

## IP Hotline

October 13, 2008

### DRAFT NATIONAL INNOVATION ACT, 2008: GOVERNMENT OF INDIA'S NEW INITIATIVE TO BOOST INNOVATION

*"The problem is not how to innovate but to know what to innovate." - Albert Einstein*

At a meeting of the Indo-US Task Force on Shaping the Global Innovation Economy in September 2007, Union Minister For Science & Technology And Earth Sciences, Mr. Kapil Sibal had announced that FICCI (Federation of Indian Chambers of Commerce of India) would soon draft for the Government, an India Innovation Act to spur Innovation in India. The draft of the **National Innovation Act, 2008** ("Draft Act") that was to be modeled on the America COMPETES Act, 2007, is now available on <http://dst.gov.in/draftInnovationlaw.pdf> for public review.

*The ethos of the Act reflects in its 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."*

#### THE HIGHLIGHTS OF THE DRAFT ACT:

The Draft Act has defined "Innovation" as a process for incremental or significant technical advance or change, providing enhancement of measurable economic value to 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.

The Draft Act further explains that: 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.

The Draft Act specifically excludes "product/s" from this definition.

The Act introduces the concept of "Special Innovation Zones" ("SIZs") (on the lines of the SEZ under the Special Economic Zones Act, 2005) and Innovation Parks ("IPs") that shall be notified by the Ministry of Science and Technology ("Ministry") of the Government of India in order to cluster the enterprises engaged in Innovation. The Government may set up a company or a corporation or a body corporate as public or public- private initiative for establishing Special Innovation Zones through a special purpose vehicle.

The Draft Act is divided into 7 Chapters and has a Schedule that lists the fiscal benefits to be granted to SIZs and IPs. The Appropriate Government (State or Central Government) will, on notification of this Act, bring about appropriate changes in various other statutes to give effect to this Act.

#### CHAPTER 3: NATIONAL ANNUAL INTEGRATED SCIENCE AND TECHNOLOGY PLAN

The Ministry shall present the National Annual Integrated Science and Technology Plan ("Plan") in February every year. The Plan will include annual goals set for encouraging Innovation in the country. The Plan is a holistic approach to make India a world leader in science and technology. It will highlight the policy initiatives and measures that need to be taken to spur Innovation at all levels including the grass root level. It shall take into account the resources needed to boost basic research, revamping the course structure at university level and providing better opportunities to talented young minds. The plan also includes setting up state-of-art research facilities and SIZs for scientists and researchers to take research and Innovation to the next step of successful commercialization. The Government also aims to consider collaboration with other countries and have international participation to aid in the overall development of science and technology in India.

#### CHAPTER 4: MEASURES FOR SUPPORTING INNOVATION

The Government shall take special measures for supporting Innovation especially low cost technologies by way of supporting public, private or public-private initiatives to promote Innovation resulting in economic/low cost products & services. The Act suggests amending the Finance Act provisions of the Income Tax Act, 1961 or other cognate central tax laws, to incorporate the following concessions for entities involved in Innovation:

- Waiver of R&D fees
- Waiver of stamp duty on conveyances of property for establishing R&D facilities

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- Long term tax benefits
- Fiscal incentives under Schedule I
- Waiver of short and long term capital gains

**Considering the increased involvement of Angel Investors in this plan, the Government has proposed the following incentives for Angel Investors as defined in Section 2(1) of the Draft Act:**

- Stamp duty waiver on issue of equity capital (physical/ dematerialized form)
- Stamp duty waiver on transfer of physical shares
- Fiscal incentives under Schedule I
- Short term and long term capital gain
  - Transfer of investments in securities in unlisted enterprises engaged in translating R&D to product in market.
  - Investment in securities of unlisted companies established in SIZ/ IP or clients of companies in SIZ/ IP
  - Investment in educational institutes, engaged in sciences, finance, management, law with the principal object of supporting Innovation under SIZ/IPs.

#### **FACILITATING MEASURES BY THE GOVERNMENT INCLUDE:**

- Regulation of zoning of premises in SIZ/IPs
- Providing assistance in registrations for tax purposes or make such registrations not mandatory
- Providing facility (liaison offices of existing Registries) for securing intellectual property rights (IPRs) on Innovation generated at the SIZ.
- Providing tax exemptions and stamp duty waivers on technology licensing, conveyances of property
- Assist in registration in order to take benefits for expenditure on research, know-how, acquisition of patents and copyrights and setting up of science and technology based infrastructures.

**The Act envisages benefits within SIZs, as have been created for Special Economic Zones in the Special Economic Zones (SEZ) Act, 2005.**

#### **CHAPTER 5: PRIVATE AND PUBLIC-PRIVATE PARTNERSHIPS**

The Government plans to facilitate the establishment of an electronic exchange or a physical market place for monetizing the results of Innovation, including IPRs. The Government will also encourage Innovation by inter alia providing funds at reduced interest rates to facilitate Innovation in products and services in small and medium enterprises (SMEs).

#### **Chapter 6: Confidentiality and Confidential Information**

This Chapter is dedicated to an important aspect of Innovation which no legislation in India has previously addressed. It creates an obligation of confidentiality irrespective of whether an agreement to the effect has been entered into by the parties engaged in Innovation. (I.e. it includes non-contractual relationships). Further, the Appropriate Government shall notify the minimum terms & conditions for confidentiality agreements for the purpose.

Similarly courts are also required to preserve secrecy of subject matters under dispute in respect of CI. Section 11 defines three acts that do not amount to misappropriation of CI. The Chapter also discusses the injunctive reliefs and damages available in case of misappropriation of CI.

Section 12 provides for interim, ad interim and final injunction to restrain actual, threatened or apprehended misappropriation of CI. In a situation where interim relief provided by court is later found to be groundless, it also provides for compensation by complainant to defendant. It further provides for roping in the administrative machinery (like the police) to assist enforcement of the court's directions. The Appropriate Government shall be entrusted with the duty of notification of quantum of damages for complainant in case of misappropriation of CI.

#### **CHAPTER 7: RULES AND REGULATIONS TO BE MADE BY APPROPRIATE GOVERNMENT**

The Government shall lay down the rules and regulations to carry out the provisions of the Innovation Act in a way that is best suited to encourage more initiatives towards making India an Innovation leader. This would include rules that provide for minimum investment terms and conditions for establishing Special Innovation Zones by different entities and notifications to put the confidentiality provisions in Chapter 6 into effect.

**Schedule I:** It sets out the special fiscal benefits to be granted to units set up in SIZs and IPs.

**Part I** lists the Indirect Tax incentives that include exemption from: payment of customs/ excise duties sourced by the units, payment of Central Sales Tax, excise duty on prototypes manufactured, service tax on services procured, R&D cess payable.

**Part II** lists the Direct Tax incentives that *inter alia* are: tax holidays in respect of profits, both from domestic and export revenues, exemption from payment of: income tax on income of a Venture Capital fund/ company investing in an unlisted company engaged in Innovation, weighted deduction equivalent to one and one-fourth times of any sum paid to a company engaged in Innovation, tax gains in certain defined situations, capital gains on transfer of assets while shifting a unit from urban area to a SIZ, exemption of profits and gains by undertaking engaged in SIZ.

#### **INDIA'S PRESENT COMMITMENT TO INNOVATION:**

In January 2007, Government of India had announced plans of doubling the R&D spending over the next five years, from 1% to 2% of India's GDP. Government funding accounts for roughly 75% of India's R&D investments, and rises to 85% when indirect Government funding is included. The remainder comes from industry and foreign direct investment (FDI). The need of the hour is adequate investment in universities, better compensation and incentives to faculty to commercialize their research, world-class laboratory facilities and more encouragement for students to enroll for doctorates.

On a similar note, the Council for Scientific and Industrial Research (CSIR) is planning to set up a separate company to monetize their existing patents. CSIR, the single largest holder of patents in India has patents with a potential commercial value of \$1 billion. The proposed holding company will commercialize the patents by *inter alia* forming subsidiary joint ventures and licensing intellectual property to professional firms.

India, the land of outsourcing, has been known to *"rent its IQ rather than creating IP<sup>1</sup>"*. The interest shown by the Government in encouraging Innovation will go a long way in reversing this fact.

- IP Team

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1 Opinion of Craig Mundie, chief research and strategy officer at Microsoft

**Sources:**

- <http://dst.gov.in/draftInnovationlaw.pdf> (text of the Draft Act)
- <http://www.businessworld.in/index.php/Web-Exclusives/Boosting-Research.html>
- <http://www.livemint.com/2008/10/05235209/CSIR-looks-to-profit-from-pate.html>

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