

**ZIMBABWE NATIONAL WATER AUTHORITY BILL, 1997****MEMORANDUM**

This Bill establishes the Zimbabwe National Water Authority, a statutory corporation which will be charged with the operational aspects of what has hitherto constituted part of the work of the Department of Water Development. With the proposed establishment of the Zimbabwe National Water Authority, the development and management of the national water resources will be the responsibility of the Authority whilst the policy making and regulatory functions will remain the responsibility of the Government in the Department of Water Development. The Authority will operate on a commercial basis except in respect of certain non-commercial functions for which levies will be raised from certain water consumers. In more detail, the Bill provides as follows:

**Part I** of the Bill deals with preliminary matters, i.e. the title of the Bill, date of commencement and the interpretation of terms.

In **Part II** of the Bill, *clause 3* deals with the establishment of the Authority which will be a body corporate with the usual features of such corporations. *Clause 4* provides for a Board of the Authority for the control and direction of the operations of the Authority. The Board will consist of 10 members of whom 7 will be appointed by the Minister, one will be the managing director, and two will be appointed by the Minister from a list of persons nominated by catchment councils which will be set up to manage water resources in specified river systems established under the Water Act. Six of the Minister's direct appointments will be persons recognized for their ability and experience in the development and management of water resources, business and administration. One member will be a water engineer from the Ministry responsible for water resources development.

*Clause 5* sets out a detailed list of functions of the Authority. Essentially, the Authority will advise the Minister in the formulation of national policies and standards on water resources planning, management and development; on water quality and pollution

control and the protection of the environment; on hydrological and hydrogeological matters; on dam safety and borehole drilling; and on water pricing. The functions emphasize the Authority's role in ensuring the equitable accessibility to water by citizens and its efficient allocation, distribution, use and development on a cost effective basis. The Authority will superintend catchment councils established under the Water Act in discharging their functions under that Act and will assist local authorities in the development and management of, in particular, potable water resources in areas under their jurisdiction.

*Clause 6* provides for the powers of the Authority which powers are set out in the Schedule. In the performance of its functions, the Authority will have regard to the environmental, social, physical and economic impact of any of its activities. *Clauses 7 to 20* are standard provisions dealing with matters of qualifications and conditions of membership of members of the Board, committees of the Board, the holding of meetings and the appointment of the managing director, etc.

**Part III** of the Bill makes provision in *clauses 21 to 32* for the management of the financial affairs of the Authority. Under *clause 21* the funds of the Authority will include Parliamentary appropriations and fees and charges from services rendered by the Authority under *clause 24* for such services as the sale of raw or treated water from water works it operates or controls; the disposal of waste water; the drilling of boreholes and the provision of consultancy services. Any charges fixed in terms of *clause 24* must get the approval of the Minister. *Clause 24* also sets out the basis upon which any increase in charges may be done. Different levels of charges may be fixed in respect of different classes of persons as long as the differentiation is not on the basis of the discrimination prohibited by the Constitution. The rest of the provisions in this Part are standard.

**Part IV** of the Bill provides in *clauses 33 to 39* for a Water Levy Fund. *Clause 33* establishes the Water Levy Fund which will be vested in the Minister as trustee. The Fund will be for the development of water resources. Under *clause 34*, the Fund will consist of water levies payable under *clause 35* by permit holders whose permits are issued under the Water Act, Parliamentary appropriations and any other moneys to which the Fund may become entitled. The Fund will be administered by the Authority on behalf of and in

accordance with the directions of the Minister (*clause 36*). The moneys in the Fund will be applied to such functions, other than the commercial activities of the Authority, as the Minister may approve aimed at promoting the development of water resources. *Clauses 38 and 39* of the Bill are standard provisions dealing with the management of the Fund.

**Part V** deals with general matters pertaining to the affairs of the Authority. *Clause 40* authorises the Minister to get the affairs of the Authority investigated if he considers it necessary and *clause 41* requires the Authority to provide the Minister with its financial reports, a report of the Authority's activities and the auditor's report. *Clause 43* provides for appeals against decisions of the managing director and the Board to the Minister and the Administrative Court. *Clause 44* provides for the Minister's powers, in consultation with the board, to make regulations and *clause 45* repeals the Regional Water Authority Act [*Chapter 20:16*].

**Part VI** of the Bill contains transitional provisions dealing with the transfer of some members of the Public Service to the Authority following the transfer of some of the functions of the Department of Water Development to the Authority. *Clause 46* deals with such transfer whilst *clause 47* provides for the conditions as to remuneration, pension, leave, security of tenure, etc., upon which the transfer will be made. The Minister of Finance may authorize the transfer to the Authority of some assets of the Department of Water Development, together with any liabilities and obligations attaching to them (*clause 48*).

Following upon the repeal of the Regional Water Authority Act [*Chapter 20:16*], the Bill makes provision for the transfer of the assets of the Regional Water Authority to the new Authority (*clause 49*). *Clause 50* vests in the new Authority all the contractual obligations of the Regional Water Authority. Under *clause 51*, the Minister is authorized to give directions to ensure the proper transfer of assets by the Regional Water Authority to the new Authority. *Clause 52* is a standard savings provision and the Schedule sets out the powers of the Authority.

PSM/ZINWABIL

1<sup>st</sup> October, 1997.

**ZIMBABWE NATIONAL WATER AUTHORITY BILL, 1997****ARRANGEMENT OF SECTIONS****PART I****PRELIMINARY***Section*

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SCHEDULE : Powers of Authority.

Seventh draft : 1<sup>st</sup> October, 1997.

Sixth draft : 23rd May, 1997.

Fifth draft : 3rd April, 1997.

Fourth draft : 27th March, 1997.

Third draft : 26th February, 1997.

Second draft : 17th December, 1996.

First draft : 25th October, 1996.

## **BILL**

To establish the Zimbabwe National Water Authority and to provide for its functions; to provide for the appointment and functions of a board of the Authority; to provide for the raising of charges for the provision of water and other services by the Authority; to provide for the funds of the Authority; to provide for the imposition and collection of a water levy; to repeal the Regional Water Authority Act [*Chapter 20:16*]; and to provide for matters connected with or incidental to the foregoing.

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 Zimbabwe National Water Authority Act, 1997.

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



## 2 Interpretation

2. In this Act—

"appropriate Minister", in relation to any matter, means the Minister who by or under any enactment is empowered or required to exercise any power or to perform any duty or function in respect of the matter or to whom any function in respect of the matter has been assigned;

"Authority" means the Zimbabwe National Water Authority established by section *three*;

"Board" means the Board of the Authority constituted in terms of section *four*;

"catchment council" has the meaning assigned to it in the Water Act, 1997;

"financial year" means the financial year fixed in terms of section *thirty-two*;

"fixed date" means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act;

"member" means a member of the Board, including the chairman;

"Minister" means the Minister of Rural Resources and Water Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"Regional Water Authority" means the Regional Water Authority which was established under section 3 of the repealed Act;

"repealed Act" means the Regional Water Authority Act [*Chapter 20:16*], repealed by this Act;

"water works" has the meaning assigned to it in the Water Act, 1997.

## PART II

### ZIMBABWE NATIONAL WATER AUTHORITY

## 3 Establishment of Zimbabwe National Water Authority

There is hereby established an authority, to be known as the Zimbabwe National Water Authority, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

#### **4 Board of Authority**

(1) Subject to this Act, the operations of the Authority shall be directed and controlled by a board consisting of—

- (a) a chairman appointed by the Minister; and
- (b) the managing director; and
- (c) eight other members of whom—
  - (i) six shall be appointed by the Minister; and
  - (ii) two shall be appointed by the Minister from a list of not less than five persons nominated by catchment councils established in terms of the Water Act, 1997.

(2) Of the persons appointed in terms of subparagraph (i) of paragraph (c) of subsection (1)—

- (a) one shall be a member of the Public Service who is a water engineer appointed from among the water engineers employed by the Ministry for which the Minister is responsible; and
- (b) the remainder, as well as the chairman, shall be persons recognised for their ability and experience in the development and management of water resources, business or administration.

(3) Members of the board shall elect one of their number to be deputy chairman of the Board.

#### **5 Functions of Authority**

(1) Subject to this Act, the Water Act, 1997, and any other enactment, the functions of the Authority shall be—

- (a) to advise the Minister on the formulation of national policies and standards on—
  - (i) water resources planning, management and development; and
  - (ii) water quality and pollution control and environmental protection; and
  - (iii) hydrology and hydrogeology; and
  - (iv) dam safety and borehole drilling; and

- (v) water pricing;
- and
- (b) subject to the Water Act, 1997, to assist and participate in or advise on any matter pertaining to the planning of the development, exploitation, protection and conservation of water resources; and
  - (c) to exploit, conserve and manage the water resources of Zimbabwe with the object of—
    - (i) securing equitable accessibility and efficient allocation, distribution, use and development; and
    - (ii) providing, in both the short and the long term, adequate water on a cost effective basis; and
    - (iii) taking appropriate measures to minimise the impacts of droughts, floods or other hazards;
- and
- (d) to promote an equitable, efficient and sustainable allocation and distribution of water resources; and
  - (e) to encourage and assist local authorities in the discharge of their functions under the Rural District Councils Act [*Chapter 29:13*] and the Urban Councils Act [*Chapter 29:15*] with regard to the development and management of water resources in areas under their jurisdiction and in particular, the provision of potable water and the disposal of waste water; and
  - (f) to superintend, catchment councils in the discharge of their functions under the Water Act, 1997; and
  - (g) to encourage and assist catchment councils to plan and co-ordinate the development and management of water resources in areas under their jurisdiction; and
  - (h) to operate and maintain any water works owned or managed by the Authority and to sell any water therefrom, to dispose of waste water, to construct boreholes and to provide design and construction services; and
  - (i) to provide, at such fee as the Authority may determine, all forms of assistance, including technical assistance, personnel, advisory and training, information and

other services to the Government, local authorities and catchment councils in connection with the exploitation, development, management and distribution of water resources; and

- (j) to undertake research studies and develop a database on hydrological issues pertaining to or of interest to Zimbabwe and to publish the findings and any other data compiled by the Authority; and
- (k) to conduct hydrological and geographical surveys and to produce plans, maps or other information necessary in the planning, development and exploitation of water resources and to publish any such surveys, plans, maps or other information; and
- (l) to promote such mechanisms for the co-operative management of international water resources as the Minister may determine; and
- (m) to carry out any function that may be conferred or imposed on the Authority by or under this Act, the Water Act, 1997 or any other enactment.

(2) If, in the carrying out of the Authority's functions under this Act, any question arises as to what is to be considered to be the national interest, the question shall be decided by the President after consultation with the Minister and the Authority.

## **6 Powers of Authority**

(1) For the better exercise of its functions, the Authority shall have the power, subject to this Act, to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule either absolutely or conditionally and either solely or jointly with others.

(2) In the performance of the Authority's functions, the Board shall have regard to the environmental, social, physical and economic impact of any activity or undertaking.

## **7 Qualifications for appointment as member**

Subject to this Act, a person shall not be qualified for appointment or election as a member if—

- (a) he not is a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) he has, in terms of a law in force in any country—

- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated therefrom; or
  - (i) made an assignment or composition with his creditors which has not been rescinded or set aside;
- or
- (c) he has been convicted in Zimbabwe or in any other country of any offence involving dishonesty or any other offence for which a term of imprisonment without the option of a fine, whether or not any portion of that sentence has been suspended has been imposed;
  - (d) he is a member of Parliament.

## **8 Terms and conditions of office of members**

(1) Subject to this Act, a member shall hold office for a period of three years from the date of his appointment, and shall cease to hold office only in terms of this Act.

(2) A retiring member shall be eligible for re-appointment.

## **9 Vacation of office by members**

(1) A member shall vacate his office and his office shall become vacant from the date on which -

- (a) the period for which he has been appointed expires; or
  - (b) he gives notice to the Board of his intention to resign or after such period, not exceeding two months, from that date as he and the Board may agree upon; or
  - (c) he is elected as a member of Parliament; or
  - (d) he ceases to be a citizen of Zimbabwe or to be ordinarily resident in Zimbabwe;
- or
- (e) he is convicted of any offence involving dishonesty or begins to serve a sentence of imprisonment imposed on him, whether in Zimbabwe or elsewhere; or
  - (f) he is adjudged, by a court of competent jurisdiction, to be mentally or physically incapable of performing his functions as a member; or
  - (g) in the case of the managing director, when he ceases to be the managing director.

(2) The Minister, on the recommendation of the Board, may require a member to vacate

his office if the Minister is satisfied that the member has been absent without the permission of the Board from three consecutive meetings of the Board, of which the member was given not less than seven days' notice, and that there was no just cause for the member's absence.

(3) A member's membership of the Board shall be suspended, and he shall not exercise any functions of the Board or be entitled to receive any remuneration as a member of the Board, from the date on which he first appears in court, on remand or for trial, in any criminal proceedings in Zimbabwe or elsewhere in respect of any offence involving dishonesty or any offence for which a sentence of imprisonment without the option of a fine may be imposed.

## **10 Filling of vacancies on Board**

On the death of, or the vacation of office in terms of section *nine*, by a member, his office shall be filled within three months in accordance with section *four*.

## **11 Meetings and procedure of Board**

(1) The Board shall hold its first meeting on 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 Board shall meet at least six times in each financial year.

(2) The chairman of the Board—

- (a) may convene a special meeting of the Board at any time; and
- (b) shall convene a special meeting of the Board on the written request of the Minister or not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairman's receipt of the request.

(3) Written notice of a special meeting convened in terms of subsection (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

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

- (a) such business as may be determined by the chairman of the Board, where he convened the meeting in terms of paragraph (a) of subsection (2); or

(b) the business specified in the request for the meeting, where the chairman of the Board convened the meeting in terms of paragraph (b) of subsection (2).

(5) The chairman of the Board or, in his absence, the deputy chairman shall preside at all meetings of the Board:

Provided that, if the chairman and deputy chairman are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairman.

(6) Five members shall form a quorum at any meeting of the Board.

(7) Subject to subsection (12), anything authorized or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

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

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

(10) Subject to subsection (11) and to section *fifteen*, at all meetings of the Board each member present shall have one vote on any question before the Board 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) The managing director shall not take part in the discussion of, and shall not vote on, any question before the Board which involves—

(a) his tenure of office or conditions of service; or

(b) advice which the Board is to give the Minister in regard to an appeal under section *forty-three* against a decision of the managing director.

(12) Any proposal circulated among all members 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 Board and shall be incorporated into the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of

the Board, this subsection shall not apply to the proposal.

## **12 Committees of Board**

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

Provided that the vesting of any function in a committee shall not divest the Board of that function, and the Board 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 subsection (1), the Board -

(a) shall appoint at least one member of the Board as a member of the committee, and that member or one of those members, as the case may be, shall be chairman of the committee; and

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

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

(4) Subject to subsection (3) and to section *fourteen* and *fifteen*, the procedure to be followed at any meeting of a committee and the quorum at any such meeting shall be as fixed by the Board.

## **13 Remuneration and allowances of members of Board and committees**

(1) Every member of the Board or of a committee shall be paid—

(a) such remuneration, if any; and

(b) such allowances to meet his reasonable expenses incurred in connection with the business of the Board or the committee, as the case may be;

as the Board may fix with the approval of the Minister.

## **14 Disclosure of interests by members of Board and committees**

(1) In this section -

"associate", in relation to a member, means—

(a) a person who is related to the member by blood or by marriage; or



- (b) a partner, employee or employer of the member; or
- (c) any body of persons, whether corporate or unincorporated, of which the member is a director or in which the member holds any office or position other than that of an auditor or in which the member holds a controlling interest.

(2) The managing director and every member shall, upon appointment, and annually thereafter, declare to the Board in full any significant commercial or financial interest held directly or indirectly by him or his associate in accordance with such guidelines as the Board, in consultation with the Minister, may fix.

(3) If a member or his associate is in any way interested, whether directly or indirectly, in any business or proposed business of the Authority, the member shall disclose his interest at the meeting of the Board at which the business or proposed business is first taken into consideration.

(4) If a member or his associate becomes interested, whether directly or indirectly, in any business or proposed business of the Authority after it has been taken into consideration by the Board, the member shall declare his interest to the Board at the first meeting of the Board which takes place after his interest arises.

(5) A general declaration that a member or his associate has an interest in any particular company or body of persons and is interested in all transactions by that company or body of persons shall not be sufficient disclosure for the purposes of this section, and whenever any business or proposed business by the Authority with that company or body of persons is taken into consideration by the Board, a declaration of interest in terms of this section shall be required.

(6) A member shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any matter in which he or his associate has an interest.

## **15 Minutes of proceedings of Board and committees**

(1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board and of every 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 minute relate or by the person presiding at the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.

#### **16 Validity of decisions and acts of Board and committees**

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

#### **17 Appointment and functions of managing director of Authority**

(1) Subject to this Act, the Board shall appoint, on such terms and conditions as the Board may fix, a person to be the managing director of the Authority.

(2) Without the authority of the Minister, no person shall be appointed as managing director and no person shall be qualified to hold office as managing director if he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe.

(3) The appointment of the managing director shall terminate if he would be required in terms of paragraph (c), (d) or (e) of subsection (1) of section *ten* to vacate his office had that section, and paragraph (a) of subsection (2) of section *eight*, applied to him:

Provided that his appointment shall not terminate on the ground that he has ceased to be a citizen of Zimbabwe or ordinarily resident in Zimbabwe, if the Minister has granted authority under subsection (2).

(4) The managing director shall, subject to the Board's directions, supervise and manage the Authority's staff, activities, funds and property and perform such other functions on behalf of the Board as the Board may assign to him.

(5) Any assignment of functions in terms of subsection (4)—

(a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;

(b) may be revoked by the Board at any time;

- (c) shall not preclude the Board itself from exercising the functions.

## **18 Execution of contracts and instruments by Authority.**

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

## **19 Reports of Authority**

(1) In addition to any annual report which the Authority may be required to submit to the Minister in terms of the Audit and Exchequer Act [*Chapter 22:03*], the Board -

- (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 Authority considers desirable;

in regard to the operations, undertakings and activities of the Authority.

(2) The Board shall give the Minister all information relating to the operations, undertakings and activities of the Authority that the Minister may at any time require.

## **20 Minister may give Board directions on matters of policy**

(1) Subject to subsection (2), the Minister may give the Board such directions of a general character relating to the policy which the Authority is to observe in the exercise of its functions, as the Minister considers to be requisite in the national interest.

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and the possible effects which the proposal may have on the finances, commercial interests and other resources and functioning of the Authority.

(3) After receipt of the views of the Board submitted in terms of subsection (2), the Minister may confirm, alter or withdraw any proposed direction to the Board and, where the Minister has confirmed a direction, whether altered or not, the Board shall forthwith comply with the direction.

(4) When any direction has been received by the Board in terms of this section, the

Board shall set out in the Authority's annual report the direction received by it, the views expressed by it in terms of subsection (2), and the final direction given to it in terms of subsection (3).

### PART III

#### FINANCIAL PROVISIONS RELATING TO AUTHORITY

##### **21 Annual programmes and budgets of Authority**

(1) On or before the beginning of every financial year, the Board shall prepare and submit to the Minister for his approval—

- (a) a programme of the projects and activities which the Board intends the Authority to undertake during that financial year; and
- (b) a budget showing the income and expenditure of the Authority for the financial year as proposed by the Board..

(2) During any financial year the Board may submit to the Minister for his approval a supplementary budget relating to expenditure which -

- (a) was not, for good reason, provided for in the annual budget; or
- (b) was inadequately provided for in the annual budget due to unforeseen circumstances.

(3) A supplementary budget approved by the Minister shall be deemed to form part of the annual budget of the Authority for the financial year to which it relates.

(4) The Board shall furnish the Minister with such additional information in regard to any budget submitted under subsection (1) or (2) as the Minister may require.

(5) In approving any budget under this section the Minister may impose such terms and conditions as he considers to be necessary or desirable.

(6) With the approval of the Minister, the Board may vary a budget approved under this section:

Provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

(7) The Minister may withdraw, vary or modify his approval of any budget under this section or any of the terms and conditions of such approval.

**22 Funds of Authority**

The funds of the Authority shall consist of—

- (a) such moneys as may be payable to the Authority—
  - (i) from moneys appropriated for the purpose by Act of Parliament; and
  - (ii) by any subsidiary in terms of section *twenty-three*; and
  - (iii) from the Fund in terms of section *thirty-seven*;and
- (b) any donations and grants made to the Authority by any person or authority or by any government of any country; and
- (c) such moneys as may, with the approval of the Minister responsible for finance, be obtained by the Authority as loans or by way of other financial assistance; and
- (d) charges payable in terms of section *twenty-four* and any fees or charges in respect of any services rendered by the Authority; and
- (e) such other moneys or assets as may accrue to the Authority, whether in the course of its operations or otherwise.

**23 Payments to Authority by subsidiaries**

There shall be paid to the Authority at such time as the Board may direct such portion of the profit of any company promoted, established or acquired by the Authority as the Board may determine:

Provided that, before determining the portion of profit to be paid to it in terms of this subsection, the Board shall consult the board of the subsidiary concerned.

**24 Water and other charges**

(1) The Authority may, with the approval of the Minister and subject to the Water Act, 1997, fix charges for—

- (a) the sale of raw or treated water from water works operated or controlled by the Authority; and

- (b) the disposal of waste water; and
  - (c) the drilling of boreholes; and
  - (d) the provision of consultancy services;
- and

(2) When seeking the approval of any charge in terms of subsection (1) or an increase in any charge, the Authority shall apply to the Minister in writing, setting out the full details of any proposed charge or increase therein and the basis of the proposal.

(3) The Minister shall forthwith consider any application made in terms of subsection (2) and if he is satisfied that the proposed charge or increase therein is fair and reasonable having regard to—

- (a) the cost of providing, operating or maintaining the service concerned; and
- (b) any proposed improvements to any service or facility provided by the Authority; and
- (c) any other relevant economic factors justifying the proposed charge or increase therein;

he shall approve the charge or increase therein sought.

(4) If, after due consideration, the Minister is not satisfied in respect of any of the matters specified in subsection (3), he shall not grant the approval:

Provided that, before refusing to grant approval in terms of this subsection, the Minister shall notify the Authority of his intention to do so and of his reasons therefor and shall give the Authority a reasonable opportunity to make representations in the matter.

(5) Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], different charges may be fixed in terms of subsection (1) for the sale of water to different classes of persons or uses:

Provided that, in fixing different charges in respect of different classes of persons or uses, there shall be no discrimination between persons on the grounds of race, tribe, place of origin, political opinion, colour, creed or gender.

## **25 Investment of moneys not immediately required by Authority**

Moneys not immediately required by the Authority may be invested in such manner as the Board may approve.

**26 Authority to make certain charges to revenue account**

(1) The Authority shall charge to its revenue account all charges which, in the normal conduct of business, are regarded as proper to be charged to the revenue account and, in so doing, shall make proper provision in each financial year for—

- (a) the depreciation or diminution in value of its assets; and
- (b) the payment of interest on and all other charges and expenses incurred in connection with its activities.

(2) In charging to its revenue account all charges which in the normal conduct of business are regarded as proper to be charged to revenue account as provided in subsection (1), the Board may, in each financial year, make provision for—

- (a) meeting in whole or in part increases in the cost of replacing assets to an extent approved by the Minister and the Minister responsible for finance; and
- (b) making payments to an insurance fund established by the Board to meet, wholly or in part, such of the Authority's liabilities as the Minister may approve; and
- (c) making payments to a pension fund to meet, wholly or in part, superannuation liabilities of the Authority.

**27 Establishment and operation of general reserve**

(1) The Authority shall establish a general reserve to which, subject to this Part, may be appropriated from a surplus of income over expenditure at the end of its financial year such sums as the Board, in consultation with the Minister may approve.

(2) Subject to this Part, moneys in the general reserve established in terms of subsection (1) may be used for such purposes as the Board, after consultation with the Minister, may consider expedient for the proper exercise by the Authority of its functions, including the development of its assets and subsidiaries.

(3) Moneys in the general reserve established in terms of subsection (1) shall not be reduced below such an amount as the Minister may fix, otherwise than for the purpose of meeting a deficiency as is provided in subsection (1) of section *twenty-eight*.

**28 Meeting of deficiencies**

(1) If in any financial year the income of the Authority, together with any surplus income brought forward from a previous financial year, is insufficient to enable the Authority to meet the charges and to make the provision required by section *twenty-six*, the deficiency shall be met from the general reserve established in terms of section *twenty-seven*.

(2) If the moneys in the general reserve are insufficient for the purpose of meeting the deficiency referred to in subsection (1), the Minister may, out of moneys appropriated for the purpose by Act of Parliament, meet the whole or any portion of the amount of the deficiency outstanding after the application of the moneys in the general reserve to that purpose either at the end of the financial year or at such time thereafter as he considers expedient.

(3) Any payment made in terms of subsection (2) shall be regarded as a loan made by the State to the Authority and shall be repayable by the Authority on such terms and conditions as the Minister may fix.

## **29 Accounts of Authority**

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

## **30 Audit of Authority's accounts**

(1) Subject to the Audit and Exchequer Act [*Chapter 22:03*], the Authority shall appoint as auditors one or more persons who are registered as public auditors under the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Authority in terms of section *twenty-nine* shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Board and to the Minister on the statement of accounts prepared in terms of section *twenty-nine*, and in their report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Authority's financial affairs.

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



the Minister may consider expedient, and the Board shall forthwith comply with any such requirement.

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

- (a) they have not obtained any information or explanation they require; or
- (b) any accounts or records relating to any accounts have not been properly kept by the Authority; or
- (c) the Authority has not complied with any provision of this Part;

the auditors shall include in their report made in terms of subsection (3) or (4), as the case may be, a statement to that effect.

(6) If in terms of the Audit and Exchequer Act [*Chapter 22:03*] the Authority'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.

### **31 Powers of auditors**

(1) An auditor referred to in section *thirty-one* shall be entitled at all times to require to be produced to him all accounts and other records relating to such accounts which are kept by the Authority or its agents and to require from any member of the Board or employee or agent of the Authority such information and explanation as in the auditor's opinion are necessary for the purpose of his audit.

(2) Any member of the Board or employee or agent of the Authority who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **32 Financial year of Authority**

The financial year of the Authority shall be the period of twelve months ending on the 31st December each year or on such other date as may be fixed by the Minister with the concurrence of the Minister responsible for finance.

## **PART IV**

## WATER LEVY FUND

**33 Establishment and object of Water Levy Fund**

(1) There is hereby established a fund, to be known as the Water Levy Fund, the management and control of which shall, subject to this Act, be vested in the Minister as trustee of the Fund.

(2) Subject to this Act, the object of the Fund shall be the development generally of the water resources of Zimbabwe.

**34 Composition of Fund**

The Fund shall consist of—

- (a) water levies payable in terms of section *thirty-five*;
- (b) any moneys that may be payable to the Fund from moneys appropriated for the purpose by Act of Parliament;
- (c) any moneys that the Fund may obtain, with the approval of the Minister and the Minister responsible for finance, by way of donations, loans or other financial assistance; and
- (d) any moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

**35 Water levy**

(1) The Minister may, in consultation with the Board, and with the approval of the Minister responsible for finance, by statutory instrument, impose a water levy on any person holding a permit issued in terms of the Water Act, 1997.

(2) In prescribing a water levy in terms of subsection (1), the Minister shall prescribe—

- (a) the persons responsible for the payment, collection and remittal of the levy; and
- (b) the manner in which and the times at which the levy shall be paid, collected and remitted; and
- (c) the basis upon which the levy shall be calculated.

(3) The Minister may, by proceedings in a competent court, recover the amount of any levy which is due in terms of this section from any person required to pay the levy or to collect

or remit the levy.

- (4) All amounts remitted or collected by way of levy shall be paid into the Fund.

### **36 Administration of Fund**

Subject to this Act, the Fund shall be administered by the Minister through a competent body acting in accordance with the directions of the Minister.

### **37 Application of Fund**

Moneys in the Fund shall be applied to the following purposes—

- (a) payment to the Authority of such amount as the Minister considers the Authority will require for the purpose of meeting the expenditure incurred or to be incurred by the Authority in that financial year in performing such functions, other than commercial functions, as the Minister may approve:

Provided that no moneys shall be applied towards any expense that is not provided for in a budget approved by the Minister for the purposes of this section;

- (b) reimbursing the Authority for the cost of administering the Fund;
- (c) any other purpose which the Minister, after consultation with the Authority, considers will promote the development of water resources.

### **38 Financial year of Fund**

The financial year of the Fund shall be the period of twelve months ending on the 31st December each year or on such other date as may be fixed by the Minister with the concurrence of the Minister responsible for finance.

### **39 Books of account and audit of Fund**

(1) The Minister shall ensure that—

- (a) proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Fund; and
- (b) in respect of each financial year—
- (i) a balance-sheet; and

- (ii) a statement of the transactions referred to in paragraph  
(a);

are prepared without undue delay.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him by section 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Fund were public moneys or State property and persons employed by the Authority were employees of the State.

## PART V GENERAL

### **40 Investigation into affairs of Authority**

(1) The Minister may at any time cause an investigation to be made into the affairs of the Authority by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

### **41 Information to be furnished to Minister and to Parliament**

(1) As soon as possible and in any case not later than six months after the end of each financial year of the Authority, the Board shall transmit to the Minister in respect of—

- (a) its last preceding financial year copies of—
- (i) a balance sheet and profit and loss account showing separately the financial details in connection with the exercise of any of its functions in terms of section *five* and duly certified by the auditors appointed under section *thirty*; and

- (ii) a full report on the activities of the Authority during the financial year and the annual report of the auditor;
  - (b) such other period as the Minister may direct, a statement of accounts in respect of that period.
- (2) The Minister shall lay copies of all such balance sheets, accounts and reports before Parliament on one of the fourteen days on which Parliament next sits after he has received them.
- (3) Copies of the documents referred to in subsection (2) shall be available for inspection by any member of the public at the offices of the Authority during normal working hours.

#### **42 Minister may require statistics and information**

The Minister may direct the Authority to furnish him with such information and statistics as the Minister may from time to time require, and the Authority shall forthwith comply with any such direction.

#### **43 Appeals**

- (1) If any person is aggrieved by any decision or action of the Board or the managing director in the performance of the functions of the Authority, he may, within twenty-eight days after being notified of the decision or of the action being taken, appeal in writing to the Minister.
- (2) For the purpose of determining an appeal noted in terms of subsection (1), the Minister may require the Board, the managing director or any employee of the Authority, to furnish him with the reasons for the decision that is the subject of the appeal.
- (3) The Minister, after due and expeditious inquiry and, except where the Board's decision is the subject of the appeal, after consultation with the Board, may make such order on any appeal noted in terms of subsection (1) as he considers just.
- (4) An appeal shall lie to the Administrative Court against any order of the Minister in terms of subsection (3).
- (5) The Board, the managing director or an employee of the Authority, shall

take all necessary steps to comply with any order made by the Minister in terms of subsection (3) or by the Administrative Court on an appeal in terms of subsection (4).

(6) The noting of an appeal in terms of this section shall not, pending the determination of the appeal, suspend the decision appealed against unless the Minister or the Administrative Court, as the case may be, directs otherwise.

#### **44 Regulations**

(1) Subject to subsection (3), the Minister, in consultation with the Board, may make regulations providing for all matters which in terms of this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the terms and conditions under which the Authority will supply water or provide its services;
- (b) a tariff of water charges;
- (c) the manner of payment of any charges or fees due for water supplied or any services rendered by the Authority;
- (d) the making of additional charges or the payment of interest in respect of overdue accounts;
- (e) the disconnecting of the supply of water for non-payment of any charge or fee payable to the Authority;
- (f) the provision of clean water;
- (g) the regulation of the operations of the Authority's partners or of the companies promoted, established or acquired by the Authority.

(3) The Minister shall consult the Board before making regulations in terms of subsection (1).

### **PART VI**

#### **REPEAL, TRANSITIONAL PROVISIONS AND SAVINGS**

#### **45 Repeal of Cap. 20:16**

Subject to Part VI, the Regional Water Authority Act [*Chapter 20:16*], is

repealed.

**46 Transfer of State employees to Authority**

The Authority, with the approval of the Public Service Commission and with the consent of the person concerned, may take on transfer any member of the Public Service employed in the Department of Water Resources to the Authority, subject to section *forty-seven*, on such terms and conditions of employment as the Authority may determine.

**47 Conditions of employment of transferred employees**

(1) A person transferred in terms of section *forty-six* shall enjoy conditions of service with the Authority which, taken as a whole, are no less favourable than those enjoyed by him immediately prior to the date of his transfer in relation to—

- (a) security of tenure;
- (b) salary and salary scale;
- (c) pension, including commutation of pension;
- (d) leave, whether vacation, sick or other leave;
- (e) acting, overtime and travelling and subsistence allowances;
- (f) hours of work.

(2) Any vacation leave which had accrued to and not been taken by a person transferred in terms of section *forty-six* at the date of transfer shall be credited to him by the Authority and shall be taken on such terms as may be agreed.

**48 Transfer of certain assets, rights, liabilities and obligations to Authority**

(1) The assets and rights of the State connected with the services carried on by the Department of Water Resources, together with the liabilities and obligations attaching thereto, which were subsisting immediately before the fixed date and are specified by the Minister, with the approval of the Minister responsible for finance, shall, with effect from the fixed date, be transferred to the Authority on such terms and conditions as the Minister and the Minister responsible for finance may fix in consultation with the Board.

(2) The Registrar of Deeds shall, where so directed by the Minister, make such endorsements on the appropriate title deeds and in his registers as may be required by reason of the transfer to the Authority of the assets, rights, liabilities and obligations referred to in subsection (1) and all the transfers shall be exempt from stamp duty, fees of office and other such charges.

(3) All charges, agreements, contracts, instruments and working arrangements creating, giving rise to, relating to or connected with an asset, right, liability or obligation referred to in subsection (1) which were subsisting immediately before the fixed date, including any contract entered into before the fixed date for the supply of equipment for the Department of Water Resources shall, subject to subsections (1) and (5), be of full force against or in favour of the Authority and enforceable as if, instead of the State, the Authority had been named therein and had been a party thereto.

(4) Any proceedings or cause of action relating to or connected with an asset, right, liability or obligation referred to in subsection (1) or arising out of a charge, agreement, contract, instrument or working arrangement referred to in subsection (3) which was pending or existing immediately before the fixed date by or against the State may, subject to subsection (5), be continued or enforced by or against the Authority as it might have been by or against the State if this Act had not come into operation.

(5) Subsections (3) and (4) shall not apply to any proceedings or a cause of action pending or existing immediately before the fixed date between the State and a person employed by the State.

#### **49 Transfer of assets and liabilities of Regional Water Authority**

(1) All the assets that, immediately before the fixed date were assets of the Regional Water Authority and the liabilities that had been incurred by the Regional Water Authority and immediately before the fixed date subsisted in the Regional Water Authority shall, on the fixed date, pass by succession to the Authority, which shall have all powers, duties and obligations in relation to the assets and liabilities that are conferred by this Act in relation to its assets and liabilities.

(2) All bonds, hypothecations, title deeds, documents, charges, agreements, contracts, notes, instruments and working arrangements, including contracts with



customers, that subsisted immediately before the fixed date to which the Regional Water Authority was a party shall, on and after that date, be effective against or in favour of the Authority and enforceable as if, instead of the Regional Water Authority, the Authority had been named therein or had been a party thereto.

(3) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his registers in respect of any immovable property or any right or obligation under a mortgage, hypothecation, pledge, bond, note or charge vested in or imposed upon the Authority in terms of this section, but the Registrar of Deeds, when so requested in writing by the Authority in relation to any particular such immovable property, mortgage, hypothecation, pledge, bond, note or charge, shall cause the name of the Authority to be substituted for that of the Regional Water Authority on the appropriate title deed or other document or in the appropriate register.

(4) Any proceedings or cause of action pending or existing immediately before the fixed date by or against the Regional Water Authority may, on and after the fixed date, be continued or enforced by or against the Authority as it might have been by or against the Regional Water Authority had this Act not been passed.

(5) Any guarantee or suretyship which was given or made by the Government or any other person in respect of any debt or obligation of the Regional Water Authority and which was effective immediately before the fixed date shall, on and after the fixed date, remain effective against the guarantor or surety in relation to the payment of the debt or performance of the obligation, as the case may be, by the Authority.

#### **50 Obligations of Zimbabwe National Water Authority**

All the rights and obligations of the Regional Water Authority—

- (a) in its capacity as employer under any contract of employment; and
- (b) under any contract or arrangement for the payment of pensions, allowances or gratuities to or in respect of any former employee of the Regional Water Authority;

shall vest in the Zimbabwe National Water Authority as from the fixed date.

**51 Directions regarding transitional matters**

(1) In order to ensure the proper transfer of assets and liabilities of the Regional Water Authority to the Zimbabwe National Water Authority, the Minister may give the Board of the Regional Water Authority such directions in writing as he considers necessary and the said Board shall without delay comply with every such direction.

(2) Without derogation from subsection (1), directions given under that subsection may provide for—

- (a) the cessation of all or any of the functions of the Regional Water Authority;
- (b) the termination of any contract entered into between the Regional Water Authority and any person:

Provided that no such direction shall authorize the Regional Water Authority to commit an unlawful breach of any such contract;

- (c) the production of any report and the provision of any information concerning the conduct of the Regional Water Authority or its Board or anything done by or on behalf of the Regional Water Authority or its Board.

**52 Savings**

(1) Any decision made or other thing whatsoever made, done or commenced under the repealed Act which, immediately before the date of commencement of this Act, had or was capable of acquiring effect shall continue to have or to be capable of acquiring, as the case may be, effect as if it had been made, done or commenced under this Act.

(2) Any price which, immediately before the fixed date, was chargeable within any area in respect of the supply of water to any consumer by the Regional Water Authority or the Department of Water Resources shall, on or after the fixed date and until alternative charges have been fixed, continue to be chargeable in respect of the supply of water to those or similar consumers by the Authority.

(3) Subject to this Act, any right in or over land which, immediately before the fixed date, vested in the Regional Water Authority shall, on or after the fixed date, vest

in the Authority.

SCHEDULE (*Section 6*)  
POWERS OF AUTHORITY

1. With the approval of the Minister and the appropriate Minister, to construct, establish, acquire, maintain and operate dams, reservoirs, canals, distribution works and hydro-electric power stations in any area on such terms and conditions as may be approved by such Ministers.
2. With the approval of the Minister and the Minister responsible for finance, to raise loans or borrow moneys in such amounts, for such purposes and under such conditions as may be approved by such Ministers.
3. To recommend to the appropriate Minister that any property relating to water be acquired or expropriated for development or utilization in the national interest or for the benefit of the inhabitants generally in the area concerned.
4. To purchase, take on lease or otherwise acquire and hold property and interests in or rights over land, rights to the use of water and any other rights which may be necessary for the efficient exercise of the powers specified in this Schedule.
5. To enter into such contracts as the Board considers to be necessary for the exercise of the powers specified in this Schedule.
6. To employ, on such terms and conditions as the Board thinks fit, such persons as are necessary for conducting the Authority's affairs, and to suspend or discharge any such employees in accordance with established policies and procedures.

7. To apply for, buy or otherwise acquire patents, licences, concessions or the like conferring an exclusive or non-exclusive or limited right to use information or a process which may seem to the Board capable of being used for the purposes of the Authority or the acquisition of which may seem to the Board calculated, directly or indirectly, to benefit the Authority, and to use, exercise, develop and grant licences in respect of or otherwise turn to account rights, information and processes so acquired.

8. To sell, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with assets of the Authority or any part thereof, which are not required for the purposes of the Authority, for such consideration as the Board may determine.

9. To draw, make, accept, endorse, discount, execute and issue for the purpose of the business of the Authority promissory notes, bills of exchange, bills of lading, securities and other negotiable and transferable instruments.

10. To enter into or renew, cancel or abandon arrangements with any Government institution or authority, local or otherwise, that appear conducive to the exercise of any of its functions and to obtain from such Government or authority rights, privileges and concessions that it thinks desirable to obtain and carry out, exercise and comply with the arrangements, rights, privileges and concessions.

11. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.

12.. To promote schemes for the purpose of improving the skill, knowledge or competence of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research.

13. To promote, establish or acquire companies or other undertakings and, in connection with any such company or undertaking—

- (a) to manage it; and
- (b) to appoint any person to act on behalf of the Authority as a director or secretary thereof or in any other capacity in relation thereto.

14. To associate with, participate in or enter into joint or other ventures with individuals, associations or other bodies or corporations in the promotion, supply, distribution or use of water as well as disposal of waste water.

15. To insure against losses, damages, risks and liabilities the Authority may incur.

16. Generally, to do all such things as are incidental or conducive to the exercise of the functions of the Authority or incidental to the powers specified in this Schedule.

CENTRO DE INFORMACION DE RECURSOS HIDRICOS



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