# The implications of the revised framework for Indigenization and Economic Empowerment on Investments in the Mineral Resource Sector in Zimbabwe

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## Introduction

In 2007, Zimbabwe promulgated the Indigenization and Economic Empowerment (IEE) Act[1], which seeks amongst other objectives to provide support measures for the economic empowerment of indigenous Zimbabweans. The Africa Mining Vision that was adopted by the Africa Union Head of States in February 2009 supports the narrative that Africa's transformation of the continents social and economic development is premised on natural resources.[2] Several narratives have however been proffered among policy makers, civil society organizations, academics and the business community. Most of these narratives painted a very gloomy picture with regards to the interpretation of IEE Act. The 'confusion' in its interpretation has mainly been credited for the slow compliance among the foreign owned companies. The President of the Republic of Zimbabwe at the ZANU PF's 15th National People's Conference in December 2015, conscious of the slow rate of compliance pronounced that government would not accept any company that refuses to comply with indigenization in 2016. He added that all companies should comply irrespective of the incorrect views emanating from those claiming that indigenization is "inhibiting". It is against this background that the Minister of Youth, Indigenization and Economic Empowerment developed a framework, procedures and guidelines for the implementation of the IEE Act in line with Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET) objectives and the 10 Point Plan.[3] The aim of this short paper is to analyze the implications of the new framework on investments in the mineral resource sector in Zimbabwe as a way of steering conversations on the same.

## Background

In pursuant with the IEE Act, Blanket Mine which is owned by Caledonia Mining Cooperation[4] signed a Memorandum of Understanding (MOU) with the Minister of Youth, Development, Indigenisation and Empowerment of the Government of Zimbabwe[5] in which it ceded 51% of its

[1] Chapter 14:33.
[2] http://www.africaminingvision.org/amv_resources/AMV/Africa_Mining_Vision_English.pdf
[3] Section 1 of The Frameworks, Procedures And Guildlines For The Implementing The Indigenization And Economic Empowerment Act (Chapter 14:33).
[4] http://www.caledoniamining.com/index.php/operations/blanket-gold-mine.
[5] Ibid.

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equity for a ‘paid’ transactional value of US$30.09 million in February 2012. Blanket Mine was the first, and to date the only mining company in Zimbabwe to fully comply with the provisions of the IEE Act with effect from September 2012.[6] Caledonia facilitated the vendor funding of the 51%, which was going to be repaid through the forfeiture of future dividend streams.[7] Blanket mine also reconstituted its board taking into account the new ownership structure. The Government of Zimbabwe accepted this indigenization model and the company was issued with a Certificate of Compliance. Efforts by other mining companies such as Zimplats, Mimosa and Unki to adapt the Blanket Mine Indigenization Implementation Plan (IIP) model hit a snag. For instance Implats[8] submitted an IIP that valued 51% of Mimosa at US$550 million and Zimplats at US$971 million. These transactions where to be financed through vendor funding arrangements and forfeiture of future dividend streams.[9] Implats IIP proposal was rejected though the company is still in negotiation with the government on how best to be in compliance with the IEE Act.[10] The government has to date only approved the sale of 10% to the Employee Share Ownership Trust, pending the Reserve Bank of Zimbabwe approval.

**Indigenization and Economic Empowerment frameworks applicable to the Mineral Resources Sector**

The Government Notice 114 of 2011 states that all businesses operating in the mining sector must dispose 51% equity to designated entities.[11] These entities include the 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.[12] The rationale for ceding 51% equity to these entities lies on the state having sovereign ownership of the mineral resources. This means that the government can incur costs in the

[6] ibid.

[7] Vendor financing is a form of lending which a company lends money to be used by the borrower to buy the vendors shares.

[8] Implats is the Holding company of Zimplats and Mimosa

[9] 2013 Implats integrated annual report.

[10] J.W Chikuhwa *Zimbabwe: The End Of The First Republic* (2013).

[11] Section 15.

[12] Section 16.

compliance process but will not pay for in the acquisition of 51% equity [13] hence should it come "at no monetary cost to the government or the designated entities."

**Pathways to implementing Indigenization and Economic Empowerment Framework**

- The framework provides that all new applications must incorporate Indigenization Implementation Plan.[14]
- The framework also provides that all businesses that were established prior to and after the promulgation of the regulations should within a period of 5 years submit their IIPs.
- In order to ensure compliance with the IEE Act, the Minister[15] has imposed a levy that has been initially pegged at 10% of gross annual turnover of the business concerned.[16]
- The framework also provides for a rebate for those businesses that are at different levels of compliance.[17] The effect of the rebate on the company is that they reduce the amount of Indiginisation Compliance and Empowerment levy payable relative to the level of compliance. These rebates fall into 3 categories namely the Indigenization legislation compliance rebate,[18] the Good Corporate Citizenship rebate[19] and the Indigenous shareholding rebate.[20]

**The implications of the framework on investments in the mining sector**

- Compliance with IEE regulations in the mining sector is mandatory.
- Government or its agencies will not pay any monetary costs for the acquisition of the 51% equity.
- Mining companies are given up to a maximum of 5 years to comply with the IEE regulations.
- The government has given mining companies rebates, which relates to the level of compliance.
- No foreign owned companies will be licensed to invest in reserved sectors of the economy. This includes artisanal mining that is listed as a reserved sector.

[13] Section 13.
[14] Section 28.
[15] Minister Zhuwawo at Breakfast meeting on 14 January, 2016 at Celebration Centre.
[16] This follows Section 25 of the framework that invokes section 17 of the IEE Act. Section 17 of the IEE Act empowers the Minister of Indigenization, Youth and Economic Empowerment in consultation with the Minister of Finance and Economic Planning to impose an Indigenization, Youth and Economic Empowerment levy.
[17] Section 39.
[18] Section 41.
[19] Ibid.
[20] Ibid.

- Unlike other sectors of the economy, the mining sector is excluded from earning empowerment credits. Empowerment credits are given to businesses in the reserved sectors of the economy that fulfill the goals of the IEE Act through the accomplishment of socially and economically desirable objectives.[21]
- It is mandatory for all mining companies to procure at least 50% of their goods and services from local business.[22]
- At the very least, indigenous businesses benefitting from the National Indigenization and Economic Empowerment Fund, or the Indigenization programme will earn rebates to the extent of their ethical and good business conduct.

**Conclusion**

- The framework clearly reinforces the government's position on Indigenization and Economic Empowerment and how this feeds into achieving the ZIMASSET and the 10 Point Plan.
- In addition to the taxes, fees and the ceding of 51% equity, the framework further requires that mining companies procure 50% of their goods and services from local businesses. This requirement has been cited as 'inhibitive' by mining companies as the cost of local suppliers is significantly higher than that of similar goods from offshore suppliers.[23]
- Although there seems to be an option for mining companies to tailor make their own empowerment model that are in line with the objectives of ZIMASSET and 10 Point Plan, the provisions of the IEE framework seem to imply that mining companies either can pay the Indigenisation Compliance and Empowerment levy or they cede 51% equity to government and its entities.
- The new framework is silent on the shareholding structure in the event of new capital injection or investments in capital investment programmes. Lack of clarity in this regard implies that new capital investment projects will have to be funded from internally generated cash and this will negatively affect declaration of dividends.

[21] Empowerment credit do not apply to foreign owned businesses already operating in the reserved sectors of the economy.
[22] Section 48.
[23] State of the Mining Industry Survey Report 2015

## Recommendations

- The government should make it clear with regards to the shareholding structure particularly in circumstances involving new capital injections.
- Government should value mineral resources based on quality, accessibility and quantity of the mineral deposits this would then guide the IIPs.
- The Ministry of Youth, Indigenization and Economic Empowerment should categorically state in the Frameworks and Procedures that all ‘non capital intensive goods’ and unskilled/semi-skilled labour services should be procured from businesses and communities directly affected by mining activities.
- The IEE Framework should clearly state that the procurement of goods and services that are not ‘capital intensive’ should be reserved for local businesses from communities that are directly affected by mining operations.
- Government should allow mining companies to arrange vendor financing mechanisms for acquiring the 41% shareholding because it helps to successfully transition the business to the fnew owners.