments in clients of the Special Innovation Zone/Innovation Park, which are exclusively located in Special Innovation Zone/Innovation Park; or
 - (iii) investments made in universities, centres of excellence and institutions engaged in sciences, technologies, mathematics and engineering or finance, management, law, and legal services with the principal object of supporting Innovation under Special Innovation Zones and Innovation Parks;

For the said purposes, the Central Government may amend through the Finance Act provisions of the Income Tax Act, 1961 or other cognate central tax laws, for matters provided in Schedule I, and other matters incidental thereto.

6. Facilitating Measures

The Appropriate Government shall:-

- (a) regulate zoning of owned or leased premises earmarked for commercial offices made on a build to suit or suit to use basis within the Special Innovation Zone or as a Innovation Park; and

- (b) provide assistance for registration for or exemption from income tax, service tax, commercial taxes, tax deduction at source and any other local tax registrations required for the purposes of commencing research and development and the commercialization thereof including inter alia for establishing exchanges for Innovation and financing thereof; and
- (c) provide assistance for establishing representative or liaison offices of the registries for registering patents, designs, copyrights, integrated circuits, trademarks, within the Special Innovation Zones so as to serve as a centralized collection for those enterprises, which establish themselves within the Special Innovation Zones for research and development, innovation, education and training, or as exchanges for Innovation and financing of Innovation thereof;
- (d) locate its local administration within the Special Innovation Zone for facilitating registration, including of client enterprises established within the Special Innovation Zones, for the purposes of availing exemptions from taxes whether central or local or for availing the benefits of weighted deductions for, expenditure on scientific research, acquisition of patent rights or copyrights, expenditure on know-how and provisions similar to the special provisions in respect of newly established units in Special Economic Zones as under Special Economic Zones Act, 2005.
- (e) from time to time, encourage Innovation by providing fiscal incentives and waivers or remissions on stamp duty on any conveyances of immovable or movable property within the State or land acquisition services for aggregating land for Special Innovation Zones, for establishing research and development facilities or licensing of technology or Innovation universities, centres of excellence and institutions engaged in sciences, technologies, mathematics and engineering or finance, management, law, and legal services in aid of Innovation set up in the Special Innovation Zones, and service fee for the purposes of royalty payments generated as a result of technology licensing.

CHAPTER V

PRIVATE AND PUBLIC-PRIVATE PARTNERSHIPS

7. Exchange or market place for trading in Innovation

- (1) The Central Government shall facilitate the establishment of an electronic exchange or a physical market place for commercialization of information on or the results of Innovation, including any statutory or non-statutory rights in intellectual property arising in connection with or as a consequence of Innovation.

- (2) The Central Government shall facilitate small and medium scale enterprises by fiscal policy changes or government directions for financial institutions regulated by the institutions regulated under the Reserve Bank of India Act or as Non Banking Financial Corporations for developmental finance for facilitating Innovation which inter alia could provide for concessional rates of interest.
- (3) Special rules and procedures shall be made for facilitating maintenance of confidentiality and secrecy whilst promoting transfer or licensing of Innovation for its commercialization.

CHAPTER VI

CONFIDENTIALITY AND CONFIDENTIAL INFORMATION AND REMEDIES AND OFFENCES

8. Obligations of Confidentiality

- (1) Parties may contractually set out the terms and conditions governing rights and obligations in respect of Confidential Information, including with a view to maintain confidentiality and prevent Misappropriation.
- (2) Subject to any terms and conditions agreed to between parties, the respective rights and obligations in relation to the said Confidential Information shall be governed by such terms and conditions as may be prescribed by the Appropriate Government pursuant to Section 15 (d).
- (3) Notwithstanding anything contained in sub-section (1), parties may nevertheless enforce any rights in Confidential Information arising in equity or as a result of circumstances imparting an obligation of confidence.

9. Confidentiality arising from non contractual relationships

Obligations of confidentiality and equitable considerations may also create rights to maintain and obligation as to preserve confidentiality and rights to prevent disclosure or release into the public domain of Confidential Information by any third party who has received such information other than with the consent of a complainant.

10. Remedies to protect and preserve confidentiality and orders to prevent threatened or apprehended misappropriation thereof

In relation to any proceeding concerning actual or apprehended Misappropriation of Confidential Information, the court shall preserve the secrecy of the subject matter of the dispute claimed as Confidential Information by reasonable means, which may include granting mandatory protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the Confidential Information including confidential filings or records of the action, and ordering

any person or class of persons impleaded in an action not to disclose the Confidential Information referred to in the claim without prior orders of the court.

11. Exceptions to Misappropriation of Confidential Information

Confidential information shall not have been misappropriated where:

- (a) the Confidential Information was available in the public domain; or
- (b) the Confidential Information has been independently derived by the alleged Misappropriator, or by any third party from whom the alleged Misappropriator received the information; or
- (c) where disclosure of the Confidential Information is held to be in public interest by a court of law;

12. Preventive or mandatory injunction restraining misappropriation of Confidential Information

- (1) A court shall grant such injunctions, including interim, ad interim or final injunctions, as may be necessary to restrain actual, threatened or apprehended Misappropriation of Confidential Information.
- (2) A court may vary or vacate an injunction granted under sub-section (1) in the event that the Confidential Information in question is found to fall under any of the categories described in clause (a) to (c) of Section 11.
- (3) In the event a complainant secures an interim injunction against an alleged or apprehended Misappropriation and is later found not to have been entitled to such relief for failure to establish any of the grounds essential to securing interim relief, or where the issue relating to which interim relief was initially secured, is eventually decided against the complainant, then such complainant shall be liable to compensate the defendant for actual losses arising as a direct result of the interim relief earlier secured.
- (4) In exceptional circumstances, an injunction may stipulate conditions for future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited.
- (5) The Appropriate Government shall provide its machinery, including police and local administration, to aid and assist in implementation/enforcement of any injunction granted or other direction passed by a court under sub-section (1).

13. Mandatory damages on proof of breach of confidentiality

- (1) Where a Misappropriator has utilized Confidential Information or is directly or indirectly responsible for Confidential Information falling into the hands of a third party or into the public domain, the complainant shall be entitled to elect to receive anyone of the following:

- (a) such mandatory damages not exceeding the limit as may have been notified by the Appropriate Government from time to time as under Section 15 (c), which sum shall be recoverable as a contract debt; or
 - (b) such damages as may have been agreed upon by contract between the parties; or
 - (c) actual damages as may be demonstrated, including consequential losses;
- (2) In addition to damages provided for in sub-section (1), where a Misappropriator is found to have acted with willful or malicious intent, the complainant shall be entitled to not more than three times the mandatory damages provided for in Section 15 (1) (a) and costs including attorney fees.
- (3) Subject to the requirements for securing grant of interim relief, a court may require an alleged Misappropriator to pre - deposit upto 10 percent of the damages claimed by the complainant as under sub – section (1), as a pre-condition to a continued right to defend the suit.

14. Immunity for acts done in good faith or purporting to be so done

No legal proceedings or any other claim or action, shall lie against any person for anything done in good faith under this Act or the Rules and Regulations made thereunder.

CHAPTER VII

RULES AND REGULATIONS

15. Rules and Regulations

- (1) The Appropriate Government may, by notification in the Official Gazette prescribe rules and regulations to carry out the provisions of this Act
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules and regulations may provide for:
- (a) minimum investment terms and conditions for establishing a Special Innovation Zone by private enterprises and by state or state authorities in collaboration with private enterprises;
 - (b) notification of an Innovation Park;
 - (c) notification of, from time to time, the quantum of damages which the complainant is entitled to in case of misappropriation of Confidential Information;

- (d) minimum terms and conditions for contracts governing rights and obligations in respect of Confidential Information, as provided for under Section 10 (1);
- (e) establishment, operation and maintenance of electronic or physical market place for the purpose of commercialization/exchange of Innovation;
- (f) facilitating single window clearances for facilitating incorporation or establishment of commercial undertakings for engaging in research and development or commercialization of Innovation;
- (g) any other matter for the purpose of effective implementation of the provisions of this Act;

16. Effect of the Act on other laws

The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

Schedule I – Fiscal Benefits to be granted to Innovation Parks and Special Innovation Zones

The Ministry of Science and Technology, Government of India may recommend granting of the following fiscal benefits by the Finance Ministry either through an amendment to the existing laws, through issuance of a notification or through enactment of a special law in this regard.

PART I

Indirect tax Incentives

- (1). A unit set up in an Innovation Park or in a Special Innovation Zone [ADA1] would be entitled to the following concessions:
 - (a) Exemption from payment of customs/excise duties on goods sourced for use by the unit, including equipment or machinery which is sourced under lease agreements and second hand capital goods. The import would be subject to the conditions under the Foreign Trade Policy 2004-09 (FTP) and the ITC(HS) conditions.
 - (b) Exemption from payment of central sales tax on all goods procured for use by the unit and scrap sales made by the unit.
 - (c) Exemption from payment of excise duty on prototypes or any equipment manufactured/produced by the unit in the course of Innovation.
 - (d) Exemption from payment of service tax on all input services procured by the unit.
 - (e) Supplies from domestic manufacturers to unit would qualify for availment of deemed export benefits envisaged under FTP.
 - (f) Exemption from research and development cess, if any, payable by the unit.

NOTE:

- (1) Notifications would need to be issued/amendments to existing legislations would need to be made by the Finance Ministry under the following legislations for operationalising the indirect tax benefits indicated above:
 - Customs Act, 1962 and Customs Tariff Act, 1975 on the same lines as Notification No. 52/2003 dated 31.03.2003;
 - Finance Act, 1994 on the same lines as Notification No. 4/2004 dated 31.03.2004;
 - Central Excise Act and Central Excise Tariff Act, 1985 on the same lines as Notification No. 22/2003-CE dated 31.03.2003;
 - Amendment to Section 8 the Central Sales Tax Act, 1956 as has been done in the case of Special Economic Zones;

- Amendment to Chapter 8 of the FTP and issuance of consequent notifications for effecting the provisions pertaining to deemed export benefits.
- (2) The State Value Added Tax incentives, would be operationalised through an amendment of the State Value Added Tax legislations or through issuance of a notification thereof.

PART II

Direct tax Incentives

- (1) A unit set up in an Innovation Park or in a Special Innovation Zone as notified under National Innovation Act, 2008 would be entitled to the following income tax concessions:
 - (a) Tax holiday in respect of profits (including both the profit derived from domestic revenues and from exports) derived by the unit in an Innovation Park or in a Special Innovation Zone from the revenues generated from the:
 - (i) sale or transfer of all or any right or use of copyright patent, or know-how, license, or any other business or commercial rights; or
 - (ii) payment of any kind received as consideration for the use of, or the right to use any copyright of a scientific work, any patent, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience including gains derived from the alienation of any such right or property.
 - (b) Exemption from the payment of income tax on any income of a venture capital company or venture capital fund from investment in a domestic unlisted company engaged in Innovation;
 - (c) Weighted deduction equivalent to one and one-fourth times of any sum paid to a company engaged in Innovation;
 - (d) Exemption from the payment of gains tax arising:
 - (i) on transfer of investments in securities made by Angel Investors or collective schemes of investments by or for Angel Investors in unlisted enterprises engaged in translating research and development leads into scalable technologies, collaboration for development application and flow of technologies from labs to market place;
 - (ii) investments in securities of unlisted companies established in Special Innovation Zones/Innovation Parks or investments in clients of the Special Innovation Zones/Innovation Parks, which are exclusively located in Special Innovation Zones; or
 - (iii) investments made in universities, centers of excellence and institutions engaged in sciences, technologies, mathematics and engineering or finance, management, law, and legal services with the principal object of supporting Innovation under Special Innovation Zones and Innovation Park;
 - (e) Exemption of capital gains on transfer of assets in case of shifting of industrial undertaking from urban area to any Special Innovation Zone;

- (f) Exemption of profits and gains by an undertaking or enterprise engaged in the development of Special Innovation Zone.
- (2) The following amendments would need to be carried under the Income Tax Act, 1961 for making available the direct tax benefits indicated above:
- (a) Insertion of new section in the Income Tax Act, 1961 on the same lines of Section 10AA of the Income Tax Act, 1961 to provide for exemption from the Income Tax to the units set up under the Special Innovation Zone;
 - (b) Insertion of new section in the Income Tax Act, 1961 on the same lines of Section 10A of the Income Tax Act, 1961 to provide for exemption from the Income Tax to the units set up under the Innovation Park;
 - (c) Amendment in Section 10 (23FB) of the Income Tax Act, 1961 under the definition of “Venture Capital Undertaking”;
 - (d) Amendment in Section 35 (1) (iia) of the Income Tax Act, 1961 to including Ministry of Science and Technology as the ‘Prescribed Authority’;
 - (e) Amendment in Section 47 to provide exemption from payment of income tax on the short term and capital gains arising:
 - (i) on investments in securities made by Angel Investors or collective schemes of investments by or for Angel Investors in unlisted enterprises engaged in translating research and development leads into scalable technologies, collaboration for development application and flow of technologies from labs to market place;
 - (ii) investments in securities of unlisted companies established in Special Innovation Zones or investments in clients of the Special Innovation Zones, which are exclusively located in Special Innovation Zones; or
 - (iii) investments made in universities, centers of excellence and institutions engaged in sciences, technologies, mathematics and engineering or finance, management, law, and legal services in aid of innovation set up in the special innovation zones.
 - (f) Amendments under section 54GA of the Income Tax Act, 1961 to provide exemption of capital gains on transfer of assets in case of shifting of industrial undertaking from urban area to any Special Innovation Zone. The said amendment can be made to provide a reference to the Special Innovation Zone on the similar lines as to a Special Economic Zone;
 - (g) Insertion of new section in the Income Tax Act, 1961 on the same lines of Section 80IAC of the Income Tax Act, 1961 to provide exemption of profits and gains by an undertaking or enterprise engaged in the development of Special Innovation Zone.