

Bill No. L 177

Danish Parliament (the Folketing)

Introduced on 10 March 2004 by the Minister for Science, Technology and Innovation (Helge Sander)

Translation: Only the Danish version of the text has legal validity.

Bill

for an

Act on Technology Transfer, etc. at Public Research Institutions

Purpose, etc.

- 1.** -(1) The purpose of the Act is to increase competitiveness by promoting the transfer of new knowledge and technology between public research institutions and trade and industry, including the establishment of new research-based enterprises, and supporting cooperation between public research institutions, foundations and associations.
- 2.** -(1) In this Act, public research institution means universities, covered by the Act on Universities, and Government research institutions, covered by the Act on Government Research Institutions, cf., however, Sub-section 3 below.

(2) In this Act, technology transfer means the identification, evaluation, protection, marketing and assignment of intellectual property rights with a view to commercial utilisation.

(3) Each Government research institution may only form companies and cooperate with foundations and associations under this Act to the extent to which this does not create conflicts of interest with the exercise of the institution's public duties and the relevant minister authorises the institution to do so.
- 3.** -(1) A public research institution's agreements with commercial companies and other private persons must be entered into on the conditions that apply on the private market.

Public Research Institutions' Formation of and Participation in Companies

- 4.** -(1) For the promotion of the purpose of the Act under Section 1, a public research institution may form and own one public limited company and be co-owner of one or more public limited companies formed by other public research

institutions. The public limited companies must have a domicile and head office in Denmark in accordance with their articles of association.

(2) The public research institution's investment in companies under Sub-section 1 or acquisition of shares in such companies may not exceed the higher of the following amounts at the time of each investment:

- 1) DKK 5 million or
- 2) 3% of the institution's turnover on research and development activities as stated in the latest official research statistics.

(3) For the calculation under Sub-section 2, investments are included at their value on the investment date and shares are included at their value on acquisition or transfer.

(4) Share portfolios acquired under the Act on Inventions at Public Research Institutions, acquired by gift or covered by the Ministry of Justice's Executive Order on Investment of Foundations' Funds and Executive Committee Fees, etc. are not to be included in the calculation under Sub-section 2.

(5) The participating public research institution(s) must own the companies in full.

(6) The public research institution(s) must use revenues in the form of profit from the company for activities within the purposes of the institution.

(7) In its annual report, the public research institution must report investments and acquisitions under Sub-section 1 and the commercial transactions between the public research institution and the companies in which the institution holds shares.

(8) If a company formed under Sub-section 1 becomes insolvent, the formation of a new company may only take place with the approval of the funding authorities.

(9) The Minister for Science, Technology and Innovation may, with the approval of the funding authorities, adjust the amount limits in Sub-section 2.

5. -(1) Employees and board members of the public research institution(s), which are shareholders in companies formed under Section 4 and employee representatives in the public limited companies may not together constitute majorities on the companies' boards of directors.

(2) Employees of public research institutions, which have formed or are shareholders in companies, may not also be employed by the companies.

6. -(1) A public limited company formed under Section 4 must have as its purpose to carry out activities in connection with technology transfer with a commercial aim and on market conditions.

7. -(1) A public limited company formed under Section 4 may not acquire shares in companies other than public and private limited companies.

(2) A public limited company formed under Section 4 may not grant loans, including subordinate loan capital, or guarantees or lodge any other form of security.

8. -(1) A public limited company formed under Section 4 may comply with its purpose by:

- 1) Forming or acquiring shares in public or private limited companies which have the same purpose as under Section 6 together with other public limited companies formed under Section 4, approved technological service institutes, Vækstfonden and municipalities, county municipalities, The Copenhagen Hospital Cooperation and The Greater Copenhagen Authority to the extent to which the respective authorities are entitled to do so according to other legislation. The participants must own the company in full.
- 2) Forming or acquiring shares in public limited companies, the purpose of which is to rent real property to research-based companies.
- 3) Acquiring shares in innovative incubators, cf. the Act on Technology and Innovation.

(2) Public limited companies formed under Section 4 and universities may not, on their own or together, acquire shares in companies covered by Sub-section 1, nos. 1-3, to such an extent that the latter companies obtain a connection to a single public limited company formed under Section 4 or a single university like that of a subsidiary to a parent company under the Danish Companies Act. Public limited companies formed under Section 4 and Government research institutions may not, on their own or together acquire shares in companies covered by Sub-section 1, nos. 1-3 to such an extent that the latter companies obtain a connection to a single public limited company formed under Section 4 or one or more Government research institutions like that of a subsidiary to a parent company under the Danish Companies Act.

(3) In order for a public limited company formed under Section 4 to be able to form or acquire shares in companies covered by Sub-section 1, nos. 1-2, the articles of association of the company in question must follow the provisions in Sections 7 and 9.

9. -(1) The following applies where a public limited company formed under Section 4 forms a company that is not covered by Section 8, Sub-section 1, nos. 1-3, or where it or a public research institution acquires shares in such a company:

- 1) Public limited companies formed under Section 4 and public research institutions may not, on their own or together, obtain a connection to the company like that of a parent company to a subsidiary under the Danish Companies Act.
- 2) A public limited company formed under Section 4 must, prior to the acquisition of equity that exceed 15% of the total shares in a company, prepare a strategy for the disposal of such shares.

Public Research Institutions' Cooperation with Foundations and Associations

10. -(1) A public research institution may use gift funds to found a foundation on behalf of the donor, including a commercial foundation, if the main purpose of the foundation is linked to the activities of the institution in question and both the foundation of the foundation and the main purpose are determined by the donor.

11. -(1) A public research institution may, to a limited extent, pay expenses for the administration of foundations and associations, including commercial foundations and associations, if the main purposes of the foundations and associations are linked to the activities of the institution in question.

(2) A public research institution must report expenses paid in accordance with Sub-section 1 in its annual report.

12. -(1) Employees of a public research institution may not also be employed by a foundation or association that the public research institution has founded under Section 10 or for which it pays expenses under Section 11 unless the foundation or association follows the State pay and employment rules.

13. -(1) A public research institution may only participate in the management of a foundation or association if the main purposes of the foundations and associations are linked to the activities of the institution in question.

(2) A public research institution must ensure that it does not incur liability for the obligations of a foundation or association via participation in the management of the foundation or association or via close cooperation with the foundation or association.

(3) If the turnover of a commercial foundation or association has been over DKK 30 million within the last three years, a public research institution's participation in the management of the foundation or association must follow rules equivalent to the rules in Section 5, Sub-section 1, unless the will of the donor or founder stipulates otherwise.

Other Provisions

14. -(1) The Council for Technology and Innovation can advise the Minister for Science, Technology and Innovation on Sections 4-9 in this Act, including on the relationship with other activities for the promotion of technology transfer.

Commencement, etc.

15. -(1) The Minister for Science, Technology and Innovation will specify the date on which the Act enters into force.

(2) For existing agreements under Section 47 of the Act on Universities, Sections 10-12 and Section 13, Sub-section 3, may, however, not enter into force before 1 July 2005.

(3) The Act does not cover ownership by The Technical University of Denmark of SCION*DTU A/S, DTU Innovation A/S and Bioneer A/S, except that these companies' shares in other companies must be included when calculating the shares of The Technical University of Denmark under Section 8, Sub-section 2, and Section 9, Sub-section 1, no. 1.

(4) The Act does not limit Statens Serum Institut's authority in pursuance of other legislation.

16. -(1) The Act does not apply to the Faeroe Islands and Greenland.