

**CZI Position and Proposed Amendments to SI 21 of 2010, The**  
**Indigenisation and Economic Empowerment (General)**  
**Regulations of 2010**

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**Introduction**

CZI took an official position to support and promote the economic empowerment of indigenous Zimbabweans. We requested and participated in consultations with the then responsible minister, Minister Paul Mangwana. At these meetings we underlined our commitment to indigenisation and we made known our concerns. Again, dialogue with government continued when Minister Kasukuwere was appointed.

We have, in concert with other business associations emphasized that the criteria for successful indigenisation and economic empowerment should include:

- The creation of a competitive investment environment .
- Contributing to the sustainable growth and development of the economy.
- Increase in employment and generalised empowerment of the majority of Zimbabweans

- Consistence with constitutional provisions such as property rights, the rule of law and the avoidance of imposition of equity partners.

In truth we had anticipated that the regulations would have been initially issued in draft form. This would allow stakeholders to comment seeing as this is such an important issue. We still ask that this be done once the revised draft is in place.

Below are the specific amendments that we propose:

1. **Management of the Review Process**

We recommend that government makes a public statement that the regulations are being reviewed, together with the relevant timelines.

As matters stand, there has been no coherent and full advice so that we all work to the same timetable.

Further, since the regulations are being reviewed it is only logical that the published SI 21 of 2010 in its current form be set aside until the replacement regulations are in place.

**Strategic Intent**

Indigenisation or economic empowerment is not an urgent item on the country's agenda. The economy is still in a very serious crisis with poor

performance all around. The utilities are in a deplorable condition and require injection of capital just as do businesses in general. We must position indigenisation as part of our investment promotion strategy and efforts. Right now these two are not relating whatsoever. The investment promotion regulations must be framed first and the indigenisation must support that economic growth and development thrust. Investment efforts must be deliberately focused on infrastructure such as power (Zesa, Coal mining), communications and specifically players such as Zisco, NetOne and TelOne. The state enterprise sector is crying out for investment and we propose urgent privatisation with local players offered a significant portion to buy.

Our strategic challenge is how to grow the economy. We must not accept the mediocre performance that we have now. Unless and until we attend to infrastructure investment needs and release the ownership of most state enterprises too, any economic empowerment will itself flounder.

Let us focus on the strategic and tangible intent. Most strategic economic enterprises are in fact in state or indigenous ownership. However, the law is here and we have made an attempt on how to best

build around them. Ideally, we should have approached the issue differently and with more prior consensus.

We must encourage new investment and not attempt to interfere too much with existing companies who are under capitalised and operating at low capacity utilisation.

**2. 51% Threshold**

Members feel that the 51% figure has been set as an aspirational target rather than prescriptive. Companies in the last 10 years have not been able to recapitalise and we are operating with virtually obsolete equipment. There is a dire need for huge amounts of money to be spent to get capacity up to expected levels. Locals do not have these sums of money, let alone funds to buy the indigenous stakes. 51% seems too high a target.

We propose figures around 20-25% and that specifics be determined by industry/sector guidelines. Some members are even asking as to why we need thresholds.

**3. Timeframe for submission of Form ID GO1**

The present timeframe for submission of Form IDGO1 advising the extent of indigenisation and the indigenisation plan is by April 15, 2010. Given the significant changes in the economy over the last 12 months and the need for recapitalisation that most companies have, we believe that the present timeframe is too short.

We recommend that the timeframe for submission of the indigenisation and the indigenisation plans be extended to a six month period. For the present regulations this would take the deadline to September 30, 2010.

#### **4. Powers of the Minister**

At the NECF meeting of Thursday February 25, 2010, the Minister accepted that the powers vested in the minister in the Main Act are excessive. The potential for abuse and/or misuse must be curtailed. There should be minimal room for discretion by the minister.

We recommend that the powers of the minister be reviewed. We are aware that some work needs to be done to re-draft the relevant sections in the Act.

#### **5. Increasing Stakeholder and investor confidence**

Again, at the said NECF meeting, the Minister indicated that specific stakeholder and investor representation will be accommodated in the structures of the indigenisation board. There is to be sector representation.

It is also proposed that to further increase stakeholder and investor confidence, an Appeal Board be instituted. This should be composed of business, labour and relevant civic society. We are mindful that any aggrieved persons can still seek justice through the court system.

#### **Funding of the equity participation**

The regulations use the term "cede" with reference to the process of changing the controlling interest in companies. We suggest the use of the term "sell"

The regulations are silent on how the indigenous players are to pay for their shareholding. The National Empowerment Fund provided for in the Act has the potential to make a critically important contribution.

We recommend that this Fund be professionally managed using persons with private equity and investment skills. We also recommend that the fund be open to outside investors and those investments in this fund be considered as

a way of meeting ownership criteria. For example if a business with USD20 million invests USD2 million in the fund, it will be deemed to have met a 10% ownership criteria.

### **Threshold Value**

The threshold value is now prescribed as an asset value of USD500 000. This will encompass many quite small businesses. In fact prescribing any figure could lead investors to break-up their businesses just to fit with this very low figure. Again ideally it should not be necessary to prescribe a figure. However if government has to do so, we suggest a minimum of \$2 million.

We recommend an increase in the threshold to USD2 million.

### **Overall Timeframe to Reach Target Indigenisation Levels**

The overall timeframe to reach indigenisation target levels of 51% ownership is five years. Given the investment requirements of the economy, we believe that the timeframe is too short. We therefore recommend a timeframe of 10 years.

### **Equity Equivalent Programmes (EEP)**

Most multi nationals for various reasons need to own 100% or at least controlling interests in their investment. This is common in China, as it is in Europe. South Africa has recognised and accepted this and allows for Equity Equivalent programmes in its empowerment regulations. Under these EEP's the multi national can meet ownership criteria and still own 100% or at least majority interest in their local operation.

For example if a multi national has an investment with USD100 million and assists locals in a interest free loan to start a business, preferably but not exclusively, in the same sector and worth USD10 million, then it is deemed to have met the 10% ownership criteria. Such a scheme could support the land reform programme where resources are sorely required for equipment, farming inputs and irrigation. Also this has the potential to broaden the empowered base.

### **Technology transfer**

Modern technology is of ever growing importance today. We must use the indigenisation exercise as an opportunity to access better and modern technologies. The gazetted regulations already provide for credit to be given where technologies are being transferred.

We recommend that guidelines be published that clarify how credit for technology transfer can be accrued.

### **Reserved Sections**

The Act and accompanying regulations stipulate that from now on each and every investment must include the indigenisation and/or empowerment component. We believe that maintaining a list of sectors reserved for indigenous players is in fact counter-productive. It will cause indigenous Zimbabweans to lose out on opportunities to partner with appropriate foreign investors. In any case such foreign investment could find homes within other SADC and COMESA sister countries and Zimbabwe will end up importing products which could have been produced here.

We recommend that the regulations be amended to allow all sectors to be open for investment.

### **Skills Development**

The modern economy is evolving into “knowledge” economies. Skills are of pre-eminent importance. This is already recognised in the regulations. As with technology transfer, we recommend that specific and transparent criteria should be developed to guide skills development and transfer credits.

### **Social and Community Investments**

The regulations also recognise the importance of social and community investment. We recommend these criteria be set aside for this. For example in South Africa a target of net profit after tax is the compliance target in the 6-10 years range

### **Sectoral Approach**

A sectoral approach when looking at ownership is very helpful. The focus will then be ownership of the sector or industry rather than of an individual company operating in the sector. This approach allows for greater flexibility while still meeting the overall objectives. Again this could benefit the land reform programme and other areas of the economy which desperately require investment and other support if they are to make their full contribution to the growth and development of the economy.

Under this scheme, if the sector or industry is 51% owned by Zimbabweans then the sector can be considered to be indigenised.

We recommend that provision is made in the regulations of sectoral indigenisation.

### **Recognition of Sale of Assets**

The South African BEE recognises the sale of assets as contribution towards meeting ownership criteria. For example if a business has two divisions each worth a USD5 million and sells one division to indigenous entrepreneurs, it would be deemed to have met a 50% ownership criteria. We recommend that these regulations be enhanced to recognise sale of assets as contributing towards ownership targets.

### **Leasing of Business or other Assets including Mining Claims**

One approach that facilitates empowerment and at the same time encourages investments is the provision of a lease option.

Under a lease option, indigenous persons can lease assets, business land, mining claims and so on to foreign investors for a lease consideration whilst at the same time maintaining ultimate ownership of the asset being leased.

We therefore recommend that provision for leasing is included in the regulations.

### **Procurement as a way of meeting empowerment targets.**

Procurement criteria are an extremely effective way of advancing the indigenisation agenda. What makes them particularly useful is that this

approach results in a broader empowerment than in a direct ownership transaction.

We therefore recommend that greater emphasis be give to procurement initiatives. This can be done through the publishing of comprehensive guidelines and related empowerment credits they are received as and when guidelines are met

### **Capital Gains Tax Relief**

The envisaged sales of shares that will take place as companies sell to indigenous investor would give rise to taxable gains in many cases. We recommend that as an incentive to empowerment, approved empowerment transactions qualify for exemption from Capital Gains Tax.

### **Public Companies**

It is often difficult to know with certainty the true identity of shareholders in public companies. Furthermore the identity and composition can change at anytime. This makes compliance with the current regulations very tricky.

We therefore recommend that for public companies freely trading on the Zimbabwe Stock Exchange, these companies be deemed indigenous for the purposes of the law.

This will be with the provision that the Minister has full powers to conduct detailed investigations into the shareholding should there be grounds to do this.