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NATIONAL INCOMES AND PRICING COMMISSION

MEMORANDUM

This Bill will establish a National Incomes and Pricing Commission whose mandate is to develop pricing models for goods and services produced in this country with a view to balancing the viability of producers and the incomes and welfare needs of the people of Zimbabwe.

In more detail the individual clauses of the Bill are as follows:-

Part 1

Clause 1 sets out the Bill's short title and provides for its date of commencement.

Clause 2 defines the terms used throughout the Bill.

Part II

Clause 3 establishes the National Incomes and Pricing Commission. In terms of Clause 4 the Commission will be made up of at least five and not more than eight commissioners and these will be appointed by the President. The commissioners must be people who have knowledge and experience in industry, law, finance, labour, commerce and administration. The provisions relating to terms and conditions of office, vacation of office, filling of vacancies, meetings and procedures of the Commission are as set out in the First Schedule

Clause 5 sets out the functions of the Commission, which include carrying out research for the work related to pricing and production in all sectors of the economy in order to come up with pricing policy models, to monitor price trends of goods and services, to consider and approve requests for price adjustments of monitored goods, to carry out inspections and any other functions authorised under the Bill.

Clause 6 provides for powers of the Commission and the Second Schedule lists the powers.

Clause 7 authorises the Minister to give policy directions to the Commission.

In clause 8 contracts approved by the Commission may be entered into or executed on behalf of the Commission by persons authorised by the Commission.

The Commission is obliged in clause 9 to prepare and submit reports of its activities to the Minister.

Part III

This Part provides for the Secretariat of the Commission which shall consist of the Chief Executive Officer and any other employees appointed in terms of this Bill. The Chief Executive Officer will be appointed by the Commission with the approval of the Minister under clause 11. The terms and conditions of the Chief Executive Officer are also spelt out in the clause. The Commission will also employ people who are necessary to conduct the business of the Commission. Matters to deal with the suspension, discipline, or discharge of the employees will be dealt with by the Commission.

Part IV

The Commission will be funded by the State from moneys appropriated by an Act of Parliament under Clause 13. The Commission is authorised in Clause 14 to invest any moneys it does not immediately require subject to the Minister's approval. In Clause 15 the Commission is required to keep proper books of accounts and other records of its activities. Under Clause 16, the Commission will appoint registered auditors to audit the accounts of the Commission. Clause 17 provides powers of auditors and the Commission and all staff are enjoined to produce all information and records as may be required by the auditors for the purpose of the audit.

Part V

This Part deals with general provisions.

Clause 18 obliges any person to whom a notice has been served to provide information which the Commission may require and relating to an issue the Commission may be considering in pursuance of its functions authorised in terms of this Act.

In Clause 19 the Commission may designate any of its employees to be inspectors for the purpose of this Act and issue them with certificates which shall be produced upon demand by any interested person before carrying out any functions under this Act.

Clause 20 gives inspectors powers of entry and inspection upon any premises where there is reasonable suspicion that there are any violations prohibited in terms of this Bill being done. Persons found guilty will be liable to pay a fine not exceeding level twelve or imprisonment not exceeding three years or both such fine and such imprisonment.

Clause 21 makes it an offence for any person carrying on the business of selling goods to refuse to sell the goods upon tender of immediate payment of the maximum price or falsely denies that he or she has the goods or fails to expose them for sale.

Every wholesaler or retailer is obliged under clause 22 to display the price of goods offered for sale. A fine not exceeding level ten or imprisonment not exceeding two years will be imposed on those found guilty.

Conditional selling not ordinarily authorised is prohibited under Clause 23 and attracts a fine not exceeding level fourteen or imprisonment not exceeding five years for those found guilty.

Clause 24 requires all employees working under the Commission to keep secret all information and documents coming to their knowledge in the course of their functions.

Under Clause 25, no liability will attach to the Commission or any employee of it for any loss or damage incurred by any person as a result of the actions done in good faith by the Commission or its employees in carrying out its functions under this Bill except in circumstances of negligence.¹

Clause 26 creates offences for certain contraventions under the Bill. Persons found guilty of the offences will be liable to pay a fine not exceeding level fourteen or imprisonment not exceeding five years.

Clause 27 gives the Commission power to make by-laws with the approval of the Minister necessary in order to give effect to or carry out the provisions of this Bill.

Clause 28 makes a few amendments to the Control of Goods Act and to the general regulations made under that Act to harmonise the provisions of the Bill with those of the existing Control of Goods Act and the regulations.

¹ Clause 25 actually excepts "loss or damage ... caused by gross negligence or fraud". Veritas.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and date of commencement.
2. Interpretation.

PART II

NATIONAL INCOMES AND PRICING COMMISSION

3. Establishment of National Incomes and Pricing Commission.
4. Composition of Commission.
5. Functions of Commission.
6. Powers of Commission.
7. Policy directions.
8. Execution of contracts and instruments by Commission.
9. Reports of Commission and supply of information to Minister.

PART III

SECRETARIAT OF COMMISSION

10. Secretariat of Commission.
11. Chief Executive Officer.
12. Employees of Commission.

PART IV

FINANCIAL PROVISIONS RELATING TO COMMISSION

13. Funds of Commission.
14. Investment of moneys not immediately required by Commission.
15. Accounts of Commission.
16. Audit of Commission's accounts.
17. Powers of auditors.

PART V

GENERAL

18. Power to obtain information.
19. Inspectors.
20. Powers of entry and inspection.
21. Refusal to sell goods.
22. Display of prices of goods on sale.

23. Conditional selling.
24. Preservation of secrecy.
25. Exemption from liability for Commission.
26. General offences and penalties.
27. Regulatory powers of the Commission.
28. Amendment of Cap. 14:05 and S.I. 334 of 2001.

FIRST SCHEDULE: Provisions applicable to the Commission.

SECOND SCHEDULE: Powers of Commission.

PRESENTED BY THE MINISTER OF INDUSTRY AND INTERNATIONAL TRADE

BILL

To establish a National Incomes and Pricing Commission and to confer powers on functions on such a Commission in relation to incomes and pricing issues; to regulate the implementation of policies related to the determination of incomes and prices; to amend the Control of Goods Act [*Chapter 14:05*]; and to provide for matters connected therewith or incidental thereto.

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 National Incomes and Pricing Commission Act [*Chapter 14:32*].

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

In this Act-

"chairperson" means the chairperson of the Commission designated in terms of paragraph 5 of the First Schedule and includes the deputy chairperson of the Commission when performing the chairperson's functions;

"Commission" means the National Incomes and Pricing Commission established in terms of section 3;

"commissioner" means a member of the Commission, including the chairperson and deputy chairperson;

"consumer"² includes any person who purchases or offers to purchase goods otherwise than for the purpose of resale, but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale;

"customer" means a person who purchases goods or services from another person;

"document" includes-

- (a) a book, plan, paper, parchment or other material on which there is writing or painting, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them;
- (b) a disc, tape, paper, or other device from which sounds or messages are capable of being reproduced; and
- (c) any other record of information;

"financial year", in relation to the Commission, means the period of twelve months ending on the 31st December;

"goods" means articles or things of any kind whatsoever that are capable of being owned or possessed including-

- (a) anything capable of being imported or exported; and
- (b) any kind of manufactured or unmanufactured commodity; and
- (c) any kind of animal or plant life;

"inspector" means a person designated as an inspector in terms of section 19;

"local industry" means the persons who in Zimbabwe are engaged in the business of producing or providing, otherwise than by importation, goods or services for consumption in or export from Zimbabwe, and includes any class of such persons;

"Minister" means the Minister of Industry and International Trade or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"premises" includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

"price" includes-

- (a) a charge of any description; and
- (b) in relation to goods or services, any pecuniary benefit, whether direct or indirect, received by a person for or in connection with the supply by the person of the good or services;

² The word "consumer" is not used elsewhere in the Bill. Veritas.

"price monitored or controlled goods or services" means goods and services whose prices are monitored or controlled by the Control of Goods Act [*Chapter 14:05*] or any other enactment;

"pricing violations" means violations of any enactment relating to the price monitored or controlled goods and services;

"regulatory authority" means an entity established in terms of an enactment responsible for regulating an industry;

"respondent" means a person against whom a complaint of a prohibited practice has been initiated in terms of this Act;

"sale" includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

"services" includes the rights or benefits provided under an agreement for the performance of work (otherwise than under a contract of service), whether with or without the supply of goods.

PART I

NATIONAL INCOMES AND PRICING COMMISSION

3 Establishment of National Incomes and Pricing Commission

There is hereby establish a Commission, to be known as the National Incomes and Pricing Commission, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that a body corporate may by law perform.

4 Composition of Commission

(1) Subject to subsection (2), the Commission shall consist of not less than five or more than eight commissioners appointed by the President.

(2) The persons appointed under subsection (1) shall be chosen for their knowledge and experience in industry, law, finance, labour, commerce or administration and their professional qualifications.

(3) The provisions relating to the terms and conditions of office, vacation of office, filling of vacancies, meetings and procedures of the Commission and other related matters are set out in the First Schedule.

5 Functions of Commission

The functions of the Commission shall be to-

- (a) undertake research and maintain a comprehensive nationwide statistical database to be used in the analysis of pricing and production costs across all sectors of the economy and developing periodic pricing policy models, frameworks and strategies;
- (b) monitor price trends of goods and services through comprehensive surveys and inspections, producing periodic price monitoring reports and initiating corrective measures in cases of unscrupulous business practices affecting Zimbabwe's pricing system;

- (c) consider, approve or determine, as the case may be-
 - (i) requests for price adjustments of price monitored or controlled goods and services and the impact thereof on the economy of such adjustments;
 - (ii) the major cost drivers in various industrial sectors;
 - (iii) prices and industry mark-ups and trade margins in relation to price monitored or controlled goods and services;
- (d) investigate pricing violations;
- (e) provide regular reviews and updates on capacity utilisation in various sectors of the economy, promote public understanding and disseminate information on matters related to prices and wages, compile regular reports on the status of incomes and conduct stakeholder training, education and awareness campaigns on pricing and incomes issues;
- (f) establish the determinants of wages and wage variations in all sectors of the economy and provide information on minimum wages for the purposes of wage and salary negotiations, carry out productivity studies and track productivity trends in the economy and assess the impact of remuneration packages on the prices of goods;
- (g) perform any other function that may be conferred or imposed upon the Commission by this Act or any other enactment.

6 Powers of Commission

Subject to this Act, for the better exercise of its functions, the Commission 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 Second Schedule, either absolutely or conditionally and either solely or jointly with others.

7 Policy directions

(1) Subject to subsection (2), the Minister may give the Commission such general directions relating to the policy the Commission is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest.

(2) Before giving the Commission a direction in terms of subsection (1), the Minister shall inform the Commission, in writing, of the direction and the Commission shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal.

(3) The Commission shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given to the Commission in terms of subsection (1), the Commission shall ensure that the direction and any views that the Commission has on it in terms of in terms of subsection (2) are set out in the Commission's annual report.

8 Execution of contracts and instruments by Commission

An agreement, contract or instrument approved by the Commission may be entered into or executed on the Commission's behalf by any person generally or specially authorised by the Commission for that purpose.

9 Reports of Commission and supply of information to Minister

(1) As soon as practicable after the end of each financial year, the Commission shall prepare and submit to the Minister a report on all its activities during the previous financial year.

(2) In addition to the report referred to in subsection (1), the Commission-

- (a) shall submit to the Minister such other reports as the Minister may require; and
- (b) may submit to the Minister such other reports as the Commission considers desirable;

in regard to the operations and activities of the Commission.

PART III

SECRETARIAT OF COMMISSION

10 Secretariat of Commission

The secretariat of the Commission shall consist of the Chief Executive Officer and other employees of the Commission appointed in terms of this Act.

11 Chief Executive Officer

(1) Subject to this Act, the Commission shall appoint a person approved by the Minister to be the Chief Executive Officer of the Commission, on such terms and conditions as the Commission, with the approval of the Minister, may fix.

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

(3) The Board shall terminate the appointment of the Chief Executive Officer if he or she would be required in terms of paragraph 3(1)(b), (c) or (d) of the First Schedule to vacate his or her office had the provisions of that paragraph and of paragraphs 1(b) and (c) of the First Schedule applied to him or her.

(4) Subject to the general control of the Commission, the Chief Executive Officer shall be responsible for-

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

(5) The Commission may assign to the Chief Executive Officer such other functions as the Commission thinks fit:

Provided that the Commission shall not assign to the Chief Executive Officer any duty that has been assigned to the chairperson of the Commission.

(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 Commission may determine, and may be revoked by the Commission at any time.

12 Employees of the Commission

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

(2) The Commission may delegate its powers referred to in subsection (1) to the Chief Executive Officer.

(3) The Commission may, with the approval of the Minister, make rules relating to staff development.

PART IV

FINANCIAL PROVISIONS RELATING TO COMMISSION

13 Funds of Commission

The funds of the Commission shall consist of-

- (a) moneys payable to the Commission from moneys appropriated for the purpose by Act of Parliament; and
- (b) any other moneys that may vest in or accrue to the Commission, whether in terms of this Act or otherwise; and
- (c) the proceeds of such share of the value of deposit fines collected by the Commission for pricing violations as is fixed by the Minister with the consent of the Minister of Finance.

14 Investment of moneys not immediately required by Commission

Moneys not immediately required by the Commission may be invested in such manner as the Commission in consultation with the Minister may approve.

15 Accounts of Commission

(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

16 Audit of Commission's accounts

(1) The Commission shall appoint as auditors one or more persons approved by the Minister who are registered as public accountants in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] to audit the accounts of the Authority.

(2) The auditors appointed in terms of subsection (1) shall make a report to the Commission and to the Minister on the statement of accounts prepared in terms of section 15(2), and in their report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's financial affairs.

(3) In addition to the report referred to in subsection (2), the Minister may require the Commission to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the Commission's activities, funds and property as the Minister may consider expedient.

(4) If in the opinion of the auditors appointed in terms of subsection (1)—

- (a) they have not obtained the information and explanations they require; or

- (b) any accounts or records relating thereto have not been properly kept; or
- (c) the Commission has not complied with any provision of this Part;

the auditors shall include in their report made in terms of subsection (2) or (3), as the case may be, a statement to that effect.

(5) If in terms of the Audit and Exchequer Act [*Chapter 22:03*], the Commission's accounts are required to be audited by the Comptroller and Auditor-General, any reference in this section to auditors appointed in terms of subsection (1) shall be construed as a reference to the Comptroller and Auditor-General.

17 Powers of auditors

(1) The auditors appointed in terms of section 16 shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purpose of their audit.

(2) If the Chief Executive Officer or any commissioner or employee or agent of the Commission fails without just cause to comply with a requirement of an auditor in terms of subsection (1), he or she shall be guilty of an offence and liable to a fine not exceeding level ten or imprisonment for a period not exceeding two years or both fine and such imprisonment.

PART V

GENERAL

18 Power to obtain information

(1) The chairperson may, by notice in writing signed by him or her and served on a person, require the person-

- (a) to furnish to the Commission, in writing, such information in relation to the affairs of the person as is specified in the notice; or
- (b) to produce to the Commission, in accordance with the notice, such documents in relation to the affairs of the person as are specified in the notice;

being information that is, or documents that are, relevant to-

- (i) the consideration by the Commission of the matters contained in a notice given to the Commission by the person; or
- (ii) an inquiry that is being held in relation to the person; or
- (iii) a supply of goods or services by the person, being a supply of a kind in relation to which this Act applies.

(2) Any person who-

- (a) without reasonable excuse, refuses or fails to comply with a notice under subsection (1); or
- (b) in purported compliance with such a notice, knowingly furnishes information that is false or misleading;

shall be guilty of an offence and liable to a fine not exceeding level ten or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

19 Inspectors

(1) The Commission may designate any of its employees to be inspectors for the purpose of this Act.

(2) Inspectors designated under subsection (1) shall also be inspectors for the purposes of the Control of Goods Act [*Chapter 14:05*].

(3) The Commission shall cause every inspector to be furnished with a certificate of appointment signed by the Chief Executive Officer, which the inspector shall exhibit on demand by any interested person before carrying out any functions under this Act or the Control of Goods Act [*Chapter 14:05*].

20 Powers of entry and inspection

(1) An inspector may at all reasonable times-

(a) enter any premises in or on which he or she has reasonable cause to suspect that there are goods or documents relating to any pricing violations;

(b) require any person upon the premises-

(i) to disclose any information at his or her disposal; and

(ii) to produce any book, record or document or extract therefrom that may relate in any way to any actual or suspected pricing violations;

and

(c) make copies of or take extracts from any book, records or document referred to in paragraph (b).

21 Refusal to sell goods

Any person carrying on business in the course of which any price monitored or controlled goods and services are supplied, and who has in his or her possession any quantity of the goods, and who-

(a) falsely denies to an inspector that he or she has the goods in his or her possession; or

(b) refuses or fails to supply to any customer the goods upon tender of immediate payment of the lawful maximum price thereof; or

(c) refuses or fails to expose or offer for sale such goods continuously;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

22 Display of prices of goods on sale

(1) Every wholesaler and retailer shall display the prices of goods offered for sale.

(2) Any person who fails to display prices of goods offered for sale shall be guilty of an offence and liable to a fine not exceeding level ten or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

23 Conditional selling

Any trader, manufacturer, producer, commission agent or retailer to whom an offer to buy price monitored or controlled goods has been made and who imposes any condition of sale other than a condition-

- (a) requiring immediate payment on delivery thereof; or
- (b) prescribing the terms within which payment must be made or delivery taken; or
- (c) requiring a deposit in respect of any container of such goods;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

24 Preservation of secrecy

(1) Every person who-

- (a) is employed in carrying out the provisions of the Act; or
- (b) examines documents under the control or in the custody of the Commission;

shall, subject to subsection (2), keep secret, and aid in keeping secret, all information coming to his or her knowledge in the exercise of his or her functions.

(2) No person referred to in subsection (1) shall, except in the exercise of his or her functions under this Act or unless he or she is required to so by order of a competent court-

- (a) communicate information coming to his or her knowledge in the exercise of his or her functions to any person who is not-
 - (i) the person to whom the information relates or by whom the information was furnished; or
 - (ii) the lawful representative of the person to whom the information relates or by whom the information was furnished; or
 - (iii) a person to whom the information is required to be communicated in terms of this Act or any enactment relating to the Public Service, the collection and safe custody of public moneys or the audit of public accounts;

or

- (b) allow any person who is not a person referred to in paragraph (a)(i), (ii) or (iii) to have access to any record, document or application under the control or in the custody of the Commission which contains information referred to in that subparagraph.

(3) No person referred to in subsection (1) 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.

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

25 Exemption from liability for Commission

No liability shall attach to the Commission or to a commissioner or any committee or employee of the Commission 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 Commission or a committee or employee:

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 gross negligence or fraud.

26 General offences and penalties

(1) Any person who-

- (a) obstructs or hinders any person authorised under this Act to enter and inspect or search any premises or to stop and search any vehicle or to examine any books, accounts or documents or to seize any vehicle, goods or money; or
- (b) refuses or delays or fails to produce any books, accounts or other documents or certified copies or translations thereof relating to his or her business which he or she may be required under this Act to produce; or
- (c) refuses or delays or fails to furnish any information or, in purported compliance with any requirement of this Act, knowingly or without reasonable grounds for believing the same to be true furnishes information which is false or misleading in any material particular, whether upon demand being made by a person authorised under this Act to demand the same or otherwise; or
- (d) publishes or otherwise discloses any information in contravention of any provision of the Act; or
- (e) refuses or delays or fails to, comply with any order, prohibition, direction, demand, requirement or notice lawfully made, given, issued, served or published under this Act;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who offers for sale any goods or services at prices above the approved prices shall be guilty of an offence and liable to a fine not exceeding level fourteen or an amount equivalent to five times the amount of any profit or advantage unlawfully gained or acquired by the convicted person as a result of the offence, whichever is greater.

(3) Where any trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter or person rendering any services has been found guilty of an offence under this Act, the court may, in addition to any other penalty to which the convicted person may be liable, make such order, having effect during such period, as the court thinks fit, for preventing the offender from carrying on, or being concerned directly or indirectly in the carrying on of, the business in the course of which the transaction constituting the offence was effected, or any branch of that business, or in any business or branch of a business of a similar character.

(4) Where a person charged with any offence under this Act is a body corporate, every person who, at the time of the commission of the offence, was a director, manager or officer of the body corporate may be charged jointly in the same proceedings with such body corporate, and, where the body corporate is convicted of the offence, every such director, manager or officer shall be deemed to be guilty of that offence unless he or she proves that the offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of the offence.

27 Regulatory powers of the Commission

(1) Subject to subsection (2), the Commission, may make by-laws providing for all matters which by this Act are required or permitted to be prescribed or which in its opinion, are necessary or convenient to be prescribed in order to carry out or give effect to this Act.

- (2) By-laws made in terms of subsection (1) may provide for-
 - (a) the manner in which inspections are to be conducted;

- (b) the manner in which investigations are to be carried out;
- (c) factors to be taken into consideration in the price determination of price monitored or controlled goods and services;
- (d) factors to be considered in incomes adjustments;
- (e) the listing of price monitored or controlled goods and services.

(3) By-laws made in terms of subsection (1) shall not have any effect until they have been approved by the Minister and published in a statutory instrument.

28 Amendment of Cap. 14:05 and Statutory Instrument 334 of Agricultural Land Settlement Act [Chapter 20:01]

(1) The Control of Goods Act [Chapter 14:05] is amended-

- (a) in section 2 ("Interpretation") by the insertion of the following definition-

""Commission" means the National Incomes and Pricing Commission established in terms of section 4 of the National Incomes and Pricing Commission Act [Chapter 14:32];";

- (b) in section 3 ("Regulations for the control of goods") by the insertion after "Whenever" of "on the recommendation of or in consultation with the Commission,".

(2) The Control of Goods (Price Control) Regulations, 2001, published in Statutory Instrument 334 of 2001, is amended-

- (a) in section 2 ("Interpretation") by the repeal of the definition of "inspector" and the substitution of-

""inspector" means a person designated as an inspector in terms of section 19 of the National Incomes and Pricing Commission Act [Chapter 14:32];";

- (b) by the repeal of section 30.

FIRST SCHEDULE (Section 4(3))

PROVISIONS APPLICABLE TO THE COMMISSION

1. Disqualifications for appointment as commissioner.
2. Terms and conditions of service of commissioners.
3. Vacation and suspension of commissioners from office.
4. Filling of vacancies in Commission.
5. Chairperson and deputy chairperson of Commission.
6. Meetings and procedure of Commission.
7. Committees of Commission.
8. Remuneration and allowances of commissioners and members of committees.
9. Disclosure of interests by commissioners and members of committees.
10. Validity of decisions and acts of Commission and committees.
11. Minutes of proceedings of Commission and committees.

Disqualifications for appointment as commissioner

1. (1) A person shall not be appointed as a commissioner or be qualified to hold office as a commissioner if—

- (a) he or she is not a citizen of or ordinarily resident in Zimbabwe; or
- (b) in terms of a law in force in any country—
 - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) he or she has made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;

or

- (c) he or she has been convicted in Zimbabwe or in any country of an offence involving fraud or dishonesty and sentenced to a term of imprisonment imposed without the option of a fine, whether or not any portion of the sentence has been suspended, and he or she has not received a free pardon.

(2) A member of Parliament shall not be qualified for appointment as a commissioner.

(3) A person shall not be qualified for appointment as a commissioner if he or she is a member of two or more other statutory bodies.

(4) For the purposes of subsection (3)-

- (a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
- (b) "statutory body" means-
 - (i) any commission established by the Constitution; or
 - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a commission established by the Constitution.

Terms and conditions of service of commissioners

2. (1) Subject to this Part, a commissioner, other than the chairperson and deputy chairperson, shall hold office for such period, not exceeding three years, on his or her appointment, and upon the expiry of his or her term of office he or she shall be eligible for re-appointment as a member.

(2) On the expiry of the period for which a commissioner has been appointed in terms of subsection (1), he or she shall continue to hold office for a period not exceeding six months, until he or she has been re-appointed or his or her successor has been appointed.

(3) Subject to this Part, a commissioner, other than the chairperson and deputy chairperson, shall hold office on such terms and conditions as the President may fix for commissioners generally.

Vacation and suspension of commissioners from office

3. (1) A commissioner shall vacate his or her office and his or her office shall become vacant—

- (a) one month after the date upon which he or she gives notice to the President, through the Minister, of his or her intention to resign, or after the expiry of such other period of notice as he or she and the Minister may agree; or
- (b) if he or she becomes a member of Parliament; or
- (c) if he or she becomes disqualified in terms of paragraph 1(1)(a) or (b) or paragraphs 1(2) or (3) to hold office as a commissioner; or
- (d) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country.

(2) The President may require a commissioner to vacate his or her office if the commissioner—

- (a) has been guilty of improper conduct as a commissioner or of conduct prejudicial to the interests or reputation of the Commission; or
- (b) has failed to comply with any condition of his or her office fixed by the President in terms of paragraph 2(3) or paragraph 5(5); or
- (c) is mentally or physically incapable of efficiently performing his or her functions as a commissioner.

(3) The President, on the recommendation of the Commission, may require a commissioner to vacate his or her office if the President is satisfied that the commissioner has been absent, without the permission of the Commission, from three consecutive meetings of the Commission of which the commissioner was given not less than seven days' notice, and that there was no just cause for the commissioner's absence.

(4) The President—

- (a) may suspend from office a commissioner against whom criminal proceedings have been instituted in respect of an offence for which a sentence of imprisonment without the option of a fine may be imposed;
- (b) shall suspend from office a commissioner who has been sentenced by a court to imprisonment without the option of a fine, whether or any portion has been suspended, pending determination of the question whether the commissioner is to vacate his or her office;
- (c) may suspend from office a commissioner against whom misconduct charges have been preferred against pending determination;

and while that commissioner is so suspended he or she shall not exercise any function or be entitled to any remuneration as a commissioner.

Filling of vacancies in Commission

4. On the death of, or the vacation of office by, a commissioner, the President shall appoint a person qualified to fill the vacancy.

Chairperson and deputy chairperson of Commission

5. (1) The President shall designate one of the commissioners to be the chairperson of the Commission and another commissioner to be the deputy chairperson.

(2) The chairperson and the deputy chairperson of the Commission shall hold office for such period as the President may fix:

Provided that the President may at any time for good cause terminate the appointment of the chairperson or deputy chairperson and designate another commissioner as chairperson or deputy chairperson, as the case may be.

(3) The deputy chairperson shall perform the chairperson's functions during any period that the chairperson is unable to perform them.

(4) On the expiry of the period for which the chairperson or deputy chairperson has been appointed in terms of subsection (2), he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed.

(5) Subject to this Part, the chairperson and deputy chairperson shall hold office on such terms and conditions as the President may fix.

Meetings and procedure of Commission

6.(1) The Commission shall hold its first meeting at a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission will meet at least six times in each financial year.

(2) The chairperson—

- (a) may convene a special meeting of the Commission at any time; and
- (b) shall convene a special meeting of the Commission on the written request of the Minister or of at least two commissioners, which meeting shall be convened on a date not sooner than seven days nor later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting to be convened in terms of subsection (2), specifying the business of the meeting, shall be sent to each commissioner not later than forty-eight hours before the meeting.

(4) No business shall be discussed at a special meeting convened in terms of subsection (2) other than—

- (a) where the meeting was convened by the chairperson in terms of paragraph (a) of that subsection; such business as he or she specifies; or
- (b) where the meeting was convened by the chairperson in terms of paragraph (b) of that subsection, such business for which the meeting was requested.

(5) The chairperson or, in his or her absence, the deputy chairperson shall preside at meetings of the Commission:

Provided that if the chairperson and the deputy chairperson of the Commission are both absent from a meeting of the Commission, the commissioners present may elect one of their member to preside at the meeting as chairperson.

(6) Four commissioners shall form a quorum at any meeting of the Commission.

(7) Subject to subsection (11), all acts, matters or things authorised or required to be done by the Commission shall be decided by consensus or a majority vote of the commissioners at a meeting of the Commission at which a quorum is present.

(8) With the Commission's approval, the chairperson may invite any person to attend a meeting of the Commission or a committee where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Commission at that meeting.

(9) A person invited to attend a meeting of the Commission or a committee in terms of subsection (8) may take part in the proceedings of the Commission or the committee as if he or she were a commissioner or member thereof, but shall not have a vote on any question before the Commission or committee.

(10) Subject to paragraph 9, at all meetings of the Commission each commissioner present shall have one vote on any question before the Commission and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

(11) Any proposal circulated among all commissioners and agreed to in writing by a majority of them shall have the same effect as a resolution passed by a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that if a commissioner requires that such a proposal be placed before a meeting of the Commission, this subsection shall not apply to the proposal.

Committees of Commission

7.(1) For the better exercise of its functions, the Commission may establish one or more committees in which it may vest such of its functions as it thinks appropriate:

Provided that the vesting of any function in a committee shall not divest the Commission of that function, and the Commission may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee in terms of subparagraph (1), the Commission—

(a) shall appoint at least one commissioner of the Commission to be a member of the committee and shall designate that commissioner or, if more than one commissioner is so appointed, one of those commissioners, as the case may be, to be chairperson of the committee; and

(b) may appoint as members of the committee, on such terms and conditions as the Commission may fix, persons who are not commissioners.

(3) Meetings of a committee may be convened at any time and any place by the chairperson of the Commission or the chairperson of the committee.

(4) Subject to subparagraph (3) and to paragraphs 9, and 11, the procedure to be followed at any meeting of a committee shall be as fixed by the Commission.

Remuneration and allowances of commissioners and members of committees

8. Every commissioners or member of a committee shall be paid from the Commission's funds—

- (a) such remuneration, if any, as the Minister may fix, generally; and
- (b) such allowances as the Minister may fix to meet any reasonable expenses incurred by a commissioner or member of a committee in connection with the business of the Commission or the committee, as the case may be.

Disclosure of interests by commissioners and members of committees

9.(1) If a commissioner or a member of a committee or a spouse of such commissioner or member—

- (a) knowingly acquires or holds a direct or indirect pecuniary interest in a company or association of persons whose conduct is the subject of an investigation under this Act; or
- (b) owns immovable property or 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 functions as a commissioner or member of a committee, as the case may be;

the commissioner or member shall forthwith disclose the fact to the Commission or the committee, as the case may be.

(2) A commissioner or member referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the Commission or the committee, as the case may be, which relates to any investigation, order, contract, right, immovable property or interest referred to in that subsection.

(3) A commissioner or member referred to in subsection (1) shall not-

- (a) apply or negotiate for a contract with the Commission; or
- (b) tender for or acquire or hold a direct or indirect pecuniary interest in a contract with the Commission.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Validity of decisions and acts of Commission and committees

10. No decision or act of the Commission or committee and no act that is authorised by the Commission or committee shall be invalid solely because there was a vacancy in the membership of the Commission or the committee or because a disqualified person purported to act as a commissioner or member of the committee, as the case may be, at the time the decision was taken or the act was done or authorised.

Minutes of proceedings of Commission and committees

11. (1) The Commission shall cause minutes of all proceedings of and decisions taken at every meeting of the Commission and any committee to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Commission or committee concerned, as the case may be, shall be

accepted for all purposes as *prima facie* evidence of the proceedings and decision taken at the meeting concerned.

SECOND SCHEDULE (Section 6)

POWERS OF COMMISSION

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 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 Commission may, with the approval of the Minister, determine.
5. To open bank and building society and post office accounts in the name of the Commission 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. 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 Commission thinks desirable to obtain, and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
8. To raise loans or borrow money in such amounts and for such purposes and under conditions as may be approved by the Minister.
9. To establish and administer such funds and reserves as the Commission may consider appropriate or necessary for the proper exercise of the functions of the Commission.
10. 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.
11. Generally, to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Commission in terms of this Act or any other enactment.