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14 MARCH 2018 AMENDMENTS OF ZIMBABWE'S INDIGENISATION AND ECONOMIC EMPOWERMENT ACT

The Finance Act, 2018 (No. 1 of 2018), was published as law in the Zimbabwean Government Gazette Extraordinary dated 14th March 2018 .

Section 42 of this 46-page Act makes major amendments to the Indigenisation and Economic Empowerment Act.

For the convenience of those particularly interested in these amendments, this document is an extract from pages 19 to 30 of the Finance Act showing the text of section 42.

The [complete Finance Act](#) is available on the Veritas website using this [link](#).

- (b) the use and enjoyment of such services and facilities; which allowances, services and facilities shall be as favourable as those that are prescribed for a former Vice-President in terms of the Presidential Pension and Retirement Benefits Act [*Chapter 2:05*].”.
- (e) by the repeal of subsection (1) of section 9 (“Review of benefits”) and the substitution of the following—
 - “(1) The Committee on Standing Rules and Orders shall with the approval of the Minister responsible for finance, review and determine the level of salaries, allowances and benefits provided for in terms of this Act.”.

41 Amendment of Cap. 2:06

The Presidential Salary and Allowances Act [*Chapter 2:06*] is amended—

- (a) in section 2 (“Benefits for President and Acting President”)—
 - (i) by the deletion of the title thereto and the substitution of—
 - “2 Benefits of President, Acting President and Vice President”;
 - (ii) by the deletion of “The President and any Acting President” and the substitution of “The President, any Acting President and a Vice-President”;
- (b) in section 3 (“Prescribing of benefits and other matters”)(2)(a) of the principal Act is amended by the deletion of “the President and any Acting President” and the substitution of “the President, any Acting President or a Vice-President.”.

42 Amendment of Cap. 14:33

(1) The Indigenisation and Economic Empowerment Act [*Chapter 14:33*] is amended—

- (a) in section 2 (“Interpretation”)—
 - (i) by the repeal of the definition of “Minister” and the substitution of—
 - ““Minister” means the Minister to whom the President assigns the administration of this Act.”;
 - (ii) by the insertion of the following definitions—
 - ““appropriate designated entity” means any of the following entities (and such other entities as may be designated by the line Minister by notice in the *Gazette*)—
 - (a) the Zimbabwe Mining Development Corporation established in terms of the Zimbabwe Mining Development Corporation [*Chapter 21:08*], and any company or other entity incorporated by the Zimbabwe Mining Development Corporation or by the Republic of Zimbabwe for the purposes of section 3(2b); or
 - (b) the Zimbabwe Consolidated Diamond Company, being a wholly Government-owned private limited company involved predominantly or exclusively in the extraction for profit of diamonds, that was incorporated on the 11th May, 2015; or
 - (c) the National Indigenisation and Economic Empowerment Fund;

“community share ownership scheme” means a scheme referred to in section 14B of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in Statutory Instrument 21 of 2010, subject to any amendment or replacement of that section or those regulations from time to time;

“designated extractive business” means a company, entity or business referred to in section 3(1)”;

“reserved sector of the economy” means the sector comprising those kinds of businesses reserved for citizens of Zimbabwe under the First Schedule;

“Unit” means the National Indigenisation and Economic Empowerment Unit referred to in section 6A;”;

- (b) by the insertion after section 2 of the following section—

“2A Application of Act

For the avoidance of doubt it is declared that this Act shall not apply to any business in the national economy other than those specified in section 3(1) and those in the reserved sector of the economy, and that accordingly any person is free to invest in, form, operate, and acquire the ownership or control of any business not included in section 3(1) or in the reserved sector of the economy.”;

- (c) by the repeal of section 3 and the substitution of the following sections—

“3 Objectives and measures in pursuance of indigenisation and economic empowerment

(1) The State shall, by this Act, or through regulations under this Act or any other law, secure that at least fifty-one *per centum* of the shares or other ownership interest of every designated extractive business, that is to say a company, entity or business involved in the extraction of—

- (a) diamonds; or
- (b) platinum;

shall be owned through an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both).

(2) No—

- (a) merger or restructuring of the shareholding of two or more related or associated designated extractive businesses; or
- (b) acquisition by a person of a controlling interest in a designated extractive business;

that requires to be notified to the Competition Commission in terms of Part IVA of the Competition Act [*Chapter 14:28*] shall be approved unless—

- (c) a fifty-one *per centum* of the shares or other ownership interest in the merged or restructured business is held in the case of a designated extractive business, by an appropriate designated entity:

Provided that some part of the fifty-one *per centum* here referred to may be held by a community share ownership scheme or employee share ownership scheme or trust, or both;

and

- (d) the appropriate designated entity is equitably represented in the governing body of the merged or restructured entity.

(3) No unbundling of a designated extractive business or demerger of two or more such businesses shall, if the value of any business resulting from the unbundling or demerger is at or above a prescribed threshold, be approved unless—

- (a) fifty-one *per centum* in any such resulting business is held by an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both); and
- (b) the appropriate designated entity referred to in subparagraph (c) is equitably represented in the governing body of any such resulting business.

(4) No relinquishment by a person of a controlling interest in a designated extractive business, if the value of the controlling interest is at or above a prescribed threshold, shall be approved unless the controlling interest is relinquished to an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both).

(5) No projected or proposed investment in a prescribed sector of the economy available for investment by domestic or foreign investors for which an investment licence is required in terms of the Zimbabwe Investment Authority Act [*Chapter 14:30*] shall be approved unless, in the case of a designated extractive business, a controlling interest in the investment is reserved for an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both).

(6) In the case of a designated extractive business the Minister may permit the business in writing to do either of the following—

- (a) to comply with this Act within such period as may be prescribed by the Minister so that indigenisation and empowerment quota can be achieved; or
- (b) to achieve the indigenisation and empowerment quota through the use of the credits and within and for such period as the Minister shall prescribe.

3A Reserved sectors of the economy

(1) Subject to subsections (2) and (10), only a business owned by a person who is a citizen of Zimbabwe may operate in the reserved sector of the economy.

(2) Every business owned by a person who is not a citizen of Zimbabwe that, before the 1st January, 2018, commenced operating in the reserved sector of the economy may continue to operate if—

- (a) it registers itself with—
 - (i) the Zimbabwe Revenue Authority;
 - (ii) the Unit, in accordance with subsection (3);and
- (b) it opens and maintains a bank account in accordance with the Bank Use Promotion Act [*Chapter 24:24*].

(3) For the purpose of benefiting from, and evidencing, the exception granted to a business under subsection (2)—

- (a) the business in question shall, no later than the 1st July, 2018, notify the Unit by affidavit that—
 - (i) it commenced operating in the reserved sector of the economy before the 1st January, 2018; and
 - (ii) it has registered for tax purposes with the Zimbabwe Revenue Authority, and has opened, and continues to maintain, a bank account with a named banking institution in accordance with the Bank Use Promotion Act [*Chapter 24:24*];and
- (b) the Unit shall open and maintain a register wherein shall be recorded relevant particulars of every business referred to in paragraph (a), and furnish to every such business at its request, free of charge, a certificate that it has been registered for the purpose of subsection (2).

(4) Any person who is not a Zimbabwean citizen and who, after the 1st January, 2018, wishes to operate a business in the reserved sector of the economy shall seek the permission of the Minister referred to in subsection (10).

(5) Any person who is not a Zimbabwean citizen and who—

- (a) after the 1st July, 2018, fails to comply with subsections (2) and (3); or
- (b) after the 1st January, 2018, begins to operate a business referred to in subsection (1) without the permission of the Minister given under subsection (10);

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) In addition, the Minister may direct any licensing authority to revoke, suspend or cancel the operating licence of a business operating in contravention of subsections (2) and (3) or (5).

(7) Any official of the Unit and any law enforcement agent and any other person bearing the authority of the Minister, in writing, may access any premises of any business operating in a reserved sector, on production of the written authority by the Minister, and demand any relevant documents for purposes of verifying compliance with this section by such business.

(8) The official referred to in subsection (7) may take copies of documents or any other material that may be used as proof of compliance or non-compliance with this section.

(9) Any person who interferes with or obstructs an official referred to in subsections (7) and (8) in the execution of their functions shall be guilty of an offence and liable to fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(10) Subject to subsection (11), a person who is not a Zimbabwean citizen may, after the 1st January, 2018, invest in a business in the reserved sector of the economy if that business meets such criteria or threshold as the Minister will prescribe based on the following objectives—

- (a) significant and sustainable employment creation in Zimbabwe;
- (b) the transfer of skills and technology for the benefit of the people of Zimbabwe;
- (c) the creation of sustainable value chains;
- (d) other prescribed socially and economically desirable objectives.

(11) For the purpose of subsection (10)—

- (a) the proposed investor in question shall lodge a written application with the Unit illustrating how it meets or intends to meet the applicable criteria or threshold prescribed under subsection (10);
- (b) the Unit shall, within seven days of receiving the application or such longer period as the Unit and the proposed investor may agree, forward the application, together with its recommendations thereon, to the Minister; and
- (c) the Minister shall, after considering the application, grant or refuse it, and if the Minister grants it, shall furnish to the applicant, free of charge, a permit allowing it to undertake the investment:

Provided that the grant of any such permit and the name of the proposed investor in question shall be published by notice in the *Gazette*.”;

- (d) by the repeal of sections 5 and 6;
- (e) by the repeal of Part III and the substitution of —

“PART III

NATIONAL INDIGENISATION AND ECONOMIC EMPOWERMENT UNIT

6 Establishment, composition and location of Unit

There shall be a Unit in the Ministry responsible for the administration of this Act, known as the National Indigenisation and Economic Empowerment Unit, having the following special features, namely that—

- (a) it shall be headed by a Director whose post shall be a post in the Civil Service;

and

- (b) it shall consist of such other members of staff as may be necessary for the performance of its functions, who shall be civil servants.

7 Functions of Unit

(1) The functions of the Unit shall be —

- (a) to administer the Fund in terms of section 15; and
- (b) to perform such other functions as may be imposed or conferred upon the Unit under this Act or any other enactment.

(2) The Director and all members of staff and agents of the Unit shall perform their functions under this Act in an impartial, clear and, subject to section 11 (“Confidentiality”), open manner.

(3) Before reaching a decision under this Act which affects or is likely to affect the rights or interests of any person, the Director and all members of staff and agents of the Unit shall, to the fullest extent practicable—

- (a) give the person due and clear notice of the nature of the decision that is to be made and of the factors that are likely to be taken into consideration when making it; and
- (b) subject to section 11 (“Confidentiality”), allow the person reasonable access to the information available to the Director or the member of staff or agent concerned in regard to the matter under consideration; and
- (c) give the person as full an opportunity as circumstances allow to make representations in the matter; and
- (d) take into account any representations that the person may make in the matter;

and generally observe due process and the rules commonly known as the rules of natural justice.

(4) Subject to section 11 (“Confidentiality”), where the Director or any member of staff or agent of the Unit has made a decision or taken any action that adversely affects the rights or interests of any person, the Director or the staff member or agent concerned shall provide that person, promptly on demand, with full written reasons for the decision or action.

(5) The Minister may give the Director general directions of policy to be adopted by the Unit in the performance of its functions.

(6) Directions under subsection (5) shall be given in writing and kept by the Director at the Unit's principal office, where they may be inspected free of charge by members of the public at all reasonable times during office hours.

8 Further provisions on the Director, staff, agents and inspectors of Unit

(1) The Director must be a person experienced or qualified in economics, banking, accounting, law or who possesses any other appropriate qualification or experience.

(2) Subject to this Act, the Director shall be responsible for directing, managing and controlling the activities of the Unit and its staff and agents.

(3) The Director may, when necessary, appoint any—

- (a) police officer; or
- (b) employee of the Zimbabwe Anti-Corruption Commission established by the Constitution; or
- (c) employee of the Reserve Bank; or
- (d) employee of the Zimbabwe Investment Authority; or
- (e) person employed by any other institution or authority that the Director considers appropriate;

to be an agent of the Unit for the purpose of exercising any of the Unit's functions in terms of this Act:

Provided that any such appointment shall be made with the approval of the Minister and, in the case of—

- (a) a police officer, with the approval of the Commissioner-General of Police;
- (b) an employee of the Zimbabwe Anti-Corruption Commission, with the approval of the chairperson of the Commission;
- (c) an employee of the Reserve Bank, with the approval of the Governor of the Reserve Bank;
- (d) an employee of the Zimbabwe Investment Authority, with the approval of the chairperson of the Authority;
- (e) an employee of any other institution or authority, with the approval of the governing body of that institution or authority.

(4) With the approval of the Minister, the Director may delegate to any member of the Unit's staff any function conferred or imposed upon him or her by this Act.

9 Inspectors and their powers

(1) The Director may appoint any member of the Unit's staff and any agent of the Unit to be an inspector for the purposes of this Act.

(2) The Director shall furnish each inspector with a certificate stating that he or she has been appointed as an inspector, and the inspector shall, on demand, exhibit the certificate to any person affected by the exercise of the inspector's powers.

(3) An inspector may, without previous notice and at all reasonable times, enter premises of any business referred to in section 3(1) or a business operating or purporting to operate in the reserved sector of the economy, and, after informing the person in charge or control of the premises of the purpose of his or her visit, may do any or all of the following—

- (a) make such examination and inquiry as he or she considers appropriate;
- (b) question any person who is employed in or at the premises;
- (c) require any person who is employed in or at the premises to produce any book, account, notice, record, list or other document;
- (d) require from any person an explanation of any entry made in any book, account, notice, record, list or other document found upon any person or premises referred to in paragraph (c);
- (e) examine and make copies of any book, account, notice, record, list or other document;
- (f) take possession of any book, account, notice, record, list or other document:

Provided that such book, account, notice, record, list or other document shall be retained only so long as may be necessary for the purpose of any examination, investigation, trial or inquiry arising out of any contravention of this Act;

where there are reasonable grounds for believing that such action is necessary—

- (g) for the prevention, investigation or detection of an offence in terms of this Act, for the seizure of any property which

is the subject-matter of such an offence or evidence relating to such an offence, or for the lawful arrest of a person.

(4) In a search under subsection (3), an inspector may be accompanied and assisted by one or more police officers or other persons, and those persons shall have the same powers as the inspector under that subsection.

(5) Every person whose premises have been entered in terms of subsections (3) and (4), and every employee or agent of that person in or on those premises, shall forthwith provide the inspector and his or her assistants with whatever facilities the inspector may reasonably require for the exercise of the powers conferred on them by those subsections.

(6) Nothing in this section shall be taken to require a legal practitioner to disclose any privileged communication made to him or her in that capacity.

(7) Any person who—

- (a) hinders or obstructs an inspector or his or her assistant in the exercise of his or her powers under this section; or
- (b) without just cause, fails or refuses to comply with a lawful request of an inspector or his or her assistant in terms of this section;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(8) A court convicting a person of failing to give information or to produce any document when required to do so under this section may require the person, within such period as the court may specify, to give the information or to produce the document, as the case may be.

10 Unit to have access to information

(1) For the proper performance of its functions, the Unit shall have power to obtain from any—

- (a) financial institution; or
- (b) person carrying on a designated extractive business or reserved business; or
- (c) law enforcement agency; or
- (d) public authority or public officer; or
- (e) corporate body of a public character; or
- (f) public company;

any information, whether specific or general, that the Director considers necessary to carry out its functions.

(2) Where, in the exercise of the power under subsection (1), the Director or an employee, inspector or agent of the Unit requests information from a person referred to in subsection (1), the information shall be provided within such reasonable time and in such manner as may be specified in writing by the Director or by the employee, inspector or agent concerned.

(3) This section shall not be construed as—

- (a) limiting the powers of inspectors under section 9 (“Inspectors and their powers”); or
- (b) precluding the Unit from obtaining information from any other person or entity, whether in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] or otherwise.

(4) Nothing in this section shall be taken to require a legal practitioner to disclose any privileged communication made to him or her in that capacity.

11 Confidentiality

(1) Any information reported to the Unit or gathered or discovered by any employee, inspector or agent of the Unit in the course of exercising his or her functions under this Act shall be confidential to the Unit, and no person shall disclose any such information to any other person or body except—

- (a) in the course of exercising his or her functions under this Act; or
- (b) to a judicial officer for the purposes of any legal proceedings under this Act; or
- (c) in accordance with the order of any court; or
- (d) for the purposes of any prosecution or criminal proceedings;

or where the disclosure is authorised or required by or under this Act or any other law.

(2) Any officer, employee, inspector or agent of the Unit who discloses any information referred to in subsection (1) otherwise than in accordance with that subsection, or makes use of it for personal gain, shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

(3) The Director shall ensure that the Unit maintains adequate systems and procedures to maintain the confidentiality of information referred to in subsection (1).

11A Reports of Unit

(1) As soon as possible after—

- (a) the 31st March, the 30th June, the 30th September and the 31st December in each year, the Director shall submit to the Minister a report on the Unit's activities during the three months preceding the date concerned;
- (b) the 31st December in each year, the Director shall submit to the Minister a consolidated report on the Unit's activities during that year.

(2) As soon as practicable after receiving a consolidated report in terms of subsection (1)(b), the Minister shall lay it before the Senate and the National Assembly.”;

(f) by the repeal of section 15 and the substitution of—

“15 Administration of Fund

(1) Subject to this Act, the Fund shall be administered by the Minister through the Director of the Unit who shall act on behalf of and in accordance with any instructions of the Minister.

(2) With the approval of the Minister, the Director of the Unit shall open one or more banking accounts into which all moneys received on behalf of the Fund shall be paid.

(3) Further provisions governing the administration of the Fund are set out in the Third Schedule.”;

(g) by the repeal of section 16;

(h) in section 19 (“Minister may request information”) by the substitution of “Director of the Unit” for “Minister” wherever it occurs;

(i) in section 20 (“Appeals”) by the repeal of subsection (1) and the substitution of—

(1) If any person is aggrieved by—

- (a) any decision or action of the Unit, he or she may, within thirty days after being notified of the decision or of the action being taken, appeal to the Minister against such decision or action; or
- (b) a decision by the Minister to refuse a permit referred to in section 3A(11)(c), or a decision of the Minister made on appeal to him or her under paragraph (a) of this subsection, or any other decision or action of the Minister in terms of any provision of this Act, he or she may, within thirty days after being notified of the decision or of the action being taken, appeal to the Administrative Court.”;

- (j) in section 21 (“Regulations”)(1) by the deletion of “, after consultation with the Board.”;
- (k) by the repeal of the First Schedule and the substitution of—

“FIRST SCHEDULE (Section 3A(1))

RESERVED THRESHOLD SECTORS

1. Transportation: passenger buses, taxis and car hire services.
 2. Retail and wholesale trade.
 3. Barber shops, hairdressing and beauty saloons.
 4. Employment Agencies.
 5. Estate Agencies.
 6. Valet services.
 7. Grain milling.
 8. Bakeries.
 9. Tobacco grading and packaging.
 10. Advertising Agencies.
 11. Provision of local arts and craft, marketing and distribution.
 12. Artisanal mining.”;
- (l) by the repeal of the Fourth Schedule.

(2) Any tax incentive that a business enjoyed before the promulgation of the Finance Act of 2018 by virtue of complying with the principal Act shall continue to apply after such promulgation and may be applied for on a voluntary basis as if the Finance Act of 2018 had not been promulgated, for which purpose the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in Statutory Instrument 21 of 2010, shall remain in force.

(3) If a business wishes to amend an indigenisation implementation plan approved under the aforementioned regulations on or before the date of commencement of this Act, the business may, no later than sixty days after the commencement of this Act, submit a revised indigenisation implementation plan to the Minister who shall, no later than three months after the revised indigenisation implementation plan submitted to him or her, by notice in writing to the business concerned, either approve the revised indigenisation implementation plan submitted by the business or reject it.

(4) If a revised indigenisation implementation plan submitted to the Minister in terms of subsection (3) is rejected, the business concerned shall have one more opportunity to submit another revised indigenisation implementation plan no later than sixty days from the date when it is notified of the rejection, and subsection (3) shall apply to such plan in the same way as it applied to the first revised indigenisation implementation plan submitted by it.”.