

## CHAPTER 2:12

# ZIMBABWE ELECTORAL COMMISSION ACT

Act 22/2004, 17/2007.

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**AN ACT to provide for the terms of office, conditions of service, qualifications and vacation of office of members of the Zimbabwe Electoral Commission, the procedure at meetings of the Zimbabwe Electoral Commission and the appointment of the Chief Elections Officer; and to provide for matters connected with or incidental to the foregoing.**

[Long title substituted by section 15 of Act 17 of 2007]

[Date of commencement : 1st February, 2005]

### PART I

#### PRELIMINARY

#### 1 Short title and date of commencement

This Act may be cited as the Zimbabwe Electoral Commission Act [*Chapter 2:12*].

#### 2 Interpretation

(1) In this Act—

“Chief Elections Officer” means the Chief Elections Officer appointed in terms of section 11(1);

“Commission” means the Zimbabwe Electoral Commission appointed in terms of section 61 of the Constitution;

[Definition substituted by section 2 of Act 17 of 2007]

“Commissioner” means a member of the Commission, and includes the Chairperson of the Commission;

“Committee on Standing Rules and Orders” ...

[Definition repealed by section 2 of Act 17 of 2007]

“election” means—

(a) the election of a member of Parliament; or

(b) an election to the office of President; or

(c) an election for the purposes of the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*];

as the case may be;

“election period” ....

[Definition repealed by section 2 of Act 17 of 2007]

“Electoral Act” means the Electoral Act [*Chapter 2:13*] or other Act of Parliament having effect for the purposes of section 58(4) of the Constitution which is for the time being in force;

“fixed date” means the date fixed in terms of section 1(2) as the date of commencement of this Act;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“political party” means an association of persons the primary object of which is to secure the election of one or more of its members to a local authority or Parliament, or to the office of President, or to campaign for a specified result at a referendum;

“referendum” means a referendum held in terms of the Referendums Act [*Chapter 2:10*];

“Registrar-General” means the Registrar-General of Voters referred to in section 18 of the Electoral Act.

(2) Any word or expression to which a meaning has been assigned in the Electoral Act shall have the same meaning when used in this Act.

### PART II

#### ZIMBABWE ELECTORAL COMMISSION

#### 3 Procedure and powers of Commission

(1) The First Schedule applies to the procedure to be followed by the Commission at its meetings.

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

[Section substituted by section 3 of Act 17 of 2007]

#### **4 Additional functions of Commission**

(1) In addition to the functions set out in section 61 of the Constitution, the Commission shall be responsible for—

- (a) undertaking and promoting research into electoral matters; and
- (b) developing expertise and the use of technology in regard to electoral processes in Government at all levels; and
- (c) promoting co-operation between the Government, political parties and civil society in regard to elections; and
- (d) keeping the public informed about—
  - (i) the times and places where persons can register as voters and the progress of the voter registration exercise; and
  - (ii) the delimitation of wards, constituencies and other electoral boundaries; and
  - (iii) the location and boundaries of polling stations and when they are open; and
  - (iv) voters rolls and the times and places at which they are open for inspection; and
  - (v) political parties and candidates contesting every election; and
  - (vi) voting; and
  - (vii) generally, all matters relating to the Commission's work and the electoral process;
- and
- (e) making recommendations to Parliament on appropriate ways to provide public financing for political parties.

[Section substituted by section 3 of Act 17 of 2007]

#### **5 Commissioners: qualifications for and terms and conditions of office**

The First Schedule applies to the qualifications, terms and conditions of office and vacation of office of Commissioners.

#### **6 Removal of Commissioners from office**

(1) A Commissioner may be removed from office only for—

- (a) inability to discharge the functions of his or her office, whether arising from physical or mental incapacity;
- (b) conduct that renders him or her unsuitable as a Commissioner.

(2) If the President considers that the question of the removal from office of a Commissioner ought to be investigated, the President shall appoint a tribunal to inquire into the matter.

(3) A tribunal appointed under subsection (2) shall consist of not less than three members selected by the President from the following—

- (a) persons who have held office as a judge of the Supreme Court or the High Court;
- (b) persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roman-Dutch or English, and English is an official language;
- (c) legal practitioners of not less than seven years' standing;

one of whom shall be designated by the President as chairman.

(4) It shall be the duty of the association which is constituted under an Act of Parliament and which represents legal practitioners practising in Zimbabwe to nominate a panel containing the names of at least five duly qualified legal practitioners for the purposes of subsection (3)(c) when so required by the President.

(5) A tribunal appointed under subsection (2) shall inquire into the matter with all due dispatch, and report to the President with a recommendation whether or not the Commissioner concerned should be removed from office.

(6) The provisions of the Commissions of Inquiry Act [*Chapter 10:07*] as in force at the time or any other law substituted for the same shall, *mutatis mutandis*, apply in relation to a tribunal appointed under subsection (2) as they apply to commissioners appointed under that Act.

(7) If the question of removing a Commissioner from office has been referred to a tribunal under subsection (2), the Commissioner shall be suspended from performing the functions of his or her office until the President, on the recommendation of the tribunal or the Judicial Service Commission, revokes the suspension or the Commissioner is removed from office in accordance with subsection (8).

(8) A tribunal appointed under subsection (2) shall make a report of its findings to the President and advise whether a Commissioner should be removed from office, and if it advises the President that a Commissioner should be removed, the President shall, without delay, remove the Commissioner from office.

(9) The Minister shall lay a copy of a tribunal's report and advice before Parliament within a reasonable time after its report and advice has been delivered to the President.

#### **7 Decentralisation of Commission**

The Commission shall endeavour to establish such provincial and district offices as will enable it to exercise its functions more effectively throughout Zimbabwe.

## **8 Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of Commission**

(1) In this section—

“elective office” means the office of—

- (a) the President; or
- (b) a Minister or Deputy Minister; or
- (c) a member of Parliament; or
- (d) a member of the governing body of a local authority;

“political office” means—

- (a) any executive appointment or elected office, whether remunerated or not; or
- (b) any paid office;

in the service of a political party or of an organisation or movement which publicly supports or opposes the policies, candidates or cause of any political party.

(2) Commissioners and the Commission's employees and agents shall—

(a) exercise their functions in a manner that—

- (i) promotes conditions conducive to free, fair and democratic elections and referendums; and
- (ii) ensures that the secrecy and integrity of voting at elections and referendums is respected;

and

(b) not interfere, directly or indirectly, with the exercise by a voter of his or her rights under the Electoral Act; and

(c) maintain strict impartiality in the exercise of their functions; and

(d) not do anything, whether in the exercise of their functions or otherwise and whether by way of action, speech, attitude or manner, that may—

- (i) give rise to a reasonable apprehension that they are exercising their functions with partiality or bias; or
- (ii) place in jeopardy their independence or the perception of their independence; or
- (iii) compromise the Commission's credibility, impartiality, independence or integrity;

and

(e) assist observers accredited under the Electoral Act to exercise their functions under that Act; and

[Paragraph amended by section 4 of Act 17 of 2007]

(f) safeguard all ballot boxes, ballot papers and other electoral documentation and materials entrusted to the custody of the Commission in terms of the Electoral Act; and

(g) not—

- (i) divulge, except in the exercise of his or her functions or with the Commission's prior approval; or

- (ii) make private use of or profit from;

any confidential information which he or she has gained through being a Commissioner or an employee or agent of the Commission.

[Paragraph inserted by section 4 of Act 17 of 2007]

(3) Without derogation from subsection (1)(c) and (d), no Commissioner and no full-time employee of the Commission shall—

(a) hold, or seek appointment, election or nomination to, any elective or political office; or

(b) except in the exercise of his or her functions as a Commissioner or as an employee of the Commission, perform any work for a political party or candidate in connection with an election or referendum;

(c) knowingly wear any badge or article of clothing that is or is reasonably likely to be associated with a political party or candidate contesting any election or supporting or opposing any question put to a referendum.

(4) Subsection (3) applies to part-time employees of the Commission during any period that they are employed or engaged by the Commission.

## **PART III**

### **FINANCES, STAFF AND REPORTS OF COMMISSION**

## **9 Funds and finances of Commission**

(1) In addition to the funds appropriated in terms of section 61(6) of the Constitution, the funds of the Commission shall consist of—

(a) ...

[Paragraph repealed by section 5 of Act 17 of 2007]

(b) fees, charges and other income accruing to the Commission from things done by it in terms of this Act or the Electoral Act; and

- (c) the proceeds of any monetary penalties imposed by the Commission under this Act or the Electoral Act; and
- (d) deposits forfeited by candidates under the Electoral Act; and
- (d1) donations or grants from any local or foreign source whatsoever, which have been approved by the Minister; and

[Paragraph inserted by section 5 of Act 17 of 2007]

- (e) such other moneys as may vest in or accrue to the Commission, whether in the course of its operations or otherwise, and whether under this Act or any other enactment.

[Subsection amended by section 5 of Act 17 of 2007]

- (2) The Third Schedule governs the financial aspects of the operation of the Commission.

## **9A Investment of moneys not immediately required by Commission**

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

[Section inserted by section 6 of Act 17 of 2007]

## **10 Estimates of revenue and expenditure of Commission**

The estimated revenue and expenditure of the Commission shall be itemised clearly and separately in any estimates of revenue and expenditure laid before Parliament pursuant to Chapter XI of the Constitution.

## **11 Chief Elections Officer and other employees of Commission**

(1) For the better exercise of its functions the Commission shall appoint a chief executive of the Commission who shall be called the Chief Elections Officer.

[Section amended by section 7 of Act 17 of 2007]

(2) The Commission shall, with the approval of the Minister responsible for finance, fix the terms and conditions of service of the Chief Elections Officer.

(3) Subject to the general control of the Commission, the Chief Elections Officer shall—

- (a) manage the affairs and property of the Commission;
- (b) supervise and control the activities of the employees of the Commission in the course of their employment;
- (c) be the accounting officer of the Commission in terms of the Audit and Exchequer Act [*Chapter 22:23*];
- (d) perform any of the functions of the Commission as the Commission may entrust or assign to him or her:

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

(4) The Commission shall terminate the appointment of the Chief Elections Officer if he or she would be required in terms of paragraph 3(b) or (c) of the First Schedule to vacate his or her office had that paragraph and paragraph 2(1)(a), (b) and (c) of the First Schedule, and subparagraph (2) of that paragraph, applied to him or her.

(5) The Commission shall not terminate the services of the Chief Elections Officer on a ground other than one referred to in subsection (4) without the approval of the Minister.

(6) The Commission shall employ such persons in addition to the Chief Elections Officer as it considers expedient for the better exercise of the functions of the Commission.

(7) The Commission shall, with the approval of the Minister responsible for finance, fix the terms and conditions of service of the employees of the Commission.

(8) Any assignment of functions in terms of subsection (3)(d) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time.

(9) The Chief Elections Officer shall have the right to attend meetings of the Commission and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Commission as if he or she were a Commissioner, but shall not have a vote on any question before the Commission.

(10) The remuneration and other benefits payable to the Commissioners, the Chief Elections Officer and other members of the staff of the Commission shall be paid from the funds of the Commission.

## **12 Reports of Commission on elections, referendums and other matters**

(1) As soon as possible after the result of any election or referendum has been announced, and in any event no later than six months thereafter, the Commission shall submit a report on the conduct of the election or referendum to—

- (a) the President, the Speaker of the House of Assembly and the Minister; and
- (b) each of the political parties that contested the election or referendum.

[Subsection substituted by section 8 of Act 17 of 2007]

(2) As soon as possible after the end of each financial year the Commission shall submit to the Speaker of the House of Assembly, the President and the Minister a report on its activities during that financial year.

[Subsection amended by section 8 of Act 17 of 2007]

(3) The Commission—

- (a) shall submit to the Speaker of Parliament, the President and the Minister such other reports on any matter related to its activities as the Speaker of Parliament, the President and the Minister may require; and
- (b) may submit to the Speaker of Parliament, the President and the Minister such other reports on any matter related to its activities as the Commission considers advisable.

(4) The Speaker of the House of Assembly shall cause every report received in terms of subsection (1), (2) or (3) to be laid before Parliament on one of twenty-four days on which the Senate and the House of Assembly sit, whichever House meets first after the Speaker of the House of Assembly has received the report..

[Subsection substituted by section 8 of Act 17 of 2007]

(5) The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a report submitted to him or her by the Commission in terms of subsection (3)(a), together with the statement of accounts and auditor's report for the preceding financial year of the Commission referred to in paragraphs 2 and 3 of the Third Schedule.

## PART IV

### VOTER EDUCATION

#### 13 Interpretation in Part IV

In this Part—

“foreign contribution or donation” means a contribution or donation made by—

- (a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or
- (b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or
- (c) any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe;

“local contribution or donation” means a contribution or donation that is not a foreign contribution or donation;

“programme of voter education” means a course or programme of instruction whose purpose is to inform voters generally about the electoral process and additionally, or alternatively, about the identity of the political parties and any candidates contesting an election, but does not include such a course or programme that is part of a course in civics or law offered to students at an educational institution;

[Definition inserted by section 9 of Act 17 of 2007]

“voter education” means any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law, civics or other subject for students at an educational institution;

“voter education materials” means printed, aural, visual or audio-visual materials intended for use in voter education.

#### 14 Functions of Commission with respect to voter education

(1) The Commission shall have the following functions with respect to voter education—

- (a) to provide adequate, accurate and unbiased voter education; and
- (b) to ensure that voter education provided by persons other than political parties is adequate and not misleading or biased in favour of any political party; and
- (c) to ensure compliance otherwise by persons referred to in paragraph (b) with the provisions of section 15(1).

(2) The Commission shall produce its own voter education materials or course or programme of instruction for use in voter education.

(3) The Commission may appoint any person to assist it in providing voter education.

#### 15 Voter education by persons other than the Commission or political parties

(1) No person, other than the Commission, or a person appointed in terms of section 14(3), or a political party, shall provide voter education unless—

- (a) such person is a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe, or an association of persons, whether incorporated or unincorporated, consisting exclusively of citizens or permanent residents of Zimbabwe, domiciled in Zimbabwe; and

(b) such person is, in the case of—

- (i) an association of persons, whether incorporated or unincorporated; or
- (ii) a lawfully constituted trust, whether or not registered in terms of any law;

registered as a private voluntary organisation in terms of the Private Voluntary Organisations Act [Chapter 17:05], and the constitution of such organisation or the deed of trust, as the case may be, specifically mandates it to provide voter education; and

[Paragraph amended by section 10 of Act 17 of 2007]

- (c) such person employs individuals who are citizens or permanent residents of Zimbabwe to conduct any voter education; and
- (d) such person conducts voter education in accordance with a course or programme of instruction furnished or approved by the Commission; and
- (e) the proposed voter education activities of such person are, subject to section 16, funded solely by local contributions or donations; and
- (f) the voter education materials proposed to be used by the person and the course or programme of instruction in accordance with which the voter education will be conducted are adequate and not misleading or biased in favour of any political party; and
- (g) no fee or charge is levied for the provision of voter education or voter education materials.

(2) The Commission may in writing require any person, other than a political party, providing or proposing to provide voter education, to—

- (a) furnish the Commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted; and
- (b) furnish the Commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education; and
- (c) disclose the manner and sources of funding of its proposed voter education activities; and
- (d) satisfy the Commission that it is not otherwise disqualified in terms of subsection (1) from providing voter education.

(3) Any person who contravenes subsection (1) or who fails to comply with a requirement by the Commission in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Where a person is convicted in terms of subsection (3), such person shall not provide voter education in terms of this Act for a period of five years from the date of such conviction.

[Subsection inserted by section 10 of Act 17 of 2007]

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

[Subsection inserted by section 10 of Act 17 of 2007]

### **15A Provision of voter education by Commission**

(1) Not later than ninety days before polling day in any election, the Commission shall begin a programme of voter education directed at the electorate in the election.

(2) The Government shall give the Commission whatever assistance it may require in providing programmes referred to in subsection (1).

(3) Subsection (1) shall not be construed—

- (a) as absolving the Commission from its obligation to provide general programmes of voter education at other times; and
- (b) subject to sections 15 and 15B, as preventing anyone other than the Commission from providing programmes of voter education.

[Section inserted by section 11 of Act 17 of 2007]

### **15B Commission to monitor voter education by other persons**

(1) The Commission shall monitor programmes of voter education provided by other persons in Zimbabwe.

(2) If the Commission considers that any programme of voter education is—

- (a) false in that the information provided by it is materially false or incorrect; and
- (b) misleading, in that while the programme purports to be impartial it is materially and unfairly biased in favour of or against a political party or candidate contesting the election;

and that the programme is likely to prevent a substantial number of voters from making an informed political choice in an election, the Commission may by written notice direct every person responsible for providing and publishing the programme to cease providing or publishing it or to make such alterations to it as the Commission may specify to render it accurate and fair.

(3) Before giving a direction under subsection (2), the Commission shall afford every person responsible for providing and publishing the programme concerned an adequate opportunity to make representations on the matter.

(4) A person to whom a direction has been given under subsection (2) shall immediately take all necessary steps to comply with the direction.

[Section inserted by section 11 of Act 17 of 2007]

## **16 Foreign contributions or donations for the purposes of voter education**

No foreign contribution or donation for the purposes of voter education shall be made except to the Commission, which may allocate such contribution or donation to any person referred to in section 14(3) or section 15(1).

### **PART IVA**

#### **MEDIA COVERAGE OF ELECTIONS**

[Part IVA inserted by section 12 of Act 17 of 2007]

#### **16A Interpretation in Part IVA**

In this Part—

“broadcaster” means a person who operates a broadcasting service for the transmission of television or radio programmes to the public or any substantial section of the public, whether the transmission is effected by wireless or other means;

“election period” has the meaning given to that term by section 4 (“Interpretation”) (1) of the Electoral Act [Chapter 2:13];

“print publisher” means a person who publishes a newspaper, magazine or other printed document at regular intervals for sale or distribution to the public generally;

“public broadcaster” means a broadcaster that is owned or controlled by the State.

[Section inserted by section 12 of Act 17 of 2007]

#### **16B Application of Part IVA in relation to other media laws**

In the event of inconsistency between this Part and the Broadcasting Services [Chapter 12:06] (No. 3 of 2001), the Access to Information and Protection of Privacy [Chapter 10:27] (No.5 of 2002) or any other enactment, this Part shall prevail over that enactment to the extent of the inconsistency.

[Section inserted by section 12 of Act 17 of 2007]

#### **16C Access to public broadcasting media**

(1) Public broadcasters shall afford all political parties and independent candidates contesting an election such free access to their broadcasting services as may be prescribed in regulations made by the Commission, with the approval of the Minister, in terms of section 19.

(2) Regulations referred to in subsection (1) shall provide for—

(a) the total time to be allocated to each political party and candidate and the duration of each broadcast that may be made by or on behalf of a party or candidate; and

(b) the times at which broadcasts made by political parties and candidates are to be transmitted; and

(c) the areas to which broadcasts made by political parties and candidates are to be transmitted;

and the regulations shall ensure—

(d) a fair and balanced allocation of time between each political party and independent candidate;

(e) that each political party and independent candidate is allowed a reasonable opportunity to present a case through the broadcasting service concerned.

[Section inserted by section 12 of Act 17 of 2007]

#### **16D Political advertising in broadcasting and print media**

(1) A broadcaster or print publisher shall not be obliged, subject to section 16C, to publish any advertisement by or on behalf of a political party or candidate contesting an election, but if the broadcaster or publisher is prepared to publish any such advertisement—

(a) it shall offer the same terms and conditions of publication, without discrimination, to all the political parties and candidates contesting the election; and

(b) the price it charges for publication shall be at the lowest rate it offers to publishers of commercial advertisements; and

(c) every such publication shall be identified clearly as an advertisement.

(2) Subsection (1) shall not be construed as obliging a broadcaster or print publisher to publish an advertisement which would render the broadcaster or publisher liable to any criminal or delictual penalty.

[Section inserted by section 12 of Act 17 of 2007]

#### **16E Publication of electoral information in public interest**

(1) If required to do so by the Commission, broadcasters and print publishers shall publish statements issued by the Commission for the purpose of informing voters about aspects of the electoral process.

(2) The Commission shall pay for the publication of any statement referred to in subsection (1) such reasonable amount as may be agreed between it and the broadcaster or print publisher concerned.

[Section inserted by section 12 of Act 17 of 2007]

#### **16F Conduct of news media during election period**

During an election period broadcasters and print publishers shall ensure that—



- (a) all political parties and candidates are treated equitably in their news media, in regard to the extent, timing and prominence of the coverage accorded to them;
- (b) reports on the election in their news media are factually accurate, complete and fair;
- (c) a clear distinction is made in their news media between factual reporting on the election and editorial comment on it;
- (d) inaccuracies in reports on the election in their news media are rectified without delay and with due prominence;
- (e) political parties and candidates are afforded a reasonable right of reply to any allegations made in their news media that are claimed by the political parties or candidates concerned to be false;
- (f) their news media do not promote political parties or candidates that encourage violence or hatred against any class of persons in Zimbabwe;
- (g) their news media avoid language that—
  - (i) encourages racial, ethnic or religious prejudice or hatred; or
  - (ii) encourages or incites violence; or
  - (iii) is likely to lead to undue public contempt towards any political party, candidate or class of person in Zimbabwe.

[Section inserted by section 12 of Act 17 of 2007]

### **16G Monitoring of media by Commission**

(1) The Commission shall monitor the Zimbabwean news media during any election period to ensure that political parties, candidates, broadcasters, print publishers and journalists observe the provisions of this Part.

(2) In their post-election report the Commission shall include a report on the coverage of the election by the news media.

(3) This section shall not be construed as preventing anyone other than the Commission from monitoring news media and reporting on their conduct during an election period.

[Section inserted by section 12 of Act 17 of 2007]

## **PART V**

### **GENERAL**

### **17 Provision of copies of electoral legislation**

The Commission shall ensure that—

- (a) every political party and every accredited observer is provided with a copy of this Act and the Electoral Act and all regulations and rules made under those Acts; and
- (b) this Act and the Electoral Act and all regulations and rules made under those Acts are available at all times, free of charge or at minimal cost, to members of the public.

### **18 Legal proceedings against Commission**

The State Liabilities Act [*Chapter 8:14*] applies with necessary changes to legal proceedings against the Commission, including the substitution of references therein to a Minister by references to the Chairperson of the Commission.

### **19 Regulatory powers of Commission**

(1) The Commission may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in its opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

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

### PROVISIONS APPLICABLE TO ZIMBABWE ELECTORAL COMMISSION

#### ***1. Terms of office and conditions of service of Commissioners***

(1) Subject to this Schedule, a Commissioner shall hold office for five years.

(2) A Commissioner shall continue in office after the expiry of his or her term until he or she has been re-appointed or his or her successor has been appointed:

Provided that a Commissioner shall not hold office in terms of this subparagraph for longer than six months.

(3) Subject to paragraph 8, a Commissioner shall hold office on such terms and conditions as the President may fix in relation to Commissioners generally.

(4) A retiring Commissioner is eligible for re-appointment as a Commissioner:

Provided that no Commissioner may be re-appointed for a third term in office.

## **2. Disqualifications for appointment as Commissioner**

(1) No person shall be appointed as a Commissioner and no person shall be qualified to hold office as a Commissioner who—

- (a) is not a citizen of Zimbabwe; or
- (b) has a financial interest in any business connected with the provision of services to the Commission, or is engaged in any activity connected with any such service, or is married or connected to or associated with a person who has such an interest or is engaged in such an activity, unless the President is satisfied that the interest or activity will not interfere with the person's impartial discharge of his or her duties as a Commissioner; or
- (c) has, in terms of a law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or
- (d) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
  - (i) in Zimbabwe, of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;  
and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(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 subparagraph (2)(b) 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.

## **3. Vacation of office by Commissioner**

A Commissioner shall vacate his or her office and his or her office shall become vacant—

- (a) three months after the date upon which he or she gives notice in writing to the President of his or her intention to resign, or on the expiry of such other period of notice as he or she and the President may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment 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 constitute an offence; or
- (c) if he or she becomes disqualified in terms of paragraph 2(1)(a), (b) or (c), or in terms of subparagraph (2) of that paragraph, to hold office as a Commissioner; or
- (d) if he or she is required in terms of section 6 to vacate his or her office.

## **4. Filling of vacancies on Commission**

On the death of, or vacation of office by, a Commissioner, the President may appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of Commissioners falls below the minimum number specified in paragraph 6, the President shall fill the vacancy within three weeks.

## **5. Chairperson and Vice-Chairperson of Commission**

(1) The President shall designate one of the Commissioners as Vice-Chairperson of the Commission.

(2) The Vice-Chairperson of the Commission shall perform the Chairperson's functions whenever the Chairperson is for any reason unable to perform them.

(3) The Chairperson or Vice-Chairperson of the Commission may at any time resign his or her office as such by one month's notice in writing to the President.

(4) Whenever the office of Chairperson or Vice-Chairperson of the Commission falls vacant, the President or the Minister, as the case may be, shall fill the vacancy within three weeks.

## **6. Meetings and procedure of Commission**

(1) The Commission shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission shall meet not less than six times in each year.

(2) The Chairperson of the Commission—

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

(b) shall convene a special meeting of the Commission on the written request of—

(i) the Minister, within such period as the Minister may specify; or

(ii) not fewer than two Commissioners, not later than fourteen days after his or her receipt of such request.

(3) Written notice of any special meeting convened in terms of subparagraph (2) shall be sent to each Commissioner not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the Chairperson or Minister, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

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

(a) such business as may be determined by the Chairperson of the Commission, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (2)(a); or

(b) the business specified in the request for the meeting, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (2)(b).

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

Provided that, if the Chairperson and the Vice-Chairperson are both absent from a meeting of the Commission, the Commissioners present may elect one of their number to preside at that meeting as Chairperson.

(6) Three Commissioners shall form a quorum at any meeting of the Commission.

(7) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present.

(8) Subject to paragraph 9, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to a deliberative vote.

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

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

### **7. Committees of Commission**

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

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

(2) The Commission may appoint to a committee persons other than Commissioners.

(3) The Chairperson of the Commission or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Commission.

(5) Subject to this paragraph, paragraph 6(2) to (9) shall apply, with any necessary changes, to committees and their members as they apply to the Commission and its Commissioners.

### **8. Remuneration and expenses of Commissioners**

(1) Commissioners shall be paid—

(a) such remuneration, if any, as the President, may from time to time fix for Commissioners generally; and

(b) such allowances, if any, as the Minister, in consultation with the Minister responsible for finance, may from time to time fix to meet any reasonable expenses incurred by Commissioners in connection with the business of the Commission.

(2) The salary, allowances and other benefits payable to a Commissioner shall not be reduced during his or her tenure of office.

### **9. Commissioners to disclose certain connections and interests**

(1) In this paragraph—

“relative”, in relation to a Commissioner, means the Commissioner’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

(a) if a Commissioner—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
- (ii) 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 Commissioner's private interests coming or appearing to come into conflict with his or her functions as a Commissioner; or
- (iii) knows or has reason to believe that a relative of his or hers—
  - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; 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 Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner;

or

- (b) if for any reason the private interests of a Commissioner come into conflict with his or her functions as a Commissioner;

the Commissioner shall forthwith disclose the fact to the Commission.

(3) A Commissioner referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) Any Commissioner who contravenes subparagraph (2) or (3) 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.

#### **10. Validity of decisions and acts of Commission**

No decision or act of the Commission or act done under the authority of the Commission shall be invalid on the ground that—

- (a) the Commission consisted of fewer than the minimum number of persons prescribed in paragraph 6(6); or
- (b) a disqualified person acted as a Commissioner at the time the decision was taken or act was done or authorised;

Provided that the Commission shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in subparagraph (a) or (b).

#### **11. Minutes of proceedings of Commission**

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

(2) Any minutes referred to in subparagraph (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 of the Commission or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

(3) ....

[Subparagraph repealed by section 13 of Act 17 of 2007]

#### **12. Execution of contracts and instruments by Commission**

Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.

### **SECOND SCHEDULE (Section 3(3))**

#### ANCILLARY POWERS OF COMMISSION

1. To acquire by lease, purchase, or otherwise, immovable property and to construct buildings thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Commission may, with the approval of the Minister, determine.
5. To open bank and building society and post office accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.

7. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.
8. To enter into, renew, cancel or abandon arrangements with the Government or any local or other authority within Zimbabwe, or, with the approval of the Minister, any foreign government or authority, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Commission thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.  
[Paragraph amended by section 14 of Act 17 of 2007]
9. With the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Commission.
10. To employ, upon such terms and conditions as the Commission may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.
11. Subject to section 39 of the Audit and Exchequer Act [*Chapter 22:03*], to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay bonuses and the like to its employees as the Commission thinks fit.
12. 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.
13. With the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.
14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Commission.
15. To sell or let dwellings and land for residential purposes to its employees.
16. With the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.
17. To provide security in respect of loans guaranteed in terms paragraph 16 by the deposit of securities.
18. To make loans to any employee of the Commission—
  - (a) not exceeding six months' salary or wages payable to him or her, for any purpose;
  - (b) with the approval of the Minister, for the purpose of purchasing vehicles, tools or other equipment used by him or her in carrying out his duties; or
 on such security as the Commission considers adequate.  
[Paragraph substituted by section 14 of Act 17 of 2007]
19. 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 and to pay for the aforesaid, where necessary.
20. To provide such services as the Commission considers could properly be provided by the Commission.
21. With the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Commission, of benefit to the Commission.
22. Generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Commission under this Act or any other enactment.

### **THIRD SCHEDULE (Section 9(2))**

#### FINANCIAL PROVISIONS RELATING TO COMMISSION

##### **1. Financial year of Commission**

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

##### **2. Accounts of Commission**

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

(2) Not later than three months after the end of each financial year of the Commission, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

### **3. *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 approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Commission in terms of paragraph 2(1) shall be examined by the auditors appointed in terms of subparagraph (1).

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

(4) In addition to the report referred to in subparagraph (3), the Minister may require the Commission to obtain from its auditors appointed in terms of subparagraph (1) such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider expedient, and the Commission shall forthwith comply with any such requirement.

### **4. *Powers of auditors***

(1) An auditor referred to in paragraph 3 shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any Commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes 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 subparagraph (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.

### **5. *Statement of accounts of and auditor's report to be laid before Parliament***

The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament the statement of accounts and auditor's report for the preceding financial year of the Commission referred to in paragraphs 2 and 3.