

Zimbabwe

ZEP-RE (Membership of Zimbabwe and Branch Office Agreement) Act, 2017 Act 4 of 2017

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ZEP-RE (Membership of Zimbabwe and Branch Office Agreement) Act, 2017 (Act 4 of 2017)

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ZEP-RE (Membership of Zimbabwe and Branch Office Agreement) Act, 2017 Act 4 of 2017

Published on 8 December 2017

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includes any amendments published up to 31 December 2017.]*

To enable effect to be given within Zimbabwe of the Host Agreement between the Government of Zimbabwe concerning the ZEP-RE (PTA Reinsurance Company); and to provide for matters incidental to or connected therewith.

WHEREAS the Agreement for the Establishment of the ZEP-RE (PTA Reinsurance Company) (hereinafter called "the Company") was concluded on November 23, 1990, among member states of the Preferential Trade Area (PTA) (now the Common Market for Eastern and Southern Africa), including Zimbabwe, by virtue of which Zimbabwe is a member;

AND WHEREAS the PTA Authority, at its tenth meeting, took the decision that the Company commence operations on September 1, 1992;

AND WHEREAS for the purposes of regulating matters relating to legal capacity, privileges and immunities of the Company granted pursuant to Article 40 of the agreement establishing the Company:

NOW, THEREFORE, be it enacted by the Parliament and the President of Zimbabwe.

1. Short title

This Act may be cited as ZEP-RE (Membership of Zimbabwe and Branch Office Agreement) Act, 2017.

2. Interpretation

In this Act—

"**Agreement**" means the Agreement for the establishment of the Company, concluded on November 23, 1990, among members states of the Preferential Trade Area (PTA) (now the Common Market for Eastern and Southern Africa);

"**Company**" means the ZEP-RE (PTA Reinsurance Company);

"**Host Agreement**" means the Agreement between the Government of Zimbabwe and ZEP-RE (PTA Reinsurance Company);

"**member of the family**", in relation to any person shall be construed as meaning—

- (a) the spouse or any dependent child of that person; and
- (b) any other person deemed by the Minister to be a member of the family in question;

"**Minister**" means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act.

3. Provisions of ZEP-Re to have force of law

All the provisions in the Schedule shall have the force of law in Zimbabwe:

Provided that nothing in the Host Agreement shall be construed as—

- (a) entitling the company to import goods free of customs duty without any restriction on their subsequent sale; or
- (b) conferring on the Company any exemption from taxes which are in fact no more than charges for public utility services which are payable by other international organisations situated or represented in Zimbabwe.

4. Minister's powers

- (1) The Minister may make such regulations and give such directions as he or she may deem necessary or convenient for the carrying out of the objects and purposes of this Act.
- (2) In particular, the Minister may (without violating the spirit or letter of the Agreement) by regulation or direction—
 - (a) temporarily suspend in relation to any individual or class of individuals the application of Articles 3 and 4 of the Agreement if the Minister is of the opinion that such suspension is necessary in the interests of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest;
 - (b) prescribe reasonable definitions of or limitations to the scope of the application of the privileges and immunities referred to in Articles 7, 8, 9, 10 and 11 of the Agreement, including the specification of periods for which those privileges and immunities may be enjoyed for the purpose of those Articles by persons who have concerned have ceased to be officials of the Company or by members of the families of such officials.
- (3) The Company shall be given advance notice of the exercise of any power by the Minister under subsection 2(a) or (b) and shall be afforded the opportunity of making representations on the matter to the Minister.

Schedule (Section 3)

Article 1 – Legal status of ZEP-Re (PTA Reinsurance Company)

Pursuant to provisions of Article 40 of the Agreement establishing the Company, ZEP-Re (PTA Reinsurance Company) is hereby declared to have the legal capacity of a body corporate in Zimbabwe and shall be recognised as a corporate body with international legal personality with the power to acquire or dispose of movable and immovable property and to have the legal capacity required for the performance of its functions under the Treaty.

Article 2 – Interpretation

1. In this Agreement, unless the context shall otherwise require, the expression:

"Appropriate Authorities of Zimbabwe" means such national, local or other agencies of the Government of Zimbabwe, as may be appropriate in accordance with the laws of Zimbabwe;

"The Establishment Agreement" means the Agreement establishing the ZEP-Re (PTA Reinsurance Company);

"Company" means the ZEP-Re (PTA Reinsurance Company);

"Government" means the Government of the Republic of Zimbabwe;

"Host Agreement" means the Agreement between the Government of Zimbabwe and ZEP-Re (PTA Reinsurance Company);

"Laws of the Republic of Zimbabwe" includes legislative acts, rules, regulations, decrees issued by or under the authority of the Government or appropriate Zimbabwean authorities;

"Official Correspondence" means all correspondence relating to the Company;

"Representatives of the Member States and Institutions" include Representatives, advisors, technical experts and secretaries of delegations of States and Institutions that are members of the Company;

"Treaty" means the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA).

2. The provisions of the Host Agreement apply to—

- (a) the temporary offices used by the Company; and
- (b) the land of the offices together with any buildings, and other structures and installations erected upon it; and
- (c) any other land, buildings, structures or installations which may be defined as being part of the offices by supplementary Agreements between the Company and Government of Zimbabwe.

Article 3 – Inviolability of offices of ZEP-Re (PTA Reinsurance Company)

1. The offices of the Company shall be inviolable and shall be under the control and authority of the Managing Director as provided for in this Agreement. Officials of the Government, whether administrative, judicial, military or police, shall not enter the offices of the Company to perform any official duties therein except with the consent of and under conditions agreed to by the Managing Director or anybody acting on his or her behalf.
2. The Company shall have the like inviolability of its official archives and premises occupied as offices, as is accorded to an international financial institution.
3. The appropriate authorities shall exercise due diligence to ensure that the tranquility of the offices of the Company is not disturbed by the unauthorised entry of groups of persons from outside or by disturbances in its immediate vicinity, and shall cause to provide on the boundaries of the offices of the Company such security as is required for these purposes.
4. If requested by the Managing Director or anyone acting on his or her behalf, the appropriate Zimbabwean authorities shall provide sufficient number of police or other security personnel for the preservation of law and order in the offices of the Company, and for the removal therefrom of persons as identified by the Managing Director or anybody acting on his or her behalf.
5. Without prejudice to the provisions of the Treaty and the Agreement on Privileges and Immunities of this Agreement, the Managing Director or anyone acting on his or her behalf shall prevent the offices of the Company from becoming a refuge for persons who are avoiding arrest or service of legal process under any law of the Republic of Zimbabwe.
6. Without prejudice to the provisions of Article 43(2) of the Establishment Agreement, the Government will take whatever required action in order that the Company shall not be disposed of its rights in the offices of the Company nor deprived of the enjoyment of such rights except with its express consent.

Article 4 – Access to the offices of the Company and residence

1. The appropriate authorities of the Government shall not impede the transit to or from the offices of the Company of any official of the Company proceeding there to perform his or her official duties, or any other authorised person at the invitation of the Company.

2. To this end, the Government shall facilitate the entry and residence in the Republic of Zimbabwe and exit therefrom, while they are engaged in business with the Company of—
 - (a) directors of the Company and their alternates;
 - (b) Managing Director and other officials of the Company;
 - (c) persons other than officials of the Company performing missions for the Company;
 - (d) other persons invited under the authority of the Managing Director or any person acting on his or her behalf to visit or to perform their duties at the offices of the Company;
 - (e) members of the family and personal employees of the persons referred to in subparagraphs (a), (b), (c) and (d) while the latter are engaged in business with the Company.
3. The names of persons mentioned in paragraph 2(a) and (b) shall be notified to the Government by the Managing Director of the Company.
4. Visas for persons referred to in paragraph 2(b) of this Article, where required, shall be granted expeditiously and gratis.
5. No measure excluding or restricting the residence in the Republic of Zimbabwe of any such person shall be taken on account of any activities performed by him or her in his or her official capacity. In case of abuse of privilege by any such person acting outside of his or her official capacity in the Republic of Zimbabwe, measures for excluding or restricting his or her residence there may be taken after prior consultation between Minister of Foreign Affairs of the Republic of Zimbabwe and Managing Director of the Company.
6. The provisions of this Article shall not apply to general interruption of transport nor imply exemption from the obligation to produce reasonable evidence to establish that persons claiming the rights granted under the Article are included in the categories specified in paragraph 2(b) hereof nor from the reasonable application of quarantine and health regulations.

Article 5 – Communications, transport, public service and utilities

1. Without prejudice to any other concessions that the Government may agree to grant to the Company by any subsequent Agreements, the Company shall enjoy for its official communications, treatment not less favourable than that accorded by the Government to any Government including diplomatic missions of such Government or to any other International or African Organisation in the matter of priorities and rates of mail, cables, telegrams, telefaxes, telephones and other communications as well as press rates for information to press or television.
2. All official communications addressed to the Company, its Managing Director, Deputy Managing Director or any other official of the company and all outward communication of the Company, shall be immune from censorship and from any form of interception or interference.
3. The Company shall have the right to use codes and dispatch and receive official correspondence, and without limitation by reason of this enumeration, publications, documents, plans, blue-prints and sketches, still and moving pictures, films and sound recordings, either by courier or in sealed bags which shall enjoy the same immunities, exemptions and privileges as diplomatic couriers and bags.
4. Nothing in this Article shall be construed to preclude the adoption of appropriate precautions by the Government designed to prevent or avoid abuse of the immunities, exemptions and privileges provided in this Article.
5. In consultation with the Government and without prejudice to other provisions of this Agreement, the Company shall install and operate such equipment as may be necessary for the proper performance of its functions.
6. Without prejudice to special concessions that might be offered by the Government to the Company by any subsequent Agreements the Company shall be entitled, for its official purpose to use transport operated by

the Government at the rates and terms not less favourable than those accorded by the Government to any Government or any other International or African organisation.

7. The appropriate authorities of the Republic of Zimbabwe shall exercise, to the extent requested by the Managing Director, the powers which they possess with respect to the supply of public services to ensure that the offices of the Company shall be supplied on equitable terms with the necessary public services, including electricity, water, post, telephone, telegraph, transport, drainage. collection of refuse, fire protection, etc.
8. In case of any interruption or threatened interruption of any such service, the appropriate authorities of the Republic of Zimbabwe shall consider the needs of the Company as being of equal importance with similar needs of essential agencies of the Government, and shall take steps accordingly to ensure that the work of the Company is not prejudiced.

Article 6 – Financial provisions

1. Subject to exchange control laws and regulations for the time being in force, the Company may, operate such external bank accounts in foreign currencies as may be necessary in order to satisfactorily carry out its activities. However, it is agreed that prior Exchange approval is required to place locally realised capital/income into External Accounts.
2. Where the Government for the time being operates a system of priorities in the allocation of foreign exchange, it should accord priority to the conversions and/or the remittances of the Company.

Article 7 – Immunities and privileges of the Company

1. The Company shall be immune from suit and/or legal process except in so far as in any particular case the Managing Director in consultation with the Board of Directors has expressly waived the immunity. No waiver of immunity shall be deemed to extend to any measure of execution.
2. The Company shall have the like exemption from taxes and rates as is accorded to a sending State accredited to Zimbabwe. In particular the Company shall—
 - (a) be exempt from prohibitions and restrictions on importation or exportation of goods directly imported or exported by it for its official use; and
 - (b) be exempt from taxes, other levies and charges of equivalent effect on the importation of goods and publications directly imported or exported by it for its official use; be exempt from indirect taxes normally incorporated in the price of goods or services; and
 - (c) have the right to purchase ex-bond or import free of duty, taxes and other levies or charges of equivalent effect, prohibitions and restrictions, furniture, equipment and other effects and motor vehicles for official use.

Article 8 – Privileges and immunities for the Directors of the Company and their alternates

1. Directors of the company shall enjoy in the territory of the Republic of Zimbabwe while exercising their functions and during their journey to and from the offices of the Company the same immunities, exemptions and privileges as are accorded by the Government to non-resident diplomatic envoys of comparable rank in conformity with international law.
2. Alternates of Directors of the company and other designated representatives of member Government and Institutions participating in its work shall, while exercising their functions and during their journey to and from the offices of the company, enjoy in the territory of the Republic of Zimbabwe the immunities, exemptions and privileges normally enjoyed by non-resident members of diplomatic missions of comparable rank.

3. Directors of the Company and their Alternates, if resident in the Republic of Zimbabwe shall enjoy in the territory of the Republic of Zimbabwe the same immunities, exemptions and privileges as the Government accords to resident diplomatic representatives of comparable rank.
4. No tax shall be levied on or in respect of emoluments paid by the Company to its non-residence Directors and their non-resident Alternates.

Article 9 – Officials and staff of the Company

1. Except in so far as in any particular case, any immunity or privilege is waived by the Board of Directors or the Managing Director; the Deputy Managing Director, the Officials of the Company shall be accorded in respect of themselves, their spouses and their children under the age of twenty-one (21) years, the like immunity from suit and legal process, the like inviolability of residence and the like exemptions from taxes as is accorded to a diplomatic agent of a sending State accredited to Zimbabwe, his or her spouse and children. They shall enjoy exemption from income tax only in respect of emoluments received by them as officials of the Company and shall in particular enjoy—
 - (a) immunity from suit and legal process in respect of words spoken or written and all acts done by them in the course of the performance of their official duties and such immunity shall continue notwithstanding that the official concerned has ceased to be an official of the Company;
 - (b) immunity from personal arrest and detention;
 - (c) immunity from seizure or inspection of their personal and official baggage;
 - (d) immunity, together with their families, from immigration restrictions and alien registration;
 - (e) immunity from national service obligations;
 - (f) exemptions from taxation on the salaries, allowances and emoluments paid to them by the Company, and on income derived from sources outside the Republic of Zimbabwe and the right to maintain within or outside Zimbabwe foreign accounts, securities, and other moveable and immovable property;
 - (g) the right to purchase ex-bond or import free of duty, taxes and other such levies and charges of equivalent effect, prohibitions and restrictions, furniture, personal effects and other articles for personal use or for use of members of their family forming part of the household including articles intended for the establishment, provided that the articles so imported shall not be sold or otherwise disposed of in Zimbabwe except after two years from their importation;
 - (h) exemption from indirect taxes normally incorporated in the price of goods and services;
 - (i) the same repatriation facilities in time of crisis, together with members of their families and their personal domestic employee as the facilities accorded to diplomatic agents of a sending State accredited to Zimbabwe;
 - (j) subject to the approval of the Government, the opportunity for their spouses to take up employment in Zimbabwe, provided that the salaries and emoluments paid to such spouses shall not be exempt from income tax;
 - (k) the same privileges in respect of exchange facilities as are accorded to a diplomatic agent of a sending State accredited to Zimbabwe;
 - (l) the right to import free of duty, one motor vehicle every five years;
 - (m) the same right for their spouses to take up employment in Zimbabwe as accorded to spouses of a sending State accredited to Zimbabwe in reciprocal rights. Provided that the salaries and emoluments paid to such spouses shall not be exempt from income tax;

- (n) the right to take out of Zimbabwe at the time of termination of employment, funds in non-Zimbabwean currencies without any restrictions or limitations, provided that the said officials show that the funds were lawfully acquired.
2. In the case of other-general service staff who are internationally recruited (ordinary card holders) the right to purchase ex-bond or import free of duty, one motor vehicle every five years, purchase ex-bond or import free of duty, furniture and other personal effects and other articles for personal use or for the use of members of their family forming part of the household including articles intended for their establishment provided that such articles shall not be sold or otherwise disposed of in Zimbabwe except after three years after their importation. In particular they shall—
- (a) be exempt from income tax on salaries and emoluments including gratuity paid to them by the Company;
 - (b) enjoy immunity from seizure or inspection of their personal baggage;
 - (c) enjoy immunity, together with their families, from immigration restrictions and alien registration;
 - (d) enjoy immunity from suit and legal process in respect of words spoken or written and all acts done by them in the course of the performance of their official duties and such immunity shall continue notwithstanding that the staff concerned has ceased to be staff of the Company;
 - (e) enjoy immunity from national service obligation;
 - (f) have the right to take out of Zimbabwe at the time of termination of employment, funds in non-Zimbabwean currencies without any restrictions or limitations, provided that the said staff can show that the funds were lawfully acquired;
 - (g) have the same repatriation facilities in time of crisis together with members of their families the facilities accorded to diplomatic agents of a sending State accredited to Zimbabwe;
 - (h) the same privileges in respect of exchange facilities as are accorded to a diplomatic agent of a sending State accredited to Zimbabwe.
3. In the case of Zimbabwean citizens general service staff excluding spouses and other members of their family forming part of the household shall enjoy immunity from legal process of every kind in respect of words spoken or written and all acts done by them in the exercise of their functions.
4. The registration of vehicles belonging to the Company and to vehicles of officials of the Company shall be similar to the registration of vehicles belonging to diplomatic missions and agents of a sending State accredited to Zimbabwe.
5. Officials and staff of the Company shall be provided by the Government with a special identity card certifying the fact that they are officials or staff of the Company enjoying the privileges and immunities specified in this Agreement.
6. For purposes of this Article, the Managing Director, Deputy Managing Director and the officials of the Company, shall be incorporated by the Ministry of Foreign Affairs into the appropriate diplomatic category and shall enjoy the customs exemptions granted to such diplomatic categories in the Republic of Zimbabwe.
7. Officials of the Company who are nationals of or permanently resident in the Republic of Zimbabwe shall enjoy privileges and immunities only to the extent permitted by the Government.

Article 10 – Application or cessation of privileges and immunities

1. The Managing Director, Deputy Managing Director, every official and staff entitled to privileges and immunities shall enjoy diplomatic immunities and privileges from the moment he or she enters the territory of the Republic of Zimbabwe on proceeding to take up his or her post or, if already in the territory of Zimbabwe, from the moment when his or her appointment is notified to the Ministry of Foreign Affairs or such other Ministry as may be agreed.

2. When the functions of the persons enjoying privileges and immunities referred to in paragraph 1 of this Article come to an end, such privileges and immunities shall immediately cease at the moment when he or she leaves Zimbabwe or on expiry of a reasonable period in which to do so, but shall subsist until that time.
3. In case of the death of a person provided for in paragraphs 1 and 2 of Article 10 of this Agreement, the members of his or her family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period, agreed to between the Managing Director and the Government, in which to leave Zimbabwe.
4. In the case of immovable property the successors of the persons referred to in paragraphs 1 and 2 of Article 10 shall be exempt from payment of any duties or other taxes on the sale of such immovable property if they intend to permanently leave Zimbabwe immediately thereafter.
5. The privileges and immunities accorded by this Article are granted in the interests of the Company and not for the personal benefit of the individuals themselves.
6. The Managing Director may waive the immunity of any official in a case where, in his or her opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Company.
7. The company shall co-operate at all times with the appropriate authorities of the Republic of Zimbabwe to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article 11 – Status of the Managing Director

In addition to the immunities, exemptions and privileges specified in Article 9, the Managing Director and, in his or her absence, the Deputy Managing Director acting on his or her behalf, shall be accorded in respect of himself or herself, members of his or her family and his or her personal employees, the immunities, exemptions and privileges accorded to heads of diplomatic missions in conformity with International Law.

Article 12 – Interpretation and application

1. The provisions of the Treaty, the Agreement on Privileges and Immunities and of this Agreement, shall, where they relate to the same subject matter, be treated as complementary, so that the provisions of all shall be applicable and neither shall narrow the effect of the other but in any case of absolute conflict, the provisions of the Treaty and the Agreement on Privileges and Immunities, in that order, shall prevail.
2. The Government and the Company may enter into such supplementary agreements as may be necessary to fulfill the purpose of this Agreement.
3. Wherever this Agreement imposes obligations on the appropriate Zimbabwean authorities, the ultimate responsibility for the fulfillment of such obligations shall rest with the Government.
4. This Agreement shall be interpreted in the light of its primary purpose to enable the Company to fully and efficiently discharge its responsibilities and fulfill its objectives.

Article 13 – Settlement of disputes

1. Any dispute between the Company and the Republic of Zimbabwe concerning the interpretation or application of this Agreement or of any supplementary agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision or arbitration by tribunal of three arbitrators, one to be appointed by the Managing Director, one to be appointed by the Government of Zimbabwe and the third arbitrator to be chosen by the two or if they should fail to agree on his or her appointment by the Secretary-General of the Common Market for Eastern and Southern Africa (COMESA).

2. In cases of disputes referred to in paragraph 1 of this Article, the Arbitration Act [*Chapter 7:15*] of Zimbabwe shall be applicable.

Article 14 – Termination

The Agreement shall cease to be in force—

- (a) by mutual accord between the parties thereto; and
- (b) if the offices of the Company within the meaning of Article 13 of the Establishment Agreement is removed from the territory of the Republic of Zimbabwe, except for such provisions of the present Agreement as may be applicable in connection with the orderly termination of the activities of the Company at its offices in Zimbabwe and disposal of its property and assets therein.

Article 15 – Entry into force

This Agreement shall be signed by both Parties and shall enter into force upon compliance with all legislative requirements for its approval.