Supplement to the Republic of Zambia Government Gazette dated the 19th May, 2006

[No.9 of 2006 33

THE CITIZENS ECONOMIC EMPOWERMENT ACT, 2006

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

1. Short title and commencement
2. Application
3. Interpretation

PART II

THE ECONOMIC EMPOWERMENT COMMISSION

4. Establishment of Economic Empowerment Commission
5. Seal of Commission
6. Functions of Commission
7. Composition of Commission
8. Disqualification for appointment
9. Tenure of office and vacancy
10. Filling of casual vacancy
11. Allowances
12. Director-General and other staff

PART III

ECONOMIC EMPOWERMENT MEASURES

13. General economic empowerment measures
14. Prohibition of discrimination
15. Employment equity plan
16. Analysis of employment policies or practices

17. Skills development
18. Sector education and training
19. Preferential procurement
20. Promotion of local and foreign investment
21. Investment opportunities
22. Regional development
23. Supportive culture
24. Codes of good practices
25. Status of code good practice
26. Mechanisms for measuring progress
27. Strategy for broad-based economic empowerment
28. Sector codes

PART IV

CITIZEN ECONOMIC EMPOWERMENT FUND

29. Establishment of Citizen's Economic Empowerment Fund
30. Management of fund
31. Auditing of fund
32. Statement of income and expenditure

PART V

GENERAL PROVISIONS

33. Assessment of compliance
34. Undertaking by State institutions or company
35. Progress reports
36. Register and database
37. Entry and inspection
38. Obstruction, undue influence and false information
39. Regulations
40. Act to bind Republic

SCHEDULE

(*Section* 4 (2))

ADMINISTRATIVE PROVISIONS

41. Proceedings of Commission
42. Committees
43. Disclosure of interest
44. Immunity of Commission
45. Prohibition of disclosure of information
46. Funds of Commission
47. Financial year
48. Accounts
49. Annual report

GOVERNMENT OF ZAMBIA

ACT

No.9 of 2006

Date of Assent: 12th May, 2006

An Act to establish the Citizens Economic Empowerment Commission and to define its functions and powers; establish the Citizens Economic Empowerment Fund; promote the economic empowerment of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies; promote gender-equality in accessing, owning, managing, controlling and exploiting economic resources; encourage an increase in broad-based and effective ownership and meaningful participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in the economy in order to contribute to sustainable economic growth; remove social customs, statutory provisions or other practices that limit access to any particular gender to skills training that is essential for effective participation in the economic sector; promote the employment of both gender by removing structural and discriminatory constraints that hinder any particular gender from employment opportunities and in so doing ensure equitable income distribution;

promote equal opportunity of targeted citizens and citizen empowered companies, citizen influenced companies and citizen owned companies in accessing and being awarded procurement contracts and other services from State institutions; promote Greenfield investment through joint ventures and partnerships between local and foreign investors in order to enhance broad-based economic empowerment; and provide for matters incidental to or connected to the foregoing.

[19th May, 2006

ENACTED by the Parliament of Zambia. Enactment

36 [No. 9 of 2006 Citizens Economic Empowerment

PART 1

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Citizens Economic Empowerment Act, 2006 and shall come into force on such date as the President may, by statutory instrument, appoint.

Application

2. Notwithstanding any other law, this Act shall apply to all sectors of the economy, including the value chain, and to –

(a) all State institutions; and

(b) any employer that employs at least twenty-five people; in so far as broad-based economic empowerment is concerned, as provided in this Act.

Interpretation

3. In this Act, unless the context otherwise requires – "broad-based economic empowerment" means the economic empowerment of –

(a) targeted citizens;

(b) citizens empowerment companies

(c) citizen influenced companies; and

(d) citizen owned companies;

through diverse but integrated socio-economic strategies that include ownership of productive assets and resources, increasing the levels of employment in the formal sector, increasing household incomes, expanding literacy and skills development and ensuring preferential procurement and access to services of State institutions.

"Chairperson" means the person appointed Chairperson of the commission under section *seven*;

"citizen" means a citizen of Zambia;

"Citizen empowerment company" means a company where twenty-five to fifty percent of its equity is owned by citizens;

"citizen influenced company" means a company where five to twenty-five percent of its equity is owned by citizens and in which citizens have significant control of the management of the company;

"citizen owned company" means a company where at least fifty point one percent of **it** equity is owned by citizens and in which citizens and in which citizens have significant control of the management of the company;

"code" means a code of good practice issued by the Commission under section *twenty-four*;

"Commission means the Citizens Economic Empowerment Commission established under section *four*;

"Commissioner" means a member of the Commission;

"company" means a private or public company as defined in the

Cap. 388 Companies Act;

Cap. 397 "cooperative" means a cooperative society established under the

Co-operatives Societies Act;

"development services" include advisory services promoting training and financing, facilitating the preparation of business plans, project proposals, loan applications, financial statements, audited statements of expenditure and accounts and other similar services;

"Director-General" means the person appointed Director-General of the Commission under section *twelve*;

"economic resources" include physical, technical, human and financial resources;

"employment policy or practice" includes the following:

(a) recruitment procedures, advertising and selection criteria;

(b) appointments and the appointment process;

(c) job classification and grading;

(d) remuneration, employment benefits and terms and conditions of employment;

(e) job assignments;

(f) the working environment and facilities;

(g) training and development;

(h) performance evaluation systems;

(i) promotion;

(j) transfer;

(k) demotion;

(l) disciplinary measures other than dismissal; and

(m) dismissal.

"empowerment" means an integrated broad-based and multi-faceted strategy aimed at substantially increasing meaningful participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in the economy and decrease income inequalities;

"financial resources" includes credit, wages, cash and financial guarantees;

"financial institution" means a person who holds a financial institutions licence under the Banking and Financial Services Act;

"gender" means female or male and the role individuals play in society as a result of their sex and status;

"Greenfield investment" means new investment;

"HIV/AIDS" means the human immuno deficiency virus;

"human resources" includes labour, educational opportunities, knowledge, knowledge management and information;

"learnership" includes mentorship, structured learning and practical work experience of a specified nature and duration;

"micro enterprise" means any business enterprise whose amount of total investment, excluding land and buildings and annual turnover does not exceed a numerical value prescribed by the President and which employs up to ten people;

"physical resources" includes land, personal property, intellectual property and infrastructure;

"prescribed" means prescribed by statutory instrument by the president;

"reasonable adjustment" means any modification or adjustment to a job or working environment that enables a targeted citizen to have access to, participate or advance in employment;

"regional area" means any area in Zambia that is economically depressed;

"sex" means female or male;

"small enterprise" means any business enterprise whose amount of total investment, excluding land and building and annual turnover does not exceed a numerical value prescribed by the President and which employs up to thirty persons;

"State institution" includes a ministry or department of the Government, a public office or agency or institution, statutory body or company in which the Government has a controlling interest, a local government authority, commission

Cap. 1 or body established under the Constitution;

"status" includes age, HIV/AIDS status or other diseases, disability, social standing, economic standing or rural or urban location;

"supportive culture" includes support from companies to enable a person start up a business, timely payments to suppliers by State institutions and social investments made by companies to encourage socio economic growth and development such as housing, transport, health care, sports, HIV/AIDS programmes, skills development programmes, environmental responsibilities and charitable donations;

Citizens Economic Empowerment **[No.9 of 2006 39**

"targeted citizens" means a citizen who is or has been marginalized or disadvantaged and whose access to economic resources and development capacity has been constrained due to various factors including race, sex, educational background, status and disability;

"technical" includes know how, knowledge and technology;

"TEVETA" means the Technical Education, Vocational *Act No. 13 of 1998*
and Entrepreneurship Training Authority established by
the Technical Education, Vocational and Entrepreneurship
Training Act; and

Value chain" means any sector of the economy that may have an
Impact on the empowerment of targeted citizens and includes the specific
Value additions at all levels of a process in the different sectors of industry.

PART II

THE CITIZENS ECONOMIC EMPOWERMENT COMMISSION

4. (1) There is hereby established the Citizens Economic Empowerment Commission which shall be a body corporate with Perpetual succession and a common seal, capable of suing and Being sued in its corporate name and with power, subject to this Act, to do all such things as a body corporate may by law do or Perform. *Establishment of Economic Commission*

(2) The Schedule applies to the Commission.

5. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Director-General. *Seal of Commission*

(2) The affixing of the seal shall be authenticated by the Chairperson or any other person authorised in that behalf by a Resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or Issued without further proof, unless the contrary is proved.

6. (1) The functions of the Commission shall be to promote the empowerment of citizens that are or have been marginalized or disadvantaged and whose access to economic resources and development capacity has been constrained due to various factors including race, sex, educational background, status and disability. *Functions Commission*

(2) Without limiting subsection (1), the functions of the Commission shall be to –

(a) advise on the necessary changes to various types of legislation for the effective delivery of economic empowerment initiatives;

(b) promote gender-equality in accessing, owning, controlling, managing and exploiting economic resources;

(c) encourage effective and meaningful participation of targeted citizens in the economy in order to contribute to sustainable economic growth;

(d) promote the employment of both gender by recommending to appropriate authorities the removal of structural and discriminatory constraints and practices that hinder any particular gender from employment opportunities;

(e) ensure equal opportunities for, and where necessary, ensure preferential treatment to, targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in accessing procurement contracts and other services of any State institutions;

(f) promote the subcontracting of services, materials and equipment from targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies;

(g) mobilise resources for economic empowerment programmes;

(h) review the framework for the provision of development services to micro and small businesses in response to changing circumstances;

(i) develop or facilitate the development of sector codes and codes of good practice for economic empowerment;

(j) commission and conduct research for economic empowerment;

(k) develop innovative ways of creating business opportunities such as identifying services which State institutions need to outsource;

(l) develop business ideas and import business ideas from

other countries and disseminate such ideas to targeted citizens in order to interest them in developing those ideas into business ventures;

(m) undertake information, education and communication activities for targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies on various empowerment schemes available;

(n) promote a savings culture amongst citizens;

(o) explore ways of fostering business linkages, such as join ventures and partnerships in Greenfield investments;

(p) keep under review the economic empowerment policy;

(q) propose changes to Zambia's education curricula in order to inculcate an entrepreneurial culture amongst citizens;

(r) promote or undertake a civic education and awareness programme which will ensure an orientation of all institutions and persons to the maintenance of a positive work culture;

(s) encourage increased investments in education and training in the labour market;

(t) encourage the use of the workplace as an active learning environment;

(u) encourage public and private institutions to provide opportunities to targeted citizens to acquire necessary skills training and work experience; and

(v) monitor and evaluate economic empowerment initiatives.

(3) In carrying out its functions, under subsection (2), the Commission shall take into account and be consistent with –

(a) any sectoral programmes developed by the Government in its national development plans;

(b) any policies of the Government relating to decentralisation, gender youth, technical education and vocational training, land, trade, commerce and investment; and

(*c*) any initiative of the Government for the enhancement of partnerships and joint ventures between local and foreign investors.

(4)In the performance of the Commission's functions under this Act, the commission shall effectively liaise and consult appropriate State institutions and shall have the power to give such instructions or directions to any State institution or a company for the purposes of fulfilling the Commission's mandate under this Act.

(5) The Commission shall develop and recommend to the President criteria to tes the means of targeted citizens so as to distinguish those citizens that have the capacity to sustain themselves and the President shall prescribe those criteria.

(6) The President may give to the Commission such general or specific directions with respect to the discharge of its functions as the President considers necessary and the Commission shall give effect to such directions.

(7) The Commission may, after the approval of the Minister, enter into agreements with any organisation or institution on any matter relevant to the carrying out of the Commission functions under this Act.

Composition of *Commission* **7.** (1) The Commission shall consist of the following part-time Commissioners who shall be appointed by the President;

(*a*) a Chairperson;

(*b* the Secretary to the Treasury in the Ministry responsible for finance;

(*c*) the Permanent Secretary in the Ministry responsible for commerce, trade and industry;

(*d*) the Permanent Secretary in the Ministry responsible for labour and social security;

(e) the Attorney-General or a representative of the Attorney-General;

(f) one person representing the youth;

(g) two persons representing the private sector and civil society organisations;

(h) three persons representing the university community, central statistical office and the trade unions, respectively; and

(i) one person representing the disabled.

(2) The Vice-Chairperson shall be elected by the members from among their number.

Disqualifications for appointment **8.** A person shall not be qualified for appointment as a commissioner if that person-

(a) is not a citizen of Zambia;

(b) is a declared insolvent or bankrupt;

(c) is declared to be of unsound mind;

(d) has been convicted of an offence involving fraud or dishonesty;

(e) has been convicted of an offence under any written law and sentenced to a term of imprisonment of not less than six months, without the option of a fine; or

(f) has been dismissed for gross mismanagement.

Citizens Economic Empowerment **[No. 9 pf 2006 43**

Tenure of office and vacancy

9. (1) Subject to the other provisions of this Act, a commissioner shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment for one further term of three years.

(2) A commissioner may resign upon giving one month notice in writing, to the President and to the organisation that nominated the commissioner or upon giving such shorter period of notice as may be agreed by the President and the commissioner.

(3) The office of the commissioner shall become vacant-.

(a) upon the commissioner's death;.

(b) if the commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the commissioner has had notice;.

(c) on ceasing to be a representative of the organisation that nominated the commissioner;

(d) if the commissioner becomes mentally or physically incapable of performing the duties of a commissioner;

(e) if the commissioner is declared bankrupt or insolvent;

(f) if the commissioner is convicted of an offence involving fraud or dishonesty;

(g) if the commissioner is convicted of an offence under any written law and is sentenced to imprisonment of not less than six months, without the option of a fine; or

(h) if the commissioner ceases to be a citizen of Zambia.

(4) On the expiration of the period for which a commissioner is appointed, the commissioner shall continue to hold office until a successor has been appointed but in no case shall the further period exceed four months.

Filling of casual vacancy

10. (1) Whenever the office of a commissioner becomes vacant before the expiry of the term of office, the President may appoint another commissioner in place of the commissioner who vacates office but that commissioner shall hold office only for the unexpired part of the term.

(2) The Commissioner appointed under subsection (1) shall be nominated by the organisation of which the commissioner who vacates office was a representative.

Allowances

11. A commissioner shall be paid such allowances as the Commission may, with the approval of the Secretary to the Cabinet, determine.

Director-General and other staff

12. (1) The Commission shall appoint a director-General who shall be the chief executive officer of the Commission, on such terms and conditions as the Commission may determine.

(2) The Director-General shall be responsible under the general direction of the Commission for the-

(a) management and administration of the affairs of the Commission;

(b) implementation of the decisions of the Commission; and

(c) any other function assigned to the Director-General by the Commission or by or under this Act.

(3) The Director-General shall attend meetings of the Commission and may address those meetings, but shall have no Vote.

(4) The director-General shall be assisted by such staff as the Commission may appoint, on such terms and conditions as the Commission may determine.

PART III

ECONOMIC EMPOWERMENT MEASURES

General Economic Empowerment Measures

13. (1) In this part economic empowerment measures include actions designed to ensure broad based economic empowerment of targeted citizens, citizen empowered Companies, citizen influenced companies and citizen Owned companies, as specified under this Act.

(2) A state institution and a company shall implement economic empowerment measures including the following:

(a) the identification and elimination of employment barriers in its employment policy or practice which adversely affect targeted citizens;

(b) measures designed to further diversity and inclusiveness in the workplace based on dignity and respect of all people;

(c) making reasonable adjustments for targeted citizens in order to ensure that they enjoy equal opportunities and

are equitably represented at board and management levels and in the workforce;

(d) taking measures to-

(*i*) ensure the equitable representation of suitably qualified people from targeted citizens in all occupational categories and levels in the workforce; and

(*ii*) retain and develop targeted citizens in employment and implement appropriate training programmes under any legislation providing for skills development.

Prohibition of Discrimination

14. (1) Subject to section thirteen, a person or company shall not discriminate, directly or indirectly, against an employee in any employment policy or practice due to that employee's status, disability or gender.

(2) Nothing in this section shall be construed as requiring an employer to establish an absolute barrier to the prospective or continued employment or advancement of people who are not targeted citizens.

Employment Equity plan

Cap. 269

15. (1) Notwithstanding the Employment Act, a State institution and a company shall prepare and implement an employment equity plan in order to achieve progress towards employment equity.

(2) An employment equity plan, prepared under subsection (1), shall state-

(a) the objectives to be achieved for each year of the plan;

(b) the empowerment measures to be implemented as provided by *section thirteen;*

(c) where under representation of targeted citizens has been identified, the numerical goals to achieve the equitable representation of suitably qualified targeted citizens within each occupational category and level in the workforce, the

timetable within which this is to be achieved and the strategies intended to achieve those goals;

(d) the timetable for year of the each plan for the achievement of goals and objectives other than numerical goals;

(e) the duration of the plan which may not be shorter than one year or longer than five years;

(f) the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity;

(g) the internal procedures to resolve any dispute about the interpretation or implementation of the plan;

(h) the person in the workforce, including senior managers, responsible for monitoring and implementing the plan; and

(i) any other matter as may be prescribed by or under this Act.

Analysis of employment policies or practices

16. (1) A state institution and a company shall compile and submit, to the commission, information on employment policies and practices and the working environment for the purpose of the Commission identifying employment barriers which have adversely affected, or may adversely affect, targeted citizens.

Act No. 13 of 1998

17. (1) Notwithstanding the Technical Education, Vocational and entrepreneurship Training Act, the TEVETA shall liaise and inform the Commission on the progress made in training targeted citizens to enable them effectively participate in the value-chain or to achieve broad-based economic empowerment.

Act No. 13 of 1998

(2) Notwithstanding the Technical Education, Vocational and entrepreneurship Training Act, the TEVETA shall report to the commission, in a prescribed manner, on the progress made in training targeted citizens to enable them effectively participate in the value-chain or to achieve broad based economic empowerment.

Sector education and training Act No. 13 of 1998

18. (1) Notwithstanding the Technical Education, Voacational and Entrepreneurship Training Act, the TEVETA shall in liaison with the Commission, develop a discrete sector plan for purposes of education and skills development for any economic sector.

(2) A sector plan developed, under subsection (1), shall be within the framework of the national skills and vocational training policy and strategy and shall-

(a) establish learnerships;

(b) provide for work place skills training programmes; and

(c) provide for the monitoring of education and skills training in the sector.

(3) The TEVETA shall give advice and other consultancy services to any State institution or a a company that develops a skills training programme or establishes learnerships at their work place.

(5) The TEVETA shall advise the Commission on the implementation of, and progress made on, the sector plans developed under subsection (1).

Preferential Procurement Cap.394

19. (1) Notwithstanding the Zambia National Tender Board Act or any other law relating to procurement of public services and goods, the commission shall, in consultation with the Tender Board, determine the thresholds to be prescribed by the Minister responsible for finance for the participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in tender for the procurement of services and goods for any State institution at national, provincial and district levels.

(2) The Commission shall develop, in consultation with the Tender Board, policy guidelines to ensure that targeted citizens and companies specified in subsection (1) are given preferential treatment in accessing and being awarded tenders for procurement of services and goods for any State institution.

Promotion of local and Foreign Investment

20. The Commission shall, in liaison and close consultation with State institutions responsible for investment, trade development, tariff imposition and rebates, pension, securities and finance, promote and facilitate increased flow of local and foreign investment into the economy by, amongst other measures, fostering the creation of an enabling macro economic and micro economic environment-

(a) which does not constrain the inflow of local and foreign investment;

(b) that is conducive to the promotion of a savings culture amongst citizens;

(c) that ensures mandatory contributions to national pension schemes and funds by employers and employees and

(d) that ensures timely and priority payments to micro and small enterprises, in particular, to citizens, citizen empowered companies, citizen influenced companies and citizen owned companies.

Investment opportunities

21. (1) Notwithstanding any other law, after the commencement of this Act, the Ministry responsible for commerce, trade and industry shall reserve, as prescribed by the President, specific areas of commerce, trade and industry for targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies.

(2) Notwithstanding any other law, after the commencement of this Act-

(a) where any business deals with technological developments, as prescribed by the President, targeted citizens and companies specified under subsection (1) shall be granted concessionary licences;

(b) licences to foreign investors to engate in specific businesses, as prescribed by the President, shall be granted on the basis of joint ventures and partnerships with citizens and citizen empowered companies;

(c) every State institution shall apply criteria, prescribed by the President, for any particular license or concession in relation to any specific business, prescribed by the President, when granting any licence or concession to any person to operate an asset or enterprise on its behalf; and

(d) priority for concessions, licences and incentives given under any law shall be granted to companies that are implementing broad based economic empowerment programmes under this Act.

Regional development

22. The Commission shall encourage State institutions responsible for sectors that impact on economic development to-

(a) scale up investment in regional areas;

(b) develop a programme to provide for the establishment of cooperatives and other community based projects in regional areas;

(c) introduce incentives for financial and other institutions to operate in regional areas;

(d) provide matching grant funds to private sector investors willing to invest in viable projects in regional areas in partnerships with local communities; and

(e) introduce awards to companies that support broad based economic empowerment programmes in regional areas.

Supportive culture

23. The Commission shall promote a supportive culture –

(a) that permeates all levels of institutions, through and amongst persons who are leaders in all sectors of the economy;

(b) by ensuring that targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies are give priority when payments for any services rendered or goods supplied are being made;

(c) by ensuring that incentives are granted to companies that introduce supportive culture programmes; and

(d) where loans obtained are paid back timely.

Codes of goods Practice

24. (1) In order to promote the purposes of this Act, the Commission shall, by notice in the *Gazette*, issue codes of good Practice on broad based economic empowerment programmes which shall include-

(a) the further interpretation and definition of broad based economic empowerment and the categorizing of the different State institutions and companies;

(b) qualification criteria for preferential treatment in procurement and other economic activities;

(c) indicators to measure broad based economic empowerment;

(d) the weighting to be attached to broad based economic empowerment indicators referred to in paragraph (c);

(e) guidelines for State institutions and companies to enable them draw up codes of good practice and sector codes for their sectors; and

(f) any other matter necessary to achieve the objectives of this Act.

(2) A strategy issued by the Commission under section *twenty seven* shall be taken into account in preparing any code of good practice.

(3) A code of good practice issued, under subsection (1), shall specify-

(a) targets consistent with the objectives of this Act; and

(b) the period within which those targets must be achieved.

(4) In order to promote the achievement of equality of women, a code of good practice issued under subsection (1) and any targets specified in a code of good practice, under subsection (3), may distinguish between each gender.

(5) The commission shall, before issuing, replacing or amending a code of good practice issued under subsection (1) -

(a) publish the draft code of good practice in the *Gazette* for public comment; and

(b) grant interested persons a period of at least thirty days to comment on the draft code of good practice.

25. Every State institution shall take into account and, as is reasonably possible, apply any relevant code of good practice issued under this Act in-

Status of code of good practice

(a) determining qualification or criteria for the issuing of licences, concessions or other authorisations under any law;

(b) developing and implanting a preferential procurement policy;

(c) determining qualification or criteria for the sale of State owned enterprises and

(d) developing criteria for entering into partnerships or joint ventures with the private sector.

26. The Commission shall, for the purposes of measuring the progress made in achieving broad based economic empowerment-

Mechanisms for measuring progress

(a) ensure that codes of good practice are published in the print and electronic media;

(b) develop a score card to measure, evaluate and ensure compliance with this Act and any regulations made under this Act; and

(c) receive regular returns of relevant information from those involved in the economic empowerment programme.

27. (1) The Commission-

Strategy for Broad-based and *Economic Empowerment*

(*a*) shall issue a strategy for broad based economic empowerment;

(*b*) may change or replace a strategy issued under this section.

(2) A strategy under this section shall-

(a) provide for an integrated, co-ordinated and uniform approach to broad-based economic empowerment;

(b) develop guidelines for financing broad based economic empowerment;

(c) provide a system for State institutions and companies to prepare broad-based economic empowerment plans and to report on compliance with those plans;

(d) publish penalties for failure to render report as required; and

(e) be consistent with this Act.

sector codes

28. The Commission shall promote sector codes for particular sectors of the economy and shall cause the codes to be published in the *Gazette*, for general information, if the Commission is satisfied that the codes-

(a) were developed by the major stakeholders in that sector; and

(b) advance the objectives of this Act.

PART IV

CITIZEN'S ECONOMIC EMPOWERMENT FUND

Establishment of Citizen's Economic Empowerment Fund

29. (1) there is hereby established the Citizen's Economic Empowerment Fund for supporting the development of broad based economic empowerment programmes.

(2) The Fund shall consist of-

(*a*) such moneys as may be appropriated by Parliament for the purposes of the Fund;

(*b*) moneys received by way of grants, fees, loans or donations for the purposes of the Fund; and

(c) interest accrued from any investment made by the Commission or raised through the local stock exchange.

(3) The Commission shall, in order to facilitate the flow of financial resources to programmes for broad based economic empowerment-

(a) on its own or in cooperation with other State institutions identify citizen owned companies, groups of citizens or co-operatives, citizen empowered companies and citizen influenced companies and broad-based economic empowerment programmes which require financial assistance;

(b) provide information on sources of finance and promote investments for companies and programmes specified in paragraph (a);

(c) on its own or in cooperation with other State institutions and other institutions render development services to companies specified in paragraph (a) so as to enable them access financial resources;

(d) in conjunction with any financial institutions financing micro and small enterprises, monitor, establish and design standards for loan administration, effective use of loan funds and repayment mechanisms by groups of citizens or co-operatives of companies specified under paragraph (a) so as to curb misuse of financial resources;

(e) on its own or in consultation with any relevant financial institution establish or source venture capital funds to promote investments in companies specified under paragraph (a) and

(f) secure incentives through relevant authorities for any financial institution which undertakes to finance or develop a company specified under paragraph (a) or any company carrying out any broad based economic empowerment programme.

(4) Where a company, specified under paragraph (a) of subsection (3), has been funded through the Citizens Economic Empowerment Fund the commission shall, in partnership with any financial institution, devise a mechanism to lock in the equity of the company, for a reasonable period of time, in order to ensure value addition to the company.

(5) Where the Commission proves to its satisfaction that any company, specified under paragraph (a) of subsection (3), is engaged in fronting, that company shall be barred from accessing any moneys from the Citizens Economic Empowerment Fund or

from benefiting from any incentives under this Act and in addition shall be liable to any penalty specified under subsection (6).

(6) Any moneys from the Citizens Economic Empowerment Fund or any incentives under this Act that would have been granted to a Company in which a Director or Shareholder is engaged in fronting, will be withdrawn.

(7) Any director or shareholder of a company that engages in fronting commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units.

(8) In this section "fronting" includes holding out as being the defacto director or shareholder of a company in order to hide the true identity of the shareholder or director of that company.

Management of fund

30. (1) The Citizens Economic Empowerment Fund, established under section twenty nine, shall be vested in the Commission but shall be managed and administered by various financial institutions and fund managers that meet the criteria prescribed by the President.

(2) The Commission shall establish criteria for the application and disbursement of moneys from the Citizens Economic Empowerment Fund.

Auditing of Fund

31. The Citizens Economic Empowerment Fund shall be audited every year by auditors appointed by the Commission with the approval of the Auditor-General.

Statement Income and Expenditure

32. (1) The Commission shall cause to be prepared an annual audited statement of income and expenditure with respect to the Citizens Economic Empowerment Fund which shall be submitted to the President.

(2) The Minister responsible for commerce, trade and industry shall, not later than seven days after the first sitting of the National Assembly next after receipt of the audited statement of income and

expenditure referred to in subsection (1), cause it to be laid before the National Assembly.

PART V

GENERAL PROVISIONS

Assessment of Compliance

33. In determining whether a State institution or a company is complying with this Act, the Commission or any person authorised by the Commission shall take into account the following:

(a) the extent to which suitably qualified people from and amongst the different targeted citizens are equitably represented within each occupational category and level in that institution's or company's workforce in relation to the-

(i) demographic profile of the national economically active population as determined by the State institution responsible for such functions;

(*ii)*pool of suitably qualified targeted citizens from which the institution or company may reasonably be expected to promote or appoint employees under this Act;

(*iii*) economic and financial factors relevant to the sector in which the institution or company operates;

(i*v)* present an anticipated economic and financial circumstances of the institution or company; and

(v) the number of present and planned vacancies that exist in the various categories and levels and labour turnover;

(b) progress made in implementing this Act by State institutions and companies operating under comparable circumstances and within the same sector;

(c) efforts made by the State institution or the company to implement the sector code;

(d) the extent to which the State institution or the company has made progress in achieving broad based economic empowerment; and

(e) any other factor that the President may prescribe.

undertaking by State

34. (1) if the Commission has reasonable grounds to believe that a State institution or a company has failed to -

(a) compile and submit information as required by section *sixteen;*

(b) prepare an employment equity plan as required by section *fifteen;*

(*c*) implement its employment equity plan;

(d) submit a progress report as required by section *thirty six*; and

(*e*) publish its report as required by section thirty six;

the Commission shall request and obtain a written undertaking, from that State institution or company, that the institution or company shall comply with this Act within a specified period.

(2) A State Institution or Company that repeatedly fails to comply with subsection (1) shall be barred from accessing any moneys from the Citizens Economic Empowerment Fund or from benefiting from any incentives under this Act.

Progress report

35. (1) Every State institution and company shall submit to the Commission, once every year, a report on the progress being made to achieve broad-based economic empowerment

in accordance with a sector plan or strategy.

(2) Every State institution and company shall publish a summary of the progress report in that institution's or company's annual report.

Register and Database

36. The Commission shall keep a comprehensive database on, and register, every citizen owned company, citizen empowered Company and citizen influenced company identified by the Commission for purposes of this Act.

Entry and Inspection

37. The Commission or any member of its staff authorised by the Commission may, on production of an identity card of the Commission, enter and inspect, during reasonable hours, the Premises of any State institution or company to ensure that this Act is being complied with.

Obstruction, undue influence and false information

38. (1) A person shall not-

(*a*) obstruct or attempt to improperly influence any person who is exercising a power or performing a function under this Act; or

(b)knowingly give false information in any document or information submitted to the Commission for purposes of this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding eight thousand penalty units or to imprisonment for a period not exceeding six months, or to both.

Regulations

39. (1) The President may, on the recommendation of the Commission, make regulations with regard to any matter that is To be prescribed under this Act and to ensure proper implementation of the objectives of this Act.

(2) Without limiting subsection (1), regulations may-

(a) make different provisions in respect of different sectors

of the economy and for different components of the broad based empowerment policy;

(b) provide for fines not exceeding eight thousand penalty units or for imprisonment not exceeding three years or both for any contravention of the regulations; and

(c) provide for the cancellation of the registration of, or the incentives or benefits to, any company or institution which is not implementing broad-based economic empowerment programmes or in which the implementation of the broad-based empowerment programm, is not being effected or has ceased.

SCHEDULE

(Section 4(2))

ADMINISTRATIVE PROVISIONS

Proceedings of Commission

1. (1) Subject to this Act, the Commission may regulate its own procedure.

(2) Seven commissioners shall form a quorum at any Meeting of the Commission.

(3) There shall preside at any meeting of the Commission-

(a) the Chairperson; or

(b) in the absence of the Chairperson, the Vice Chairperson and in the absence of the Vice Chairperson such commissioner as the commissioners present may elect for the purposes of that meeting.

(4) A decision of the Commission on any question shall be by a majority of the commissioners present and voting at the meeting and in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(5) The Commission may invite any person, whose presence is

in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

(6) The validity of any proceeding, act or decision of the Commission shall not be affected by any vacancy in the Membership of the Commission or by any defect in the Appointment of any commissioner or by reason that any person Not entitled to do so took par in the proceedings.

Committees

2. (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers necessary.

(2) Without limiting subsection (1), the Commission shall establish a special empowerment committee for purposes of carrying out its functions relating to empowerment effectively and for reporting to the National Assembly through the Minister.

(3) The Commission may appoint as members of a committee persons who are or are not commissioners, except that at least one member of a committee shall be a commissioner who shall be chairperson of the committee.

(4) A person serving as a member of a committee shall hold office for such period as the Commission may determine.

(5) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

Disclosure of interest

3. (1) If any person is present at a meeting of the Commission or any committee established by it at which any matter is the subject of consideration and in which matter that person or that persons spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs,

take part in any consideration or discussion of, or vote on, any question touching the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

Immunity of Commission

4. an action or other proceedings shall not lie against any commissioner, member of staff, agent or representative of the Commission for or in respect of any act done or omitted to be Done in good faith in the exercise or purported exercise of the Functions of the Commission.

Prohibition of disclosure of information

5. (1) A person shall not without the consent in writing given by, or on behalf of, the Commission publish or disclose to any person, otherwise that in the course of the person's duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of, the person's duties under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable, upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

(3) If any person having information which to that person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates that information to any person, that person commits an offence and shall be liable, upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

Funds of Commission

6. (1) The funds of the Commission shall consist of such moneys as may-

(a) be appropriated by parliament for the purposes of the Commission;

(b) be paid to the Commission by way of fees, grants or donations; and

(c) vest in or accrue to the Commission.

(2) The Commission may, subject to the approval of the Minister-

(a) accept moneys by way of grants or donations from any source; and

(b) raise by way of loans or otherwise such moneys as it may require for the discharge of its functions.

(3) There shall be paid from the funds of the Commission-

(a) the salaries, allowances and loans of the staff of the Commission and allowances of the commissioners;

(b) such reasonable traveling, transport and subsistence allowances for the staff and commissioners and members of a committee of the Commission, when engaged in the business of the Commission, at such rates as the Commission may determine; and

(c) any other expenses incurred by the Commission in the performance of its functions.

(4) The Commission may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions, subject to the approval of the Minister responsible for finance.

Financial year

7. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.

Accounts

8. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by the Auditor-General or by independent auditor appointed by the Commission with the approval of the Auditor-General.

(3) The auditors fees or expenses shall be paid by the Commission.

Annual report

9. (1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the Minister a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.