



ZIMBABWE

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**ACT**

To amend Securities Act [*Chapter 24:25*], the Collective Investment Schemes Act [*Chapter 24:19*] and the Asset Management Act [*Chapter 24:26*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and Parliament of Zimbabwe.

**1 Short title**

This Act may be cited as the Securities Amendment Act, 2013.

**2 Amendment of section 1 of Cap. 24:25**

Section 1 ("Short title and date of commencement") of the Securities Act [*Chapter 24:25*] (hereinafter called "the principal Act") is amended by the insertion after "Securities" of "and Exchange".

**3 Amendment of section 2 of Cap. 24:25**

Section 2 ("Interpretation") of the principal Act is amended in subsection (1)—

(a) by the insertion of the following definitions—

““Audit Committee” means the Audit Committee appointed in terms of section 15A;

“board”, in relation to a securities exchange, means the board of directors of the exchange, constituted in terms of paragraph 6 of the Second Schedule;”;

- (b) in the definition of “Commission” by the deletion of “Securities Commission” and the substitution of “Securities and Exchange Commission of Zimbabwe”;
- (c) by the repeal of the definition of “committee”;
- (d) by the insertion of the following definition—
  - ““Investor Protection Fund” means the Investor Protection Fund established by section 86B;”;
- (e) in the definition of “licensable activity”—
  - (i) by the deletion of “when carried on for remuneration that bears a direct relation to the activity”;
  - (ii) in paragraph (b) by the repeal of subparagraph (i) and the substitution of—
    - “(i) advising other persons, whether as employee, agent or consultant, on corporate actions and investments in securities;”;
  - (iii) by the repeal of paragraph (e) and the substitution of—
    - “(e) recording transfers and other transactions relating to securities;”;
  - (iv) by the insertion after paragraph (e) of the following paragraph—
    - “(f) managing or operating a collective investment scheme as defined in section 3 of the Collective Investment Schemes Act [*Chapter 24:19*];”;
- (f) by the insertion of the following definitions—
  - ““Licensing Committee” means the Licensing Committee appointed in terms of section 15B;
  - “Reserve Bank of Zimbabwe” means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:15*];”;
- (g) in the definition of “rules” by the deletion of “and includes any amendment of such rules” and the substitution of “and in any other case means rules made by the Commission in terms of section 118;”.

#### **4 Amendment of section 3 of Cap. 24:25 -**

Section 3 (“Establishment of Securities Commission”) of the principal Act is amended by the deletion of “Securities Commission” and the substitution of “Securities and Exchange Commission of Zimbabwe”.

#### **5 Amendment of section 5 of Cap. 24:25**

Section 5 (“Membership of Commission”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “three or more than five” and the substitution of “seven or more than nine”;
- (b) by the insertion after subsection (2) of the following subsection—
  - “(3) The Minister and the nomination committee shall ensure that so far as possible the Commission’s membership at any one time includes the following—
    - (a) a person registered as a legal practitioner in terms of the Legal Practitioners Act [*Chapter 27:07*]; and
    - (b) a person registered as a public accountant or public

- auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; and
- (c) an economist; and
  - (d) a person with experience in financial risk management; and
  - (e) a specialist in information and communications technology; and
  - (f) a person with experience in finance and financial markets; and
  - (g) a person who, in the opinion of the nomination committee, represents persons who carry on licensable activities; and
  - (h) a person who, in the opinion of the nomination committee, represents institutional investors in securities.”.

#### 6 Amendment of section 6 of Cap. 24:25

Section 6 (“Nomination committee”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of—
  - “(1) For the purpose of section 5, the Minister shall appoint a nomination committee consisting of—
    - (a) a member of the board of each securities exchange that is registered in Zimbabwe; and
    - (b) the person for the time being in charge of financial markets at the Reserve Bank of Zimbabwe; and
    - (c) two persons who, in the Minister’s opinion, represent insurers as defined in the Insurance Act [*Chapter 24:07*] and administrators of funds registered under the Pension and Provident Funds Act [*Chapter 24:09*]; and
    - (d) three persons appointed by the Minister from the lists of names submitted in terms of subsection (2).”;
- (b) in subsections (3) and (4) by the deletion of “paragraph (c)” and the substitution of “paragraph (d)”.

#### 7 Amendment of section 7 of Cap. 24:25

Section 7 (“Disqualifications for appointment to Commission”) of the principal Act is amended—

- (a) in subsection (2) by the insertion after paragraph (b) of the following paragraph—
  - “or
  - (c) a director of—
    - (i) any company or body corporate whose securities are listed securities; or
    - (ii) any licensed person;”;
- (b) in subsection (3) by the insertion in paragraph (b) after subparagraph (ii) of the following subparagraph—
  - “or
  - (iii) a company in which the State holds or controls the majority of the shares.”.

**8 Amendment of section 9 of Cap. 24:25**

Section 9 (“Terms of office and conditions of service of Commissioners”) of the principal Act is amended by the repeal of subsection (3) and the substitution of—

“(3) Commissioners shall be appointed on terms and conditions which give them responsibility for determining the Commission’s policies and ensuring that the Commission’s objectives are achieved and its functions performed efficiently and economically, and no commissioner shall be given direct executive responsibility for the day-to-day management of the Commission’s affairs, funds or property.”.

**9 Amendment of section 13 of Cap. 24:25**

Section 13 (“Meetings and procedure of Commission”) of the principal Act is amended in subsection (1) by the repeal of the proviso and the substitution of—

“Provided that the Commission shall meet at least once every three months.”.

**10 Amendment of section 14 of Cap. 24:25**

Section 14 (“Chief Executive Officer and staff of Commission”) is amended by the insertion after subsection (5) of the following subsection—

“(5a) Any decision made or act done by an employee of the Commission, including the Chief Executive Officer, in the exercise of his or her functions as an employee shall be deemed to be a decision made or act done by the Commission, and references to “the Commission” in this Act shall be construed accordingly.”.

**11 New sections inserted in Cap. 24:25**

The principal Act is amended by the insertion after section 15 of the following sections—

**“15A Audit Committee**

(1) The Commission shall appoint an Audit Committee consisting of at least three commissioners, none of whom shall be the Commission’s chairperson or vice-chairperson.

(2) The functions of the Audit Committee shall be—

- (a) to make recommendations to the Commission as to appointment and dismissal of auditors in terms of section 27; and
- (b) to ensure that the auditors appointed in terms of section 27 are given any information, explanations, assistance and facilities they need to enable them to carry out their functions under that section; and
- (c) to establish appropriate accounting procedures and accounting controls in respect of the Commission’s activities, and to ensure compliance with those procedures; and
- (d) to assist the Commission in evaluating the adequacy and efficiency of its internal control systems, accounting practices, information systems and auditing processes; and
- (e) to introduce such measures as the Committee considers may enhance the objectivity of financial statements and reports prepared by the Commission; and

- (f) to carry out any other function conferred or imposed upon the Committee by the Commission.

(3) The Audit Committee shall meet as often as may be necessary to carry out its functions.

(4) Decisions of the Audit Committee shall be decided by a majority vote of the members present:

Provided that no member may abstain from any vote to be taken.

#### 15B Licensing Committee

(1) The Commission shall appoint a Licensing Committee consisting of at least three commissioners, none of whom shall be the Commission's chairperson or vice-chairperson.

(2) The functions of the Licensing Committee shall be—

- (a) to supervise the Chief Executive Officer and other members of the Commission's staff in regard to the issue, renewal, amendment, cancellation and suspension of licences in terms of this Act; and
- (b) to carry out any other function conferred or imposed upon the Committee by the Commission.

(3) The Licensing Committee shall meet as often as may be necessary to carry out its functions.

(4) Decisions of the Licensing Committee shall be decided by a majority vote of the members present.”

#### 12 Amendment of section 16 of Cap. 24:25

Section 16 (“Commissioners and staff to disclose certain connections, interests and assets”) of the principal Act is amended—

- (a) in subsection (2) by the deletion of “Before a commissioner performs any function as a commissioner, he or she shall disclose in writing to the Minister” and the substitution of “The nomination committee shall not recommend any person for appointment as a Commissioner unless that person has disclosed in writing to the committee”;
- (b) by the repeal of subsections (3) and (4) and the substitution of the following subsections—

“(3) When recommending a person for appointment as a Commissioner, the nomination committee shall forward to the Minister any document in which the person has disclosed interests in terms of subsection (2), and the Minister may appoint the person subject to such conditions relating to the disposal of those interests as, in the Minister's opinion, will ensure that the person's judgement as a Commissioner will not be unduly influenced by them.

(4) Upon appointment, every Commissioner shall provide the Chief Executive Officer with a copy of any document in which he or she disclosed interests in terms of subsection (2), and shall notify the Chief Executive Officer, in writing, of any changes in those interests since the document was prepared.

(4a) A Commissioner shall not attend a meeting of the Commission unless, at least one day before the meeting, he or she has disclosed in writing to the Chief Executive Officer the full extent of—

Commissioner or member, acquires or has an interest or owns any property such as is referred to in paragraph (a);

the Commissioner or member, as the case may be, shall forthwith disclose the fact to the Chief Executive Officer or, where the interest or property is acquired, owned or held by the Chief Executive Officer or his or her relative, to the secretary of the Commission.”;

- (c) in subsection (6) by the deletion of “subsection (2), (3), (4) or (5)” and the substitution of “subsection (2), (4), (4a), (4b), (4c), (4e) or (5)”.

### 13 New section inserted in Part II of Cap. 24:25

Part II of the principal Act is amended by the insertion after section 22 of the following section—

“22A Exemption from liability of Commission, etc.

No liability shall attach to—

- (a) the Commission or to any commissioner or member of the Commission’s staff; or
- (b) any committee, panel or working group of the Commission, or to any member of such a committee, panel or working group;

in respect of loss or damage sustained by any person as a result of the *bona fide* exercise or performance of the functions of the Commission, committee, panel or working group:

Provided that this section shall not be construed so as to prevent any person from recovering damages or compensation for loss or damage sustained by him or her which was caused by negligence or breach of contract.”.

### 14 Amendment of section 30 of Cap. 24:25

Section 30 (“Registration of securities exchanges”) is amended in subsection (2) by the repeal of paragraph (a) and the substitution of—

- “(a) a certified copy of the applicant’s memorandum and articles of association, together with any other rules for the conduct of the applicant’s business; and”.

### 15 New section inserted in Cap. 24:25

The principal Act is amended by the insertion after section 35 of the following section—

“35A Dissolution of board of registered securities exchange or dismissal of its members

(1) Subject to subsections (2) and (3), the Commission may, by notice in writing to the exchange concerned, dissolve the board of a registered securities exchange or dismiss one or more of its members, if the Commission has reasonable grounds for believing that—

- (a) members of the board were improperly elected or appointed; or
- (b) the composition of the board does not comply with any requirements prescribed in rules made by the Commission

in terms of section 118; or

- (c) the exchange misrepresents the facilities it offers to the public; or
- (d) proceedings have been instituted for the winding up or dissolution of the exchange; or
- (e) the board has not properly enforced any of the rules of the exchange relating to the trading of securities; or
- (f) the exchange has failed or refused to pay a monetary penalty imposed on it in terms of section 105(1).

(2) Before dissolving the board of a securities exchange or dismissing any of its members, the Commission shall notify the board or the members concerned, in writing, of the action it proposes to take and of the Commission's reasons for proposing to take that action, and shall afford the board or the members concerned, as the case may be, an adequate opportunity to make representations in the matter.

(3) The Commission shall not dissolve the board of a securities exchange or dismiss any of its members—

- (a) until the period within which an appeal may be lodged in terms of section 108 has elapsed; or
- (b) if an appeal is lodged in terms of section 108, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, until the Commission is notified that its decision has been upheld.

(4) Where the board of a securities exchange has been dissolved in terms of this section, the Commission shall appoint a person to exercise the functions of the board pending the election or appointment of a new board in accordance with the articles of association of the exchange, which election or appointment shall be completed as soon as possible and in any event within three months after the dissolution of the previous board.

(5) Where members of the board of a securities exchange have been dismissed in terms of this section, the remaining members shall take the necessary steps to ensure that the vacant seats of those members are filled as soon as possible in accordance with the articles of association of the exchange.”

## 16 Amendment of section 36 of Cap. 24:25

Section 36 (“Cancellation of registration”) of the principal Act is amended by the repeal of subsection (2) and the substitution of—

“(2) Before cancelling the registration of a securities exchange, the Commission shall—

- (a) consult the Minister; and
- (b) after the consultation, notify the exchange, in writing, of the proposed cancellation and the reasons for it, and shall afford the board of the exchange an adequate opportunity to make representations in the matter:

Provided that, if the Commission believes on reasonable grounds that it is not possible to notify the exchange at its registered office, the Commission shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the main office of the

exchange is or was situated, stating that its registration will be cancelled unless the exchange lodges an appeal with the Minister in terms of section 108 within thirty days from the date of publication of the notice in the *Gazette*.”.

**17 Amendment of section 38 of Cap. 24:25**

Section 38 (“Persons requiring to be licensed”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “Subject to subsection (3)” and the substitution of “Subject to subsections (3) and (4);
- (b) in subsection (3) by the repeal of paragraphs (b) and (c).

**18 Amendment of section 43 of Cap. 24:25**

Section 43 (“Form and period of validity of licence”) of the principal Act is amended by the repeal of subsection (3) and the substitution of the following subsections—

“(3) A licence shall be valid indefinitely or for such fixed period as the Commission may fix, subject to rules, in any particular case.

(4) Where the Commission issues a licence for a fixed period, it shall ensure that the period is clearly endorsed on the licence.”.

**19 Amendment of section 44 of Cap. 24:25**

Section 44 (“Renewal of licence”) of the principal Act is amended in subsection (1) by the deletion of “The Commission may renew a licence” and the substitution of “Where a licence has been issued for a fixed period, the Commission may renew it”.

**20 New section inserted in Cap. 24:25**

The principal Act is amended by the insertion after section 44 of the following section—

“44A Annual fee payable by licensed persons

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

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

**21 New section inserted in Cap. 24:25**

Part V (“Licensing of brokers and other persons”) of the principal Act is amended by the insertion after section 49 of the following section—

“49A Accounts of registered securities exchanges

(1) Except as otherwise provided in rules, every licensed person shall—

- (a) keep proper accounts and other records relating thereto in respect of all his or her activities, funds and property; and
- (b) at the end of each financial year, prepare financial statements;

reflecting, in accordance with sound accounting practices, the activities and financial condition of the licensed person.

(2) The accounts, records and statements referred to in subsection (1) shall be kept and prepared in such form and detail, and in accordance



with such accounting standards, as may be prescribed in rules.

(3) Within ninety days after the end of each financial year, every licensed person shall submit to the Commission a copy of the financial statements prepared in terms of subsection (1)(b) and certified by the person's auditor.

(4) If required to do so by the Commission for the purpose of ensuring proper compliance with this Act, a licensed person shall supply the Commission with any account, document or information whatsoever relating to his or her activities, funds, property or financial condition.”.

## 22 Amendment of section 63 of Cap. 24:25

Section 63 (“Listed securities”) of the principal Act is amended—

(a) by the insertion after subsection (2) of the following subsection—

“(2a) Securities issued by a registered securities exchange shall not be listed on the official list of that or any other exchange except with the approval of the Commission and subject to such terms and conditions as the Commission may determine for the purpose of avoiding conflicts of interest.”;

(b) in subsection (3) by the insertion after “Subject to” of “this section and”.

## 23 Amendment of section 64 of Cap. 24:25

Section 64 (“Delisting or suspension of listing of securities and omission of prices from quotations of prices”) of the principal Act is amended—

(a) in subsection (1) by the repeal of paragraphs (a) and (b) and the substitution of the following paragraph—

“(a) with the approval of the Commission—

- (i) remove a listed security from its official list; or
  - (ii) suspend the listing of a security on its official list;
- or”;

(b) by the insertion after subsection (1) of the following subsection—

“(1a) The Commission shall inform the Minister without delay whenever a registered securities exchange requests its approval for action in terms of subsection (1)(a).”.

## 24 Amendment of section 65 of Cap. 24:25

Section 65 (“Rules of registered securities exchange”) of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a)—

A. by the repeal of subparagraph (i) and the substitution of—

“(i) the powers, functions and procedures of the board of the exchange;”;

B. in subparagraph (iv) by the deletion of “the audit” and the substitution of “subject to section 67A. the audit”;

(ii) in paragraph (c) by the deletion from subparagraph (iv) of “the removal” and the substitution of “subject to section 64, the removal”;

- (iii) by the repeal of paragraph (k);
- (b) by the repeal of subsection (2) and the substitution of—
  - “(2) Subject to subsection (3), a registered securities exchange—
  - (a) may amend or repeal its rules in accordance with its memorandum or articles of association; and
  - (b) shall amend or repeal its rules in accordance with its memorandum or articles of association, if required to do so by the Commission.”;
- (c) in subsection (3) by the insertion after “Commission” of “and published in the *Gazette*”.

## 25 New section inserted in Cap. 24:25

Part VIII (“Management of registered securities exchanges”) of the principal Act is amended by the insertion after section 67 of the following section—

### “67A Accounts of registered securities exchanges

- (1) Every registered securities exchange shall—
  - (a) keep proper accounts and other records relating thereto in respect of all its activities, funds and property; and
  - (b) at the end of each financial year, prepare financial statements; reflecting, in accordance with sound accounting practices, the activities and financial condition of the exchange.
- (2) The accounts, records and statements referred to in subsection (1) shall be kept and prepared in such form and detail, and in accordance with such accounting standards, as may be prescribed in rules.
- (3) Within ninety days after the end of its financial year, every registered securities exchange shall submit to the Commission a copy of the financial statements prepared in terms of subsection (1) and certified by the exchange’s auditor.
- (4) If required to do so by the Commission for the purpose of ensuring proper compliance with this Act, a registered securities exchange shall supply the Commission with any account, document or information whatsoever relating to the exchange’s activities, funds, property or financial condition.”.

## 26 Amendment of section 69 of Cap. 24:25

Section 69 (“Scheme for establishment of central securities depository”) of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by the repeal of paragraph (l);
  - (ii) in paragraph (n) by the deletion of “with the approval of the Commission.”;
- (b) by the insertion after subsection (1) of the following subsection—
  - “(1a) Rules referred to in subsection (1)(n) shall not have effect until they have been approved by the Commission and published in the *Gazette*.”.

**27 New sections substituted for section 76 of Cap. 24:25**

Section 76 (“Maintenance of accounts by central securities depository and probative effect thereof”) of the principal Act is repealed and the following sections are substituted—

**“76 Accounts of central securities depository**

(1) Every central securities depository shall—

(a) keep proper accounts and other records relating thereto in respect of all its deposited securities, funds and property; and

(b) at the end of each financial year, prepare financial statements; reflecting, in accordance with sound accounting practices, the depository’s activities and financial condition.

(2) The accounts, records and statements referred to in subsection (1) shall be kept and prepared in such form and detail, and in accordance with such accounting standards, as may be prescribed in rules.

(3) Within ninety days after the end of its financial year, every central securities depository shall submit to the Commission a copy of the financial statements prepared in terms of subsection (1)(b) and certified by the depository’s auditor.

(4) If required to do so by the Commission for the purpose of ensuring proper compliance with this Act, a central securities depository shall supply the Commission with any account, document or information whatsoever relating to the depository’s deposited securities, funds, property, activities or financial condition.

**76A Probative effect of entries in records of central securities depository**

An entry in any account or record maintained by a central securities depository shall be *prima facie* evidence of any dealings in deposited securities that are recorded in the entry.”

**28 New Part inserted in Cap. 24:25**

The principal Act is amended by the insertion after Part IX of the following Part—

“PART IXA  
INVESTOR PROTECTION FUND

**86A Interpretation in Part IXA**

(1) In this Part—

“Board” means the Investor Protection Board established by section 86C(1);

“contribution” means a contribution payable to the Fund in terms of section 86G;

“contributor” means any person who or institution which, in terms of 86G, is required to pay contributions to the Fund;

“Fund” means the Investor Protection Fund established by section 86B(1);

“malpractice” means—

- (a) theft, fraud, forgery, breach of trust or other dishonest conduct on the part of a contributor; or
- (b) a wrongful breach by a contributor of any provision of this Act or of any rule made under this Act;

“protected investor” means—

- (a) the holder of a security which is dealt with by a contributor; or
- (b) a person for whom a contributor holds a security; or
- (c) a person who has a right, whether vested or contingent, to obtain a security from a contributor.

(2) A contributor becomes insolvent for the purposes of this Part—

- (a) where the contributor is an individual, upon the High Court making an order for the sequestration of his or her estate; or
- (b) where the contributor is a company, upon—
  - (i) the making of an order by the High Court; or
  - (ii) the passing of a special resolution;

in terms of Part V of the Companies Act [*Chapter 24:03*] for the winding up of the company.

#### 86B Investor Protection Fund

(1) There is hereby established a fund, to be known as the Investor Protection Fund, which shall be vested in and administered by the Board in accordance with this Part.

(2) The Fund shall consist of—

- (a) all contributions; and
- (b) income from the investments of the Fund; and
- (c) any moneys borrowed on behalf of the Fund in terms of section 86D(2)(c); and
- (d) any moneys received by the Fund under any insurance effected on behalf of the Fund in terms of section 86D(2)(a); and
- (e) any other moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

(3) The object of the Fund shall be to compensate protected investors in accordance with this Act for losses directly incurred by them as a result of malpractice on the part of a contributor or in the event of a contributor becoming insolvent.

#### 86C Investor Protection Board

(1) There is hereby established a board, to be known as the Investor Protection Board, consisting of not fewer than three or more than six members appointed by the Commission.

(2) The Board shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of doing anything that bodies corporate may do.

(3) Members of the Board shall be appointed for such period and subject to such terms and conditions as the Commission may fix for such members generally.

(4) The Commission may require a member of the Board to vacate his or her office if the member—

- (a) has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
- (b) has failed to comply with any term or condition of his or her office fixed in terms of subsection (3); or
- (c) is mentally or physically incapable of efficiently performing his or her duties as a member.

(5) On the death of, or vacation of office by, a member of the Board, the Commission shall appoint a person to fill the vacancy.

(6) The procedure of the Board, including the quorum at its meetings, shall be as prescribed in rules or, in relation to any matter that is not so prescribed, as may be fixed by the Board.

(7) The validity of any act or decision of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of a member.

#### 86D Functions of Board

(1) Subject to this Act, the Board shall be responsible for—

- (a) administering the Fund; and
- (b) levying contributions from contributors; and
- (c) paying compensation to protected investors for losses directly incurred by them as a result of malpractice on the part of a contributor or in the event of a contributor becoming insolvent.

(2) Subject to this Act, in the exercise of its functions, the Board may—

- (a) enter into any contract of insurance for the purpose of indemnifying the Fund against the making of compensation payments to depositors;
- (b) invest any moneys of the Fund that are not immediately required for the purposes of the Fund;
- (c) borrow moneys for the purposes of the Fund, and mortgage or hypothecate any of the Fund's investments as security for any such loan;
- (d) exercise, in relation to the Fund, any power conferred upon a trustee by the common law.

#### 86E Financial year of Fund

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

#### 86F Books of account and audit of Fund

(1) The Board shall ensure that proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Fund.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General in terms of Part VIII of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009).

(3) The audited accounts of the Fund shall be open for inspection by contributors and their officers and employees at all reasonable times at the offices of the Commission.

#### 86G Contributions to Fund

(1) Every registered securities exchange and licensed person shall be liable to pay contributions to the Fund.

(2) The amount of contributions payable to the Fund and the times and manner of their payment shall be as prescribed in rules.

(3) Any contributor who, without lawful excuse, fails or refuses to pay any contribution which he or she is liable to pay shall be guilty of an offence and liable to a fine not exceeding five times the amount of the contribution.

(4) The court convicting a contributor of an offence in terms of subsection (3) may, on the application of the prosecutor and in addition to any penalty it may impose, give summary judgment against the contributor in favour of the Board for the amount of the contribution which the contributor has been convicted of failing or refusing to pay.

(5) A contribution and any interest or surcharge connected therewith shall be a debt due to the Fund, and the Board may recover it from the contributor concerned by proceedings in a court of competent jurisdiction.

#### 86H Payment of compensation to protected investors in event of insolvency of contributor

(1) Subject to this Act, where it is proved to the satisfaction of the Board that a protected investor has sustained loss as a direct consequence of—

- (a) malpractice on the part of a contributor; or
- (b) the insolvency of a contributor;

the Board shall as soon as practicable compensate the protected investor for that loss in accordance with this Part.

(2) The amount of compensation payable to any one protected investor shall not exceed such amount as may be prescribed in rules.

(3) Subject to such terms and conditions as may be prescribed, the Board may reduce the compensation paid to any protected investor in order to take into account any amount paid to the investor—

- (a) by the trustee or liquidator of the contributor concerned, from the contributor's assets; or
- (b) by an insurer or any other person, by way of compensation for the loss concerned.

(4) Upon the payment of compensation to a protected investor, the Board shall be subrogated, up to the amount of the compensation, to any rights and remedies in respect of the protected investment concerned that may be vested in or available to the protected investor.

#### 86I Matters to be provided for in rules

The Commission shall provide for the following matters in rules made in terms of section 118—

- (a) the procedure of meetings of the Board;
- (b) the allowances and other remuneration payable to members of the Board;
- (c) the form and manner in which applications for compensation under this Part are to be made and the procedure to be followed in determining such applications;
- (d) generally, for the proper administration of the Fund and all matters incidental thereto.”.

#### 29 New section substituted for section 90 of Cap. 24:25

Section 90 of the principal Act is repealed and the following is substituted—

##### “90 Criminal penalty for misuse of inside information

Any person who contravenes section 88 shall be guilty of an offence and liable—

- (a) to a fine not exceeding—
  - (i) level fourteen; or
  - (ii) five times the amount of any profit or gain which he or she received as a result of the offence;
 whichever is the greater; or
- (b) to imprisonment for a period not exceeding five years; or to both such fine and such imprisonment.”.

#### 30 Amendment of section 108 of Cap. 24:25

Section 108 (“Appeals”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of—

“(1) Subject to this section, any person who is aggrieved by any decision, proposal or action, including a refusal to take action, on the part of—

- (a) the board of a registered securities exchange; or
- (b) the operator of a central securities depository; or
- (c) any person or entity vested with powers in terms of rules referred to in section 118(2)(k1);

may appeal to the Commission against the decision, proposal or action concerned.”;

- (b) by the repeal of subsections (5) and (6) and the substitution of the following subsections—

“(5) Any person who is aggrieved by a decision, proposal or

action of the Commission, whether on an appeal in terms of subsection (1) or otherwise, may appeal against the decision to the Minister.

(6) An appeal in terms of subsection (5) shall be made in writing and lodged with the Minister—

- (a) within thirty days after the appellant was notified of the decision, proposal or action appealed against; or
- (b) where a notice was published in terms of the proviso to section 36(2), within thirty days after the publication of the notice.

(7) In an appeal in terms of subsection (5), the Minister may conduct or cause to be conducted such inquiry into the matter as he or she thinks appropriate and may confirm, vary or set aside the decision, proposal or action appealed against:

Provided that the Minister shall—

- (i) ensure that the appellant and the Commission are given an adequate opportunity to make representations in the matter;
- (ii) deliver his or her decision in the appeal within thirty days after it was lodged.

(8) The Minister shall ensure that the appellant and the Commission are notified of his or her decision in an appeal in terms of subsection (5).

(9) Any person who is aggrieved by the Minister's decision in an appeal in terms of subsection (5) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

(10) In an appeal in terms of subsection (9), the Administrative Court may confirm, vary or set aside the decision, proposal or action appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.”

### **31 Amendment of section 111 of Cap. 24:25**

Section 111 (“Observance of rules of natural justice”) of the principal Act is amended by the insertion after paragraph (d) of the following paragraph—

“and

- (e) persons and entities vested with powers in terms of rules referred to in section 118(2)(k1);”.

### **32 Amendment of section 118 of Cap. 24:25**

Section 118 (“Rules”)(2) of the principal Act is amended—

- (a) by the insertion after paragraph (d) of the following paragraph—

“(d1) controlling, regulating and prohibiting related-party transactions, that is to say transactions between—

- (i) issuers of listed securities and their directors or shareholders; and
- (ii) any other persons who have a special relationship with each other;”;



- (b) by the repeal of paragraph (f) and the substitution of—
- “(f) the use of electronic means to trade and deal in securities, including—
- (i) requiring registered securities exchanges and licensed persons to employ automated electronic means when trading and dealing in securities and otherwise conducting their business activities;
  - (ii) regulating the automated electronic systems to be employed by registered securities exchanges and licensed persons when trading and dealing in securities and otherwise conducting their business activities;
- in order to ensure compatibility, and enhance productivity and efficiency, throughout the financial system of Zimbabwe;”;
- (c) by the insertion after paragraph (k) of the following paragraph—
- “(k1) the conferring of powers on persons and entities to create and enforce standards and rules to govern the conduct of licensed persons and additionally, or alternatively, of issuers of listed securities or any class of such persons and issuers;”.

### **33 Amendment of Second Schedule to Cap. 24:25**

The Second Schedule (“Requirements for Registration of Securities Exchange”) to the principal Act is amended—

- (a) in paragraph 1 by the deletion of “or other body corporate”;
  - (b) in paragraph 2 by the deletion of “constitution or”;
  - (c) in paragraph 6 by the deletion of “constitution, articles of association or other rules provide for a committee, board or other body” and the substitution of “articles of association provide for a board”;
  - (d) by the repeal of paragraph 7 and the substitution of—
- “7. The board referred to in paragraph 6 is or will be composed of persons with the qualifications and experience prescribed in rules made by the Commission in terms of section 118, and the applicant’s members will be adequately represented on that board.”.

### **34 Minor amendments to Cap. 24:25**

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column.

### **35 Amendment of long title of Cap. 24:25**

The long title of the principal Act is amended—

- (a) by the deletion of “Securities Commission” and the substitution of “Securities and Exchange Commission”;
- (b) by the insertion after “transfer of securities;” of “to establish an Investor Protection Fund and to provide for its application and management;”.

### **36 Amendment of Cap. 24:19**

The Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997) is amended—

- (a) in the long title by the deletion of “to provide for the appointment and functions of a Registrar of Collective Investment Schemes and other officers;”;
- (b) in section 2 (“Interpretation”)—
  - (i) by the insertion of the following definitions—
    - ““Chief Executive Officer” means the Chief Executive Officer of the Commission;
    - “Commission” means the Securities and Exchange Commission established by section 3 of the Securities and Exchange Act [Chapter 24:25];”;
  - (ii) by the repeal of the definition of “Registrar”;
- (c) by the repeal of section 4 (“Registrar and other officers”) and the substitution of—

“4 Functions of Chief Executive Officer and Staff of Commission

(1) The Chief Executive Officer shall perform his or her functions under this Act subject to such general directions as the Commission may give him or her.

(2) Other members of the Commission’s staff shall perform such of the Chief Executive Officer’s functions under this Act as the Chief Executive Officer may assign to them.”;

- (d) in section 7 (“Registration of Collective Investment Schemes”) by the deletion of “Registrar” and “Registrar’s” wherever they occur and the substitution of “Chief Executive Officer” and “Chief Executive Officer’s” respectively;
- (e) in section 8 (“Cancellation of registration”)—
  - (i) in subsection (1) by the deletion of “Registrar”—
    - A. where it occurs for the first time, and the substitution of “Chief Executive Officer, with the approval of the Commission.”;
    - B. where it occurs in paragraph (d)(ii), and the substitution of “the Commission or the Chief Executive Officer”;
  - (ii) in subsections (2), (3), (4) and (5) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
- (f) in section 9 (“Registration and cancellation thereof to be notified in *Gazette*”) and in section 11 (“Trust deed”)(5) by the deletion of “Registrar” and the substitution of “Chief Executive Officer”;
- (g) in section 13 (“Licensing of manager and trustee”)—
  - (i) in subsections (1) to (4) by the deletion of “Registrar” and “Registrar’s” wherever they occur and the substitution of “Chief Executive Officer” and “Chief Executive Officer’s” respectively;
  - (ii) by the repeal of subsection (5) and the substitution of the following subsections—
    - “(5) A licence shall be valid indefinitely or for such fixed period as the Chief Executive Officer may fix, subject to rules, in any particular case.
    - (6) Where the Chief Executive Officer issues a licence for a fixed period, he or she shall ensure that the period is clearly endorsed on the licence.”;

- (h) in sections 14, 15, 16, 17, 18(2)(c), 20, 21, 22, 24 and 26 by the deletion of “Registrar” and “Registrar’s” wherever they occur and the substitution of “Chief Executive Officer” and “Chief Executive Officer’s” respectively;
- (i) by the repeal of section 28 and the substitution of—
- “28 Inspectors
- Persons who have been appointed to be inspectors in terms of section 101 of the Securities and Exchange Act [*Chapter 24:25*] shall be inspectors for the purposes of this Act.”;
- (j) in sections 29 (“Registrar may demand information”), 30 (“Investigation into affairs of licensed person or registered scheme”) and 31 (“Procedure on completion of investigation”) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
- (k) by the repeal of section 32 and the substitution of—
- “32 Expenses of investigation
- (1) The Commission may recover from—
- (a) a manager whose affairs have been investigated in terms of this Part; or
- (b) the trustee of a scheme whose affairs have been investigated in terms of this Part;
- all or any of the expenses necessarily incurred by it in connection with the investigation.
- (2) In any proceedings in a court for the recovery of any expenses referred to in subsection (1), a certificate purporting to be signed by the Chief Executive Officer and setting out the amount of the expenses concerned shall be *prima facie* proof of their amount.”;
- (l) in section 34 (“Unsolicited calls”)(2) by the deletion of “The Minister may, in regulations made in terms of” and the substitution of “The Commission may, in rules referred to in”;
- (m) in section 37 (“Secrecy to be observed by Registrar and other officers”) (1) and section 38 (“Annual reports of Registrar”)(1) by the deletion of “Registrar” and the substitution of “Chief Executive Officer”;
- (n) in section 39 (“Appeals”)—
- (i) in subsection (1)—
- A. by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
- B. by the deletion of “Minister” and the substitution of “Commission”;
- (ii) in subsections (2), (3) and (4) by the deletion of “Minister” and the substitution of “Commission”;
- (iii) in subsections (3) and (4) by the deletion of “he” and “him” and the substitution of “it”;
- (iv) by the insertion after subsection (4) of the following subsections—
- “(4a) Any person who is aggrieved by a decision, proposal or action of the Commission, whether on an appeal in terms of subsection (1) or otherwise, may appeal against the decision to the Minister.

(4b) An appeal in terms of subsection (4a) shall be made in writing and lodged with the Minister—

- (a) within thirty days after the appellant was notified of the decision, proposal or action appealed against; or
- (b) where a notice was published in terms of the proviso to section 8(3) or the proviso to section 14(2), within thirty days after the publication of the notice.

(4c) In an appeal in terms of subsection (4a), the Minister may conduct or cause to be conducted such inquiry into the matter as he or she thinks appropriate and may confirm, vary or set aside the decision, proposal or action appealed against:

Provided that the Minister shall—

- (i) ensure that the appellant and the Commission are given an adequate opportunity to make representations in the matter;
- (ii) deliver his or her decision in the appeal within thirty days after it was lodged.

(4d) The Minister shall ensure that the appellant and the Commission are notified of his or her decision in an appeal in terms of subsection (4a).

(4e) Any person who is aggrieved by the Minister's decision in an appeal in terms of subsection (4a) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

(4f) In an appeal in terms of subsection (4e), the Administrative Court may confirm, vary or set aside the decision, proposal or action appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.”;

- (v) in subsection (5) by the deletion of “Minister” and the substitution of “Commission, the Minister or the Administrative Court, as the case may be.”;
- (o) in section 40 (“Evidence”) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
- (p) in section 42 (“Regulations”)—
  - (i) by the repeal of subsection (1) and the substitution of—
 

“(1) The Commission may make rules in terms of section 118 of the Securities and Exchange Act [*Chapter 24:25*] providing for all matters which in terms of this Act are required or permitted to be prescribed or which, in the Commission's opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.”;
  - (ii) in subsection (2)—
    - A. by the deletion of “Regulations” and the substitution of “Rules”;
    - B. in paragraphs (f) and (j) by the deletion of “Registrar” and the substitution of “Chief Executive Officer”;
    - C. by the insertion after paragraph (n) of the following paragraph—

- “(o) any matter which may be provided for in rules in terms of section 118 of the Securities and Exchange Act [*Chapter 24:25*].”;
- D. by the repeal of subsection (3).

### 37 Amendment of Cap. 24:26

The Asset Management Act [*Chapter 24:26*] is amended—

- (a) in the long title by the deletion of “to provide for the appointment and functions of a Registrar of Asset Managers and other officers;”;
- (b) in section 2 (“Interpretation”)(1)—
  - (i) by the insertion of the following definitions—
    - ““Chief Executive Officer” means the Chief Executive Officer of the Commission;
    - “Commission” means the Securities and Exchange Commission established by section 3 of the Securities and Exchange Act [*Chapter 24:25*].”;
  - (ii) by the repeal of the definition of “prescribe”;
  - (iii) in the definition of “recognised stock exchange” by the deletion of “Minister” and the substitution of “Commission”;
  - (iv) by the repeal of the definition of “Registrar”;
- (c) in section 3 (“Meaning of “business of asset management””)(2) by the repeal of paragraph (c) and the substitution of—
  - “(c) a person whose portfolio of property for investment on behalf of other persons amounts to less than the prescribed amount;”;
- (d) by the repeal of section 4 and the substitution of—
  - “4 Functions of Chief Executive Officer and Staff of Commission
    - (1) The Chief Executive Officer shall be responsible for registering asset managers and suspending or cancelling their registration and performing the other functions conferred or imposed upon him or her by this Act.
    - (2) The Chief Executive Officer shall perform his or her functions under this Act subject to such general directions as the Commission may give him or her.
    - (3) Other members of the Commission’s staff shall perform such of the Chief Executive Officer’s functions under this Act as the Chief Executive Officer may assign to them.”;
- (e) in section 5 (“Asset managers to be registered”)—
  - (i) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
  - (ii) in subsection (2) by the deletion of “form provided by the Reserve Bank for the purpose” and the substitution of “prescribed form”;
- (f) in section 6 (“Register of asset managers”), section 8 (“Officers of asset managers”), section 9 (“Disqualification for appointment as officer of asset manager”), section 10 (“Complaints to asset managers by clients”) and section 11 (“Responsibility of officers for fraudulent conduct of business by asset manager”) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;

- (g) in section 12 (“Registrar may require certain property of asset managers to be invested in prescribed investments”)—
- (i) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
  - (ii) by the deletion of “Governor” and the substitution of “Commission”;
- (h) in section 13 (“Appointment, duties and powers of auditors of asset managers”), section 14 (“Accounts, financial statements and returns”), section 15 (“Amalgamations and transfers of asset managers”) and section 16 (“Cancellation or variation of registration of asset managers”) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
- (i) in section 17 (“Enforcement of conditions of registration in lieu of cancellation”)—
- (i) in subsections (1) to (3) by the deletion of “Registrar” wherever it occurs and the substitution of “Chief Executive Officer”;
  - (ii) in subsection (6) by the deletion of “Registrar” and the substitution of “Commission”;
- (j) in section 18 (“Appointment and powers of inspectors”)—
- (i) by the repeal of subsection (1) and the substitution of—
 

“(1) Persons who have been appointed to be inspectors in terms of section 101 of the Securities and Exchange Act [*Chapter 24:25*] shall be inspectors for the purposes of this Act.”;
  - (ii) in subsection (2) by the deletion of “Registrar” and the substitution of “Chief Executive Officer”;
  - (iii) in subsection (4) by the deletion of “form provided by the Reserve Bank for the purpose requiring that person to produce that notice” and the substitution of “prescribed form requiring that person to produce the certificate”;
- (k) in section 19 (“Appeals”)—
- (i) in subsection (1)—
    - A. by the deletion of “Registrar” where it occurs for the first time and the substitution of “Chief Executive Officer”;
    - B. by the deletion of “through the Registrar to the Minister” and the substitution of “to the Commission”;
    - C. by the deletion of “Registrar’s” and the substitution of “Chief Executive Officer’s”;
  - (ii) by the repeal of subsections (2) and (3) and the substitution of the following subsections—
 

“(2) An appeal shall be made in the form and manner prescribed in rules and shall be lodged with the Commission within thirty days after the appellant was notified of the decision appealed against.

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

Provided that the Commission shall ensure that the appellant is given an adequate opportunity to make representations in the matter.

(4) The Commission shall ensure that the appellant is notified of any decision reached by the Commission in terms of subsection (3).

(5) Any person who is aggrieved by a decision of the Commission, whether on an appeal in terms of subsection (1) or otherwise, may appeal against the decision to the Minister.

(6) An appeal in terms of subsection (5) shall be made in writing and lodged with the Minister within thirty days after the appellant was notified of the decision, proposal or action appealed against.

(7) In an appeal in terms of subsection (5), the Minister may conduct or cause to be conducted such inquiry into the matter as he or she thinks appropriate and may confirm, vary or set aside the decision appealed against:

Provided that the Minister shall—

- (i) ensure that the appellant and the Commission are given an adequate opportunity to make representations in the matter;
- (ii) deliver his or her decision in the appeal within thirty days after it was lodged.

(8) The Minister shall ensure that the appellant and the Commission are notified of his or her decision in an appeal in terms of subsection (5).

(9) Any person who is aggrieved by the Minister's decision in an appeal in terms of subsection (5) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

(10) In an appeal in terms of subsection (9), the Administrative Court may confirm, vary or set aside the decision appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.”.

- (l) in section 20 (“Complaints referred to Registrar”) by the deletion of “Registrar” and the substitution of “Chief Executive Officer”;
- (m) in section 21 (“Codes of practice”)—
  - (i) in subsection (1) by the deletion of “Registrar” and the substitution of “Chief Executive Officer”;
  - (ii) by the repeal of subsection (3) and the substitution of—

“(3) A code of practice shall not have effect until it has been published in rules referred to in section 24.”;

- (n) in section 22 (“False statements, etc.”) by the deletion of “Registrar” and the substitution of “Chief Executive Officer”;
- (o) in section 23 (“Destination of certain moneys paid in terms of this Act”) by the deletion of “Reserve Bank” and the substitution of “Commission”;
- (p) by the repeal of section 24 and the substitution of—

“24 Rules

The Commission may make rules in terms of section 118 of the Securities and Exchange Act [*Chapter 24:25*] providing for all matters

which in terms of this Act are required or permitted to be prescribed or which, in the Commission's opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act, including any matter that may be provided for in rules under the said section 118."

### 38 Transitional provisions

(1) Any word or expression to which a meaning has been assigned in the principal Act shall bear the same meaning when used in this section.

(2) The Committee of the Zimbabwe Stock Exchange shall take whatever steps are necessary, within such reasonable period as the Commission may in writing specify, to convert the Zimbabwe Stock Exchange into a company in compliance with the principal Act as amended by this Act.

(3) The Commission may give the Committee of the Zimbabwe Stock Exchange written directions for the purpose of subsection (2) and the Committee shall comply with those directions notwithstanding anything to the contrary in the rules of the Exchange.

(4) A person who, immediately before the date of commencement of this Act, was registered or licensed in terms of the Collective Investment Schemes Act [Chapter 24:19] or the Asset Management Act [Chapter 24:26] shall be deemed, for a period of twelve months from that date, to be the holder of an appropriate licence under section 38 of the principal Act.

(5) The Commission shall ensure that persons referred to in subsection (4) are afforded all reasonable facilities to enable them to obtain an appropriate licence within the twelve-month period referred to in that subsection.

### SCHEDULE (Section 34)

#### MINOR AMENDMENTS TO SECURITIES ACT [Chapter 24:25]

<i>Provision</i>	<i>Extent of Amendment</i>
Sections 13(8), 15(1), (2), (4) & (5), 17(1), 18(2) and 21(1)(c) & (3)(c)	By the deletion of "panels" wherever it occurs and the substitution of "committees, panels".
Sections 13(9) and 15(1) & (3)	By the deletion of "panel" wherever it occurs and the substitution of "committee, panel".
Section 27(1)	By the insertion after "Commission" of "on the recommendation of the Audit Committee,".
Sections 30(2)(d)(ii), 65(1)(d)(viii), (j)(i) & (n), 67, 86(3)(g)(i), 100(1)(a), 103(1) & (2), 104(2) & (3), 105, 106(1), 108(1), (3) & (4), 111(b), 116(2)(d) and 118(4) & (5)(a)	By the deletion of "committee" wherever it occurs and the substitution of "board".
Section 48(2) (proviso)	By the deletion of "with the Administrative Court".
Section 61(2)	By the insertion after "form" of ", whether written, electronic or otherwise,".
Section 65(2)	By the deletion of "constitution or".