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Statutory Instrument 34 of 2011.¹

[CAP. 14:33

Indigenisation and Economic Empowerment (General) (Amendment) Regulations, 2011 (No. 3)

IT is hereby notified that the Minister of Youth Development, Indigenisation and Empowerment, after consultation with the Board has, in terms of section 21 of the Indigenisation and Economic Empowerment Act [*Chapter 14:33*], made the following regulations:—

1. These regulations may be cited as the Indigenisation and Economic Empowerment (Amendment) Regulations, 2011 (No. 3).
2. The Indigenisation and Economic Empowerment Regulations, 2010, published in Statutory Instrument 21 of 2010 (hereinafter called the “principal regulations”) are amended in section 2 (“Interpretation”) by the insertion of the following definitions—

““non-indigenous business” means a business in respect of which fifty-one *per centum* of the shares or a controlling interest is not held by indigenous Zimbabweans;

“primary documents”, with reference to the documents required to be submitted by a responsible person on behalf of a business under section 10(1), means the **Form IDG 01** and indigenisation implementation plan required of the business concerned;

“responsible person” mean a person referred to in section 10(1)(a), (b), (c) or (d);

“secondary document” means the resolution or proof of authority referred to in section 10(4)(a), (b), (c) or (d), as the case may be, required to be submitted by a responsible person together with the primary documents;”.

3. The Indigenisation and Economic Empowerment Regulations, 2010, published in Statutory Instrument 21 of 2010 (hereinafter called the “principal regulations”) are amended in section 4 (“Every business to notify extent of present or future compliance with indigenisation”)—

(a) in subsection (6) by the deletion of “referred to in subsection (3)” wherever it occurs and the substitution of “referred to in subsection (4)”;

(b) by the insertion of the following subsection after subsection (6)—

“(6a) A business which, having been granted an extension under subsection (6) within which to submit its indigenisation implementation plan, fails to do so within the extended period, shall be guilty of an offence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”

¹ This statutory instrument was published in the Zimbabwean Government Gazette Extraordinary of 25th March 2011.

4. Section 5 (“Approval and amendment of indigenisation implementation plans and prescription of thresholds and timeframes”)(1) of the principal regulations is amended—

(a) in subsection (1)—

(i) in paragraph (b) by the repeal of subparagraphs (i) and (ii) and the substitution of—

“(i) the Minister shall, if the provisional indigenisation implementation plan meets or exceeds the minimum indigenisation requirements for a business operating in the sector or subsector of the economy concerned, approve the plan in writing; or

(ii) if the provisional indigenisation implementation plan does not meet the minimum indigenisation requirements for a business operating in the sector or subsector of the economy concerned, reject the plan in writing.”;

(ii) by the insertion of the following proviso to paragraph (b)—

“Provided that if the Minister makes no written response to a business approving or rejecting its provisional indigenisation implementation plan within such of the following periods as may be applicable—

(a) ninety days of the publication of a notice in the *Gazette* referred to in subsection 4 relating to the sector or subsector of the economy to which the business concerned belongs;

(b) within ninety days of the final date fixed in a notice in the *Gazette* referred to in subsection 4 for businesses in the sector or subsector concerned to bring their plans into compliance with the requirements of the notice;

(c) in the case of a business commenced after the publication a notice in the *Gazette* referred to in subsection 4 relating the sector or subsector of the economy to which the business concerned belongs, within ninety days of the date when the business concerned submitted its provisional indigenisation implementation plan;

the plan shall—

(i) if the provisional indigenisation implementation plan meets or exceeds the minimum indigenisation requirements for a business operating in the sector or subsector of the economy concerned, the plan shall be deemed to have been approved; or

(ii) if the provisional indigenisation implementation plan does not meet the minimum indigenisation requirements for a business operating in the sector or subsector of the economy concerned, the plan shall be deemed to have been rejected:

Provided further that if the Minister, at any time before the expiry of the ninety days referred to in the foregoing proviso, indicates in writing to the business concerned that he or she requires more information in connection with its provisional indigenisation implementation plan or requires more time to consider the plan, the Minister shall have a further ninety days to indicate his or her approval or rejection of the plan in addition to the ninety days stipulated in the foregoing proviso.”;

(b) by the insertion of the following subsection after subsection (2)—

“(2a) A business which, having been served with a notice by the Minister under subsection (2) to submit a provisional indigenisation implementation plan, fails to do

so within thirty days of receiving the notice, shall be guilty of an offence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”;

(c) by the insertion of the following subsection after subsection (4)—

“(5) Every—

(a) business that submitted a provisional indigenisation implementation plan in accordance with section 4(1), (2) or (4) but whose plan is, in terms of subsection (1)(b)(ii), rejected or deemed (in terms of the proviso to subsection (1)(b)) to have been rejected by the Minister; or

(b) non-indigenous business that was not required to submit an indigenisation implementation plan in accordance with section 4(1), (2) or (4) but subsequently becomes liable to submit such a plan because, in accordance with any notice in the *Gazette* referred to in subsection 4, it does not meet the minimum indigenisation requirements for a business operating in the sector or subsector of the economy concerned;

shall, in the case of a business—

(i) referred to in paragraph (a), resubmit its indigenisation implementation plan no later than forty-five days after the date when the Minister rejected or is deemed to have rejected its provisional indigenisation implementation plan;

(ii) referred to in paragraph (b), submit the primary documents (the **Form IDG 01** and indigenisation implementation plan) and secondary document relating to the business no later than forty-five days after the date of publication of a notice in the *Gazette* referred to in subsection 4 relating to the sector or subsector of the economy to which the business concerned belongs;

and section 4(4), (5), (6) and (7) shall apply to every such business.”;

(d) by the repeal of subsection (7).

5. Section 9 (“Indigenisation of projected or proposed investments”) of the principal regulations is amended—

(b) by the repeal of subsection (2) and the substitution of—

“(2) In the circumstances described in subsection (1), no investment licence shall be issued to the domestic or foreign investor concerned unless the domestic or foreign investor—

(a) submits the primary documents (the Form IDG 01 and indigenisation implementation plan) and secondary document relating to the investment; and

(b) the indigenisation implementation plan has been approved in accordance with section 5.”;

(b) by the insertion of the following subsection after subsection (3)—

“(4) Any investor who, after the date of commencement of the Indigenisation and Economic Empowerment (Amendment) Regulations, 2011 (No. 3)², makes an investment in a business belonging to any of the sectors prescribed under the Third Schedule which results in the investor owning or having a controlling interest in that

² i.e. 25th March 2011. *Note by Veritas.*

business shall, unless he or she has obtained for the investment the prior written approval of the Minister and the Minister responsible for the administration of the Zimbabwe Investment Authority Act [*Chapter 14:30*], be guilty of an offence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”

6.(1) Section 10 (“Persons or parties responsible for submitting forms, making notifications, etc.”) of the principal regulations is amended by the insertion of the following subsections after subsection (3)—

“(4) Where primary documents are required to be submitted by—

(a) a company secretary in terms of subsection (1)(a), the company secretary shall submit together with the primary documents a resolution of the company concerned authorising the submission of the documents in question to the Minister; or

(b) a senior partner in terms of subsection (1)(b), the senior partner shall submit together with the primary documents written proof that that he or she has been nominated by the other partners to submit the documents in question to the Minister; or

(c) a person nominated by the governing body of an unregistered association, trust or other kind of association not being a company in terms of subsection (1)(c), the person concerned shall submit together with the primary documents written proof that that he or she has been nominated to submit the documents in question to the Minister; or

(d) the person in whose name a private business corporation is incorporated in terms of the Private Business Corporation Act, in terms of subsection (1)(c), the person concerned shall submit together with the primary documents a resolution of a meeting of the members of the private business corporation (if the private business corporation has more than two members) authorising the submission of the documents in question to the Minister.

(5) A business (other than the business of a sole trader) on whose behalf a responsible person has submitted primary documents to the Minister in accordance with section 4 shall not be considered not to have complied with section 4(1) or (2) unless the responsible person also submits the secondary document, either simultaneously with the primary documents or no later than the final day for compliance with section 4(1) or (2), whereupon section 4(4) shall apply to such business as if it had not submitted any primary documents.”.

(2) Every business (other than the business of a sole trader) which, in compliance with the principal regulations before their amendment by these regulations, had complied with section 4(1) and (2), shall, no later than the 30th June, 2011, submit through the responsible person the secondary document required by section 10(4) of the principal regulations as inserted by these regulations.

(3) A business (other than the business of a sole trader) which fails to comply with subsection (2) by the date there mentioned shall not be considered not to have complied with section 4(1) or (2) of the principal regulations, whereupon section 4(4) of the principal regulations shall apply to such business as if it had not submitted any primary documents.

7. Section 11 (“Proof of compliance with Act”) of the principal regulations is amended by the insertion of the following subsection, the existing section becoming subsection (1)—

“(2) Any business may, in writing to the Minister, request that it be issued a written certificate under the hand of the Minister or any person authorised by the Minister in that behalf certifying that—

(a) it has obtained approval for an indigenisation implementation plan in accordance with these regulations; or

(b) it has achieved or exceeded the minimum indigenisation and empowerment quota.”.

8. Section 16 (“Valuation of businesses where truth or accuracy of valuation disputed”) of the principal regulations is amended by the insertion of the following subsections, the existing section becoming subsection (1)—

“(2) If, after a valuation conducted by the Minister in terms of subsection (1) a business is found to have substantially (to the extent of ten *per centum* or more) undervalued its net asset value, it shall be guilty of an offence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) A court convicting a business of an offence against subsection (2), may, on the application of the prosecutor and in addition to any penalty which it may impose, give summary judgment in favour of the Minister for the costs of the valuation undertaken in terms of subsection (1).

(4) On the hearing of an application referred to in subsection (3) a court shall, for the purpose of determining the amount of the valuation costs referred to in subsection (3), refer to the proceedings and evidence at the trial and consider such further evidence, whether oral or documentary, as may be tendered by the prosecutor and the accused.

(5) A judgment given by a court in terms of subsection (3) shall have the same force and effect and may be executed in the same manner as if the judgment had been given in a civil action instituted—

(a) in the case of the court of a regional magistrate, in the court of a magistrate other than a regional magistrate; or

(b) in the case of a court other than the court of a regional magistrate, in the first-mentioned court.”.

9. The First Schedule (“Sectors Reserved Against Foreign Investment in Favour of Indigenous Zimbabweans”) is amended by the deletion of the section reference note next to the numeric title of the Schedule and the substitution of “(Section 9)”.