

THE SECURITIES ACT, 2016

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GOVERNMENT OF ZAMBIA

ACT

No. 41 of 2016

Date of Assent: 19th December, 2016

An Act to regulate the capital markets so as to foster fair and efficient trading; to continue the existence of the Securities and Exchange Commission and provide for its functions and powers; to license and regulate securities exchanges, clearing and settlement agencies and self-regulatory organisations; to ensure the financial integrity of transactions and avoidance of systemic risk in the capital markets; to provide for licensing and regulation of capital markets operators; to provide for licensing and regulation of credit rating agencies and protect the integrity, transparency and reliability of the credit rating process and credit ratings; to provide for registration of securities and conduct of securities business; to provide for regulation of collective investment schemes; to prohibit insider dealing in securities and other offences; to provide for mergers and take-overs of listed companies and companies whose securities are registered with the Commission; to provide for auditing and corporate responsibility of listed companies and companies whose securities have been registered with the Commission; to continue the existence of the Compensation Fund; to establish the Capital Markets Tribunal; to repeal and replace the Securities Act, 1993 ; and to provide for matters connected with or incidental to the foregoing.

[27th December, 2016

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

Short title	1. This Act may be cited as the Securities Act, 2016.
Interpretation	2. In this Act, unless the context otherwise requires—
Act No. 13 of 2008	<p>“ auditor ” has the same meaning assigned to it in the Accountants Act;</p> <p>“ authorisation ” means any consent, permission, recognition or capacity given or granted by the Commission to a licensed person—</p> <p style="padding-left: 40px;">(a) for carrying on business, a transaction or a series of transactions as a capital markets operator; or</p> <p style="padding-left: 40px;">(b) for doing any act or omitting to do any act incidental to business, a transaction or a series of transactions;</p> <p style="padding-left: 40px;">whether or not for a specific period;</p> <p>“ authorised person ” means a person authorised to exercise the powers of the Commission as specified in this Act;</p> <p>“ Commission ” means the Securities and Exchange Commission continued in existence in accordance with section <i>seven</i>;</p>
Cap. 387	<p>“ bank ” has the meaning assigned to it in the Banking and Financial Services Act;</p> <p>“ beneficial owner ” means the ultimate owner of securities held in a securities account, excluding a nominee;</p> <p>“ blocked account ” means an account that belongs to a holder of securities and which is the subject of a pledge, charge or judgment debt and in which the interest of the chargee, pledgee or judgment creditor has not been satisfied and notified to a clearing and settlement agency;</p> <p>“ board ” means a board of a capital markets operator or company with registered securities in whom the management of the entity is vested;</p> <p>“ Board ” means the Board of the Commission appointed in accordance with section <i>eight</i>;</p>

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- “ capital markets ” means the market where securities are bought and sold;
- “ capital markets operator ” means a person registered, authorised or licensed in accordance with this Act to perform specific functions in the capital markets, including a person or entity, whether incorporated in Zambia or not, who is granted or receives authorisation from the Commission, an intermediary, nominee or a person conducting a professional development or asset management programme;
- “ Chief Executive Officer ” means the person appointed as Chief Executive Officer of the Commission in accordance with section *sixteen*;
- “ clearing and settlement ” means the—
- (a) process of preparing for settlement of a securities transaction which has been executed on a securities exchange;
 - (b) provision of clearing and settlement facilities; and
 - (c) determination of payment and delivery obligations of the parties to a securities transaction, whether or not on a net basis;
- “ clearing and settlement agency ” means a company that is licensed in accordance with this Act to—
- (a) be a depository of securities for purposes of clearing and settling securities transactions;
 - (b) provide clearing and settlement facilities;
 - (c) maintain records of trades in securities for purposes of settling claims for securities;
 - (d) maintain records of transfers and pledges of securities for purposes of permitting securities to be transferred by record entry; or
 - (e) hold security certificates deposited for purposes of permitting securities to be transferred by record entry;
- excluding a dealer, bank or financial institution acting exclusively in the ordinary course of its business;
- “ clearing and settlement agency licence ” means a licence granted to a company in accordance with section *twenty-three*;

“ clearing and settlement facility ” means a system or mechanism provided by a clearing and settlement agency for the—

- (a) holding of securities in dematerialised form;
- (b) presentation and exchange of data or documents in order to calculate the obligations of the participants in the system and to allow for the settlement of obligations;
- (c) transfer of securities; and
- (d) clearing services or arrangements that mutualise or transfer among participants the credit risk arising from securities transactions;

excluding a clearing and settlement facility maintained by the Bank of Zambia, or an entity, facility, system or organisation that solely arranges or provides for—

- (a) settlement, netting or novation of obligations resulting from agreements, contracts or transactions on a bilateral basis;
- (b) settlement or netting of cash payments through an inter-bank payment system; or
- (c) settlement, netting or novation of obligations resulting from a sale of a commodity;

“ collective investment scheme ” means a scheme in whatever form, including an open-ended investment company, where members of the public are invited or permitted to invest money or other assets in a portfolio and in terms of which—

- (a) two or more investors contribute money or other assets to, and hold a participatory interest in, a portfolio of the scheme through shares, units or other form of participatory interest; and
- (b) the investors share the risk and the benefit of investment in proportion to their participatory interest in the portfolio of the scheme or as determined in the trust deed;

“ committee ” means a standing or special committee of the Commission established in accordance with section *thirteen*;

- “commodity” means virtual and non-virtual commodities, such as agricultural commodities, gold, silver, platinum, gemstones, minerals, carbon credits, emission permits, emission allowances, and includes other products commonly known as commodities and which are prescribed by rules made by the Commission;
- “company” has the meaning assigned to it in the Companies Act; Cap. 388
- “contract note” means a document specified in section *eighty-five*;
- “control” means the control of a company by a person who—
- (a) beneficially owns more than one half of the issued share capital of the company;
 - (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;
 - (c) is able to appoint or to veto the appointment of a majority of the directors of the company;
 - (d) is a holding company and the company is a subsidiary of that company as provided for in the Companies Act; Cap. 388
 - (e) in the case of a company that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust; or
 - (f) has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e);
- “Court” means the High Court for Zambia;
- “credit rating” means an opinion regarding the creditworthiness of a licensed person, securities or an issuer;
- “credit rating agency” means a person who provides credit rating services as provided in this Act;

- “ credit rating services ” means the analysis, evaluation, approval, issuing or review of data and information for the purposes of credit rating;
- “ custodian ” means a company authorised, in accordance with this Act, to have charge or custody of property, papers or other valuables;
- “ dealer ” means a person specified in section *thirty-two* and who holds a dealer’s licence;
- “ dealer’s licence ” means a licence granted to a company in accordance with section *thirty-seven* authorising a company to carry on a business as a dealer;
- “ dealing ” means—
- (a) acquiring, disposing of, subscribing for or charging or pledging of, securities;
 - (b) underwriting securities; or
 - (c) 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—
 - (i) the acquisition or disposal of, subscription for or charging or pledging of, securities; or
 - (ii) underwriting of securities;
- “ debt securities ” means debt created or acknowledged in an instrument which is issued or proposed to be issued by a company, including debentures, debenture stock, loan stock, bonds, certificates of deposit, commercial paper and notes;
- “ defalcation ” means a default, act of embezzling, failure to meet an obligation, misappropriation of trust funds or money held in any fiduciary capacity and failure to properly account for such funds;
- “ dematerialised ” means uncertificated securities which represent a share, or other interest in property, of a company or an obligation of the issuer that is not represented by an instrument but is registered on the issuer’s records;

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- “depository” means a place where money or other valuable is placed and kept for safekeeping;
- “disgorgement” means an act of giving up profits, as a result of insider dealing obtained in accordance with an order of the court issued as specified in section *one hundred and forty-one*;
- “electronic” means the use of equipment for processing, digital compressing, storing and transmitting data or employing wires, radio, optical technology or any electromagnetic method for such purpose, and includes an electronic signature attached to, incorporated in or logically associated with other data and which is intended by the user to serve as a signature, and “electronically” shall be construed accordingly;
- “electronic book entry system” means an electronic arrangement that permits the holding of securities, whether or not represented by scrip, and which permits the transfer of ownership or interest in those securities by electronic adjustments through securities accounts without physical movement or physical exchange of scrip or endorsement, and “book entry” shall be construed accordingly;
- “electronic trading facility” means a trading facility that—
- (a) operates by means of an electronic or telecommunications network; and
 - (b) maintains an automated audit trail of bids, offers and the matching of orders or the execution of securities transactions;
- “exchange” means a securities exchange which is licensed in accordance with section *twenty-two*;
- “exchange rules” means rules made by a securities exchange and approved by the Commission;
- “fit and proper” means the criteria set by the Commission in accordance with rules made under section *two hundred and twenty-one*;
- “foreign collective investment scheme” means a collective investment scheme declared to be an authorised scheme in accordance with section *one hundred and twenty-five*;

“ Fund ” means the Compensation Fund established in accordance with section *one hundred and seventy-six*;

“ insider ” means a person who—

(a) is connected with a listed company in one or more of the following capacities:

(i) director of the company or of a related company;

(ii) officer of the company or of a related company;

(iii) employee of the company or of a related company;

(iv) independent contractor of the company who is involved in a professional or business relationship with the company;

(v) shareholder of the company or any person who has or can be considered to have a relationship with the company or shareholder;

(vi) member of the audit committee of the company;

(b) has inside information where the person knows that the direct or indirect source of the information was a person specified in paragraph (a);

(c) obtains inside information from a person specified in paragraph (b); and

(d) by virtue of having been connected with the company in any other way, possesses unpublished price-sensitive information in relation to the securities of the company;

“ insider dealing ” means trading in securities by an insider for the benefit of the insider or any other person;

“ investment adviser ” means a person specified in section *thirty-three* and who holds an investment adviser’s licence;

“ investment adviser contract ” means a contract entered into between an investment adviser and a client to, provide advice on the value of securities or investing in securities, or manage an investment or trading account of a client;

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- “ investment adviser’s licence ” means a licence granted to an investment adviser in accordance with section *thirty-seven*;
- “ investment company ” means a company having, as its purpose, the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of the company;
- “ issuer ” means a person or other entity that issues, has issued or proposes to issue, securities to the public in accordance with this Act;
- “ licence ” means a licence granted in accordance with this Act and “licensed” shall be construed accordingly;
- “ licensed person ” means a person who is granted a licence, as the case may be, in accordance with this Act;
- “ listed company ” means a company whose securities have been registered with the Commission and which has been admitted to trade its securities on a securities exchange;
- “ listed securities ” means securities of a listed company;
- “ listing exchange ” means the securities exchange on which listed securities are traded;
- “ listing requirements ” means the requirements, issued by a licensed exchange and approved by the Commission, which must be met before securities are listed on the securities exchange, traded or continue to be traded on the exchange;
- “ manager ” means a person who—
- (a) holds a dealer’s or investment adviser’s licence;
 - (b) directs the business, operations and affairs of a collective investment scheme; and
 - (c) is authorised in accordance with section *one hundred and twenty-three*;
- “ marked to market ” means re-valued for purposes of the seller’s obligations at the current market value;
- “ market misconduct ” includes—
- (a) the use or disclosure of price-sensitive information contrary to this Act;

(b) engaging in improper trading practices as provided in Part XVIII;

(c) failure to comply with any provision of this Act; and

(d) a conviction of an offence under this Act;

“ material change ” means a change in the business, operations, assets or ownership of an issuer that could reasonably be expected to have a significant effect on the market price or value of the securities of the issuer, and includes a decision to implement a change made by the issuer;

“ material fact ” means a fact that significantly affects or could reasonably be expected to significantly affect the market price or value of the securities of the issuer;

“ merger ” means an amalgamation of two or more entities, where an entity, directly or indirectly, acquires or establishes control over the whole or part of the business of another entity or where two or more entities mutually agree to adopt arrangements for common ownership or control over the whole or part of a business, and includes an acquisition by an entity outside Zambia which affects Zambian entities;

“ misrepresentation ” means—

(a) an untrue statement of a material fact; or

(b) an omission to state a material fact that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made;

“ netting ” means the process of reducing multiple obligations for fewer settlement obligations or to a single settlement obligation;

“ nominee ” means a person authorised by a beneficial owner of securities to hold the securities in custody for that beneficial owner;

“ officer ” means an employee of the Commission;

“ open-ended investment company ” means a company whose articles of association authorise the acquisition of its own shares structured in such a manner that it provides for the issuing of different classes of shares to investors, with each class of shares representing a separate portfolio having a distinct investment policy;

“ participant ” means a person who receives services from a clearing and settlement agency, other than exclusively—

(a) through another person who is a participant; or

(b) as a pledgee, judgment creditor or beneficial owner; for whom a blocked account in a clearing and settlement facility has been established;

“ participating clearing bank ” means a bank which is assigned or appointed to provide banking and other facilities, to an exchange, a clearing and settlement agency and members of an exchange, to facilitate clearing and settlement functions;

“ pledge ” means a contractual interest in a security that is delivered to, retained by, or considered to be in the possession of, a creditor to secure payment of a debt or other obligation;

“ price-sensitive information ” means a material fact or material change that is not generally available or disclosed in relation to registered securities and if it were generally known, would likely materially affect the price of the securities;

“ primary market ” means the market in which securities are issued or traded for the first time, including a market where a company seeks to raise funds from investors in exchange for the company’s securities;

“ prospectus ” means a notice, circular, brochure, advertisement, publication or request issued in paper or other document, whether electronic or otherwise, inviting applications or offers from the public to subscribe or purchase, or offering to the public for subscription or purchase, a share in or debenture of a company or proposed company, and includes a statement attached to or intended to be read with the prospectus;

“ public body ” means the Government, a Ministry or department of the Government, the National Assembly, a local authority, parastatal, council, authority, the Commission or other body appointed by the Government or established by any other written law;

“ public company ” has the meaning assigned to it in the Companies Act;

Cap. 354

- “ public debt securities ” means loan stock, bonds and other instruments creating or acknowledging indebtedness by or on behalf of a public body or central bank;
- “ registered owner ” means a person who is, or is presumed to be, shown on the securities register of an issuer as the owner of securities or holds a securities certificate issued by the issuer;
- “ registered securities ” means securities that have been registered in accordance with section *seventy-five*;
- “ repealed Act ” means the Securities Act, 1993, repealed in accordance with section *two hundred and twenty-two*;
- “ reporting issuer ” means an issuer—
- (a) who has made an offer of securities, by way of a prospectus, before or after the commencement of this Act;
 - (b) who has made, by way of a merger, take-over or similar procedure, an offer for securities;
 - (c) whose securities are listed on a securities exchange in Zambia; or
 - (d) who has not less than fifty shareholders;
- “ 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, other than the work ordinarily performed by accountants, legal practitioners, clerks or cashiers, whether or not remuneration is paid, and holds a representative’s licence;
- “ representative’s licence ” means a licence granted in accordance with section *thirty-seven*;
- “ rules ” in relation to a securities exchange, a clearing and settlement agency or a self-regulatory organisation means the rules governing the members, by whatever name called and wherever contained, and includes rules contained in the articles of association of the securities exchange, clearing and settlement agency or self-regulatory organisation;
- “ Secretary ” means the person appointed Secretary to the Commission in accordance with section *seventeen*;

“ securities ” means—

- (a) shares;
- (b) debt securities;
- (c) public debt securities;
- (d) derivatives;
- (e) any rights, options or derivatives in respect of any such shares, debt securities or public debt securities;
- (f) any rights under a contract to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of any shares, debt securities or public debt securities;
 - (ii) the value or price of a group of shares, debt securities or public debt securities; or
 - (iii) an index of shares, debt securities or public debt securities;
- (g) unit trusts and interests under collective investment schemes;
- (h) commercial paper;
- (i) depository receipts;
- (j) warehouse receipts; or
- (k) any other instrument commonly known as securities or which are prescribed by rules made by the Commission;

excluding treasury bills, bills of exchange, promissory notes, certificates of deposit issued by a bank, or any other instrument prescribed by rules, made by the Commission, not to be securities for the purposes of this Act;

“ securities certificate ” means an instrument issued by, or on behalf of, an issuer that is evidence of an interest in securities;

“ securities exchange ” means an exchange established and operated by a company licensed to do so in accordance with section *twenty-two*;

“ securities market ” means a place where, or facility, whether electronic or otherwise, by which—

- (a) trading in securities is regularly undertaken;

(b) invitations are intended, or may reasonably be expected, to result, whether directly or indirectly, in securities transactions; or

(c) information is regularly provided on the prices at which, or the consideration for which, particular persons or particular classes of persons propose, or may reasonably be expected, to undertake securities transactions;

“ securities transaction ” means the process or system through or by which securities are traded;

“ self-regulatory organisation ” means an organisation that regulates the operations and standards of practice and business conduct of its members and their representatives and which is recognised by the Commission in accordance with section *twenty-nine*;

“ senior management ” means the chief executive officer, chief financial officer and executive director of a company, licensee or issuer, or any person performing similar functions;

“ settlement ” means the completion of a securities transaction, in accordance with this Act, through the final transfer of securities and monies between the buyer and seller;

“ settlement guarantee fund ” means a fund established by a clearing and settlement agency in accordance with paragraph (e) of subsection (1) of section *twenty-three*;

“ shares ” means an ownership interest or stocks issued or proposed to be issued by a company in the capital of the company;

“ share transfer agent ” means—

(a) a person who, on behalf of an issuer—

(i) creates and maintains the records of holders of securities issued by an issuer;

(ii) deals with all matters connected with the transfer, issue, cancellation and redemption of its securities;

(iii) safeguards securities and funds; and

(iv) distributes dividends; or

(b) a department or division, by whatever name called, of a listed company performing the activities referred to in paragraph (a), if at any time the total number of the holders of the company's securities exceed a prescribed amount;

“ short sale ” means a sale of a security that the seller or seller's principal does not own, or has not contracted for, at the time of sale or which requires the seller to borrow in order to make delivery;

“ subsidiary ” has the meaning assigned to it in the Companies Act; Cap. 388

“ substantial shareholder ” means a person who is the beneficial owner of, or is in a position to exert control over, not less than fifteen percent of the shares of a body corporate;

“ take-over ” means the acquisition by a person of sufficient shares in a company to give the acquirer control over that company, and includes an acquisition by a person outside Zambia which affects Zambian companies;

“ take-over bid ” means an offer or invitation to treat made for the purpose of a take-over as provided in section *one hundred and thirty-two*;

“Tribunal” means the Capital markets Tribunal established in accordance with section *one hundred and eighty-four*;

“ trust deed ” means an agreement drawn up between the trustees and the managers, or between such persons approved by the Commission, for purposes of regulating the operations of a collective investment scheme, funds, debentures, bonds or other schemes approved by the Commission;

“ trustee ” means a person who is authorised by the Commission in accordance with section *one hundred and twenty-three*;

“ underwriter ” means—

- (a) a dealer who has temporarily purchased securities from an issuer with a view to offering or selling the securities for the issuer in connection with the distribution of such securities or participates or has a direct or indirect participation in any such undertaking, excluding a person whose interest is limited to a commission from an underwriter or a dealer which is not in excess of the usual and customary distributor’s or seller’s commission; or
- (b) a person who is not a dealer but who obtains approval from the Commission to act as an underwriter in a particular transaction in compliance with rules prescribed by the Commission;

and “ underwriting ” shall be construed accordingly;

“ units ” means sub-divisions of a beneficial interest in the assets of a collective investment scheme or of any other scheme approved by the Commission;

“ unit trust ” means any scheme or arrangement in the nature of a trust where members of the public are invited or permitted, as beneficiaries under the trust, to acquire an interest or undivided share in one or more groups or blocks of specified securities and to participate proportionately in the income or profits derived under the trust;

“ unlisted securities ” means securities that are not listed on a securities exchange; and

“ venture capital funds ” means risk capital by investors to start-up firms and small and medium sized businesses with perceived high growth potential.

Application
of Act to
shares owned
by
Government

3. Notwithstanding any other provision to the contrary, this Act shall equally apply to public offerings of securities in a listed company owned by the Government.

Exemption

4. (1) A transaction in government securities traded in the primary market shall be exempt from this Act.

(2) The Commission may, by notice in the *Gazette* and a daily newspaper of general circulation in Zambia, exempt a person or any securities from the application of this Act.

5. In this Act, unless the context otherwise provides, words and expressions used and which are not defined, but are defined in the Companies Act or Banking and Financial Services Act, shall have the meaning assigned to them in those Acts.

Interpretation
in other laws
to apply
Cap. 388
Cap 387

6. Where there is an inconsistency between this Act and any other written law, the provisions of this Act shall prevail to the extent of the inconsistency.

Relationship
with other
laws

PART II

THE SECURITIES AND EXCHANGE COMMISSION

7. (1) The Securities and Exchange Commission, established in accordance with the repealed Act, is continued in existence as a body corporate, with a common seal, capable of suing and being sued and, subject to this Act, of performing all such acts as a body corporate may by law do or perform..

Securities
and Exchange
Commission

(2) The First Schedule applies with respect to the Commission and the Board.

8. (1) There is constituted the Board of the Commission which shall be responsible for the implementation of this Act and shall, subject to this Act—

Board of
Commission

- (a) exercise the functions of the Commission as provided in this Act;
- (b) oversee the administrative affairs of the Commission by putting in place effective, efficient and transparent systems of corporate governance and, in doing so, shall—
 - (i) ensure sound financial management structures and processes, including financial, risk management and internal audit controls;
 - (ii) provide strategic direction to the Commission and approve the annual work plan and activity programmes of the Commission as recommended by the Chief Executive Officer;
 - (iii) ensure that the Commission builds sufficient human resource, technical and scientific capacity within the Commission;
 - (iv) determine the structure and staffing levels of the Commission;

- (v) approve the budget estimates of the Commission and ensure that the Commission receives adequate funding for its operations;
 - (vi) ensure the prevention of irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct and expenditure not complying with the operational and financial policies of the Commission;
 - (vii) ensure that the members of the Commission, members of committees and officers act in a manner consistent with the objectives and functions of the Commission, the Commission's corporate governance charter and this Act; and
 - (viii) ensure that officers perform their functions efficiently and effectively; and
- (c) do every act or thing that is required to be done by the Board as specified in this Act.
- (2) The Minister shall appoint seven persons as non-executive members of the Board from a nomination made by each of the following organisations:
- (a) Bank of Zambia;
 - (b) Law Association of Zambia;
 - (c) Zambia Institute of Chartered Accountants;
 - (d) Zambia Chamber of Commerce and Industry;
 - (e) Ministry responsible for finance;
 - (f) Ministry responsible for justice; and
 - (g) Pensions and Insurance Authority.
- (3) The Chief Executive Officer shall be an ex-officio member of the Board.
- (4) The members of the Board shall elect, from amongst their number, the Chairperson and Vice-Chairperson of the Board.
- (5) The Minister shall, when making appointments in accordance with subsection (2), ensure that fifty percent of each gender is nominated and appointed as members, unless it is not practicable to do so.
- (6) A person shall not be appointed or hold office as a member of the Board if the person—

- (a) is an undischarged bankrupt;
- (b) is of unsound mind; or
- (c) has been convicted of an offence under this Act or of an offence involving fraud or dishonesty.

9. (1) The Commission shall create and promote conditions in the capital markets aimed at ensuring an orderly growth, integrity and development of the capital markets.

Functions of
Commission

(2) Notwithstanding the generality of subsection (1), the Commission shall—

- (a) ensure compliance with this Act and regulations or rules made in accordance with this Act;
- (b) license securities exchanges, regulate the activities of securities exchanges and the settlement of securities transactions;
- (c) license and regulate capital markets operators;
- (d) license and regulate clearing and settlement agencies and other participants in the capital markets;
- (e) license and regulate credit rating agencies and provide conditions for the issuing of credit ratings;
- (f) approve the constitutions, charters, articles, by-laws and rules governing and pertaining to securities exchanges, clearing and settlement agencies and other participants in the capital markets;
- (g) promote and encourage high standards of investor protection and integrity among members of securities exchanges, capital markets operators, clearing and settlement agencies, self-regulatory organisations and other participants in the capital markets;
- (h) support the operation of a free, orderly, fair, secure and properly informed capital markets;
- (i) regulate the manner and scope of securities transactions;
- (j) regulate margin requirements, capital adequacy requirements, disclosure and reporting requirements and clearing and settlement requirements, as may be prescribed;
- (k) take all reasonable steps to safeguard the interest of persons who invest in securities and guard against illegal and improper practices as provided in this Act;

- (l) authorise the establishment of collective investment schemes and other schemes;
- (m) regulate the activities of managers, trustees and custodians;
- (n) authorise and regulate the establishment of venture capital funds;
- (o) consider and suggest proposals for the reform of this Act and rules and regulations made in accordance with this Act;
- (p) promote and develop a system of self-regulation by securities exchanges, clearing and settlement agencies, self-regulatory organisations, other participants in the capital markets and capital markets operators, as may be prescribed;
- (q) encourage the development of securities and securities exchanges and the increased use of such exchanges;
- (r) provide, promote or otherwise support financial education, awareness and confidence with regard to financial products, institutions and services;
- (s) prescribe certification standards and accreditation for licensees;
- (t) co-operate with, provide assistance to, receive assistance from, and exchange information with, other regulatory bodies and trade organisations in Zambia and elsewhere; and
- (u) exercise and perform such other functions as may be conferred or imposed upon it by or in accordance with this Act or any other written law.

Commission
to regulate
foreign
capital
markets
operators
and
participants

10. (1) The Commission shall regulate foreign capital markets operators and participants operating in the Zambian capital markets.

(2) The Minister shall, by statutory instrument, prescribe the securities services that may be provided and the functions and duties that may be performed by foreign capital markets operators and participants in the capital markets.

- 11.** (1) The Commission may, in writing, prohibit a licensed person from doing any of the following:
- Commission to prohibit certain activities by licensed persons
- (a) entering into a securities transaction of a class or description specified in the notice or entering into the transaction otherwise than in circumstances so specified or to an extent so specified;
 - (b) soliciting business from persons of a specified class or description or from persons other than persons of such a class or description; or
 - (c) carrying on business in a specified manner.
- (2) A prohibition notified in accordance with this section may relate to a transaction entered into, in connection with, or for, the purposes of the business in respect of which the person is licensed.
- (3) Where a licensed person refuses to—
- (a) comply with an order or directive of the Commission made in accordance with this Act;
 - (b) permit an inspection to be made as provided by this Act or obstructs such an inspection or where an inspection is instituted and shows that—
 - (i) the licensed person concerned conducts its business in breach of any written law or engages in a course of conduct that is unsafe or unsound;
 - (ii) for any reason the licensed person concerned is unable, or is likely to become unable, to continue its operations in the ordinary course of its business;
 - (iii) the capital adequacy of the licensed person concerned is less than the prescribed minimum; or
 - (iv) the licensed person concerned is insolvent;
- the Commission shall take supervisory action against the licensed person.
- (4) The supervisory action the Commission may take includes:
- (a) taking possession of, or appointing a manager to run, the affairs of the licensed person;
 - (b) suspending the licence of the licensed person for a specified period not exceeding six months; or
 - (c) cancelling the licence of the licensed person.

Commission's
powers over
assets of
licensed
person

12. (1) The Commission may, as regards an asset of a licensed person, whether in Zambia or elsewhere, by notice in writing—

- (a) prohibit the licensed person from disposing of the asset or dealing with the asset in a manner specified in the notice;
- (b) require the licensed person to deal with the asset in a manner specified in the notice; or
- (c) prohibit the licensed person from pledging securities and other assets as collateral for borrowings.

(2) The Commission may, by notice in writing, require a licensed person 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 is able to meet that person's liabilities in respect of the business to which that person's licence relates.

(3) The Commission may, in writing, for the purposes of any requirement in this section, direct that assets of a specified class or description shall or shall not be taken into account.

Committees

13. (1) The Board may, for the purpose of performing its functions, constitute standing and special committees and delegate to the committees such of its functions as it considers necessary.

(2) The Board may appoint as members of a committee, constituted in accordance with subsection (1), persons who are or are not members of the Board, who shall hold office for such period as the Board may determine.

(3) A meeting of a committee, constituted in accordance with subsection (1), shall be held at such times and places as the committee may determine or as the Board shall direct.

(4) The Board may refer a matter to a committee, constituted in accordance with subsection (1), for consideration of, or inquiry or management by, the committee.

(5) The Board may appoint a member of a committee to be the chairperson of the committee.

(6) Where the Board does not appoint a chairperson, in accordance with subsection (5), the committee shall elect one of its members to be the chairperson of the committee.

(7) Subject to this Act and any specific or general direction of the Board, a committee, constituted in accordance with subsection (1), may regulate its own procedure.

14. (1) The Board may delegate to a committee or the Chief Executive Officer such of the functions of the Commission as the Board considers necessary or expedient for the better performance of the functions of the Commission.

Delegation
of functions

(2) The Board may impose such conditions and issue such guidelines relating to the performance of a function delegated in accordance with subsection (1).

(3) A delegation made in accordance with this section shall not prevent the Board from performing the function so delegated.

(4) A person who is directly affected by a decision of a committee or the Chief Executive Officer made in the performance of a delegated function may, by notice in writing to the Board, within thirty days after the person has been notified of the decision, request a review of the decision by the Board.

(5) The Board may, after due consideration of the decision that was the subject of review, as provided in subsection (4), confirm the decision or make such other decision as the Board considers appropriate to the case, and shall inform the party requesting the review of the decision, giving the reasons for the Board's decision.

(6) Notwithstanding that a person has requested a review of a decision, as provided in subsection (4), the decision under review by the Board shall take effect immediately, but the Board may grant a stay until the review has been disposed of.

15. (1) The Chief Executive Officer shall give notice of, and publish, prescribed regulatory decisions in such form and manner as the Board may specify.

Notification
of regulatory
decisions

(2) A notice of a prescribed regulatory decision shall set out the regulatory decision and the reasons for the decision.

16. (1) The Board shall appoint a Chief Executive Officer of the Commission, who shall hold office on such terms and conditions as the Board shall determine.

Chief
Executive
Officer

(2) The Chief Executive Officer shall be responsible, under the general direction of the Board, for—

- (a) the management and administration of the affairs of the Commission;
- (b) the implementation of the decisions of the Board; and
- (c) any other function assigned or delegated to the Chief Executive Officer by the Board or in accordance with this Act.

(3) Except as otherwise provided in this Act, where the Board has delegated to the Chief Executive Officer the power to grant, vary, cancel or renew a licence, recognition or authorisation, the Chief Executive Officer shall do so in accordance with—

- (a) conditions specified in this Act;
- (b) regulations issued in accordance with this Act;
- (c) guidelines established by the Board; and
- (d) any direction, in writing, not inconsistent with this Act, given by the Board.

(4) The Chief Executive Officer shall attend meetings of the Board as an *ex-officio* member and may address those meetings, but shall not vote on any matter.

(5) The Chief Executive Officer shall furnish the Minister, on approval of the Board, such information relating to the activities and undertakings of the Commission, as the Minister may require.

Secretary

17. (1) The Board shall appoint a Secretary to the Board on such terms and conditions as the Board shall determine.

(2) The Secretary shall, under the general direction of the Chief Executive Officer, be responsible for the corporate secretarial affairs of the Commission.

(3) The Secretary shall perform such other functions as directed by the Board, under the general supervision of the Chief Executive Officer.

Other staff
of
Commission

18. The Board may appoint, on such terms and conditions as the Board shall determine, such other professional, administrative and technical officers, inspectors, and other employees as may be necessary for the performance of the functions of the Commission.

Code of
ethics

19. (1) The Minister may, by statutory instrument, prescribe a code of ethics for the members of the Board.

(2) The Board shall prescribe a code of ethics for the Chief Executive Officer, the Secretary and other staff of the Commission.

PART III

LICENSING OF SECURITIES EXCHANGES AND CLEARING AND
SETTLEMENT AGENCIES

20. (1) A person shall not—

- (a) establish or maintain a securities market that is not a securities exchange in accordance with the requirements of this Act;
- (b) establish, maintain or hold out as providing or maintaining a securities exchange unless that person is licensed in accordance with this Act; or
- (c) assist in establishing or maintaining, or hold out as providing or maintaining, or carrying on a business as, a clearing and settlement agency that is not established and operated by a company licensed in accordance with this Act.

Establishing and maintaining securities market, securities exchange and clearing and settlement agency

(2) A person that contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

21. (1) A company may apply to the Commission, in the prescribed form and manner, for a licence to establish and operate a—

- (a) securities exchange; or
- (b) clearing and settlement agency.

Application for securities exchange licence and clearing and settlement agency licence

(2) An application made in accordance with subsection (1) shall be accompanied with a prescribed fee.

(3) The Commission may require an applicant for a licence, as provided in this section, to furnish it with such further information as the Commission considers necessary for purposes of considering and granting the licence applied for in accordance with sections *twenty-two* and *twenty-three*, as the case may be.

(4) If the Commission fails to respond within one hundred and eighty days after receiving a complete application for a licence, in accordance with this Part, the application shall be deemed to have been accepted and the licence applied for duly granted.

Consideration
and grant of
securities
exchange
licence

22. (1) The Commission may, on receipt of an application for a securities exchange licence, as provided in section *twenty-one*, grant a securities exchange licence to a 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 capital markets;
- (b) the applicant has sufficient financial resources, as the Commission may prescribe by rules, for the proper performance of its functions as a securities exchange;
- (c) the applicant has, for the proposed securities exchange, at least five members who are engaged in carrying on the business of dealing in securities independently of, and in competition with, each other;
- (d) the rules and practices of the proposed securities exchange are such as ensure that business conducted by means of its facilities shall be conducted in an orderly manner, so as to afford proper protection to investors;
- (e) the rules of the proposed securities exchange make such provisions as the Commission considers satisfactory with regard to—
 - (i) efficient, honest, fair, competitive and informed trading in securities;
 - (ii) the qualifications for membership of the securities exchange;
 - (iii) the exclusion, from membership, of persons who are not of good character and business integrity;
 - (iv) the suspension or discipline of members of the securities exchange for conduct inconsistent with just and equitable principles in the transaction of securities or for contravention or failure to comply with the rules of the exchange or the provisions of this Act;
 - (v) the conditions governing securities transactions by members of the exchange and the class or classes of securities that may be dealt in by the members;

- (vi) the carrying on of the business of the exchange taking into account the interests of the public; and
 - (vii) the prevention of a member of the 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;
- (f) the applicant has satisfied the requirements set out in the Second Schedule; and
- (g) the applicant has made such provision as the Commission considers satisfactory for-
- (i) the clearing and settlement of dealings in securities to ensure the efficient, prompt and accurate settlement of securities transactions effected on the proposed exchange, and for the recording of such transactions;
 - (ii) the effective monitoring and enforcement of compliance with its rules, this Act and regulations or rules made in accordance with this Act;
 - (iii) investigating complaints in respect of business transacted by any of its members; and
 - (iv) promotion and maintenance of high standards of integrity and fair dealings by its members.
- (2) The Commission shall not grant a licence to a securities exchange, unless the Commission has approved the appointment of Directors and senior management of a securities exchange.

23. (1) The Commission may, on receipt of an application for a clearing and settlement agency licence, as provided in section *twenty-one*, grant a clearing and settlement agency licence to a company, if the Commission is satisfied that—

Consideration and grant of clearing and settlement agency licence

- (a) the establishment of the clearing and settlement agency is necessary in the public interest, having regard to the nature of the capital markets;

- (b) the rules of the proposed clearing and settlement agency contain satisfactory provisions designed to—
 - (i) develop and operate a prompt and accurate clearing and settlement system;
 - (ii) safeguard money and securities in its custody or under its control or for which it is responsible;
 - (iii) supervise and regulate its participants; and
 - (iv) provide that dealers, financial institutions and other clearing and settlement agencies may become participants in the clearing and settlement agency;
- (c) the application is supported by a licensed securities exchange, to which the company is to provide clearing and settlement facilities;
- (d) the clearing and settlement agency shall ensure that, as far as is reasonably practical, there are fair, transparent and efficient clearing arrangements for securities transactions;
- (e) the clearing and settlement agency shall put in place measures, including the establishment of a settlement guarantee fund, to contain or manage any risks associated with its business and operations in a prudent manner;
- (f) the clearing and settlement agency shall enforce compliance by its participants with its rules; and
- (g) the clearing and settlement agency has sufficient financial, human and system resources to—
 - (i) establish and operate a fair, transparent and efficient clearing and settlement facility;
 - (ii) meet contingencies or disasters, including events such as technical complications occurring with automated systems; and
 - (iii) provide adequate security arrangements.

(2) The Commission shall not grant a licence to a clearing and settlement agency unless the Commission has approved the appointment of the Directors and senior management of the clearing and settlement agency.

24. (1) If the Commission is satisfied that an application for the grant of a licence, made in accordance with section *twenty-one*, fails to comply with, or is contrary to, the requirements of section *twenty-two* or *twenty-three*, as the case may be, or the other requirements of this Act or any regulations made in accordance with this Act, the Commission may, after giving the applicant an opportunity to be heard, refuse to grant the licence to the applicant.

Refusal to grant licence

(2) Where the Commission refuses to grant a licence to an applicant, the Commission shall inform the applicant of the reasons for the refusal to grant the licence.

25. (1) A licence granted, in accordance with section *twenty-two* or *twenty-three*, shall be subject to the terms and conditions attached to it and shall be valid until revoked, cancelled or surrendered.

Validity of licence

(2) A licence granted, in accordance with section *twenty-two* or *twenty-three*, shall be subject to the payment of an annual prescribed fee and to compliance, by the licensed person, with the conditions of the licence and any provision of this Act or regulations or rules made in accordance with this Act.

(3) A licence granted, in accordance with section *twenty-two* or *twenty-three*, shall not be transferred, assigned or encumbered in any manner.

(4) The Commission may impose such additional conditions on a licence as the Commission considers appropriate for the enforcement of the requirements of this Act and regulations or rules made in accordance with this Act.

26. The conditions of a licence granted in accordance with section *twenty-two* or *twenty-three* may be varied by the Commission after due investigation—

Variation of licence

(a) on the operations of the securities exchange or clearing and settlement agency, as the case may be;

(b) in the interest of trade in the capital markets; or

(c) in the interest of investor protection.

27. (1) The Commission may, after due investigation, and after giving a licensed person the opportunity to be heard, cancel or suspend a licence granted in accordance with section *twenty-two* or *twenty-three*—

Cancellation or suspension of licence

- (a) in the interest of trade in the capital markets; or
- (b) due to contravention by the licensed person of this Act or regulations or rules made in accordance with this Act.

(2) Where the Commission cancels or suspends a licence, in accordance with this section, the Commission shall issue a notification of such cancellation or suspension in the *Gazette* and a daily newspaper of general circulation in Zambia.

(3) A cancellation or suspension of a licence, in accordance with this section, shall not affect the validity of a securities transaction made before the date of notification in the *Gazette* and daily newspaper of general circulation in Zambia.

Appeals
relating to
licences

28. (1) A person aggrieved by a decision of the Commission—

- (a) to refuse to grant or suspend a licence in accordance with this Part;
- (b) relating to any condition imposed on, or varying the conditions of, a licence; or
- (c) cancelling a licence;

may, within thirty days after the date of the decision, appeal to the Tribunal.

(2) The decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, except that the Tribunal shall, on sufficient ground shown, stay the Commission's decision.

PART IV

SELF-REGULATORY ORGANISATIONS

Recognition
of self-
regulatory
organisations

29. (1) The Commission may, on the application of a self-regulatory organisation, recognise the organisation for purposes of this Act, if the Commission is satisfied that it is in the public interest to do so.

(2) Subject to subsection (1), recognition of a self-regulatory organisation, by the Commission, shall be in writing and subject to such terms and conditions as the Commission may determine.

(3) A self-regulatory organisation shall regulate the operations and standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, policies, procedures practices and interpretations.

(4) A self-regulatory organisation shall appoint an auditor, approved by the Commission, to audit its financial affairs.

(5) The Commission may, if it is satisfied that it is in the public interest, approve a by-law, rule, policy, procedure, practice or interpretation of a self-regulatory organisation.

(6) A self-regulatory organisation may apply for the voluntary surrender of its recognition and the Commission may accept the surrender, subject to such terms and conditions as it may impose, if the Commission is satisfied that the surrender of the recognition is not prejudicial to the public interest.

30. (1) The Commission may, on such terms and conditions as it may impose, assign to a self-regulatory organisation any of the functions or powers of the Commission relating to the regulation of members of the self-regulatory organisation.

Delegation
of powers to
self-
regulatory
organisations

(2) The Commission may revoke, in whole or in part, a delegation of functions or powers made in accordance with subsection (1).

(3) A person directly affected by the administration of a direction, decision, order or ruling made in accordance with a by-law, rule, policy, procedure, practice or interpretation of a self-regulatory organisation, may apply to the Tribunal for the determination of the direction, decision, order or ruling.

31. Without prejudice to the generality of the Commission's power to make rules in accordance with this Act, the Commission may, by statutory instrument, make the following rules:

Rules for
self-
regulatory
organisations

- (a) the qualifications for membership of a self-regulatory organisation;
- (b) application for, grant and refusal to grant membership to a self-regulatory organisation;
- (c) disciplinary procedures for members that contravene this Act or regulations or rules made in accordance with this Act or the rules of the self-regulatory organisation;
- (d) the basis on which fees are charged to members, the level of such fees and the allocation of fees as between members; and
- (e) providing for the protection of investors and the maintenance of the public interest.

PART V

LICENSING AND REGULATION OF CAPITAL MARKETS OPERATORS

Licensing of
dealers

32. (1) A company which carries on a business, whether as principal or agent, by—

- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into, or offering to enter into, any agreement for, or with a view to, buying, selling, exchanging, underwriting or subscribing for, securities;
- (b) soliciting or accepting any order for securities; or
- (c) otherwise transacting in securities, whether electronically or otherwise;

shall apply for a dealer's licence in accordance with section *thirty-six*.

(2) A person who is not licensed as a dealer, but deals or underwrites securities, commits an offence and shall be liable, on conviction, to a fine not exceeding six hundred thousand penalty units or to imprisonment for a term not exceeding six years, or to both.

Licensing of
investment
advisers

33. (1) A person who—

- (a) engages or holds out as engaging in the provision of advice on investments in securities, including advice on subscribing for, or purchasing, selling, exchanging or holding of, securities to any person, a collective investment scheme or manager of a collective investment scheme; or
- (b) issues analysis or reports for the purposes of facilitating the recipients of the analysis or reports to make decisions on whether specific securities may be bought, sold, exchanged or subscribed for;

shall apply for an investment adviser's licence in accordance with section *thirty-six*.

(2) Subsection (1) shall not apply to—

- (a) a dealer who gives advice or issues analysis or reports as part of its business;
- (b) a dealer's representative who gives advice or issues analysis or reports as part of employment with a dealer;

- (c) a financial institution or insurance company;
- (d) an advocate or accountant whose advice with respect to investments is incidental to the practice of the profession; and
- (e) a person who gives advice or issues analysis or reports—
 - (i) in an electronic or print media or any publication, which is made generally available to the public, and which does not have as its principal or only object, the provision of advice or the issue of analysis or reports, concerning securities; or
 - (ii) in electronic print media for reception by the public, whether on subscription or otherwise:

provided the person does not receive commission or other consideration for giving or publishing the advice.

(3) Subject to sub-section (2), 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 out as carrying on a business as an investment adviser;

commits an offence and shall be liable, on conviction, to a fine not exceeding six hundred thousand penalty units or to imprisonment for a term not exceeding six years, or to both.

34. (1) Any person who intends to do business as a share transfer agent and who—

- (a) has the necessary infrastructure, such as adequate office space, equipment and man-power for the prompt and accurate clearance and settlement of securities transactions;
- (b) has capacity to ensure the safeguarding of securities and monies;
- (c) submits, with the application proposed rules with respect to record keeping, reporting, prompt and accurate creation of securities holders records and the safeguarding of securities and monies;
- (d) fulfills the prescribed capital adequacy requirement;

Licensing of
share transfer
agents and
representatives

(e) submits, with the application, proposed rules which provide for disciplinary proceedings against its employees, directors, partners or principal officers; and

(f) is a fit and proper person in accordance with prescribed criteria;

shall apply for a share transfer agent's licence in accordance with section *thirty-six*.

(2) A person shall apply, in accordance with section *thirty-six*, for a representative's licence.

(3) A representative's licence may be conditioned on the applicant being employed or acting only as the representative of a dealer or an investment adviser.

(4) A person who is not the holder of a representative's licence and who is employed or acts as a representative, commits 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 two years, or to both.

Regulation of
other capital
markets
operators

35. (1) The Commission shall register, authorise, recognise or licence any other capital markets operator as may be prescribed.

(2) The Commission shall, by statutory instrument, prescribe the processes and procedures for applying for, and the terms and conditions for, the registration, authorisation, recognition or licensing of other capital markets operators, and the application of this Act, to such capital markets operators.

Applications
for licences

36. (1) An application for a licence, as specified in sections *thirty-two*, *thirty-three* and *thirty-four* shall be made to the Commission, in the prescribed manner and form, and shall be accompanied by a prescribed fee.

(2) The Commission may require an applicant for a licence to provide it with such further information as the Commission considers necessary for the consideration and grant of the licence, in accordance with the requirements for the licence applied for, as provided in this Part.

(3) A person who, for the purpose of obtaining a licence in accordance with this Part, whether directly or indirectly, makes any representation, in writing, orally or otherwise, which is false or misleading in a material particular, commits an offence and shall be liable, on conviction, to a fine not exceeding six hundred thousand penalty units or to imprisonment for a term not exceeding six years, or to both.

37. (1) Subject to section *thirty-eight*, the Commission shall, within ninety days of receipt of a complete application for the licence applied for, in accordance with section *thirty-six*, grant the licence if it is satisfied that the applicant shall perform the duties of a licensed person efficiently, honestly and fairly in accordance with the requirements of the licence, as stipulated in this Part.

Consideration
and grant of
licences

(2) If the Commission fails to respond to an application for a licence, within the period prescribed in subsection (1), the application shall be deemed to have been granted and the licence applied for duly issued.

38. (1) Notwithstanding section *thirty-seven*, the Commission shall not grant a dealer's licence to an individual.

Conditions
for refusal to
grant
licences

(2) The Commission shall not grant a representative's licence to a company.

(3) Notwithstanding section *thirty-seven*, the Commission may, after due consideration or investigation, refuse to grant an investment adviser's licence to a person on the grounds that the applicant—

- (a) has not provided the Commission with such information relating to the applicant or any person employed by or associated with the applicant, or to any circumstances likely to affect the method of conducting business, as may be prescribed in accordance with this Act;
- (b) has become incapable, mentally or physically, of performing the activities to which the licence relates;
- (c) is an undischarged bankrupt;
- (d) 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 under this Act or regulations or rules, made in accordance with this Act, relating to licensed persons;
- (e) is not a fit and proper person to be licensed as an investment adviser;
- (f) shall not perform the duties of a licensed person efficiently, honestly and fairly;

-
- (g) is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with this Act; or
- (h) is under twenty-one years of age, as the case may be.
- (4) The Commission may, after due consideration or investigation, refuse to grant a dealer's licence or investment adviser's licence to a company on the grounds 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 the director's duties with respect to the activities to which the applicant's licence relates;
- (c) any director of the applicant is an undischarged bankrupt;
- (d) 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 under this Act or regulations or rules, made in accordance with this Act, relating to licensed persons;
- (e) the applicant is not a fit and proper person to be licensed in accordance with this Part;
- (f) there are circumstances which are likely to lead to improper conduct of business by, or discredit the method of conducting business of, the applicant;
- (g) the applicant shall not perform the duties of a licensed person efficiently, honestly and fairly; or
- (h) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with this Act.
- (5) Where the Commission refuses to grant a licence in accordance with this section, it shall notify the applicant, in writing, of the reasons for the refusal.

39. (1) A licence, granted in accordance with section *thirty-seven*, shall remain valid unless revoked or cancelled by the Commission or surrendered by the licensee.

Validity,
terms and
conditions of
licences

(2) A licence shall be granted subject to the payment of an annual prescribed fee and compliance, by the licensed person, with the conditions of the licence and any provision of this Act or regulations or rules made in accordance with this Act.

(3) A licence granted in accordance with section *thirty-seven* shall not be transferred, assigned or encumbered in any manner.

(4) The Commission may impose such additional conditions on a licence as the Commission considers appropriate for the enforcement of the requirements of this Act or regulations or rules made in accordance with this Act.

40. The conditions of a licence, granted in accordance with section *thirty-seven*, may be varied by the Commission after due investigations of the activities of the licensed person.

Variation of
conditions of
licences

41. (1) Where a licensed person, being—

Revocation
of licences

- (a) an individual, dies; or
- (b) a company, is dissolved;

the licence shall cease to be valid and shall be deemed to have been revoked by the Commission from the date of the death of the individual or the dissolution of the company, as the case may be.

(2) The Commission may revoke the licence of licensed person, who is an individual, after due investigation and after giving the licensed person the opportunity to be heard, where appropriate, if the person—

- (a) becomes mentally or physically incapable of performing the activities to which the licence relates;
- (b) becomes bankrupt, or makes a composition or scheme of arrangement with creditors;
- (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 regulations or rules made in accordance with this Act;
- (e) is no longer a fit and proper person, as prescribed, to hold a licence in accordance with this Part;

-
- (f) is unable to meet such minimum financial, solvency, capital adequacy or liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with 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 is revoked or suspended.
- (3) The Commission may revoke the licence of a licensed person, who is a company, after due investigation and after giving the company the opportunity to be heard, where appropriate, if—
- (a) the company goes into liquidation or is ordered to be wound up;
 - (b) a receiver or manager for 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) the licence of a director, secretary or other person concerned in the management of the company, who is required to be licensed in accordance with this Act, has been revoked; or
 - (g) the company is unable to meet such minimum financial, solvency, capital adequacy and liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with this Act.
- (4) Subject to subsection (5), the Commission may revoke a licence at the request of a licensed person.
- (5) The revocation of a licence, in accordance with this section shall not operate so as to—
- (a) avoid or affect any agreement, transaction or arrangement relating to a securities transactions entered into by the person whose licence has been revoked, whether the agreement, transaction, or arrangement was entered into before or after the revocation of the licence; or
 - (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement.

(6) A person whose licence is revoked, in accordance with this section may not apply to be licensed in accordance with this Act, in any capacity, until the expiration of at least twelve months from the date of revocation of the licence.

42. A person licensed in accordance with this Act, shall, subject to such conditions as the Commission may prescribe, pay an annual fee.

Annual
fee

43. (1) A person aggrieved by a decision of the Commission –

Appeals to
Tribunal

- (a) to refuse to grant a licence in accordance with this Part;
- (b) relating to any condition imposed on, or varying the conditions of, a licence; or
- (c) revoking a licence;

may, within thirty days after the date of the decision, appeal to the Tribunal.

(2) The decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, except that the Tribunal shall, on sufficient grounds shown, stay the Commission's decision.

44. (1) The Commission shall establish and maintain, in such form as may be appropriate, a register of licensed persons.

Register of
licences

(2) The Commission shall record in the register, established in accordance with subsection (1)—

- (a) the name of the licensed person;
- (b) in the case of a licensed person which is a company, the name of each director and secretary of the company and the names and shares of each shareholder;
- (c) the date on which the licence was granted;
- (d) the address of the principal place at which the business is carried on;
- (e) the addresses of the other places, if any, at which the licensed person carries on business;
- (f) if the business is carried on under a name or style other than the name of the licensed person, that name or style;
- (g) particulars of revocation of a licence;

(h) in the case of a representative's licence, the name and address of the business of the dealer or investment adviser in relation to whom the representative is licensed; and

(i) such other matters as may be prescribed.

(3) Any person may, on payment of the prescribed fee, inspect and make copies of, or take extracts from, the register, established in accordance with subsection (1).

Records kept
by licensed
person

45. (1) A licensed person shall maintain a record, in the prescribed form, of the securities in which that person has an interest, within seven days of the acquisition of the interest in the securities.

(2) Where there is a change in the interests in securities of a licensed person, that person shall enter in the record, maintained in accordance with subsection (1), within seven days after the date of the change, full particulars of the change, including the date and circumstances relating to the change.

(3) A licensed person shall inform the Commission, in the prescribed manner and form the place at which that person keeps the record maintained in accordance with subsection (1).

(4) A licensed person, who fails to maintain a record as provided in this section, commits 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 twelve months, or to both.

Information
to be
supplied by
licensed
person

46. (1) A licensed person shall notify the Commission, in writing, of any change that may occur relating to—

(a) the address, in Zambia, at which the licensed person carries on business; or

(b) any information submitted in the application for a licence as prescribed by regulations made in accordance with this Act.

(2) A licensed person who ceases to carry on the business authorised by the licence shall, at least six months before that person ceases to carry on business or within such shorter period as may be approved by the Commission, notify the Commission.

(3) Where a person becomes or ceases to be a director of a company licensed in accordance with this part, the company shall, within one month of the director becoming or ceasing to be a director, notify the Commission in writing of the change.

(4) A licensed person shall notify the Commission of any misconduct that has resulted in legal or disciplinary proceedings being taken.

(5) A licensed person shall furnish the Commission with any additional information as may be prescribed.

(6) A person who fails to give any notice or supply any information, as provided for in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the contravention continues.

47. (1) A company licensed under this Act shall file with the Commission, within ninety days of the date of the company's financial year, an annual report which shall include—

Annual reports

(a) information on the corporate governance policy of the company and any other information required by the Commission;

(b) audited financial statements or other returns as may be prescribed by the Commission; and

(c) audited consolidated financial statements, where the company is a holding company or a subsidiary.

(2) The financial statements to be included in an annual report, as specified in subsection (1), shall be audited in accordance with auditing and other standards as provided in the Accountants Act.

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of 2003

(3) An investment adviser who is an individual shall file annual reports with the Commission, within a time and in a manner and form prescribed by rules issued by the Commission by statutory instrument.

PART VI
CREDIT RATING AGENCIES

Establishing
and
operating a
credit rating
agency

48. (1) A person who intends to establish and operate a credit rating agency shall apply to the Commission for a licence, in the prescribed manner and form, and pay the prescribed fee.

(2) The Commission shall, in considering an application for a licence to establish and operate a credit rating agency, take into account the following:

- (a) the ownership structure, organisational structure and the corporate governance policy of the proposed credit rating agency;
- (b) the resources and expertise to be used in the performance of credit rating services;
- (c) the procedures and methodologies to be used in determining credit ratings;
- (d) any conflict of interest that may arise in relation to the issuance of credit ratings by the applicant; and
- (e) whether the applicant satisfies the requirements of the rules referred to in section *sixty-one*.

Consideration
and grant of
credit rating
agency
licence

49. (1) The Commission shall, within ninety days of receipt of a complete application for a credit rating agency licence, made in accordance with section *forty-eight*, grant the licence if the Commission is satisfied that the applicant has complied with the requirements of this Act.

(2) If the Commission fails to respond to an application for a licence within the period specified in subsection (1), the application shall be deemed to have been granted and the licence applied for duly issued.

Refusal to
grant licence

50. (1) If the Commission is satisfied that an application for the grant of a licence, made in accordance with section *forty-eight*, fails to comply with, or is contrary to, the requirements of this Act or regulations or rules made in accordance with this Act, the Commission may, after giving the applicant an opportunity to be heard, refuse to grant the licence to the applicant.

(2) Where the Commission refuses to grant the licence, as provided in subsection (1), the Commission shall, within ninety days of receipt of the application, inform the applicant of the refusal to grant the licence and the reasons for the refusal.

- 51.** (1) A licence granted in accordance with section *forty-nine*, shall be subject to the terms and conditions attached to it, and shall be valid until revoked, cancelled or surrendered. Validity of licence and non-transferability, etc of licence
- (2) A licence granted, in accordance with section *forty-nine*, shall be subject to the payment of an annual prescribed fee and to compliance, by the licensed person, with the conditions of the licence and any provision of this Act or regulations or rules made in accordance with this Act.
- (3) A licence, granted in accordance with section *forty-nine*, shall not be transferred, assigned or encumbered in any manner.
- 52.** The conditions of a licence, granted in accordance with section *forty-nine*, may be varied by the Commission after due investigation— Variation of licence
- (a) on the operations of the credit rating agency; or
- (b) in the interest of the capital markets.
- 53.** The Commission may, in consultation with relevant regulatory authorities who use or refer to credit ratings in its regulatory functions, after giving a licensed person the opportunity to be heard, cancel a licence, granted in accordance with section *forty-nine*— Cancellation of licence
- (a) in the interest of the capital markets;
- (b) due to contravention by the licensed person of this Act or regulations or rules made in accordance with this Act;
- (c) if the licensed person contravenes the conditions specified in the licence; or
- (d) if the licensed person fails to comply with any directive issued by the Commission.
- 54.** (1) A person aggrieved by a decision of the Commission— Appeals relating to credit rating agency licence
- (a) refusing to grant a credit rating agency licence in accordance with this Part;
- (b) relating to any condition imposed on, or the variation of the conditions of, a credit rating agency licence; or
- (c) cancelling a credit rating agency licence;
- may, within thirty days after receiving the decision, appeal to the Tribunal.

(2) A decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, except that the Tribunal shall, on sufficient grounds shown, stay the Commission's decision.

Duties of
credit rating
agency

55. (1) A credit rating agency licensed in accordance with this Act shall—

- (a) have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control arrangements for information processing systems;
- (b) protect confidential information made available to it by issuers, including prohibiting its employees from using such information to enter into transactions; or
- (c) ensure that it has the necessary knowledge and experience to issue credit ratings and perform its credit rating services.

(2) Each officer of a credit rating agency who fails to comply with this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Code of
conduct

56. A credit rating agency shall adopt and adhere to a code of conduct approved by the Commission.

Methodologies,
models and
key rate
assumptions

57. (1) A credit rating agency shall—

- (a) adopt, implement and enforce adequate measures to ensure that credit ratings are based on a thorough analysis of all the information that is available to it and relevant to its analysis according to its rating methodologies;
- (b) use rating methodologies that are systematic, continuous and subject to validation on historical experience, including back-testing;
- (c) regularly review its methodologies, models and key rating assumptions; and
- (d) establish internal arrangements to monitor the impact of changes in macro-economic or capital markets conditions on credit rating.

(2) A person or an officer of the Commission shall not hinder, interfere, obstruct or improperly attempt to influence a credit rating, the content of a credit rating, or any methodology, model or key assumption used by a credit rating agency to derive a credit rating.

(3) A person who contravenes subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

58. A credit rating agency shall, on the request of an interested person, make available, free of charge, for inspection—

Disclosures

(a) the practices, procedures, processes, methodologies, models and key rating assumptions it uses in its credit ratings and credit rating services;

(b) its code of conduct;

(c) the general nature of its compensation arrangements; and

(d) its policy on publishing credit ratings and other related communication.

59. A credit rating agency shall cause to be kept, for a period of ten years, records and audit trails of its credit rating services.

Records

60. (1) The Commission may approve a credit rating agency that is authorised, licensed or registered by a foreign regulatory authority to perform credit rating services, subject to compliance with this Act and rules and regulations made in accordance with this Act and such terms and conditions as the Commission may determine.

Approval of external credit rating agencies

(2) A credit rating agency shall apply to the Commission, in the prescribed form and manner for the approval of a credit rating agency that is authorised, licensed or registered by a foreign regulatory authority and whose credit ratings it intends to endorse.

(3) The Commission shall require a credit rating agency that is authorised, licensed or registered by a foreign regulatory authority to provide the Commission with such information as the Commission considers necessary to monitor, on an ongoing basis, compliance with this Act and rules and regulations made in accordance with this Act.

Rules for
credit rating
agency

61. (1) Without prejudice to the generality of the Commission's power to make rules in accordance with this Act, the Commission may, by statutory instrument, make rules relating to all credit rating agencies, including credit rating agencies authorised, licensed or registered by a foreign regulatory authority, with respect to the following:

- (a) organisational requirements for credit rating agencies;
- (b) quality and integrity of credit ratings;
- (c) presentation of credit ratings;
- (d) disclosures;
- (e) fraudulent and misleading advertising, canvassing and marketing;
- (f) the responsibilities of credit rating agencies to investors and the public; and
- (g) any matter that is required to be prescribed in terms of this Act.

(2) Without prejudice to subsection (1), the Commission may make different rules for locally established credit rating agencies and credit rating agencies authorised, licensed or registered by a foreign regulatory authority or for different aspects of the provisions specified in subsection (1).

PART VII

REGULATION OF SECURITIES EXCHANGES

Power of
Commission
to give
direction

62. (1) Where the Commission is satisfied that an exchange has ceased to meet the conditions, referred to in section *twenty-two*, or that there is adequate evidence requiring the protection of investors, or for the proper regulation of trade on the securities exchange, the Commission may give directions with respect to—

- (a) trading on or through the facilities of the exchange generally or of a particular security listed on the exchange;
- (b) the manner in which the exchange carries on any aspect of its business or administration; or
- (c) any other matter that the Commission considers necessary for the effective administration of, and compliance with, this Act and regulations and rules made in accordance with this Act.

(2) A director or officer of a securities exchange who fails to comply with a direction given, in accordance with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

63. (1) A securities exchange that is dissatisfied by a direction of the Commission, given in accordance with section *sixty-two*, may, within thirty days after the direction is given, appeal to the Tribunal.

Appeal
against
direction of
Commission

(2) The Tribunal may confirm, quash or vary the direction of the Commission.

(3) The Tribunal's decision shall be final and binding, except in cases in which an appeal to the Court is allowed.

(4) The Commission's direction shall not be stayed by reason only of the lodgement of an appeal, pending the decision of the Tribunal, and it shall be the duty of the Commission to give effect to the Tribunal's decision.

64. (1) The Minister may, after consultation with the Commission, on the grounds specified in subsection (2), direct that a securities exchange suspends the transaction of dealings in securities for such period as may be specified in the direction.

Power of
Minister to
suspend
business of
securities

(2) A direction, provided for in subsection (1), 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 due to the following:

- (a) a natural disaster has occurred in Zambia; or
- (b) an economic or financial crisis or other like circumstance, whether in Zambia or elsewhere, has occurred.

(3) A securities exchange which allows a dealer to deal in securities while a direction is in force, as provided in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

(4) A securities exchange which allows a participant in the capital markets to participate in the securities market while a direction is in force, as provided in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

(5) The Commission may take such steps as it considers necessary to ensure compliance with a direction, given in accordance with this section, and may cause the premises of the securities exchange affected by the direction to be locked and secured.

Management
of securities
exchange

65. (1) The affairs of a securities exchange shall be managed by a board whose members shall, subject to approval of the Commission, be elected or appointed in accordance with its articles of association.

(2) The board of a securities exchange shall ensure that the exchange is operated in compliance with this Act, rules and regulations made in accordance with this Act and its exchange rules and shall—

- (a) be responsible for the general oversight of the affairs of the exchange;
- (b) oversee the administrative affairs of the exchange in order to ensure sound financial management structures and processes; and
- (c) ensure compliance with continuing obligations provided for in the Second Schedule and with regulations and rules made in accordance with this Act, and with its exchange rules.

(3) The members of the board of a securities exchange shall individually and collectively be responsible for any non-compliance with the provisions of this Act and rules and regulations made in accordance with this Act and its rules.

(4) A person directly affected by the administration of a direction, decision, order or ruling made, in accordance with a by-law, rule, policy, procedure, practice or interpretation of a securities exchange rule, may apply to the Tribunal for a determination of the matter.

Governance
fitness
standards

66. A securities exchange shall establish and enforce appropriate fitness standards for members, directors, members of a disciplinary committee and any other person with direct access to the securities exchange.

Exchange
rules

67. (1) 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 securities exchange.

(2) A rule of a securities exchange shall have no effect unless it has been approved, in writing, by the Commission.

68. 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 transactions in securities and any other specified information as the Commission may require for the proper enforcement of this Act.

Securities
exchanges to
assist
Commission

69. (1) A securities exchange shall notify the Commission, in writing, of any change that may occur relating to—

Notification
of changes
and legal
proceedings
for
misconduct

- (a) the address, in Zambia, at which the securities exchange carries on business; or
- (b) any information submitted in the application for a securities exchange licence, as prescribed by this Act or regulations made in accordance with this Act.

(2) A securities exchange that intends to cease to carry on the business authorised by the licence shall immediately notify the Commission of such intention and shall not cease to conduct business until the securities exchange develops and implements measures approved by the Commission for the protection of investors.

(3) Where a person becomes or ceases to be a director of a securities exchange the company shall, within one month of the Director becoming or ceasing to become a director, notify the Commission in writing of the change.

(4) A securities exchange shall notify the Commission of any misconduct that has resulted in legal or disciplinary proceedings being taken.

(5) A securities exchange shall furnish the Commission with any additional information, relating to the matters provided for in this section, as may be prescribed.

(6) A securities exchange which fails to give any notice or supply any information, as provided for in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the contravention continues.

70. (1) A securities exchange shall file with the Commission, within ninety days of the date of its financial year, an annual report which shall include—

Annual
reports

- (a) information on the corporate governance policy of the securities exchange and any other information required by the Commission;
- (b) audited financial statements or other returns as may be prescribed by the Commission; and
- (c) audited consolidated financial statements, where the securities exchange is a holding company or a subsidiary.

(2) The financial statements, to be included in an annual report, as specified in subsection (1), shall be audited, in accordance with auditing and other standards as provided in the Accountants Act.

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Amendment
to exchange
rules

71. (1) A securities exchange that wishes to make an amendment to its rules, whether by way of rescission, alteration or addition, shall submit a draft of the proposed amendment to the Commission for approval.

(2) The Commission may, within forty-five days after receipt of a draft of a proposed amendment, submitted in accordance with subsection (1), by notice to the securities exchange, allow the amendment to be made to the rules or disallow the amendment, whereupon the amendment shall not be made to the rules.

(3) If the Commission fails to issue a notice, within the period prescribed in subsection (2), the proposed amendment shall be deemed to have been approved, except that any period used to clarify issues relating to the rules shall not be counted.

Use of
certain titles

72. 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 the titles specified in paragraph (a) as to be likely to deceive;

commits 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 one year, or to both.

Delegation
of powers to
securities
exchange

73. (1) The Commission may, on such terms and conditions as it may impose, assign to a securities exchange, in writing, any of its functions and powers, as the Commission considers appropriate for the effective operation of the exchange.

(2) The Commission may revoke, in whole or in part, an assignment of functions and powers made in accordance with subsection (1).

74. Without prejudice to the generality of the Commission's power to make rules, in accordance with this Act, the Commission may, by statutory instrument, make the following rules:

Rules
relating to
securities
exchanges

- (a) the conditions subject to which, and the circumstances in which, any exchange may suspend securities transactions;
- (b) the qualifications for membership of an exchange and the minimum number of persons that are required to be admitted to membership of a securities exchange;
- (c) the basis on which fees are charged to members, the level of such fees and the allocation of fees as between members;
- (d) the type of business that may be carried on and services that may be provided by or at a securities exchange;
- (e) prescribing the requirements to be met before securities are listed on a securities exchange or traded on a securities exchange;
- (f) prescribing the procedure for dealing with applications for the listing of securities;
- (g) providing for the cancellation or suspension of the listing of any specified securities, if the Commission's requirements for listing or trading on the securities exchange are not complied with;
- (h) the cancellation or suspension of the listing of any specified securities, if the Commission considers that such action is necessary to maintain an orderly securities market ;
and
- (i) prescribing the free float to be maintained by a listed entity on each securities exchange.

PART VIII

REGISTRATION OF SECURITIES, REGISTERED SECURITIES AND TRADING ON SECURITIES EXCHANGE

75. (1) An issuer of securities or its representative shall file with the Commission, a statement, in the prescribed form, for the registration of the securities it proposes to issue to the public in Zambia, which shall be accompanied by the prescribed fee, and such registration shall be valid for such period as may be prescribed.

Registration
of securities

(2) Subject to subsection (3), the Commission may approve a statement for the registration of securities, filed in accordance with subsection (1), and register the securities.

(3) If the securities—

(a) of a public company are publicly traded or, directly or indirectly, promoted or advertised or offered for sale to the public in contravention of this section; and

(b) have not been registered, in accordance with this section, and are not guaranteed by the Government or exempted in accordance with this Act, from the requirements of this section;

the issuer commits an offence and shall be liable, on conviction, to a penalty not exceeding two hundred thousand penalty units.

(4) For the purposes of this section, securities of a public company shall be treated as being publicly traded if—

(a) the company has more than fifty shareholders; or

(b) the Commission, by notice in writing to the issuer, has declared that, after ninety days, those securities shall be treated as being publicly traded, and ninety days has elapsed since that notice was given.

(5) Unless a company proceeds to list the registered securities on a securities exchange, a registration made, in accordance with subsection (1), shall remain valid for such period as the Commission may, by statutory instrument, prescribe.

Prospectus

76. A prospectus prepared for the purposes of any public offer to be made in relation to securities that are registrable, in accordance with section *seventy-five* shall contain or be accompanied by—

(a) such information as investors and their professional advisers would reasonably require and expect to find in the prospectus 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) such other information, particulars, and requirements as may be prescribed by regulations made in accordance with this Act.

77. (1) A dealer who transacts in securities at or through a securities market which is not operated by a securities exchange commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Dealings in securities market not operated by securities exchange prohibited

(2) This section shall not apply to any dealings of a kind or description prescribed by regulations or rules made in accordance with this Act.

78. A person who transacts in any registered securities, other than on the securities exchange on which the securities are listed, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Trading in listed registered securities

79. (1) A person who intends to transact in a Government security or a registered security that is not listed on any securities exchange shall report that transaction to a securities exchange.

Trading in unlisted registered securities

(2) A person who transacts in a Government security or a registered security that is not listed on any securities exchange and who fails to report that transaction to a securities exchange, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units, or imprisonment for a term not exceeding five years, or to both.

(3) The Commission may, by notice to every dealer, declare that any securities specified in the notice, being securities which, in the opinion of the Commission, are being actively traded shall be dealt with as if the securities were listed securities.

80. (1) A person who deals in any registered securities shall only trade through a dealer.

Registered securities to be traded through licensed dealers

(2) A person who contravenes subsection (1), commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) This section shall not apply to any dealings of a kind or description prescribed by regulations made in accordance with this Act.

81. (1) An issuer shall, once registered securities are listed, 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 or in other media approved by the Commission and shall submit reports to the Commission and to the securities exchange on which those securities are listed.

Continuing obligations for registered securities

(2) The Commission may require an issuer of securities registered in accordance with section *seventy-five* to submit such information as the Commission may reasonably require for the proper performance of its functions under this Act.

(3) Regulations, made in accordance with this Act, may prescribe further obligations to be met by the issuers of registered securities.

(4) An issuer that neglects or fails to comply with this section or regulations, made in accordance with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

Dematerialisation and maintenance of securities

82. (1) On the commencement of this Act—

(a) any new issue of securities to be traded on a securities exchange shall be issued in a dematerialised form;

(b) the electronic record of a clearing and settlement agency shall constitute the record of an issuer in respect of securities held in a clearing and settlement agency for that issuer and, in case of any discrepancy between the issuer's record and the record of the clearing and settlement agency, the latter shall prevail; and

(c) a clearing and settlement agency register shall constitute the register of all securities in the securities accounts of its account holders.

(2) The Commission may, by statutory instrument, make rules for the elimination of scrips in order to give effect to the dematerialisation of securities.

(3) Every securities account, in a clearing and settlement agency, shall be in the name of the beneficiary owner of the securities that have been deposited in the securities account or in the name of a nominee and in such form as may be prescribed by the rules of the clearing and settlement agency.

(4) All securities deposited in a securities account shall be regarded as negotiable instruments.

Fungibility

83. Securities of the same class, issued by the same issuer, are interchangeable and shall be regarded as a collection of one class of securities.

84. (1) The Commission may prescribe codes of ethics and corporate governance for the capital markets.

Codes of ethics and governance for capital markets

(2) Where any contract for the sale of securities is entered into in contravention of the code of ethics or the code of corporate governance, prescribed in accordance with subsection (1), the contravention shall be actionable at the suit of any person who suffers loss as a result of the contravention.

85. (1) A dealer shall, in respect of every contract for the purchase, sale or transfer of an interest in securities in the secondary market, entered into, 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—

Contract notes

- (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.
- (2) A contract note shall include—
- (a) the name or style under which the dealer carries on business and the address of the principal place at which it carries on the 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 which are the subject of the contract;
 - (f) except in the case of a securities exchange, the price per unit of the securities;
 - (g) the amount of consideration payable under the contract or, in the case of a transfer of an interest in securities, sufficient particulars of the securities transferred;

- (h) the rate or amount if any, payable in respect of the contract;
- (i) the date of settlement; and
- (j) such other information as may be prescribed by regulations made in accordance with this Act, to ensure a complete audit trail for the execution of customer instructions and settlement of securities transactions.

(3) A dealer who completes a contract for the purchase, sale or transfer of an interest in securities in the secondary market without having complied with this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

(4) A disclaimer or exclusionary clause in a contract note for purposes of ousting the provisions of this section shall have no legal effect.

Terms of settlement of bargains in securities, etc.

86. 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.

Short-selling

87. (1) A person who short-sells securities at or through a securities exchange, commits an offence, unless at the time of the sale—

- (a) the person or the person's principal has a presently exercisable and unconditional right to vest the securities in the purchaser of the securities;
- (b) the person or that person's principal has deposited, in the manner prescribed, one hundred percent collateral against the short-sale, marked to market at the close of every trading day until the transaction is complete;
- (c) the person or that person's principal owns another security convertible into the securities sold or an option or right to acquire the securities sold and, within ten days after the sale, exercises the conversion privilege, option or right and delivers the security, so acquired, to the purchaser or transfers the convertible security, option or right to the purchaser of the security; or
- (d) the person has entered into a fully secured and unconditional borrowing agreement or arrangement pursuant to which that person shall be able to deliver the securities for settlement in accordance with the rules of the relevant securities exchange.

(2) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) The Commission may, by statutory instrument, make rules regulating short-sales.

88. (1) A licensed person, who is dealer or investment adviser, shall keep or cause to be kept such accounting and other records as shall sufficiently explain the securities 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 and shall cause such records to be kept in a manner and form prescribed as to enable the accounts to be conveniently and properly audited.

Accounts to
be kept by
licensed
persons

(2) Without limiting the generality of subsection (1), each licensed person, specified in subsection (1), shall maintain such books and records for a period of ten years after the settlement or conclusion of a securities transaction and shall file such reports in the prescribed manner and form.

(3) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

89. (1) The Commission may issue rules prescribing financial resources to be maintained by a person licensed in accordance with this Act.

Financial
resources
rules

(2) Rules, made in accordance with subsection (1), may—

- (a) impose requirements which are absolute or which may be varied by reference to factors specified in the rules;
- (b) impose requirements which take account of any business carried on in respect to the businesses which the dealer or investment adviser is licensed for; and
- (c) make provision as to the assets, liabilities and other matters to be taken into account in determining a dealer's or investment adviser's financial resources and the extent to which, and the manner in which, they are to be taken into account.

90. (1) An investment adviser shall not enter into an investment advisory contract or extend, renew or perform an investment advisory contract entered into, extended or renewed after the commencement of this Act, if the contract—

Investment
advisory
contracts

-
- (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 stating 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 stating that the investment adviser—
- (i) if the investment adviser practices in partnership with one or more other investment advisers, shall notify the client of any change in the partnership within a reasonable time after the change; or
 - (ii) if a company, shall notify the client of any change in the directors of the company, within a reasonable time after the change.
- (2) Notwithstanding anything to the contrary, paragraph (a) of subsection (1) shall not apply to an investment advisory contract—
- (a) 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) with respect to participation in a collective investment scheme, in accordance with Part X, 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—
- (i) the investment record of an appropriate index of securities; or
 - (ii) such other measure of investment performance, as the Commission may approve or on the application of either party to an investment advisory contract or intended contract.
- (3) An investment advisory contract entered into in contravention of this section shall, notwithstanding any provision of the contract, be voidable at the option of the client.

(4) An investment adviser who knowingly enters into an investment advisory contract in contravention of this section, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

5

PART IX

REGULATION OF CLEARING AND SETTLEMENT AGENCIES

91. (1) Where the Commission is satisfied that it is necessary in the public interest and proper operations of the affairs of a clearing and settlement agency, the Commission may give directions with respect to—

Power of Commission to give directions to clearing and settlement agency

- (a) the manner of clearing and settlement through the facilities of the clearing and settlement agency generally or of particular listed securities listed or traded on listed or trade on the securities exchange;
- (b) the manner in which the clearing and settlement agency carries on any aspect of its business or administration;
- (c) the persons or class of persons who may be participants in the clearing and settlement agency; or
- (d) any other matter that the Commission considers necessary for the effective administration of, and compliance with, this Act or regulations or rules made in accordance with this Act.

(2) A director or officer of any clearing and settlement agency who neglects or fails to comply with a direction, given to it, in accordance with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

92. (1) A clearing and settlement agency that is dissatisfied with a direction given by the Commission, in accordance with section *ninety-one*, may, within thirty days after the direction is given, appeal to the Tribunal.

Appeal against direction of Commission

(2) The Tribunal's decision shall be final and binding on all parties, including the Commission, except where an appeal to the Court is allowed.

(3) A direction given by the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, but the Tribunal shall, on sufficient grounds shown, stay the Commission's decision.

Power of Commission to suspend business of clearing and settlement agency

93. (1) The Commission may, on the grounds specified in subsection (2), direct that a clearing and settlement agency suspend transactions in securities for such period as may be specified in the direction.

(2) A direction, provided for under subsection (1), may only be given if the Commission is satisfied that the orderly transaction of business in the clearing and settlement agency is being or is likely to be prevented due to the following reasons:

- (a) a natural disaster has occurred in Zambia;
- (b) an economic or financial crisis or other like circumstance, whether in Zambia or elsewhere has occurred; or
- (c) the clearing and settlement agency has ceased to meet the conditions set out in section *twenty-three*.

(3) A clearing and settlement agency which allows a participant in the capital markets to participate in the clearing and settlement agency while a direction is in force, as provided in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units.

(4) The Commission may take such steps as it considers necessary to ensure compliance with a direction, given in accordance with this section, and may cause the premises of the clearing and settlement agency affected by the direction to be locked and secured.

Notification of changes and legal proceedings for misconduct

94. (1) A clearing and settlement agency shall notify the Commission, in writing, of any change that may occur relating to—

- (a) the address, in Zambia, at which the clearing and settlement agency carries on business; or
- (b) any information submitted in the application for a licence, as prescribed by regulations made in accordance with this Act.

(2) A clearing and settlement agency which ceases to carry on the business of a clearing and settlement agency shall, at least six months before the agency ceases to carry on business, notify the Commission.

(3) Any person who becomes or ceases to be a director of a clearing and settlement agency shall, at least three months before the date of cessation of business, notify the Commission, in writing, of the change of address of the person.

(4) A clearing and settlement agency shall notify the Commission of any misconduct that has resulted in legal or disciplinary proceedings being taken.

(5) A clearing and settlement agency shall furnish the Commission with any additional information, related to matters provided for in this section, as may be prescribed.

(6) A person who fails to give any notice or supply any information, as provided for in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the contravention continues.

95. (1) A clearing and settlement agency shall file with the Commission, within ninety days of the date of its financial year, an annual report which shall include—

Annual reports

- (a) information on the corporate governance policy of the agency and any other information required by the Commission;
- (b) audited financial statements or other returns as may be prescribed by the Commission; and
- (c) audited consolidated financial statements, where the agency is a holding company or subsidiary.

(2) The financial statements to be included in an annual report, as specified in subsection (1), shall be audited in accordance with auditing and other standards as provided in the Accountants Act.

Act No. 13 of 2003

96. The Commission shall facilitate the coordination of clearing and settlement agencies with other regulated clearing and settlement facilities for the effective settlement of securities transactions.

Coordination of clearing and settlement agencies

97. (1) A person may hold one or more securities accounts in a clearing and settlement agency and the securities accounts of each person shall be segregated from each other and from the securities accounts of the other account holders, and the interest, dividends and other benefits accruing to each securities account shall be similarly segregated.

Asset segregation in securities account

(2) A nominee shall hold securities for only one beneficial owner or for joint beneficial owners in respect of each securities account, unless otherwise agreed between a nominee and the clearing and settlement agency.

(3) A nominee shall, in such manner and within such period as may be specified in the rules of a clearing and settlement agency, furnish to the clearing and settlement agency the name and other particulars of the beneficial owner and the balances of securities, in a named securities account, held in the name of the nominee.

(4) A nominee who contravenes subsection (2) or (3) shall be liable to such penalty as may be specified by the clearing and settlement agency under its rules.

Exercising
control over
participant's
account

98. (1) A clearing and settlement agency shall establish a procedure where it or an interested person may exercise control over a participant's account in the clearing and settlement agency if—

- (a) the interested person is, in relation to securities in the participant's account, a beneficial owner, pledgee or judgment creditor of the beneficial owner; or
- (b) the securities in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to this Part, a clearing and settlement agency shall not transfer, deliver or otherwise deal with securities in a blocked account without instructions, in writing, from the person who exercises control over it.

Holders of
record

99. (1) A clearing and settlement agency shall, on such dates as may be requested, in writing, produce and submit to the issuer or the issuer's duly appointed representative a list of holders of record.

(2) Subject to section *ninety-six*, a securities exchange shall not own or operate a clearing and settlement agency, except that a securities exchange may have an interest in a clearing and settlement agency but its shareholding shall not exceed the prescribed percentage of voting rights.

(3) Subject to subsection (2), this section shall not be construed as prohibiting the trading by a securities exchange, or the clearing and settlement agency of the securities exchange, of securities held in the clearing and settlement agency relating to such issuer and in the respective securities accounts held by the account holders for the purpose of issuing notices, announcements, reports, payment of interest or dividends or any other purpose.

(4) A clearing and settlement agency may, in accordance with its rules, issue to an account holder, upon request by the account holder, in the prescribed form, a statement of the account holder's securities account, specifying the amount and description of securities in the account.

(5) The Tribunal may, on application by an interested party, order the rectification of a list of holders of record or any other electronic record kept by a clearing and settlement agency if it is satisfied that—

- (a) an account holder did not consent to a transfer of deposited securities from the account holder's securities account;
- (b) a person who purports to be an account holder should not have been registered in the clearing and settlement agency's register as having title to the deposited securities, unless that person acquired the securities for consideration, in good faith and without notice of other interests in the securities and obtained registration of the transfer in the records of the issuer or the clearing and settlement agency; or
- (c) upon consideration of the application there is other cause to justify rectification.

100. (1) On the issue of securities, an issuer may deliver a securities certificate, in the prescribed form, directly to a clearing and settlement agency certifying the clearing and settlement agency as the registered owner of the securities if—

Use of
clearing and
settlement
agency as
registered
owner of
securities

- (a) the issuer has written authorisation signed by or on behalf of the beneficial owner; and
- (b) the delivery of the securities certificate is evidenced by a written confirmation signed by the clearing and settlement agency and sent at once by the issuer to the beneficial owner or the beneficial owner's agent.

(2) An issuer may, on the issue of securities, instead of delivering a securities certificate, issue the securities to a clearing and settlement agency, as registered owner, by means of a record entry if—

- (a) the issuer of the securities has written authorisation signed by or on behalf of the beneficial owner of the securities;

- (b) the issue of the securities is further evidenced by a written confirmation executed by the clearing and settlement agency and sent at once by the issuer to the beneficial owner of the securities or the beneficial owner's agent; and
- (c) the issue of the securities is recorded at once in the securities register of the issuer and the records of the clearing and settlement agency.

(3) The requirement to obtain a written authorisation of the beneficial owner, as specified in subsections (1) and (2), shall be satisfied if the beneficial owner acknowledges in an agreement or a document, entered into with a licensed person or clearing and licensed settlement agency, that securities owned by the beneficial owner may be kept by means of a record entry with a clearing and settlement agency, whether entered into before or after the issue of the securities, as specified in this section.

(4) A written confirmation, referred to in subsections (2) and (3), shall be, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities so described.

(5) A clearing and settlement agency shall not, in respect of securities that are not fully paid for, make an entry in its records.

Transfer of securities into clearing and settlement agency

101. (1) A clearing and settlement agency shall, immediately after receipt of a securities certificate from a participant, deliver the securities certificate to the issuer and request the transfer of the securities evidenced by the securities certificate to the clearing and settlement agency.

(2) Where a clearing and settlement agency presents a securities certificate to an issuer and requests a transfer to it of the securities evidenced by the securities certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing and settlement agency a securities certificate representing the securities and showing the clearing and settlement agency as the registered owner.

(3) Section *ninety-nine* shall apply, with the necessary modifications, to a transfer of securities provided for in this section.

102. (1) On receipt of instructions, in writing, from a participant or, if the participant's account is blocked, from the person who exercises control over it, a clearing and settlement agency shall in accordance with the instructions, effect a transfer of securities or any interest therein from the participant to another participant by making an entry in its records.

Transfer by
record entry

(2) If —

(a) securities shown in the records of a clearing and settlement agency are—

(i) evidenced by a securities certificate identifying the clearing and settlement agency as the registered owner; and

(ii) the securities certificate is in the custody of the clearing and settlement agency; or

(b) the clearing and settlement agency is the registered owner of the securities by means of a record entry;

on receipt of instructions, in writing, from a participant or, if the participant's account is blocked, from the person who exercises control over it, a clearing and settlement agency shall in accordance with the instructions, effect a transfer of securities or any interest in the securities from one beneficial owner to another beneficial owner by making an appropriate entry in its records in addition to any other method permitted by law, and such transfer shall have the effect of transferring all rights, title and interest in the securities to the beneficial owner.

103. (1) A clearing and settlement agency shall, on receipt of instructions, in writing, from a participant or if the participant's account is blocked, from the person who exercises control over it, effect a transfer, in accordance with the instructions, by way of pledge of securities from the participant to a pledgee, by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged.

Effecting
transfer of
pledge by
record entry

(2) A clearing and settlement agency shall, subject to subsection (1), on receipt of instructions, in writing, from a pledgee in whose favour an account is blocked, stating that the pledgee is entitled to realise the securities in the blocked account, and in accordance with the instructions, transfer the securities unless—

(a) it knows that the pledgee is not entitled to realise the securities; or

(b) its procedures specify otherwise.

(3) A clearing and settlement agency shall not be liable for any loss resulting from compliance with the instructions of a pledgee, given in accordance with subsection (2), unless the clearing and settlement agency knows, before the transfer, that the pledgee is not entitled to the securities.

Blocking
account by
record entry

104. A clearing and settlement agency may, on receipt of instructions, in writing, from a participant and a beneficial owner of securities, make an entry in its records, in accordance with instructions, to block an account in the name of the participant in favour of the beneficial owner or a person who acts on the beneficial owner's behalf.

Refusal to
open
account

105. (1) A clearing and settlement agency may refuse to open an account in respect of securities that are subject to a—

(a) lien in favour of its issuer; or

(b) restriction or constraint on its transfer, whether statutory or otherwise.

(2) A clearing and settlement agency may, with respect to securities, referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the clearing and settlement agency or an interested person.

Blocking
account by
Court order

106. (1) The Court may, on the application of a creditor who has a judgment against a beneficial owner of securities, held by a clearing and settlement agency, order the clearing and settlement agency to make an entry in its records to block an account in the name of the beneficial owner or the beneficial owner's agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) A clearing and settlement agency shall transfer securities, on receipt of an order of, or instructions in writing from, the Court or an officer of the Court stating that a judgment creditor in whose favour an account is blocked, in terms of subsection (1), is entitled to realize securities in the blocked account.

(3) The Tribunal may, on the application of a person claiming to be entitled to securities held for a beneficial owner in a clearing and settlement agency, order the clearing and settlement agency to make an entry in its records to block the account in the name of the beneficial owner or the owner's agent in favour of the claimant for the amount or number of securities mentioned in the order.

(4) A clearing and settlement agency shall not be liable for any loss resulting from compliance with an order or instructions issued and received in accordance with this section.

107. (1) Transactions concluded on a securities exchange shall be executed and completed when a clearing and settlement agency transfers the securities transacted, within the period approved by the Commission, from the securities account of the transferor to that of the transferee in accordance with this Part and—

Settlement of
securities

(a) where the consideration is monetary, by the Bank of Zambia simultaneously transferring funds through debiting and crediting the appropriate current accounts of participating clearing banks in same-day value funds and in accordance with an agreement between the banks and the clearing and settlement agency; or

(b) where the consideration is not monetary, by the simultaneous transfer of the consideration in accordance with the rules of the clearing and settlement agency.

(2) For the purpose of effecting a settlement, the transfer of securities by a clearing and settlement agency and the transfer of funds by the Bank of Zambia, or the transfer of the non-monetary consideration, in terms of subsection (1), shall be final and irrevocable.

(3) Every participant of a clearing and settlement agency, other than a participating clearing bank, shall maintain a bank account with a participating clearing bank for the purpose of settling its payment obligations in accordance with the rules of the clearing and settlement agency.

(4) The transfer of ownership of, or an interest in, securities or a pledge of securities shall become effective and binding only upon the settlement of the securities transaction concerned.

Limitation on
rights of
participants

108. A capital markets participant who pledges, transfers or otherwise deals with securities held by a clearing and settlement agency, except through the facilities of the clearing and settlement agency, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Withdrawal
of securities

109. (1) A clearing and settlement agency shall, within a reasonable time, on the receipt of a demand, in writing, from a participant for whom securities are held, other than in securities held in a blocked account, for withdrawal of the securities, subject to any proceedings specified in this Part, obtain and deliver to the participant a securities certificate in the clearing and settlement agency's name or a name designated by the clearing and settlement agency evidencing the securities.

(2) The issuer of securities shall, on receipt of instructions, in writing, from a clearing and settlement agency that is the registered owner of securities, immediately deliver the securities certificate to the clearing and settlement agency in accordance with its instructions.

Closure of
securities
register

110. (1) Where a clearing and settlement agency is the registered owner of a class of securities of an issuer that proposes to close its securities register or fix a record date with respect of the class for the purpose of determining the security holders entitled to—

- (a) receive notice of, or to vote at, a meeting of security holders;
- (b) receive payment of a dividend or interest;
- (c) to participate in a liquidation distribution;

the issuer shall give the clearing and settlement agency such notice of its intention to close its securities register or fix a record date.

(2) A notice, referred to in subsection (1), shall request, from the clearing and settlement agency, a list of the names of the participants and beneficial owners for whom the clearing and settlement agency and the participants hold securities of the class, mentioned in that subsection, made up as of the date on which it proposes to close its register or fix a record date.

(3) A clearing and settlement agency shall, on receipt of a demand, in writing, from an issuer for a list of the names of participants and beneficial owners for whom it and the participants hold securities of a class issued by the issuer, provide the issuer, within ten days of the demand, with a list setting out the names and addresses of, and the number or amount of securities of the class held for, each participant and beneficial owner made up as of the date specified in the demand.

(4) A clearing and settlement agency shall, on receipt of a demand from an issuer, in terms of subsection (3), send a notice of the demand to each participant.

(5) A participant that receives a notice, sent in terms of subsection (4), shall, within five days of receipt of a notice—

(a) furnish to the clearing and settlement agency a list containing the name and address of the beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and

(b) instruct the clearing and settlement agency to furnish the list to the issuer.

(6) Where a participant who receives a notice, sent in accordance with subsection (4), does not provide a clearing and settlement agency or the issuer with a list of the beneficial owners for whom it holds securities, the participant shall, at its own expense, obtain from the issuer and send to each beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend, interest or any document that the issuer wishes to send to its security holders.

(7) A clearing and settlement agency that receives lists of participants and beneficial owners, in accordance with subsection (5), shall, before it furnishes the lists to the issuer, consolidate the lists into one list in a form that does not disclose any connection between a beneficial owner and a participant, and the clearing and settlement agency may charge the participants a reasonable fee for the consolidation.

(8) A clearing and settlement agency shall treat as confidential any information it receives in accordance with subsection (5).

(9) A clearing and settlement agency shall, after receipt of a demand, in writing, from an issuer that has received a list of participants and beneficial owners, in terms of subsection (3), provide the issuer, within three days of the demand, with a current list, made up as of a date subsequent to the demand, showing any change in respect of the securities held for a participant since the date the list was made up.

(10) An issuer is entitled to obtain, free of charge, from a clearing and settlement agency, in any one calendar year, four lists of participants and beneficial owners, in terms of subsection (3), with respect to each class of securities held by the clearing and settlement agency and the issuer shall pay the clearing and settlement agency a reasonable amount for—

(a) any additional costs attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date; or

(b) any additional list.

(11) An issuer is entitled to presume that a person named in a list, obtained in accordance with this section, is the beneficial owner of the securities of the issuer referred to in the list.

Access to
clearing and
settlement
agency
records

111. A beneficial owner of a security of an issuer and the beneficial owner's agent may, after submitting a request, in writing, to a clearing and settlement agency, during usual business hours, examine a list delivered to an issuer that relates to any securities of the issuer held by it and may make extracts from the list, without charge and any other person may do so upon payment of a reasonable fee.

Incorrect
entry by
clearing and
settlement
agency

112. (1) Subject to subsection (3), an incorrect entry made in the records of a clearing and settlement agency, in connection with a transfer or pledge of securities has the same effect as a correct entry.

(2) Subject to subsection (3), a clearing and settlement agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records.

(3) Where a clearing and settlement agency, makes an incorrect entry in its records, transferring a particular class of security to a participant's account, the clearing and settlement agency may, to the extent that there are securities of that class in the account, correct the entry, in whole or in part, without the participant's consent.

113. (1) Where a clearing and settlement agency is unable to effect a pledge or transfer of securities on its records because of an extraordinary event, the clearing and settlement agency shall not be liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

No liability
in
extraordinary
circumstances

(2) For the purposes of this section, “extraordinary event” means a gain or loss which is infrequent and unusual in nature due to a non-recurring event that is out of the clearing and settlement agency’s control.

114. (1) Subject to section *eighty-six*, a participant, who is insolvent, shall cease to be a member of the clearing and settlement agency and, except in so far as the rules of the clearing and settlement agency provide for the purpose of winding up the affairs of the participant and the protection of the interests of the participant’s clients and of the securities market, such participant shall not, while insolvent, conduct any business relating to the clearing and settlement agency.

Insolvency of
participant

(2) A person who, having ceased to be a participant, in accordance with subsection (1), conducts any business relating to a clearing and settlement agency commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand penalty units.

115. (1) Where a clearing and settlement agency becomes insolvent, the liquidator, receiver and manager of the clearing and settlement agency shall not have any right or privilege of access to, or control or management of, any of the securities deposited in that clearing and settlement agency.

Insolvency
of clearing
and
settlement
agency

(2) The securities deposited in a clearing and settlement agency, which becomes insolvent, shall be managed by a person appointed by the Commission and in such manner as the Commission may direct for the purpose of winding up the affairs of the clearing and settlement agency and protecting the assets of the account holders, interests of the securities market and the public.

(3) A clearing and settlement agency shall not, while insolvent, carry on or purport to carry on the business of a clearing and settlement agency, except in so far as the rules made by the Commission provide for the winding up of the affairs of a clearing and settlement agency and the protection of the interests of its participants and the securities market.

(4) The chief executive officer or any officer or employee of a clearing and settlement agency who, while the clearing and settlement agency is insolvent and contrary to subsection (3), carries on or permits to be carried on the business of the clearing and settlement agency, commits an offence and is liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

Utilisation of collateral upon insolvency

116. Notwithstanding any law relating to insolvency, any asset of a participant, who is insolvent, pledged to a clearing and settlement agency as security for the settlement obligations of the participant or its client, in accordance with this Act, prior to the insolvency of the participant, may upon and after the commencement of the insolvency be utilised by the clearing and settlement agency to the extent required for the discharge of those obligations.

Winding up order

117. Where a participant is insolvent, the winding up order of the affairs of the participant shall not affect any settlement that becomes final and irrevocable, in accordance with this Act, prior to service of such order on the clearing and settlement agency.

Netting agreements and procedures

118. Where a participant is wound up or placed under receivership, the provisions of a written agreement to which the participant is a party and netting rules or procedures applicable to such participant, shall be binding upon the liquidator, receiver or manager in respect of any settlement obligation which—

- (a) has been incurred prior to the commencement of insolvency proceedings or prior to the issue of a winding up or receivership order;
- (b) is to be discharged on or after the date of the winding up or receivership order; or
- (c) was overdue on the date of the winding up or receivership order.

Rectification of record by Tribunal

119. (1) Where an entry is alleged to have been incorrectly made or retained in, or omitted or deleted from, the records of a clearing and settlement agency, other than in the circumstance specified in this Part, the clearing and settlement agency or an interested person may apply to the Tribunal for an order that the records be rectified.

(2) The Tribunal may, on an application made in accordance with subsection (1), make an order—

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;
- (c) determining the right of a party to the proceedings to have that party's name entered or retained in, or deleted or omitted from, the records of a clearing and settlement agency;
- (d) directing that the records of a clearing and settlement agency be rectified;
- (e) directing that a clearing and settlement agency make an entry in its records to block an account; or
- (f) compensating any person.

120. (1) An order of the Tribunal, made in accordance with section *one hundred and nineteen*, shall be final and binding on all parties, including the Commission, except where an appeal to the Court is allowed.

Order of
Tribunal

(2) An order made by the Tribunal shall not be stayed by reason only of an appeal having been lodged with the Court, but the Court shall, on sufficient grounds shown, stay the order made by the Tribunal.

PART X

COLLECTIVE INVESTMENT SCHEMES AND VENTURE CAPITAL FUNDS

121. (1) The Commission may authorise the establishment of collective investment schemes.

Authorisation
and regulation
of schemes

(2) An application for authorisation to establish a collective investment scheme shall be made, to the Commission, by a dealer or investment advisor, in the prescribed manner and form, and shall be accompanied by a prescribed fee.

(3) Subject to subsection (1), the Commission may authorise the application, within ninety days of receipt of a complete application for authorisation applied for, if after considering the application it is satisfied that—

- (a) the manager of a collective investment scheme has the relevant competencies in relation to a scheme, and the manager, directors, external auditors, trustee or custodian as the case may be, are suitable to act as manager, trustee or custodian in respect of the scheme;

- (b) the manager, trustee or custodian of the scheme is a body corporate registered by the Commission;
- (c) the collective investment scheme is such that the effective control of its affairs is vested in a manager and exercised independently of the trustee or custodian of the scheme; and
- (d) trust deed or custodial arrangement is in compliance with the Act and the regulations and rules made in accordance with the Act.

(4) An authorisation, granted in accordance with subsection (1), may be subject to such terms and conditions as the Commission considers necessary or desirable for the protection of investors.

(5) A person who enters or offers to enter into any agreement for, or with a view to, acquiring, disposing of, or subscribing for, shares, units or other securities representing an interest in a collective investment scheme that is not authorised in accordance with this Part, or establishes and operates a venture capital fund that is not authorised in accordance with this Part, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

Restrictions
on
promotions

122. (1) A person who—

- (a) issues or causes to be issued an advertisement or invitation to persons to become or offer to become participants in a collective investment scheme, that is not authorised in accordance with 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 a person to become or offer to become a participant in such a scheme;

commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(2) The Commission may issue a public warning and restrict unauthorised promotions.

123. (1) A person shall not carry on business, or purport to do so, as manager, trustee or custodian of a collective investment scheme, unless that person that is authorised by the Commission to operate in accordance with an authorisation granted in accordance with this section and regulations made in accordance with this Act.

Authorisation of managers, trustees and custodian

(2) Subject to this Act, the Commission may, on an application made in accordance with regulations made by the Commission, by statutory instrument, grant or refuse to grant, in accordance with prescribed criteria and conditions, an authorisation to carry on business as a manager, trustee or custodian of a collective investment scheme.

(3) The Commission shall refuse to grant an authorisation to operate as a manager, trustee or custodian of a collective investment scheme, as prescribed, unless it is satisfied that the applicant is a fit and proper person to be so authorised.

(4) An individual who, or a company which, is not authorised to operate as a manager, trustee or custodian of an collective investment scheme and—

- (a) carries on business as a manager, trustee or custodian of a collective investment scheme; or
- (b) holds out as carrying on business as a manager, trustee or custodian of a collective investment scheme;

commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or, in the case of an individual, to imprisonment for a term not exceeding five years, or to both.

124. The property of a collective investment scheme shall be held by a trustee or custodian on behalf of participants.

Trustee or custodian to hold property

125. (1) The Commission may, on an application, made in accordance with regulations made by the Commission, by statutory instrument, and after being provided with such information as the Commission may require, make an order declaring a foreign collective investment scheme to be an authorised scheme for the purposes of this Act, if —

Authorisation of foreign schemes

- (a) the scheme is managed in a country outside Zambia;
- (b) the scheme affords adequate protection to participants;

- (c) the scheme makes adequate provision for the matters dealt with by regulations prescribed for purposes of this Part;
- (d) the manager of the scheme has an agent in Zambia who is authorised, in accordance with this Part, and has the power to act generally for the manager and accept service of notice and other documents on the manager's behalf; and
- (e) the participants are entitled to have their interests redeemed, in accordance with the terms of the collective investment scheme, at a price related to the net value of the property to which the interests relate and determined in accordance with the scheme.

(2) An order declaring a foreign collective investment scheme to be an authorised collective investment scheme, for the purposes of this Act, may include such conditions as the Commission considers appropriate.

Revocation
of
authorisation

126. The Commission may revoke the authorisation of a collective investment scheme, if it appears to the Commission that—

- (a) the manager, trustee or custodian of the collective investment scheme has contravened a requirement of this Act and regulations and rules made in accordance with this Act;
- (b) the manager, trustee or custodian of the collective investment scheme has, in purported compliance with any requirement of this Act, knowingly or recklessly given the Commission information which is false or misleading in a material particular;
- (c) one or more of the requirements for granting the authorisation are no longer satisfied; or
- (d) it is undesirable in the interests of participants of the collective investment scheme, or potential participants of the scheme, or is otherwise not in the public interest, that the collective investment scheme should continue to be so authorised.

Directions
by
Commission
on
revocation
of
authorisation

127. The Commission may, in revoking an authorisation of a collective investment scheme, as provided in section *one hundred and twenty-six*, give directions—

- (a) requiring the manager of the collective investment scheme to cease the issue or redemption, or both, of interests under the collective investment scheme, on a date specified in the direction, until such further date as is specified in the direction; or

-
- (b) requiring the manager, trustee and custodian of the collective investment scheme to wind it up, by such date as is specified in the direction or, if no date is specified, as soon as is practicable;
- (c) requiring the manager, trustee or custodian of the collective investment scheme to take any other action that shall ensure investor protection.
- 128.** (1) The Commission shall issue rules, by statutory instrument, for or with regard to—
- Rules for collective investment schemes
- (a) the application process, establishment and operation of collective investment schemes;
- (b) the constitution, management and operation of collective investment schemes;
- (c) the appointment, removal, powers, duties, rights and liabilities of the manager, trustee and custodian of collective investment schemes;
- (d) the administration of collective investment schemes and the issue of directions to managers, trustees and custodians with regard to their duties and manner of operating and administering collective investment schemes;
- (e) the rights and duties of the participants in any collective investment scheme;
- (f) the procedures and conditions for the renewal, and revocation of an authorisation granted under this Part;
- (g) the conduct of business of a collective investment scheme and persons involved in the operation of a collective investment scheme;
- (h) the manner in which the property of a collective investment scheme is held;
- (i) the closure and winding up of a collective investment scheme, including an unauthorised collective investment scheme;
- (j) the appointment, removal, powers and duties of an auditor for a collective investment scheme;
- (k) the promotion, marketing and distribution of shares, securities or units representing the interest of participants in a collective investment scheme;

- (l) the expenses relating to a collective investment scheme and the means of meeting them;
- (m) the issue and redemption of participants' interests;
- (n) the valuation and pricing of participants' interests;
- (o) the provision of management, custodian services or trusteeships, or any other services for or in connection with a collective investment scheme;
- (p) restricting or regulating the investment and borrowing powers exercisable in relation to a collective investment scheme;
- (q) requiring the keeping of records with respect to transactions and financial position of a collective investment scheme and for the inspection of such records;
- (r) requiring the preparation of periodical reports with respect to a collective investment scheme and the submission of such reports to the participants and the Commission;
- (s) any fee, remuneration or reward payable or receivable for any services rendered to a collective investment scheme;
- (t) changes to be made to a collective investment scheme;
- (u) the exemption from any of the requirements of this Part or of regulations or rules made in accordance with this Act, where the Commission considers it appropriate in the circumstances of a particular case; and
- (v) the provision by anybody corporate, trustee, custodian and operator to service or provide other services, for or in connection with a collective investment scheme;

(2) Without limiting the generality of subsection (1), rules issued, in accordance with that subsection, may vary according to the scheme being operated by a collective investment scheme, an open-ended investment company or any other kind of investment company.

Authorisation
of venture
capital fund

129. (1) The Commission may authorise the establishment of a venture capital fund.

(2) An authorisation, granted in accordance with subsection (1), may be subject to such terms and conditions as the Commission considers necessary or desirable for protection of investors.

(3) Subject to this Act, the Commission may, on an application made in accordance with regulations made by the Minister, by statutory instrument, grant or refuse to grant, in accordance with prescribed criteria and conditions, authorisation to operate a venture capital fund.

(4) The Commission shall refuse to authorise the establishment of a venture capital fund as prescribed, unless it is satisfied that the applicant is a fit and proper person to be so authorised as prescribed.

(5) A person who is not authorised to establish and operate a venture capital fund in accordance with this Part, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

(6) A person aggrieved by a decision of the Commission refusing the establishment of a venture capital fund may, within thirty days after the date of the decision, appeal to the Tribunal.

130. The Commission shall issue rules, by statutory instrument, for or with regard to—

Rules for
venture
capital fund

- (a) the application process, establishment and operation of venture capital funds;
- (b) the management and operation of venture capital funds;
- (c) investment conditions and restrictions in venture capital funds;
- (d) general obligations and responsibilities of venture capital funds;
- (e) maintenance of books and accounts by venture capital funds; and
- (f) winding up of venture capital funds

PART XI

MERGERS AND TAKE-OVERS

131. (1) Notwithstanding any other written law, every merger or take-over of listed companies or companies whose securities are registered with the Commission shall be subject to this Part.

Scope of
Part
Act No. 24
of 2010

(2) An approval of a merger or take-over by the Commission in accordance with this Part shall not relieve a listed company from complying with any other applicable law.

(3) Nothing in this section shall apply to holding companies acquiring shares solely for the purpose of investment.

Take-overs or
substantial
acquisition

132. (1) A person shall not make or pursue an offer in respect of a take-over or substantial acquisition of the securities of any listed company or company whose securities are registered with the Commission except in accordance with this Act and the conditions and procedures prescribed by regulations made in accordance with this Act.

(2) For the purposes of this section, “substantial acquisition” means an acquisition of at least fifteen per cent of the issued securities of the company concerned.

Creation of
mergers

133. For the purposes of this Act, a merger may be created through the acquisition of control or direction over the voting rights of a company other than by way of a revocable proxy given for no consideration for the purpose of one meeting of shareholders only.

Consideration
of
applications
for proposed
take-overs
and mergers

134. (1) The Commission shall consider transactions relating to the merger of a listed company or company whose securities are registered with the Commission, in accordance with subsection (2) and (4).

(2) A listed company or company whose securities are registered with the Commission, that proposes a takeover or merger, or is being taken over by another company, shall apply to the Commission to approve the takeover or merger, in the prescribed manner and form, and accompanied by a prescribed fee.

(3) The Commission shall consider and make a determination on a proposed merger within sixty days of receipt of an application made in accordance with subsection (2) and may extend the period in which to consider and determine a proposed merger by a further period, not exceeding thirty working days.

(4) The Commission shall, in considering an application for a proposed takeover or merger, made in accordance with subsection (2) determine whether or not shareholders in a takeover or merger transaction have been afforded fair treatment by requiring—

- (a) fair, equitable and similar treatment of shareholders;
- (b) the disclosure of timely and adequate information to enable shareholders to make an informed decision as to the merits of an offer; and
- (c) that there is a fair and informed market in the shares of companies affected by takeover and merger transactions.

(5) The Commission may request the parties to the takeover or merger to furnish the Commission with such additional information as the Commission may require in order to make an informed decision on the transaction.

(6) The Commission shall, after making a determination on a proposed merger, notify the parties of its decision to approve or reject an application for a takeover or merger, which may be subject to conditions, in the prescribed manner and form.

(7) Where the Commission rejects an application made under subsection (2), the Commission shall advise the parties not to proceed with the proposed takeover or merger for stated reasons and shall inform the parties of their right of appeal to the Tribunal if they are not satisfied with the Commission's determination.

135. (1) The Commission may investigate or appoint an authorised person to investigate any merger or take-over and may designate one or more persons to assist the authorised person.

Power to investigate mergers or take-overs

(2) The Commission may require any party to a proposed merger or take-over to provide additional information in respect of the merger or takeover.

(3) A person may voluntarily file any document, affidavit, statement or other relevant information in respect of a merger or take-over.

136. The Commission may, by statutory instrument make rules to provide for the manner in which take-overs and mergers concerning listed companies or companies whose securities are registered by the Commission shall be effected.

Rules on mergers and take-overs

PART XII INSIDER TRADING

137. (1) An insider of a reporting issuer, other than a collective investment scheme, shall, in accordance with rules made by the Commission—

Reports by insiders

(a) file periodic reports disclosing the insiders direct or indirect beneficial ownership of, or control over, securities of the issuer and the insider's interest in, or right or obligation associated with, a securities transaction; and

(b) make any other disclosures as may be prescribed.

(2) An insider shall, on request by the Commission, provide the Commission with information in the manner and form and within the time specified by the Commission.

- Prohibition of insider dealing
- 138.** Subject to the other provisions of this Part insider dealing is prohibited.
- Prohibition on disclosing price-sensitive information
- 139.** (1) An insider shall not, directly or indirectly, counsel, procure or otherwise advise any person to buy, sell, or otherwise transact in registered securities, if the person has price-sensitive information until such information is publicly disclosed.
- (2) A person shall not deal, counsel or procure another person to deal in securities of a company of which that person has any knowledge that—
- (a) is not publicly available; and
- (b) would, if it were publicly available, materially affect the price of the securities.
- (3) This section shall not apply to a person who transacts in registered securities who has knowledge or possession of price-sensitive information that has not been generally disclosed, where the person proves that—
- (a) a director, senior officer, partner, employee or agent of the person that made or participated in making the decision on the securities transaction had no actual knowledge of the price-sensitive information; and
- (b) investment advice was not given relating to the securities transaction to a director, officer, partner or employee of the person who made or participated in making the decision on the securities transaction and who had actual knowledge of the price-sensitive information.
- (4) This section shall not apply where the person proves that the other party to the purchase, sale or trade of securities had knowledge or possession of the price-sensitive information.
- (5) Subsection (4) shall not apply to a director or officer of a reporting issuer in connection with a distribution of securities of the reporting issuer to such director or officer unless the trade is made pursuant to a pre-existing option or other right of the director or officer to subscribe for securities of the reporting issuer.
- Offence of insider trading
- 140.** (1) A person who contravenes section *one hundred and thirty-eight* or *one hundred and thirty-nine* commits an offence and shall be liable, on conviction, to a fine as specified in section *one hundred and forty-one* or to imprisonment for a period not exceeding five years, or to both.

141. (1) Where the Tribunal finds, on application by the Commission, that a person has engaged in insider dealing, the Tribunal may make an order requiring that person to pay to the Commission, an amount determined by the Tribunal.

Disgorgement

(2) The maximum amount that may be ordered to be paid in terms of subsection (1) shall be an amount equal to the amount determined by the Tribunal to be the amount of three times the profit that may have been realised or loss avoided by the offender due to the offence, or in the case of a company, ten percent of the annual turnover of the company, whichever is more.

(3) The Tribunal shall, in making an order in terms of this section have due regard to any administrative penalty already imposed in accordance with this Act.

(4) An amount recovered in terms of this section shall be a debt due to the Commission, and shall be used by the Commission for investor protection and market development activities.

142. A transaction shall not be void or voidable, by reason only that it was entered into by a person who had knowledge or possession of price-sensitive information.

Transaction not void or voidable

143. (1) Subject to this Part, a person shall not be prohibited, by reason of the person having knowledge or possession of price-sensitive information, from—

Exceptions to insider dealing

(a) entering into a securities transaction, in good faith, whilst exercising that person's functions as a liquidator, receiver, receiver-manager or trustee in bankruptcy; or

(b) acquiring securities through any employee profit sharing plan or employee stock ownership plan established to provide for the ownership of securities by employees, except that—

(i) the participation of the person in the plan is established prior to the time that the person acquired knowledge or possession of the price-sensitive information; and

(ii) the plan provides for the automatic acquisition of securities by participants in the plan.

(2) A person shall not be considered to have engaged in insider dealing if the person facilitates the completion or carrying out of a transaction that was agreed to before the person acquired the knowledge or possession of the price-sensitive information and the transaction was completed on the same terms.

Defence of
not soliciting
information
unavailable

144. Where a person has committed an offence as specified in this Part, it shall not be a defence to the charge that the price-sensitive information came to the person's knowledge or possession without having been solicited by that person or that the person made no effort to procure the acquisition of such information.

Presumptions

145. (1) For purposes of this Part, price-sensitive information shall be considered to be disclosed following the public dissemination of the price-sensitive information.

(2) In this Part, a person who trades in securities at a time when that person has knowledge or possession of price-sensitive information is presumed to have traded in the securities as a result of the person's knowledge or possession of the price-sensitive information, unless proved to the contrary.

(3) In this Part, a company or unincorporated body is considered to have knowledge or possession of price-sensitive information at and from the time such price-sensitive information comes into the knowledge or possession of any director, senior officer, partner or employee of such person.

PART XIII

AUDITING AND CORPORATE RESPONSIBILITIES OF LISTED COMPANIES

Filing of
annual and
periodic
reports with
Commission
Cap. 388

146. (1) Notwithstanding the Companies Act, a listed company or company whose securities are registered with the Commission shall file with the Commission, on a periodic or annual basis, as may be prescribed by the Commission, its accounting records, financial statements and such other returns.

(2) The chief executive officer and the chief financial officer or any other officers or persons performing similar functions in a listed company or company whose securities are registered with the Commission shall certify in each annual or periodic report filed, in accordance with subsection (1), that—

- (a) the signing officer has reviewed the report;
- (b) based on the knowledge of the officer, the report does not contain—
 - (i) any untrue statement of a material fact, or
 - (ii) omit to state a material fact, which would make the statement, misleading in the light of the circumstance under which such statement was made;

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- (c) based on the knowledge of such officer, the financial statements and other financial information included in the report fairly present, in all material respects, the financial condition and results of operations of the listed company or company whose securities are registered with the Commission as of, and for the periods presented in the report;
- (d) the signing officers—
- (i) are responsible for establishing and maintaining internal controls;
 - (ii) have designed such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities particularly during the period in which the periodic reports are being prepared;
 - (iii) have evaluated the effectiveness of the listed company's, or company's whose securities are registered with the Commission, internal controls, within ninety days prior to the report; and
 - (iv) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;
- (e) the signing officers have disclosed to the audit committee and to the auditors of the listed company or company whose securities are registered with the Commission—
- (i) all significant deficiencies in the design or operation of internal controls which would adversely affect the company's ability to record, process, summarise and report financial data and have identified for the listed company's auditors any material weakness in internal controls; and
 - (ii) any fraud, whether or not material, that involves management or other employees who have significant role in the listed company's or company's, whose securities are registered with the Commission, internal controls; and

- (f) the signing officers have identified, in the report, whether or not there were significant changes in internal controls or other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

System of
internal
control of
companies
Cap. 388

147. (1) Notwithstanding the Companies Act, a listed company or company whose securities are registered with the Commission shall establish a system of internal controls over its financial reporting and security of its assets and the board of directors shall ensure the integrity of the listed company's systems.

(2) The board of directors of a listed company or company whose securities are registered with the Commission, shall report on the effectiveness of the company's internal control system in its annual report.

(3) In this section, "internal control" means policies, procedures and practices put in place by the management or the board of a listed company or company whose securities are registered with the Commission to ensure safety of assets, accuracy of financial records and reports, achievement of corporate objectives and compliance with laws and regulations.

Commission
to approve
auditors of
companies

148. (1) Notwithstanding the Accountants Act, a listed company or company whose securities are registered with the Commission shall appoint an auditor who is a member in good standing of the Zambia Institute of Chartered Accountants, and such auditor shall not provide auditing services to the company unless the auditor meets the minimum criteria specified by the Commission.

(2) An auditor shall audit the annual financial statements of a listed company or company whose securities are registered with the Commission, in accordance with the prescribed standards specified in the Accountants Act, and as provided in this Part.

Act No. 13
of 2008

(3) Notwithstanding the Accountant's Act, an auditor shall, in the prescribed form and manner, provide a report to the Commission, on a licensed person's failure to produce audited results within four months of the end of a financial year, stating the reasons for such delay.

(4) A licensed person or auditor who fails to provide audited results or who fails to report a delay by a licensed person in submitting audited results, as the case may be, and after due investigation by the Commission, is liable to the penalty provided in section *one hundred and fifty-nine*.

149. An auditor of a listed company or company whose securities are registered with the Commission shall, in the audit report of the company, issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the company.

Duty of auditor to report on internal controls of listed companies

150. A listed company or company whose securities are registered with the Commission shall disclose to the relevant securities exchange its quarterly earnings forecast in the manner and form prescribed by the Commission in rules issued by statutory instrument.

Disclosure of quarterly earnings forecasts by listed companies

151. (1) Where, on the commencement of this Act, a director of a listed company or company whose securities are registered with the Commission has an interest in the securities of the listed company, or any other company being the listed company's subsidiary or holding company, or a subsidiary of the holding company of the listed company or company whose securities are registered with the Commission, the director shall give notice, in writing, to the company—

Duty of directors to disclose interests in securities of listed company

(a) of the subsistence of the director's interests at that time; and

(b) of the number of shares of each class in, and the amount of debentures of each class of, the listed company or other such company in which the director's interest subsists.

(2) Subject to subsection (3), a director of a listed company or company whose securities are registered with the Commission shall have interest in a transaction to which the company is a party where the director—

(a) is a party to, or shall or may derive a material financial benefit from, the securities transaction;

(b) has a material financial interest in or with another party to the securities transaction;

(c) is a director, officer or assignee of another party to, or person who shall or may derive a material financial benefit from, the securities transaction, not being a party or person that is—

(i) the company's holding company, being a holding company of which the company is a wholly-owned subsidiary;

- (ii) a wholly-owned subsidiary of the company; or
- (iii) a wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary; or

(d) is otherwise, directly or indirectly, materially interested in the transaction.

(3) A director of a listed company or company whose securities are registered with the Commission shall not be considered to be interested in a securities transaction to which the listed company is a party, if the transaction comprises only the giving, by the company, of security to a third party and at the request of that third party, which has no connection with the director and in respect of a debt or obligation of the company for which the director or another person has listed personally or assumed responsibility, in the whole or in part, under a guarantee or indemnity or by deposit of a security.

(4) A director of a listed company or company whose securities are registered with the Commission shall give notice, in writing, to the company of any of the following events:

- (a) an event in consequence of whose occurrence the director has or ceases to have, an interest in securities of the company, or any other listed company being the listed company's subsidiary or holding company, or a subsidiary of the listed company's holding company;
- (b) the entering into by the director of a contract to sell securities;
- (c) the assignment by the director of a right granted to the director by the listed company to subscribe for securities of the listed company;
- (d) the grant to the director by another company, being the listed company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for securities of that other company, the exercise of such a right granted to the director and the assignment by the director of such a right so granted; and
- (e) the notification to the listed company shall state the number, amount and class of securities involved.

(5) A director in a listed company or company whose securities are registered with the Commission shall disclose any interest in securities held in a listed company before the expiry of a period of five days from the date on which the interest arises.

(6) For the purposes of subsections (1) and (4), an interest in securities of—

(a) the spouse of a director of a listed company or company whose securities are registered with the Commission, not being a director of the company; and

(b) the child of a director, not being a director of the listed company or company whose securities are registered with the Commission;

shall be treated as being the director's interest.

152. (1) Every listed company or company whose securities are registered with the Commission shall establish and maintain a register for the purposes of section *one hundred and fifty-one* in a manner and form approved by the Commission.

Register of directors' interests in securities

(2) Whenever a listed company or company whose securities are registered with the Commission receives notification from a director in terms of section *one hundred and fifty-one*, the company shall enter in the register, against the director's name, the information received and the date of the entry.

(3) A register, established in accordance with subsection (1), shall, during normal office hours, be open for inspection by the public, without payment of any charge.

153. (1) A listed company or company whose securities are registered with the Commission shall, where a director discloses an interest in securities held in the listed company, in accordance with section *one hundred and fifty-one*, notify the Commission and the listing exchange, where applicable, in writing, of that matter.

Notification to Commission and securities exchange of directors' interests

(2) A listed company or company whose securities are registered with the Commission shall notify the Commission and listing exchange, where applicable, before the expiration of five days from the date on which the company was notified by the director.

(3) A listing exchange may publish, to the public, in such manner as it may determine, the information notified in accordance with subsection (1).

Duty of substantial shareholders to disclose shareholdings

154. Where, on the commencement of this Act, a person is a substantial shareholder in a listed company or company whose securities are registered with the Commission, the person shall give notice, in writing, within twenty eight days of the commencement of this Act, to the company, stating the person's name and address and giving full particulars of the shares held by that person or the person's nominee by which the person is a substantial shareholder.

Subsequent disclosures by substantial shareholders

155. (1) A substantial shareholder shall give further notice, in writing, to the listed company or company whose securities are registered with the Commission, where the person—

- (a) acquires further shares in that company; or
- (b) disposes of shares as a result of which the person ceases to be a substantial shareholder of that company.

(2) The disclosure notified, in accordance with subsection (1), shall include the following information:

- (a) the total number of shares acquired or disposed of;
- (b) the prices paid or received for the acquired or disposed of shares; and
- (c) the resultant total amount of shares held in the company and the percentage of shares it represents.

(3) Subject to subsection (1), a notification given by a substantial shareholder, in accordance with this section, shall be made five days after the acquisition of the shares.

Registration of substantial shareholders' shareholdings

156. Where a listed company or company whose securities are registered with the Commission receives notification from a substantial shareholder, in accordance with sections *one hundred and fifty-four* and *one hundred and fifty-five*, the company shall enter in the register, established and maintained, in accordance with section *one hundred and fifty-two*, the information so notified and specify the date of the entry.

Notification to Commission and listing exchange of substantial shareholders

157. (1) Where a listed company or company whose securities are registered with the Commission is notified of any matter, by a substantial shareholder, in accordance with section *one hundred and fifty-four* and *one hundred and fifty-five*, the company shall notify the Commission and the listing exchange, where applicable, in writing, of the matter.

(2) A disclosure of an interest in securities made by a substantial shareholder of a listed company or company whose securities are registered with the Commission shall be disclosed before the expiry of a period of five days from the date on which the company was notified by the substantial shareholder.

(3) The listing exchange may publish in such manner as it may determine, the information notified as specified in subsection (1).

158. (1) Subject to subsection (3), all dividends or other sums which are—

Unclaimed
dividends

(a) payable in respect of shares; and

(b) unclaimed after having been declared or become payable;

shall be deposited in a separate special dividends payment bank account in the name of the issuer until claimed.

(2) The issuer and its agents, including the clearing and settlement agency shall ensure that they maintain complete records detailing the names of investors or shareholders and the dividend amounts payable.

(3) Notwithstanding subsection (1), if a dividend remains unclaimed—

(a) a shareholder can claim, from the issuer, a dividend declared by the issuer, within fifteen years of the date on which the dividend became payable; or

(b) the dividend that remains unclaimed after fifteen years of the date on which the dividend became payable shall be transferred to the Commission.

(4) Where the dividend has been transferred to the Commission, in accordance with paragraph (b) of subsection (3), the recipient shall no longer be entitled to that dividend and it shall accrue to the Commission and shall be deposited in an investor fund by the Commission for purposes of investor protection and market development activities.

(5) The Commission shall prescribe rules, by statutory instrument, on the prudential management of an investor fund into which unclaimed dividends are deposited in accordance with subsection (4).

(6) No action to recover unclaimed dividends may be brought against the issuer or against the Commission after the fifteenth year from the date on which the dividend became payable, but where the Commission considers it desirable, to avoid hardship or injustice, the Commission may make a payment to a claimant in respect of unclaimed dividends.

Penalties for
contravention
of Part

159. A listed company or company whose securities are registered with the Commission, a shareholder or an auditor who contravenes this Part, shall be liable on conviction, to a penalty not exceeding one hundred thousand penalty units and to a further penalty of ten thousand penalty units for each day the offence continues.

PART XIV

INFORMATION, INVESTIGATIONS, INSPECTIONS AND CO-OPERATION

Power of
Commission
to request
information

160. (1) The Commission may, by notice in writing, require a capital markets operator, or any other person or authority who the Commission considers has relevant information, to furnish it with such information as it may require for the performance of its functions and exercise of its powers in terms of this Act, within such reasonable time as it may specify.

(2) A capital markets operator, person or authority with information sought by the Commission shall furnish the information to the Commission upon the request of any authorised employee of the Commission, failure to which the Commission shall seek a court order to compel the submission to it of such information.

(3) Subject to this Act, the Commission may, provide information furnished, in accordance with subsections (1) and (2), to other local or foreign regulatory authorities.

Investigations

161. (1) The Commission may appoint such number of investigators as it considers appropriate to carry out investigations for purposes of this Act.

(2) Where the Commission has reasonable cause to believe, either on its own motion or as a result of a complaint or other information received, that—

- (a) an offence has been committed as specified in this Act;
- (b) a capital markets operator may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with a securities transaction or engaged in market misconduct; or
- (c) the manner in which a capital markets operator has engaged or is engaging in a securities transaction is not in the interest of the client or the public interest;

the Commission may, in writing, direct one or more investigators, to investigate any of the matters referred to in paragraphs (a), (b) or (c) and report the results of the investigation to the Commission.

(3) Where an investigator suspects a person to have possession or control of any record or document which contains, or which is likely to contain, information relevant to an investigation, that person shall—

- (a) produce to the investigator, within the time and at the place the investigator directs in writing, any record, document or information specified by the investigator which is, or may be, relevant to the investigation and which is in the possession or control of the person;
- (b) if directed by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) attend, before the investigator, at the time and place the investigator requires, in writing, and in the prescribed manner, give a sworn statement relating to the matters under investigation; and
- (d) give the investigator all assistance in connection with the investigation which the person is reasonably able to give, including responding to any written question raised by the investigator.

(4) A sworn statement, given in accordance with subsection (3), may be relied upon in proceedings before the Tribunal or the Court.

(5) A person commits an offence if, without reasonable excuse, the person fails to—

- (a) produce any record or document required to be produced as specified in paragraph (a) of subsection (3);
- (b) give an explanation or further particulars required in paragraph (b) of subsection (3);
- (c) attend before the investigator as required in paragraph (c) of subsection (3);
- (d) answer a question put by the investigator or answers a question falsely or in a misleading manner or makes a false statement; or
- (e) comply with paragraph (d) of subsection (3).

(6) A person who commits an offence specified in subsection (5) shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Avoidance of
duplication in
investigations

162. The Commission shall liaise and cooperate with other institutions and authorities which conduct investigations of securities markets, capital markets operators, competition and consumer protection or other relevant sectors or activity, so as to avoid duplication of information-gathering activities and applications.

Inspections

163. (1) For the purpose of ascertaining whether a licensed person or a person who held a licence granted in terms of this Act, is complying or had complied with this Act, and regulations or rules, made in accordance with this Act, or the terms and conditions of a licence, recognition or authorisation, the Commission may inspect any record or document relating to the business, including the inspection of the bank accounts and financial transactions of a capital markets operator.

(2) An inspector may—

- (a) enter the premises of a capital markets operator;
- (b) require the capital markets operator or any other person whom the authorised person believes is in possession of, or has under that person's control, any record or document, referred to in subsection (1), to produce it to the authorised person;
- (c) make inquiries of a capital markets operator, or any other person whom the authorised person has reasonable cause to believe has information relating to any record or document, referred to in subsection (1), concerning such record, document, transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the capital markets operator; and
- (d) inspect and make copies of, or take extracts from, and where necessary, take possession of, such documents.

(4) The Commission may appoint any person to exercise the powers of the Commission as specified in this section.

(5) For the purpose of an inspection, undertaken in accordance with this section, a capital markets operator or other person, referred to in subsection (3), shall afford an inspector access to the records or documents as may be required for inspection and produce, to the inspector, such records or documents as the inspector may require.

(6) A person who, without reasonable excuse, fails to comply with a request made by an inspector, in accordance with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

164. A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, which the person knows or ought to know is relevant to an inspection or investigation in terms of this Part, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Destruction
of
documents

165. (1) Subject to other written laws, the Commission shall consult and co-operate with any other regulatory authority exercising power, in any other written law, over a financial institution, pensions or insurance industry entity, or other entity in the capital markets, in order to minimize duplication of effort and maximize the protection of investors.

Co-operation
with other
regulators

(2) Where the Commission receives, from a regulatory authority outside Zambia, a request for assistance to investigate a person specified by the regulatory authority as having contravened or is contravening any legal or regulatory requirement which –

- (a) the regulatory authority enforces or administers; and
- (b) relate to securities transactions as are regulated by the regulatory authority;

the Commission may, where it is satisfied that there is need to provide assistance, as specified in subsection (3), provide the assistance to investigate the matter by exercising any of its powers under this Act.

(3) Subject to subsection (2), the Commission may provide assistance to investigate, as provided in subsection (2), if it is satisfied that—

- (a) it is desirable or expedient that the assistance requested should be provided in the public interest or it is in accordance with an agreement to provide assistance on a reciprocal basis; or
- (b) the assistance shall enable or assist the recipient of the assistance to perform its functions under any other law.

(4) The Commission shall use its best efforts to protect the confidentiality of non-public documents and information received pursuant to a request for assistance under this section.

(5) In furtherance of the purpose of this Act, the Commission may enter into a memorandum of understanding with any regulatory authority, specified in subsection (1), and with any regulatory authority of a foreign government, foreign securities regulator or other regulatory body which regulates securities transactions.

(6) The Commission may co-operate and participate in the work of a national, regional or international organisation dealing with securities transactions, markets and the securities industry.

PART XV

CIVIL LIABILITY

Liability for
misrepresentation in
prospectus

166. (1) Subject to this section, a purchaser of securities distributed under a prospectus has a right of action for damages for any loss or damage sustained by reason of a misrepresentation in the prospectus, and the following shall be liable for any loss or damage:

- (a) the issuer or the securities holder, selling securities, on whose behalf the distribution is made;
- (b) a person who is a director of the issuer at the time of filing of the prospectus;
- (c) a person who is authorised, or is named in, the prospectus as a director or as having agreed to become a director, either immediately or after a specified time;
- (d) where the issuer is not a reporting issuer prior to the distribution, any person who was a promoter of the issuer within the twenty-four month period immediately preceding the date of filing of the prospectus;
- (e) a person whose consent has been obtained to include a representation made by the person with respect to a misrepresentation in a prospectus derived from, or based on, reports, opinions, valuations or statements that have been made by such person; and
- (f) any other person who signed a certificate in the prospectus, other than a person referred to in paragraphs (a) to (e).

167. Where an issuer or an individual or a company with actual, implied or apparent authority to act on behalf of an issuer releases a document that contains a misrepresentation, an individual or a company who acquires or disposes of the issuer's securities, during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected, has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against—

Liability for misrepresentation in other documents

- (a) the issuer of the securities;
- (b) each director of the issuer of the securities at the time the document was released;
- (c) each officer of the issuer of the securities who authorised, permitted or acquiesced in the release of the document; and
- (d) each expert where—
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert;
 - (ii) the document includes, summarises or quotes from the report, a statement or opinion of the expert; and
 - (iii) the document was released by a person or company, other than the expert, the expert consented, in writing, to the use of the report, statement or opinion in the document.

168. (1) A person shall not, other than the issuer or the security holder, who is selling the securities, or on whose behalf the distribution is made, be liable in terms of sections *one hundred and sixty-six* and *one hundred and sixty-seven* who—

Defences

- (a) having consented to become a director of the issuer, withdraws the consent before the filing of the prospectus and the prospectus;
- (b) is filed without the person's authority or consent;
- (c) when the prospectus was filed without the person's knowledge or consent, gave reasonable public notice of that fact after becoming aware of it;

-
- (d) after the filing of the prospectus and before the sale of securities under it, became aware of a misrepresentation and withdrew the consent, and gave reasonable public notice of the withdrawal of the consent and the reasons for it; or
- (e) for every misrepresentation, not purporting to be made on the authority of an expert or an official document or statement, had conducted such reasonable investigation as to provide reasonable grounds to believe and did believe, up to the time of the distribution of the securities, that the prospectus did not contain a misrepresentation.
- (2) An individual or a company shall not be liable in an action specified in section *one hundred and sixty-seven*, if that person or company proves that the plaintiff acquired or disposed of the issuer's security with knowledge that the document contained a misrepresentation.
- (3) A person or company shall not be liable in an action specified in section *one hundred and sixty-seven* if that person or company proves that—
- (a) before the release of the document containing the misrepresentation, the individual or company conducted or caused to be conducted a reasonable investigation to ascertain the accuracy of the document; and
- (b) at the time of the release of the document, the individual or company had no reasonable grounds to believe that the document contained the misrepresentation.
- (4) A person, shall not be liable as specified in sections *one hundred and sixty-six* and *one hundred and sixty-seven* if—
- (a) as regards a misrepresentation made by an expert or based on a report, opinion, valuation or statement made or prepared by an expert, the misrepresentation fairly represented and was a correct and fair copy of, or extract from, the report, opinion, valuation or statement of the expert, and that person had reasonable grounds to believe and did believe, up to the time of the filing of the prospectus or release of the document, that the expert making the statement or preparing the report, opinion or valuation was competent to make it, and had given

consent to the inclusion of the representation in the document and had not withdrawn that consent before delivery of a copy of the prospectus for filing or the release of the document, nor had the expert, to the person's knowledge, withdrawn that consent before the sale of securities under the prospectus or the release of the document;

- (b) the person bringing the action had knowledge of the misrepresentation at the time of the purchase or sale of the securities; or
- (c) as regards a misrepresentation purporting to be a statement made by a public official or contained in what purports to be a copy of, or extract from, a public document, the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document.

(5) An expert shall not be liable in an action as specified in sections *one hundred and sixty-six* and *one hundred and sixty-seven* for any part of a prospectus or other document that includes, summarises or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn, in writing, before the prospectus was filed or the document was released.

(6) The liability of persons, referred to in sections *one hundred and sixty-six* and *one hundred and sixty-seven*, is joint and several as between themselves with respect to the same cause of action.

(7) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable, in terms of this section, to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable to do so.

169. The right of action for damages and the defences to an action in terms of sections *one hundred and sixty-six* and *one hundred and sixty-seven*, are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

Non-
derogation
from other
rights

Action for
rescission for
misrepresent-
ation in
prospectus

170. (1) Subject to this section, a purchaser of securities distributed under a prospectus has a right of action against the issuer or the underwriter, who has sold securities to the purchaser for the rescission of the sale and repayment to the purchaser, of the price that has been paid in respect of the securities, if the prospectus contained a misrepresentation, except that if the purchaser elects to exercise a right of action for rescission against the issuer or underwriter, the purchaser shall have no right of action for damages against the issuer or underwriter in terms of section *one hundred and sixty-six*.

(2) In an action brought in terms of section *one hundred and sixty-six*, the person bringing the action need not prove that the person was in fact influenced by the misrepresentation, or that the person relied on the misrepresentation in purchasing the securities.

(3) A person shall not be liable, as specified in subsection (1), if the purchaser who brought the action knew of the misrepresentation at the time of the purchase of the securities.

(4) This section applies to securities sold under a prospectus that offers the securities for subscription in consideration of the transfer or surrender of other securities, with or without the payment of cash by, or to, the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, including the amount of cash, if any, to be paid by the issuer.

Limitations
on action

171. (1) Notwithstanding any other provision to the contrary, the amount recoverable in terms of section *one hundred and sixty-six* or *one hundred and sixty-seven* shall not exceed the price at which the securities were sold.

(2) A dealer shall not be liable for underwriting, as provided in section *one hundred and sixty-six*, for more than the total public offering price represented by the portion of the distribution of securities underwritten or sold by, or to, the dealer.

(3) An action shall not be brought, as specified in section *one hundred and sixty-six*, later than—

- (a) two years after the date that the securities were sold to the person bringing the action; or
- (b) one hundred and eighty days after the date that the purchaser bringing the action learnt of the misrepresentation.

(4) An action shall not be brought, as specified in section *one hundred and sixty-six*, later than—

- (a) three years after the date on which the document containing the misrepresentation was first released; and
- (b) six months after the issuance of a news release disclosing that leave had been granted to commence an action in accordance with section *one hundred and sixty-six*, in respect of the same misrepresentation.

172. (1) An action shall not be commenced, in accordance with section *one hundred and seventy* without leave of the Court, granted on a motion with notice to each defendant.

Leave to proceed

(2) The Court shall grant leave where it is satisfied that—

- (a) the action is being brought in good faith; and
- (b) there is a reasonable possibility that the action shall be resolved at trial in favour of the plaintiff.

(3) The plaintiff and each defendant shall on an application made in accordance with this section, serve and file one or more affidavits setting forth the material facts upon which each intends to rely on.

(4) The maker of an affidavit, filed in accordance with subsection (3), may be examined on it by the Court.

(5) A copy of the application for leave to proceed and any affidavits filed with the Court shall be sent to the Commission, immediately after being filed, by the plaintiff and each defendant.

173. An individual or a company that has been granted leave to commence an action, in accordance with section *one hundred and seventy-two*, shall—

Notice of action

- (a) promptly issue a news release, in a newspaper of wide circulation, disclosing that leave has been granted to commence an action, in terms of section *one hundred and seventy-two*;
- (b) send a written notice of the order for leave to proceed to the Commission, within seven days, together with a copy of the news release; and
- (c) send a copy of the documents filed into Court to the Commission.

Restriction
on
discontinuation,
etc. of action

174. An action, commenced in accordance with section *one hundred and sixty-six* and *one hundred and sixty-seven* shall not be discontinued, abandoned or settled without the approval of the Court given on such terms as the Court considers appropriate in the case, including, terms as to costs, and in determining whether to approve the settlement of the action, the Court shall consider, whether there are any other actions outstanding, in Zambia in terms of section *one hundred and sixty-six* and *one hundred and sixty-seven*, in respect of the same misrepresentation or failure to make a timely disclosure.

Rights of
Commission
to bring
representative
action

175. (1) The Commission may apply to the Court for leave to bring an action, in accordance with this Part, in the name, and on behalf of, an issuer or securities holder, and the Court may grant leave on such terms as to security for costs that the Court considers appropriate, if the Court is satisfied that—

- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part;
- (b) the issuer or securities holder has failed or is unable to commence an action; and
- (c) the Commission has given sixty days written notice to the issuer or securities holder who has refused or failed to commence an action;

(2) The Commission may apply to the Court for leave to appear or intervene in an action under this Part and the Court may grant leave on such terms as it considers appropriate.

(3) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened by it in a regular periodical published by it, or in a newspaper of general circulation in Zambia.

PART XVI

COMPENSATION FUND

Compensation
Fund

176. The Compensation Fund established by the Minister in the repealed Act is continued and maintained for the purposes of this Act.

177. The Compensation Fund shall be held and applied on such terms and conditions as the Minister may, by regulations, determine for the purposes of compensating persons who suffer pecuniary loss occasioned by any default of a licensed person or any employee of a licensed person, 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 was entrusted to, or received by, the licensed person or an employee for, and on behalf of, the licensed person.

Purpose of
Fund

178. (1) There is constituted the Compensation Fund Committee which shall be responsible for the management and administration of the Compensation Fund and for the settlement of claims against the Fund.

Compensation
Fund
Committee

(2) The members of the Compensation Fund Committee shall be constituted of persons from the following organisations which shall nominate one individual for appointment by the Commission:

- (a) the Bankers' Association of Zambia;
- (b) an association of capital markets players;
- (c) the Ministry responsible for finance;
- (d) the Law Association of Zambia;
- (e) the Zambia Chamber of Commerce and Industry; and
- (f) the Commission.

(3) The members of the Compensation Fund Committee shall elect the Chairperson and Vice chairperson, of the Committee, from amongst the members.

(4) The Committee may, subject to this Act, regulate its own procedure.

179. The Compensation Fund shall consist of—

Monies of
Fund

- (a) monies paid to or deposited into the Fund by dealers and investment adviser, as prescribed;
- (b) monies recovered by, or on behalf of, the Fund in the exercise of any right of action conferred by this Part;
- (c) interests and profits accruing from the investment made; and
- (d) monies lawfully paid into the Fund.

Disbursements
from
Compensation
Fund

180. There shall be paid out of the Compensation Fund and in such order as the Compensation Fund Committee considers fair and just in the circumstances—

- (a) the amount of claims for compensation, including costs, allowed by the Compensation Fund Committee;
- (b) legal and other expenses incurred in investigating or defending claims for compensation made in terms of 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;
- (c) premiums payable in respect of contracts of insurance or indemnity entered into by the Compensation Fund Committee;
- (d) the expenses incurred or involved in the administration of the Fund;
- (e) the insolvency, bankruptcy or negligence costs resulting from an action of a licensed person;
- (f) defalcation committed in terms of this Act; and
- (g) other moneys lawfully payable out of the Fund, as prescribed by the Minister.

Management
of Fund

181. 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 financial management and integrity of the Compensation Fund.

Limited
liability of
Fund and
insurance by
licensed
persons

182. (1) The Minister may, by statutory instrument, prescribe the liability of the Fund, where a licensed person is in default on contribution payments to the Fund.

(2) A licensed person shall, in addition to contributing towards the Compensation Fund, take out insurance against the liabilities that may arise from the negligence or default of the licensed person, and employees of the licensed person.

Recovery of
disbursements
from licence
defaulters

183. Any disbursement from the Compensation Fund that is on account of a default by a licensed person shall be a debt due to the Fund and recoverable, from the licensed person, at the suit of the Commission.

PART XVII
CAPITAL MARKETS TRIBUNAL

- 184.** (1) There is established the Capital Markets Tribunal. Establishment of Tribunal and jurisdiction
- (2) The Tribunal shall be a superior court of record and have an official seal which shall be judicially noticed.
- (3) The Tribunal shall have jurisdiction to hear and determine —
- (a) appeals from decisions of the Commission, or a person exercising the functions or powers of the Commission;
 - (b) proceedings relating to misconduct in the securities market; and
 - (c) such other matters as may be specified in, or prescribed in terms of this Act or any other written law.
- 185.** (1) The Tribunal shall consist of the following part-time members who shall be appointed by the Minister: Members of Tribunal
- (a) a Chairperson, who shall be a person eligible to be appointed as a Judge of the High Court;
 - (b) a Vice Chairperson, who shall be a person eligible to be appointed as a Judge of the High Court;
 - (c) three other members with knowledge and experience in law, securities, commerce, finance or accountancy.
- (2) The members, referred to in paragraph (a) and (b), shall be appointed in consultation with the Judicial Service Commission.
- (3) The members of the Tribunal shall be appointed on such terms and conditions as maybe specified in their letters of appointment.
- (4) A person shall not be appointed as a member of the Tribunal if the person —
- (a) is an undischarged bankrupt;
 - (b) is of unsound mind; or
 - (c) has been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months without the option of a fine.
- (5) The office of a member of the Tribunal shall become vacant—
- (a) upon the member's death;

- (b) if a member is absent without reasonable excuse from three consecutive sittings of the Tribunal of which the member had notice;
- (c) if the member is removed by the Minister on grounds of inability to perform the functions of office whether arising from infirmity of body or mind, incompetence or misbehaviour;
- (d) if the member is adjudged bankrupt;
- (e) the member becomes mentally or physically incapable of performing the duties of a member;
- (f) if a member is removed on disciplinary grounds confirmed by the relevant professional or regulatory body; or
- (g) if the member is convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months, without the option of a fine.

(6) If a vacancy occurs, in accordance with subsection (4), the Minister may appoint a new member in accordance with subsection (1), but the member shall hold office only for the unexpired period of the term.

(7) The validity of any proceedings, act or decision of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

Tenure of office of members of Tribunal

186. A member of the Tribunal shall hold office for a period of four years from the date of appointment and may be re-appointed for a further term of four years.

Funding and allowances of members of Tribunal

187. (1) The expenses and costs of the Tribunal shall be paid out of funds appropriated by Parliament for the performance of the Tribunal's functions under this Act.

(2) The members of the Tribunal shall be paid such remuneration and allowances as the Minister may determine.

Appointment and functions of Registrar of Tribunal

188. (1) There shall be a Registrar of the Tribunal who shall be appointed by the Minister in consultation with the Judicial Service Commission.

(2) The Registrar shall be a person with not less than ten years legal experience.

(3) The Registrar of the Tribunal shall be the chief administrative officer of the Tribunal and shall be responsible, under the general supervision of the Chairperson, for the effective and efficient administration of the affairs of the Tribunal, and may discharge such duties as prescribed by the rules of the Tribunal.

(4) The terms and conditions of service of the Registrar of the Tribunal shall be as determined by the Tribunal.

189. (1) There shall be such officers and employees of the Tribunal, as may be necessary to carry out the functions of the Tribunal, appointed by the Tribunal.

Staff of
Tribunal

(2) The terms and conditions of service of staff of the Tribunal shall be as determined by the Tribunal.

190. (1) The tribunal shall be constituted and exercise the following powers and functions as specified in this section:

Exercise of
powers of
Tribunal and
procedure

- (a) any matter, by the Chairperson or Vice-Chairperson sitting with at least two other members or by the full membership;
- (b) any matter of practice or procedure, by the Chairperson or any member of the Tribunal who is assigned for that purpose by the Chairperson; or
- (c) any matter of practice or procedure, which is uncontested, by any member of the Tribunal assigned generally or specifically for that purpose by the Chairperson.

(2) The Tribunal may sit in more than one division at such places and times, in any part of Zambia, as the Chairperson or, in the absence of the Chairperson, the Vice Chairperson may determine.

(3) The Chairperson, when present, shall preside, and, in the absence of the Chairperson, the Vice-Chairperson shall preside.

(4) The Tribunal shall, when hearing any matter, be duly constituted if it consists of three members which members shall include the Chairperson or the Vice-Chairperson.

(5) The Chief Justice may, by statutory instrument, make rules relating to the following:

- (a) prescribing the forms to be used in proceedings before the Tribunal;
- (b) issuing of notices for the attendance at, and hearings of, the Tribunal, including time periods;
- (c) procedure for the attendance and examination of witnesses, the production and inspection of documents, the enforcement of the Tribunal orders, the entry on and inspection of property and other matters necessary or proper for the due exercise of the Tribunal's mandate;

- (d) written submissions to be filed in addition to, or in the place of, an oral hearing;
- (e) the carrying on of the functions of the Tribunal and the practice and procedure on appeals and disciplinary hearings; and
- (f) awarding of costs of proceedings before the Tribunal.

(6) A summons for the attendance of a witness or for the production of any book, document, record or other thing shall be signed by the Registrar of the Tribunal and served in the same manner as a subpoena for the attendance of a witness at a civil trial in a Court.

(7) The decision of the Tribunal shall be that of the majority of the members considering the matter.

(8) The decision of the Tribunal in any proceedings shall be delivered by the presiding member.

Appeals to
Tribunal

191. (1) Where—

- (a) an application of a person for a licence, made in accordance with this Act, is refused or denied;
- (b) a licence, registration, authorisation or recognition, granted in accordance with this Act, is subject to conditions which the applicant is dissatisfied with;
- (c) conditions are attached to, or varied for, a license, registration, authorisation or recognition, and the licensed person, self-regulatory organisation or other person is dissatisfied with the conditions or variation;
- (d) a licence, registration, authorisation or recognition, granted in accordance with this Act, is revoked or cancelled in accordance with this Act;
- (e) the Commission declines to register any securities in accordance with this Act; or
- (f) the Commission declines to authorise the establishment of a collective investment scheme in accordance with this Act;

the applicant, person, licensed person or self-regulatory organisation may appeal to the Tribunal, within thirty days of receipt of the decision.

(2) Notwithstanding subsection (1), the Tribunal shall hear an appeal on any matter specified in this Act, being a matter that an aggrieved person, licensed person, scheme or organisation is entitled to appeal on in accordance with this Act.

192. (1) An appeal, to the Tribunal shall be instituted by filing with the Registrar of the Tribunal, a notice of appeal, accompanied with the prescribed fee, and by serving a copy of the notice on the Commission, within twenty-eight days of the notification to, or the service on, the respondent, or within such other time as may be required by the rules prescribed by the Chief Justice.

Notice of
appeal

(2) Notwithstanding subsection (1), an appeal may be instituted out of time if the Tribunal is satisfied that there was a reasonable cause for not appealing within the time prescribed and that the appeal was filed thereafter without unreasonable delay.

(3) A notice of appeal shall specify the grounds of appeal and be in such form and manner as may be prescribed by rules issued by the Chief Justice.

(4) If, on the hearing of an appeal, the appellant desires to bring in any ground of appeal, which was not specified in the notice of appeal, and the omission of that ground from the notice was, in the opinion of the Tribunal, not wilful or unreasonable, the Tribunal shall not be precluded from allowing the appellant to bring in that ground or take such ground into consideration.

(5) The Commission shall, within seven days, after receiving a notice of appeal, forward to the Tribunal copies of all documents relevant to the decision appealed from.

193. (1) An appeal shall be heard in public, unless the Tribunal, on the application of the applicant, otherwise directs.

Hearings
before
Tribunal

(2) The Tribunal may dispose of an appeal by—

- (a) confirming, varying or setting aside an original order, or decision and, where the original order or decision is set aside, by substituting the original order or decision as the Tribunal considers appropriate;
- (b) remitting the matter in question to the Commission with such directions as it considers appropriate; or
- (c) making any other order which the Tribunal considers appropriate.

(3) Where the Tribunal varies or substitutes any order or decision as provided in paragraph (a) of subsection (2), the order or decision as varied or substituted shall be the decision of the Commission on appeal.

(4) The Tribunal shall deliver a judgment within sixty days of the conclusion of the hearing of a matter and the judgment or decision of the Tribunal shall be reasoned.

(5) The standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in the Court of law.

(6) A person aggrieved with the decision of the Tribunal may, within thirty days of receipt of the decision, appeal to the Court of Appeal.

(7) The Registrar of the Tribunal shall cause every award, decision or judgement of the Tribunal to be communicated to the parties concerned.

(8) The Tribunal shall cause to be kept a record of its proceedings.

Market
misconduct
proceedings

194. (1) The Commission may institute proceedings before the Tribunal, if it appears to the Commission that any licensed person has committed an act of misconduct in the capital markets, as prescribed.

(2) The Commission shall institute proceedings by giving the Tribunal a notice, in writing, as prescribed, which notice shall contain a statement specifying the grounds being relied on and the matters specified in subsection (3).

(3) Without limiting the generality of subsection (2), the Tribunal shall determine—

(a) whether any act of misconduct in the capital markets has been committed;

(b) the amount of profit gained or loss avoided as a result of the act of misconduct in the capital markets.

(4) The Tribunal may, where an act of misconduct in the capital markets is proven, order that a person identified as having engaged in the act of misconduct be subject to the following order—

(a) payment of an administrative fine, payable to the Commission, as may be prescribed;

- (b) censure, including the publication of a notice in a newspaper of general circulation;
- (c) compensation or restitution to any person, on such terms as the Tribunal may direct;
- (d) account for, in such form and on such terms as the Tribunal may direct, such amounts as the Tribunal determines to be profits arising from the act of misconduct or any other form of unjust enrichment determined by the Tribunal;
- (e) cease and desist from such activity as the Tribunal may determine;
- (f) do any act or thing;
- (g) be prohibited from being, or becoming, a senior officer or director of a reporting issuer or participant; or
- (h) pay a specified amount, being all or part of the costs of the proceedings, including those of any other party to the proceedings.

(5) Notwithstanding subsection (1), the Commission may refer any matter to the Director of Public Prosecutions, and the appropriate investigative wing, if it appears to the Commission that the act of misconduct in the market or industry may constitute a criminal offence.

195. (1) An appellant, respondent or the Commission, if dissatisfied with an order or decision of the Tribunal, as being erroneous in point of law or fact or both law and fact may, within twenty-one days after the delivery of the order or decision or within such other time as may be prescribed by rules issued by the Chief Justice, appeal against such order or decision, with leave of the Court of Appeal, except that the appellant may appeal to the Supreme Court against the refusal of the leave to appeal.

Appeal to
Court of
Appeal

(2) An appeal shall be instituted by filing with the Registrar a notice, in writing, in the prescribed form, and serving a copy of the notice on the respondent.

(3) A notice of appeal shall set forth the facts and the determination of the Tribunal and the appellant shall transmit the case to the Court of Appeal within twenty-eight days after receiving the same.

(4) The appellant shall, at or before the time of transmission of the case to the Court of Appeal serve a copy of the case to the other party.

(5) The Court of Appeal shall hear and determine the case and shall reverse, affirm, or amend the order or decision being appealed against or refer the matter back to the Tribunal with an opinion of the Court of Appeal or make such other order in relation to the case as the Court of Appeal may consider appropriate in the matter.

PART XVIII

OFFENCES ON IMPROPER TRADING PRACTICES

Penalty in substitution of penalty units

196. In this Part, where a section provides that a person is liable to payment of penalty units for committing an offence, the Court may impose, taking into account the size of the transaction or severity of the offence, in substitution of the penalty units, a penalty of ten percent of the annual turn-over of the business of the capital markets operator, if the turn-over is higher than the penalty units provided.

Fraudulent transactions

197. A person who, directly or indirectly, in connection with any securities transaction—

(a) employs any device, scheme or artifice to defraud another 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 another person;

commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

False trading and manipulation of the market

198. (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 securities on any securities exchange; or

(b) a false or misleading appearance of the market for, or the price of, securities.

(2) A person shall not, in a securities transaction that does not involve a change in the beneficial ownership of securities or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of securities.

(3) A securities transaction shall 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 securities transaction, or a person associated with the person in relation to the securities, holds an interest in the securities after the securities transaction.

(4) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

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

Use of
deceptive
statements,
etc. as
inducements

(a) by making or publishing any statement, promise or forecast that the person 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;

commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

200. (1) A person shall not make a statement or give information to a securities exchange, self-regulatory organisation or a clearing and settlement agency, being a statement or information that the person is required to give in terms of this Act, where the person knows or ought reasonably to have known that the statement or information is false or misleading.

False
statements to
securities
exchange, etc.

(2) A person shall not omit to state any matter, in or in connection with any application to a securities exchange, self-regulatory organisation or a clearing and settlement agency, being a matter required by this Act or regulations or rules made in accordance with this Act, where the person knows or ought reasonably to have known that, because of the omission, the application is misleading in a material respect.

(3) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

201. A person who, directly or indirectly, for the purpose of inducing a securities transaction, makes with respect to the securities, or with respect to the operations or the past or future performance of the listed company—

False or
misleading
statements
on sale of
securities

- (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 the person 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 the person knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact;

commits offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

Damages for
loss
sustained

202. (1) A person who is convicted of an offence as specified in 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 incurred.

(2) Nothing in this section limits or diminishes any civil liability which any person may incur in terms of any other law.

Failure to
furnish
information

203. A person who refuses or fails, without reasonable excuse, to furnish information or a document that the person is required to furnish in terms of this Act or any regulations or rules, made in accordance with this Act, commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units, or imprisonment for a term not exceeding ten years, or to both.

Obstructing
Commission,
Chief
Executive
Officer, etc.

204. A person who hinders or obstructs the Commission, the Chief Executive Officer or any person authorised by the Commission or Chief Executive Officer, in the performance of their functions as provided in this Act or any regulations or rules, made in accordance with this Act, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or imprisonment for a term not exceeding five years, or to both.

PART XIX

MISCELLANEOUS PROVISIONS

205. A person who, for the purposes of obtaining a licence, in accordance with this Act, whether for oneself or for any other person, makes any representation, whether in writing, orally or otherwise, which that person knows to be false or misleading as to a material particular, commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a period not exceeding ten years, or to both.

Fraudulent applications

206. (1) A licensed person shall, after the approval of the Commission, designate a compliance officer in accordance with prescribed guidelines and rules.

Designation of compliance officer of licensed person

(2) A compliance officer shall —

- (a) monitor and report, to the Commission, compliance of a licensed person in respect of the obligations specified in this Act and any codes, policies, procedures or systems prescribed in this Act or regulations or rules made in accordance with this Act;
- (b) advise and assist the licensed or authorised person in complying with its obligations in accordance with this Act;
- (c) review policies and procedures for management of conflicts of interest and assess the risk of non-compliance of such policies and procedures; and
- (d) submit reports to the Commission on compliance by licensed persons.

207. (1) The regulatory powers conferred on the Commission over a licensed person, in this Act, may only be exercised if it appears to the Commission that the person is not a fit and proper person to be a licensed person and—

Commission's power over licensed persons

- (a) the person has contravened or failed to comply with a provision of this Act or regulations or rules made in accordance with this Act, is in purported non-compliance with any such provision or has furnished the Commission with information that is false, inaccurate or misleading; or
- (b) the exercise of the power is otherwise necessary for the protection of current or future investors.

(2) The Commission may recommend, to a securities exchange, clearing and settlement agency, dealer, investment advisor, or self-regulatory organisation, the removal from office of a person in senior management who is not compliant with subsection (1).

Association
of Capital
Markets
Operators

208. (1) The Capital Markets Operators shall establish an association of Capital Markets Operators for the purpose of establishing and enforcing a code of conduct and promoting the development of Capital Markets.

(2) The Commission shall not license a Capital Market Operator that is not a member of the association referred to in subsection (1).

Disciplinary
actions

209. (1) A board of a securities exchange or the Commission, if the board fails to act, may suspend, expel or otherwise discipline any member of the securities exchange, or deny any member access to the securities exchange, in accordance with the exchange rules.

(2) Any suspension, expulsion, disciplinary or access denial procedures, prescribed by an exchange rules, shall provide for written notice to the Commission and to the member who is suspended, expelled, disciplined or denied access, which shall include the reasons for the action or decision taken, within thirty days of the taking of such action or decision.

(3) A board of a securities exchange or the Commission shall make public its findings and the reasons for any action taken in any proceeding in terms of this section.

(4) The Commission may, by notice in writing, for a period not exceeding six months, suspend, a director, manager or officer concerned in the management of a capital market operator who fails to take reasonable steps to secure compliance by the capital market operator with the requirements of this Act or the Regulations.

(5) The Commission may, before the expiry of the period of suspension referred to in subsection (4), apply to the Tribunal for an order extending the suspension for such period as the Tribunal considers necessary, or removing the director, manager or officer from office.

(6) Despite subsection (5), the Commission may recommend to a capital market operator for the removal from office of a director, manager or officer who fails to take reasonable steps to secure the compliance of the capital market operator with this Act and Regulations without suspending the director, manager or officer.

(7) Where a director, manager or officer is suspended or removed from office under this section, the director, manager or officer shall not perform any duty pertaining to the office during the period of suspension, or after removal from office.

(8) A person who contravenes subsection (6) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

210. (1) The Commission may, in accordance with such standards and procedures as it may consider appropriate, review any decision made by a board of a securities exchange or a clearing and settlement agency in which a person is suspended, expelled or otherwise disciplined or denied access to the securities exchange.

Review by
Commission

(2) The Commission may, by order, affirm, modify, set aside or remand any decision it reviews, pursuant to subsection (1), after a determination, on the record, whether the action of the board was in accordance with this Act and its exchange rules.

(3) Any order of the Commission, made in terms of subsection (2), shall govern the securities exchange in its further treatment of the matter.

(4) The Commission may order a stay of any action taken, pursuant to subsection (1), pending review of the action.

211. (1) The Commission may publish, in the *Government Gazette* and a daily newspaper of general circulation in Zambia, and in any other manner it considers appropriate, such codes and guidelines as it considers necessary for providing guidance—

Codes and
guidelines

(a) for the furtherance of any of its regulatory objectives; and

(b) in relation to any matter relating to the functions of the Commission or operation, compliance and enforcement of this Act or rules or regulations made in accordance with this Act.

(2) A code, guideline, directive or guidance notes issued by the Commission, in accordance with this Act, shall be complied with, failure to which the Commission may impose an administrative penalty as provided in this Part.

212. The Commission may issue such directives, guidance notes, bulletins or other regulatory statements as the Commission may consider necessary or desirable for the administration of this Act, or rules and regulations made in accordance with this Act.

Guidance
notes, etc.

213. (1) Subject to this section, any person may, on request, review or copy any document lodged with the Commission in terms of this Act or any regulations or rules made in accordance with this Act.

Access to
documents

(2) The Commission may, by rules, specify procedures for making requests for access, as provided in subsection (1), and the terms and fees to be paid for purposes of such access.

(3) The Commission may refuse to authorise a document to be reviewed or copied, in whole or part, where it is satisfied that—

- (a) information in the document is confidential to the person lodging the document and has a real commercial value to the person that would be seriously and unreasonably prejudiced if the information were to be made generally available; or
- (b) information in the document is personal information about a person and it is in the public interest that the information should not be generally available.

Control of
advertisements

214. (1) The Commission may make rules in respect of the publication, form and content of securities advertisements.

(2) Rules made in accordance with subsection (1) may—

- (a) prohibit the publication of advertisements of any description, whether by reference to their contents, to the persons by whom they are published or otherwise;
- (b) make provision as to the matters which should or should not be included in such advertisements;
- (c) provide for any exemptions from any requirement imposed by this Act; and
- (d) provide for offences and penalties for the breach of any requirement of the rules.

(3) Where, it appears to the Commission that a securities advertisement—

- (a) does not comply with any requirement imposed in the rules made in terms of this section; or
- (b) is false or misleading;

the Commission shall give such directives to the person who has published or caused to be published the securities advertisement as it considers appropriate in the circumstances.

(4) A directive given, in terms of subsection (1), may require—

- (a) a person to modify, in whole or in part, the advertisement;
or
- (b) the publication of the securities advertisement to cease.

(5) Nothing in this section shall prejudice any remedy that an aggrieved person may have against a person who published or caused to be published an advertisement contrary to the requirements of the rules made in accordance with this section.

(6) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or imprisonment for a term not exceeding ten years, or to both.

215. (1) Where this Act or any rules and regulations made in accordance with this Act, provides that a person commits an offence where the person does a particular act, the offence is deemed to have been committed even where the act is done partly outside Zambia.

Offences committed partly in and partly out of Zambia

(2) Where this Act or any regulations and rules, made in accordance with this Act, provides that a person commits an offence where the person does two or more particular acts, the offence is deemed to have been committed even if some of those acts are done outside Zambia.

216. Where, in accordance with this Act—

- (a) an act is required to be done within a particular period or before a particular time and the obligation to do the act continues after the period has ended or the time has passed; or
- (b) failure or refusal to comply with the provision is an offence and such failure continues; and

Continuing acts or offences

the person commits a separate offence for each day on which the failure or refusal continues and shall be liable to an administrative penalty for each day on which the failure or refusal continues or, on conviction, to a penalty prescribed by the Minister, by statutory instrument, for each day that the offence continues.

217. (1) A person who is convicted of an offence, in accordance with this Act, shall have that person's licence, registration, authorisation or recognition revoked or cancelled, as the case may be, and may not be licensed, authorised, registered or recognised, in terms of this Act, for a period determined by the Commission and may be barred from participating, in any manner, in any securities market on such terms and conditions as the Commission may determine.

Actions by Commission on conviction of offence

(2) The Commission may, upon petition, review the disqualification and bar and, for good cause shown, reduce the period, provided in terms of subsection (1).

218. (1) Where the Commission is satisfied, after due investigation, or where a person admits that the person has committed an offence under this Act or regulations or rules, made in accordance with this Act, the Chief Executive Officer, may compound the offence and impose an administrative penalty as specified in subsection (2).

Administrative penalties

(2) The Commission may impose any of the following penalties as an administrative penalty:

- (a) a public or private censure or reprimand;
- (b) where a fine is provided for an offence, an amount of money not exceeding fifty percent of the maximum of the fine; or
- (c) where no penalty is provided for an offence, an amount of money to be determined by the Commission but not exceeding double the monetary gain to the person for each contravention.

Offence by
body
corporate or
unincorporate
body

(3) If a person, on whom an administrative penalty is imposed in accordance with this section, fails to pay the penalty within the time ordered by the Commission, the Commission may, recover the penalty by action in a court of competent jurisdiction.

219. Where an offence is committed by a body corporate or an unincorporate body, every director or manager of the corporate or unincorporate body is liable, on conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the Court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

General rules
by
Commission

220. (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 by the Commission, or that is necessary to be prescribed for purposes of carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), rules made under that subsection may make provision for—

- (a) the conduct of business by licensed persons and their representatives;
- (b) matters incidental to the licensing of any person under this Act;
- (c) the class of persons in relation to whom, and the manner and circumstances in which, licensed persons and their licensed representatives may deal in securities;
- (d) the types of securities in which licensed persons and their representatives may deal;
- (e) the correction of any errors in any register or record kept in accordance with this Act;

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- (f) particulars to be recorded for the purposes of this Act, in relation to accounts of licensed persons;
 - (g) the lodgment of auditor's reports and the information to be contained in the auditor's report;
 - (h) the lodgment by licensed persons of annual financial statements;
 - (i) the forms to be used for the purposes of this Act, and the manner in which applications are to be made;
 - (j) the 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;
 - (k) 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;
 - (l) administrative penalties to be imposed;
 - (m) the types of business that the Commission considers as constituting securities activities;
 - (n) the authorization and conduct of credit rating agencies and the rating of securities by the agencies;
 - (o) maintenance of the confidentiality of clients of licensed persons;
 - (p) information and the matters to be displayed on business stationery of licensed persons;
 - (q) insurance by licensed persons against negligence or default;
 - (r) the issue of duplicate licences in case of loss or destruction;
 - (s) dealings in securities including margin and position limits;
 - (t) the practice and conduct of share registers;
 - (u) the arbitration of disputes involving licensed persons;
 - (v) the making of annual or other regulatory returns to the Commission by licensed persons;
 - (w) mandatory disclosures and registration of interests in securities;
 - (x) determination of fit and proper test for directors or licensed persons;
 - (y) anti-money laundering and countering the financing of terrorism by licensed persons;

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- (z) any saving or transitional provisions the Commission considers necessary or convenient to be made in consequence of the enactment of this Act and the repealed Act; and
 - (aa) operation and management of a collective investment scheme.
- (3) The Commission may, by statutory instrument, make other rules to provide for—
- (a) the contents, form and issue of a prospectus, financial statements, annual reports and other documents required or provided for in this Act;
 - (b) requirements for the display and use of unique numbers allocated for licences;
 - (c) securities requirements for transactions, including requirements prohibiting or restricting an issuer from commencing or carrying out business or applying funds raised in an offering;
 - (d) the procedure for the clearance and settlement of securities;
 - (e) categories of securities that shall be dematerialised;
 - (f) the formulation and publication of codes of conduct for licensed persons, their officers and employees;
 - (g) the categorisation of collective investment schemes for the purposes of this Act or any regulations made under this Act;
 - (h) requirements for licensees to make reports to the Commission, securities exchanges, their clients or participants in the schemes, either regularly or on the occurrence of specified events or circumstances;
 - (i) requirements for contents, publication and dissemination of reports to the Commission by —
 - (i) licensed persons;
 - (ii) officers and former officers of licensed persons;

- (j) prudential rules, including rules as to capital adequacy, assets and other resources for licensed persons;
- (k) disclosures to be made by licensed persons;
- (l) offer of securities through the electronic media;
- (m) keeping of books and records by licensed persons;
- (n) the transfer of business, contracts or other engagements of a licensed person on insolvency or winding up;
- (o) the taking of fees and the levying of charges;
- (p) any form of trading of securities including turnaround trading and short-selling, and lending and borrowing on securities;
- (q) the criteria for declaration as publicly traded companies;
- (r) the de-registration of securities; and
- (s) the effective administration and implementation of this Act.

(4) The Commission may issue rules prescribing the segregation and safe custody of client moneys or other property.

(5) The Commission shall, before making the rules as prescribed in this section publish proposals for the rules in a newspaper or electronic media of general circulation and shall take into account any representations made to the rules.

221. (1) The Minister may, by statutory instrument, make regulations as provided or required to be prescribed in this Act and as are necessary to give effect to the provisions of this Act.

Regulations

(2) Notwithstanding the generality of subsection (1), the Minister may prescribe the—

- (a) procedure and qualifications for licensing of dealers, investment advisers, share transfer agents and representatives;
- (b) procedure for applying for a licence and the grant, modification, renewal, transfer, suspension and revocation of a licence;
- (c) terms and conditions attaching to the application, grant, modification, refusal, renewal, transfer, suspension or revocation of a licence;

- (d) performance standards relating to the issuance of certificates, record keeping and reporting;
- (e) prompt and accurate creation of securities and the safeguarding of securities and funds by share transfer agents; and
- (f) procedures for claims and access to the Compensation Fund.

Repeal of
Securities
Act and
savings and
transitional
provisions
Cap. 354

222. (1) The Securities Act, 1993 is hereby repealed.

Cap. 354

- (2) Notwithstanding the repeal of the Securities Act, 1993—
 - (a) any application pending before the Commission under the repealed Act shall be deemed to have been made to the Commission in accordance with the corresponding provision of this Act and the Commission shall ensure that the application complies with the provisions of this Act and the applicant shall comply with any request or direction of the Commission to ensure that the requirements stipulated in this Act, with respect to an application, are complied with;
 - (b) a licence, registration, authorisation or recognition granted in accordance with the repealed Act, whether to a company or an individual, shall be deemed, until expiry, revocation or cancellation of that licence, registration, authorisation or recognition, as provided in the repealed Act, to be a licence, registration, authorisation or recognition granted in accordance with this Act, but subject to any rights or benefits accruing, or any liabilities suffered, under the repealed Act, but without the right of renewal;
 - (c) any investigation or proceeding commenced by the Commission and not concluded at the commencement of this Act may be continued by the Commission; and
 - (d) any directions given in accordance with the repealed Act shall, unless contrary to this Act, continue in force until revoked, in accordance with 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 Commission under the repealed Act.

(4) A securities exchange doing business before the commencement of this Act shall continue to operate as a securities exchange as if licensed in accordance with this Act, but shall, within twelve months of the coming into force of this Act, comply with the licensing and other provisions of this Act.

(5) All capital markets operators licensed, registered, authorised or recognised to do business in accordance with the repealed Act shall continue to operate as capital markets operators, but shall, within twelve months of the coming into force of this Act, comply with the licensing and other provisions of this Act.

(6) A company which at the commencement of this Act is carrying on any activity as a venture capital fund shall make an application to the Commission, within a period of six months of the commencement of this Act, in accordance with this Act and be compliant with this Act.

(7) All capital markets operators licensed, registered or doing business, in accordance with the repealed Act, shall, within sixty days of the establishment of the Association of Capital markets Operators, become members of the Association.

FIRST SCHEDULE

(Section 7)

THE SECURITIES AND EXCHANGE COMMISSION

PART I

ADMINISTRATION OF COMMISSION

Seal of
Commission

1. (1) The seal of the Commission shall be such device as may be determined by the Board and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(3) Any document purporting to be a document executed under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Tenure of
office and
vacancy

2. (1) A member of the Board shall, subject to the provisions of this Schedule, hold office for a term of not more than three years and may be appointed for a further term of three years, except that a member shall only hold office for two terms.

(2) Upon the expiration of the term for which a member is appointed the member shall continue to hold office until a successor has been appointed, but in no case shall any such extension of the term exceed three months.

(4) The office of a member becomes vacant—

- (a) upon the member's death;
- (b) if the member is adjudged bankrupt;
- (c) if the member is absent, without reasonable cause, from three consecutive meetings of the Board of which the member has had notice;
- (d) upon the expiry of one month's notice of the member's intention to resign from office given by the member in writing to the Minister;
- (e) upon the expiry of one month's notice of the member's removal given to the member in writing by the Minister;
- (f) if the member becomes mentally or physically incapable of performing the duties of a member; or
- (g) if the member is convicted of an offence under this Act or any other written law and is sentenced to imprisonment for a term of six months or more, without the option of a fine.

(5) The Minister shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.

3. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

Proceedings
of Board

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one third of the members so request in writing except that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.

(4) There shall preside at any meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson;

(c) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.

(5) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting, and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.

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

4. There shall be paid to members of the Board or any committee such travelling and subsistence allowances, as the Emoluments Commission may determine.

Allowances
for members

5. (1) If a member or person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration, and in which matter that person or person's spouse, relative, friend or associate is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, take part in any consideration or discussion of, or vote on, any question relating to that matter.

Disclosure of
interest

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Prohibition of publication of, or disclosure of, information to an unauthorised persons

6. (1) A person shall not, without the consent in writing given by, or on behalf of, the Board, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully published or communicates the information to any other person, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Immunity of members and staff

7. An action or proceeding shall not lie or be instituted against a member of the Board or a committee of the Board for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise of or performance, or purported exercise or performance of any of the powers, functions or duties conferred under this Act.

PART II

FINANCIAL PROVISIONS

Funds of Commission

8. (1) The Commission shall be funded by—

- (a) such sums as may be payable to the Commission 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, transactions and any other levies imposed; and
- (d) such sums of money or such other assets as may accrue to or vest in the Commission whether in the course of the exercise of its functions or otherwise.

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- (2) The Commission may —
- (a) accept moneys by way of grants or donations from any source in Zambia; and
 - (b) and subject to the approval of the Minister, accept moneys from any source outside Zambia.
- (3) There shall be paid from the funds of the Commission —
- (a) where appropriate, salaries, allowances, loans, gratuities and pensions of staff of the Commission, and other payments for the recruitment and retention of staff;
 - (b) such reasonable travelling and subsistence allowances for staff, members of the Commission and members of any committee of the Commission, when engaged on the business of the Commission, at such rates as the Commission may, with the approval of the Minister, determine; and
 - (c) any other expenses incurred by the Commission in the performance of their functions.
- (4) The Commission shall perform its functions in accordance with sound financial principles and shall ensure as far as possible that its revenue is sufficient to meet expenditure properly chargeable to revenue.
- (5) The charge or fee imposed on any services and facilities rendered by the Commission shall be reasonably related to expenses incurred, or to be incurred, by the Commission in relation to the provision of the service or facility.

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

Financial
year

10. (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.

Accounts and
audit

(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.

(3) The auditor's fees shall be paid by the Commission.

Annual
report

11. (1) As soon as practicable, but not later than one hundred and eighty days after the end of the financial year, the Commission shall submit to the Minister a report concerning its activities during the financial year.

(2) The report referred to in subsection (1), shall include information on the financial affairs of the Commission and there shall be appended to the report—

(a) audited financial statements;

and

(b) such other information as the Minister may require.

(3) The report to be submitted in accordance with subsection (1), shall include the following:

(a) the extent to which the Commission has fully implemented its regulatory oversight functions as provided under this Act and in its rules and the effectiveness of the operation of such regulatory oversight function;

(b) the actual and projected cost savings to the Government, if any, resulting from operations of the Commission;

(c) the actual and projected costs which the Commission and the public would have incurred if the Commission had not undertaken regulatory responsibility for certain areas under the Commission's jurisdiction;

(d) the nature of the working relationship between the securities exchanges, clearing and settlement facilities and the Commission;

(e) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Commission; and

(f) the immediate and projected capabilities of the Commission.

(4) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

SECOND SCHEDULE

*(Section 22)*REQUIREMENTS TO BE MET BY APPLICANTS FOR SECURITIES
EXCHANGE LICENCE

For the purposes of section *twenty-two*, the requirements are as follows:

1. The applicant shall have financial resources sufficient for the proper performance of its functions.
2. 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.
3. The rules and practices proposed to be followed by the applicant shall be such as ensures that business conducted by means of its facilities are 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 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 disciplinary action against that member.

4. The applicant has made such provision as the Commission considers satisfactory for—

- (a) clearing and settlement of dealings in securities ties to ensure that performance of transaction 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.

5. The applicant shall be able and willing to promote and maintain high standards of integrity and fair dealing by its members.

6. The applicant shall have good corporate governance structures at Board and management levels so as to be able to put in place including the requirement that independent members of the Board should be in the majority in comparison to trading members.

7. A Security clearance shall be undertaken before the appointment of Board members and management.

8. Where the Board is of the view that the securities exchange board is not upholding the requirements specified in this Act the Commission shall have powers to dissolve the securities exchange board.
