

ACT

To amend the Broadcasting Services Act [*Chapter 12:06*].

ENACTED by the President and Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Broadcasting Services Amendment Act, 2003.

2 Amendment of section 2 of Cap. 12:06

Section 2 of the Broadcasting Services Act [*Chapter 12:06*] (hereinafter called “the principal Act”) is amended in subsection (1)—

- (a) in the definition of “foreign donation on contribution” by the deletion of “on” and “other wise” and the substitution of “or” and “otherwise”, respectively;
- (b) by the repeal of the definition of “broadcasting” occurring after the definition of “railcasting” and the substitution of—

“roadcasting” means the broadcasting of pre-recorded programmes for reception by passengers of any public service vehicle as defined in the Road Motor Transportation Act [*Chapter 13:15*];”.

3 Amendment of section 3 of Cap. 12:06

Section 3 of the principal Act is amended by the insertion after subsection (4) of the following subsection—

“(5) Subject to this Act, the Authority shall not, in the lawful exercise of its functions under this Act, be subject to the direction or control of any person or authority.”.

4 New sections substituted for section 4 of Cap. 12:06

Section 4 of the principal Act is repealed the following is substituted—

“4 Establishment and composition of Broadcasting Authority of Zimbabwe Board

(1) The operations of the Authority shall, subject to this Act, be controlled and managed by a board to be known as the Broadcasting Authority of Zimbabwe Board.

(2) Subject to subsection (3), the Board shall consist of not fewer than seven members and not more than nine members appointed by the Minister after consultation with the President and in accordance with any directions the President may give him.

(3) Of the members appointed in terms of subsection (2)—

- (a) two shall be persons chosen for their experience or professional qualifications in the field of broadcasting technology and broadcasting content, respectively; and
- (b) one shall be a chief as defined in the Traditional Leaders Act [*Chapter 29:17*] and nominated by the Council of Chiefs referred to in that Act; and
- (c) one shall be a legal practitioner of not less than five years' standing registered in terms of the law in force relating to the registration of legal practitioners; and
- (d) one shall be a public accountant of not less than five years' standing registered in terms of the law in force relating to the registration of public accountants; and
- (e) one shall be a representative of churches or other religious bodies chosen from a list of nominees submitted by groups representative of churches or other religious bodies.

(4) At least three of the members referred to in subsection (3) shall be women.

(5) The Third Schedule shall apply to the qualifications of members of the Board, their terms and conditions of office, vacation of office, suspension and dismissal, and the procedure to be followed by the Board at its meetings.

(6) If any council or group referred to in subsection (3), or the Board or portfolio committee referred to in subsection (1) of section *four A*, fails or refuses to submit any nomination within thirty days of being requested to do so by the Minister in writing, the Minister may, subject to subsection (4), appoint any person to represent that council or group or the Board or portfolio committee, and the person so appointed shall hold office as a member of the Board or of the Independent Disciplinary Committee in all respects as if he or she had been duly nominated and appointed in terms of subsection (3) or subsection (1) of section *four A*.

4A Dismissal or suspension of members of Board

(1) For the purposes of subsections (5) and (6) there shall be a committee, hereafter in this section referred to as "the Independent Disciplinary Committee", consisting of—

- (a) a person, not being a member of the Board, appointed by the Minister from a list of three registered legal practitioners recommended by the Attorney-General, who shall be the chairperson of the Committee; and
- (b) a member of the Board chosen by the Minister from a panel of three members of the Board nominated by the Board; and
- (c) a person chosen by the Minister from a list of not less than three names submitted by the portfolio committee of Parliament responsible for broadcasting, who shall not be a member of Parliament.

(2) The Independent Disciplinary Committee shall reach its decisions by consensus or, failing consensus, by a vote of the majority of its members.

(3) A member of the Board shall vacate his or her office if the member—

- (a) has, subject to subsection (5), been found to have conducted himself or herself in a manner that renders him or her unsuitable as a member, including a contravention of paragraph 9 of the Third Schedule; or
- (b) has failed to comply with any term or condition of his or her office fixed by the Minister in terms of subparagraph (3) of paragraph 1 of the Third Schedule; or

- (c) is mentally or physically incapable of efficiently carrying out his or her functions as a member; or
- (d) has been absent without the permission of the Board from two consecutive meetings of the Authority of which he or she was given at least seven days' notice, and there was no just cause for the member's absence.

(4) The Minister may suspend a member of the Board—

- (a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in paragraph (a) of subsection (3); or
- (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he or she shall not carry out any functions as a member.

(5) A member suspended in terms of paragraph (a) of subsection (4) shall be given notice in writing of the grounds for the suspension and may, within fourteen days of being so notified, make written representations to the Independent Disciplinary Committee showing cause why no finding of misconduct rendering him or her unsuitable to be a member of the Board should be made.

(6) The Independent Disciplinary Committee shall require a member suspended in terms of subparagraph (a) of subsection (4) to vacate his or her office if—

- (a) no representations are made by the member in terms of subsection (5); or
- (b) it finds that the member is guilty of the misconduct alleged, upon receiving the written representations of the member referred to in subsection (5) and after affording such member, the Minister and any other person whom it considers to have any interest or knowledge in the matter to make such further representations to it, written or oral, as it deems necessary:

Provided that if it finds that the member is not guilty of the misconduct alleged, the suspension of the member shall immediately be rescinded.

4B Minister may give policy directions

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

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

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

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

5 Repeal of section 6 of Cap. 12:06

Section 6 of the principal Act is repealed.

6 Amendment of section 7 of Cap. 12:06

Section 7 of the principal Act is amended—

- (a) by the repeal of subsection (4) and the substitution of—

"(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to—

- (a) a fine not exceeding five million dollars or to imprisonment for a period not exceeding two years, where the offence involves the unlicensed provision of any broadcasting service referred to in paragraphs (a) to (f) of subsection (2); or
- (b) a fine not exceeding level ten or to imprisonment for a period not exceeding three months, where the offence involves the unlicensed provision of any broadcasting service referred to in paragraphs (g) to (j) of subsection (2);

or to both such fine and such imprisonment.";

- (b) by the insertion of the following subsection after subsection (6)—

"(7) Both the person responsible for recording the programmes used in a railcasting or roadcasting service and the operator of the public service vehicle or railway service who broadcasts such programmes for reception by passengers of such public service vehicle or railway service shall apply for a licence to provide a railcasting or roadcasting service, as the case may be.".

7 Amendment of section 10 of Cap. 12:06

Section 10 of the principal Act is amended—

- (a) by the repeal of subsection (6) and the substitution of—

"(6) Every applicant for a licence to provide any of the broadcasting services specified in paragraphs (a), (c), (d), (e) and (f) of subsection (2) of section *seven*, who is shortlisted in terms of subsection (5), shall be required to attend a public inquiry conducted by the Authority for the purpose of determining his or her suitability to be licensed, at a time and place to be determined in a written notice to such applicant.";

- (b) by the insertion in subsection (7) after "application" of "for a licence referred to in subsection (6)";

- (c) by the repeal of subsections (9) and (10) and the substitution of—

"(9) After a consideration of an application for a licence in terms of this section, whether after a public inquiry or otherwise, the Authority may issue or refuse to issue the licence sought and notify the applicant of its decision and, in the case of a refusal to issue a licence, of the reasons thereof.".

8 Amendment of section 12 of Cap. 12:06

Section 12 of the principal Act is amended by the repeal of subsections (2) and (3) and the substitution of—

"(2) A licence for a broadcasting service specified in paragraphs (a) to (f) of subsection (2) of section *seven* shall be valid for a period of ten years.

(3) A licence for a broadcasting service specified in paragraphs (g) to (j) of subsection (2) of section *seven* shall be valid for a period of two years."

9 Amendment of section 14 of Cap. 12:06

Section 14 of the principal Act is amended by the repeal of subsection (3) and the substitution of—

"(3) Subsections (3), (4), (9), (10) and (11) of section *ten* shall apply, *mutatis mutandis*, to an application to renew the licence."

10 New section substituted for section 15 of Cap. 12:06

Section 15 of the principal Act is repealed and the following is substituted—

"15 Amendment of licence

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

- (a) to correct any error in the licence; or
- (b) for any reasons connected with regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television, or connected with the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or
- (c) if the licensee requests an amendment; or
- (d) if the Authority considers the amendment necessary to reflect the true nature of the service, system or business which the licensee is conducting.

(2) Before amending a licence in terms of subsection (1), otherwise than at the request of the licensee, the Authority to notify the licensee in writing of the nature of the amendment it proposes to make and of its reasons for wishing to make the amendment, and shall give the licensee thirty days to make representations in the matter.

(3) Where a licensee requests an amendment of its licence and the Authority—

- (a) refuses the request, it shall, within ten days after reaching its decision, notify the licensee in writing of its decision and of its reasons for it;
- (b) proposes to amend the license as requested, it shall afford the Minister an opportunity to make representations to it concerning the proposal, and subsections (9) and (11) of section *ten* shall apply to such proposal as if it were a proposal to issue a licence."

11 Amendment of section 16 of Cap. 12:06

Section 16 of the principal Act is amended—

- (a) in subsection (1) by the deletion of "the Minister, after consulting the Authority," and the substitution of "the Authority, on its own initiative or at the request of the Minister,";
- (b) in subsection (2) by the deletion of "the Minister shall direct the Authority to notify the licensee in writing of his intention" and the substitution of "the Authority shall notify the licensee in writing of its intention";

- (c) in subsection (3) by the deletion of "the Minister shall, if he is of the opinion that the evidence referred to in subsection (1) justifies such a course, request the Authority to" and the substitution of "the Authority shall, if it is of the opinion that the evidence referred to in subsection (1) justifies such a course,";
- (d) by the repeal of subsection (5) and the substitution of—

"(5) If, at the conclusion of a public inquiry held in terms of subsection (3), the Authority is satisfied for any reason specified in subsection (1) that the licence concerned should be suspended or cancelled, the Authority shall, by notice in writing to the licensee, suspend or cancel the licence or take such other action as it considers appropriate, and publish a notice in the *Gazette* of such suspension or cancellation or other action."

12 Amendment of section 38A of Cap 12:06

Section 38A of the principal Act is amended—

- (a) by the repeal of the definitions of "broadcasting company" and "Corporation";
- (b) by the insertion of the following definitions—

"former Corporation" means the Zimbabwe Broadcasting Corporation referred to in section 3 of the Zimbabwe Broadcasting Corporation Act [*Chapter 12:01*];

"inspector" means an inspector appointed in terms of subsection (a1) of section *thirty-eight D*;

"listener" means a person who has in his possession a receiver otherwise than in his capacity as—

- (a) an operator of a diffusion service; or
- (b) the legal representative of a person who is of unsound mind or who has died or who—
 - (i) has been adjudged or otherwise declared insolvent or bankrupt; or
 - (ii) has made an assignment to or arrangement or composition with his creditors; or
 - (iii) is being wound up or is under judicial management;

in terms of a law in force in any country:

Provided that a dealer who has a receiver—

- (a) in or on his business premises; or
- (b) being used in the course of a demonstration;

shall not be regarded as a listener in respect of his possession of that receiver;

"receiver" means an apparatus—

- (a) in respect of which no licence is required in terms of the Postal and Telecommunications Act [*Chapter 12:05*]; and
- (b) which is capable of being used for the reception of a broadcasting service;

"Zimbabwe Broadcasting Corporation" means the national broadcasting service formed as the successor to the former Corporation in terms of section 3 of the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001 (No. 26 of 2001).".

13 Amendment of section 38B of Cap 12:06

Section 38B of the principal Act is amended—

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

"(1) No listener shall have in his possession in Zimbabwe a receiver otherwise than in accordance with the terms and conditions of a licence issued by the Zimbabwe Broadcasting Corporation or by agents of the Zimbabwe Broadcasting Corporation appointed by it in terms of subsection (a1) of section *thirty-eight D*.";

- (b) in subsection (2) by the deletion wherever it occurs of "the broadcasting company" and the substitution of "the Zimbabwe Broadcasting Corporation".

14 New section substituted for section 38C of Cap 12:06

Section 38C of the principal Act is repealed and the following is substituted—

38C Collection of licence fees

Licence fees referred to in subsection (2) of section *thirty-eight B*, less such amounts as may be payable for the services of the agents of the Zimbabwe Broadcasting Corporation referred to in subsection (1) of section *thirty-eight B*, shall be paid into the general funds of the Zimbabwe Broadcasting Corporation for the use of the Corporation."

15 Amendment of section 38D of Cap 12:06

Section 38D of the principal Act is amended—

- (a) by the deletion of the heading to the section and the substitution of "38D Appointment of inspectors and powers of inspectors and police officers";
- (b) by the insertion before subsection (1) of the following subsection—

"(a1) The Zimbabwe Broadcasting Corporation may appoint persons employed by it to be inspectors for the purposes of this Part and shall furnish each person so appointed with a certificate signed on behalf of the company stating that he has been appointed as an inspector.";

- (c) in subsection (7) by the deletion of "paragraph (c) of subsection (1) of section *fifteen*" and the substitution of "subsection (a1)".

16 New section inserted in Cap 12:06

The principal Act is amended by the insertion in Part VIIIA after section 38D of the following section—

"38E Offences and penalties under Part VIIIA

- (1) A person who—

- (a) fails or refuses to register as a dealer with the Zimbabwe Broadcasting Corporation when required to do so in terms of regulations made under section *forty-six*; or
- (b) fails or refuses to furnish a return or to supply information to the Zimbabwe Broadcasting Corporation in the manner and in the time prescribed under section *forty-six* or furnishes a false or incomplete return or supplies false or incomplete information to the Corporation; or
- (c) fails to comply with the requirement contained in a notice served on him in terms of subsection (2) of section *thirty-eight D* or with a requirement made by an inspector or police officer in terms of subsection (6) of that section; or
- (d) wilfully delays or obstructs an inspector or police officer in the exercise of the powers conferred upon him by or under this Part; or
- (e) fails or refuses, without reasonable cause, to give information to an inspector or police officer, when required to do so in terms of section *thirty-eight D*, or gives false or incomplete information; or
- (f) fails to comply with the terms and conditions of a licence issued to him in terms of this Part; or
- (g) for the purpose of obtaining, whether for himself or another person, the issue of a licence in terms of this Part, makes a declaration or statement which he knows to be false in any particular or does not know or believe to be true, or knowingly makes use of such a declaration or statement or a document containing the same; or
- (h) contravenes—
 - (i) subsection (1) of section *thirty-eight B*;
 - (ii) regulations, orders or notices made or issued in terms of section *forty-six* for the purposes of this Part;

shall be guilty of an offence and liable—

- A. for a contravention of subsection (1) of section *thirty-eight B* to fine not exceeding level three;
- B. in the case of any offence not referred to in subparagraph A, to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) A court convicting a person of an offence of—

- (a) having in his possession a receiver the possession of which is not authorised by a licence referred to in subsection (1) of section *thirty-eight B*; or
- (b) making a declaration or statement referred to in paragraph (g) of subsection (1) or making use of such a declaration or statement or a document containing the same, thereby obtaining in respect of a receiver in his possession a licence referred to in subsection (1) of section *thirty-*

eight B on payment of a fee which is less than the appropriate licence fee;

may, on the application of the prosecutor and in addition to any penalty which it may impose, do either or both of the following—

- (i) order that the receiver concerned be forfeited to the State;
- (ii) give summary judgment in favour of the Zimbabwe Broadcasting Corporation for the amount of the appropriate licence fee or, as the case may be, an amount equal to the difference between the fee actually paid by the person and the appropriate licence fee.

(3) On the hearing of an application referred to in subsection (2) a court shall, for the purpose of determining the amount of the appropriate licence fee and, in the case of a prosecution for an offence referred to in paragraph (b) of that subsection, the liability of the accused to pay the same, refer to the proceedings and evidence at the trial and consider such further evidence, whether oral or documentary, as may be tendered by the prosecutor and the accused.

(4) A judgment given by a court in terms of subparagraph (ii) of subsection (2) shall have the same force and effect and may be executed in the same manner as if the judgment had been given in a civil action instituted—

- (a) in the case of the court of a regional magistrate, in the court of a magistrate other than a regional magistrate; or
- (b) in the case of a court other than the court of a regional magistrate, in the first-mentioned court.

(5) If the Minister has, in terms of subsection (3) of section *forty-six*, classified listeners, a certificate purporting to be signed by the managing director or general manager of the Zimbabwe Broadcasting Corporation and alleging that a person is a member of a particular class of listener shall, on its mere production, be admissible—

- (a) on the prosecution of the person for a contravention of this Part; or
- (b) for the purpose of determining the amount of the appropriate licence fee to which an application made in terms of subsection (3) for summary judgment relates;

as *prima facie* evidence of the facts stated in the certificate.

(6) A certificate under the hand of an inspector shall, in any proceedings under this Part or in any criminal proceedings in respect of a contravention of this Part or regulations made under section *forty-six* for the purposes of this Part, be *prima facie* evidence of the facts stated therein and it shall not be necessary to tender oral evidence of those facts unless the court before which the proceedings are held so directs, in which event a postponement shall be allowed to enable the inspector whose oral evidence is required to attend.”.

17 Amendment of section 42 of Cap 12:06

Section 42 of the principal Act is amended by the deletion of “level five” and the substitution of “level ten”.

18 Amendment of section 43 of Cap. 12:06

Section 43 of the principal Act is amended by the deletion of "Minister" wherever it occurs and the substitution of "Authority".

19 Amendment of section 46 of Cap. 12:06

Section 46 of the principal Act is amended—

(a) in subsection (2)—

(i) by the repeal of paragraph (h1) and the substitution of—

"(h1) the registration with the Zimbabwe Broadcasting Corporation of dealers and the information to be supplied to the Corporation in connection with applications for registration;"

(ii) in paragraphs (h2), (h3) and (h5) by the deletion of "the broadcasting company referred to in paragraph (h1)" and the substitution of "the Zimbabwe Broadcasting Corporation";

(iii) by the repeal of paragraph (h6) and the substitution of—

"(h6) the form and manner in which applications for licences in terms of section *thirty-eight B* are to be made and the information to be supplied in connection therewith;

(h7) the circumstances in which and the terms and conditions subject to which licences in terms of section *thirty-eight B* shall be issued;

(h8) the form of licences in terms of section *thirty-eight B*, the terms and conditions to be contained in the licences and the periods for which the licences shall remain in force;

(h9) the issue of licences in terms of section *thirty-eight B* without charge authorising the possession of receivers by such persons or classes of persons or in such institutions or classes of institutions as the Zimbabwe Broadcasting Corporation, after consultation with the Authority and the Minister, may specify;

(h10) the circumstances in which, and the conditions, including the payment of a fee, subject to which, copies of licences may be obtained;

(h11) any other matter in connection with the Zimbabwe Broadcasting Corporation or the digital convergence signal carrier company that, in the opinion of the Minister, is required to be provided for in the public interest;"

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

"(3) In making regulations, orders or notices the Minister may classify dealers and listeners and otherwise make different provision for different classes of persons."

20 Amendment of Third Schedule to Cap. 12:06

The Third Schedule to the principal Act is amended—

(a) in paragraph 1—

(i) by the repeal of subparagraph (1) and the substitution of—

"(1) Subject to this Schedule, a member shall hold office for a term of five years.";

(ii) by the insertion of the following proviso to subparagraph (4)—

"Provided that no member may be re-appointed for a third term in office.";

(b) by the repeal of paragraph 4 and the substitution of—

"Dismissal of Board

4. (1) Subject to subparagraph (2), if the Minister considers that—

(a) the Board has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or

(b) whether through disagreements amongst its members or otherwise, the Board is unable to carry out any of its functions in terms of this Act;

and that it is in the national interest to do so, the Minister may, by written notice to the chairman copied to the chief executive of the Authority, dismiss all the members of the Board, and their offices shall become vacant as soon as the chairman receives the notice, and the Minister shall table a report on the matter in the House within the next fourteen days on which Parliament sits after the dismissal.

(2) Before dismissing all the members in terms of subparagraph (1), the Minister shall consult the President and act in accordance with any directions the President may give him."