

Zimbabwe

ZIMBABWE INVESTMENT AND DEVELOPMENT AGENCY ACT [CHAPTER 14:37] (2020)

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Contents

- PART I PRELIMINARY
- PART II Zimbabwe Investment and Development Agency
- PART III Investor Guarantees and Non-Discriminatory Treatment
- PART IV Investor Obligations

PART V PROVISIONS COMMON TO INVESTORS IN AND OUTSIDE SPECIAL ECONOMIC ZONES
PART VI INVESTMENT IN SPECIAL ECONOMIC ZONES
PART VII PUBLIC PRIVATE PARTNERSHIPS
PART VIII DISPUTE SETTLEMENT
PART IX FINANCIAL PROVISIONS
PART X GENERAL
FIRST SCHEDULE (Section 4(3)) Ancillary Powers of Agency
SECOND SCHEDULE (Section 6(3)) Provisions Applicable to Zida Advisory Board
THIRD SCHEDULE (Section 31(3)) Rights, Duties and Obligations of Persons Licensed to Operate in
Special Economic Zones
FOURTH SCHEDULE (Sections 2 and 35) RULES AND PROCEDURES GOVERNING PUBLIC PRIVATE
PARTNERSHIPS

ZIMBABWE INVESTMENT AND DEVELOPMENT AGENCY ACT [CHAPTER 14:37]

AN ACT to provide for the promotion, entry, protection and facilitation of investment; to provide for the establishment of the Zimbabwe Investment and Development Agency; to provide for the One Stop Investment Services Centre; to repeal the Zimbabwe Investment Authority Act [Chapter 14:30], the Special Economic Zones Act [Chapter 14:34] and the Joint Ventures Act [Chapter 22:22]; and to provide for matters incidental to or connected to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

PART I PRELIMINARY

1 Short title

This Act may be cited as the Zimbabwe Investment and Development Agency Act [Chapter 14:37].

2 Interpretation In this Act—

“Agency” or “ZIDA” means the Zimbabwe Investment and Development Agency established by section 3;

“Board” means the Zimbabwe Investment and Development Agency Advisory Board established by section 7;

“Commissioner-General” means the Commissioner-General of the Zimbabwe Revenue Authority;

“contracting authority” means any Ministry, Government department or public entity which has entered into or is considering entering into a PPP agreement;

“counterparty”, in relation to a PPP agreement, means a party to the agreement other than the contracting authority;

“Chief Executive Officer” means the Chief Executive Officer of the Agency appointed in terms of section 9;

“customs territory” means any part of Zimbabwe excluding a special economic zone;

“foreign investor” means a natural or juristic person domiciled outside Zimbabwe, who seeks to make, is making or has made an investment in Zimbabwe pursuant to this Act;

“foreign investment” is a direct or indirect investment made by a foreign investor, other than any foreign portfolio investment;

“foreign portfolio investment” means the purchase of Zimbabwean stocks and bonds by any natural or juristic person domiciled outside Zimbabwe, and includes the deposit by such person of moneys in any banking account in Zimbabwe;

“Government” means the Government of the Republic of Zimbabwe;

“Immigration Department” means the office headed by the Chief Immigration Officer, referred to in section 5(1)(a) of the Immigration Act [Chapter 4:02];

“investor” means any person, natural or juristic, who seeks to make, is making or has made an investment in Zimbabwe, including a foreign investor;

“Minister” means—

- (a) any Minister or Vice-President to whom the President may assign the administration of this Act;
- (b) the President, where the President has reserved the administration of the Act to himself or herself;
- “One Stop Investment Services Centre” or “OSISC” has the meaning given to it in section 5;
- “one stop shop” means the OSISC or any branch thereof established under section 5(8);
- “Public Private Partnership agreement” or “PPP agreement” has the meaning given to it in Part I of the Fourth Schedule;
- “PPP project” or “project” means a project to be implemented under a PPP agreement, and includes any of the types of projects specified in, but not limited to, those specified in Part III of the Fourth Schedule;
- “public entity” means—
- (a) any corporate body established by or in terms of an Act of Parliament for special purposes; or
- (b) any company in which the State has a substantial or controlling interest, whether by virtue of holding or controlling shares therein or by virtue of a right of appointment of members to the controlling body thereof or otherwise, and includes any company which is subsidiary of the first mentioned company, as determined in accordance with section 183 of the Companies and other Business Entities Act [Chapter 24:31]; or
- (c) local authority;
- “special economic zone” or “SEZ” means any part of Zimbabwe declared in terms of section 31 to be a Special Economic Zone;
- “territory” means the land and territory of the Republic of Zimbabwe and the airspace above it;
- “user levy” means any toll, fee, tariff, charge or other benefits whatsoever called that is collected by a counterparty or by the contracting authority on behalf of the counterparty from users or customers of a facility or service provided by it to enable the counterparty to recover its investment together with a fair return thereon;
- “unsolicited bid” means a proposal that is prepared or made without the invitation, solicitation, supervision or request of a contracting authority, being made solely at the initiative of the prospective counterparty, and “unsolicited bidder” shall be construed accordingly;
- “value for money” in relation to a PPP agreement, means that the agreement will result in a net benefit to users or consumers of the facility or service availed by the completion of the agreed project in terms of cost, delivery, price, quality, quantity, timeliness or risk transfer, or any combinations thereof;
- “Zimbabwe Revenue Authority” means the Authority established in terms of section 3 of the Revenue Authority Act [Chapter 23:11].

PART II Zimbabwe Investment and Development Agency

3 Establishment of Zimbabwe Investment and Development Agency

There is hereby established an Agency to be known as the Zimbabwe Investment and Development Agency, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

4 Functions of Agency

(1) The functions of the Agency shall be—

- (a) to promote, plan and implement investment promotion strategies for the purpose of encouraging investment by domestic and foreign investors;
- (b) to promote the decentralisation of investment activities;
- (c) to implement and coordinate investment programmes and investment promotion related activities;
- (d) to facilitate entry and implementation of investment projects;
- (e) to assist investors in all appropriate investment-related support that may be required;
- (f) to work with Government and interested stakeholders in using modern communications methods to promote Zimbabwe as an attractive investment destination;
- (g) to facilitate, across all sectors of the economy, dialogue and other consultations between the public and private sectors to improve the investment climate for domestic and foreign investment;
- (h) to establish and regulate special economic zones;
- (i) to appraise and recommend the approval of Public Private Partnerships with the State to the Cabinet;
- (j) to deliver investor aftercare services, including but not limited to post-establishment facilitation services that support investment retention and expansion;
- (k) where appropriate, to monitor the operations of registered investments;
- (l) to maintain records related to investment certificates, work permits, visas and any other documents pertaining to the licensed investor;
- (m) to advise the Minister on all matters relating to investment in Zimbabwe; and
- (n) to perform such other functions as may be assigned by the Minister from time to time.

(2) The Agency shall exercise its functions impartially and without fear, favour or prejudice and shall conduct all its activities in a clear and open manner to give the fullest effect to the objectives of this Act.

(3) Subject to this Act, for the better exercise of its functions the Agency shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the First Schedule, either absolutely or conditionally and either solely or jointly with others.

5 One Stop Investment Services Centre

(1) There is hereby established under the control and supervision of the Agency a One Stop Investment Services Centre consisting of the following desks—

- (a) a desk to represent the general investment division of the Agency;

- (b) a desk to represent the unit in the Agency responsible for public private partnerships;
- (c) a desk to represent the unit in the Agency responsible for special economic zones;
- (d) a desk to represent the Immigration Department;
- (e) a desk to represent the Zimbabwe Revenue Authority;
- (f) a desk to represent the Environment Management Agency established by section 9 of the Environmental Management Act [Chapter 20:27];
- (g) a desk to represent the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [Chapter 22:15];
- (h) a desk to represent the Office for the Registration of Companies and Other Business Entities established in terms of section 5 of the Companies Act [Chapter 24:03];
- (i) a desk to represent the National Social Security Authority established in terms of the National Social Security Authority Act [Chapter 17:04];
- (j) a desk to represent the Zimbabwe Energy Regulatory Authority established by section 3 of the Energy Regulatory Authority Act [Chapter 13:23];
- (k) a desk to represent the Ministry responsible for mines and minerals;
- (l) a desk to represent the Ministry responsible for local authorities;
- (m) a desk to represent the Zimbabwe Tourism Authority established by section 3 of the Tourism Act [Chapter 14:20];
- (n) a desk to represent the Ministry responsible for labour;
- (o) one or more desks representing any additional Ministry or Ministries as the Minister, after consultation with the Minister or Ministers concerned and the President, considers to be relevant for the success of the one stop shop.

(2) Each desk shall be manned by an employee, officer or representative of the relevant agency, department or Ministry, and each such employee, officer or representative shall have a mandate to assist investors using the one stop shop to the extent it is possible for them to so within the sphere of competence of the agency, department or Ministry of which he or she is a an employee, officer or representative.

(3) Persons manning the desks referred to in subsections (1)(a), (b) and (c), are employees of the Agency.

(4) Persons manning the desks referred to in subsections (1) (d) to (n) are employees, officers or representatives of the relevant agency, department or Ministry seconded to the Agency.

Provided that the seconding authority shall have power on reasonable notice to

the Agency to recall any person seconded, on the condition that the seconding authority promptly seconds another person to the vacancy thus created.

(5) The Chief Executive Officer shall, whenever a vacancy arises with respect to the manning of a desk, whether by virtue of a recall referred to in the proviso to subsection (4) or for some other cause, request in writing the head of the relevant agency, department or Ministry to fill the vacancy by making the appropriate secondment, and the head of relevant agency, department or Ministry shall promptly comply with such request, and in any event no later than fourteen days of receiving the request.

(6) If any delay is made in complying with subsection (5) the Chief Executive Officer shall promptly inform the Chief Secretary to the Office of President and Cabinet of that fact, attaching therewith a copy of the original request communicated in terms of subsection (5).

(7) The OSISC shall operate every working day during normal business hours and at such other times as the Agency may determine, and any potential investor may use the services of the one stop shop without notice during those hours.

(8) The Agency may establish other one stop shops at different venues in all the provinces of Zimbabwe.

(9) To facilitate the prompt processing of investment enquiries through all the relevant desks within the one stop shop, the Agency shall appoint a Chief Facilitator and such number of assistant facilitators as are required to guide the potential investors to the appropriate desks.

(10) For the avoidance of doubt it is declared that, while on secondment the persons referred to in subsection (4) shall, with respect to the discharge of their mandates in their respective desks in the one stop shop, be subject to the authority and discipline of the Agency in the person of the Chief Facilitator as if they were employees of the Agency.

6 Prioritisation of consideration by third party agencies of certain applications secondary to granting of investment licences

Every officer, organ or arm of the State, and every statutory body and local authority, whose duty it is to consider any application for the grant of any permit, licence, permission, concession or other authorisation required in connection with any activity, or for the provision of a service, shall ensure that as far as possible priority is given to the consideration of any application therefor by an applicant whose activity is permitted or approved in terms of an investment licence issued under this Act.

7 Zimbabwe Investment and Development Agency Advisory Board

(1) There shall be an advisory board of the Agency known as the ZIDA Advisory Board which has the following functions—

(a) on its own initiative or at the request of the Chief Executive Officer—

(i) to investigate and make recommendations to the Chief Executive Officer on any matter affecting investment facilitation, development, promotion and protection; and

(ii) to assist the Chief Executive Officer in the discharge of his or her functions in terms of section 9 by making appropriate recommendations or giving appropriate advice to the Chief Executive Officer; and

(iii) making appropriate recommendations or giving appropriate advice on the formulation and implementation of strategies for the facilitation, development, promotion and protection of investments;

and

(b) at the request of the President or the Minister (as the case may be), to evaluate the performance by the Chief Executive Officer of his or her functions and responsibilities under this Act when he or she is being considered for re-appointment; and

(c) to consider any matter referred to it by the President or the Minister; and

(d) to perform any other function assigned to it by or in terms of this Act.

(2) The Chief Executive Officer is not bound by any recommendations made or advice given by the Board in terms of subsection (1)(a), but, at the request of the Board, he or she shall, in any annual or special report made in terms of section 43 (as directed by the Board) make a report on the substance of any such recommendations or advice he or she has chosen not to follow in whole or in part, together with the reasons for not doing so.

(3) The provisions of the Second Schedule apply to the Board.

8 Composition of ZIDA Advisory Board

(1) The Minister shall appoint eight (8) members of the Board of whom—

(a) three persons (of whom one shall be an expatriate) having the following qualities, among others, who shall be chosen from the private sector—

(i) international experience or exposure in major investment institutions, international financial institutions and any other internationally acclaimed organisations; or

(ii) expertise in investment analysis, finance, banking, corporate law and private equity financing.

(b) five shall be chosen from the public sector at director level and above in line with the Public Entities Corporate Governance Act [Chapter 10:31].

(2) The Chief Executive Officer shall be an ex officio member of the Board and the Secretary to the Board.

(3) In appointing Board members the Minister shall have regard for the provisions of sections 17 and 18 of the Constitution.

(4) From among the appointed members, the Minister shall appoint the Chairperson of the Board.

(5) The Board shall, at its first meeting, elect a Vice-Chairperson of the Board from among its members:

Provided that the Chairperson and the Vice Chairperson shall be of different genders.

9 Chief Executive Officer and staff of Agency

(1) There shall be a Chief Executive Officer of the Agency who shall be

appointed by the President on the President's own authority if the President is responsible for administering this Act, or otherwise after consultation with the Minister responsible for administering this Act.

(2) The Chief Executive Officer shall hold office for such period (not exceeding three years) and on such terms and conditions of service, as the President or the Minister (as the case may be) shall fix on his or her appointment, and shall be eligible for reappointment (subject to satisfactory evaluation of performance referred to in section 7(1)(b)) for the same period as the period for which he or she was originally appointed, and on the same or on different terms and conditions of service.

(3) The following provisions of the Second Schedule relating to the appointment of members of the Board, their vacation of office, disqualification for appointment, dismissal and refilling of their vacancies shall also apply to the Chief Executive Officer:—

Paragraphs 2, 3, 4(1) (subject to the reference in subparagraph (b) to paragraph

1(2) of the Second Schedule being construed as a reference to subsection (2) of this section), (3) and 5.

(4) The Chief Executive Officer shall, on behalf and in the name of the agency—

(a) employ, upon such terms and conditions as he or she may think fit, whether as permanent employees on pensionable conditions of service, or on contract or otherwise, such staff as are necessary for conducting the Agency's affairs; and

(b) assign and promote members of staff to offices, posts and grades in the Agency and fix their conditions of service; and

(c) supervise and control the activities of the staff of the Agency in the course of their employment; and

(d) discipline, suspend or discharge any such staff.

(5) The staff of the Agency shall carry out their functions under the direction and control of the Chief Executive Officer.

10 Specific and general responsibilities and functions of Chief Executive

Officer

(1) The Chief Executive Officer shall be—

(a) personally responsible for—

(i) overseeing the discharge by the Agency of its statutory functions; and

(ii) providing leadership and strategic direction to the Agency; and

(iii) approving the Agency's work programme and operations; and

(iv) approving the Agency's budget; and

(v) approving an investment promotion strategy in line with Zimbabwe's investment policy; and

(vi) the submission of annual and other reports in terms of section 43; and

(vii) exercising any other functions that may be imposed or conferred upon him or her personally in terms of this Act or any other enactment;

and

- (b) personally or by delegation to any member of staff of the Agency responsible for—
- (i) implementing the policies of the Agency; and
 - (ii) managing the operations and property of the Agency; and
 - (iii) inquiring into and dealing with complaints and grievances made by or against the Agency or members, employees or agents of the Agency; and
 - (iv) representing the Agency externally; and
 - (v) exercising on behalf of the Agency the ancillary powers referred to in the First Schedule; and
 - (vi) exercising any other functions that may be imposed or conferred upon the Agency in terms of this Act or any other enactment.
- (2) The Chief Executive Officer shall carry out his or her responsibilities and discharge his or her functions under this Act so as to exert effective leadership over the Agency and ensure its well-being and maintenance in a high state of efficiency.
- (3) The Minister may, through the Chief Executive Officer, give the Agency such general directions relating to the policy the Agency is to observe in the exercise of its functions that the Minister considers to be necessary in the national interest.

PART III Investor Guarantees and Non-Discriminatory Treatment

11 Conformity to law of investments

All investments must be established in accordance with, and shall be subject to, the laws of Zimbabwe.

12 Freedom of Investment

Foreign investors may invest in, and reinvest profits of such investments into, any and all sectors of the economy of Zimbabwe, and in the same form and under the same conditions as defined for Zimbabweans under the applicable laws and regulations of Zimbabwe. (This section is subject only to the reservation of certain classes of business in favour of Zimbabwean citizens contained in the First Schedule to the Indigenisation and Economic Empowerment Act [Chapter 14:13].)

13 Non-discrimination between domestic and foreign Investors

- (1) The Agency shall accord to foreign investors and their investments, treatment no less favourable than that it accords, in like circumstances, to domestic investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of their investments.
- (2) Subsection (1) does not apply to—
- (a) the existing non-conforming measures as set out in section 3 and 3A of the Indigenisation and Economic Empowerment Act [Chapter 14:33], the Land Commission Act [Chapter 20:29], and the Legal Practitioners Act [Chapter 27:07];

(b) an amendment to a non-conforming measure set out in the First Schedule to the Indigenisation and Economic Empowerment Act [Chapter 14:13], to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment.

14 Non-discrimination among foreign Investors

(1) The Agency shall accord to foreign investors from one country and their

investments, treatment no less favourable than that it accords, in like circumstances, to investors of any other country with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of their investments.

(2) For purposes of this section, the determination of whether treatment is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments based on legitimate public welfare objectives.

(3) For purposes of this section, the term “treatment” does not include

procedures for the resolution of investment disputes between a foreign investor and Zimbabwe provided for in international investment treaties and trade agreements.

(4) The provisions of subsections (1) and (2) shall not apply to all actual and future advantages accorded by Zimbabwe by virtue of its membership of, or association with a customs, economic or monetary union, a common market or a free trade area, to Zimbabweans, or to nationals or companies of Member States of such union, common market or free trade area, or of any other third State.

(5) The provisions of subsections (1) and (2) shall not be construed to require

the Government to accord to foreign investors any beneficial treatment, privilege or preference that may be granted to Zimbabweans as a result of—

(a) any law or other measure, the purpose of which is to promote and preserve cultural heritage and practices, indigenous knowledge and biological resources related thereto, or national heritage; or

(b) any special advantages provided in Zimbabwe by development finance institutions established for the purpose of development assistance or the development of small and medium businesses or new industries, provided that the legislation or advantages be applied in a transparent manner and subject to objective criteria and not in a manner that would constitute a disguised restriction on the freedom of establishment of foreign investors.

(6) The provisions of subsections (1) and (2) shall not apply to—

(a) the existing non-conforming measures as referred to in section 13(2); and

(b) the continuation or prompt renewal of the non-conforming measures referred to in section 13(2); and

(c) an amendment to a non-conforming measure referred to in section 13(2) and to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment.

15 Employment of senior expatriate staff

An investor may appoint, regardless of their nationality, any individual who is a qualified person as a senior manager, technical and operational expert or advisor with respect to the investment in accordance with the laws of Zimbabwe.

16 Fair and equitable treatment

- (1) Every investor shall be entitled to the protection against the following—
 - (a) denial of justice in criminal, civil or administrative proceedings; or
 - (b) breaches of fundamental due process, including—
 - (i) substantial procedural delays; or
 - (ii) fundamental breaches of transparency (as defined in section 18) in judicial and administrative proceedings; or
 - (iii) any substantive change to the terms and conditions under any licence, permit or endorsement granted by the Government or the Agency to investors and their direct investments; or
 - (c) manifest arbitrariness; or
 - (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or
 - (e) abusive treatment of investors, such as coercion, duress and harassment.
- (2) Every investor shall be entitled to—
 - (a) equal access to the law; and
 - (b) the protection of investments.

17 Guarantee against expropriation

- (1) No—
 - (a) investment shall be nationalised or expropriated; and
 - (b) investor shall be compelled to cede an investment to another person, either directly or indirectly through measures having an effect equivalent to nationalisation or expropriation; except for a public purpose, in accordance with due process of law, in a nondiscriminatory manner and on payment of prompt, adequate and effective compensation.
- (2) The compensation referred to in subsection (1) shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation) or, where the value of the property was negatively impacted by notice of imminent expropriation, immediately before such notice. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.
- (3) Compensation referred to in subsection (1) shall—
 - (a) be paid without delay and shall be fully realisable and freely transferable; and
 - (b) be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment.

- (4) The affected investor shall have a right, under the law of Zimbabwe, to prompt review, by a judicial or other independent authority, of its case and of the valuation of its investment in accordance with the principles set out in this section.
- (5) For purposes of this section, indirect expropriation occurs if a measure or series of measures of the Government has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
- (6) The determination of whether a measure or series of measures, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors—
- (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred; and
 - (b) the duration of the measure or series of measures; and
 - (c) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and
 - (d) the character of the measure or series of measures, notably their object, context and intent.
- (7) Non-discriminatory measures that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive.

18 Transparency

- (1) All laws, regulations, procedures, and administrative rulings that affect or pertain to investments or investors shall be promptly made publicly available.
- (2) Policies that affect investments or pertain to investors which are not expressed in laws and regulations, as well as adjudicatory decisions in respect to any matter covered by the Act, shall be made publicly available in a timely manner.
- (3) Notwithstanding subsections (1) and (2), this section does not require disclosure of any confidential or proprietary information, including information concerning particular investors or investments, or investment disputes, the disclosure of which would—
- (a) impede law enforcement or national security; or
 - (b) be contrary to laws protecting confidentiality or to the public interest; or
 - (c) prejudice the legitimate commercial interests of a particular public or private entity.

19 Transfer of funds

- (1) With respect to investments made under this Act, investors may without restriction or delay in a freely convertible currency transfer the following funds into and out of Zimbabwe—

- (a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment; and
 - (b) proceeds, profits from the asset, dividends, royalties, patent fees, licence fees, technical assistance and management fees, shares and other current income resulting from any investment under this Act; and
 - (c) proceeds from the sale or liquidation of the whole or part of an investment or property owned by an investment; and
 - (d) payments made under a contract entered into by the investor or investment, including payments made pursuant to a loan agreement; and
 - (e) payments resulting from any settlement of investment disputes pursuant to section 38; and
 - (f) earnings and other remuneration of foreign personnel legally employed in Zimbabwe in connection with an investment.
- (2) Any transfer of funds shall be allowed only after paying all tax obligations imposed on the amount to be transferred in accordance with the stipulated tax laws.
- (3) The Government may, in an equitable and non-discriminatory manner, prevent or delay a transfer of funds relating to any of the following circumstances—
- (a) bankruptcy, insolvency or the protection of the rights of creditors; or
 - (b) criminal or penal offences; or
 - (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
 - (d) ensuring compliance with orders or judgments in judicial or administrative proceedings.
- (4) Notwithstanding subsections (1) and (2), in the event of serious balance-of-payments or external financial difficulties, the Government may temporarily restrict payments or transfers related to investments, provided that such restrictions are imposed on a non-discriminatory and good faith basis.

PART IV Investor Obligations

20 Compliance with domestic legislation

Investors shall abide by this Act and the other legislation in force in the Republic of Zimbabwe, as well as by their contractual undertakings.

21 Responsibility of investor

In addition to their basic obligations to act in accordance with all laws of Zimbabwe, investors shall have common obligations, including those obligations relating to—

- (a) the preservation of the environment; and
- (b) the maintenance of independent accounts and records in respect of the given enterprise in accordance with international accounting standards; and
- (c) making sure that the products produced, works conducted and services provided by them comply with national and international standards; and

(d) respecting the national heritage, customs and traditions of Zimbabwe.

PART V PROVISIONS COMMON TO INVESTORS IN AND OUTSIDE SPECIAL ECONOMIC ZONES

22 Applications for investment licences

(1) Any investor wishing to obtain the approval of the Agency for his or her existing or projected investment outside a special economic zone for the purpose of securing the protections accorded by this Act to his or her investment must apply for an investment licence, and the application shall be accompanied by the prescribed fee and such documents as the Agency may require.

(2) Any person wishing to invest in a special economic zone must apply for an investment licence, and the application shall be accompanied by the prescribed fee and such documents as the Agency may require.

(3) The Chief Executive Officer shall without delay approve or refuse to approve any application for an investment licence submitted to the Agency in terms of subsection (1) or (2).

(4) The Chief Executive Officer may—

(a) at his or her discretion, refer any application for an investment licence to the Board for its advice or recommendation thereon;

(b) impose such conditions on the issuance of an investment licence as he or she considers fit, whether or not on the basis of any advice or recommendation tendered by the Board in terms of paragraph (a).

(5) For the purpose of securing the protections accorded by this Act, the production before any court of a document purporting to be an investment licence issued under the hand of any officer or person on behalf of the Agency, and identifying the investment and investor therein as a foreign or domestic investment or investor, as the case may be, shall be prima facie proof that the document is an investment licence and that the name, nature and identity of the investor and the investment is as it is stated in the investment licence, and any person disputing the same shall bear the burden of proving otherwise.

23 Period of validity of investment licences

(1) An investment licence other than one for investment in a special economic zone shall be valid for a period fixed by the Agency from the date of issue.

(2) An investment licence for investment in a Special Economic Zone shall be valid for a period of ten (10) years.

24 Renewal of investment licences

A licensed investor may renew his or her investment licence before its expiry, and an application for renewal shall be made in such form and manner and within such period as may be prescribed and shall be accompanied by such fee, if any, as may be prescribed.

25 Register of investment licences

- (1) The Agency shall maintain or cause to be maintained a register of—
- (a) investment licences, including any conditions subject to which each licence is issued; and
 - (b) any amendments, suspensions or cancellations of investment licences.
- (2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the offices of the Agency on payment of the prescribed fee, if any.
- (3) The Agency shall create and maintain up to date a website which, among other things, will enable members of the public to have access to the register kept in terms of subsection (1).

26 Investor to notify Agency of non-implementation of investment proposals or changes in particulars

- (1) Where for any reason, a licensed investor is unable to implement the investment described in his or her investment licence, he or she shall notify the Agency of his or her inability to implement such investment, stating the reasons therefor, within thirty (30) working days of his or her becoming aware of the non-implementation of the investment.
- (2) A licensed investor shall without delay inform the Agency of any material alteration in the information or particulars furnished by him or her when he or she applied for the investment licence.

27 Transfer of investment licences

No licensed investor shall, except with the prior approval of the Agency, assign, cede or otherwise transfer his or her investment licence to any other person.

28 Power to visit premises and inspect documents

- (1) To ensure compliance with any conditions subject to which any investment licence was issued, the Agency may visit and inspect any premises having any connection with the investment or proposed investment referred to in the licence, and may examine, make copies of or take extracts from any financial statements, books or other documents having any such connection.
- (2) Any person who hinders or obstructs the Agency in the conduct of an inspection or examination under subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14.

29 Suspension and cancellation of investment licences

- (1) The Agency may suspend or cancel any investment licence where the licensed investor—
- (a) obtained the licence on the basis of fraud or a misrepresentation of a material nature or any false or misleading statement; or
 - (b) assigns, cedes or otherwise transfers the licence to another person without the prior approval of the Agency; or
 - (c) fails without reasonable explanation to implement the approved activity described in the licence within the period stipulated or any extension thereof; or
 - (d) fails to comply with any conditions imposed on the issue of the licence.

(2) The Agency shall, before taking any action in terms of subsection (1), notify the licensed investor of its intention to suspend or cancel the investment licence concerned and the reasons therefor, and call upon the licensed investor to show cause, within such reasonable period as may be specified in the notice, why his or her investment licence should not be suspended or cancelled, as the case may be.

(3) If, at the expiration of the period specified in the notice given in terms of subsection (2), and after considering any representations made by the licensed investor, the Agency is satisfied for any reason specified in subsection (1) that the investment licence concerned should be suspended or cancelled, the Agency may, by notice in writing to the applicant, suspend or cancel the licence or take such other action as it considers appropriate, including suspending or cancelling any incentives to which the licensed investor may be entitled in terms of this Act.

30 Incentives

(1) The Agency, in consultation with the Minister responsible for finance, shall publish guidelines for investment, which shall mention—

(a) general incentives that may be applicable to licensed investors, whether foreign or domestic; and

(b) special incentives that may be applicable to specific categories of licensed investors such as primary producers, exporters, and investors involved in value-addition and import-substitution projects, whether foreign or domestic; and

(c) any other incentives and conditions that may be applicable to investors, whether foreign or domestic; and in so doing the Agency may, without derogation from section 21 of the Interpretation Act [Chapter 1:01], specify different incentives for domestic and foreign licensed investors.

(2) The Agency shall take all reasonable steps that are necessary to ensure that any incentives mentioned in guidelines published in terms of subsection (1) are granted to the licensed investors concerned.

PART VI INVESTMENT IN SPECIAL ECONOMIC ZONES

31 Establishment of special economic zones

(1) The Agency may, by notice in the Gazette, declare any area or premises to be a special economic zone, the geographical area of which shall be defined in the notice.

(2) The Agency may at any time amend, add to or abolish any special economic zone.

(3) The Third Schedule applies to the rights, duties and obligations of persons licensed to operate in a special economic zone.

32 Considerations of applications for investment licences for special economic zone

When considering an application for an investment licence in a special economic zone, the Agency shall have regard to—

(a) the degree of export orientation or import substitution of the project; and

- (b) the extent to which the proposed investment will promote industrialisation of the domestic economy; and
- (c) the extent to which skills and technology will be transferred for the benefit of Zimbabwe and its people; and
- (d) the extent to which the proposed investment will lead to the creation of employment opportunities and the development of human resources; and
- (e) the extent of value addition and beneficiation of local raw materials; and
- (f) the value of the convertible foreign currency transferred to Zimbabwe in connection with the project; and
- (g) the impact the proposed investment is likely to have on the environment and, where necessary, the measures proposed to deal with any adverse environmental consequences; and
- (h) the impact the investment is likely to have on existing industries in the economy and the extent to which the proposed investment will establish linkages within the domestic economy; and
- (i) the possibility of transfer of technology; and
- (j) any other considerations that the Agency considers appropriate.

33 Application for developer's permits for special economic zones

Any person who wishes to obtain approval to develop an area as a special economic zone area in which licensed investors will establish and conduct their operations shall submit an application to the Agency in the prescribed form for a permit, and the application shall be accompanied by the prescribed fee, if any, and such documents as the Agency may require.

PART VII PUBLIC PRIVATE PARTNERSHIPS

34 Public Private Partnership Unit

- (1) The Joint Venture Unit established in terms of section 3 of the Joint Venture Act [Chapter 22:22] (No. 6 of 2015) in the Ministry responsible for Finance and Economic Development shall, on and after the fixed date, continue in existence and shall be known as the Public Private Partnership Unit of the Agency.
- (2) The Public Private Partnership Unit shall perform the following functions—
 - (a) to consider project proposals submitted to it and assess whether or not they—
 - (i) are affordable to the contracting authority; and
 - (ii) provide value for money; and
 - (iii) provide for the optimum transfer of technical, operational and financial risks to the counterparty; and
 - (iv) are competitive; and
 - (b) through the Chief Executive Officer, to make recommendations on such proposals to the Cabinet; and

- (c) to examine requests for project proposals to ensure they conform with the approved feasibility studies; and
- (d) to advise Government on PPPs generally; and
- (e) to develop best practice guidelines in relation to all aspects of PPPs; and
- (f) formulate suggested policy in relation to PPPs for adoption by the Government; and
- (g) to develop awareness of PPPs in Zimbabwe as a vehicle for economic development and delivery of public services; and
- (h) through the Chief Executive Officer, to make recommendations on project proposals submitted by contracting authorities to the Cabinet as to whether to approve or reject project proposals; and
- (i) to undertake monitoring and evaluation of PPPs and, where necessary, through the Chief Executive Officer, to make appropriate recommendations concerning such projects to the Cabinet and contracting authority.

35 Procedures preliminary to conclusion of PPP agreements, and conclusion thereof

The procedures preliminary to concluding any PPP agreement, and the conclusion of PPP agreements, are set out in Part II of the Fourth Schedule.

36 Powers of ZIDA in relation to PPPs

- (1) The Agency may—
 - (a) retain consultants to assist it on an ad hoc, part-time or full-time basis;
 - (b) request the chairperson, accounting officer or chief executive officer of a contracting authority—
 - (i) to furnish any information or produce any records or other documents relating to a project;
 - (ii) to answer all questions relating to a project;
 - (c) examine such records or other documents as are availed to it and make copies thereof or take extracts therefrom.
- (2) Any person to whom a reasonable request is made under subsection (1)(b) or (c) who—
 - (a) without just cause, fails to comply with the request; or
 - (b) refuses without just cause to answer or wilfully gives any false or misleading answer to any question lawfully put by the Agency or by any employee or agent of the Agency;
 shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

37 Effect and amendment of Part III of Fourth Schedule

(1) The types of PPP projects and PPP agreements enumerated in Parts III of the Fourth Schedule or any variation or combination thereof, that may be undertaken by a contracting authority, are indicative in nature, and the Agency or contracting authorities may evolve and arrive at such types of agreement incorporating any other arrangements as are necessary or expedient for any specific project.

(2) The Agency may, for the sake of public information, and after consulting the Cabinet, by notice in a statutory instrument amend Part III of the Fourth Schedule by adding, deleting or substituting any items therein, or may replace Part III of the Fourth Schedule entirely.

PART VIII DISPUTE SETTLEMENT

38 Resolution of disputes

Every dispute concerning an investment within the scope of this Act shall be governed by and construed in accordance with laws of Zimbabwe, including where applicable—

(a) domestic arbitration as provided in the Arbitration Act, 1996; or

(b) any other international arbitration referred to by mutual agreement of the parties.

(2) In the case of foreign investors the dispute may also be submitted to the dispute settlement mechanisms provided for in any treaty or agreements on the promotion and protection of investments between Zimbabwe and the country from which the foreign investor originates.

(3) A foreign investor who established his or her investment in Zimbabwe before the date of commencement of this Act and claims to be protected by a Bilateral Investment Protection and Promotion Agreement concluded before such date must register such investment with the Agency no later than twelve (12) months after such date.

(4) For the purposes of subsection (3) —

“registration” means notification in the prescribed form of the following particulars—

(a) the name, nationality and address of the foreign investor; and

(b) the date on which the investment concerned was made or began in Zimbabwe; and

(c) the Bilateral Investment Protection and Promotion Agreement under which the investor wants to claim protection.

(5) If an investor referred in subsection (3) fails to register the investment within the period specified, such investor shall be deemed to have waived the protection of the Bilateral Investment Protection and Promotion Agreements in question, with the result that any dispute in relation thereto can only be settled by a domestic court or domestic arbitration.

(6) A foreign investor who establishes his or her investment in Zimbabwe after the date of commencement of this Act and claims to be protected by a Bilateral Investment Protection and Promotion Agreement concluded before or after such date must register such investment with the Agency no later than ninety (90) days after such date and subsection (5) shall apply to such investor.

PART IX FINANCIAL PROVISIONS

39 Funds of Agency

The funds of the Agency shall consist of—

- (a) any moneys that may be appropriated for the purpose by Parliament; and
- (b) any loans, donations and grants which the Agency receives, from any person or agency or from the government of any country or intergovernmental organisation; and
- (c) any other moneys that may accrue to the Agency, whether in the course of its operations or otherwise; and
- (d) fees collected in respect of licensing, programmes, publications, seminars, documents, consultancy services and other services provided by the Agency.

40 Financial year of Agency

The financial year of the Agency shall be the period of twelve months ending on the 31st December in each year or on such other date as may be prescribed.

41 Accounts of Agency

- (1) The Agency shall ensure that proper accounts and other records relating to such accounts are kept in respect of all its activities, funds and property.
- (2) Within ninety (90) days after the end of each financial year, the Agency shall prepare and submit to Parliament a statement of accounts and performance in respect of that financial year or in respect of such other period as Parliament may direct.

42 Audit of accounts of Agency

The accounts of the Agency shall be audited by the Auditor-General, who for the purpose shall have all the functions conferred on him or her by sections 8 and 9 of the Audit Office Act [Chapter 22:18] as though the assets of the Agency were public moneys and the members, employees and agents of the Agency were officers as defined in that Act.

43 Reports of Chief Executive Officer

- (1) The Chief Executive Officer shall, as soon as possible after the end of each financial year, submit an annual report on the operations of the Agency to the Minister.
- (2) In addition to the report referred to in subsection (1), the Chief Executive Officer—
 - (a) shall submit to the Minister any other report, and provide him or her with any other information, that the Minister may require in regard to the operation of the Agency; and
 - (b) may submit to the Minister any other report that the Chief Executive Officer considers desirable.
- (3) The Minister—
 - (a) shall table before Parliament every annual report submitted to him or her by the Chief Executive Officer in terms of subsection (1); and
 - (b) may table before Parliament any report submitted to him or her by the Chief Executive Officer in terms of subsection (2).

PART X GENERAL

44 Preservation of secrecy

(1) All persons who—

(a) are employed in carrying out the provisions of this Act; or

(b) examine documents or investment applications or proposals under the control or in the custody of the Agency;

shall, subject to subsection (2), keep secret, and aid in keeping secret, all information coming to their knowledge in the exercise of their functions.

(2) No person referred to in subsection (1) shall, except in the exercise of his

or her functions under this Act or unless he or she is required to do so by order of a competent court—

(a) communicate information coming to his or her knowledge in the exercise of his or her functions to any person who is not—

(i) the applicant or other person to whom the information relates or by whom the information was furnished; or

(ii) the lawful representative of the applicant or other person to whom the information relates or by whom the information was furnished; or

(iii) a person to whom the information is required to be communicated in terms of this Act or any enactment relating to the Public Service, the collection and safe custody of public moneys or the audit of public accounts;

or

(b) allow any person who is not a person referred to in paragraph (a) (i), (ii) or (iii) to have access to any record, document or application under the control or in the custody of the Agency which contains information referred to in that paragraph.

(3) No person referred to in subsection (1) shall, for his or her personal gain,

directly or otherwise, make use of any information which has come to his or her knowledge in the exercise of his or her functions in terms of this Act.

(4) Any person who contravenes any provision of this section shall be guilty

of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

45 Exemption from liability for Agency

No liability shall attach to the Agency or to any employee of the Agency or to the Board or to a member of the Board or any committee of the Board for any loss or damage sustained by any person as a result of the bona fide exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Agency, the Board or a committee:

Provided that this section shall not be construed so as to prevent any person

from recovering compensation for any loss or damage sustained by him or her, which was caused by negligence.

46 Regulations

(1) The Minister may, after consultation with the Chief Executive Officer and the Board, make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations in terms of subsection (1) may provide for—

(a) the imposition, revision and collection of user levies, whether generally or in relation to any particular project or agreement;

(b) fees and charges for anything done or provided by the Agency in terms of this Act;

(c) operations within special economic zones;

(d) the extent to which local raw materials will be utilised and benefited;

(e) best practice guidelines in relation to all aspects of Public Private Partnerships;

(f) best practice guidelines in relation to all aspects of special economic zones;

(g) the maximum periods within which the Agency must complete the making of recommendations and conclude other specified tasks in terms of this Act.

(3) Regulations may provide penalties for contraventions thereof:

Provided that no such penalty shall exceed a fine of level 7 or imprisonment for a period of six months or both such fine and such imprisonment.

47 Amendment of Cap.22:23 and repeal of various Acts

(1) Section 100 (“Application of Act to joint ventures”) of the Public Procurement and Disposal of Public Assets Act [Chapter 22:23] is amended—

(a) in subsection (1) by the repeal of the definitions therein and their substitution by—

““contracting authority” and “counterparty” are as defined in the Zimbabwe Investment and Development Agency Act [Chapter 14:37];

“Public Private Partnership entity” means the entity resulting from a Public Private Partnership agreement concluded under the Zimbabwe Investment and Development Agency Act or the Joint Ventures Act repealed by that Act (and if no such entity is formed, the parties to the agreement are deemed for the purposes of this section to constitute such an entity);

“Zimbabwe Investment and Development Agency Act” means the Zimbabwe Investment and Development Agency Act [Chapter 14:37].”;

(b) in subsection (2) by the deletion of “joint ventures” and the substitution of “Public Private Partnership entities”;

(c) in subsection (3) by the deletion of “Joint Ventures Act” and “joint venture project” and their substitution respectively by “Zimbabwe Investment and Development Agency Act” and “Public Private Partnership project”;

(d) in subsection (4) by the deletion of “Joint Ventures Act” and “joint venture project”, wherever they occur, and their substitution respectively by “Zimbabwe Investment and Development Agency Act” and “Public Private Partnership project”;

(e) in subsection (5) by the deletion of “Joint Ventures Act” and “joint venture”, (wherever they occur) and “joint venture agreement”, and their substitution respectively by “Zimbabwe Investment and Development Agency Act”, “Public Private Partnership entity” and “Public Private Partnership agreement”.

(2) The following Acts are hereby repealed—

(a) the Zimbabwe Investment Authority Act [Chapter 14:30]; and

(b) the Special Economic Zones Act [Chapter 14:34]; and

(c) the Joint Venture Act [Chapter 22:22].

48 Savings and transitional provisions

(1) In this section—

“commencement date” means the date of promulgation of this Act; “repealed law” means the Acts repealed by section 47(2);

“transitional period” means the period of two years immediately following the commencement date.

(2) Any property or asset and any obligation which, immediately before the date of commencement, vested in or, as the case may be, had been incurred by the Zimbabwe Investment Authority, the Joint Venture Unit and the Zimbabwe Special Economic Zones Authority established respectively under the Acts repealed by section 47(2) (a), (b) and (c), shall on and after that date be property or an asset or obligation of the Agency.

(3) Any proceedings commenced before the fixed date by or against by the Zimbabwe Investment Authority, or the Zimbabwe Special Economic Zones Authority established respectively under the Acts repealed by section 47(2)(a) and (b) shall be completed in accordance with the repealed law, any reference to those entities being construed as a reference to the Agency:

Provided that the Agency may, by written notice to the entity concerned, direct that any provision of this Act that is specified in the notice shall apply to the proceedings, and that provision shall thereupon apply accordingly, subject to any modification stated in the notice.

(4) Any direction or order which was given by the by the Zimbabwe Investment Authority, the Joint Venture Unit and the Zimbabwe Special Economic Zones Authority established respectively under the Acts repealed by section 47(2)(a), (b) and (c) and which, immediately before the fixed date, had or was capable of acquiring legal effect shall continue to have or to be capable of acquiring, as the case may be, the same effect as if it had been given by the Agency.

(5) Any regulations made under the Acts repealed by section 47(2)(a), (b) and (c) shall be deemed to be regulations made under this Act until they are replaced by regulations made under section 46.

(6) Any investment license approved by the Zimbabwe Investment Agency under the Zimbabwe Investment Agency Act [Chapter 14:30] shall continue to be governed by the said Act until the term of such license has expired.

(7) Any processes begun before the commencement date under the Joint Ventures Act with a view to concluding a joint venture agreement shall not be deemed to be interrupted by this Act and shall proceed to finality as if the Joint Ventures Act were still in force.

(8) Any premises declared to be a special economic zone in terms of General Notice 675 of 2010 shall continue as such until the expiry of the licence in relation thereto

49 Engagement by Agency of certain employees of State and former statutory corporations

(1) In this section—

“former statutory corporation” means the Zimbabwe Investment Authority constituted by the Zimbabwe Investment Authority Act [Chapter 14:30], or the Special Economic Zones and Authority constituted by the Special Economic Zones Act [Chapter 14:34].

(2) Subject to the Public Service Act [Chapter 16:04] and to subsections (6) and (8) and to the consent of the employees concerned, the Chief Executive Officer of the Agency may invite such of the persons who were employed by the Joint Venture Unit of the Ministry of Finance on the date of commencement of this Act to be engaged as employees of the Agency:

Provided that any person not so engaged must be redeployed by the Public Service Commission elsewhere in the Public Service.

(3) Persons engaged in terms of subsection (2) may be permitted to continue contributing towards a pension in terms of the Public Service (Pensions) Regulations (Statutory Instrument 124 of 1992), or any other enactment, subject to such terms and conditions as the Public Service Commission may fix with the approval of the Minister and Chief Executive Officer.

(4) Terms and conditions fixed in terms of subsection (3) may provide for—

(a) payments by the Agency to the Consolidated Revenue Fund to compensate the State, wholly or in part for pensions and other benefits paid or payable to or in respect of persons engaged in terms of subsection (2); and

(b) the application, non-application or modification of provisions of the Public Service (Pensions) Regulations (Statutory Instrument 124 of 1992), in regard to persons engaged in terms of subsection (2);

(5) Notwithstanding any other provision in this Act, a person who—

(a) as a member of the Public Service was afforded an opportunity of engagement by ZIDA in terms of this section and declined to avail himself or herself of the opportunity; and

(b) subsequently left the service and as a consequence became entitled to a pension benefit in respect of the abolition of his or her post;

shall not be engaged in any capacity by the Agency for a period of five years from the date on which he or she left the civil service unless the Minister and the Public Service Commission consent to his or her engagement.

(6) Subject to the consent of the employees concerned, the Chief Executive Officer of the Agency may engage such of the persons who were employed by either of the former statutory corporations as the Chief Executive Officer believes are necessary for the uninterrupted provision of the services (now provided by the Agency) which had been provided by them.

(7) In engaging persons in terms of subsection (2) or (6) the Chief Executive Officer of the Agency shall have regard to—

(a) the optimum staffing levels of the Agency and its units; and

(b) the qualifications, qualities, experience and competence of the persons to be engaged, as determined by reference to previous job appraisals of the persons concerned and other objectively verifiable criteria.

(8) Until such time as conditions of service are drawn up the Agency, the terms and conditions of service of employees of the Zimbabwe Investment Authority constituted by Zimbabwe Investment Authority Act [Chapter 14:30], shall apply to all employees of the Joint Venture Unit or of a former statutory body concerned who are engaged by the Agency, whether or not they were former employees of the Zimbabwe Investment Authority.

FIRST SCHEDULE (Section 4(3)) Ancillary Powers of Agency

1. To acquire by lease, purchase, or otherwise, immovable property, and to construct buildings thereon.

2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.

3. To maintain, alter and improve property acquired by it.

4. To mortgage or pledge any assets or part of any assets and to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of assets which are not required for the exercise of its functions for such consideration as the Agency, with the approval of the Minister, may determine.

5. To open bank and building society and post office accounts in the name of the Agency and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments.

6. To insure against losses, damages, risks and liabilities which it may incur.

7. To sell, rent, grant leases, subleases or other interests or concessions in respect of land, buildings or any other facility or structure owned by it, or under its control.

8. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.

9. With the approval of the Minister, to enter into, review, cancel or abandon arrangements with any government or agency, whether inside or outside Zimbabwe, that may seem conducive to the exercise of any of its functions and to obtain from such government or agency rights, privileges and concessions which the Agency thinks desirable, and to carry out, exercise and comply with such arrangements, rights, privileges and concessions.
10. To raise loans or borrow money in such amounts and for such purposes and under conditions as may be approved by the Minister.
11. To establish and such funds and reserves as the Agency considers appropriate or necessary for the proper exercise of the Agency's functions.
12. To provide terminal benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury.

SECOND SCHEDULE (Section 6(3)) Provisions Applicable to Zida Advisory Board

Terms and conditions of office of members

1. (1) Subject to this Schedule, a member shall hold office for such period, not exceeding five years, as the Minister may fix on his or her appointment.
- (2) Subject to paragraph 8, a member shall hold office on such conditions as the Minister may fix in relation to members generally.
- (3) A retiring member shall be eligible for re-appointment as a member.

Disqualification for appointment as member

2. (1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member if he or she—
 - (a) is married to a person who is engaged in any activity connected with any business, if in the opinion of the Minister such financial interest or activity is likely to interfere with the impartial discharge by that person of his or her duties as a member; or
 - (b) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;
- or
- (d) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
 - (i) in Zimbabwe, of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which if committed in Zimbabwe would constitute an offence;

and sentenced to a term of imprisonment imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who is—

(a) a member of Parliament; or

(b) a member of two or more other statutory bodies;

shall not be appointed as a member, nor shall he or she be qualified to hold office as a member.

(3) For the purpose of subparagraph (2)(b)—

(a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body, shall be regarded as a member of that statutory body;

(b) “statutory body” means—

(i) any Commission established by the Constitution; or

(ii) any body corporate established-directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, Vice President, a Minister or a statutory body or by a Commission established by the Constitution

Vacation of office by member

3. A member shall vacate his or her office and the member’s office shall become vacant—

(a) one month after the date upon which he or she gives notice in writing

to the Minister of his or her intention to resign or on the expiry of such other period of notice as the member and the Minister may agree; or

(b) on the date he or she begins to serve a sentence of imprisonment imposed in Zimbabwe without the option of a fine—

(i) in Zimbabwe, in respect of an offence; or

(ii) outside Zimbabwe, in respect of conduct which if committed in Zimbabwe, would constitute an offence; or

(c) if he or she becomes disqualified in terms of paragraph 2(1)(a), (b) or (c) to hold office as a member; or

(d) if he or she is required in terms of paragraph 4 to vacate his or her office.

Dismissal or suspension of members

4. (1) The Minister may require a member to vacate his or her office if the member—

(a) has been guilty of any conduct that renders him or her unsuitable as a member; or

(b) has failed to comply with the conditions of his or her office fixed by the Minister in terms of paragraph 1(2); or

(c) is mentally or physically incapable of efficiently carrying out his or her functions as a member.

(2) The Minister, on the recommendation of the Board, may require a member to vacate his or her office if the member has been absent without the permission of the Board from two consecutive meetings of the Board of which he or she was given at least seven days' notice and there was no just cause for the member's absence.

(3) The Minister may suspend a member—

(a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in subparagraph (1)(a); or

(b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he or she shall not carry out any functions as a member.

Filling of vacancies in Board

5. On the death of or the vacation of office by a member the Minister shall appoint a person to fill the vacancy.

Meetings and procedure of Board

6. (1) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet for the dispatch of business and adjourn, close and regulate its business as it thinks fit:

Provided that a meeting of the Board shall be held not less than six times in each financial year of the Agency.

(2) The chairperson of the Board—

(a) may at any time convene a special meeting of the Board; and

(b) shall convene a special meeting of the Board on the written request of—

(i) the Minister, within such period as the Minister may specify; or

(ii) at least two members, not later than fourteen days after his or her receipt of such request.

(3) Written notice of any special meeting convened in terms of subparagraph

(2) shall be sent to each member no later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

(a) such business as may be determined by the chairperson of the Board, where he or she has convened the meeting in terms of paragraph (a) of that subparagraph; or

(b) the business specified in the request for the meeting, where he or she has convened the meeting in terms of paragraph (b) of that subparagraph.

(5) The chairperson or, in his or her absence, the vice-chairperson shall preside at all meetings of the Board:

Provided that, if the chairperson and the vice-chairperson are absent from a meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

(6) Five members shall form a quorum at any meeting of the Board.

(7) All acts, matters or things authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(8) Subject to subparagraph (9), at all meetings of the Board each member present shall have one vote on each question before the Board and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that if a member requires that such proposal be placed before a meeting of the Board, this subparagraph shall not apply to such proposal.

Committees of Board

7. (1) For the better exercise of its functions, the Board may establish one or more committees and vest in the committees such of its functions as it thinks fit:

Provided that the vesting of any functions in a committee shall not divest the Board of those functions in relation to any matter that has not been decided by the committee.

(2) Where it has established a committee the Board—

(a) shall appoint at least one member of the Board to be a member of the committee and shall designate that member, or one of those members, as the case may be, to be chairperson of the committee;

(b) subject to subparagraph (3), may appoint persons who are not members of the Board to be members of the committee.

(3) The Board shall not appoint a person to be a member of a committee if he or she is disqualified in terms of paragraph 2 from appointment as a member of the Board.

(4) The office of a member of a committee of the Board shall terminate—

(a) in the case of a member who is a member of the Board, upon his or her ceasing to be a member of the Board;

(b) in the case of a member who is not a member of the Board, if he or she would be required in terms of paragraph 3 to vacate his or her office had paragraphs 3(a), (b) and (c) applied to him or her.

(5) Subject to subparagraph (4), members of committees of the Board shall hold office on such conditions as the Board may fix for members of committees generally.

(6) The chairperson of the Board may at any time and place convene a meeting of a committee of the Board.

(7) Subject to paragraphs 6, 9, and 12, the procedure to be followed at any meeting of a committee of the Board shall be fixed by the Board.

Remuneration and expenses of members of Board and members of committees

8. Members of the Board and of committees of the Board shall be paid from the funds of the Agency—

(a) such remuneration, if any, as the Minister may from time to time fix for such members generally; and

(b) such allowances, if any, as the Board may from time to time fix to meet any reasonable expenses incurred by such members in connection with the business of the Board or of the committee concerned,

as the case may be.

Disclosure of interest of members of Board and members of committees

9. (1) If a member of the Board or of a committee of the Board or a spouse of such a member—

(a) tenders for or acquires or holds a direct or indirect pecuniary interest in

a contract with the Agency or any application for an investment licence under consideration by the Agency; or

(b) knowingly acquires or holds a direct or indirect pecuniary interest in a company or association of persons—

(i) applying or negotiating for a contract with the Agency; or

(ii) applying for an investment licence; or

(c) owns immovable property or holds a right in immovable property or a

direct or indirect pecuniary interest in a company or association of persons which results in his or her private interests coming or appearing to come into conflict with his or her duties as a member;

the member shall forthwith disclose the fact to the Board or to the committee, as the case may be.

(2) A member referred to in subparagraph (1) shall take no part in the consideration or discussion of, or vote on, any question before the Board or the committee, as the case may be, which relates to any contract or right, immovable property, interest or application referred to in that subparagraph.

Validity of decisions and acts of Board

10. No decision or act of the Board or act done under the authority of the Board

shall be invalid by reason only of the fact that a disqualified person acted as a member of the Board at the time the decision was taken or act was done or authorised.

Execution of contracts and instruments by Agency

11. Any agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Agency by any persons generally or specially authorised by the Board for that purpose.

Minutes of proceedings of Board and committees

12. (1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board or of a committee of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as prima facie evidence of the proceedings of and decisions taken at the meeting concerned.

THIRD SCHEDULE (Section 31(3)) Rights, Duties and Obligations of Persons Licensed to Operate in Special Economic Zones

Interpretation in Third Schedule

1. (1) In this Schedule—

“licensed investor” means an investor licensed in terms of section 32. Dealing with or disposal of goods in special economic zones

2. (1) The Agency and any licensed investor shall be entitled to import into a special economic zone—

(a) any capital goods, consumer goods, raw materials, components or articles intended to be used for the purposes of, and in connection with, an approved activity; and

(b) any articles which are for the construction, alteration, extension or repair of premises in a special economic zone, including any articles for the equipping of premises and other ancillary facilities necessary for the proper administration of the premises and for the health, safety, hygiene and welfare at the premises of persons employed therein.

(2) The Agency may take such steps as it considers necessary to preserve goods within a special economic zone, whether by moving such goods from one place to another or by storing such goods and, where any expenses are incurred by the Agency in so doing, the owner or consignee of such goods shall reimburse the Agency for any expenses so incurred.

(3) Subject to this Act, goods brought into a special economic zone may—

(a) unless otherwise directed by the Agency, be stored, sold, exhibited, broken up, packed, unpacked, replaced, assembled, distributed, sorted, graded, cleaned, marked, re-marked, loaded, unloaded, reloaded, divided, mixed, separated, or otherwise manipulated; or

(b) be worked, processed or re-processed or otherwise manipulated or manufactured; or

(c) subject to any enactment pertaining thereto, be destroyed. Retail trade

3. No retail trade shall be conducted within any special economic zone without the prior approval in writing of the Commissioner-General of the Zimbabwe Revenue Authority and of the Agency, and any approval so granted shall be subject to such terms and conditions as the Commissioner-General and the Agency may impose.

Disposal of goods abandoned in special economic zones

4. (1) Where it appears to the Agency that any goods or property have been abandoned in any special economic zone for a period exceeding six months, the Agency may dispose of such goods or property whether by destruction, sale or otherwise and, in the case of disposal by sale, shall apply the proceeds of such sale against any fees or other expenses incurred in connection with those goods or property or such disposal.

(2) Where any balance remains after the settling of the fees and expenses referred to in subparagraph (1), that balance may be paid to any person who claims them, if he or she does so within three months of the date of the disposal and the Agency is satisfied that the claimant was the owner of the goods disposed of or was entitled to them, but where there is no claimant for the proceeds of any such disposal by sale, such proceeds shall be paid into and become part of the funds of the Agency.

(3) Nothing in subsection (1) shall be construed as authorising the sale or the disposal of any goods for use in the customs territory except in such circumstances and on such terms as the Minister and the Commissioner-General of the Zimbabwe Revenue Authority may from time to time approve.

Certain goods not to be taken into or stored in special economic zones

5. Notwithstanding any other provision of this Act, the following goods shall not be taken into or stored in any special economic zone—

(a) firearms and ammunition, except by members of the Police Force or the Defence Forces or by security guards employed to work in the area of any special economic zone in the course of their duties, or by such other persons as may be authorised by the Agency;

(b) explosives;

(c) petroleum, inflammable materials, hazardous cargoes and oil fuels, except in such quantities and on such terms and conditions as maybe permitted by the Agency;

(d) such other goods as may be prescribed. Import and export licensing

6. (1) Subject to paragraph 2, licensed investors shall not be required to obtain a licence or permit under the Control of Goods Act [Chapter 14:05] for—

(a) the import of any goods referred to in paragraph 2 from a country outside Zimbabwe; or

(b) the export of any goods resulting from an approved activity within special economic zone to a country outside Zimbabwe.

(2) The export of goods from a special economic zone to the customs territory shall, save as otherwise provided by this Act, be subject to the same requirements in regard to the obtaining of licences or permits under the Control of Goods Act [Chapter 14:05] as apply to goods imported from other countries outside Zimbabwe.

Banking activities

7. Any banking institution registered under the Banking Act [Chapter 24:20] may,

subject to that Act and with the approval of the Agency, establish a branch within a special economic zone, and may at such branch—

(a) conduct normal banking business permitted under the Banking Act [Chapter 24:20]:

Provided that such bank shall not without any approval required under the Exchange Control Act [Chapter 22:05], lend or make advances to—

(i) any person designated as a non-resident for the purposes of that Act; or

(ii) any licensed investor operating within such special economic zone;

(b) subject to any approval required under the Exchange Control Act [Chapter

22:05], operate foreign currency accounts for licensed investors operating within such export processing zones.

Restrictions on borrowing and payments of employees

8. (1) A licensed investor operating in a special economic zone—

(a) may move funds necessary for his or her approved activity into and out of such special economic zone without having to obtain permission under the Exchange Control Act [Chapter 22:05]:

Provided that a prior written declaration of the movement and amount of such funds shall be made to the Reserve Bank of Zimbabwe;

(b) save for the purposes of borrowing working capital, shall not, without approval under the Exchange Control Act [Chapter 22:05], borrow funds for use in his or her approved activity from any bank, building society, financial institution or other source situated in the customs territory.

(2) A licensed investor who employs persons within a special economic zone who are regarded as non-residents for the purposes of the Exchange Control Act [Chapter 22:05] may pay the emoluments of such persons in foreign currency, and any person so paid may operate an external account with any banking institution whether within or outside the special economic zone.

Vessels in special economic zones

9. Any vessel tied alongside a structure built beside a lake or river or other water body where vessels may dock comprised within the area of a special economic zone, shall be deemed to be within that zone.

Foreign currency accounts and payments in foreign currency

10. (1) Every licensed investor carrying on an approved activity within a special economic zone may, subject to any approval required under the Exchange Control Act [Chapter 22:05], operate a foreign currency account (otherwise known as “Nostro FCA account”) with any banking institution within the special economic zone or in the customs territory or outside Zimbabwe.

(2) Where any person who is regarded as a resident of Zimbabwe for the purpose of the Exchange Control Act [Chapter 22:05] has any interest in an approved activity within a special economic zone, payment of interest, dividends or profits may be made to such resident in foreign currency.

Insurance business

11. (1) In this section—

“Commissioner of Insurance” means the Commissioner of Insurance and Pension and Provident Funds as defined in section 2 of the Insurance Act [Chapter 24:07].

(2) All insurance business carried on in a special economic zone shall be subject to the Insurance Act [Chapter 24:07].

(3) The Agency shall not grant approval to any person to carry on insurance business in a special economic zone unless that person—

(a) is registered in Zimbabwe in accordance with the Insurance Act [Chapter 24:07]; or

(b) if not so registered, has obtained the approval of the Commissioner of Insurance in respect of the proposed business; and has obtained any approval required under the Exchange Control Act [Chapter 22:05].

(4) Any insurance company, broker, agent, or sub-agent may, with the approval of the Agency and the Commissioner of Insurance, establish a branch within a special economic zone for the conduct of insurance business therein:

Provided that any such approval shall be subject to such conditions as the Agency and the Commissioner of Insurance may consider necessary.

(5) Any person granted approval in terms of this section shall—

(a) keep such records in such form and containing such particulars; and

(b) make such reports at such times;

as may be required by the Commissioner of Insurance, and shall permit the Commissioner of Insurance or any person authorised by him or her at all reasonable times to inspect and examine such records and any documentation relevant thereto.

(6) Where a person conducting insurance business establishes a branch in a special economic zone in terms of subparagraph (4), the Agency shall permit the Commissioner of Insurance or any person authorised by him or her to enter that special economic zone for the purpose of carrying out the inspection or examination of records referred to in subparagraph (5).

FOURTH SCHEDULE (Sections 2 and 35) RULES AND PROCEDURES GOVERNING PUBLIC PRIVATE PARTNERSHIPS

PART I PRELIMINARY

Meaning of PPP agreement

1. (1) In this Act, “PPP agreement” means an agreement between a contracting authority and a counterparty, approved under this Act, in terms of which—

(a) the counterparty undertakes to perform a contracting authority’s function

on behalf of the contracting authority for a specified period; and

(b) the counterparty receives a benefit for performing the function by way of—

- (i) compensation from funds appropriated by Parliament; or
- (ii) funds obtained by way of loan by the contracting authority; or
- (iii) user levies; or
- (iv) revenue generated from the project: or

(v) any combination of the foregoing; and

(c) the counterparty is liable for the risks arising from the performance of its function; and

(d) public resources may be transferred or made available to the counterparty;

and includes any of the types of agreement specified in Part III of this Schedule. (2) For the purpose of subparagraph (1)—

“public resources” has the same meaning as in the Public Finance Management Act [Chapter 22:19] (No. 11 of 2009).

PART II

PROCEDURES PRELIMINARY TO THE CONCLUSION OF PPP AGREEMENTS

PPP Committee and functions thereof

2. (1) The Unit shall report to a committee of the Cabinet, to be known as the Public Private Partnership Committee, consisting of—

- (a) the Secretary of the Ministry responsible for finance, who shall chair the Committee; and
- (b) the Secretary of the ministry responsible for industry and commerce; and
- (c) the Secretary of the ministry responsible for transport and infrastructural development; and
- (d) the Secretary of the ministry responsible for energy and power development; and
- (e) the Secretary of the ministry responsible for local government; and
- (f) the Secretary of the ministry responsible for justice; and
- (g) the Secretary of the ministry responsible for economic planning; and
- (h) a representative of the Attorney-General, at Director level; and
- (i) the CEO or in his or her absence the head of the Unit.

(2) The following persons have the right to attend meetings of the Committee

and take part in its deliberations, but not to vote on any matter put to the vote by the Chairperson—

- (a) a person invited by the Minister to attend a particular meeting or series of meetings by reason of that person having expertise which the Committee may require;

(b) a representative of a contracting authority whose project proposal is on the agenda of a meeting of the Committee, for as long as that item of the agenda is under consideration by the Committee.

(3) The functions of the Committee shall be—

(a) to assist the Minister to formulate policy guidelines on PPP agreements; and

(b) to ensure that all PPP projects are consistent with the national priorities specified in the relevant policy on PPP agreements; and

(c) to make recommendations to Cabinet as to whether to approve or reject project proposals submitted to it by the Unit; and

(d) to perform any other function as may be conferred on it by the Minister in terms of this Act or any other law.

Solicited proposals for PPP agreements

3. (1) Subject to this Act, whenever a contracting authority wishes to enter into a PPP agreement in relation to the exercise of any of its functions or responsibilities, it shall—

(a) identify a project to be implemented by virtue of a PPP agreement; and

(b) develop the identified project proposal by means of a pre-feasibility study, and submit the proposal to the Unit for preliminary assessment or evaluation; and

(c) invite expressions of interest in a project where appropriate by means of a public advertisement in the print, electronic or broadcast media or in any other transparent manner:

Provided that it may dispense with this requirement where it has already identified a proposed project with an identified counterparty and has disclosed that fact to the Unit;

and

(d) undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented under an agreement; and

(e) submit the feasibility study to the Unit for its approval; and

(f) where the Unit approves the feasibility study, prepare a request for the project proposal and a model agreement on the basis of the approved feasibility study.

(2) The Unit shall refer the project proposal to the Committee which shall make recommendations thereon to the Cabinet for the Cabinet's determination.

(3) Upon receipt of the project proposal together with the recommendations of the Committee thereon, the Cabinet may—

(a) approve the project proposal, or

(b) reject the project proposal and give its reasons for rejection, or

(c) provisionally approve the project proposal on fulfilment of certain conditions specified by the Cabinet; or

(d) where it approves or provisionally approves the project proposal but—

(i) no counterparty or satisfactory counterparty has been identified, direct the contracting authority to receive tenders for the project from proposed counterparties in accordance with the law relating to public procurement; or

ii) two or more proposed counterparties have been identified—

A. select one of the proposed counterparties as the counterparty in the PPP agreement; or

B. direct the contracting authority to receive tenders for the project from proposed counterparties in accordance with the law relating to public procurement.

(4) Notwithstanding anything in this Act a contracting authority may, subject

to prior approval by the Minister, invite special formal tenders, in accordance with regulations made under section 46, only in the following cases—

(a) the requirements are of a proprietary nature and the names of likely suppliers are known;

(b) projects which in the opinion of the Minister are of specialist nature;

(c) projects which in the opinion of the Minister concern national security. Feasibility study

4. (1) Where a contracting authority considers that a project may be implemented

under a PPP agreement, it shall undertake or cause to be undertaken a feasibility study, to assess whether the proposed project is feasible as a PPP project.

(2) A feasibility study shall—

(a) demonstrate the advantages of implementing the project under a PPP agreement; and

(b) describe in specific terms—

(i) the nature of the contracting authority's functions, the specific functions to be considered in relation to the project, and the expected inputs and deliverables; and

(ii) the extent to which those functions can lawfully and effectively be performed by a counterparty in terms of an agreement; and

(iii) the most appropriate form by which the contracting authority may implement the project under an agreement;

and

(c) demonstrate that the project will—

(i) be affordable to the contracting authority and users; and

(ii) provide value for money; and

(iii) optimally transfer technical, operational or financial risk to the counterparty; and

(iv) not adversely impact the environment or mitigate or address any such adverse impacts; and

(v) be viable, whether technically, socio-economically or otherwise; and

(d) explain the capacity of the contracting authority to effectively enforce

the agreement, including the ability to monitor and regulate project implementation and the performance of the counterparty in terms of the agreement.

Unsolicited bids or expressions of interest

5. (1) In this paragraph—

“unsolicited bid, or expression of interest” means a proposal that is prepared or made without the invitation, solicitation, supervision or request of contracting authority in terms of paragraphs 3, made solely at the initiative of the prospective counterparty, and “unsolicited bidder” shall be construed accordingly.

(2) Any unsolicited bid or expression of interest in a PPP by a prospective counterparty with an identified contracting authority must be referred by the contracting authority to the Unit.

(3) Once the Unit receives the unsolicited bid or expression of interest it shall consult with the relevant contracting authority for a preliminary assessment, within a period of fourteen days, as to whether the PPP of the type proposed is acceptable or not.

(4) If the assessment and consultation in terms of subparagraph (3) determines that the PPP proposed by the unsolicited bid or expression of interest is of a type that is acceptable, the Unit shall seek the approval of the Committee for the contracting authority to conduct a feasibility study at the cost of the unsolicited bidder.

(5) If however the assessment and consultation determines that the PPP being proposed is unacceptable, the Unit shall advise the unsolicited bidder and contracting authority accordingly.

PPP agreement

6. (1) Notwithstanding any other enactment but subject to this Act, a contracting authority may enter into an agreement with a counterparty for the performance of one or more of the functions of that contracting authority.

(2) Every PPP agreement shall—

(a) identify the project deliverables; and

(b) identify the responsibilities of the contracting authority and the counterparty; and

(c) specify the relevant financial terms; and

(d) ensure the management of performance of the counterparty; and

(e) provide for the return of the assets, if any, to the contracting authority,

at the termination or expiry of the agreement, in such manner as may be provided for in the agreement; and

(f) provide for the sharing of risks between the contracting authority and the counterparty; and

(g) provide for the payment to the counterparty for performing the contracted function or services by way of—

(i) compensation from funds appropriated by Parliament; or

(ii) funds obtained by way of loan by the contracting authority; or

(iii) user levies; or

- (iv) revenue generated from the project; or
 - (v) any combination of the foregoing; and
 - (h) provide for its duration; and
 - (i) provide for the respective shareholdings of the contracting authority and the counterparty, if any; and
 - (j) contain such other provisions as may be necessary or expedient or as may be prescribed, including any conditions precedent to the coming into force of the agreement, or the transfer of skills or technology to the contracting authority.
- (3) Every PPP agreement shall be governed by and construed in accordance with the laws of Zimbabwe.
- (4) Every PPP agreement shall provide for disputes between the counterparty and the contracting authority to be settled by arbitration, according to—
- (a) the Arbitration Act [Chapter 7:15] (No. 6 of 1996); or
 - (b) rules defined in the agreement.

Award of project and signature of agreement

7. (1) Subject to subparagraph (2) and paragraph 3(4), no contracting authority shall award a project or sign a PPP agreement relating to the project unless the PPP agreement has been approved by the Cabinet in accordance with this Act, and any agreement required to be so approved that is purported to be concluded without such approval shall be null and void.

(2) A PPP agreement relating to a project referred to in paragraph 2(3)(d)(i) or 3(3)(d)(ii) B (that is to say a project in respect of which the Cabinet has directed that the contracting authority concerned must receive tenders for the project from proposed counterparties in accordance with the law relating to public procurement) may be concluded upon award of the tender without Cabinet approval:

Provided that the Cabinet may nullify—

- (a) the award; or
- (b) the agreement concluded as the result of the award at any time before the execution of the project;

if the Cabinet deems it to be in the national interest to do so.

(3) Any employee of a contracting authority who knowingly concludes a PPP agreement in contravention of this Act shall be guilty of an offence and be liable to a fine not exceeding level 8 or to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment.

PART III

TyPEs oF PuBlic PRivATE PARTNERsHiPs AGREEMENTs

1. Build and Transfer (BT)

A contractual arrangement whereby a counterparty undertakes the financing and construction of a given project and after its completion hands it over to the Government or a contracting Authority. The Government or the contracting authority reimburses the total project investment, on the basis of an agreed schedule. This arrangement may be employed in the construction of any project, including critical facilities, which for security or strategic reasons must be operated directly by the contracting Authority.

2. Build, Lease and Transfer (BLT)

A contractual arrangement whereby a counterparty undertakes to finance and construct any project and upon its completion hands it over to the Government or a contracting authority concerned on a lease arrangement for a fixed period, after which ownership of the project is automatically transferred to the Government or the contracting Authority concerned.

3. Build, Operate and Transfer (BOT)

A contractual arrangement whereby a counterparty undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The counterparty operates the facility over a fixed term during which the counterparty is allowed to collect user levies, fees, rentals and other charges not exceeding those proposed in the bid or as negotiated and incorporated in the agreement or regulations to enable the recovery of the investment in the project. The counterparty transfers the project to the Government or the contracting authority concerned at the end of the fixed term that shall be specified in the agreement. This includes a supply and operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given project, if the interest of the Government or the contracting Authority so requires, operates the facility, providing in the process technology transfer and training to Government, a regulatory authority, the contracting Authority or nominated individuals.

4. Build, Own and Operate (BOO)

A contractual arrangement whereby a counterparty is authorised to finance, construct, own, operate and maintain a project from which the counterparty is allowed to recover its total investment by collecting user levies. Under the project, the counterparty owns the assets of the project and may choose to assign its operation and maintenance to a project operator. The transfer of the project to the Government or the contracting Authority is not envisaged in this structure. However, the Government or contracting Authority may terminate its obligations after a specified time period.

5. Build, Own, Operate and Transfer (BOOT)

A contractual arrangement whereby a counterparty is authorised to finance, construct, maintain and operate a project and whereby the project is to vest in the counterparty for a specific period. During the operation period, the counterparty will be permitted to charge user levies specified in the agreement, in order to recover the investment made in the project. The counterparty is liable to transfer the project to the Government or the contracting Authority after the expiry of the specified period of operation.

6. Build, Transfer and Operate (BTO)

A contractual arrangement whereby the Government or a contracting Authority contracts out a project to a counterparty to construct the facility on a turnkey basis, assuming costs overruns, delays and other specified performance risks. Once the facility is commissioned satisfactorily, the counterparty is given the right to operate the project and collect user levies under an agreement. The title of the project always vests with the Government or the contracting authority in this arrangement.

7. Contract, Add and Operate (CAO)

A contractual arrangement whereby the counterparty adds to an existing project which it rents from the Government or a contracting authority and operates the expanded project and collects user levies, to recover the investment over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the counterparty.

8. Develop, Operate and Transfer (DOT)

A contractual arrangement whereby favourable conditions external to a new project which is to be built by a counterparty are integrated into the BOT arrangement by giving the counterparty the right to develop adjoining property and thus enjoy some of the benefits the investment creates such as higher property or rent values.

9. Rehabilitate, Operate and Transfer (ROT)

A contractual arrangement whereby an existing facility is handed over to a counterparty to refurbish, operate and collect user levies in the operation period to recover the investment and maintain for a franchise period, at the expiry of which the facility is turned over to the Government or a contracting authority. The term is also used to describe the purchase of an existing facility from abroad, and importing, refurbishing, erecting and consuming it within the host country.

10. Rehabilitate, Own and Operate

A contractual arrangement whereby an existing facility is handed over to the counterparty to refurbish and operate with no time limitation imposed on ownership. As long as the counterparty is not in violation of its franchise, it can continue to operate the facility and collect user levies in perpetuity.

11. Build, Own, Operate and Maintain Contract

A contractual arrangement whereby a counterparty undertakes to finance, construct, operate and maintain a project and whereby such project is to vest in the counterparty for a specified period. During the period of operation of the project, the counterparty may be permitted to charge user levies as specified.

12. Lease Management Contract

A contractual arrangement whereby the Government or a contracting authority leases a project owned by the Government to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user levies therefor.

13. Management Contract

A contractual arrangement whereby the Government or a contracting authority entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration. In such agreement, the Government or the contracting Authority may charge the user levies and collect the same either itself or entrust the collection, for consideration, to any person who shall after collecting the user levies pay the same to the Government or the contracting authority.

14. Service Contract

A contractual arrangement whereby an existing project vested in a counterparty to renovate, operate and maintain. The counterparty shall be permitted to charge levies as specified in the agreement.

15. Contract for Services

A contractual arrangement whereby a counterparty undertakes to provide services to the Government or contracting authority for a period. The Government or the contracting Authority shall pay the counterparty an amount according to the agreed schedule.

16. Supply, Operate and Transfer

A contractual arrangement whereby a counterparty supplies to the Government or a contracting authority the equipment and machinery for a project and undertakes to operate the project for a period and consideration specified in the agreement. During the operation of the project, the counterparty shall undertake to train employees of the Government or contracting authority to operate the project.

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