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FRAMEWORKS, PROCEDURES AND GUIDELINES FOR IMPLEMENTING THE INDIGENISATION AND ECONOMIC EMPOWERMENT ACT [CHAPTER 14:33]

INTRODUCTION

- The Minister of Youth, Indigenisation and Economic Empowerment was mandated to simplify and clarify the guidelines and processes for complying with the country's Indigenisation and Economic Empowerment laws espoused in the Indigenisation and Economic Empowerment Act [Chapter 14:33] ("IEE Act") in order to achieve the following objectives:
 - Encouraging private sector investment in line with His Excellency, the President's 10-point economic plan;
 - · Economically empower indigenous Zimbabweans; and
 - · Ensuring compliance with the law.
- 2. In the State of Nation Address, His Excellency, the President, made it clear that "in line with the Rapid Approach Framework, we should see, before 31st December, 2015, an urgent overhaul of the Companies Act and all pieces of allied legislation which have hitherto hindered the Ease of Doing Business. Instead, we expect to have a clear and robust legislation and regulatory framework to be urgently put in place in order to create a One Stop Investment Centre that streamlines processes and procedures. This is now very urgent and high priority matter for which those responsible will be held to account."
- 3. During my 2016 National Budget Statement, I indicated that: "Consultations towards strengthening and clarifying the process of implementing the indigenisation policies in the other sectors of the economy outside the resources sector have been completed. To this end the Minister of Youth, Indigenisation and Economic Empowerment, will be announcing and gazetting before Christmas the frameworks' templates and procedures for implementing the indigenisation policies in a manner that both promotes investment and eliminates discretionary application of the law. Such measures will contribute immensely towards the ease of doing business in the country and will render the services sector of our country conducive for Foreign Direct Investment."

FRAMEWORK

4. The framework as agreed amongst the Minister of Youth, Indigenisation and Economic Empowerment, the Minister of Finance and Economic Development and the Governor of the Reserve Bank of Zimbabwe seeks to eliminate discretionary application of law by providing guidance on the implementation of the Indigenisation and Economic Empowerment Act in the following three broad categories:

- Resources based sector;
- · Non-resources sectors; and
- Reserved sectors.
- 5. Further, the paper will:
 - Outline procedures for ensuring compliance with the legislation;
 - (ii) Articulate the Empowerment Levy;
 - (iii) Describe the indigenisation compliance process flow;
 - (iv) Highlight the National Indigenisation and Economic Empowerment Charter; and
 - (v) Outline measures for ensuring compliance with procurement requirements of the legislation.

Resources-Based Sector

 His Excellency President Mugabe spoke to the policy position on natural resources during his inauguration speech of 22nd August, 2013, in which he states:

"As we go about reorganising this critical mining sector, our policy reflexes must be oriented towards the goals of indigenisation and economic empowerment of our people.

This was the centrepiece of our manifesto. This is what the people voted for. It must become the centrepiece of our development endeavours.

We dare not let our people down. We are aware that people of ill will have cast aspersions on our hallowed policy of indigenisation and economic empowerment. Well, it is a set policy, our chosen path to full sovereignty.

The premise of that policy is an easy one. Our minerals are a depletable resource. We cannot grow them again once they have been exploited."

7. During my 2016 National Budget presentation I also highlighted

"The position of indigenisation in the resource sector has been clarified on several occasions by his Excellency the President to reflect that the contribution of our designated entities towards our 51% shareholding will be effected through the resource being exploited and at no monetary cost to the Government or designated entities."

8. According to section 3(1) of the IEE Act:

The Government shall, through this Act or regulations or other measures under this Act or any other law, endeavour to secure that—

At least fifty-one per centum of the shares of every public company and any other business shall be owned by indigenous Zimbabweans.

- The Indigenisation and Economic Empowerment (General) Regulation (2010) provides a broader definition of natural resources that include the following:
 - Air, soil, waters and minerals in Zimbabwe;
 - Mammal, bird, fish and other animal life in Zimbabwe;
 - The trees, grasses and other vegetation of Zimbabwe;
 - Springs, vleis, sponges, reed beds, mashes, swamps and public streams of Zimbabwe; and
 - Any landscape, scenery or site having aesthetic appeal or scenic value or of historic or archaeological interest.
- 10. General Notice 114 of 2011 provides for indigenisation in the mining sector by requiring that businesses operating within this sector must dispose of 51% equity to designated entities while taking into account the State's sovereign ownership of the mineral or minerals exploited or proposed to be exploited by the non-indigenous mining business concerned.
- To reflect the broad-based objectives of the Government's empowerment policy, the designated entities which shall acquire the 51% equity in businesses exploiting natural resources include
 - National Indigenisation and Economic Empowerment Fund:
 - · Sovereign Wealth Fund;
 - Employee Share Ownership Trusts;
 - Community Share Ownership Trust;
 - Zimbabwe Mining Development Corporation (ZMDC);
 - Zimbabwe Consolidated Diamond Company (ZCDC), and
 - Any other company incorporated by Government or in which Government has a controlling interest.
- In the tourism sector any businesses wholly dependent upon and exploiting natural resources must comply with indigenisation to the extent of 51%.

Non-Resources Sectors

- The legislation requires that at least 51% of the shares of every business shall be owned by indigenous Zimbabweans as stipulated in section 3(1) paragraph (a) of the Indigenisation and Economic Empowerment Act [Chapter 14:33].
- 14. During an interview to mark his 89th birthday, President Mugabe responded to a question on a perceived "Public spat between officials of the same Government over the issue of Indigenisation and Economic Empowerment, stating that:

"Well I suppose it is the application, how do we apply that principle 51/49 of Indigenisation and Economic Empowerment? When it comes to the natural resources that is very clear".

"When it comes now to areas of technology, in fact the technology is borrowed, then you cannot apply the same principle of the (51/49) because this is not yours.... Those who have brought the resource here own the resource, what you can say is you are participating in that resource that is coming into the country

- and for that one, you can go 50/50 or you can agree on a ratio which is sustainable and equitable. It is not every case that we must apply the 51/49.
- The non-resource sectors of the economy include the manufacturing, financial services, tourism, construction and energy among others.
- 16. Section 3(5) of the IEE Act provides that:

The Line Minister may prescribe that a lesser share than fiftyone per centum or a lesser interest than a controlling interest may be acquired by indigenous Zimbabweans in any business in terms of subsections (1)(b)(iii), (1)(c)(i), (1)(d) and (e) in order to achieve compliance with those provisions, but in so doing he or she shall prescribe the general maximum timeframe within which the fifty-one per centum or the controlling interest shall be attained.

Simplification and Clarification of the Indigenisation Framework

 Section 3(a) of the Indigenisation and Economic Empowerment (General) Regulations, 2010, ("IEE Regulations") states that:

Within the next five years from the date of operation of these regulations, or within five years from the commencement of the business concerned, as the case may be, cede a controlling interest of not less than fifty-one per centum of the shares or interest therein to indigenous Zimbabweans; unless, in order to achieve other socially or economically desirable objectives, a lesser share of indigenisation or a longer period within which to achieve it is justified.

 In respect of the non-resources sectors, the following predetermined framework shall be implemented with immediate effect.

Provision of Longer Period for Compliance

19. A non-indigenous business may hold the majority shareholding for a period ranging up to 5 years (except for the energy sector which can go up to 20 years), which period may be extended upon application in terms of section 3 (a) of the IEE Regulations.

Provision of a Lesser Share of Indigenisation

20. Further, empowerment credits as provided in Table 1 shall be taken into account in achieving the 51% indigenisation threshold in order to support the country's socially and economically desirable objectives.

Provision for Dilution of Equity in Resource Based Sectors

21. The 51% equity held by designated entities in the resource based sectors of the economy may be diluted to the extent of injection of additional capital by foreign shareholders on a pro rata basis subject to the condition that the designated entities shall be entitled to buy new shares in order to restore their shareholding to 51% within a period ranging up to 5 years, which period may be extended upon application in terms of section 3(a) of the IEE General Regulations.

	Construction	Energy 20 Yrs.	Finance	Telecoms/ICT	Manufacturing	Tourism	Transport	Arts Entertainment and Culture	Services
Direct Equity	50%	20%	20%	50%	20%	30%	25%	50%	50%
Social & Economic Empowerment Objective	res								
Agriculture			8						
SMEs and Micro financing			2						
Youth programmes			2						-
Women programmes			2						
Low cost housing			4						-
Vocational Training		5	4		4	4	4		-
Skills Development		3			2	2	6		
Value Addition					10		5		-
Preferential Procurement		4	4		5	3	3		
Carbon Neutral Environment & Empowerment		5	2		4	3	5		ļ
Linkage/Outsourcing Programmes		5			2	2	2		
Enterprise Development		3	I		3	3			
Socio-economic Development Initiatives		5				3			-
Educational Bursaries			1						
National Economic Empowerment Charter	1	1	1	1	1	1	1	1	1
Total Credits	1	31	31	I	31	21	26	11	1
Grand TOTAL	51	51	51	51	51	51	51	51	51

22. The calculation of the empowerment credits which are given in Table 1 shall be developed and monitored to reflect the peculiarities of each sector and subsector by the line ministries in liaison with NIEEB.

Reserved Sectors for Indigenous Zimbabweans

- The IEE Regulations stipulate in the Third Schedule, sectors that are reserved for indigenous Zimbabweans.
- Table 2 shows the sectors to be reserved in favour of indigenous Zimbabweans.

Table 2: Reserved Sectors

Existing Sub-sector
Agriculture, primary production of food and cash crops
Transportation: passenger buses, taxes and car hire service
Retail and wholesale trade
Barber shops, hairdressing and beauty salons
Employment agencies
Estate agencies and Real Estates
Bakeries
Advertising agencies
Provision of local and craft, marketing and distribution
Tobacco grading and packaging
Cigarette Manufacturing
Valet services
Milk processing
Grain milling
Proposed Sub-sector
Fuel retailing
Artisanal mining of all minerals (except diamond)

- 25. No new non-indigenous businesses will be allowed to invest in the reserved sector unless under special cases as determined or approved by Cabinet.
- The provisions in the ZIA Act defining the reserved sectors will be repealed so that there are no inconsistencies in the legal framework.

EMPOWERMENT LEVY

 An Empowerment Levy at the prescribed rate shall be levied on all businesses.

Uses of the Levy

- The levy will be used for economic empowerment activities as set out in section 12 of the Indigenisation and Economic Empowerment Act.
- The funds realised from the levy shall be used to facilitate economic empowerment of the indigenous Zimbabweans including Youths, Women and people with disabilities.

NON-COMPLIANT BUSINESSES

- 30. Existing foreign-owned businesses may continue to operate in all the sectors of the economy but shall be required to pay an indigenisation compliance levy as a trade-off for noncompliance.
- An indigenisation compliance levy is to be imposed on a sliding scale rewarding businesses which are compliant whilst penalising non-compliant businesses.

Reserved Sectors

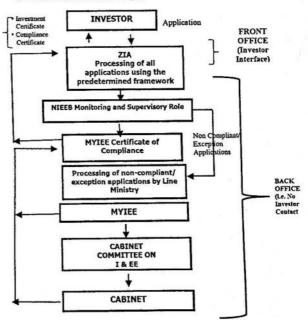
 For the reserved sectors the indigenisation compliance levy will be determined on the basis of the compliance level that excludes credits for socially and economically desirable objectives.

INVESTMENT APPLICATION PROCESS

 All investment applications will be submitted through the Zimbabwe Investment Authority (ZIA) for processing in

- accordance with the simplified Indigenisation and Economic Empowerment framework and by so doing, accelerating the ease of doing business as well as the operationalization of the one stop investment centre.
- 34. All companies that have not yet submitted their Indigenisation Implementation Plans as required by the Act should submit their applications through ZIA by the new deadline of 31st March, 2016.
- 35. During its normal course of processing, ZIA would consult with the line ministries and the National Indigenisation and Economic Empowerment Board (NIEEB) which shall play, under the guidance of the Ministry of Youth, Indigenisation and Economic Empowerment (MYIEE), a supervisory and monitoring role to ensure Government entities comply with the Indigenisation and Economic Empowerment Act and other set regulations and policies. This process is in line with regional best practice.
- 36. Applications that do not conform to the predetermined frameworki.e.exception applications will be lodged by NIEEB in consultation with the line ministries through MYIEE for consideration by Cabinet through the Cabinet Committee on Indigenisation and Economic Empowerment.

SCHEMATIC PROCESS



PROCUREMENT

- 37. All Government departments, statutory bodies and local authorities and all companies are to procure at least fifty per centum of their goods and services required to be procured in terms of the Procurement Act [Chapter 22:15] from local businesses.
- 38. The Ministry of Youth, Indigenisation and Economic Empowerment will be engaging with the procuring entities and other appropriate authorities who are involved in procurement arrangements in an effort to ensure compliance with these provisions.
- To the extent necessary, the Attorney General's Office will ensure that the law is aligned to the framework set out herein.

NATIONAL INDIGENISATION AND ECONOMIC EMPOWERMENT CHARTER

40. The Indigenisation and Economic Empowerment Act, section 16 read with the Fourth Schedule, provides for a National Indigenisation and Economic Empowerment Charter, to the effect that indigenous businesses benefitting from NIEEF, or the indigenisation programme, must comply to the best of their ability with the framework for ethical and good business conduct contained in the Charter.

- 41. The Ministry of Youth Indigenisation and Economic Empowerment will make the provision of rebates conditional upon commitment to abide by the principles of the NIEEC so as to ensure that indigenous business entities develop a reputation of good governance and ethics.
- 42. Indigenous businesses must comply with the National Indigenisation and Economic Empowerment Charter, and must be bound by the provisions of the Charter. The Charter has been developed and put into legislation for the purpose of rebranding indigenous businesses.

HON. P. A. CHINAMASA (MP),

24-12-2015. Minister of Finance and Economic Development.

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