

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

INTRODUCTION

1. Cabinet has tasked me, as the Minister of Youth, Indigenisation and Economic Empowerment, to simplify and clarify the framework, procedures and guidelines for complying with the country's Indigenisation and Economic Empowerment laws espoused in the Indigenisation and Economic Empowerment Act [Chapter 14:33] ("IEE Act" or "the Act") in a manner that will ensure compliance with the laws of the land.

2. These frameworks, procedures and guidelines take cognisance of the objectives and legislative intent of the IEE Act, as outlined within the Preamble to the Act and include the following:
 - (i) To provide support measures for the further indigenisation of the economy;
 - (ii) To provide for support measures for the economic empowerment of indigenous Zimbabweans;
 - (iii) To provide for the establishment of the National Indigenisation and Economic Empowerment Board ("NIEEB") and its functions and management;
 - (iv) To provide for the establishment of the National Indigenisation and Economic Empowerment Fund ("NIEEF");
 - (v) To provide for the National Indigenisation and Economic Empowerment Charter ("NIEEC"); and
 - (vi) To provide for matters connected with or incidental to the foregoing.

3. The National Indigenisation and Economic Empowerment Board, and National Indigenisation and Economic Empowerment Fund and National Indigenisation and Economic Empowerment Charter are in place and now require adequate funding.
4. There has been rampant non-compliance with the indigenisation and economic empowerment legislation, to such an extent that His Excellency President R. G Mugabe, as he closed the ZANU PF 15th National People's Conference on 12 December 2015, pronounced that Government would not accept a company which refuses to comply with indigenisation as we enter the new year, 2016, adding that all companies should comply irrespective of the views of those that incorrectly claim that indigenisation is "inhibiting".
5. These frameworks procedures and guidelines have been developed to give added impetus towards compliance with the indigenisation and economic empowerment legislation and to give effect to His Excellency, President R.G Mugabe's pronouncements of 12 December 2015.
6. During his 2016 National Budget presentation the Minister of Finance and Economic Development, Honourable Patrick Chinamasa, indicated that:

Consultations towards strengthening and clarifying the process of implementing the indigenisation policies in the other sectors of the economy outside the resources sector have been completed. To this end the Minister of Youth, Indigenisation and Economic Empowerment, will be announcing and gazetting before Christmas the frameworks' templates and procedures for implementing the indigenisation policies in a manner that both promotes investment and

eliminates discretionary application of the law. Such measures will contribute immensely towards the ease of doing business in the country and will render the services sector of our country conducive for Foreign Direct Investment.

7. The frameworks, procedures and guidelines have been developed in a manner designed to contribute to the achievement of the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET) and the 10 Point Plan such that they therefore seek to:
 - (i) Clarify the position on the indigenisation of businesses in the:
 - (a) Resources sectors;
 - (b) Non-resources sectors;
 - (c) Reserved sectors;
 - (ii) Outline procedures for ensuring compliance with the legislation;
 - (iii) Articulate the Indigenisation Compliance and Empowerment Levy;
 - (iv) Describe the indigenisation compliance process flow;
 - (v) Highlight the National Indigenisation and Economic Empowerment Charter; and
Outline measures for ensuring compliance with procurement requirements of the legislation.

GOVERNMENT POSITION OF INDIGENISATION

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

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

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

9. His Excellency President R.G. Mugabe has reinforced Government’s position on indigenisation on several occasions, most notably on 22nd August 2013 on the occasion of his inauguration, where he said.

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

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

10. During the ZANU PF 15th National People’s Conference on 12 December 2015 the President went further to state that:

“But some people say, ah why do we do that? It is inhibiting. Well, let it be inhibiting.

Ah well, this is 2015 and of course we are in December. It is end of the year. But certainly come January 2016, that stubbornness and resistance, we say, should end in 2015. 2016 we will not accept a company which refuses and rejects our policy of indigenisation and empowerment in the manner in which we inscribed it.”

Indigenisation in the Resources-Based Sector

11. His Excellency has clarified the position on the resources sector on several occasions most notably in February 2013 on the occasion of his birthday when he referred to issues of technology wherein he stated:

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

*“When it comes now to areas of technology, in fact the technology is borrowed, then you cannot apply the same principle of the (51/49) because this is not yours.... Those who have brought the resource here own the resource, What you can say is you are participating in that resource that is coming into the country and for that one, **you can go 50/50 or you can agree on a ratio which is sustainable and equitable. It is not every case that we must apply the 51/49***

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

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

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

13. During his 2016 National Budget presentation the Minister of Finance and Economic Development, Honourable Patrick Chinamasa also highlighted that:

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

14. The Indigenisation and Economic Empowerment [General] Regulations, 2010 (“IEE Regulations” or “the Regulations”) provide a broader definition of natural resources that include the following:
 - Air, soil, waters and minerals in Zimbabwe;
 - Mammal, bird, fish and other animal life in Zimbabwe;
 - The trees, grasses and other vegetation of Zimbabwe;
 - Springs, vleis, sponges, reed beds, mashes, swamps and public streams of Zimbabwe; and
 - Any landscape, scenery or site having aesthetic appeal or scenic value or of historic or archaeological interest.

15. General Notice 114 of 2011 provides for indigenisation in the mining sector by requiring that businesses operating within this sector must dispose of 51% equity to designated entities while taking into account the State’s sovereign ownership of the mineral or minerals exploited or proposed to be exploited by the non-indigenous mining businesses concerned.

16. To reflect the broad-based objectives of the Government’s empowerment policy, the designated entities which shall acquire the 51% equity in businesses exploiting natural resources include:
 - National Indigenisation and Economic Empowerment Fund (NIEEF);

- Sovereign Wealth Fund;
 - Employee Share Ownership Trusts;
 - Community Share Ownership Trust;
 - Zimbabwe Mining Development Corporation (ZMDC);
 - Zimbabwe Consolidated Diamond Company (ZCDC); and
 - Any other company incorporated by Government or in which Government has a controlling interest.
17. Models that allow for achieving the objectives of ZIMASSET and the 10 Point Plan within the legislative framework of the Indigenization and Economic Empowerment Act will be developed in consultation with the appropriate line Ministries.

Indigenisation in the Non-Resources Sectors

18. The non-resources sectors are provided for in General Notice 459 of 2011 for the Manufacturing sector and General Notice 280 of 2012 for other sectors, which provide for the Net Asset Value, Lesser Share and Maximum Period for Businesses to indigenise as shown in Table 1.

Table 1: Current Sector Specific Compliance Provisions

	Sector	Lesser Share	Years to Comply
1	General Notice 459 of 2011 – Manufacturing	26%	1 st year
		36%	2 nd Year
		46%	3 rd Year
		51%	4 th Year
General Notice 280 of 2012 – Other Sectors			
2	Financial Services	51%	1 year
3	Tourism	51%	1 Year
4	Education and Sport	51%	1 Year
	Arts, Entertainment and		

5	Culture	51%	1 Year
6	Engineering and Construction	51%	1 Year
7	Energy	51%	1 Year
8	Services	51%	1 Year
9	Telecommunications	30 – 51%	1 Year
10	Transport and Motor Industry	51%	1 Year

19. The above sector specific compliance provisions were developed in accordance with Section 5 (4) of the IEE Regulations, as read with Section 3, which provides for lesser shares than the minimum indigenisation and empowerment quota that a business may enjoy, and the period over which it can enjoy such lesser share until the 51% minimum shareholding is achieved.
20. Section 3 (5) of the IEE Act provides that:

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

Sectors reserved for Indigenous Zimbabweans

21. The IEE Regulations stipulate in the Third Schedule, sectors that are reserved for indigenous Zimbabweans.
22. Table 4 shows the sectors to be reserved in favour of indigenous Zimbabweans.

Table 4: Reserved Sectors

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

23. No new non-indigenous businesses will be allowed to invest in the reserved sector unless under special cases as determined by line Ministries and approved by Cabinet.
24. The provisions in the Zimbabwe Investment Authority Act [Chapter 14:30] (“ZIA Act”) relating to the reserved sectors will be harmonised so that there are no inconsistencies in the legal frameworks between the ZIA Act and the IEE Act.

FRAMEWORKS FOR INDIGENISATION IMPLEMENTATION PLANS

25. In order to take account of the broad vision of ZIMASSET, of economic transformation within the context of His Excellency the President's 10 Point Plan, the Ministry of Youth, Indigenisation and Economic Empowerment will be implementing measures to ensure compliance to the legislation by introducing a raft of measures that include invoking Section 17 of the Act albeit in a manner that recognises businesses that are complying with the legislation through the provision of indigenisation legislation compliance rebates, indigenous shareholding rebates and rebates for achieving socially and economically desirable objectives as stipulated in Section 5 (4) of the Regulations.
26. Section 3(a) of the IEE Regulations states that:
- “Within the next five years from the date of operation of these regulations, or within five years from the commencement of the business concerned, as the case may be, cede a controlling interest of not less than fifty-one per centum of the shares or interest therein to indigenous Zimbabweans; **unless, in order to achieve other socially or economically desirable objectives, a lesser share of indigenisation or a longer period within which to achieve it is justified.**”*
27. The IEE Regulations provide for businesses to present Indigenisation Implementation Plans (IIP) that notify the extent of indigenization and programme for achieving compliance.
28. All investment applications must incorporate an indigenization implementation plan.

29. The frameworks provide for two possible pathways for ensuring compliance, namely compliance through provision of a lesser share of indigenisation for the economic empowerment of indigenous Zimbabweans; or implementation of the Indigenisation Compliance and Empowerment Levy that takes account of the rebate scoring system.

Pathway 1: Measures for the economic empowerment of indigenous Zimbabweans

30. Empowerment credits as provided in Table 2 may be taken into account in achieving the 51% indigenisation threshold in order to support economic empowerment of indigenous Zimbabweans through achieving socially and economically desirable objectives.

Table 2: Empowerment Quotas or Credits (%)

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

31. Section 5 (4) of the IEE Regulations outlines at least four specific “socially and economically desirable objectives” that can be weighted and added towards fulfilment of the indigenisation and empowerment minimum shareholding of 51%, and these include:
- a) The undertaking of specified development work in the community in which the business in question carries on its business;
 - b) The beneficiation to a specified extent of raw materials that are extracted in Zimbabwe by the business in question before it exports them;
 - c) The transfer to a specified extent of new technology to Zimbabwe by the business in question; and
 - d) The employment to a specified extent of local skills or the imparting of new skills to Zimbabweans to a specified extent.
32. It is necessary to establish a consistent, clear and non-discretionary framework on the ‘lesser share’ principle and the weighting of ‘socially and economically desirable objectives’ as a percentage to be applied towards achieving the 51% minimum shareholding.
33. The calculation of the socially and economically desirable objectives which are given in Table 2 shall be developed and monitored to reflect the peculiarities of each sector and subsector by the line ministries in liaison with NIEEB.
34. A standard formula, based on a prescribed rate, (which shall be applied to any of the respective pathways to compliance), that is linked to the annual gross turnover of the business entities will be determined in establishing the extent to which the individual entities are supporting socially and economically desirable objectives,

ZIMASSET programme as well implementing the 10 Point Plan to ensure non-discretionary application of the lesser shares provision.

Pathway 2: Implementation of the Indigenisation Compliance and Empowerment Levy

35. Section 17 of the IEE Act provides for the imposition of “one or more levies on any private or public company and any other business in Zimbabwe”.
36. Senate recommended that the levy be put into effect as highlighted by its Thematic Committee on Youth, Indigenisation and Economic Empowerment in its ‘First Report of The Thematic Committee on Indigenisation and Empowerment on the Operations of the Community Share Ownership Trusts & Employee Share Ownership Schemes - February 2015’:

“Government must put in place the Statutory Instrument that enables the National Indigenisation and Economic Empowerment Board to collect levies by June 2015.”

37. An Indigenisation Compliance and Empowerment Levy at the prescribed rate shall be levied on all businesses. A standard formula, based on a prescribed rate, (which shall be applied to any of the respective pathways to compliance), that is linked to the annual gross turnover of the business entities will be determined in establishing the extent to which the individual entities are supporting socially and economically desirable objectives, ZIMASSET programme as well implementing the 10 Point Plan to ensure non-discretionary application of the lesser shares provision.
38. The Indigenisation Compliance and Empowerment Levy shall be subject to reduction by the Compliance and Empowerment Rebate Score earned by any business. Effectively this Indigenisation

Compliance and Empowerment Levy can be significantly moderated by the extent to which a business simply decides to comply with the laws of Zimbabwe on indigenisation and economic empowerment.

39. An Indigenisation Compliance and Empowerment Rebate can be earned from:

- (i) Indigenisation legislation compliance rebates,
- (ii) Good Corporate Citizenship rebate; and
- (iii) Indigenous shareholding rebates.

40. The Indigenisation Compliance and Empowerment Rebate Score shall be calculated against the Indigenisation Compliance and Empowerment Levy in such a manner that any business shall be able to reduce the Indigenisation Compliance and Empowerment Levy payable by it according to the rebates it has earned.

41. A maximum possible 100% Indigenisation Compliance and Empowerment Rebate Score as indicated in Table 3, will mean that a business has effectively complied with indigenisation and economic empowerment programme and does not need to pay the Indigenisation Compliance and Empowerment Levy.

Table 3: Rebate earnings

	Item	Rebate Earnings
1	Indigenisation Legislation Compliance Rebates	4% - IIP Submission
		5% - IIP Approval
		10% - Full Implementation of IIP
2	Good Corporate Citizenship Rebates	Up to 30% - Socially and Economically Desirable Objectives as recommended by sector Line Ministers.
3	Indigenous Shareholding Rebates	Up to 51% is accordance to the extent of indigenous shareholding
	Maximum Possible Empowerment Levy Rebates Score	100%

Uses of the Compliance and Empowerment Levy

42. The levy will be used for economic empowerment activities as set out in Section 12 of the Indigenisation and Economic Empowerment Act to facilitate economic empowerment of indigenous Zimbabweans including Youths, Women and Persons with Disabilities.
43. For the reserved sectors the Indigenisation Compliance and Empowerment Levy will be determined on the basis of the indigenisation compliance level that excludes credits for socially and economically desirable objectives unless under special cases as determined or approved by Cabinet.

INVESTMENT APPLICATION PROCESS

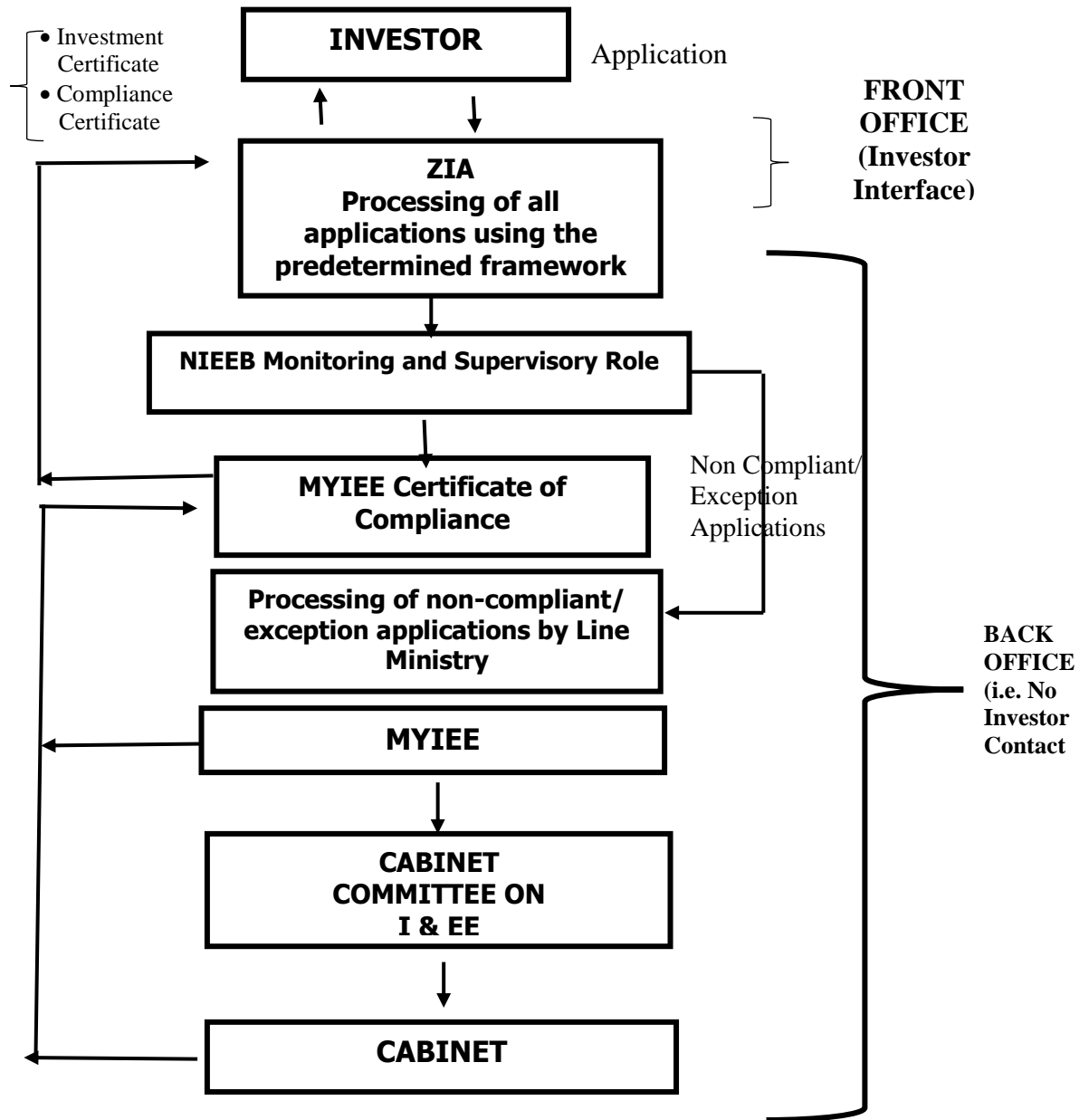
44. All such applications will be submitted through the Zimbabwe Investment Authority (ZIA) for processing in accordance with the simplified Indigenisation and Economic Empowerment framework and by so doing, accelerating the Ease of Doing Business as well as the operationalization of the One Stop Investment centre in line with the Rapid Results Approach Framework.
45. All companies that have not yet submitted their Indigenisation Implementation Plans as required by the Act should submit their applications through ZIA by the new deadline of 31 March 2016.
46. During its normal course of processing, ZIA would consult with the line ministries and the National Indigenisation and Economic Empowerment Board (NIEEB) which shall play, under the guidance of the Ministry of Youth, Indigenisation and Economic Empowerment (MYIEE), a supervisory and monitoring role to ensure Government entities comply with the Indigenisation and

Economic Empowerment Act and other set regulations and policies.

.

47. Applications that do not conform to the predetermined framework i.e. exception applications will be lodged by NIEEB in consultation with the line ministries through MYIEE for consideration by Cabinet through the Cabinet Committee on Indigenisation and Economic Empowerment.

SCHEMATIC PROCESS



PROCUREMENT

48. All Government departments, statutory bodies and local authorities and all companies are to procure at least fifty per centum of their goods and services required to be procured in terms of the Procurement Act [Chapter 22:15] from local businesses.

49. The Ministry of Youth, Indigenisation and Economic Empowerment will be engaging with the procuring entities and other appropriate authorities who are involved in procurement arrangements in an effort to ensure compliance with these provisions.
50. To the extent necessary, the Ministry of Youth, Indigenisation and Economic Empowerment will ensure that the law is aligned to the framework set out herein.

NATIONAL INDIGENISATION AND ECONOMIC EMPOWERMENT CHARTER

51. The Indigenisation and Economic Empowerment Act, Section 16 as read with the Fourth Schedule, provides for a National Indigenisation and Economic Empowerment Charter, to the effect that indigenous businesses benefitting from NIEEF, or the indigenisation programme, must comply to the best of their ability with the framework for ethical and good business conduct contained in the Charter.
52. The Ministry of Youth, Indigenisation and Economic Empowerment will make the provision of rebates conditional upon commitment to abide by the principles of the NIEEC so as to ensure that indigenous business entities develop a reputation of good governance and ethics.
53. Indigenous businesses must comply with the National Indigenisation and Economic Empowerment Charter, and must be bound by the provisions of the Charter. The Charter has been developed and put into legislation for the purpose of rebranding indigenous businesses.

HON. PATRICK ZHUWAO
MINISTER OF YOUTH, INDIGENISATION AND
ECONOMIC EMPOWERMENT
4 January 2016