

**CHAPTER 24:25**  
**SECURITIES ACT**

*Act 17/2004*

ARRANGEMENT OF SECTIONS PART I  
PRELIMINARY

*Section*

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

**PART II**

SECURITIES COMMISSION

3. Establishment of Securities Commission.
4. Objectives, functions and powers of Commission.
5. Membership of Commission.
6. Nomination committee.
7. Disqualifications for appointment to Commission.
8. Chairperson and vice-chairperson of Commission.
9. Terms of office and conditions of service of commissioners.
10. Vacation of office by commissioners.
11. Suspension of commissioners.
12. Filling of vacancies on Commission.
13. Meetings and procedure of Commission.
14. Chief Executive Officer and staff of Commission.
15. Panels and working groups.
16. Commissioners and staff to disclose certain connections, interests and assets.
17. Minutes of proceedings of Commission and its panels and working groups.
18. Remuneration and allowances of commissioners.
19. Policy directions to Commission.
20. Reports of Commission.
21. Non-disclosure of confidential information.
22. Validity of decisions and acts of Commission.

**PART III**

FINANCIAL PROVISIONS RELATING TO COMMISSION

23. Funds of Commission.
24. Financial year of Commission.
25. Investment of moneys not immediately required by Commission.
26. Accounts of Commission.
27. Audit of Commission's accounts.
28. Powers of auditors.

**PART IV**

REGISTRATION OF SECURITIES EXCHANGES

29. Securities exchanges to be registered.
30. Registration of securities exchange.
31. Terms and conditions of registration of securities exchange.
32. Registration certificates.

33. Register of securities exchanges.
34. Annual fee payable by registered securities exchange.
35. Amendment of registration.
36. Cancellation of registration.
37. Registration and cancellation of registration to be notified in *Gazette* and in newspaper.

## PART V

### LICENSING OF BROKERS AND OTHER PERSONS

38. Persons requiring to be licensed.
39. Persons disqualified from holding licence.
40. Application for licence.
41. Grant or refusal of licence.
42. Terms and conditions of licence.
43. Form and period of validity of licence.
44. Renewal of licence.
45. Register of licences.
46. Notification by licence-holder of change in particulars.
47. Amendment of licence.
48. Cancellation of licence.
49. Suspension of licence.

## PART VI

### TRUST ACCOUNTS

50. Certain licensed persons to maintain trust accounts.
51. Books of account relating to trust accounts.
52. Trust account moneys not to form part of licensed person's assets and excluded from attachment.
53. Control of operation of trust account.
54. Orders as to costs.
55. Bank or other institution not deemed to know that funds are held in trust.
56. Limitation of set-off, etc., against trust account.
57. Saving of licensed person's rights against funds in trust account.
58. Commission may require certified balance of trust account.
59. Offences in relation to trust accounts.

## PART VII

### REGISTERS OF INTERESTS IN SECURITIES

60. Interpretation in Part VII.
61. Licensed persons to keep registers.
62. Commission may inspect and publish register of interests.

## PART VIII

### MANAGEMENT OF REGISTERED SECURITIES EXCHANGES

63. Listed securities.
64. Delisting or suspension of listing of securities and omission of prices from quotations of prices.
65. Rules of registered securities exchanges.
66. Liability for contraventions of rules.
67. Delegation of powers.

## PART IX

### CENTRAL SECURITIES DEPOSITORIES

68. Interpretation in Part IX.
69. Scheme for establishment of central securities depository.
70. Transfer of deposited securities.
71. When transfer of deposited securities may be refused.
72. Issue of dematerialised securities.
73. Effect of registration of central securities depository as holder of securities.
74. Authentication of documents of title to deposited securities.
75. Confirmation of transactions.
76. Maintenance of accounts by central securities depository and probative effect thereof.

77. Certification of names of depositors.
78. Withdrawal of deposited security from central securities depository.
79. Mortgaging or pledging of deposited securities.
80. Exemption of central securities depository and participants from liability.
81. No rectification of records and accounts of central securities depository.
82. Non-application of certain provisions relating to insolvency and liquidation.
83. Rights of central securities depository on insolvency or liquidation of participant.
84. Reports and information to be furnished to Commission by central securities depository.
85. Duty of central securities depository and participants to take security measures.
86. Duty to maintain secrecy.

## PART X

### MISUSE OF INSIDE INFORMATION

87. Interpretation in Part X.
88. Prohibition against misuse of inside information.
89. Defences.
90. Criminal penalty for misuse of inside information.
91. Civil liability for misuse of inside information.
92. Class actions for misuse of inside information.
93. Assessment of penalties.
94. Contracts valid despite misuse of inside information.
95. Protection of other rights.

## PART XI

### IMPROPER TRADING PRACTICES

96. False trading and market manipulation.
97. Fraudulently inducing person to trade or deal in securities.
98. Civil liability for contraventions of Part XI.
99. Class actions for contraventions of Part XI. PART XII

### SUPERVISION OF INSTITUTIONS

100. Commission may demand information.
101. Appointment of inspectors.
102. Powers of inspectors.
103. Investigation into operations of licensed person, registered securities exchange or central securities depository.
104. Procedure on completion of investigation.
105. Action by Commission following investigation.
106. Expenses of investigation.
107. Inspectors to maintain secrecy.

## PART XIII

### GENERAL

108. Appeals.
109. Order prohibiting anticipated or actual contraventions of certain provisions of this Act.
110. Special provisions relating to winding up or judicial management of registered securities exchange, licensed person or central securities depository.
111. Observance of rules of natural justice.
112. Commission may require particulars of financial journalists.
113. Unsolicited calls.
114. False statements, etc.
115. False use of name or description implying connection with registered securities exchange.
116. Evidence and presumptions.
117. Jurisdiction of regional magistrates.
118. Rules.

## PART XIV

### SAVINGS AND TRANSITIONAL PROVISIONS

119. Repeal of Cap. 24:18.
120. Amendment of Acats.

121. Savings.

122. Transitional provision: first commissioners.

## SCHEDULES

First Schedule: Powers of Commission.

Second Schedule: Requirements for Registration of Securities Exchange.

**AN ACT to establish a Securities Commission and to provide for its objectives, functions and powers; to control and regulate the marketing of securities and investment in securities; to regulate and register securities exchanges; to regulate and license persons who trade or deal in or manage securities; to provide for the establishment and functions of central securities depositories to facilitate the marketing and transfer of securities; to prohibit individuals who have inside information relating to securities from dealing in those securities and to provide for criminal and civil penalties for such dealing and for other improper practices; to repeal the Zimbabwe Stock Exchange Act [*Chapter 24:18*]; to make consequential amendments to various other Acts; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement : 1st June, 2008.]

## PART I

### PRELIMINARY

#### 1 Short title and date of commencement

This Act may be cited as the Securities Act [*Chapter 24:23*].

#### 2 Interpretation

(1) In this Act—

“central securities depository” means a facility or system for holding securities which□

(a) is established under a scheme approved by the Commission in terms of section *sixty-nine*; and

(b) enables transfers and other transactions relating to the securities to be effected by entries in a record or account, whether electronically or otherwise; and

(c) provides facilities for□

(i) the reporting and comparison of data in regard to transactions involving deposited securities; and

(ii) the reduction of the number of separate transactions involving deposited securities; and

(iii) the netting or allocation of obligations arising out of transactions involving deposited securities;

and

(d) acts as an intermediary in facilitating payments and deliveries of or in connection with transactions involving deposited securities;

“Chief Executive Officer” means the person appointed as Chief Executive Officer of the Commission in terms of section *fourteen*;

“Commission” means the Securities Commission established by section *three*;

“Commissioner” means a member of the Commission appointed in terms of section *five*;

“committee”, in relation to a registered securities exchange, means the committee, board or other body responsible for managing the affairs of the exchange;

“deal in securities” means to enter into an agreement□

(a) to acquire, dispose of, subscribe for or underwrite any security; or

(b) to secure a profit from the yield of any security or from fluctuations in the price of any security; or to offer to enter into any such agreement or to attempt to induce a person to enter into any such agreement;

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date on which this Act comes into operation;

“group of companies” means companies or other bodies corporate that are related to each other as holding company and subsidiary, or as subsidiaries of the same holding company, for the purposes of section 143 of the Companies Act [*Chapter 24:03*];

“guarantee fund” means the guarantee fund established in terms of rules referred to in paragraph (k) of subsection (1) of section *sixty-five* or in paragraph (l) of subsection (1) of section *sixty-nine*, as the case may be;

“inspector” means a person appointed as an inspector in terms of section *one hundred and one*;

“licence” means a licence issued in terms of this Act, and “licensed” shall be construed accordingly;

“licensable activity” means any of the following activities, when carried on for remuneration that bears a direct relation to the activity□

- (a) brokering or dealing in securities, that is to say□
  - (i) entering into an agreement on behalf of another person to acquire, dispose of, subscribe for or underwrite a security; or
  - (ii) offering to enter into an agreement referred to in subparagraph (i) or attempting to induce someone to enter into such an agreement; (b) the giving of investment advice, that is to say—
    - (i) advising other persons on their investments in securities;
    - (ii) issuing or publishing analyses or reports on securities;
    - (iii) on behalf of a client, undertaking the management of a portfolio of securities for the purpose of investment, including the arranging of purchases, sales or exchanges of securities through a licensed dealer;
- (c) investment management, that is to say managing another person’s portfolio of investments, where the portfolio consists wholly or mainly of securities;
- (d) holding securities in custody for another person and dealing with them to the extent necessary for that custody;
- (e) on behalf of an issuer of securities, recording transfers and other transactions relating to those securities;

“listed security” means a security that is listed on an official list;

“member”, in relation to a securities exchange, means a dealer who is entitled or permitted to deal in securities on that exchange;

“Minister” means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“official list” means the list of securities kept by a registered securities exchange in terms of section *sixtythree*;

“operator”, in relation to a central securities depository, means the person who operates the depository under a scheme approved by the Commission in terms of section *sixty-nine*;

“registered”, in relation to a securities exchange, means registered in terms of Part IV;

“rules”, in relation to□

- (a) a registered securities exchange, means rules referred to in section *sixty-five*;
- (b) a central securities depository, means rules made under a provision of a scheme referred to in paragraph (n) of subsection (1) of section *sixty-nine*;

and includes any amendment of such rules;

“securities exchange” means a person or entity that constitutes, maintains or provides a market place or facility, including an electronic trading system, at which or by means of which□

- (a) buyers and sellers of securities can be brought together; and
- (b) offers to buy, sell or exchange securities can be regularly made and additionally, or alternatively, accepted;

“security” means□

- (a) any share or stock in the share capital of a company; or (b) any debt security, that is to say—
  - (i) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued by a company, including any debenture stock, loan stock, bond or note; or
  - (ii) any loan, stock, bond or other instrument creating or acknowledging indebtedness which is issued on behalf of a government, statutory body or local authority;
- or
- (c) any depositary receipt, that is to say, a certificate or other record which—
  - (i) is issued by or on behalf of a person who holds any shares, debt securities or warrants of a particular issue; and
  - (ii) acknowledges that another person is entitled to rights in relation to those securities or securities of the same kind;
- or
- (d) any future, that is to say, a right under a contract which provides for the acquisition or disposal of a security or commodity that is to be delivered at a future date at a price□
  - (i) agreed when the contract is made; or
  - (ii) determined in accordance with the contract; or
- (e) any contract for differences, that is to say, a right under a contract which does not provide for the delivery of securities or commodities but whose purpose or professed purpose is to secure a profit or avoid a loss by reference to fluctuation in—
  - (i) a share index or index of commodity prices or other similar reference point; or

- (ii) the price of other particular securities or commodities; or
  - (iii) the interest rate available on money placed on deposit; or
  - (iv) the exchange rate available between two or more currencies; or
  - (f) any other instrument declared by the Minister in terms of subsection (2) to be a security for the purpose of this Act;
- but does not include—
- A. any bill of exchange, cheque or promissory note to which the Bills of Exchange Act [*Chapter 14:02*] applies; or
  - B. a treasury bill with an original maturity of less than one year; or
  - C. a certificate of deposit issued by any bank.
- (2) The Minister, on the recommendation of the Commission, may by statutory instrument declare any contract or instrument which is capable of being bought, sold or exchanged to be a security for the purposes of this Act.
- (3) A reference in this Act to a male or female person includes, where appropriate, a corporate body.

## PART II

### SECURITIES COMMISSION

#### 3 Establishment of Securities Commission

There is hereby established a Commission to be known as the Securities Commission, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of doing anything that a body corporate may do by law.

#### 4 Objectives, functions and powers of Commission

- (1) The objectives of the Commission shall be—
- (a) to provide high levels of investor protection; and
  - (b) to reduce systemic risk, that is to say, a risk that a failure on the part of one or more registered securities exchanges or licensed persons to meet their obligations may result in other registered securities exchanges or licensed persons being unable to meet their respective obligations; and
  - (c) to promote market integrity and investor confidence; and
  - (d) to prevent market manipulation, fraud and financial crime; and (e) to ensure transparency in capital and securities markets; and (f) to promote investor education.
- (2) To achieve its objectives, the Commission shall have the following functions, subject to this Act—
- (a) to regulate trading and dealing in securities; and
  - (b) to register, supervise and regulate securities exchanges; and
  - (c) to licence, supervise and regulate licensed persons in order to ensure high standards of professionalism and integrity on their part; and
  - (d) to encourage the development of free, fair and orderly capital and securities markets in Zimbabwe; and
  - (e) to advise the Government on all matters relating to securities; and
  - (f) to exercise any other function that may be conferred or imposed upon the Commission by or under this Act or any other enactment.

(3) For the fulfilment of its objectives and in the exercise of its functions, the Commission shall have power to do or cause to be done, by itself or through agents, all or any of the things specified in the First Schedule, either absolutely or conditionally and either alone or jointly with others.

#### 5 Membership of Commission

(1) The Commission shall consist of not fewer than three or more than five commissioners appointed, subject to this Part, by the Minister on the recommendation of a nomination committee constituted in terms of section *six*.

(2) If the Minister declines to appoint as commissioner a qualified person recommended by the nomination committee he or she shall notify the committee of that fact without delay and invite the committee to recommend another person for appointment.

#### 6 Nomination committee

- (1) For the purpose of section *five*, the Minister shall appoint a nomination committee consisting of—
- (a) the chairperson of a registered securities exchange which, in the Minister's opinion, is the principal securities exchange in Zimbabwe; and
  - (b) the person for the time being in charge of financial markets in the Reserve Bank of Zimbabwe established in terms of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*]; and
  - (c) three persons appointed by the Minister from the lists of names submitted in terms of subsection (2).

(2) The Minister may request each of one or more associations which, in his or her opinion, represent persons trading or dealing in securities or managing portfolios of securities, or recording transfers and other transactions relating to securities, to submit a list of not fewer than five names of qualified persons whom the

association wishes to be considered for appointment to the nomination committee in terms of subsection (1) and, subject to subsection (3), the Minister shall select three persons from that list or those lists, as the case may be.

(3) If an association referred to in subsection (2) fails to submit a list of names within a reasonable time after being requested to do so in terms of that subsection, the Minister shall appoint anyone he or she thinks fit as a member of the nomination committee, and the person so appointed shall be a member of the committee in all respects as if he or she had been appointed in terms of paragraph (c) of subsection (1).

(4) Members of the nomination committee appointed in terms of paragraph (c) of subsection (1) shall hold office for such period as the Minister may fix on their appointment:

Provided that such a member may resign his or her office at any time by written notice to the Minister.

(5) The nomination committee appointed in terms of subsection (1) shall meet whenever it is called upon by the Minister to recommend a person for appointment as a commissioner, and the committee's procedure at its meetings shall be as determined from time to time by its members.

## **7 Disqualifications for appointment to Commission**

(1) The Minister shall not appoint a person as a commissioner and no person shall be qualified to hold office as a commissioner if—

- (a) he or she is neither a citizen of Zimbabwe nor ordinarily resident in Zimbabwe; or
- (b) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (c) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (d) he or she has been sentenced—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

to a term of imprisonment imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon; or (e) he or she has been convicted—

- (i) in Zimbabwe, of an offence under this Act or of an offence involving dishonesty; or
- (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty;

and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended.

(2) A person who is—

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies; shall not be appointed as a commissioner, nor shall he or she be qualified to hold office as a commissioner.

(3) For the purposes of paragraph (b) of subsection (2)—

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

(4) Any person who, knowing that he or she is disqualified in terms of this section to hold office as a commissioner—

- (a) attends any meeting of the Commission as a commissioner; or
- (b) performs any other act as a commissioner; shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

## **8 Chairperson and vice-chairperson of Commission**

(1) The Minister shall appoint chairperson and vice-chairperson of the Commission.

(2) In cases of urgency the chairperson may exercise any function conferred or imposed upon the Commission by or under this Act or any other enactment, but if he or she does so he or she shall report what he or she has done to the next meeting of the Commission, and the Commission may confirm, vary or rescind his action.

(3) The vice-chairperson of the Commission shall perform the functions of the chairperson whenever the chairperson is unable to perform them.

## **9 Terms of office and conditions of service of commissioners**

(1) Subject to this section and section *one hundred and twenty-two*, a commissioner shall hold office for four years and, at the expiry of his or her term of office, shall be eligible for re-appointment for one further four-year term only.

(2) On the expiry of a commissioner's term of office, he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed: Provided that—

- (i) a commissioner shall not continue to hold office in terms of this subsection for more than six months;
- (ii) the term for which a commissioner is re-appointed, or for which his or her successor is appointed, as the case may be, shall be reduced by the period during which he or she held office in terms of this subsection.

(3) Every commissioner shall give his or her whole time to the service of the Commission and shall not engage in any other occupation unless the Minister, on the Commission's recommendation, has permitted any commissioner to do so.

(4) Subject to subsection (3), commissioners shall hold office on such terms and conditions as the Minister may fix for commissioners generally.

## **10 Vacation of office by commissioners**

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

- (a) one month after the date he or she gives notice in writing to the Minister of his or her intention to resign office or after the expiry of such other period of notice as the commissioner and the Minister may agree; or
  - (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine—
    - (i) in Zimbabwe, in respect of an offence; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;
- or
- (c) if he or she becomes disqualified in terms of section *seven* to hold office as a commissioner; or (d) if he or she is required in terms of subsection (2) or (3) to vacate office as a commissioner.

(2) The Minister may require a commissioner to vacate office if—

- (a) the commissioner has been guilty of conduct which renders him or her unsuitable to continue to hold office as a commissioner; or
- (b) the commissioner has failed to comply with any condition of his or her office fixed in terms of section *nine*; or
- (c) the commissioner is mentally or physically incapable of efficiently performing his or her duties as a commissioner; or
- (d) the commissioner contravenes section *sixteen*; or
- (e) the commissioner or his or her spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is inconsistent with his or her duties as a commissioner.

(3) The Minister, on the recommendation of the Commission, may require a commissioner to vacate office if the Minister is satisfied that the commissioner has been absent without the consent of the chairperson of the Commission from three consecutive meetings of the Commission, of which he or she has been given at least seven days' notice, and that there was no just cause for the commissioner's absence.

## **11 Suspension of commissioners**

The Minister—

- (a) may suspend from office a commissioner—
  - (i) if criminal proceedings are instituted against the commissioner for an offence involving dishonesty or an offence under this Act; or
  - (ii) if the Minister has reasonable grounds to believe that the commissioner's office has become vacant in terms of subsection (1) of section *seven* but the commissioner has not relinquished his or her office;

and

(b) shall suspend from office a commissioner who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the commissioner is to vacate his or her office; and, whilst that commissioner is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a commissioner.

## **12 Filling of vacancies on Commission**

Within three months after a commissioner's death or vacation of office, the Minister shall, subject to this Part, take all necessary steps to fill the vacancy.



### 13 Meetings and procedure of Commission

(1) The Commission shall hold its first meeting on a date and place fixed by the Minister, which date shall be not later than three months after fixed date, and then shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission shall meet at least eleven times in each financial year.

(2) The chairperson of the Commission—

(a) may convene a special meeting of the Commission at any time; and

(b) shall convene a special meeting of the Commission on the written request of the Minister or not fewer than two commissioners, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subsection (2) shall be sent to each commissioner 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 chairperson of the Commission, where he or she convened the meeting in terms of paragraph (a) of subsection (2); or

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

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

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Commission, the commissioners present may elect one of their number to preside at that meeting as chairperson.

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

(7) Subject to subsection (11), anything authorised or required to be done by the Commission may be decided by a majority vote at any meeting of the Commission at which a quorum is present.

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

(9) A person invited to attend a meeting in terms of subsection (8) may take part in the proceedings of the Commission or the panel or working group, as the case may be, as if he or she were a member of it, but he or she shall not have a vote on any question considered at the meeting.

(10) Subject to section *sixteen*, at all meetings of the Commission each commissioner present shall have one vote on any question before the Commission: Provided that—

(i) 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;

(ii) no commissioner shall take part in the consideration or discussion of, or vote on, any question before the Commission which relates to his or her vacation of office as a commissioner.

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

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

### 14 Chief Executive Officer and staff of Commission

(1) The Commission shall appoint, on such terms and conditions as it may fix—

(a) a Chief Executive Officer; and

(b) such other members of staff as may be necessary for the proper exercise of the Commission's functions.

(2) The Commission may engage persons otherwise than as employees, to act as consultants or advisers or to perform other services of a specialised, technical or professional nature for the Commission.

(3) The Chief Executive Officer's appointment shall be terminated if he or she would be required in terms of paragraph (b) or (c) of subsection (1) of section *ten* to vacate his or her office had that section and subsection (1) of section *seven* applied to the Chief Executive Officer.

(4) Subject to any directions the Commission may give him or her, the Chief Executive Officer shall be responsible for—

(a) administering the Commission's affairs, funds and property; and

(b) controlling and supervising the Commission's staff; and

(c) exercising any other function that may be conferred or imposed upon him or her by or under this Act.

(5) The Commission may delegate or assign any of its functions to the Chief Executive Officer or to a member of its staff or to a person appointed under subsection (2), and any such delegation or assignment□

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

- (b) may be revoked by the Commission at any time; and (c) shall not prevent the Commission itself exercising the function.

(6) Any remuneration, allowances, pensions and other benefits to which the persons referred to in subsection (1) or (2) are entitled shall be chargeable to the Commission's funds.

### **15 Panels and working groups**

(1) For the better exercise of its functions, the Commission may establish one or more panels and working groups in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a panel or working group shall not prevent the Commission from itself exercising that function, and the Commission may amend or rescind any decision of the panel or working group in the exercise of that function.

(2) The Commission may appoint persons who are not commissioners to be members of any of its panels or working groups.

(3) The chairperson of the Commission or of a panel or working group of the Commission may at any reasonable time and place convene a meeting of that panel or working group.

(4) The procedure of each of the Commission's panels and working groups shall be as fixed from time to time by the Commission.

(5) Subject to this section, subsections (2) to (7) of section *thirteen* and subsection (4) of section *sixteen* shall apply, *mutatis mutandis*, to the Commission's panels and working groups and their members as they apply respectively to the Commission and commissioners.

### **16 Commissioners and staff to disclose certain connections, interests and assets**

(1) In this section—

“relative”, in relation to a commissioner or a member of staff of the Commission, means the spouse, child, parent, brother or sister of the commissioner or member of staff, as the case may be.

(2) Before a commissioner performs any function as a commissioner, he or she shall disclose in writing to the Minister the full extent of—

(a) every occupation, service or employment which the commissioner or his or her spouse engages in for remuneration; and

(b) all listed securities held by the commissioner or his or her spouse; and

(c) all other assets held by the commissioner or his or her spouse, in excess of such value as the Minister may specify.

(3) As soon as possible after a commissioner or his or her spouse— (a) commences any occupation, service or employment for remuneration; or

(b) acquires any listed security; or

(c) acquires any other asset in excess of such value as the Minister may have specified in terms of paragraph (c) of subsection (2); a commissioner shall disclose that fact

in writing to the Minister.

(4) If any commissioner or member of staff of the Commission, or a relative of such a commissioner or member—

(a) knowingly acquires or holds a direct or indirect pecuniary interest in a company or association of persons applying or negotiating for a licence; or

(b) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the private interests of the commissioner or member coming or appearing to come into conflict with his or her functions as a commissioner or member;

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

(5) A commissioner or member of staff referred to in subsection (4) shall take no part in the consideration or discussion of or, in the case of a commissioner, vote on, any question before the Commission, which relates to any interest, property or right referred to in that subsection.

(6) Any person who contravenes subsection (2), (3), (4) or (5) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

### **17 Minutes of proceedings of Commission and its panels and working groups**

(1) The Commission shall cause minutes of all proceedings of and decisions taken at any meeting of the Commission or of its panels and working groups to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting, shall be accepted for all purposes as *prima facie* proof of the proceedings of and decisions taken at that meeting.

### **18 Remuneration and allowances of commissioners and members of panels and working groups**

(1) Commissioners shall be paid from the Commission's funds— (a) such remuneration, if any, as the Minister may fix, generally; and

(b) such allowances, if any, as the Minister may fix to meet any reasonable expenses incurred by the commissioners in connection with the business of the Commission.

(2) The Commission may pay from its funds such allowances as it may determine to members of its panels and working groups who are not commissioners or members of the Commission's staff.

## **19 Policy directions to Commission**

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

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

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

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

## **20 Reports of Commission**

(1) The Commission—

(a) shall, as soon as possible after the 31st December in each year, submit to the Minister an annual report on its activities during that year; and

(b) may at any time submit to the Minister a special report on any matter upon which the Commission considers it desirable to report.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him or her—

(a) the annual report submitted in terms of paragraph (a) of subsection (1); and

(b) any special report submitted in terms of paragraph (b) of subsection (1) which the Commission has requested should be laid before Parliament; and

(c) every audit report submitted in terms of subsection (3) of section *twenty-seven*.

## **21 Non-disclosure of confidential information**

(1) Subject to subsection(5)□

(a) a commissioner; or

(b) an officer or employee of the Commission; or

(c) a member of any of the Commission's panels or working groups; shall not, during his or her tenure of office or employment or thereafter, disclose to any person any information which he or she has gained in the course of his or her duties or employment and which relates to the affairs of□

(i) a registered securities exchange or any of its members; or

(ii) a licensed person or any of his clients; or

(iii) a central securities depository or any of its participants or depositors.

(2) Subject to subsection (5), a person who has any information which, to his or her knowledge, has been disclosed in contravention of subsection (1), shall not disclose that information to any other person.

(3) Any□

(a) commissioner; or

(b) officer or employee of the Commission; or

(c) member of any of the Commission's panels or working groups; who, in the course of his or her duties or employment, has gained any information relating to the affairs of□ (i) a registered securities exchange or any of its members; or

(ii) a licensed person or any of his or her clients; or

(iii) a central securities depository or any of its participants or depositors.

shall not make use of that information for himself or herself or any other person, other than the Commission.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable□

(a) in the case of a contravention of subsection (1) or (2), to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

(b) in the case of a contravention of subsection (3), to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(5) This section shall not prevent the disclosure of information—

(a) which the Commission or the registered securities exchange, licensed person, central securities depository, member, client, participant or depositor concerned has permitted to be disclosed; or

(b) which is contained in or readily ascertainable from any document that is published or available to the public in Zimbabwe or elsewhere; or

(c) where the disclosure is required or permitted under this Act or the rules of any registered securities exchange concerned; or

- (d) where the disclosure is required under an order of court or where a witness is required to disclose the information or document in the course of proceedings before a court; or
- (e) for the purposes of any proceedings for the sequestration or liquidation of the estate of the licensed person or client concerned or, if the licensed person or client is a corporation, for the winding up of the corporation; or
- (f) for the purposes of any proceedings between the Commission, on the one hand, and the person to whom the information pertains, on the other; or
- (g) for the purposes of an investigation in terms of section *one hundred and three*: or
- (h) which is requested in writing by a person who is authorised under any law to investigate any offence:  
 Provided that the disclosure shall be limited to the accounts, records and affairs of a person suspected of the offence; or
- (i) which is required to enable or assist
  - (i) the Commission, a registered securities exchange or a central securities depository to exercise its functions under this Act; or
  - (ii) auditors of a registered securities exchange or licensed person to exercise their functions; or
  - (iii) an inspector to exercise his or her functions; or
  - (iv) the Registrar of Companies, a judicial manager or a liquidator to exercise his or her functions under the Companies Act [*Chapter 24:03*];
 or
- (j) in a summary or collection of information, framed in such a way so as not to enable the identity of any person to whom the information relates to be ascertained.

## **22 Validity of decisions and acts of Commission**

No decision made or act done by or under the authority of the Commission shall be invalid solely because there were one or more vacancies on the Commission when the decision was taken or the act was done or authorised, as the case may be.

## **PART III**

### FINANCIAL PROVISIONS RELATING TO COMMISSION

## **23 Funds of Commission**

The funds of Commission shall consist of—

- (a) levies payable to the Commission in terms of rules referred to in paragraph (i) of subsection (2) of section *one hundred and eighteen*; and
- (b) fees and charges payable to the Commission for licences issued and other things done by it in terms of this Act; and
- (c) moneys payable to the Commission from moneys appropriated for the purpose by Act of Parliament; and
- (d) any other moneys that may vest in or accrue to Commission, whether in terms of this Act or otherwise.

## **24 Financial year of Commission**

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

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

Moneys not immediately required by the Commission may be invested in such manner as the Commission may determine.

## **26 Accounts of Commission**

- (1) The Commission shall ensure that proper accounts and other records relating to the accounts are kept in respect of all its activities, funds and property.
- (2) Within three months after the end of each financial year, Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

## **27 Audit of Commission's accounts**

- (1) Subject to the Audit and Exchequer Act [*Chapter 22:03*], the Commission 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 Commission in terms of subsection (1) of section *twenty-six* 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 Commission and to the Minister on the statement of accounts prepared in terms of subsection (2) of section *twenty-six*, and in their report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's financial affairs.
- (4) In addition to the report referred to in subsection (3), the Minister may require the Commission to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in

connection with the Commission's activities, funds and property as the Minister may consider expedient, and the Commission 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 Commission; or  
(c) the Commission has not complied with any provision of this Part; the auditors shall include in their report made in terms of subsection (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 Commission's accounts are required to be audited by the Comptroller and Auditor-General, any reference in this section to auditors appointed in terms of subsection (1) shall be construed as a reference to the Comptroller and Auditor-General.

### **28 Powers of auditors**

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

(2) Any commissioner or employee or agent of the Commission 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 level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

## **PART IV**

### REGISTRATION OF SECURITIES EXCHANGES

### **29 Securities exchanges to be registered**

(1) Subject to this Act, no person shall—

- (a) establish or conduct the business of a securities exchange; or  
(b) hold himself or herself out as carrying on the business of a securities exchange; unless the securities exchange is registered and the business of the exchange is conducted in accordance with the terms and conditions of its registration.

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

### **30 Registration of securities exchanges**

(1) In this section □

“applicant” means the person who is to conduct the business of the securities exchange whose registration is sought, whether the application for registration is being made by that person or by someone else on his or her behalf.

(2) An application for the registration of a securities exchange shall be made to the Commission in the form and manner prescribed in rules and shall be accompanied by □

(a) a certified copy of □

(i) the applicant's memorandum and articles of association, where the applicant is a company; or

(ii) the applicant's constitution, where the applicant is some other form of association; together with any other rules for the conduct of the applicant's business; and

(b) details of the applicant's authorised and paid-up share capital, if any, and the financial assets otherwise available to it; and

(c) details of the applicant's structure or organisation, with sufficient information to enable the Commission to identify who owns or controls the applicant; and

(d) the names and addresses of—

(i) the applicant's prospective members; and

(ii) the prospective members if any, of the applicant's committee; together with such further information concerning them as may be prescribed or as the Commission may reasonably require; and

(e) such fee as may be prescribed in rules; and

(f) such other information and documents as may be prescribed in rules or as the Commission may reasonably require.

(3) Subject to subsection (4), if on consideration of an application in terms of subsection (2) the Commission is satisfied that the applicant meets the requirements set out in the Second Schedule, the Commission shall register the securities exchange concerned.

(4) If, on consideration of an application in terms of subsection (2) the Commission □

- (a) is not satisfied that the applicant meets any one or more of the requirements set out in the Second Schedule; or

- (b) considers that it would not be in the public interest to register the securities exchange concerned; the Commission shall refuse to register the securities exchange: Provided that
- (i) before refusing to register a securities exchange, the Commission shall notify the applicant in writing that it proposes to refuse the application and of its reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;
  - (ii) within ten days after deciding to refuse to register a securities exchange, the Commission shall notify the applicant in writing of its decision and of the reasons for it.

(5) The period between the Commission's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which it notifies the applicant of its decision or proposed decision in terms of subsection (3) or (4), as the case may be, shall not exceed six months unless the applicant consents to an extension of the period.

### **31 Terms and conditions of registration of securities exchange**

Registration of a securities exchange shall be subject to such terms and conditions as may be prescribed in rules or as the Commission may reasonably determine.

### **32 Registration certificates**

Upon registering a securities exchange in terms of section *thirty*, the Commission shall issue the exchange with a registration certificate, which shall be in the form prescribed in rules and shall specify

- (a) the name of the registered securities exchange; and
- (b) any terms and conditions subject to which the exchange is registered.

### **33 Register of securities exchanges**

(1) The Commission shall maintain, or cause to be maintained, a register in which shall be recorded, in relation to each registered securities exchange

- (a) its name; and
- (b) any terms and conditions subject to which it is registered; and (c) any amendment, cancellation or suspension of its registration.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the office of the Commission on payment of the fee, if any, prescribed in rules.

### **34 Annual fee payable by registered securities exchange**

(1) Every registered securities exchange shall pay the Commission each year a fee of such amount as may be prescribed in rules.

(2) The annual fee referred to in subsection (1) shall be paid by such date and in such manner as may be prescribed in rules.

### **35 Amendment of registration**

(1) Subject to this section, the Commission may at any time amend the registration of a securities exchange or any term or condition of its registration

- (a) to correct any error; or
- (b) if the securities exchange requests the amendment; or
- (c) if the Commission considers the amendment necessary to reflect the true nature of the facilities offered by or the business conducted at the securities exchange; or
- (d) if for any other reason the Commission considers the amendment necessary or desirable in the public interest.

(2) Before effecting an amendment in terms of subsection (1), otherwise than at the request of the registered securities exchange concerned, the Commission shall notify the exchange, in writing, of the nature of the amendment it is proposed to make and of the reasons for it, and shall give the exchange an adequate opportunity to make representations in the matter.

(3) If the Commission refuses to effect an amendment in terms of subsection (1) at the request of the registered securities exchange concerned, the Commission shall, within ten days after reaching its decision, notify the exchange in writing of the decision and of the reasons for it.

### **36 Cancellation of registration**

(1) Subject to subsections (2) and (3), the Commission may, by notice in writing to the exchange concerned, cancel the registration of a securities exchange if the Commission has reasonable grounds for believing that

- (a) the registration was obtained in error or through fraud or the misrepresentation of a material fact by the exchange; or
- (b) the exchange has contravened any provision of this Act; or
- (c) the exchange misrepresents the facilities it offers the public; or
- (d) proceedings have been instituted for the winding up or dissolution of the exchange; or
- (e) the exchange has not properly enforced any of its rules relating to the trading of securities; or
- (f) the exchange has ceased to operate as a securities exchange; or
- (g) the exchange no longer meets one or more of the requirements set out in the Second Schedule; or

(h) the exchange has failed or refused to pay a monetary penalty imposed on it in terms of subsection (1) of section *one hundred and five*.

(2) Before cancelling the registration of a securities exchange in terms of subsection (1), the Commission shall notify the exchange in writing that it proposes to cancel the registration and of the Commission's reasons for proposing to do so, and shall afford the exchange an adequate opportunity to make representations in the matter:

Provided that, if the Commission believes on reasonable grounds that it is not possible to notify the exchange at its main office, the Commission shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the main office of the exchange is or was situated, stating that the licence will be cancelled unless the exchange lodges an appeal with the Administrative Court in terms of section *one hundred and eight* within thirty days from the date of publication of the notice in the *Gazette*.

(3) The Commission shall not cancel the registration of a securities exchange in terms of subsection (1)□

(a) until□

(i) the period within which an appeal may be lodged in terms of section *one hundred and eight* has elapsed; or

(ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso;

unless the exchange concerned has consented to its cancellation;

(b) if an appeal is lodged in terms of section *one hundred and eight*, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, until the Commission is notified that its decision has been upheld.

(4) The Commission may cancel the registration of a securities exchange if the exchange so requests and the Commission is satisfied that the cancellation will be in the best interests of the exchange's creditors and members:

Provided that, if the Commission refuses to cancel the registration of a securities exchange in terms of this subsection, the Commission shall, within ten days after reaching that decision, notify the exchange, in writing, of the decision and of the reasons for it.

### **37 Registration and cancellation of registration to be notified in *Gazette* and in newspaper**

The Commission shall cause notice of the registration of a securities exchange or the cancellation of its registration to be published in the *Gazette* and in one or more issues of a newspaper circulating in the area in which the securities exchange concerned intends to conduct its business or, as the case may be, was carrying on its business.

## **PART V**

### LICENSING OF BROKERS AND OTHER PERSONS

### **38 Persons requiring to be licensed**

(1) Subject to subsection (3), no person shall carry on a licensable activity unless he or she is a holder of□ (a) a securities (dealers) licence; or

(b) a securities (investment advisers) licence; or

(c) a securities (investment management) licence; or

(d) a securities (trustee) licence; or

(e) a securities (custody) licence; or

(f) a securities (transfer) licence; or

(g) in the case of a person carrying on two or more of the licensable activities, a securities (multiple) licence; or

(h) such other licence as may be prescribed in rules; and the licensed activity is conducted in accordance with the terms and conditions of the licence.

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

(3) Subsection (1) shall not apply to□

(a) any of the following persons, to the extent that they give advice to others on investments in securities□

(i) a banking institution registered in terms of the Banking Act [*Chapter 24:20*]; or

(ii) a building society registered in terms of the Building Societies Act [*Chapter 24:02*]; or

(iii) an insurer registered in terms of the Insurance Act [*Chapter 24:07*]; or

(iv) a pension or provident fund registered in terms of the Pension and Provident Funds Act [*Chapter 24:09*]; or

(iv) a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*,] where his or her advice in regard to securities is incidental to the practice of his or her profession as a legal practitioner; or

(v) a public accountant or public auditor registered as such in terms of the Public Accountants and Auditors Act [*Chapter 27:12*], where his or her advice in regard to securities is incidental to the practice of his or her profession as a public accountant or public auditor; or

- (vi) the printer or publisher of a newspaper, magazine or other periodical in which advice, analyses or reports are published in regard to securities—
  - A. if the author of the advice, analyses or reports is licensed and the newspaper, magazine or periodical is printed and published in the ordinary course of business of the printer or publisher, as the case may be; or
  - B. if the advice, analyses or reports do not constitute the sole or principal part of the contents of the newspaper, magazine or periodical and—
    - I. the publication is generally available to the public; and
    - II. the printer or publisher receives no separate commission or other consideration for publishing the advice, analyses or reports;

or

- (b) a person who is licensed in terms of section 13 of the Collective Investment Schemes Act [*Chapter 24:19*] as a manager or trustee of an internal scheme, to the extent that the person manages the portfolio of investments held by the internal scheme or holds any of the investments in trust; or
- (c) an individual who manages another person's investments as a full-time employee of that other person; or
- (d) any act performed by□
  - (i) an executor of the estate of a deceased person; or
  - (ii) the tutor or curator of a person under a legal disability or the curator of such a person's estate; or
  - (iii) the trustee or provisional trustee of an insolvent estate; or
  - (iv) the liquidator, provisional liquidator or judicial manager of a company; to the extent that the act is performed in the ordinary course of the person's duties as executor, tutor, curator, trustee, provisional trustee, liquidator, provisional liquidator or judicial manager, as the case may be; or
- (e) such other persons or acts as may be prescribed in rules.

### **39 Persons disqualified from holding licence**

(1) A person shall not be qualified to hold a licence if— (a) in the case of an individual—

- (i) he or she is under the age of twenty-one years; or
- (ii) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (iii) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (iv) within the preceding ten years, he or she has been sentenced—
  - A. in Zimbabwe, in respect of an offence; or
  - B. outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence; to a term of imprisonment imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon; or
- (v) within the preceding ten years, he or she has been convicted—
  - A. in Zimbabwe, of an offence under this Act or an offence involving dishonesty; or
  - B. outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty; and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended and whether or not he or she has received a free pardon;

(b) in the case of a company—

- (i) the company is being wound up under the Companies Act [*Chapter 24:03*] or has been placed under judicial management in terms of that Act; or
- (ii) the company is under the control or management of one or more individuals who are disqualified under paragraph (a).

(2) An individual shall not be qualified to hold a licence authorising him or her to hold securities in custody for another person, unless that activity is incidental to some other licensable activity authorised by the licence.

### **40 Application for licence**

An application for a licence shall be made to the Commission in the form and manner prescribed in rules and shall be accompanied by—

- (a) such fee as may be prescribed in rules; and
- (b) such documents and information as may be prescribed in rules or as the Commission may reasonably require.

### **41 Grant or refusal of licence**

(1) Upon receipt of an application in terms of section *forty*, the Commission shall issue the appropriate licence to the applicant if the Commission is satisfied that the applicant—

- (a) is not disqualified in terms of section *thirty-nine* from holding the licence; and



(b) meets any standards or other requirements that may be prescribed in rules; and

(c) is a fit and proper person to hold the licence; and if the Commission is not so satisfied, it shall refuse the application.

(2) In deciding whether or not a person is a fit and proper person to hold a licence for the purposes of subsection (1), the Commission—

(a) shall have regard to the applicant's—

(i) financial status, in particular whether or not the applicant meets any financial requirements that may be prescribed in rules; and

(ii) educational and other qualifications or experience; and

(iii) ability to perform efficiently, honestly and fairly all the functions authorised by the licence; and

(iv) reputation, character, integrity and reliability;

(b) may have regard to any information in its possession, whether supplied by the applicant or not; (c) may take into account—

(i) the reputation, character, integrity and reliability of any person who is or is to be employed by or associated with the applicant in the conduct of the applicant's business as a licensed person; and

(ii) where the applicant is a company, the reputation, character, integrity and reliability of any shareholder, director or officer of the company or of any company in the same group of companies.

#### **42 Terms and conditions of licence**

(1) A licence shall authorise the holder to carry on one or more of the activities specified in the definition of "licensable activities" in section *two*.

(2) A licence shall be issued subject to such terms and conditions as may be prescribed in rules or as the Commission may reasonably determine.

#### **43 Form and period of validity of licence**

(1) Subject to subsection (2), a licence shall be in the form prescribed in rules:

Provided that different forms of licences may be prescribed for the various licensable activities authorised by the licences.

(2) A licence shall specify□

(a) the name of the holder of the licence; and

(b) the class of securities to which the licence relates; and

(c) the licensable activity to which the licence relates; and

(d) any terms and conditions subject to which the licence is issued.

(3) A licence shall be valid for one year from its date of issue, unless it is cancelled earlier in terms of this Act: Provided that rules may make provision for the issue of licences for a shorter period.

#### **44 Renewal of licence**

(1) The Commission may renew a licence if the holder applies for its renewal not later than one month before the licence expires:

Provided that the Commission may agree to entertain an application made at a later date.

(2) Sections *forty* to *forty-three* shall apply, *mutatis mutandis*, in relation to the renewal of a licence under this section.

#### **45 Register of licences**

(1) The Commission shall maintain a register of licences in which shall be recorded, in relation to each licence□

(a) the name of the holder; and

(b) the places at which the holder conducts business; and

(c) the class of securities to which the licence relates; and

(d) the investment activity to which the licence relates; and

(e) any terms and conditions subject to which the licence is issued; and

(f) the period of validity of the licence; and

(g) any amendment, cancellation or suspension of the licence; and

(h) any other particulars in relation to the holder or the licence that the Commission considers it necessary or desirable to record.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the Commission's offices on payment of such fee as may be prescribed.

#### **46 Notification by licence-holder of change in particulars If□**

(a) the holder of a licence ceases to carry on the activity to which the licence relates or materially alters the nature of that activity; or

(b) there is a material change in the membership or management or control of a company which is the holder of a licence; or

(c) there is a change in any of the particulars recorded in the register in terms of section *forty-five* in relation to a licence, or in relation to the holder of the licence; the holder shall give the Commission written notice of that fact within fourteen days of its occurrence.

#### 47 Amendment of licence

(1) Subject to this section, the Commission may at any time amend a licence or any term or condition of a licence□

- (a) to correct any error in the licence; or
- (b) if the holder requests the amendment; or
- (c) if the Commission considers the amendment necessary or desirable in the public interest.

(2) Before amending a licence or any term or condition of a licence in terms of subsection (1), otherwise than at the request of the holder, the Commission shall notify the holder in writing of the nature of the amendment it is proposed to make and of the reasons for it, and shall give the holder an adequate opportunity to make representations in the matter.

(3) If the Commission refuses to amend a licence in terms of subsection (1) at the request of the holder, the Commission shall, within ten days after reaching its decision, notify the holder in writing of the decision and of the reasons for it.

#### 48 Cancellation of licence

(1) Subject to subsections (2) and (3), the Commission may, by notice in writing to the holder, cancel a licence if the Commission has reasonable grounds for believing that□

- (a) the holder has ceased to carry on business; or
- (b) the licence was issued in error or through fraud or the misrepresentation of a material fact by the holder; or
- (c) the holder has contravened any provision of this Act or any term or condition of the licence; or
- (d) the holder misrepresents the facilities he or she offers the public; or
- (e) the holder has become disqualified to hold a licence in terms of section *thirty-nine*; or
- (f) the holder no longer meets any prescribed financial requirements for carrying on any activity authorised by the licence; or
- (g) the holder, or any employee or agent of his, has been guilty of any act or omission in the conduct of the holder's business that has resulted or is likely to result in prejudice to members of the public; or
- (h) where the holder is an individual, the holder□
- (i) has become mentally or physically incapable of carrying on business; or
  - (ii) has committed an act of insolvency described in section 11 of the Insolvency Act [*Chapter 6:04*];

or

- (i) where the holder is a company or body corporate□
  - (i) proceedings have been instituted for the holder's winding up or dissolution; or
  - (ii) the holder is deemed to be unable to pay its debts in terms of section 105 of the Companies Act [*Chapter 24:03*].

(2) Before cancelling a licence in terms of subsection (1), the Commission shall notify the holder in writing that it proposes to cancel the licence and of the Commission's reasons for proposing to do so and shall give the holder of the licence an adequate opportunity to make representations in the matter:

Provided that, if the Commission believes on reasonable grounds that it is not possible to notify the holder personally, the Commission shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the holder carried on business, stating that the licence will be cancelled unless the holder lodges an appeal with the Administrative Court in terms of section *one hundred and eight* within thirty days from the date of publication of the notice in the *Gazette*.

(3) The Commission shall not cancel a licence in terms of subsection (1)□

- (a) until□
  - (i) the period within which an appeal may be lodged in terms of section *one hundred and eight* has elapsed; or
  - (ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso;unless the holder concerned has consented to its cancellation;
- (b) if an appeal is lodged in terms of section *one hundred and eight*, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, until the Commission is notified that its decision has been upheld.

(4) The Commission may cancel a licence if the holder so requests and the Commission is satisfied that the cancellation will be in the best interests of investors and the holder's creditors, if any:

Provided that, if the Commission refuses to cancel a licence in terms of this subsection, the Commission shall, within ten days after reaching that decision, notify the holder, in writing, of the decision and of the reasons for it.

## 49 Suspension of licence

- (1) Subject to subsection (6), if the Commission considers it necessary to suspend a licence— (a) in order to facilitate an investigation into the holder's conduct; or
  - (b) pending the determination of an appeal in terms of section *one hundred and eight*; or
  - (c) following the institution of proceedings for the holder's sequestration or winding up or the placing of the holder under judicial management; the Commission may, by notice in writing to the holder, suspend the licence wholly or partially in relation to all or any of the activities authorised by the licence.
- (2) A suspension in terms of subsection (1) shall last for such period as the Commission may specify, but in no case shall it last longer than six months.
- (3) The Commission may at any time, by notice in writing to the holder of the licence concerned, revoke a suspension in terms of subsection (1).
- (4) While a licence is suspended in terms of subsection (1), the holder shall exercise only such functions, if any, in relation to the activities authorised by the licence as the Commission may permit the holder to exercise.
- (5) Any person who contravenes subsection (4) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (6) When notifying a holder of the suspension of his or her licence in terms of subsection (1), the Commission shall inform him or her of the grounds for the suspension.

## PART VI

### TRUST ACCOUNTS

## 50 Certain licensed persons to maintain trust accounts

- (1) Every licensed person who, when carrying on any activity authorised by his or her licence, holds or receives any money for or on behalf of a client shall open and keep a current account at a bank as a separate trust account in which he or she shall deposit all such money.
- (2) In addition to the trust account referred to in subsection (1), a licensed person may open and keep a trust account bearing interest at a bank or building society or with an institution approved by the Commission for the purposes of this subsection and, subject to this Act and any instructions given to the licensed person by the client for or on whose account he or she holds the money, he or she may deposit in that account any of the money that is not immediately required for any purpose.
- (3) If, with the authority of the client for or on whose account he or she holds or has received the money, a licensed person holds or receives any money in a separate account from those mentioned in subsections (1) and (2), that account shall—
  - (a) be regarded as a trust account for the purposes of this Part; and
  - (b) be in the same name as the trust account opened in terms of subsection (1) and shall indicate the name of the person for or on whose account the money is held.
- (4) In the case of an account opened in terms of subsection (2) or (3)—
  - (a) deposits shall be made only from a trust account opened in terms of subsection (1);
  - (b) withdrawals shall be made only in favour of a trust account opened in terms of subsection (1).
- (5) Where a trust account is opened in terms of subsection (1) or (2)—
  - (a) that account shall indicate that it is an account opened in terms of subsection (1) or (2), as the case may be;
  - (b) the licensed person shall pay any interest he or she receives on the money deposited in that account to the appropriate guarantee fund at such times and in such manner as may be prescribed in rules:

Provided that the Commission may permit him or her to retain a portion of the interest to be applied towards the costs of operating and auditing of his or her trust accounts.

## 51 Books of account relating to trust accounts

- (1) A licensed person shall keep proper books of account containing particulars and information of—
  - (a) money he or she has received, held or paid for or on account of any other person; and
  - (b) money he or she has deposited in his or her trust accounts; and
  - (c) interest he or she has paid on money deposited in a trust account opened in terms of subsection (1) or (2) of section *fifty*.
- (2) Without derogation from the powers conferred on the Commission and inspectors under Part XII, the Commission may appoint a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] to inspect the books of account of a licensed person in order to ascertain that the requirements of section *fifty* and of any relevant rules are being observed.
  - (3) If it is found upon an inspection referred to in subsection (2) that a licensed person has not complied with section *fifty* or any relevant rules, the Commission shall be entitled to recover the cost of the inspection from that person.

## **52 Trust account moneys not to form part of licensed person's assets and excluded from attachment**

An amount standing to the credit of a trust account opened in terms of section *fifty* by a licensed person shall not form part of his or her assets and shall not be liable to attachment at the instance of any of his or her creditors: Provided that any excess remaining after payment of—

- (a) the claims of all persons whose money has or should have been deposited in a trust account of the licensed person; and
- (b) any claim by the appropriate guarantee fund in respect of interest due to it in terms of paragraph (b) of subsection (5) of section *fifty*; shall form part of the licensed person's assets and shall be liable to attachment at the instance of a creditor.

## **53 Control of operation of trust account**

(1) Upon application made by the Commission and upon good cause shown, the High Court may—

- (a) prohibit a licensed person from operating in any way on a trust account or business account of the licensed person; and
  - (b) appoint a curator *bonis* to control and administer any of his or her trust accounts or business accounts, with such rights and functions in relation to the accounts as the High Court considers appropriate.
- (2) In the event of—
- (a) the death of a licensed person; or
  - (b) the insolvency of a licensed person who is an individual, or the assignment of his or her estate; or
  - (c) proceedings being instituted for the winding up of a licensed person that is a company or body corporate, or for the placing of such a person under judicial management; or
  - (d) a licensed person's licence being cancelled or suspended; or
  - (e) a licensed person being declared by a court of competent jurisdiction to be incapable of managing his or her own affairs; or
  - (f) a licensed person abandoning his or her practice; the Master of the High Court may, upon application made by the Commission or by a person who has an interest in any of that licensed person's trust accounts, on good cause shown, appoint a curator *bonis* to control and administer that trust account with such of the rights and functions prescribed by regulation as the Master considers appropriate to confer or impose on him or her.

(3) A person aggrieved by a decision of the Master in terms of subsection (2) may, within thirty days after the decision becomes known to him or her, appeal against the decision to a judge of the High Court, who may refer the matter to the High Court for argument.

(4) On an appeal in terms of subsection (3) the judge or court, as the case may be, may—

- (a) confirm or vary the decision of the Master; or
- (b) give such other decision as in his or her or its opinion the Master ought to have given.

(5) Nothing in this section shall be construed as preventing a licensed person who was practising in partnership with a person referred to in subsection (2) from continuing to operate a trust account of the partnership.

## **54 Orders as to costs**

The High Court shall have power to order that—

- (a) any costs incurred by the Commission in an application or appeal in terms of section *fifty-three*; or
- (b) the cost of an inspection made in terms of subsection (2) of section *fifty-one* which is due by the licensed person concerned to the Commission in terms of subsection (4) of that section; shall be a preferent charge upon the money standing to the credit of the trust account concerned, ranking next after the remuneration of the curator *bonis* and the expenses of administering the trust account.

## **55 Bank or other institution not deemed to know that funds are held in trust**

A bank, building society or other institution at which a licensed person keeps a trust account shall not be deemed, solely from the name of the account, to have knowledge that the person is not entitled absolutely to all money paid or credited to that account:

Provided that nothing in this section shall relieve the bank, building society or other institution from any liability or obligation under which it would be apart from this Act.

## **56 Limitation of set-off, etc., against trust account**

Notwithstanding section *fifty-five*, a bank, building society or other institution at which a licensed person keeps a trust account shall not, in respect of any liability owed by the person to that bank, building society or other institution which is not a liability arising out of or in connection with that account, have or obtain any recourse or right by way of set-off, counterclaim, charge or otherwise against money standing to the credit of that account.

## **57 Saving of licensed person's rights against funds in trust account**

Nothing in this Part shall be construed so as to take away or affect a just claim, lien, counterclaim, right of set-off or charge of any kind which a licensed person may have under any law against or upon money held or received by him or her on account of another person.

### **58 Commission may require certified balance of trust account**

A bank, building society or other institution at which a licensed person keeps a trust account shall, whenever so required by the Commission, furnish to the Commission a signed certificate of balance certifying the amount, if any, standing to the credit or debit of that trust account as at such date or dates as may be specified by the Commission.

### **59 Offences in relation to trust accounts**

Any person who contravenes any provision of this Part shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

## **PART VII**

### REGISTERS OF INTERESTS IN SECURITIES

### **60 Interpretation in Part VII In**

this Part

“interest”, in relation to a security, means a direct or indirect pecuniary interest in the security, whether the interest is vested or contingent.

### **61 Licensed persons to keep registers**

(1) Subject to this Part, every licensed person shall keep a register of all the securities in which an interest is held

- (a) by him or her; or
  - (b) by any director, officer, employee, associate or partner who is directly involved in the conduct or management of the licensed person’s business, in so far as it relates to securities.
- (2) A register referred to in subsection (1) shall be kept in such form as may be prescribed in rules.
- (3) A person who is required to keep a register in terms of subsection (1) shall ensure that particulars of
- (a) all securities that are required to be recorded in the register; and
  - (b) the persons who hold an interest in the securities; and (c) the nature of the interest in the securities; and
- (d) any change in the interest in the securities; are recorded in the register within forty-eight hours after the interest was acquired or the change in the interest occurred, as the case may be.

### **62 Commission may inspect and publish register of interests**

- (1) The Commission or any person authorised by the Commission may at all reasonable times
- (a) require a licensed person to produce for inspection the register he or she is required to keep in terms of section *sixty-one*; and
  - (b) make copies of or take extracts from any register kept in terms of section *sixty-one*.
- (2) If the Commission considers that it is in the public interest for any person to be informed of an interest disclosed in a register kept in terms of section *sixty-one*, the Commission may supply that person with a copy of or extract from that register.

## **PART VIII**

### MANAGEMENT OF REGISTERED SECURITIES EXCHANGES

### **63 Listed securities**

- (1) Every registered securities exchange shall
- (a) keep an official list of the securities that may be dealt in on the exchange; and
  - (b) ensure that no dealings on the exchange take place in any security that is not listed on the official list kept in terms of paragraph (a).
- (2) An official list referred to in subsection (1) shall be kept in a form and manner approved by the Commission.
- (3) Subject to section *sixty-four*, the requirements for listing securities on an official list referred to in subsection (1) shall be prescribed in the rules of the registered securities exchange concerned.

### **64 Delisting or suspension of listing of securities and omission of prices from quotations of prices**

- (1) Subject to the rules of the exchange concerned, a registered securities exchange may
- (a) remove a listed security from its official list; or
  - (b) suspend the listing of a security on its official list; or
  - (c) omit the price of any security from a list of quotations of prices of securities issued for publication.
- (2) Notwithstanding section *sixty-three*, a registered securities exchange may permit members to deal in securities that have been removed from its official list or whose listing has been suspended in terms of subsection (1), for the purpose of fulfilling any obligations they may have entered into before the removal or suspension.

## 65 Rules of registered securities exchange

(1) The rules of a registered securities exchange shall make adequate provision for such of the following matters as are appropriate to its functions—

- (a) in regard to the management of the exchange—
  - (i) the functions and procedures of a committee, board or other body to manage the affairs of the exchange;
  - (ii) the appointment of such officers and other members of staff as may be necessary for the purposes of managing the exchange, and the delegation of functions to those officers and members of staff;
  - (iii) contributions by members towards the funds of the exchange;
  - (iv) the audit of the accounts of the exchange;
- (b) in regard to membership of the exchange 
  - (i) the categories of membership, and the rights and duties of different classes of members; (ii) ensuring that—
    - A. members are of good character and integrity or, in the case of members that are corporate bodies, that they are managed and controlled by persons who are of good character and integrity;
    - B. members possess such qualifications, whether as to education, training, experience or otherwise, as are specified in the rules or, in the case of members that are corporate bodies, that they are managed and controlled by persons who possess such qualifications; C. members hold the appropriate licence in terms of this Act;
  - (iii) prohibiting the membership of persons who are not licensed under this Act;
  - (iv) the financial requirements for membership, whether in the form of capital or guarantees or otherwise, and the maintenance and review of such requirements;
  - (v) security to be provided by members for the discharge of any liabilities that may arise out of their dealings on the exchange;
  - (vi) the carrying on by members of the business of administering investments in securities or holding them in safe custody on behalf of other persons;
  - (vii) controlling advertising by members;
  - (viii) the maximum fees that members may charge and the notification of such fees by members to their clients;
  - (ix) subject to Part VI, the safeguarding by members of their clients' funds; (x) the audit of members' accounts and other records;
  - (xi) regulating the conduct of members' employees and agents, and requiring members to ensure that their members and agents comply with this Act and the rules;
  - (xii) the discipline of members and their employees and agents, including—
    - A. the establishment of a disciplinary committee or tribunal for hearing complaints or allegations of misconduct or contraventions of the rules on the part of members or their employees or agents;
    - B. the procedure to be adopted by a disciplinary committee referred to in subparagraph A;
    - C. the investigation of complaints against members or their employees or agents;
    - D. the punishment of members found guilty of misconduct or contraventions of the rules, including the expulsion or suspension of such members and the imposition of fines upon them;
    - E. the termination of any relationship between a member and his or her employee or agent who is found to have been guilty of misconduct or to have contravened any provision of this Act or the rules;
- (c) in regard to the listing of securities on the official list of the exchange 
  - (i) the requirements for listing;
  - (ii) the standards in regard to reporting, accounting and corporate governance to be observed by companies and other issuers of listed securities, which standards may be prescribed by reference to international standards specified in rules;
  - (iii) the imposition of fines on issues of listed securities that fail to observe the standards referred to in subparagraph (ii);
  - (iv) the removal or suspension of listed securities from the official list;
  - (v) the omission of listed securities from a list of quotations of prices referred to in paragraph (c) of subsection (1) of section *sixty-four*;
  - (vi) the application of new or amended terms or conditions of listing to securities that are already listed.
- (d) in regard to dealings on the exchange

- (i) subject to this Act, the manner in which and the terms and conditions under which members are to deal in securities;
  - (ii) information which members are required to provide their clients in respect of dealings in securities;
  - (iii) the disclosure of information relating to members' dealings with buyers and sellers of securities;
  - (iv) ensuring that buyers and sellers of securities are aware of their material obligations under this Act and the rules;
  - (v) the circumstances under which members may grant credit to any person and the terms and conditions of such credit;
  - (vi) the delivery of securities, the settlement of amounts payable on their sale or transfer, and ancillary matters;
  - (vii) requiring dealings to be settled through a central securities depository;
  - (viii) the halting of dealings in any security for such period as the committee of the exchange considers necessary in the public interest or for the purposes of market stability;
  - (ix) preventing fraudulent or manipulative acts or practices;
  - (x) ensuring efficiency, honesty, fair practice and fair competition in relation to dealings with securities;
- (e) the recognition of clearing houses for the provision of services in respect of the buying and selling of securities on the exchange concerned, and—
- (i) the management and operation of such recognised clearing houses;
  - (ii) the monitoring of the activities of such recognised clearing houses;
  - (iii) fostering co-operation and co-ordination with such recognised clearing houses;
- (f) the establishment of companies to hold securities on behalf of members' clients;
- (g) the settlement of disputes between members and between members and their clients;
- (h) the recording of transactions effected on the exchange;
- (i) the provision of information to the Commission in regard to transactions effected on the exchange;
- (j) the confidentiality of information acquired by—
- (i) the staff and committee of the exchange in relation to the business and activities of members and their clients;
  - (ii) members of the exchange and their employees and agents in regard to the business and activities of their clients;
- (k) the establishment of a guarantee fund to indemnify persons who suffer loss through the conduct of members and their employees or agents, and providing for—
- (i) the control and administration of such a fund;
  - (ii) contributions to such a fund, and the payment of surcharges or interest on delayed contributions;
  - (iii) the circumstances in which persons may be indemnified from such a fund and the terms, conditions and limits of any such indemnification;
- (l) the equitable allocation of dues, fees and charges;
- (m) the dissolution of the exchange, and the distribution of its assets on its dissolution;
- (n) generally, any other matter which, in the opinion of the committee of the exchange, will encourage or ensure efficient, honest, fair, competitive and informed trading in securities on the exchange.
- (2) Subject to subsection (3), the rules of a registered securities exchange may be amended or repealed from time to time in accordance with the constitution or memorandum of association of the exchange concerned.
- (3) The rules of a registered securities exchange, and any amendment or repeal of those rules, shall not have effect until they have been approved by the Commission.
- (4) A registered securities exchange—
- (a) shall keep a copy of its current rules at any premises where it carries on business and shall permit any member of the public to inspect them at all reasonable times during office hours; and
  - (b) if required to do so by the Commission, shall cause its rules to be published in such manner as the Commission may direct.
- (5) Subject to this Act, rules that have been approved by the Commission shall be binding on—
- (a) all members of the registered securities exchange concerned; and
  - (b) all employees and agents of members of the registered securities exchange concerned; and
  - (c) all companies and other issuers of securities listed on the official list of the registered securities exchange concerned; and
  - (d) every person who utilises the services of a member of the registered securities exchange concerned or who concludes a transaction with such a member in the course of the member's business.
- (6) Where a registered securities exchange has established or participates in a central securities depository in terms of Part IX, the rules of the exchange shall have effect subject to, and only to the extent that they are consistent with, the rules of the central securities depository.

## **66 Liability for contraventions of rules**

(1) Any person who contravenes or fails to comply with any rule which is binding on him or her shall be liable to any other person for any loss or damage suffered by that other person as a result of the contravention or failure.

(2) The defences that apply to an action for damages in respect of the breach of a statutory duty shall be available, with any changes that may be necessary, to any person sought to be made liable for a contravention or failure referred to in subsection (1).

## **67 Delegation of powers**

Anything which under this Act is required or permitted to be done by a registered securities exchange may be done by the committee of the exchange or by an officer or member of staff of the exchange to whom the committee has delegated that power.

## **PART IX**

### **CENTRAL SECURITIES DEPOSITORIES**

## **68 Interpretation in Part IX**

In this Part—

“certificated security” means a security evidenced by a physical document of title;

“clearing” means the presenting and exchanging of information relating to the transfer of securities, funds or financial instruments;

“dematerialised security” means a security which exists only as an accounting entry in a registry or other record kept by its issuer, and which is not evidenced by a physical document of title;

“deposited security” means a security that has been deposited with a central depository and is transferable by way of direct entry in a record or account of the depository and not by way of an instrument of transfer;

“depositor”, in relation to a deposited security, means the person who is named in the appropriate record or account of the central securities depository concerned as the depositor of that security;

“document of title” means a certificate or other document which

- (a) is evidence of title to a security; or
- (b) itself constitutes a security;

“issuer” means a company or other person that issues a security;

“participant” means a person that is entitled to use the services and facilities of a central securities depository, otherwise than solely as a depositor, and “participate” and “participating” shall be construed accordingly;

“settlement” means the discharge of obligations by the transfer of funds, securities or financial instruments.

## **69 Scheme for establishment of central securities depository**

(1) Any person, including a registered securities exchange, may establish a central securities depository under a scheme that is approved by the Commission and provides for the following matters

- (a) the establishment of a company or other body corporate to operate the central securities depository;
- (b) the deposit with the central securities depository of documents of title and ancillary documents, and the registration of the documents of title in the name of the central securities depository;
- (c) the prompt and accurate clearing and settling of obligations relating to deposited securities;
- (d) the maintenance by the central securities depository of accounts and other records to reflect the depositors’ titles to their deposited securities;
- (e) the recording of transfers of deposited securities;
- (f) the safeguarding of deposited securities and funds of which the operator of the central securities depository has custody or for which the operator is responsible;
- (g) the admission of all qualified persons as participants of the central securities depository;
- (h) fair and adequate disciplinary measures to ensure that participants comply with the rules of the scheme and with this Act;
- (i) fair representation of participants in the operation of the central securities depository;
- (j) the equitable imposition of fees and charges relating to the operation of the central securities depository;
- (k) confidentiality and protection of information and documents relating to the affairs of persons who hold accounts with the central securities depository;
- (l) the establishment of a guarantee fund to indemnify persons who suffer loss through the conduct of officers, employees or agents of the central securities depository, and providing for
  - (i) the control and administration of such a fund;
  - (ii) contributions to such a fund, and the payment of surcharges or interest on delayed contributions;
  - (iii) the circumstances in which persons may be indemnified from such a fund and the terms, conditions and limits of any such indemnification;
- (m) co-operation with any other institution or person that provides clearance and settlement facilities;



- (n) with the approval of the Commission, the making of rules for any matter referred to in paragraphs (a) to (m) and, generally, for the safe, efficient and fair operation, management and maintenance of the central securities depository.

(2) With the approval of the Commission, a registered security exchange may join a scheme that has been established in terms of subsection (1), and, subject to the rules, it and its members may participate in the facilities and services provided by that scheme.

(3) A scheme that has been approved in terms of subsection (1) shall not be amended except to such extent and in such manner as the Commission may approve or, after consultation with the operator of the central securities depository concerned, may direct for the purposes of this Act.

### **70 Transfer of deposited securities**

(1) Notwithstanding any other law but subject to this Act, a transfer of deposited securities between depositors shall be effected by the central securities depository making an appropriate entry in a record or account kept by it in relation to those securities.

(2) A transfer of securities effected in accordance with subsection (1) shall be valid even though the transfer is not made in writing or accompanied by an instrument of transfer.

(3) Entries referred to in subsection (1)□

- (a) may be made by electronic means; and
- (b) may be made in respect of the same class of securities as part of a fungible bulk; and
- (c) may refer merely to a quantity or par value of a particular security without reference to a certificate or bond number or to a similar number or identifying mark; and
- (d) in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

### **71 When transfer of deposited securities may be refused**

(1) Where—

- (a) a company is required or permitted under any law or under its memorandum or articles of association to refuse to register a transfer of deposited securities; and
- (b) such a refusal is permissible under the rules of the registered securities exchange on which the securities concerned were traded; the company may notify the central securities depository concerned in writing of its objection to the transfer before the transfer takes place and furnish the depository with the facts upon which the objection is based.

(2) Where a central securities depository has had prior notice of a company's objection to a transfer of deposited securities under subsection (1), it shall refuse to effect the transfer and to enter the name of the transferee in the appropriate record or account and shall convey to the transferee without delay the facts upon which its refusal is based.

(3) Section 101 of the Companies Act [*Chapter 24:03*] shall not apply to any refusal to register a transfer under subsection (2).

### **72 Issue of dematerialised securities**

Notwithstanding anything to the contrary in the Companies Act [*Chapter 24:03*], a participating issuer of listed securities may—

- (a) issue a security in dematerialised form; or
- (b) convert a certificated security into a dematerialised security; if it is authorised to do so by a resolution of its board of directors, board of management or other governing body:

Provided that a certificated security shall not be converted into a dematerialised security without the consent of the current holder of the document of title concerned.

### **73 Effect of registration of central securities depository as holder of securities**

(1) Notwithstanding anything to the contrary in the Companies Act [*Chapter 24:03*] or any other enactment or in the memorandum or articles of association of a company, where a central securities depository is named in any register kept by a participating company as the holder of any deposited security—

- (a) the depository shall not be regarded as a member of the company through being named as the holder of the security; and
- (b) the person who for the time being is named as the depositor in a record or account kept by the depository shall be regarded as the holder of the security and entitled to all the rights and privileges and subject to all the obligations of the security's holder:

Provided that, if the depositor's rights in the security are held on behalf of another person, that other person shall be entitled to all the rights and privileges and subject to all the obligations that he or she would have been if the depositor had been named as the holder of the security in the register kept by the participating company.

(2) Except as otherwise provided in this section, nothing in this Act shall be construed as affecting—

- (a) any obligation of a participating issuer of securities to keep a register of holders of securities and to allow inspection of the register:

Provided that the issuer shall be under no obligation to enter in any such register the names and particulars of the persons who are to be regarded as the holders of the securities under paragraph (b) of subsection (1);

- (b) any right of a depositor to withdraw his or her document of title to a deposited security from a central securities depository at any time in accordance with the rules of the depository, and to register the security in his or her or any other name; or
- (c) any right, power, privilege, liability, duty or obligation conferred or imposed under any law upon a depositor, as a member of a company or the holder of a security, except to the extent provided by or under this Act.

(3) Notwithstanding anything in the Companies Act [*Chapter 24:03*], a depositor shall not be regarded as a member of a company entitled to attend any general meeting of the company and to speak and vote thereat unless his or her name appears on the appropriate record or account of the central securities depository concerned at least forty-eight hours before the general meeting.

#### **74 Authentication of documents of title to deposited securities**

Where a document of title to a deposited security is forwarded by a central securities depository, in accordance with its rules, to the participating issuer of the security, the issuer shall inform the depository, in writing and within the period specified in the rules, whether or not the document of title is authentic.

#### **75 Confirmation of transactions**

As soon as possible after effecting any transaction involving deposited securities, a central securities depository shall issue to each depositor a confirmation note specifying the amount and description of the deposited securities and any other relevant information concerning the transaction.

#### **76 Maintenance of accounts by central securities depository and probative effect thereof**

(1) Every central securities depository shall maintain, in accordance with its rules, proper accounts and other records relating to deposited securities.

(2) An entry in any account or record maintained in terms of subsection (1) shall be *prima facie* evidence of any dealings in deposited securities that are recorded in the entry.

#### **77 Certification of names of depositors**

(1) Upon written request and on payment of any fee prescribed in the depository's rules, a central securities depository shall without delay provide a participating issuer of securities with the following information□

- (a) the names and addresses of depositors of deposited securities issued by that issuer; and
- (b) the number of such deposited securities held by or for each such depositor; and
- (c) that any of the deposited securities are held in trust, where the central securities depository has been notified of that fact.

(2) On payment of such fee as may be prescribed in the rules of the central securities depository concerned, any person may require a participating issuer of securities to furnish him or her with a record of the names and addresses of, and the number of deposited securities held by, depositors of securities issued by that issuer, and the issuer shall comply with the requirement without delay.

Provided that a registrar of companies referred to in section 5 of the Companies Act [*Chapter 24:03*] may require the participating issuer to furnish him or her with such a record without payment of any fee.

#### **78 Withdrawal of deposited security from central securities depository**

(1) Subject to the rules of the depository concerned, on application to a central securities depository a depositor may withdraw a security credited to him or her in any record or account of the depository.

(2) Where an application for the withdrawal of a deposited security is made under subsection (1), the central securities depository shall notify the issuer of the security concerned and, notwithstanding anything to the contrary in the Companies Act [*Chapter 24:03*], the issuer shall without delay complete and deliver to the depository, for forwarding to the depositor, all appropriate documents of title in connection with the transfer of the security.

#### **79 Mortgaging or pledging of deposited securities**

(1) In this section□

“mortgagee” means a person to whom deposited securities are mortgaged or pledged;

“mortgaged securities account” means the account maintained by a central securities depository in terms of subsection (2).

(2) Where a depositor mortgages or pledges a deposited security, the central securities depository concerned shall, on a written request by the depositor or the mortgagee, transfer the security or cause it to be transferred into a mortgaged securities account maintained for the purpose.

(3) Where a request referred to in subsection (2) is made by a mortgagee, it shall be supported by evidence of the mortgage or pledge in his or her favour.

(4) Upon written notice from the mortgagee that a mortgage or pledge of a deposited security has been discharged or terminated, the central securities depository shall transfer the security back into the account of depositor.

(5) The provisions of this Part and of the rules of the central securities depository concerned that relate to the transfer or withdrawal of deposited securities shall apply, *mutatis mutandis*, to securities in a mortgaged securities account.

### **80 Exemption of central securities depository and participants from liability**

(1) Subject to this Act, if a central securities depository, in good faith and without negligence and acting in accordance with the instructions of a depositor or a participant—

- (a) makes entries in any record or account in respect of any deposited securities; or
- (b) transfers or delivers any deposited securities; the central securities depository shall not be liable to any person on the ground that the depositor or participant, as the case may be, had no right to dispose of or take any other action in respect of the securities.

(2) A central securities depository or participant, if acting in good faith and without negligence, shall be fully discharged of its obligations to the depositor by the transfer or delivery of deposited securities in accordance with the rules of the central securities depository and upon the depositor's instructions.

### **81 No rectification of records and accounts of central securities depository**

Notwithstanding anything to the contrary in any other enactment, no order shall be made by a court for rectification of any record or account kept by a central securities depository: Provided that, if the court is satisfied that—

- (a) a depositor did not consent to a transfer of any deposited securities, the court may award him or her damages;
- (b) a depositor should not have been registered in any such record or account as having title to any deposited securities, the court may award damages to any person who should have been so registered; and additionally, or alternatively, the court may make such other order as it thinks appropriate, including an order for the transfer of the deposited securities to any depositor or person.

### **82 Non-application of certain provisions relating to insolvency and liquidation**

(1) Subject to subsection (2), any provision of the Insolvency Act [*Chapter 6:04*] or the Companies Act [*Chapter 24:03*] or any other enactment relating to insolvency or to the liquidation of companies which provides that—

- (a) any disposition of property of an insolvent after the filing of an application for a sequestration order and before the vesting of the insolvent estate in a trustee is void unless done with the consent or ratification of a court; or
- (b) any disposition of the property of a company after commencement of a winding up is void, unless a court orders otherwise; or shall not apply to a disposition of deposited securities.

(2) Where a court is satisfied that a party to a disposition of deposited securities, being a party other than the central securities depository, had notice that an application had been filed for the winding up or sequestration of the other party to the disposition, the court may award such damages against that party as the court thinks equitable, or may make such other order as the court thinks fit, including an order for the transfer of deposited securities by that party:

Provided that the court shall not make an order for the rectification of any record or account of the central securities depository.

### **83 Rights of central securities depository on insolvency or liquidation of participant**

(1) Where a participant becomes insolvent, or an order is made for a participant's winding up or sequestration, whether voluntary or involuntary, the central securities depository—

- (a) may terminate its agreement with the participant to clear or settle transactions involving securities, or to act as a depository for securities; and
- (b) notwithstanding any other enactment, may realise assets of the participant pursuant to—
  - (i) a pledge in favour of the central securities depository; or
  - (ii) the rules of the central securities depository; or
  - (iii) guarantees established by the central securities depository in accordance with its rules.

(2) Upon terminating an agreement under paragraph (a) of subsection (1), a central securities depository may set off obligations between itself and the participant, in accordance with the provisions of the agreement, and if on termination there is a net sum owed to the central securities depository by the participant, the depository shall be deemed to be a creditor of the participant in respect of that sum.

### **84 Reports and information to be furnished to Commission by central securities depository**

(1) A central securities depository shall, in accordance with its rules, furnish the Commission with periodic reports on its activities and operations.

(2) A central securities depository shall without delay inform the Commission of any dealing in a deposited security that fails to settle on its settlement date, and shall provide the Commission with details of any such trade and the reasons, as known to the central securities depository, for such failure.

(3) Notwithstanding any other provision of this Part or of the rules of the depository concerned, a central securities depository shall without delay furnish the Commission with such information as the Commission may

reasonably require in the exercise of its powers under this Act or in order to prevent or detect any contravention of this Act or any other law.

### **85 Duty of central securities depository and participants to take security measures**

A central securities depository and every participant shall take all reasonable measures to protect information and documents relating to the affairs of depositors against any unauthorised access, alteration, disclosure or dissemination.

### **86 Duty to maintain secrecy**

(1) Subject to subsection (3) □

- (a) any officer or employee of a central securities depository or a participant who discloses to any person, whether during his or her tenure of office or employment or thereafter, any information relating to the affairs of a depositor which he or she has gained in the course of his or her duties or employment; or
- (b) any person who has any information which, to his or her knowledge, has been disclosed in contravention of paragraph (a) and who discloses that information to any other person; shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) An officer or employee of a central securities depository or a participant who, in the course of his or her duties or employment, has gained any information relating to the affairs of a depositor and who makes any use of that information for himself or herself or any other person, other than the central securities depository or participant of which he or she is an officer or employee, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Subsection (1) shall not prevent the disclosure of any information or document relating to a depositor's affairs—

- (a) which the depositor or his or her representative has permitted to be disclosed; or
- (b) where the disclosure is required or permitted under this Act or the rules of the central securities depository concerned; or
- (c) where the disclosure is required under an order of court or where a witness is required to disclose the information or document in the course of proceedings before a court; or
- (d) for the purposes of any proceedings for the sequestration or liquidation of the depositor's estate or, if the depositor is a corporation, for the winding up of the corporation; or (e) for the purposes of any proceedings—
  - (i) between the central securities depository or a participant, on the one hand, and a depositor on the other, in connection with any account of the depositor; or
  - (ii) between the central securities depository or a participant, on the one hand, and two or more parties on the other hand, involving adverse claims to securities or money in any account of the depositor, where the central securities depository or participant seeks relief by way of interpleader;

or

- (f) which is requested in writing by any person who is authorised under any law to investigate any offence; or
- (g) which is required to enable or assist □
  - (i) the Commission or the committee of a registered securities exchange to exercise its functions under this Act; or
  - (ii) auditors of a central securities depository or of a participant to exercise their functions; or
  - (iii) an investigator or inspector appointed under this Act or the Banking Act [*Chapter 24:20*] to exercise his or her functions; or
  - (iv) the Reserve Bank of Zimbabwe to exercise its functions under any enactment; or
  - (v) the Registrar of Companies, a judicial manager or a liquidator to exercise his or her functions under the Companies Act [*Chapter 24:03*];

or

- (h) in a summary or collection of information, framed in such a way so as not to enable the identity of any depositor to whom the information relates to be ascertained.

## **PART X**

### MISUSE OF INSIDE INFORMATION

### **87 Interpretation in Part X**

(1) In this Part—

“affected security”, in relation to any inside information, means □

- (a) a listed security to which the inside information relates; or
- (b) a listed security whose price or value is likely to be affected materially if the inside information is made public;

“inside information” means specific or precise information which has not been made public and which—

- (a) if it were made public, would be likely to have a material effect on the price or value of a listed security; and
  - (b) is obtained or learned by an individual
    - (i) through being a director, employee, adviser, consultant or shareholder of an issuer of listed securities to which the inside information relates; or
    - (ii) through direct or indirect communication with a person referred to in subparagraph (i);
- “public-sector body” means—
- (a) the Government of Zimbabwe or the government of any other country or territory; or
  - (b) a local authority in Zimbabwe or any similar body outside Zimbabwe; or
  - (c) the Reserve Bank of Zimbabwe or the central bank of any other country or territory;
- “regulated exchange” means a registered securities exchange or a securities exchange that conducts business lawfully outside Zimbabwe.

- (2) Without limiting the ordinary meaning of the expression “make public”, information shall be regarded as having been made public in the following circumstances—
- (a) if the information is published in accordance with the rules of a regulated exchange for the purpose of informing investors and their professional advisers; or (b) if the information is contained in records which—
    - (i) are maintained by the Commission or by any body responsible for regulating or supervising a regulated exchange; and
    - (ii) are open to inspection by the public; or
  - (c) if the information can be readily acquired by those likely to trade or deal in any listed securities— (i) to which the information relates; or
    - (ii) issued by the person to whom the information relates; or
  - (d) if the information is derived from information which has been made public; and information is regarded as having been made public even though—
    - (i) it can be acquired only by persons exercising diligence or expertise or through observation; or
    - (ii) it is communicated to a section of the public and not to the public at large; or (iii) it is communicated only on payment of a fee; or
    - (iv) it is published outside, rather than inside, Zimbabwe.

## **88 Prohibition against misuse of inside information**

- (1) Subject to subsection (1) of section *eighty-nine*, an individual who knows or ought to know that he or she has inside information shall not—
- (a) trade or deal directly or indirectly, for his or her own or anyone else’s account, in any affected security; or
  - (b) cause or encourage any other person to trade or deal in any affected security; or (c) prevent or discourage any other person from trading or dealing in any affected security.
- (2) Subject to subsection (2) of section *eighty-nine*, an individual who knows or ought to know that he or she has inside information shall not disclose that information to any other person.

## **89 Defences**

- (1) It shall be a defence, in any civil or criminal proceedings for a contravention of subsection (1) of section *eighty-eight*, for the person alleged to have contravened the subsection to prove on a balance of probabilities— (a) that he or she was acting on specific instructions from a client:
- Provided that this shall not be a defence if he or she disclosed the inside information to that client;
- or
- (b) that he or she would have acted in the same way even without the inside information; or
  - (c) that he or she was acting on behalf of a public-sector body in furtherance of monetary policy, a policy in respect of exchange rates, the management of public debt or the management of foreign exchange reserves; or
  - (d) where it is alleged that he or she contravened paragraph (c) of subsection (1) of section *eighty-eight*, that he or she was trying to prevent the other person concerned from contravening that section.
- (2) It shall be a defence, in any civil or criminal proceedings for a contravention of subsection (2) of section *eighty-eight*, for the person alleged to have contravened the subsection to prove on a balance of probabilities that—
- (a) he or she believed, on reasonable grounds, that no one would trade or deal in any affected securities as a result of the disclosure of the inside information concerned; or
  - (b) he or she disclosed the inside information in the proper performance of the functions of his or her employment, office or profession and at the same time disclosed that the information was inside information.
- (3) Subsections (1) and (2) shall not be construed as limiting the application or scope of any other defences that may be available to a person alleged to have contravened section *eighty-eight*.

## 90 Criminal penalty for misuse of inside information

Any person who contravenes section *eighty-eight* shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

## 91 Civil liability for misuse of inside information

(1) A contravention of section *eighty-eight* shall be a delict committed□

- (a) against the Commission; and
- (b) against the person who issued any affected security; and
- (c) against every holder of an affected security; and
- (d) where the contravention consisted in unlawful trading or dealing in an affected security, against every person who, without knowledge of the inside information concerned, traded or dealt in an affected security at any time from the commencement of the unlawful trading or dealing until the inside information was made public; and, subject to this Part and any other law, the Commission and those persons, individually or jointly, shall be entitled to whatever remedies are available in respect of any delict.

(2) For the purposes of subsection (1), any□

- (a) profit which accrued to a person with inside information, through any unlawful trading or dealing in an affected security; or
- (b) avoidance of loss which a person with inside information was able to enjoy through any unlawful trading or dealing in an affected security; or
- (c) reduction in the price or value of an affected security which occurred through any unlawful trading or dealing referred to in paragraph (a) or (b) or through any unlawful disclosure of inside information; shall be regarded as prejudice suffered□
  - (i) by the person who issued the affected security; and
  - (ii) jointly by□
    - A. the holders of all the affected securities; and
    - B. all persons who, without knowledge of the inside information, traded or dealt in an affected security at any time from the commencement of the unlawful trading or dealing until the inside information was made public;

as a direct result of the contravention of section *eighty-eight* which gave rise to the proceedings.

(3) For the purposes of subsection(1), any□

- (a) profit which accrued to a person through trading or dealing in an affected security, following the unlawful communication to him or her of inside information; or
- (b) avoidance of loss which a person was able to enjoy through trading or dealing in an affected security, following the unlawful communication to him or her of inside information; shall be regarded as prejudice suffered□
  - (i) by the person who issued the affected security; and
  - (ii) jointly by□
    - A. the holders of all the affected securities; and
    - B. all persons who, without knowledge of the inside information, traded or dealt in an affected security at any time from the commencement of the unlawful trading or dealing until the inside information was made public;

as a direct result of the unlawful communication of the information.

(4) Notwithstanding any rule of law or practice to the contrary, proceedings may be instituted for a delict arising out of a contravention of section *eighty-eight* even if criminal proceedings are pending in respect of the same contravention.

(5) Where a person enters into a contract in regard to any securities and, by doing so, contravenes section *eighty-eight*, the contravention shall be regarded as a misrepresentation that induced the contract and entitles the other party to rescind it if he or she was unaware of the contravention.

## 92 Class actions for misuse of inside information

(1) In addition to any other action or proceeding available to it, the Commission may institute a class action under the Class Actions Act [*Chapter 8:17*] on behalf of all or any of the persons referred to in paragraphs (b), (c) and (d) of subsection (1) of section *ninety-one* in order to recover any damages or other amounts payable to them as a result of a delict referred to in that subsection.

(2) Subsection (1) shall not be construed as limiting the right of any person apart from the Commission to institute a class action under the Class Actions Act [*Chapter 8:17*] in respect of a delict referred to in section *ninetyone*.

## 93 Assessment of penalties

In the assessment of any penalty for an offence under section *ninety*, a court shall take into account any award previously made in respect of a delict referred to in section *ninety-one* which arises from the same cause.

## 94 Contracts valid despite misuse of inside information

A contract shall not be void or unenforceable solely on account of a contravention of section *eighty-eight*.

### **95 Protection of other rights**

Nothing in this Part shall prevent a person who is prejudiced by any conduct referred to in section *eighty-eight* from recovering any amount due to him or her under any other law, except to the extent that he or she has recovered any portion of that amount under this Part.

## **PART XI**

### **IMPROPER TRADING PRACTICES**

#### **96 False trading and market manipulation**

(1) No person shall do anything with the intention of creating□

- (a) a false or misleading appearance of the volume of trading in any securities on a registered securities exchange; or
- (b) a false or misleading appearance of the market for, or the price of, any security on a registered securities exchange.

(2) No person shall, by means of any false statement or fictitious or artificial transaction or device, maintain, inflate or depress, or cause fluctuations in, the price of any securities on a registered securities exchange.

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

#### **97 Fraudulently inducing person to trade or deal in securities**

(1) No person shall induce another person to trade or deal in securities on a registered securities exchange□

- (a) by making or publishing any statement, promise or forecast which he or she knows to be false or misleading; or
- (b) by any dishonest concealment of material facts; or
- (c) by recklessly or dishonestly making or publishing any statement, promise or forecast that is false or misleading.

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

#### **98 Civil liability for contraventions of Part XI**

(1) Any person who has suffered pecuniary loss as a result of a contravention of section *ninety-six* or *ninety-seven* shall be entitled to recover the amount of that loss from the person responsible for the contravention.

(2) Notwithstanding any rule of law or practice to the contrary, proceedings may be instituted for the recovery of any loss referred to in subsection (1) even if criminal proceedings are pending in respect of the same contravention that gave rise to the loss.

(3) For the purposes of this section, a person's pecuniary loss as a result of a contravention of section *ninety-six* or *ninety-seven* shall be deemed to be□

- (a) the difference between the price at which he or she purchased or sold any security and the price at which he or she would probably have purchased or sold it, as the case may be, had the contravention not taken place; or
- (b) any profit he or she would probably have made on the sale of any security which he or she was induced by the contravention not to sell; unless he or she is proved to have sustained some greater or smaller loss.

(4) Where a person enters into a contract in regard to any securities and, by doing so, contravenes section *ninety-seven*, the contravention shall be regarded as a misrepresentation that induced the contract and entitles the other party to rescind it if he or she was unaware of the contravention.

(5) This section shall not be construed as affecting a person's liability under any other law for a contravention of section *ninety-six* or *ninety-seven*.

#### **99 Class actions for contraventions of Part XI**

(1) Where more than one person has suffered pecuniary loss as a result of the same contravention of section *ninety-six* or *ninety-seven*, the Commission may institute a class action under the Class Actions Act [*Chapter 8:17*] on behalf of all or any of those persons in order to recover any damages or other amounts payable to them.

(2) Subsection (1) shall not be construed as limiting the right of any person apart from the Commission to institute a class action under the Class Actions Act [*Chapter 8:17*] in respect of a contravention of section *ninety-six* or *ninety-seven*.

## **PART XII**

### **SUPERVISION OF INSTITUTIONS**

#### **100 Commission may demand information**

(1) For the purpose of ensuring proper observance of this Act, the Commission may demand from□

- (a) a licensed person, the committee of a registered securities exchange or the operator of a central securities depository; or
- (b) a person who is
  - (i) employed by any person referred to in paragraph (a); or
  - (ii) concerned in the operation or management of a registered securities exchange or central securities depository; or
  - (iii) a depositor or participant in a central securities depository for the purpose of Part IX; or
  - (iv) a person who has purchased or sold securities on a registered securities exchange; or
- (c) a person who has or had any business or dealing with a person referred to in paragraph (a) or (b); any document or information relating to anything connected with the person's business as such or with the operation of the registered securities exchange or the central securities depository, as the case may be:

Provided that the Commission shall not demand any document or information from a person referred to in subparagraph (iii) or (iv) of paragraph (b) or paragraph (c) unless there are reasonable grounds for believing that the document or information is necessary for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

(2) If the Commission has reason to believe that

- (a) any person who is not registered or licensed is carrying on any business or activity for which registration or a licence is required under this Act; or
- (b) any person is operating a central securities depository in Zimbabwe without the Commission's approval; the Commission may, by written notice, direct that person to submit to it, within a reasonable period stated in the notice or within such further period as the Commission may allow, any document or information concerning his or her business, activities or operations which the Commission may reasonably require to ascertain whether or not any provision of this Act is being observed.

(3) Any person who fails to comply to the best of his or her ability with a demand or notice in terms of subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

### **101 Appointment of inspectors**

(1) The Commission may appoint

- (a) one or more of its officers or employees; and
- (b) one or more persons engaged by it in terms of subsection (2) of section *fourteen*; and
- (c) subject to the Public Service Act [*Chapter 16:04*], one or more members of the Public Service; to be inspectors for the purpose of investigating the business, activities or operations of any registered securities exchange, licensed person or central securities depository and exercising any other function conferred or imposed on inspectors by or under this Act.

(2) The Commission shall provide every inspector with a letter of appointment, and the inspector shall produce it on request by any interested person.

### **102 Powers of inspectors**

(1) Subject to subsection (2), in the exercise of his or her functions under this Act, an inspector may

- (a) at any time during normal office hours, without previous notice, enter the premises of a registered securities exchange, licensed person or central securities depository, or any premises in which it is believed on reasonable grounds that there is any security, book, record, account or document pertaining to the business, activities or operations of such an exchange, person or depository;
- (b) require any officer, employee or agent of a registered securities exchange, licensed person or operator of a central securities depository to produce any security, book, record, account or document pertaining to the business, activities or operations of the exchange, person or depository;
- (c) search any premises referred to in paragraph (a) for any security, book, record, account or document pertaining to the business, activities or operations of a registered securities exchange, licensed person or central securities depository;
- (d) in any premises referred to in paragraph (a)
  - (i) open or cause to be opened any strong-room, safe or other container in which he or she suspects on reasonable grounds there is any security, book, record, account or document pertaining to the business, activities or operations of the registered securities exchange, licensed person or central securities depository concerned;
  - (ii) examine and make extracts from and copies of any security, book, record, account or document pertaining to the business, activities or operations of the registered securities exchange, licensed person or central securities depository concerned;
- (e) remove any security, book, record, account or document from any premises referred to in paragraph (a), for so long as may be necessary for the purpose of examining it or making an extract from it or a copy of it:



Provided that the inspector shall give a full receipt for any such security, book, record, account or document so removed;

- (f) require any officer, employee or agent of a registered securities exchange, licensed person or central securities depository
  - (i) to explain any entry in a book, record, account or document pertaining to the business, activities or operations of the exchange, person or depository;
  - (ii) to provide the inspector with such information concerning the management, business, activities or operations of the exchange, person or depository as the inspector may reasonably require.

(2) The powers of entry and search conferred by subsection (1) shall not be exercised except with the consent of the licensed person or central depository concerned or with the consent of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

### **103 Investigation into operations of licensed person, registered securities exchange or central securities depository**

(1) If

- (a) a licensed person or the committee of a registered securities exchange or the operator of a central securities depository has failed to furnish the Commission or an inspector with any statement, document or information required under any provision of this Act within the period specified by or in terms of that provision; or
- (b) a licensed person or the committee of a registered securities exchange or the operator of a central securities depository has furnished incorrect or incomplete information to the Commission or an inspector and—
  - (i) has not furnished correct or complete information within a period of thirty days, commencing on the date on which the Commission or inspector, as the case may be, called upon the licensed person, committee or operator, as the case may be, to correct or complete the information; or
  - (ii) the Commission has reasonable grounds for suspecting that the licensed person, committee or operator, as the case may be, will not furnish the information or will conceal or destroy any record or evidence pertaining to the information;

or

- (c) any statement, document or information which a licensed person or committee of a registered securities exchange or operator of a central securities depository has furnished to the Commission or an inspector shows that the licensed person, committee or operator, as the case may be, has failed to comply with any provision of this Act; or
- (d) a licensed person or committee of a registered securities exchange or operator of a central securities depository has failed to correct an irregularity in the conduct of his or her business, activities or operations within thirty days after being called upon, in writing, to correct it by the Commission or an inspector; or
- (e) the Commission has reasonable grounds for believing that a licensed person or committee of a registered securities exchange or operator of a central securities depository, or any person connected with such a person, committee or operator, has committed an offence under this Act, other than an offence arising out of conduct referred to in paragraph (a) or (b); or
- (f) the Commission has reasonable grounds for believing that the rights of any class of  (i) clients of a licensed person; or
  - (ii) members of a registered securities exchange; or
  - (iii) participants or depositors in a central securities depository; are being prejudiced; or
- (g) a licensed person or committee of a registered securities exchange or operator of a central securities depository, or any person connected with such a person, exchange, person or depository, has prevented an inspector from exercising any of his or her powers in terms of section *one hundred and two*; and the Commission considers that an investigation is necessary for the purpose of preventing, investigating or detecting a contravention of this Act or any other law, the Commission may direct an inspector to conduct an investigation into the licensed person, registered securities exchange or central securities depository concerned or any aspect of his or her management, business, activities or operations.

(2) It shall not be necessary for the Commission to afford the licensed person or committee of the registered securities exchange or operator of the central securities depository concerned an opportunity to make representations before it directs an inspector to conduct an investigation in terms of subsection (1).

(3) For the purposes of an investigation in terms of subsection (1), an inspector may exercise any of the powers set out in subsection (1) of section *one hundred and two* and, in addition, may

- (a) seize any security, book, record, account or document pertaining to the management, business, activities or operations of the licensed person, registered securities exchange or central securities depository concerned which in his or her opinion may afford evidence of an offence or irregularity: Provided that

- (i) the inspector shall issue a full receipt for any security, book, record, account or document so seized;
- (ii) any security, book, record, account or document so seized shall be retained only for so long as may be necessary for the purposes of the investigation;
- (b) examine, whether under oath or otherwise, any person who is or was a director, officer, employee, agent, auditor, legal adviser, valuator, debtor, creditor, member, shareholder, partner, operator, participant or depositor of the licensed person, registered securities exchange or central securities depository concerned:

Provided that□

- (i) any person so examined shall be entitled to have his or her legal practitioner present at the examination;
- (ii) no person shall be required to answer any question which he or she would not be required to answer if he or she were a witness in a civil or criminal case before a court;
- (c) require any person referred to in paragraph (b)□
  - (i) to produce any security, book, record, account or document to which he or she has access; and
  - (ii) to give any information which is at his or her disposal; and which relates to the management, business, affairs or operations of the licensed person, registered securities exchange or central securities depository concerned:

Provided that no such person shall be required to produce any thing or to answer any question which he or she would not be required to produce or answer, as the case may be, if he or she were a witness in a civil or criminal case before a court.

(4) A licensed person, registered securities exchange or central securities depository whose securities, books, records, accounts or documents have been seized under this section shall be entitled, through his or her authorised representative, to examine, make entries in and make extracts from them during office hours under such supervision as an inspector may determine.

(5) In conducting an investigation in terms of subsection (1), an inspector shall have the same powers, rights and privileges 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 19 of that Act shall apply, *with any changes that may be necessary*, in relation to such an investigation and to any person summoned to give or giving evidence at the investigation.

(6) Any person who, without just cause, hinders or obstructs an investigator in the exercise of his or her functions under this section shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

#### **104 Procedure on completion of investigation**

(1) On completion of an investigation in term of section *one hundred and three*, an inspector shall forward his or her report thereon to the Commission.

(2) On receipt of a report in terms of subsection (1), the Commission shall□

- (a) send a summary of the conclusions reached in the report, and any recommendations made therein, to the licensed person, committee of the registered securities exchange or operator of the central securities depository, as the case may be, that was the subject of the investigation; and
- (b) invite the committee, licensed person or operator concerned to make representations on the conclusions and recommendations set out in the summary.

(3) A licensed person, committee of a registered securities exchange or operator of a central securities depository that has been sent a summary of conclusions and recommendations in terms of subsection (2) may, within thirty days, submit to the Commission representations on any of the conclusions or recommendations.

#### **105 Action by Commission following investigation**

(1) If, after considering an inspector's report sent to it in terms of subsection (1) of section *one hundred and four*, together with any representations made by the person, committee or operator concerned in terms of subsection (3) of that section, the Commission is satisfied that the person, committee or operator, as the case may be, has contravened any term or condition of his or her licence, registration or approved scheme, as the case may be, or any provision of this Act or any direction, requirement or order made under this Act, the Commission may, subject to subsection (2), do any one or more of the following□

- (a) issue a warning to the person, committee or operator;
- (b) require the person, committee or operator to appoint someone who, in the Commission's opinion, is qualified to advise the person, committee or operator on the proper conduct of his or her business;
- (c) issue a written instruction to the person, committee or operator to undertake remedial action specified in the instruction;
- (d) impose a monetary penalty not exceeding level five a day for each day that the contravention has continued;
- (e) instruct the person, committee or operator to suspend or remove any of his or her officers or employees from his or her duties;

- (f) direct the person, committee or operator to suspend all or any of his or her business;
  - (g) appoint a supervisor to monitor the affairs of the person, committee or operator;
  - (h) where the person, committee or operator is a corporate body, convene a meeting of its members to discuss the remedial measures to be taken;
  - (i) in the case of a licensed or registered person or entity, cancel the licence or amend any of its terms or conditions;
  - (j) in the case of a central securities depository, direct the operator to dissolve it or amend any rules governing its operation.
- (2) Before taking any action referred to in subsection (1), the Commission shall
- (a) inform the person, committee or operator concerned, in writing, of the action it proposes to take; and
  - (b) afford the person, committee or operator concerned an adequate opportunity to make representations in the matter:

Provided that, where the Commission considers that immediate action is necessary to prevent irreparable harm to the licensed person, registered securities exchange or central securities depository or its members, creditors or participants, the Commission may take such action before affording the person, committee or operator an opportunity to make representations in terms of this subsection.

### **106 Expenses of investigation**

(1) The Commission may recover from a licensed person, committee of a registered securities exchange or operator of a central securities depository that has been investigated in terms of this Part all or any of the expenses necessarily incurred by it in connection with the investigation.

(2) In any proceedings in a court for the recovery of any expenses referred to in subsection (1), a certificate purporting to be signed by the Chief Executive Officer and setting out the amount of the expenses concerned shall be *prima facie* proof of their amount.

### **107 Inspectors to maintain secrecy**

Section *twenty-one* shall apply, *mutatis mutandis*, to the disclosure of information gained by inspectors, even if they are not employees of the Commission.

## **PART XIII**

### GENERAL

### **108 Appeals**

(1) Subject to this section, any person who is aggrieved by any decision, proposal or action, including a refusal to take action, on the part of a committee of a registered securities exchange or the operator of a central securities depository may appeal to the Commission against the decision, proposal or action concerned.

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed in rules and shall be lodged with the Commission within thirty days after the appellant was notified of the decision, proposal or action appealed against.

(3) In an appeal in terms of subsection (1), the Commission may conduct or cause to be conducted such inquiry into the matter as it thinks appropriate and may confirm, vary or set aside the decision, proposal or action appealed against:

Provided that the Commission shall ensure that the appellant and the committee of the registered securities exchange or operator of the central securities depository, as the case may be, are given an adequate opportunity to make representations in the matter.

(4) The Commission shall ensure that the appellant and the committee of the registered securities exchange or operator of the central securities depository, as the case may be, are notified of any decision reached by the Commission in terms of subsection (3).

(5) Any person who is aggrieved by a decision, proposal or action of the Commission, whether on an appeal in terms of subsection (1) or otherwise, may appeal against the decision to the Administrative Court within the time and in the form and manner prescribed in rules of court.

(6) In an appeal in terms of subsection (5), the Administrative Court may confirm, vary or set aside the decision, proposal or action appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.

### **109 Order prohibiting anticipated or actual contraventions of certain provisions of this Act**

- (1) If the Commission has reason to suspect that
- (a) any person has conducted, is conducting or is likely to conduct any business in contravention of section *twenty-nine* or *thirty-eight*; or
- (b) a licensed person, registered securities exchange or central securities depository has engaged in, is engaging in or is likely to engage in any business or activity in contravention of this Act;

the Commission may apply to the High Court for an order

- (i) in the case of a past or continuing contravention, prohibiting its repetition or continuation, as the case may be, and additionally, or alternatively, prohibiting the person concerned from disposing of or otherwise dealing with any of his or her assets while the contravention is being investigated;
  - (ii) in the case of an anticipated contravention, prohibiting it.
- (2) On an application in terms of subsection (1) the High Court may make such order as in its opinion will ensure proper compliance with this Act.
- (3) The making of an application in terms of subsection (1) shall not affect the liability of the person in respect of whom the application is made to prosecution for any contravention of this Act.

### **110 Special provisions relating to winding up or judicial management of registered securities exchange, licensed person or central securities depository**

(1) Notwithstanding anything to the contrary in the Insolvency Act [*Chapter 6:04*] or the Companies Act [*Chapter 24:03*]

- (a) the Commission shall have the right to apply to the High Court for
  - (i) the winding up of
    - A. any registered securities exchange or central securities depository; or
    - B. any licensed person that is a company or body corporate; or
  - (ii) an order placing
    - A. any registered securities exchange or operator of a central securities depository; or
    - B. any licensed person that is a company or body corporate; under judicial management or provisional judicial management in terms of the Companies Act [*Chapter 24:03*]; or
  - (iii) an order for the sequestration of the estate of any licensed person who is an individual; and the Commission shall have the right to oppose any such application made by any other person;
- (b) no person other than a person recommended by the Commission shall be appointed as provisional liquidator, provisional judicial manager, liquidator or judicial manager of a registered securities exchange or operator of a central securities depository;
- (c) the claims of
  - (i) members of a registered securities exchange; and
  - (ii) participants and depositors of a central securities depository; and
  - (iii) the Commission, in respect of any fees and expenses incurred in the exercise of its functions in terms of this Act;

against a registered securities exchange or central securities depository that is being wound up shall enjoy such priority as may be prescribed in rules:

Provided that any such rules shall be made with the approval of the Minister to whom the administration of the Companies Act [*Chapter 24:03*] has been assigned.

(2) During the voluntary winding-up of a registered securities exchange or the operator of a central securities depository the liquidator shall furnish the Commission with every return or statement which the institution concerned would have been obliged to furnish to the Commission in terms of this Act were the exchange or operator not being wound up.

### **111 Observance of rules of natural justice**

Without derogation from any other provision of this Act or any other law, in exercising their functions under this Act

- (a) the Commission and every employee or agent of the Commission; and
- (b) the committee of every registered securities exchange; and
- (c) the operator of every central securities depository; and
- (d) every inspector; shall ensure that the rules commonly known as the rules of natural justice are duly observed and, in particular, shall take all reasonable steps to ensure that every person whose interests are likely to be affected by the exercise of the functions is given an adequate opportunity to make representations in the matter.

### **112 Commission may require particulars of financial journalists**

(1) In this section

“financial advice” means any written advice, analysis or report in regard to listed securities.

(2) The Commission may, by written notice, require the proprietor or publisher of a newspaper or periodical to supply the Commission, within a reasonable period specified in the notice, with the name and address of any person who contributed or prepared any financial advice that was published or circulated to the public in that newspaper or periodical.

(3) A proprietor or publisher who, without just cause, fails to comply promptly with a requirement under subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

### 113 Unsolicited calls

(1) In this section□

“unsolicited call” means a personal visit or oral communication, including a telephone call, made□

(a) to a person in Zimbabwe; or

(b) from Zimbabwe to a person outside Zimbabwe; otherwise than at the express invitation of that person.

(2) The Commission may, in rules made in terms of section *one hundred and eighteen*, prescribe the circumstances in which unsolicited calls may be made on persons for the purpose of inducing them□

(a) to trade or deal in listed securities; or

(b) to exercise or refrain from exercising any of their rights as holders of listed securities.

(3) If a court is satisfied that□

(a) as a result of an unsolicited call made in contravention of rules referred to in subsection (2), any person was induced□

(i) to enter into a contract whereby he or she traded or dealt in or agreed to trade or deal in any listed security; or

(ii) to exercise or refrain from exercising any of his or her rights as holder of any listed security; and

(b) the person has suffered or is likely to suffer any form of loss as a consequence of the contract or the exercise or non-exercise of his or her rights referred to in paragraph (a);

the court may, on the application of the person concerned, grant an order providing for any one or more of the following□

(i) cancelling the whole or any part of the contract;

(ii) revoking the exercise of the applicant’s rights or declaring that he or she is deemed to have exercised his or her rights, as the case may be;

(iii) ordering any money or property to be restored to the applicant; (iv) compensating the applicant for any loss he or she may have suffered.

(4) A court shall not make an order under subsection (3) unless it is satisfied that something said or done during or in consequence of the unsolicited call materially influenced the applicant to enter into the contract or to exercise or refrain from exercising his or her rights, as the case may be.

### 114 False statements, etc.

(1) Any person who, in any document required by or for the purposes of this Act, makes a statement that is false in a material particular, knowing the statement to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence.

(2) Any person who, with intent to defraud or deceive□

(a) destroys, mutilates, alters or falsifies any book, paper or security belonging to or relating to a licensed person, a registered securities exchange or a central securities depository; or

(b) makes, or is a party to the making of, a false or misleading entry in any register, book of account or other document belonging to or relating to a licensed person, a registered securities exchange or a central securities depository; shall be guilty of an offence.

(3) A person who is guilty of an offence in terms of subsection (1) or (2) shall be liable□

(a) in the case of an individual, to a fine not exceeding level five or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or

(b) in the case of a body corporate, to a fine not exceeding level eight.

### 115 False use of name or description implying connection with registered securities exchange

(1) No person shall apply to any company, body, firm, business or undertaking a name or description signifying or implying a connection between the company, body, firm, business or undertaking and a registered securities exchange when in fact no such connection exists.

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

### 116 Evidence and presumptions

(1) Any document purporting to be certified by the Chief Executive Officer as a document lodged with or furnished to or issued by the Commission in terms of this Act, or purporting to be a copy of such a document, shall be presumed *prima facie* to be such a document or copy, as the case may be, and shall be admissible in evidence in any court on its production by any person.

(2) A document purporting to be signed by the Chief Executive Officer and□

(a) stating that any person or entity is or is not licensed or registered under this Act; or

(b) setting out the terms and conditions of any licence or registration; or

(c) stating whether or not any licence has been suspended or any licence or registration cancelled; or

- (d) setting out all or any of the provisions of rules that have been made by the committee of a registered securities exchange and approved by the Commission in terms of section *sixty-five*; or
- (e) stating whether or not any scheme for the establishment of a central securities depository has been approved by the Commission in terms of section *sixty-nine* and additionally, or alternatively, in relation to any such approved scheme, setting out
  - (i) the terms and conditions of the scheme;
  - (ii) all or any of the provisions of rules that have been made under the scheme and approved by the Commission;

shall be admissible in any proceedings in any court on its production by any person, and shall be *prima facie* proof of the facts stated therein.

(3) A document purporting to be signed by a responsible officer of a registered securities exchange and

- (a) stating that any person is or is not a member of the exchange; or
- (b) setting out all or any of the provisions of rules governing the exchange; shall be admissible in any proceedings in any court on its production by any person, and shall be *prima facie* proof of the facts stated therein.

(4) A document purporting to be signed by or on behalf of the operator of a central securities depository and—

- (a) stating that any person is or is not a participant in the depository; or
- (b) setting out all or any of the provisions of
  - (i) the approved scheme under which the depository has been established; or
  - (ii) rules governing the operations of the depository;

shall be admissible in any proceedings in any court on its production by any person, and shall be *prima facie* proof of the facts stated therein.

(5) For the purposes of this Act, a person shall be deemed to carry on the business of trading or dealing in securities if

- (a) it is a regular feature of his or her business to buy and sell securities on his or her own account or on behalf of other persons; or
- (b) he or she holds himself or herself out as a person who carries on the business of buying and selling securities.

## 117 Jurisdiction of regional magistrates

A court of a regional magistrate shall have jurisdiction

- (a) in criminal proceedings for an offence under this Act, to impose the maximum penalty specified in the provision concerned for that offence;
- (b) in civil proceedings, to make any order or award any damages to which a party is entitled under this Act.

## 118 Rules

(1) Subject to subsections (5) and (6), the Commission may make rules providing for all matters which by this Act are required or permitted to be prescribed in rules or which, in the Commission's opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the Commission's objectives and the provisions of this Act.

(2) Rules in terms of subsection (1) may provide for

- (a) the publication or disclosure of information regarding the issue, purchase, sale and holding of securities and all matters relating to the conduct of securities and capital markets, in particular the disclosure of information that is required for the purposes of—
  - (i) detecting, investigating or preventing an offence, whether under Zimbabwean law or the law of any other country; or
  - (ii) recovering the proceeds of any offence referred to in subparagraph (i); or
  - (iii) complying with any obligation of Zimbabwe under an international convention, treaty or agreement;
- (b) the preservation of records by licensed persons, registered securities exchanges and central securities depositories;
- (c) the conduct of licensed persons in so far as their business relates to securities, including—
  - (i) advertising by licensed persons;
  - (ii) the disclosure by licensed persons to their clients of
    - A. their registers of interests kept in terms of section *sixty-one*; and B. actual or potential conflicts of interest;
  - (iii) records to be kept by licensed persons;
  - (iv) the audit of accounts, including trust accounts, of licensed persons;
  - (v) the prohibition of conduct on the part of licensed persons which, in the Commission's opinion, may prejudice their clients;
  - (vi) the conduct, qualifications and experience of employees of licensed persons;

- (d) prohibiting licensed persons, registered securities exchanges and central securities depositories from engaging in practices which, in the Commission's opinion, are contrary to the public interest;
- (e) the appointment, removal and functions of auditors of licensed persons, registered securities exchanges and central securities depositories;
- (f) trading or dealing in securities by electronic means;
- (g) the regulation of guarantee funds, including
  - (i) the submission to the Commission of accounts and records regarding the operation of such funds;
  - (ii) the amalgamation of two or more such funds into a single fund;
  - (iii) the dissolution of any such fund and the disposal of its assets;
- (h) the amalgamation of securities exchanges or central securities depositories and the transfer of all or part of their business from one such exchange or depository to another;
- (i) levies to be paid by licensed persons, registered securities exchanges and operators of central securities depositories to the Commission for the purpose of defraying the Commission's expenses in exercising its functions under this Act;
- (j) offers to take over or otherwise acquire a controlling interest in bodies corporate that are issuers of listed securities;
- (k) the registration of public offerings or issues of securities;
- (l) fees and charges for anything done or provided in terms of this Act;

(3) Rules in terms of subsection (1) may provide penalties for contraventions thereof:

Provided that no such penalty shall exceed level five or imprisonment for a period of six months or both such fine and such imprisonment.

(4) In the event of conflict, rules made in terms of subsection (1) shall prevail over rules made by the committee of a registered securities exchange or the operator of a central securities depository.

(5) Before making rules in terms of subsection (1) the Commission shall consult

- (a) the committee of every registered securities exchange which, in the Commission's opinion, is likely to be affected by the rules; and
- (b) the operator of every central securities depository which, in the Commission's opinion, is likely to be affected by the rules; and
- (c) every association representing licensed persons who trade or deal in or manage securities and who, in the Commission's opinion, are likely to be affected by the rules; and shall pay due regard to any representations made by them:

Provided that this subsection shall not apply where the Commission believes on reasonable grounds that such consultation would unduly delay the promulgation of the rules and that the delay would not be in the public interest.

(6) Rules in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

## PART XIV

### REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

#### 119 Repeal of Cap. 24:18

Subject to this Part, the Zimbabwe Stock Exchange Act [*Chapter 24:18*] is repealed.

#### 120 Amendment of Acts

The Act specified in each Part of the Third Schedule is amended to the extent set out in that Part.

#### 121 Savings

(1) In this section

“repealed Act” means the Zimbabwe Stock Exchange Act [*Chapter 24:18*].

(2) The Zimbabwe Stock Exchange established by section 3 of the repealed Act shall continue as a body corporate and, subject to this section, shall be deemed to be a registered securities exchange.

(3) Every person who, immediately before the fixed date, was a registered stockbroker under the repealed Act shall be deemed to be the holder of a licence issued on the fixed date and authorising him or her to trade or deal in the same securities, and subject to the same terms and conditions, as he or she was permitted to do immediately before the fixed date.

(4) The Zimbabwe Stock Exchange Security Fund shall continue in existence as a guarantee fund established by the Zimbabwe Stock Exchange in terms of its rules, and the Board of Trustees of the Zimbabwe Stock Exchange Security Fund shall continue in existence as a body corporate as if it had been established in terms of those rules.

(5) The repealed Act, other than Parts III to VI, Part IX, Part XI and Part XIV, shall be deemed to be rules made by the Zimbabwe Stock Exchange in terms of section *sixty-five*, and may be amended or repealed accordingly:

Provided that any reference in the repealed Act to the Minister or the Registrar shall be construed as a reference to the Commission.

(6) Any rules made by the Committee of the Zimbabwe Stock Exchange in terms of section 94 of the repealed Act and in force immediately before the fixed date shall be deemed to have been made by the Zimbabwe Stock Exchange in terms of section *sixty-five*, and may be amended or repealed accordingly.

## **122 Transitional provision: first commissioners**

Of the first commissioners appointed after the fixed date, the Minister shall appoint three for terms of one, two and three years respectively, and on the expiry of their terms they shall each be eligible, subject to this Act, for re-appointment for a further term of four years.

### **FIRST SCHEDULE (Section 4(3))**

#### POWERS OF COMMISSION

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights thereof and concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in its own name and to draw, make accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.
8. With the approval of the Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Commission considers appropriate or necessary for the proper exercise of its functions.
9. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to its employees as it considers fit.
10. 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.
11. To purchase, take on lease or in exchange or otherwise acquire land or dwelling-houses for use or occupation by its employees.
12. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken on lease or in exchange or otherwise acquired by it.
13. To sell or lease dwelling-houses and land for residential purposes to its employees.
14. To provide or guarantee loans made to its employees for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of its employees, subject to any conditions that may be imposed by it from time to time.
15. To provide security in respect of loans by the deposit of securities, in which the Commission may invest such money as it considers necessary for the purpose.
16. To provide loans to its employees for the purpose of purchasing vehicles or other property, subject to any conditions that it may impose from time to time.
17. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.
18. To provide such services as it considers it can properly provide and to charge for its services such fees as it may determine from time to time.
19. To engage in any activity, either alone or in conjunction with other organisations or agencies, whether inside or outside Zimbabwe, to regulate securities markets and exchanges and to promote better understanding of issues relating to securities.
20. To co-operate with other organisations and agencies, whether inside or outside Zimbabwe, in all matters relating to securities and to provide them with technical advice or assistance, including training facilities.
21. To issue written guidelines and notices— (a) explaining its policies and practices;



- (b) for the proper conduct of licensed persons, registered securities exchanges and central securities depositories;
  - (c) for any other purpose that it considers will facilitate the achievement of its objectives or the exercise of its functions or otherwise give effect to this Act.
22. To accept any donations, gifts, or assistance from any organisation or person.
23. Generally, to do whatever is calculated to facilitate or is incidental or conducive to the exercise of the Commission's functions in terms of this Act or any other enactment.

## **SECOND SCHEDULE (Sections 30 and 36)**

### REQUIREMENTS FOR REGISTRATION OF SECURITIES EXCHANGE

1. The applicant is a company or other body corporate.
2. The applicant is permitted by its constitution or memorandum of association to establish and carry on the business of a securities exchange.
3. The applicant has sufficient financial resources to exercise its functions as a securities exchange.
4. The applicant can provide and maintain, to the Commission's satisfaction, adequate and properly equipped premises and additionally, or alternatively, systems and facilities for the conduct of the business of a securities exchange.
5. At least three of the applicant's members are or will be persons engaged in the business of trading or dealing in securities independently of and in competition with each other.
6. The applicant's constitution, articles of association or other rules provide for a committee, board or other body
  - (a) to manage the applicant's affairs as a securities exchange; and (b)
  - with power to make rules complying with section *sixty-five*.
7. The applicant's members will be fairly represented on the committee, board or body referred to in paragraph 6.
8. The applicant's rules comply with section *sixty-five*.