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CENSUS AND STATISTICS BILL, 2006

MEMORANDUM

The purpose of this Bill is to establish a Statistics Agency which will provide an integrated statistical service system; provide for the qualitative development and management of official statistics; provide for the setting up of professional standards and ethics to be endeared to by organisations that produce statistics for public information in Zimbabwe; and to provide for matters incidental to or connected with the above.

The individual clauses of the Bill are explained below:

Part I

Clause 1

This clause sets out the Bill's short title while *clause 2* sets out the definition of terms used in the Bill.

Part II

Clause 3 provides for the establishment of the National Statistics Agency while *clauses 4 and 5* provide for the functions and powers of the Agency. *Clause 6* provides that the Agency is required to make annual reports or such other reports as may be required by Act of Parliament, to the Minister who may lay such reports before Parliament.

Part III

Clauses 7 and 8 provide for the Board of the Agency. *Clause 9* provides for the appointment and mandate of the Director-General of the Agency who shall also be the secretary to the Board while *clause 10* provides for the appointment of staff of the Agency by the Board. *Clause 11* provides that the Minister may give policy directions to the Board.

Part IV

Clause 12 makes provisions for the carrying out of a census while *clause 13* provides for the collection of statistics. *Clause 14* permits the use of sampling methods in taking a census or collecting statistics. This is a method of collecting data where results of a particular group of people are representative of a certain class of people. *Clause 15* makes provisions for guidelines on censuses and surveys by other persons. *Clause 16* empowers authorised officers taking a census or survey to collect certain particulars as may be prescribed, from individuals. *Clause 17* restricts the disclosure of information acquired in the course of a census or survey, to certain prescribed instances. *Clause 18* provides that an authorised officer may for the purposes of taking a census or collecting statistics and upon production of written appointment, enter upon any premises. *Clause 19* provides for the dissemination of statistical data.

Part V

Clause 20 provides for what constitute funds of the Agency. *Clause 21* provides for the keeping of books of accounts.

Part VI

Clause 22 provides for penalties in respect of false statements made in supplying any statistical data. *Clause 23* exempts the Agency from any liability incurred in the *bona fide* discharge of its duties. *Clause 24* provides for the making of regulations in terms of this Act while *clauses 25 and 26* make repeals, savings and provide for the transfer of assets and liabilities of the State which were connected with the Central Statistical Office under the repealed Act, to the Agency.

Schedule

The First Schedule provides for the powers of the Agency while the Second Schedule makes general provisions applicable to the operations of the Board.

CENSUS AND STATISTICS BILL, 2006

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PRESENTED BY THE MINISTER OF ECONOMIC DEVELOPMENT

BILL

To provide for the establishment of the National Statistics Agency which will replace the Central Statistical Office; to provide for the collection and processing of statistics; to repeal the Census and Statistics Act [*Chapter 10:05*]; and to provide for matters incidental to or connected with the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

PART I

PRELIMINARY

1 Short title and date of commencement

- (1) This Act may be cited as the Census and Statistics Act [*Chapter 10:29*].
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

In this Act-

"Agency" means the National Statistics Agency established by section 3;

"authorised officer" or "officer" in relation to the Agency means-

- (a) a member of the staff of Agency; or
- (b) any other person appointed by the Director-General to work on behalf of the Agency in terms of section 9(4)(c)

"Board" means the National Statistics Agency Board referred to in section 7;

"census" means a census referred to in section 12;

"Director-General" means the Director-General of the Agency appointed in terms of section 9;

"document" means-

- (a) a form, questionnaire, schedule, or notice whether in printed or photographic form;
- (b) a documentary recording or transcribed computer printout or record capable of being produced as a printout by a mechanical or electronic device;
- (c) a medium or device by means of which information is recorded or stored;

"dwelling unit" means the kind of housing occupied by a household;

"establishment" means an enterprise or part of an enterprise that is situated in a single location and in which only a single non-auxiliary productive activity is carried out or in which the principal productive activity accounts for most of the value added;

"fixed date" means the date fixed in terms of section 1(2) as the date of commencement of this Act;

"financial year" means the period of twelve months ending on the 31st December.

"Government Ministry or institution" means any ministry of Government or other department of the national, provincial or local administration of the State, and includes any individual functionary or department exercising public power or performing a public duty in terms of the Constitution or any other law, but does not include a court of law or a judicial officer;

"household" means a group of people who live together, eat together and share resources, or a single person who lives alone;

"member" means the chairperson or any other member of the Board referred to in section 7(2);

"Minister" means the Minister of Economic Development or any other Minister to whom the President may from time to time assign the administration of this Act;

"National Statistical System" means—

- (a) the group of all stakeholders involved in the production of official statistics, whether in their capacity as users or producers of statistics or statistical trainers and researchers or as bulk suppliers of data; and
- (b) the manner in which the stakeholders referred to in paragraph (a) relate to each other and the Agency in the production of official statistics; and
- (c) the rules governing the designation of producers of official statistics;

"official statistics" means the results of—

- (a) a census;
- (b) a statistical survey conducted in terms of section 13;
- (c) such other statistical survey as the Director-General may designate by notice in the *Gazette*;

"respondent" means any individual or household in respect of whom or which, or any Government ministry or institution or establishment in respect of whose activities or affairs, any information is sought or provided for the purposes of a census or a statistical survey;

"repealed Act" means the Census and Statistics Act [*Chapter 10:05*];

"return" means a document completed by—

- (a) a respondent; or
- (b) an authorised officer; or
- (c) any other person producing or providing official statistics;

"statistical survey" means—

- (a) a statistical survey in terms of section 13; or
- (b) an exercise whereby information is collected from all units in a field of inquiry or from a sample thereof, by the Agency, a Government Ministry or institution or other person, in terms of this Act or any other law, for the purpose of processing and summarising the results of the survey by appropriate statistical procedures and publishing such results in some statistical form;

"statistics" means aggregated numerical information relating to demographic, economic, financial, environmental, social or other matters, at national, provincial or local level, compiled and analysed according to appropriate statistical procedures.

PART II

NATIONAL STATISTICS AGENCY

3 Establishment of National Statistics Agency

There is hereby established an Agency, to be known as the National Statistics 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 a bodies corporate may by law perform.

4 Functions of Agency

- (1) Subject to this Act, the functions of the Agency shall be to—
 - (a) conduct the national census or any other censuses and surveys in terms of sections 12 and 13; and
 - (b) co-ordinate and supervise the National Statistical System; and
 - (c) advise the Government on all matters related to statistics; and

- (d) develop and promote the use of statistical standards and appropriate methodologies in the National Statistical System; and
- (e) collect, compile, analyse, interpret, publish and disseminate statistical information alone or in co-operation with other Government Ministries or institutions; and
- (f) develop and maintain a central business register in relation to establishments, containing such particulars as may be prescribed; and
- (g) develop and maintain a comprehensive national statistics database; and
- (h) provide a focal point of contact with international agencies on statistical matters; and
- (i) perform any other function that may be conferred or imposed upon the Agency by this Act or any other enactment.

(2) Except as otherwise provided for in this Act, the Agency shall not be subject to the direction or control of any person or authority in the exercise of its functions under this Act.

5 Powers of agency

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.

6 Reports of Agency

(1) In addition to any report that the Agency is required to submit to the Minister in terms of the Audit and Exchequer Act [*Chapter 22:03*], the Agency—

- (a) shall—
 - (i) submit to the Minister an annual report in regard to the operations and property of the Agency; or
 - (ii) any other report as the Minister may require;
- and
- (b) may submit to the Minister such other report as the Agency may consider advisable.

(2) The Minister shall lay a report submitted to him or her by the Agency in terms of subsection (1)(a)(i) before Parliament.

PART III

ESTABLISHMENT AND CONSTITUTION OF NATIONAL STATISTICS AGENCY BOARD

7 National Statistics Agency Board

(1) The operations of the Agency shall, subject to this Act, be controlled and managed by a Board to be known as the National Statistics Agency Board.

- (2) The Board shall consist of—
 - (a) the Director-General, who shall be the Secretary to the Board;
 - (b) a representative of the Ministry responsible for statistics;
 - (c) not more than eight other members, at least half of whom shall be women, appointed, subject to subsection (3), by the Minister after consultation with the President and subject to such directions as the President may give.

(3) The persons appointed under subsection (2)(c) shall be chosen for their knowledge and experience in statistics, information technology, economics or related fields of expertise and their professional qualifications.

(4) All appointments shall be published by notice in the *Gazette*.

(5) The Minister shall appoint one member as chairperson of the Board and the Board shall at its first meeting elect a vice-chairperson from among its members and the vice-chairperson shall exercise the functions of the chairperson during any period that the chairperson is unable to exercise his or her functions.

(6) The provisions relating to the terms and conditions of office, vacation of office and dismissal of members, and the filling of vacancies in the Board, meetings and procedures of the Board and other related matters, shall be as set out in the Second Schedule.

8 Special responsibilities of Board

(1) The Board shall be responsible for ensuring that the Agency fulfils its functions and that the profile of statistics is commensurate with its role in national development, and in particular it shall—

- (a) promote and protect the credibility, integrity and impartiality of official statistics;
- (b) formulate and monitor the implementation of policies for more effective co-ordination of the National Statistical System;
- (c) monitor compliance with best practices and international recommendations on the production of official statistics;
- (d) promote and safeguard the professional independence of the Agency;
- (e) formulate and monitor the implementation of policies pertaining to the organisation and management of the Agency;
- (f) approve the corporate plans, work plans and budgets of the Agency for submission to the Ministry responsible for Finance.

9 Director-General

(1) Subject to this Act, the Board shall appoint a person approved by the Minister to be the Director-General of the Agency, on such terms and conditions as the Board, with the approval of the Minister, may fix.

(2) No person shall be appointed as Director-General and no person shall hold office as Director-General if he or she is not a citizen of Zimbabwe.

(3) The Board shall terminate the appointment of the Director-General if he or she would be required in terms of paragraph 3(b), (c) or (d) of the Second Schedule to vacate his or her office had the provisions of that paragraph and of paragraph 2(b) and (c) of the Second Schedule applied to him or her.

(4) Subject to the general control of the Board, the Director-General shall be responsible for—

- (a) managing the operations and property of the Agency; and
- (b) supervising and controlling the activities of the employees of the Agency in the course of their employment;

(c) appointing in writing any person as an authorised officer on a part-time basis.

(5) The Board may assign to the Director-General such other functions as the Board thinks fit:

Provide that the Board shall not assign to the Director-General any duty that has been assigned to the chairperson of the Board.

(6) /Any assignment of functions in terms of subsection (5) may be made either generally or specifically and subject to such reservations, restrictions, and exceptions as the Board may determine, and may be revoked by the Board at any time.

10 Staff of Agency

(1) The Board may employ on such terms and conditions as it may determine employees who are necessary for the conduct of the business of the Agency and may suspend, discipline or discharge any such persons.

(2) The Board may delegate its powers referred to in subsection (1) to the Director-General.

(3) Without prejudice to the generality of subsection (1) the Board may, subject to the approval of the Minister, provide for the payment to its officers and employees of salaries, allowances, pensions, gratuities or other retirement benefits and may require them to contribute to any pension, provident fund or superannuation scheme.

11 Minister may give Board directions on matters of policy

(1) Subject to subsection (2), the Minister may give the Board such directions of a general character relating to the policy which the Agency is to observe in the exercise of its functions as the Minister considers to be requisite in the national interest.

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and possible effects which the proposal may have on the finances, commercial interests and other resources of the Agency and the functioning of the Agency.

(3) After receipt of the views of the Board submitted in terms of subsection (2), the Minister may confirm, alter or withdraw any proposed direction to the Board and, where the Minister has confirmed a direction, whether altered or not, the Board shall forthwith comply that direction.

(4) When any direction has been received by the Board in terms of this subsection, the Board shall set out in the Agency's annual report the direction received by it, the views expressed by it in terms of subsection (2), and the final direction given to it in terms of subsection (3).

PART IV

CENSUS AND STATISTICS

12 Census

(1) A national census shall be taken every ten years of—

- (a) the number of persons in Zimbabwe or of any class of persons in Zimbabwe or any part thereof; and
- (b) the number of households and dwelling units in Zimbabwe or of any class of households and dwelling units in Zimbabwe or part thereof; and
- (c) such other particulars whatsoever;

as shall be prescribed.

(2) The Agency shall take the census referred to in subsection (1) on such day or during such period as the Minister may fix by notice in a statutory instrument.

(3) A census may be conducted by the Agency on any other matter as may be specified by the Minister.

13 Statistical surveys

(1) The Agency may, with the approval of the Minister, and shall, when the Minister so directs, collect statistics for Zimbabwe or any part thereof with respect to such matter as may be prescribed.

(2) Notwithstanding subsection (1), the Agency shall not collect any statistics in terms of that subsection until regulations have been made specifying the particulars and information to be furnished in relation to the matter with respect to which statistics are to be collected.

(3) Subsections (1) and (2) shall not apply to the collection by the Agency, with the consent of the person concerned, of statistics in relation to any matter.

14 Use of sampling methods

The Director-General may, if he or she thinks fit, use sampling methods in the taking of any census in terms of section 12 or in the collection of statistics in terms of sections 13(1) and (3).

15 Censuses and statistical surveys by other persons

(1) In this section-

"censuses or statistical surveys at a national level" do not include-

- (a) internal statistical surveys by a Government ministry or institution, statutory body or other corporate body, whether private or public, involving members or stakeholders of such ministry, institution or body;
- (b) market surveys conducted by or on behalf of any person involving the consumers or potential consumers of the products or services of such person;
- (c) statistical surveys by or among such other classes of persons as may be prescribed.

(2) Where any Government ministry or institution or other person proposes to conduct censuses or statistical surveys at a national level, he or she shall, before conducting such survey-

- (a) furnish particulars of the proposal to the Board; and
- (b) satisfy the Board that appropriate statistical procedures will be followed.

(3) The Board shall review every proposal submitted in terms of subsection (2) within a reasonable time and in any case not later than thirty days after it has been submitted.

(4) Where the Board has any objection to the statistical procedures to be followed by the person who submitted the proposal, it shall afford that person a reasonable opportunity to make representations on the matter.

(5) Where the Board approves a proposal referred to in subsection (2), the Government ministry, institution or person shall, after conducting such census or survey, deposit the results obtained with the Agency.

(6) The Minister—

- (a) may, on the recommendation of the Board, by statutory instrument, make rules concerning the procedures to be followed with respect to proposals submitted to the Board in terms of subsection (2);
- (b) shall, in consultation with the Board, issue a code of practice that sets out professional standards and ethics to be followed by all persons producing official statistics.

16 Power to obtain particulars

(1) When a census is being undertaken in terms of section 12 or statistics are being collected in terms of section 13(1), an authorised officer may require any person from whom particulars may lawfully be obtained under this Act to supply him or her with such particulars as may be prescribed or such of those particulars as the Director-General may consider necessary or desirable in relation to the taking of such census or the collection of such statistics.

(2) Any person required in terms of subsection (1) to supply particulars shall give all particulars in such manner and within such time as may be required by the authorised officer in terms of this Act.

(3) An authorised officer may require any person to supply him or her with particulars either by interviewing such person personally or by leaving at, or by sending to the last-known address of such person a form having thereon a notice requiring the form to be filled in and returned in the prescribed manner and within the prescribed period.

(4) Any person who contravenes this section shall be guilty of an offence and shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

17 Restrictions on disclosure of information

(1) Except for the purposes of a prosecution in respect of an offence under this Act—

- (a) no individual return and no form submitted for the purposes of this Act or any portion of such return or form; and
- (b) no report or document containing particulars comprised in any such return, form or answer and so arranged as to enable identification of the particulars with the person by whom or on whose behalf the return was made, form was submitted or answer was given;

shall be disclosed to any person who is not employed in carrying out the provisions of this Act without the permission of the person by whom or on whose behalf the return was made, form was submitted or answer was given.

(2) Subsection (1) shall not apply to the disclosure of information which has already been published or information which is available on a database lawfully accessible to the public.

(3) Notwithstanding anything to the contrary in subsection (1), the Minister may, in writing, authorise the disclosure, on such terms and conditions as he or she may specify in such authority (which terms and conditions must include the prohibition of disclosure of individual information to any person other than the person specified in that authority), of any such individual return, form or part of any such return or form or any answer given to questions put, to such person as the Minister shall specify.

(4) No person 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.

(5) Any person who contravenes subsection (1) or (4) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

18 Powers of entry

(1) An authorised officer may at all reasonable times for any purpose connected with the taking of a census in terms of section 12 or the collection of statistics in terms of section 13(1) and (2), enter and inspect any land or premises, other than a dwelling unit, and may make such inquiries as may be necessary for the performance of his or her duties under this Act.

(2) An authorised officer shall produce his or her written appointment as an authorised officer or, in the case of the Director-General, proof of his or her appointment as Director-General, before exercising the powers conferred by subsection (1), if required to do so by the owner, occupier or person in charge of such land or premises.

19 Dissemination of statistical data

The Director-General shall ensure that the results of any census or statistical survey whose—

- (a) quality and accuracy have been ascertained; and
- (b) whose confidentiality has been secured with respect to any individual who provided any statistical information to which section 16 relates;

is released for general dissemination whether by publication in the *Gazette* or by any other means.

PART V

FINANCIAL PROVISIONS

20 Funds of Agency

The funds of the Agency shall consist of—

- (a) such moneys as may be payable to the Agency from moneys appropriated for the purpose by Act of Parliament; and
- (b) any fees or charges in respect of any services rendered by the Agency in terms of this Act; and
- (c) any loans, donations or grants made to the Agency with the approval of the Minister, by any person or by any Government; and

- (d) such other moneys as may vest in or accrue to the Agency, whether in the course of its operations or otherwise.

21 Accounts and audit

(1) The Agency shall keep proper books of account and other records relating thereto in respect of all its activities and property, including such particular accounts and records as the Minister may direct.

(2) The Agency shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

(3) The accounts of the Agency shall be examined and audited by the Comptroller and Auditor-General or such other person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [Chapter 27:12] and who is appointed by the Comptroller and Auditor-General after consultation with the Minister and the Agency.

(4) The auditor shall examine the accounts of the Agency and make a report to the Board and the Minister on the statement of accounts prepared in terms of subsection (2), and such report shall state whether or not in his or her opinion the statement of accounts gives a true and fair view of the financial affairs of the Agency.

(5) In addition to the report referred to in subsection (4), the Minister may require the Board to obtain from its auditor such other report or statement in connection with the operations and property of the Agency as the Minister may consider expedient.

(6) Without derogation from section 11(6) of the Audit and Exchequer Act [Chapter 22:03] an auditor shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating thereto kept by the Agency or its agents together with such information and explanations as in his or her opinion are necessary for the purpose of his or her audit.

PART VI

GENERAL

22 False statements

Any person who, when submitting a return, form or any information, makes any statement knowing it to be false in a material particular or not reasonably believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

23 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 or the Board:

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.

24 Regulations

(1) The Minister, after consultation with the Agency, may 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 provided for in order to carry out or give effect to this Act.

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

- (a) the manner in which a census may be carried out; and
- (b) the particulars and information to be given in relation to any matter in respect of which statistics may be collected in terms of section 13; and
- (c) the form of any document required to be completed with respect to a census or statistical survey; and
- (d) the manner and form in which, the times and places at which, and the persons by whom such particulars and information shall be given; and
- (e) matters in respect of which statistics may be collected; and]
- (f) fees which may be charged in respect of any services rendered by the Agency in terms of this Act; and
- (g) penalties which may be imposed for contraventions of the regulations, which penalties shall not exceed a fine or level five or imprisonment for a period not exceeding six months or both.

25 Repeal of Cap. 10:05 and savings

(1) Subject to this section, the Census and Statistics Act [*Chapter 10:05*] is repealed.

(2) Any regulations, rules, notices, orders which immediately before the fixed date, were in force under the repealed Act shall remain in force as if they had been made under this Act.

(3) Anything done or commenced or any decision made in terms of the repealed Act which immediately before the fixed date had or was capable of acquiring effect shall continue to have or be capable of acquiring, as the case may be, effect as if done, commenced or made in terms of this Act.

26 Transfer of certain assets and obligations of State to Agency

(1) In this section—

"transfer date", in relation to any property, right, liability or obligation which is transferred to the Agency in terms of this section, means the date fixed by the Minister, which is no later than six months from the fixed date;

"transferred member" means a person who is transferred from the Public Service to the Agency in terms of subsection (8).

(2) The assets and rights of the State which—

- (a) before the fixed date, were used or otherwise connected with the Central Statistical Office under the repealed Act; and
- (b) are specified by the Minister;

together with any liabilities or obligations attaching to them, shall be transferred to the Agency with effect from the transfer date.

(3) On the transfer date, every asset and right of the State which the Minister has directed shall be transferred to the Agency, together with any liability or obligation attaching to it, shall vest in the Agency.

(4) All bonds, hypothecations, deeds, contracts, instruments, documents and working arrangements which subsisted immediately before the relevant transfer date in relation to any asset, right, liability or obligation transferred to the Agency under this section and to which the State was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the Agency as if, instead of the State, the Agency had been named therein.

(5) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his registers in respect of any immovable property, right or obligation which passes to the Agency under this section, but the Registrar of Deeds, when so requested in writing by the Agency in relation to any particular such property, right or obligation, shall cause the name of the Agency to be substituted, free of charge, for that of the State on the appropriate title deed or other document or in the appropriate register.

(6) Any cause of action or proceeding which existed or was pending by or against the State immediately before the relevant transfer date in respect of any asset, right, liability or obligation which passes to the Agency under this section, may be enforced or continued, as the case may be, by or against the Agency in the same way that it might have been enforced or continued, as the case may be, by or against the State had this Act not been passed.

(7) Subsection (6) shall not apply to any cause of action or proceedings existing or pending immediately before the relevant transfer date between the State and a person employed by the State.

(8) Every member of the Public Service who, immediately before the fixed date, was employed in the Central Statistical Office under the repealed Act, shall on the fixed date—

- (a) be deemed to have been transferred to the Agency, unless he or she opts out of employment with the Agency, in writing to the Board and the Public Service Commission, within thirty days from the fixed date;
- (b) be engaged for employment with the Agency on terms and conditions not less favourable than those that were applicable to him or her immediately before his or her engagement.

(9) Notwithstanding any other provision of this Act, a person who—

- (a) as a member of the Public Service, was afforded an opportunity of engagement by the Agency in terms of subsection (8) and declined to avail himself or herself of the opportunity; and
- (b) subsequently left the Public Service and as a consequence became entitled to pension benefits in respect of the resignation from his or her post;

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

(10) Any person who is engaged by the Agency after the fixed date shall, on the date of his or her engagement, have the option to contribute—

- (a) towards the Public Service Pension Scheme as if his or her service with the Agency forms part of and is continuous with his or her service with the Public Service subsequent to his or her engagement; or
- (b) towards any pension scheme that the Board may establish or permit members of the Agency to participate in.

(11) Any regulations and circulars governing the negotiations of terms and conditions of service by or on behalf of transferred members which immediately before the fixed date, were in force under the Public Service Act [Chapter 16:04], shall continue in force until—

- (a) an employment council for the Agency is registered in terms of section 59 of the Labour Act [Chapter 28:01]; and
- (b) a collective bargaining agreement negotiated by the employment council amends, varies or repeals the regulations or circulars;

and in the event of any inconsistency between such regulations and circulars and any law governing the terms and conditions of employees generally, the former shall prevail.

(12) Any reference to the Public Service Commission in any regulation, notice, circular or other document referred to in subsection (11) shall be construed, with the necessary modifications, as a reference to the Agency.

FIRST SCHEDULE (Section 5)

POWERS OF AGENCY

1. To acquire by lease, purchase, or otherwise, immovable property and 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, with the approval of the Board, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Authority may, with the approval of the Minister, 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, sub-leases or other interests or concessions in respect of land, buildings or any other facility or structure owned by, or under the control of, the Agency.
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 authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Agency thinks desirable to obtain, and 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 administer such funds and reserves as the Agency may consider appropriate or necessary for the proper exercise of the functions of the Agency.

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 and for their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury.

SECOND SCHEDULE (Section 7(6))

PROVISIONS APPLICABLE TO THE BOARD

ARRANGEMENT OF PARAGRAPHS

1. Terms and conditions of office of members.
2. Disqualification for appointment as member.
3. Vacation of office by member.
4. Dismissal or suspension of member.
5. Filling of vacancies in Board.
6. Meetings and procedure of Board.
7. Committees of Board.
8. Remuneration and expenses of members of Board and members of committees.
9. Disclosure of interests of members of Board and members of committees.
10. Validity of decisions and acts of Board.
11. Execution of contracts and instruments Authority.
12. Minutes of proceedings of Board and Committees.

Terms and conditions of office of members

1.(1) Subject to this Part, a member shall hold office for such period, not exceeding three 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. 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 not a citizen of Zimbabwe or is not permanently resident in Zimbabwe; or
- (b) 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
- (c) 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; or
- (e) is a member of Parliament;
- (b) is currently serving on two or more boards of other statutory or corporate bodies.

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; or
- (c) if he or she becomes disqualified in terms of paragraph 2 (a), (b), (c), (e) or (f) to hold office as 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 that 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 on 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) not fewer than 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 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.

(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 2 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 the 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 interests of members of Board and 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 project proposal under consideration by the Agency; or
- (b) knowingly acquires or holds a direct or indirect pecuniary interest in a company or association of persons applying or negotiating for a contract with the Agency; 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 or interest 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.