

Zambia

## Securities Act, 1993

### Chapter 354

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# Zambia

## Securities Act, 1993

### Chapter 354

Commenced on 8 August 1993

*[This is the version of this document at 31 December 1996.]*

*[38 of 1993; 13 of 1994; [Statutory Instrument 172 of 1993](#)]*

**An Act to provide for the regulation of the securities industry; to establish the Securities and Exchange Commission and to define its objects and functions; and to provide for matters connected with or incidental to the foregoing.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Securities Act.\*

\*Date of commencement 17th December, 1993.

#### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**Commission**" means the Securities and Exchange Commission established by this Act;

"**company**" means a company registered or incorporated under the Companies Act;

"**Court**" means the High Court of Zambia;

"**dealing**", in relation to securities, means acquiring, disposing of, subscribing for or underwriting securities or making or offering to make with any person, or inducing or attempting to induce a person to enter into or offer to enter into, an agreement relating to the acquisition or disposal of, subscription for or underwriting of securities;

"**dealer**" means a person who carries on the business of dealing in securities, whether as principal or agent;

"**dealer's licence**" means a licence under Part IV authorising a company to carry on a business as a dealer;

"**exchange rules**", in relation to a securities exchange, means any rules made by the exchange that are binding on its members or any of them;

"**investment adviser**" means a person who carries on a business of providing advice to persons with respect to investments, but does not include—

- (a) a bank as defined in any written law governing the registration or licensing of banks and financial institutions (Banking and Financial Services Act);
- (b) an insurance company registered under the Insurance Act;
- (c) an advocate or accountant in practice whose advice with respect to investments is incidental to the practice of his profession;

- (d) a licensed dealer or a licensed dealer's representative whose advice with respect to investments is incidental to his business or employment in dealing in securities; or
- (e) the proprietor or publisher of a newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto or to purchasers thereof, in relation to any advice with respect to investments given therein, where—
  - (i) he receives no commission or other consideration for giving or publishing the advice; and
  - (ii) the giving or publication of that advice is incidental to the conduct of his business as a newspaper proprietor or publisher;

"**investment adviser's licence**" means a licence under Part IV authorising the licensee to carry on a business as an investment adviser;

"**issuer**" means every person who issues or proposes to issue any security;

"**licence**" means a licence in force under this Act, and "licensed" shall be construed accordingly;

"**listed security**" means a security which has been admitted to listing by a securities exchange for the purposes of dealing in that security on the exchange;

"**representative**" means a person who is employed by or acts for a dealer or an investment adviser and who performs for that dealer or investment adviser, any of the functions of a dealer or investment adviser, as the case may be, other than the work ordinarily performed by accountants, clerks or cashiers, whether his remuneration is by way of salary, wages, commission or otherwise, and includes any director or officer of a company who performs any such functions for the company;

[*Cap. 388; Cap. 387; Cap. 392*]

## Part II – Securities and Exchange Commission

### 3. The Commission

- (1) There is hereby established a body to be known as the Securities and Exchange Commission, which shall be a body corporate with a common seal, capable of suing and being sued and subject to the provisions of this Act, capable of performing all such acts as a body corporate may by law do or perform.
- (2) The provisions of the First Schedule shall apply as to the constitution of the Commission and otherwise in relation thereto.

### 4. Functions of the Commission

The Commission shall have the following functions:

- (a) to take all available steps to ensure that this Act and any rules made under this Act are complied with;
- (b) to supervise and monitor the activities of any securities exchange and the settlement of transactions in securities;
- (c) to license and monitor the activities of securities exchanges, dealers, investment advisers and their respective representatives and of persons who, within the meaning of rules made under this Act, are non-bank custodians or service registrars;

- (d) to approve the constitutions, charters, articles, by-laws, rules and regulations governing and pertaining to any securities exchange;
- (e) to make, issue, monitor and enforce rules for the conduct of participants in the securities industry and for the supervision and investigation of that conduct, including rules relating to licensing and for the revocation and suspension of licences;
- (f) to promote and encourage high standards of investor protection and integrity among members of any securities exchange;
- (g) to support the operation of a free, orderly, fair, secure and properly informed securities market;
- (h) to regulate the manner and scope of securities on any securities exchange, the exchange rules, listing requirements, margin requirements, capital adequacy requirements, disclosure and periodic reporting requirements, trade settlement and clearing requirements;
- (i) to take all reasonable steps to safeguard the interest of persons who invest in securities and to suppress illegal, dishonourable and improper practices in relation to dealings in securities, whether on the securities exchange or otherwise;
- (j) to take all reasonable steps to promote and maintain the integrity of persons licensed under Part IV and encourage the promulgation by such persons of balanced and informed advice to their clients and to the public generally;
- (k) to consider and suggest proposals for the reform of the law relating to the securities industry;
- (l) to encourage the development of securities markets in Zambia and the increased use of such markets by investors in Zambia and elsewhere;
- (m) to promote and develop self-regulation by securities exchange;
- (n) to co-operate, by the sharing of information and otherwise, with other supervisory bodies in Zambia and elsewhere;
- (o) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon it by or under this or any other Act.

## 5. Delegation of functions

The Commission may delegate to its officers and employees such of its powers and functions as the Commission considers necessary or expedient to delegate.

## 6. Rules relating to exchanges

The Commission may by statutory instrument make rules in respect of the following:

- (a) the conditions subject to which, and the circumstances in which, any securities exchange may suspend dealings in securities;
- (b) the qualifications for membership of securities exchanges and the maximum number of persons that may be admitted to membership of any securities exchange;
- (c) the type of business that may be carried on, and services that may be provided by or at securities exchanges;
- (d) prescribing the requirements to be met before securities may be listed on securities exchanges;
- (e) prescribing the procedure for dealing with applications for the listing of securities at securities exchanges;

- (f) providing for the cancellation or suspension of the listing of any specified securities at any securities exchange if the Commission's requirements for listing, or the requirements of any undertaking given to the Commission in connection with a listing agreement, are not complied with;
- (g) providing for the cancellation or suspension of the listing of any specified securities at any securities exchange if the Commission considers that such action is necessary to maintain an orderly market.

### **Part III – Securities exchanges**

#### **7. Unlawful securities market**

- (1) A person shall not establish or assist in establishing or maintaining, or hold himself out as providing or maintaining, a securities market that is not the securities market of a securities exchange established by a company licensed under this Act to do so.
- (2) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding three years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### **8. Application for securities exchange licence**

- (1) A company may apply in the prescribed form and manner to the Commission for a licence to establish and operate a securities exchange.
- (2) Any such application shall be accompanied by the prescribed fee.
- (3) Upon receipt of an application by a company under this section, the Commission may grant a licence to that company if the Commission is satisfied that—
  - (a) the establishment of the securities exchange is necessary in the public interest having regard to the nature of the securities industry; and
  - (b) the applicant satisfies the requirements of the Second Schedule.

#### **9. Lusaka Stock Exchange**

- (1) With effect from the date of commencement of this Act, the Lusaka Stock Exchange (hereinafter referred to as "the Exchange") shall, subject to subsection (3) be deemed to be licensed under this Part.
- (2) The Exchange shall, not later than six months after the commencement of this Act or within such longer period as the Commission may allow—
  - (a) take such steps as are necessary to ensure that it satisfies the requirements of the Second Schedule; and
  - (b) notify the Commission in writing of the steps so taken.
- (3) If the Exchange fails to take action in accordance with subsection (2) within the time limited by or under that subsection, the Exchange shall be deemed to have ceased to be licensed under this Part upon the expiration of that period.

## 10. Power of Commission to give directions to securities exchange

- (1) Where the Commission is satisfied that it is in the interest of the investing public to give a direction under this section, or that it is appropriate to give such a direction for the protection of investors or for the proper regulation of a securities exchange, the Commission may give a direction to a securities exchange—
  - (a) with respect to trading on or through the facilities of the exchange generally or with respect to trading of a particular security listed on that exchange;
  - (b) with respect to the manner in which the exchange carries on any aspect of its business, including the manner of reporting off-market purchases; or
  - (c) with respect to any other matters that the Commission considers necessary for the effective administration of this Act.
- (2) A securities exchange which neglects or fails to comply with a direction given to it under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

## 11. Appeal against direction of Commission

- (1) A securities exchange that is dissatisfied by a direction of the Commission under section ten may, within thirty days after the direction is given appeal to the Minister.
- (2) The Minister may confirm, quash or vary the direction of the Commission.
- (3) The Minister's decision on the appeal shall be final and binding except as to any matter of law, and in cases in which the appeal is allowed, it shall be the duty of the Commission to give effect to the Minister's decision.
- (3) The Commission's direction is not stayed by the lodgement of an appeal, pending the decision of the Minister.

*[Please note: numbering as in original.]*

## 12. Power of Minister to close securities exchange

- (1) On the grounds described in subsection (2), the Minister, after consultation with the Commission, may direct that a securities exchange shall be closed for the transaction of dealings in securities for such period as may be specified in the direction.
- (2) A direction under this section may only be given if the Minister is satisfied that the orderly transaction of business on the securities exchange is being or is likely to be prevented—
  - (a) because of a natural disaster that has occurred in Zambia; or
  - (b) because of an economic or financial crisis, whether in Zambia or elsewhere, or other like circumstance; or
  - (c) because the exchange has ceased to meet the conditions set forth in the Second Schedule to this Act.
- (3) A dealer who deals in securities at or through a securities exchange while a direction is in force under this section with respect to the exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units.

- (4) The Commission may take such steps as it considers necessary to ensure compliance with a direction under this section and, without limiting the generality of the foregoing, may cause the premises of the exchange affected by the direction to be locked and secured.

*[As amended by Act [No. 13 of 1994](#)]*

### **13. Management of securities exchange**

- (1) The affairs of a securities exchange shall be managed by a board whose members shall comprise those elected or appointed in accordance with its articles of association.
- (2) Subject to the provisions of this Act, the board shall have power in all things to administer the affairs of the exchange.

### **14. Rules of securities exchange**

Subject to the approval of the Commission, a securities exchange may make such rules as it considers necessary or desirable for the proper and efficient regulation, operation, management and control of the exchange and the securities market operated by the exchange.

### **15. Securities exchange to assist Commission**

A securities exchange shall provide such assistance to the Commission as the Commission may reasonably require for the performance of its functions and duties, including the furnishing of such returns and information relating to its business or in respect of dealings in securities or any other specified information as the Commission may require for the proper administration of this Act.

### **16. Amendments to rules of securities exchange**

- (1) A securities exchange that wishes to make any amendment (whether by way of rescission, alteration or addition) to its rules shall submit a draft of the proposed amendment to the Commission for approval.
- (2) The Commission may, within twenty-eight days after receipt of a draft in accordance with subsection (1), by notice to the exchange concerned disallow the amendment, whereupon the amendment, if made, ceases to have force or effect.
- (3) If no such notice is given within twenty-eight days after the proposed amendment was submitted to the Commission, the proposed amendment shall be deemed to have been approved.

### **17. Use of certain titles**

- (1) A person other than a licensed securities exchange who takes or uses, or has attached to or exhibited at any place—
  - (a) the title "securities exchange" or "stock exchange"; or
  - (b) any title which so closely resembles either of those titles as to be likely to deceive, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding one year or to both.

*[As amended by Act [No. 13 of 1994](#)]*

## Part IV – Licensing of dealers, investment advisers and representatives

### 18. Dealers to be licensed

An individual, or any company which is not the holder of a dealer's licence, that—

- (a) carries on a business as a dealer; or
- (b) holds himself or itself out as carrying on a business as a dealer, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding sixty thousand penalty units or, in the case of an individual, to imprisonment for a term not exceeding three years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

### 19. Investment advisers to be licensed

A person who is not the holder of an investment adviser's licence and who—

- (a) carries on a business as an investment adviser, or
- (b) holds himself out as carrying on a business as an investment adviser, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding sixty thousand penalty units or to imprisonment for a term not exceeding three years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

### 20. Representatives to be licensed

- (1) A person who is not the holder of a representative's licence and who is employed as or acts as a representative shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding one year or to both.
- (2) Without limiting the generality of section twenty-three, a representative's licence may be conditioned on the licensee's being employed or acting only as the representative of a dealer or only as the representative of an investment adviser.

*[As amended by Act [No. 13 of 1994](#)]*

### 21. Applications for licences

- (1) Application for a licence under this Part or for the renewal of any such licence shall be made to the Commission in the prescribed form and manner and shall be accompanied by the prescribed fee.
- (2) In the case of an application for renewal, the application shall be made not later than one month before the expiry of the licence.
- (3) The Commission may require an applicant for a licence or renewal to provide it with such further information as the Commission thinks necessary.

### 22. Refusal of licence or renewal

- (1) The Commission shall not grant a dealer's licence to an individual.
- (2) The Commission may refuse to grant or renew an investment adviser's licence under this Part to an individual on the grounds that—

- (a) the applicant has not provided the Commission with such information relating to him or any person employed by or associated with him, or to any circumstances likely to affect his method of conducting business, as may be prescribed by or under this Act;
  - (b) the applicant has become incapable mentally or physically of performing the activities to which the licence relates;
  - (c) the applicant is an undischarged bankrupt;
  - (d) it appears to the Commission that, because the applicant, or any person employed by or associated with the applicant for the purposes of the activities to which the licence relates, has been convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty, or has been convicted of an offence against this Act or the rules made under this Act relating to persons licensed under this Part, the applicant is not a fit and proper person to be licensed as an investment adviser; or
  - (e) the Commission has reason to believe that the applicant is not of good repute or character;
  - (f) the Commission has reason to believe that the applicant will not perform the duties of the holder of the licence efficiently, honestly and fairly;
  - (g) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act; or
  - (h) the applicant is under twenty-one years of age.
- (3) The Commission may refuse to grant or renew a dealer's licence or investment adviser's licence under this Part to a company on the ground that—
- (a) the applicant has not provided the Commission with such information relating to it or any person employed by or associated with it, or to any circumstance likely to affect its method of conducting business, as may be prescribed by or under this Act;
  - (b) any director of the applicant has become incapable mentally or physically of performing his duties in connection with the activities to which the applicant's licence relates;
  - (c) any director of the applicant is an undischarged bankrupt;
  - (d) it appears to the Commission that, because the applicant, or any director, controller or secretary of the applicant or any officer concerned in the management of the applicant's business or any employee of the applicant has been convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty, or has been convicted of an offence against this Act or the rules made under this Act relating to persons licensed under this Part, the applicant is not a fit and proper person to be licensed under this Part;
  - (e) it appears to the Commission that, by reason of any other circumstances which either are likely to lead to improper conduct of business by or reflect discredit on the method of conducting business of the applicant, the applicant is not a fit and proper person to be licensed under this Part;
  - (f) the Commission has reason to believe that the applicant will not perform the duties of the holder of the licence efficiently, honestly and fairly; or
  - (g) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act.
- (4) The Commission shall not grant a representative's licence to a company.
- (5) The Commission shall grant or renew a representative's licence to an individual if after consideration of the application it does not have any reason to believe that the applicant will not

perform the duties of the holder of the licence efficiently, honestly and fairly, but otherwise shall refuse the application.

### 23. Terms and conditions of licences

- (1) Unless sooner revoked, suspended or surrendered, a licence under this Part remains in force for the period specified in the licence.
- (2) A licence under this Part is subject to the terms and conditions attached to it.
- (3) The licence may be granted or renewed subject to such conditions as the Commission thinks fit to specify in the licence at the time of grant or renewal, and the Commission may at any time, by notice served on the licensee, vary the conditions for the time being attached to it or impose further conditions.

### 24. Revocation or suspension of licences

- (1) Where any person licensed under this Part—
  - (a) being an individual, dies; or
  - (b) being or company, is dissolved, the licence of that person is deemed to be revoked.
- (2) The Commission may revoke the licence of an individual licensed under this Part, or, if it thinks it appropriate to do so, suspend the licence of such an individual for such time, or until the happening of such event, as it may determine, if the individual—
  - (a) becomes mentally or physically incapable of performing the activities to which the licence relates;
  - (b) becomes bankrupt, or compounds with his creditors or makes an assignment of his estate for their benefit;
  - (c) is convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty;
  - (d) is convicted of an offence against this Act or the rules made under this Act;
  - (e) is or has been guilty of any misconduct in relation to the conduct of the business, or the pursuit of the occupation, with reference to which he is licensed or, by reason of any other circumstances, is no longer a fit and proper person to hold a licence under this Part;
  - (f) is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act;
  - (g) ceases to carry on business in Zambia; or
  - (h) is the holder of a representative's licence and the licence of the dealer or investment adviser whom he represented is revoked or suspended.
- (3) The Commission may revoke the licence of a company licensed under this Part or, if it thinks it appropriate to do so, suspend the licence of such a company for such time, or until the happening of such event, as it may determine, if—
  - (a) the company goes into liquidation or is ordered to be wound up;
  - (b) a receiver or manager of the property of the company is appointed;
  - (c) the company has ceased to carry on business;
  - (d) a levy of execution in respect of the company has not been satisfied;

- (e) the company has entered into a compromise or scheme of arrangement with its creditors;
  - (f) any director of the company is convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty;
  - (g) the company or any director of the company is or has been guilty of any misconduct in relation to the conduct of the business, or the pursuit of the occupation, with reference to which the company is licensed; or
  - (h) the Commission has reason to believe that the company, or any of its directors or employees, has not performed his duties efficiently, honestly and fairly;
  - (i) the licence of any director, secretary or other person concerned in the management of the company who is required to be licensed has been revoked or suspended; or
  - (j) the company is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under this Act.
- (4) The Commission may revoke a licence at the request of its holder.
- (5) A person whose licence is revoked or suspended under this Part shall be taken, for the purpose of this Act, not to be licensed.
- (6) The suspension or revocation of a licence under this Part does not operate so as to—
- (a) avoid or affect any agreement transaction or arrangement relating to a dealing in securities entered into by the person whose licence has been suspended or revoked, whether the agreement, transaction, or arrangement was entered into before or after the suspension or revocation of the licence; or
  - (b) affect any right, obligation, or liability arising under any such agreement, transaction, or arrangement.
- (7) A person whose licence is revoked under this Part may not apply to be licensed under this Part in any capacity until the expiration of at least twelve months from the revocation.
- (8) In this section, "misconduct" means—
- (a) any contravention of or failure to comply with the requirements of any rules or regulations made under this Act with respect to licensed persons;
  - (b) any failure to observe the terms and conditions of a licence; or
  - (c) any act or omission relating to the business or occupation of a licensed person which is or is likely to be prejudicial to the interests of members of the investing public.

## 25. Rights of applicant

- (1) Where the Commission refuses an application for a licence or the renewal of a licence under this Part, it shall notify the applicant in writing of that fact and shall include in the notice a statement of the reasons for the refusal.
- (2) The Commission shall not—
  - (a) refuse to grant or renew a licence under this Part;
  - (b) attach conditions to, or vary the conditions attached to, such a licence; or
  - (c) revoke or suspend such a licence;

unless it notifies the applicant or licensee of its intention to do so and affords him an opportunity to show cause in writing why it should not do so.

## 26. Appeals

- (1) Any person aggrieved by a decision of the Commission—
  - (a) to refuse to grant or renew a licence under this Part;
  - (b) to attach conditions to, or vary the conditions attached to, such a licence; or
  - (c) to cancel or suspend such a licence,  
may, within thirty days after the date of that decision, appeal to the Court.
- (2) The decision of the Commission is not stayed by the lodgment of an appeal.

## 27. Register of licences

- (1) The Commission shall cause to be kept, in such form as it thinks fit, a Register of persons holding licences under this Part.
- (2) for each dealer's licence or investment adviser's licence, the Register shall record—
  - (a) the name of the licensee;
  - (b) in the case of a dealer's licence, or in the case of an investment adviser's licence granted to a company, the name of each director, and of the secretary, of the company and the names and respective shareholdings of each shareholder;
  - (c) the date on which the licence was granted;
  - (d) in relation to each business to which the licence relates—
    - (i) the address of the principal place at which the business is carried on;
    - (ii) the addresses of the other places, if any, at which the business is carried on; and
    - (iii) if the business is carried on under a name or style other than the name of the licensee, that name or style;
  - (e) particulars of any suspension or cancellation of the licence; and
  - (f) such other matters as may be prescribed by rules made under this Act.
- (3) For each representative's licence, the Register shall record—
  - (a) the name of the person licensed and the date of issue of the licence;
  - (b) the name and address of the business of the dealer or investment adviser in relation to whom the representative is licensed;
  - (c) particulars of any suspension or cancellation of licence; and
  - (d) such other matters as may be prescribed by rules made under this Act.
- (4) Where a person no longer holds a particular licence, the Commission shall make an appropriate entry in the Register.
- (5) Any person may, upon payment of the prescribed fee, inspect and make copies of, or take extracts from, the Register.

## 28. Records to be kept by licensees

- (1) A person who is licensed under this Part shall maintain a record in the prescribed form of the securities in which he has an interest.
- (2) Particulars required by the form prescribed under subsection (1) shall be entered in the record within seven days of the acquisition of the interest.
- (3) Where there is a change in the interests or interests in securities of a person licensed under this Part, he shall enter in the record, within seven days after the date of the change, full particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred; and for the purpose of this subsection, where a person acquires or disposes of securities, there shall be deemed to be a change in the interest or interests of that person in the securities concerned.
- (4) A person who fails to keep a record as required by this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding twelve months or to both.

*[As amended by Act [No. 13 of 1994](#)]*

## 29. Information to be supplied by licensees

- (1) Every applicant for a licence under this Part shall, together with his application, give notice to the Commission in the prescribed form containing such particulars as are prescribed, including the place at which he will keep the required record of his interest in securities.
- (2) A person who ceases to carry on the business authorised by a licence under this part shall, within fourteen days of his so ceasing, give notice of the fact to the Commission.
- (3) Every person licensed under this Part shall forthwith notify the Commission in writing of any change which, while his licence is in force, may occur—
  - (a) in the address in Zambia at which he carries on the business to which the licence relates; or
  - (b) in any information supplied in or in connection with his application for his licence or any renewal thereof, being information prescribed by the rules made under this Act.
- (4) If at any time while a company is licensed under this Part, any person becomes or ceases to be a director of the company, the company shall within seven days after the event notify the commission in writing of the name and address of that person.
- (5) Every person licensed under this Part shall forthwith notify the Commission of any misconduct in his organisation that has resulted in legal or disciplinary proceedings.
- (6) The rules made under this Act may require a person licensed under this Part to furnish the Commission with additional information by way of periodic report or otherwise.
- (7) A person who neglects or fails to give any notice or supply any information as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand penalty units.

*[As amended by Act [No. 13 of 1994](#)]*

## 30. Fraudulent applications

Any person who for the purpose of obtaining a licence or the renewal of a licence under this Part, whether for himself or for any other person, makes any representation, whether in writing, orally, or otherwise,

which he knows to be false or misleading as to a material particular shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding sixty thousand penalty units or to imprisonment for a term not exceeding three years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

### **31. Deposits by dealers and investment advisers**

- (1) All licensed dealers and investment advisers shall deposit with the Commission such amount as may be required by rules made under this Act.
- (2) A licensed dealer or investment adviser that neglects or fails to comply with the requirements of this section, or is in arrears as regards such compliance, is liable to pay interest on the amount of the default at such rate as rules under this Act may prescribe.
- (3) Any deposit or interest payable under this section is a debt due to the Commission and may be recovered at the suit of the Commission in any court of competent jurisdiction.

## **Part V – Registration of securities**

### **32. Securities to be registered**

- (1) If a registration statement in the prescribed form relating to a security, signed by the issuer of the security or its representative and accompanied by the prescribed fee, has been filed with and approved by the Commission, the Commission may register the security.
- (2) If:
  - (a) any security of a public company is publicly traded, or directly or indirectly promoted or advertised or offered for sale to the public; and
  - (b) the security has not been registered under this section, and is not guaranteed by the Government or exempted, by rules made under this Act, from the requirements of this section,the issuer of the security shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding two hundred thousand penalty units.
- (3) For the purposes of this section, securities of a public company shall be treated as being publicly traded if—
  - (a) the company had more than fifty shareholders; or
  - (b) the Commission, by notice in writing to the issuer, has declared that, after ninety days, those securities would be treated as being publicly traded, and ninety days has elapsed since that notice was given.

*[As amended by Act [No. 13 of 1994](#)]*

### **33. Prospectus**

A prospectus prepared for the purposes of any public offer to be made in relation to any securities that are registerable under section thirty-two—

- (a) shall contain or be accompanied by all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer of the securities and the rights attaching to the securities; and

- (b) shall contain or be accompanied by such other information and particulars, and shall comply with such other requirements, as may be prescribed by rules made by the Commission.

#### **34. Dealers not to deal in securities market not operated by securities exchange**

A dealer that transacts a dealing in securities at or through a securities market which it knows or could reasonably be expected to know is not a market operated by a securities exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units.

*[As amended by Act [No. 13 of 1994](#)]*

#### **35. Trading of listed securities**

A person who deals in any listed, registered securities otherwise than through a securities exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### **36. Registered securities to be traded through licensed dealers**

- (1) Any person who deals in any unlisted, registered securities otherwise than through a securities exchange and who does not forthwith report that dealing to the prescribed securities exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.
- (2) The Commission may, by notice to every licensed dealer, declare that any security specified in the notice, being a security which, in the opinion of the Commission, is being actively traded shall be dealt with as if it were a listed security, and section thirty-five shall apply accordingly.

*[As amended by Act [No. 13 of 1994](#)]*

#### **37. Registered securities to be traded through licensed dealers**

- (1) Any person who deals in any registered securities otherwise than through a licensed dealer shall be guilty of an offence and shall be liable on conviction to fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.
- (2) This section does not apply to any dealings of a kind or description prescribed by rules made under this Act.

*[As amended by Act [No. 13 of 1994](#)]*

#### **38. Continuing obligations in relation to registered securities**

- (1) Once registered securities are issued, the issuer must inform and keep the public informed of all matters which affect the value of the securities immediately upon their becoming known to the directors of the issuer, by placing an advertisement in a newspaper of general circulation and by reports to the Commission and to any securities exchange on which they are listed.
- (2) Rules made under this Act may prescribe further obligation to be met by the issuers of registered securities.

- (3) An issuer of securities that neglects or fails to comply with this section or the rules made for the purposes of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units.

*[As amended by Act [No. 13 of 1994](#)]*

## Part VI – Conduct of securities business

### 39. Takeovers and substantial acquisitions

- (1) A person shall not make or pursue an offer in respect of a takeover or substantial acquisition of the securities of any company except in accordance with the conditions prescribed by the rules made under this Act.
- (2) For the purposes of this section, "substantial acquisition" means acquisition of at least twenty per cent of the issued securities of the company concerned.

### 40. Code of conduct with respect to conduct of securities business

- (1) The Commission may by statutory instrument make rules prescribing a code of conduct for the securities business.
- (2) Where any contract for the sale of securities is entered into in contravention of the code of conduct, the contravention is actionable at the suit of any person who suffers loss as a result of the contravention.

### 41. Contract notes

- (1) Every dealer shall in respect of every contract for the purchase, sale or exchange of securities entered into by him (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with subsection (2) and—
- (a) where the contract was entered into by the dealer as agent, deliver the contract note to the person on whose behalf it entered into the contract; or
- (b) where the contract was entered into by the dealer as principal, retain the contract note for itself.
- (2) The contract note shall include—
- (a) the name or style under which the dealer carries on business as a dealer and the address of the principal place at which it so carries on business;
- (b) where the dealer is acting as principal, a statement that it is so acting;
- (c) the name of the person (if any) to whom the dealer is required to give the contract note;
- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities the subject of the contract;
- (f) except in the case of an exchange, the price per unit of the securities;
- (g) the amount of consideration payable under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;
- (h) the rate or amount of commission (if any) payable in respect of the contract;

- (i) the amount of stamp duty (if any), payable in connection with the contract and, where applicable, in respect of the transfer;
  - (j) the date of settlement;
  - (k) such other information as may be prescribed by the rules made under this Act to ensure that there shall be a complete audit trail for the execution of customer instructions and settlement of market transactions.
- (3) Any dealer who completes a contract for the purchase, sale or exchange of securities without having complied with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units.
- (4) Any disclaimer or exclusionary clause in contract notes shall be void and of no effect.

*[As amended by Act [No. 13 of 1994](#)]*

#### **42. Terms of settlement of bargains in securities, etc.**

The Commission may by statutory instrument make rules for the regulation of the terms upon which bargains in securities are settled and may thereby prohibit or restrict forward transactions or option contracts.

#### **43. Short selling**

- (1) A person who sells securities which he does not hold at or through a securities exchange shall be guilty of an offence unless, at the time he sells them—
- (a) he has or, where he is selling as agent, his principal has; or
  - (b) he reasonably and honestly believes that he has or, where he is selling as agent, that his principal has.
- a presently exercisable and unconditional right to vest the securities in the purchaser of them, and has on deposit in the manner prescribed one hundred per cent collateral against the short sale, marked to market at the close of every trading day until the transaction is complete.
- (2) A person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.
- (3) For the purposes of this section, "marked to market" means revalued, for the purposes of the seller's obligation, at the current market.

*[As amended by Act [No. 13 of 1994](#)]*

#### **44. Safeguarding of investors' property**

- (1) The Commission may by statutory instrument make rules for or with repeat to the segregation of client moneys or other property and for the safe custody thereof.
- (2) The Commission may by statutory instrument make rules requiring the licensing of depositories and persons providing securities registration services or custodian services which are not banks or financial institutions regulated by any written law governing the registration of banks and financial institutions.

#### 45. Accounts to be kept by licensees

- (1) The holder of a dealer's licence or investment adviser's licence shall keep or cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of all business relating to the licence and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time and shall cause those records to be kept in such prescribed manner and form as to enable them to be conveniently and properly audited.
- (2) Without limiting the generality of subsection (1), each such licensed person shall maintain such books and records, and file such reports, in the prescribed manner and form.
- (3) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units.

*[As amended by Act [No. 13 of 1994](#)]*

#### 46. Financial resources rules

The Commission may, with the approval of the Minister, make rules requiring licensed dealers and licensed investment advisers to have and maintain, in respect of the business in relation to which they are licensed, such financial resources as are required by the rules made under this Act.

- (2) Rules made under this section may—
  - (a) impose requirements which are absolute or which are to vary from time to time by reference to factors which are either specified in, or are to be determined in accordance with, the rules;
  - (b) impose requirements which take account of any business carried on by the person concerned in conjunction with, or in addition to, the business in relation to which he is licensed; and
  - (c) make provision as to the assets, liabilities and other matters to be taken into account in determining a person's financial resources for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose.

#### 47. Investment advisory contracts

- (1) An investment adviser shall not enter into an investment advisory contract with any person in Zambia (in this section referred to as his client), or extend or renew any such contract, or in any way perform any such investment advisory contract entered into, extended or renewed after the commencement of this Act, if the contract—
  - (a) provides for remuneration to be paid by the client to the investment adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;
  - (b) does not include a provision to the effect that an assignment of the contract by the investment adviser shall be made only with the consent of the client; or
  - (c) does not include a provision to the effect that the investment adviser—
    - (i) if he practices in partnership with one or more other investment advisers, will notify the client of any change in the partnership; or
    - (ii) if a company, will notify the client of any change in the directors of the company, within a reasonable time after the change.
- (2) Subsection (1) (a) does not—

- (a) prohibit an investment advisory contract which provides for remuneration based on the total value of a fund averaged over a definite period or on definite dates, or taken on a definite date; or
- (b) apply to an investment advisory contract with respect to participation in a collective investment scheme, as defined in Part X, authorised by the Commission under the Part that provides for remuneration based on the asset value of the scheme or company under management averaged over a specified period and increasing and decreasing proportionately in accordance with the performance of the scheme or company over a specified period in relation to either—
  - (i) the investment record of an appropriate index of securities; or
  - (ii) such other measure of investment performance as the Commission may approve in connection with its authorisation of the collective investment scheme concerned or on the application of either party to a contract or intended contract.
- (3) For the purposes of this section, "investment advisory contract" means a contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of a client.
- (4) Any investment adviser who knowingly enters into any contract in contravention of any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units.
- (5) Any contract entered into in contravention of any of the provisions of this section shall, notwithstanding any provision of the contract, be voidable at the option of the client.

*[As amended by Act [No. 13 of 1994](#)]*

## Part VII – Improper trading practices

### 48. False trading and manipulation of the market

- (1) A person shall not create or cause to be created, or do anything with the intention of creating—
  - (a) a false or misleading appearance of the volume of trading in any securities on any securities exchange; or
  - (b) a false or misleading appearance of the market for, or the price of, any such securities.
- (2) A person shall not, by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of any securities.
- (3) A purchase or sale of securities does not, for the purposes of subsection (2), involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with him in relation to those securities, holds an interest in the securities after the purchase or sale.
- (4) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### 49. Use of deceptive statements, etc. as inducements

A person who induces or attempts to induce another person to deal in securities—

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
  - (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,
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### 50. Fraudulent transactions

A person who, directly or indirectly, in connection with any transaction with any other person involving the purchase, sale or exchange of securities—

- (a) employs any device, scheme or artifice to defraud that other person; or
  - (b) engages in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person,
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### 51. False or misleading statement in connection with sale of securities

A person who, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any company, makes with respect to those securities, or with respect to the operations or the past or future performance of the company—

- (a) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable grounds to believe to be false or misleading; or
  - (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which he knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact,
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### 52. Insider dealing

- (1) A person to whom this section applies who deals, or counsels or procures another person to deal, in securities of a company concerning which he has any knowledge that—
  - (a) is not publicly available; and
  - (b) would, if it were publicly available, materially affect the price of the securities,shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

- (2) This section applies to—
  - (a) any director, officer or employee of the company concerned;
  - (b) any person associated in a professional capacity with that company; and
  - (c) any person who obtains such information from any of the persons mentioned in paragraph (a) or (b).
- (3) No dealing shall be void or voidable by reason only that it was entered into in contravention of this section.

*[As amended by Act [No. 13 of 1994](#)]*

### **53. Powers of inspection**

- (1) The Commission may from time to time inspect under conditions of secrecy the bank accounts, documents and transactions of a person licensed under this Part.
- (2) The Commission may appoint any person (in this section referred to as the "inspector") to exercise the powers of the Commission under this section.
- (3) For the purposes of an inspection under this section, a person licensed under this Part shall afford the inspector access to, and shall produce, his books, accounts and documents and shall give such information and afford the use of such facilities as may be required for the inspection.
- (4) The inspector shall at all times have the power to make copies of or take extracts from, and take possession of, the books, accounts and other documents of the licensed person.
- (5) A person licensed under this Part who fails, without reasonable excuse, to produce any book, account or document to the inspector, or to furnish any information or afford the use of any facilities as required under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding three years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

### **54. Damages for loss sustained through contravention of this Part**

- (1) A person who is convicted of an offence under this Part shall, in addition to any criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.
- (2) Nothing in this section limits or diminishes any civil liability which any person may incur under any other law.

## **Part VIII – Powers of intervention**

### **55. Scope of powers under this Part**

- (1) The powers conferred on the Commission by this Part may only be exercised in relation to any person licensed under Part IV if it appears to the Commission that—
  - (a) the person is not a fit and proper person to be the holder of his licence;
  - (b) the person has contravened or failed to comply with any provision of or requirement under this Act or the rules made under this Act or, in purported compliance with any such

provision or requirement, has furnished the Commission with information that is false, inaccurate or misleading; or

- (c) the exercise of the power is otherwise necessary for the protection of investors, and the provisions of this Part shall accordingly be construed subject to this section.
- (2) For the purposes of this section, the Commission may take into account any matters that could be taken into account in deciding whether to suspend or revoke a licence.
- (3) The powers conferred on the Commission by this Part may be exercised in relation to a person whose licence has been suspended or revoked (whether or not the suspension or revocation is the subject of appeal) as if a reference in this Part to a licensed person included a reference to any such person.

## **56. Restriction of business**

- (1) The Commission may by notice in writing prohibit a person licensed under Part IV from doing any one or more of the following:
  - (a) entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
  - (b) soliciting business from persons of a class or description so specified or from persons other than persons of such a class or description; or
  - (c) carrying on business in a specified manner or otherwise than in a specified manner.
- (2) A prohibition under this section may relate to transactions entered into in connection with or for the purposes of the business in respect of which the person is licensed or to other business which is carried on in connection with or for the purposes of any such business.

## **57. Restriction on dealing with assets**

The Commission may, as regards any assets whether in Zambia or elsewhere and whether they are the assets of a person licensed under Part IV or not, by notice in writing—

- (a) prohibit a person so licensed from disposing of such assets or prohibit him from dealing with them in a manner specified in the notice; or
- (b) require a person so licensed to deal with such assets in, and only in, a manner specified in the notice.

## **58. Maintenance of assets**

- (1) The Commission may by notice in writing require a person licensed under Part IV to maintain in Zambia assets of such value as appears to the Commission to be desirable with a view to ensuring that the licensed person will be able to meet his liabilities in respect of the business to which his licence relates.
- (2) The Commission may direct that, for the purposes of any requirement under this section, assets of any specified class or description shall or shall not be taken into account.

## **59. Rescission or variation of prohibition or requirement**

The Commission may, either of its own motion or on the application of a licensed person on whom a prohibition or requirement has been imposed under this Part, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or

requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

## 60. Notices

- (1) The power to impose, rescind or vary a prohibition or requirement under this Part shall be exercisable by written notice served by the Commission on the licensed person concerned, and any such notice shall take effect on such date as is specified in it.
- (2) If the Commission refuses to rescind or vary a prohibition or requirement on the application of the licensed person to whom it applies, it shall serve notice on that person to that effect.
- (3) A notice imposing a prohibition or requirement, or varying a prohibition or requirement otherwise than on the application of the licensed person to whom it applies, and any notice under subsection (2), shall state the reasons for which the prohibition or requirement has been imposed or varied or, as the case may require, why the application for variation or rescission was refused.
- (4) The Commission may give public notice of any prohibition or requirement imposed by it under this Part and of any rescission or variation thereof, and any such notice may, if the Commission considers necessary, include a statement of the reasons for the prohibition, requirement, variation or rescission.

## 61. Winding up orders

If, in the case of a company licensed under Part IV, it appears to the Commission that it is desirable for the protection of investors that the company should be wound up under the Companies Act, the Commission may present a petition for it to be wound up under that Act on the ground that it is just and equitable that it should be wound up.

*[Cap. 388]*

## 62. Receiving orders

If it appears to the Commission that it is desirable for the protection of investors to do so, the Commission may present a petition for a receiving order in accordance with the Bankruptcy Act against a person licensed under Part IV if the person has committed an act of bankruptcy within the meaning of that Act, and that Act shall, with any necessary modifications, apply in relation to any such petition as it applies in relation to a petition presented by a creditor.

*[Cap. 82]*

## 63. Orders of the Court

- (1) Where, on the application of the Commission, it appears to the Court that a person has contravened this Act or any conditions of his licence, or is about to do an act with respect to dealing in securities that, if done, would be such a contravention, the Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:
  - (a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities specified in the order;
  - (b) in relation to a licensed dealer, an order appointing a person to administer the property of the dealer;
  - (c) an order declaring a contract relating to securities to be void or voidable;

- (d) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
  - (e) any ancillary order which it considers necessary in consequence of the making of any other order under this section.
- (2) The Court shall, before making an order under this section, satisfy itself, so far as it reasonably can, that the order would not unfairly operate to the detriment of any person.
  - (3) The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
  - (4) The Court may reverse, vary, or discharge an order made by it under this section or suspend the operation of such an order.

## **Part IX – Compensation fund**

### **64. Compensation fund**

The Minister shall establish and maintain a compensation fund for the purposes of this Part.

### **65. Compensation Fund Committee**

- (1) There shall be a committee, to be known as the Compensation Fund Committee, which shall be responsible for the administration of the compensation fund and for the settlement of claims against the fund.
- (2) The Committee shall consist of:
  - (a) a person nominated by the Bankers' Association;
  - (b) a person nominated by the Lusaka Stock Exchange;
  - (c) a person nominated by the Law Association of Zambia;
  - (d) a person nominated by the Zambia Chamber of Commerce and Industry; and
  - (e) a member of the Commission.
- (3) The members of the Committee shall elect one of their number to be the Chairman of the Committee.
- (4) The Committee may, subject to this Act, regulate its own procedure.

### **66. Constitution of fund**

The compensation fund shall consist of—

- (a) all moneys paid to or deposited into it by any licensed dealer or licensed investment adviser in accordance with section thirty-one;
- (b) all moneys recovered by or on behalf of the Commission by the exercise of any right of action conferred by this Act; and
- (c) all other moneys accruing to the fund.

## 67. Purpose of fund

The compensation fund shall be held and applied on such terms and conditions as the Minister may be regulation determine, for the purpose of compensating persons who suffer pecuniary loss occasioned by any default of a licensed dealer or licensed investment adviser, or any employee of such a dealer or adviser, in the course of or in connection with any dealing in securities, being a loss in relation to any money, securities or other property which, in the course of or in connection with the business of any such licensee, was entrusted to or received by the licensee or any such employee for and on the person's behalf.

## 68. Disbursements from the fund

Subject to this Part, there shall be paid out of the compensation fund as and when required and in such order as the Compensation Fund Committee considers proper—

- (a) the amount of all claims, including costs, allowed by the Compensation Fund Committee;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Act or incurred in relation to the fund or in the exercise by the Committee of the rights, powers and authorities vested in it by this Act in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the Committee;
- (d) the expenses incurred or involved in the administration of the fund; and
- (e) all other moneys lawfully payable out of the fund in accordance with the provisions of this Act.

## 69. Management of fund

The Minister may make regulations prescribing all such matters and things as are necessary or expedient to be prescribed for or with respect to the administration, management and application of any compensation fund established under this Part.

## 70. Liability of fund to be limited

Payment from the compensation fund shall be limited, in respect of each licensee in default, to such amount as the Minister may be regulation provide.

## 71. Recovery of disbursements from defaulters

Any disbursement from the compensation fund that is accountable to the default of any licensed person is a debt due to the fund and is recoverable at the suit of the Commission in any court of competent jurisdiction.

# Part X – Collective investment schemes

## 72. Definitions

In this Part—

"**collective investment scheme**" means any arrangements with respect to money or other property of any description, under which—

- (a) provision is made for persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;
- (b) property the subject of the arrangements—
  - (i) is owned or held in trust by; or
  - (ii) is managed by or on behalf of, a body corporate (in this Part referred to as the "operator" of the scheme); and
- (c) the interests of persons participating in the arrangements is represented by shares or other securities of the body corporate or, in the case of a unit trust, by units;
- (d) funds invested in accordance with the arrangements purporting to be invested with the aim of spreading investment risk.

**"investment company"** means a company that is the owner of property the subject of a collective investment scheme;

**"open-ended investment company"** means an investment company whose collective investment scheme makes provision for—

- (a) redemption or repurchase, by (or out of funds provided by) the company, of shares, securities or units representing the interests of participants in the scheme; or
- (b) the sale of such shares, securities or units by the participants on a securities exchange at a price related to the value of the property the subject of the scheme;

**"unit trust"** means a collective investment scheme in which:

- (a) property the subject of which the scheme is held on trust for the participants of the scheme by a person other than the operator of the scheme; and
- (b) the interests of participants in the scheme is represented by what are commonly known as units in the trust or by a mode of representation, by whatever name described, that the Commission considers equivalent.

### 73. Authorisation and regulation of schemes

- (1) The Commission may authorise collective investment schemes for the purposes of this Part.
- (2) Any such authorisation may be granted subject to such terms and conditions as the Commission considers to be necessary or desirable for the protection of investors.
- (3) The Commission may by statutory instrument make rules for or with respect to—
  - (a) the criteria for and conditions of any authorisation for the purposes of this Part;
  - (b) the establishing and operation of a collective investment scheme;
  - (c) the promotion, marketing and distribution of shares, securities or units representing the interest of participants in a collective investment scheme;
  - (d) the administration of collective investment schemes;
  - (e) the provision by any body corporate or individual of trustee, custodial and operator services, or any other services, for or in connection with collective investment schemes;
  - (f) any fee, remuneration or reward payable or obtainable for any services referred to in paragraph (e).

- (4) Without limiting the generality of subsection (3), rules made for the purpose of that subsection with respect to any aspect of or matter concerning a collective investment scheme may be made to differ according to whether the scheme is operated by a unit trust or by an open-ended investment company or another kind of investment company.
- (5) A person who enters into or offers to enter into any agreement for or with a view to acquiring, disposing of or subscribing for any shares, units or other securities representing an interest in a collective investment scheme that is not authorised under this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### **74. Restriction on promotions**

A person who—

- (a) issues or causes to be issued any advertisement or invitation inviting persons to become or offer to become participants in a collective investment scheme that is not authorised under this Part, or containing information calculated to lead directly or indirectly to persons' becoming or offering to become participants in such a scheme; or
- (b) advises or procures any person to become or offer to become a participant in such a scheme; shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

*[As amended by Act [No. 13 of 1994](#)]*

### **Part XI – Miscellaneous**

#### **75. Immunity of Commission, etc.**

No person shall be liable to any action in damages for anything done or omitted in the exercise or performance of any power or function conferred or imposed on him by or under this Act unless the act or omission is shown to have been in bad faith.

#### **76. Obstruction**

A person who obstructs the Commission or any public officer or any person in the exercise or performance of any power, authority, duty, or function under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for one year or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### **77. Offences by bodies corporate**

If a body corporate is convicted of an offence against this Act or the rules or regulations made under this Act, every person:

- (a) who is a director of the corporation; or
- (b) who is concerned in the management of the corporation, shall be deemed to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.

## 78. Rules

- (1) The Commission may by statutory instrument make rules for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, other than a matter required or permitted to be prescribed by the Minister.
- (2) Without limiting the generality of subsection (1), such rules may be made for or with respect to—
  - (a) the conduct of business by licensed dealers, licensed investment advisers and their licensed representatives;
  - (b) matters incidental to the licensing of any persons under this Act;
  - (c) the class of persons in relation to whom, and the manner and circumstances in which, licensed dealers and their licensed representatives may deal in securities;
  - (d) the types of security in which licensed dealers and their licensed representatives may deal;
  - (e) the class of persons in relation to whom, and the manner and circumstances in which, licensed investment advisers and their licensed representatives may carry on business as investment advisers or as investment representatives, as the case may be;
  - (f) the amount of deposit required to be made for the purposes of section thirty-one and the application of deposits under that section;
  - (g) the exhibition, by persons licensed under Part IV, of their licenses at their places of business;
  - (h) the correction of any errors in any register or record kept under this Act;
  - (i) particulars to be recorded for the purposes of this Act in relation to accounts of licensed persons;
  - (j) the lodgment by licensed persons of annual financial statements;
  - (k) the lodgment of auditors' reports and the information to be contained in them;
  - (l) the remuneration of an inspector appointed, and the costs of any inspection or audit carried out, for the purposes of this Act;
  - (m) the forms to be used for the purposes of this Act, and the manner in which applications are to be made for licences;
  - (n) fees and charges to be levied and paid in respect of any matter or thing required or permitted to be done for the purposes of this Act, including annual or other periodic licence fees;
  - (o) regulating or prohibiting the advertising of securities otherwise than by way of prospectus;
  - (p) maintenance of the confidentiality of clients of persons licensed under Part IV;
  - (q) information and the matters to be displayed on business stationery of licensed persons;
  - (r) regulating or prohibiting transactions with related persons (as defined in the rules);
  - (s) the extension of margin facilities to clients of persons licensed under Part IV;
  - (t) insurance by persons licensed under Part IV against negligence or default;
  - (u) the issue of duplicate licences in case of loss or destruction;

- (v) the maintenance, by officers and employees of the Commission or any other prescribed persons, of confidentiality of information obtained by them or to which they have access in connection with the performance of their duties;
  - (w) the exemption, on such terms and conditions as may be prescribed, of any bank, financial institution or person from any specified provision of this Act or any rule made under this Act, and the revocation of any such exemption or the modification of any such terms or conditions; and
  - (x) any saving or transitional provision the Commission considers necessary or convenient to be made in consequence of the enactment of this Act and the repeal by this Act of the Stock Exchange Act, 1990.
- (3) The rules may be made so as—
- (a) to make prescription vary depending on different factors or circumstances; or
  - (b) to be of general or specifically limited application; or
  - (c) to permit any matter to be from time to time determined by any person or body specified in the rules.

#### **79. Guidance notes, etc.**

The Commission may issue such guidance notes, bulletins or other regulatory statements as the Commission may consider necessary or desirable for the administration of this Act.

#### **80. Repeal of Act No. 43, 1990 and savings**

- (1) The Stock Exchange Act, 1990 is hereby repealed.
- (2) Notwithstanding the repeal of the Stock Exchange Act, 1990—
  - (a) any applications pending before the Zambia Stock Exchange Council under any provision of that Act shall be deemed to have been made to the Commission under the corresponding provision of this Act;
  - (b) the holder of a licence under section eighteen of that Act, whether a company or an individual, shall be deemed, until expiry of that licence, to be the holder of a dealer's licence under this Act, but subject to any rights or benefits accruing, or any liabilities suffered, under that Act, and without right of renewal otherwise than subject to and in accordance with this Act;
  - (c) the Board of Appeal constituted under section twenty-one of that Act, or any court exercising jurisdiction conferred by that Act, may continue to exercise its functions in relation to any matter pending or part-heard before it, and its decision shall be given effect to and shall be binding on the parties to any appeal or other proceedings, as if that Act were still in force;
  - (d) any investigation or proceeding commenced by the Council and not concluded at the commencement of this Act may be continued by the Commission; and
  - (e) any rules or regulations made or directions given under that Act shall, unless contrary to this Act, continue in force until revoked, as if made or given under this Act.
- (3) On and from the commencement of this Act, there shall be transferred to, and shall vest in or subsist against the Commission by virtue of this Act and without further assurance all property, rights, liabilities and obligations that, immediately before the commencement of this Act, were the property, rights, liabilities and obligations of the Zambia Stock Exchange Council.

- (4) Except as provided by this Act, every deed, bond or agreement (other than an agreement for personal services) to which the Zambia Stock Exchange Council was a party immediately before the commencement of this Act, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned, shall, unless the subject - matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of the assignment thereof, as if—
  - (a) the Commission had been a party thereto;
  - (b) for any reference to the Council there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to the Commission; and
  - (c) for any reference to any other officer of the Council not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer as the Commission shall designate.
- (5) Subject to subsection (4), documents other than those referred to in that subsection and which refer specifically or generally to the Council shall be construed in accordance with that subsection as far as applicable.

### **First Schedule (Section 3)**

## **The Securities and Exchange Commission**

### **1. Members of the Commission**

- (1) The Commission shall consist of seven members, being nominees from each of the following organisations:
  - (a) the Bank of Zambia;
  - (b) the Law Association of Zambia;
  - (c) the Zambia Institute of Chartered Accountants;
  - (d) the Zambia Council of Commerce and Industry;
  - (e) the Non-Governmental Organisation Coordinating Committee;
  - (f) the Lusaka Stock Exchange; and
  - (g) the Ministry of Legal Affairs.
- (2) The members of the Commission shall be nominated by their respective organisations and shall be appointed by the Minister.
- (3) Two of the members shall, in and by the terms of their respective appointments, be appointed as the Chairman and Vice-Chairman of the Commission.
- (4) Pending the appointment by the Minister of the members of the Commission, each of the persons who, immediately before the commencement of this Schedule, held office as Chairman or as a member of the Zambia Stock Exchange Council under the Stock Exchange Act, 1990, shall be deemed to be the Chairman or a member, respectively, of the Commission for a period of ninety days after that commencement or until a replacement is sooner appointed.
- (5) A person shall not be appointed under subclause (2), or hold office under subclause (4), as a member of the Commission if he—

- (a) is an undischarged bankrupt;
- (b) has been convicted of an offence under this Act;
- (c) has been convicted of an offence involving fraud or dishonesty; or
- (d) has been convicted of an offence against any other written law and sentenced to a term of imprisonment of not less than six months without the option of a fine.

## 2. Term of office and vacancy

- (1) A member of the Commission shall, subject to the provisions of this Schedule, hold office for a term of not more than three years.
- (2) A member of the Commission shall be eligible for reappointment upon the expiry of his term of office.
- (3) Upon the expiration of the term for which a member is appointed he shall continue to hold office until his successor has been appointed, but in no case shall any such extension of the term exceed three months.
- (4) The office of a member shall be vacated—
  - (a) upon his death;
  - (b) if he is adjudged bankrupt;
  - (c) if he is absent from three consecutive meetings of the Commission without the prior approval of the Commission;
  - (d) upon the expiry of one month's notice of his intention to resign his office given by him in writing to the Minister;
  - (e) upon the expiry of one month's notice of his removal given to him in writing by the Minister;
  - (f) if he becomes mentally or physically incapable of performing his duties as a member;
  - (g) if he is convicted of an offence under this Act; or
  - (h) if he is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more without the option of a fine.
- (5) The Commission may act notwithstanding any vacancy of office among its members.

## 3. Secretary

- (1) There shall be a Secretary to the Commission who shall be appointed by the Commission.
- (2) The Secretary shall be the chief executive of the Commission and it shall be his duty to assist the Commission in all respects and in such manner as the Commission may from time to time require in the discharge of its functions under this Act.
- (3) Subject to subclause (4), the Secretary shall perform such of the functions of the Commission as are for the time being delegated to him by the Commission.
- (4) The Secretary shall not exercise any function generally delegated to him by the Commission under subclause (3) without the express specific approval of the Commission in relation to—

- (a) any matter in respect of which the Commission may not exercise its powers under this Act without the prior consent or approval of the Minister;
  - (b) the sale, disposal or writing off of any property or assets of the Commission the value of which exceeds one million kwacha; or
  - (c) any general variation of the salaries, wages or allowances of persons employed by the Commission.
- (5) The Secretary shall furnish the Minister, through the Commission, with all such information relating to the activities and undertakings of the Commission as the Minister may at any time require.

#### **4. Business of the Commission**

- (1) Subject to the other provisions of this Act, the Commission may regulate its procedure.
- (2) The Commission shall meet as often as necessary or expedient for the discharge of its business and such meetings shall be held at such places, times and days as the Commission may determine.
- (3) The Chairman may at any time call a meeting of the Commission and shall call a special meeting to be held within seven days of receipt of a written request for that purpose addressed to him by at least one-third of the members of the Commission.
- (4) There shall preside at any meeting of the Commission—
  - (a) the Chairman;
  - (b) in the absence of the Chairman, the Vice-Chairman; or
  - (c) in the absence of both the Chairman and Vice-Chairman, such member as the members present may elect for the purpose of the meeting.
- (5) The decision of the Commission shall be by a majority of votes and in addition to an original vote, the Chairman or other person presiding at the meeting shall have a casting vote in any case in which the voting is equal.
- (6) Four members of the Commission shall form a quorum.
- (7) Minutes of each meeting of the Commission shall be kept and shall be confirmed as soon as practicable thereafter at a subsequent meeting.

### **Business of the Commission**

#### **5. Committees**

- (1) The Commission may for the purpose of performing its functions under this Act establish committees and delegate to any such committee such of its functions as it considers necessary.
- (2) The Commission may appoint as members of a Committee established under subsection (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.
- (3) Subject to any specific or general direction of the Commission, any committee established under subsection (1) may regulate its own procedure.
- (4) Each committee shall keep minutes of its meetings and shall keep the Commission informed of its activities and shall conduct its proceedings in such manner as the Commission may direct.

- (5) Meetings of a committee shall be held at such times and places as the committee may determine or as the Commission shall direct.

## 6. Allowances

A member of the Commission or any committee thereof shall be paid such travelling and subsistence allowances, if any, as the Minister may, in his case, fix.

## 7. Disclosure of interest

If any person is present at a meeting of the Commission or any committee of the Commission at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested, he shall as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

## 8. Staff of the Commission

- (1) The Commission may appoint and employ, on such terms and conditions as it thinks fit, such professional, technical and other officers, and such other staff, as may be necessary for the exercise and discharge of its powers and functions.
- (2) The Commission may make arrangements for or with respect to the provision and maintenance of schemes (whether contributory or not) for the payment to its employees and their dependants of such retirement benefits, gratuities or other allowances as it may determine.

## 9. Commission's funds

The Commission shall be funded by—

- (a) such sums as may be payable to the Commission from time to time from moneys appropriated by Parliament for the purpose;
- (b) such sums as may be payable to the Commission under this Act or any other written law;
- (c) such sums as may be levied by the Commission in terms of licence fees, transaction commissions and any other levies imposed; and
- (d) such sums of money or such other assets as may accrue to or vest in the Commission from time to time, whether in the course of the exercise of its functions or otherwise.

## 10. Financial year

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

## 11. Accounts and audit

- (1) The Commission shall cause proper accounts to be kept of its assets and liabilities and of its income and expenditure for each financial year.
- (2) The accounts of the Commission for each financial year shall be audited by one or more persons who publicly carry on the profession of accountants in Zambia, and who shall be appointed auditors to the Commission by the Commission with the approval of the Minister.

## 12. Annual report

The Commission shall, not later than six months after the end of each financial year of the Commission, submit to the Minister a report of its activities, together with a copy of its audited accounts for that financial year, and the Minister shall, not later than fourteen days after the first sitting of the National Assembly next after the receipt of such report, lay it before the National Assembly.

### Second Schedule (Section 8)

#### Requirements to be met by applicants for securities exchange licence

For the purposes of section eight, the requirements are as follows:

- A. The applicant must have financial resources sufficient for the proper performance of its functions.
- B. At least five of the applicant's members shall be persons engaged in carrying on the business of dealing in securities independently of and in competition with each other.
- C. The rules and practices proposed to be followed by the applicant must be such as will ensure that business conducted by means of its facilities will be conducted in an orderly manner and so as to afford proper protection to investors. In particular, the rules of the proposed exchange shall make such provisions as the Commission considers satisfactory with regard to—
  - (a) efficient, honest, fair, competitive and informed trading in securities;
  - (b) the qualifications for membership of the proposed exchange;
  - (c) the exclusion from its membership of persons who are not of good character and business integrity, and the suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for contravention or failure to comply with the rules of the proposed exchange or the provisions of this Act;
  - (d) the conditions governing dealings in securities by members of the proposed exchange, and the class or classes of securities that may be dealt in by members;
  - (e) the carrying on of the business of the securities exchange with due regard to the interests of the public; and
  - (f) preventing a member of the proposed exchange from resigning where the proposed exchange intends to investigate any matter affecting that member or any of the member's representatives for the purpose of deciding whether to expel or to take other disciplinary action against that member.
- D. The applicant has made such provision as the Commission considers satisfactory for—
  - (a) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the proposed exchange, and for the recording of such transactions;
  - (b) the effective monitoring and enforcement of compliance with its rules and the provisions of this Act and the rules made under this Act; and
  - (c) investigating complaints in respect of business transacted by any of its members.
- E. The applicant must be able and willing to promote and maintain high standards of integrity and fair dealing by its members.