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**H.B. 19, 2007**

**Gazetted in Gazette Extraordinary on Friday 14th December, 2007.**

**BROADCASTING SERVICES AMENDMENT BILL, 2007**

**MEMORANDUM**

The purpose of this Bill is to amend the Broadcasting Services Act (“the principal Act”) with a view to clarifying or improving certain of its provisions.

The individual clauses of the Bill are explained more fully below.

*Clause 1*

This clause sets out the Bill’s short title.

*Clause 2*

This clause inserts a definition of “Committee on Standing Rules and Orders” in the principal Act, which is required in connection with the new manner of appointing the Broadcasting Authority of Zimbabwe.

*Clauses 3 and 4*

Clause 3 seeks to insert a new “purposive” section in the principal Act setting out the broad aims and objectives of the principal Act. Under clause 4, the exercise of the functions of the Minister and the Broadcasting Authority of Zimbabwe are specifically subjected to those overriding aims and objectives.

*Clauses 5 and 6*

Clause 5 seeks to reconstitute the existing Broadcasting Authority of Zimbabwe Board. Three of its members will be appointed by the President from a list of six nominees submitted by the Committee on Standing Rules and Orders, and that Committee will also have a consultative role in the appointment of the other nine members. Under clause 6 the Committee on Standing Rules and Orders will also have a role in the disciplining, suspension or dismissal of members of the Board.

*Clause 7*

This clause proposes to mitigate the rule contained in section 8 of the principal Act that Zimbabweans alone must wholly own or control broadcasting services.

**[Note by Veritas: The memorandum in the printed Bill ends here; it does not mention clauses 8 to 20 of the Bill]**

PRESENTED BY THE MINISTER OF INFORMATION AND PUBLICITY

# BILL

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, 2007.

## 2 Amendment of section 2 of Cap. 12:06

Section 2 (“Interpretation”)(1) of the Broadcasting Services Act [*Chapter 12:06*] (hereinafter called “the principal Act”) is amended by the insertion of the following definition—

““Committee on Standing Rules and Orders” means the committee of Parliament appointed under section 57(2) of the Constitution;”.

## 3 New section 2A inserted in Cap. 12:06

Part I of the principal Act is amended by the insertion after section 2 of the following section—

“2A Purpose and objectives of Act

(1) The purpose of this Act is to regulate broadcasting services and provide for the control of the broadcasting service bands in order to attain the following objectives—

- (a) to ensure efficient use of the broadcasting service bands; and
- (b) to encourage the establishment of a modern and effective broadcasting infrastructure, taking into account the convergence of information technology, news media, telecommunications and consumer electronics; and
- (c) to promote the provision of a wide range of broadcasting services in Zimbabwe which, taken as a whole, are of high quality and calculated to appeal to a wide variety of tastes and interests, providing education, information and entertainment; and

- (d) to ensure that the broadcasting services in Zimbabwe, taken as a whole, provide—
  - (i) regular news services; and
  - (ii) public debate on political, social and economic issues of public interest; and
  - (iii) programmes on matters of local, national, regional and international interest or significance; and
 so as to foster and maintain a healthy plural democracy; and
- (e) to promote public, commercial and community broadcasting services in the interest of the public; and
- (f) to ensure the independence, impartiality and viability of public broadcasting services; and
- (g) to ensure the application of standards that provide adequate protection against—
  - (i) the inclusion of material that is harmful or offensive to members of the public; and
  - (ii) unfair treatment of individuals in television or radio programmes; and
  - (iii) unwarranted infringements of privacy resulting from activities carried on for the purposes of television or radio programmes;
 and
- (h) to ensure that broadcasting licences adhere to a code of conduct acceptable to the Authority.

(2) The Authority, the Minister and all other persons required or permitted to exercise functions under this Act shall pay regard to the objectives set out in subsection (1) when exercising those functions.”.

#### **4 Amendment of section 3 of Cap. 12:06**

Section 3 (“Establishment and functions of Broadcasting Authority of Zimbabwe”) of the principal Act is amended-

- (a) in subsection (2)(c) by the deletion of the words “for the purpose of advising the Minister on whether or not he should grant the licence”;
- (b) in subsection (3) by the insertion after “have regard to” of “the objectives set out in section 2A and, subject to those objectives, to”.

#### **5 New section substituted for section 4 of Cap. 12:06**

Section 4 of the principal Act is repealed and 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 twelve members, of whom—

- (a) the following nine members shall be appointed by the President after consultation with the Minister and the Committee on Standing Rules and Orders—
- (i) two shall be persons chosen for their experience or professional qualifications in the field of broadcasting technology and broadcasting content respectively; and
  - (ii) 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
  - (iii) 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
  - (iv) 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
  - (v) one shall be a representative of churches or other religious bodies chosen from a list of nominees submitted by groups considered by the Minister to be representative of churches or other religious bodies; and
  - (vi) three other members;
- (b) three members shall be appointed by the President from a list of six nominees submitted by the Committee on Standing Rules and Orders.

(3) At least three of the members referred to in subsection 2(a) shall be women and at least one of the members referred to in subsection 2(b) shall be a woman.

(4) 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.

(5) If any council or group or the Committee on Standing Rules and Orders referred to in subsection (2), fails or refuses to submit any nomination within thirty days of being requested to do so by the Minister in writing, the President may appoint any person to hold office as a member of the Board in all respects as if he or she had been duly nominated and appointed in terms of subsection (2).”.

## **6 Amendment of section 4A of Cap. 12:06**

Section 4A (“Dismissal or suspension of members of Board”) of the principal Act is amended—

- (a) in subsection (1)—
- (i) in paragraph (a) by the deletion of “Minister” and the substitution of “Committee on Standing Rules and Orders”;
  - (ii) by the repeal of paragraph (c) and the substitution of—
    - “(c) one other person, who shall not be a Senator or member of the House of Assembly, appointed by the Committee on Standing Rules and Orders.”.

- (b) in subsection (3) in paragraph (a) by the deletion of “paragraph 9” and the substitution of “paragraph 10(2) or (3)”;
- (c) by the repeal of subsection (4) and the substitution of—
  - “(4) The President, on the recommendation of the Minister—
    - (a) may suspend from office a member against whom criminal proceedings are instituted for an offence involving dishonesty; and
    - (b) may suspend a member from office if the President has reasonable grounds to believe that the member’s office has become vacant in terms of paragraph 3 of the Third Schedule but the member has not relinquished his or her office; and
    - (c) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his or her office;

and while that member is so suspended he or she shall not carry out any duties or be entitled to any allowances as a member.”.

## **7 Amendment of section 8 of Cap. 12:06**

Section 8 (“Persons disqualified to be licensed”) of the principal Act is amended—

- (a) by the deletion in subsection (1) of the words “and ordinarily resident in Zimbabwe” wherever those words occur;
- (b) by the repeal of subsection (2) and the substitution of—
  - “(2) For the purposes of subsection (1) “controlling interest” means—
    - (a) in relation to the corporate structure of the body corporate—
      - (i) all of the securities in the body corporate; or
      - (ii) securities representing all of the share capital of the body corporate; or
      - (iii) securities equivalent in value to one hundred per centum of the share capital of the body corporate; or
      - (iv) securities entitling the holders thereof to all the votes in the affairs of the body corporate.
    - (b) in relation to the governance of the body corporate, that the majority of persons who—
      - (i) determine the policy of the broadcasting service; or
      - (ii) manage the day-to-day operations of the broadcasting service; or

are Zimbabwean citizens.”;
- (c) by the repeal of subsection (5);
- (d) by the insertion of the following subsection after subsection (7)—
  - “(8) Notwithstanding subsection (1) and (2), the Minister may at his or her absolute discretion grant exemptions from those provisions and permit the Authority to issue any broadcasting licence to an individual or body corporate approved by the Minister in which the controlling interest or any portion thereof is held by persons who are not citizens of Zimbabwe”.

## **8 Amendment of section 9 of Cap. 12:06**

Section 9 (“Restrictions in relation to the issue of certain licences”) of the principal Act is repealed and the following is substituted—

### “9 Restrictions in relation to the issue of certain licences

“The Authority shall, subject only to availability of band spectrum and after carrying out its functions in terms of the First Schedule, publish a notice in the *Gazette* and in a national newspaper inviting applications for licences to provide for national free-to-air radio broadcasting services and national free-to-air television broadcasting services in addition to the national broadcasting services provided by the public broadcaster.”.

## **9 Amendment of section 10 of Cap. 12:06**

Section 10 (“Application for licence”) is amended by the repeal of subsection (1) and the substitution of the following—

“(1) The Authority shall, subject only to the availability of band spectrum and after carrying out its functions in terms of the First Schedule, publish a notice in the *Gazette* and in a national newspaper inviting applications for licences to provide the broadcasting services or systems specified in the notice.”

## **10 Amendment of section 11 of Cap. 12:06**

Section 11 (“Terms and conditions of licence”) of the principal Act is amended—

- (a) in subsection (1) —
  - (i) in paragraph (b) by the insertion after the word ”Schedule” of the words “and Seventh Schedule”
  - (ii) by the insertion after paragraph (b) of the following paragraph—
    - “(b1) the applicable requirements set out in Part I, II or III of the Seventh Schedule depending on the class of broadcaster being licensed; and”;
  - (iii) by the repeal of paragraph (c).
- (b) in subsection (2) by the deletion of the word “Minister” and the substitution of the word “Board”
- (c) in subsection (7) by the deletion of the word “six” and the substitution “eighteen”
- (d) by the repeal of subsection (8);
- (e) by the insertion after subsection (10) of the following subsection—
  - “(11) All broadcasting licensees shall be subject to the provisions of the Access to Information and Protection of Privacy Act [*Chapter 10:27*] in regard to the conduct and accreditation of journalists employed by them.”.

## **11 Amendment of section 12 of Cap 12:06**

Section 12 (“Form and period of validity of licence”) of the principal Act is amended—

- (a) in subsection (1) by the repeal of paragraphs (c), (d), (e) and (f);
- (b) in subsection (3) by the deletion of the word “two” and the substitution of the word “three”.

**12 Amendment of section 14 of Cap 12:06**

Section 14 (“Renewal of Licence”) of the principal Act is amended in subsection (3) by the deletion of “(10)”.

**13 Amendment of section 16 of Cap. 12:06**

Section 16 (“Suspension and cancellation of licences”) (1) of the principal Act is amended—

- (a) by the deletion of the words “at the request of the Minister” and the substitution of the words “at the instance of any interested party”;
- (b) by the repeal of paragraphs (b) and (c);
- (c) by the repeal of paragraph (f) and the substitution of the following—
  - “(f) in the case of a licensee which is a body corporate, the licensee has been finally wound up”;
- (d) in paragraph (g) by the deletion of the words “provisionally or”;
- (e) in paragraph (h) by the deletion of “, public morality”;
- (f) in paragraph (i) by the insertion before the words “code of conduct” of the words “Act or of the”.

**14 Repeal of sections 19 and 21 of Cap. 12:06**

Sections 19 and 21 of the principal Act are hereby repealed.

**15 Amendment of section 22 of Cap. 12:06**

Section 22 of the principal Act is repealed and the following is substituted -

“22 Prohibition against non citizens to become directors of licensees

No person other than a citizen of Zimbabwe shall be a director of a licensee.”.

**16 Amendment of section 24 of Cap. 12:06**

Section 24 (“Development of codes of conduct”) of the principal Act is amended—

- (a) by the repeal of subsections (2), (3) and (4);
- (b) in subsection (5) by the deletion of “relating to matters referred to in paragraphs (a) and (c) of subsection (2)”.

**17 Amendment of section 40 of Cap. 12:06**

Section 40 (“Complaint procedure of licensees”) of the principal Act is amended by the repeal of subsection (4) and the substitution of the following –

“(4) The Authority shall prescribe the form and manner in which complaints shall be dealt with.”

**18 New section 40A inserted in Cap. 12:06**

The principal Act is amended by the insertion after section 40 of the following section—

#### “40A Public hearings

(1) Where the Authority or Board is required to hold a public hearing in terms of this Act, the Authority or Board, as the case may be, shall—

- (a) give reasonable public notice, at least two weeks before the hearing, of the date, time and venue of the hearing and the purpose for which it will be held; and
- (b) permit all members of the public who wish to do so to—
  - (i) attend the hearing; and
  - (ii) submit oral and written representations to the person conducting the hearing;

subject to any restrictions that may be reasonably necessary to preserve order at the hearing and to prevent it being unduly prolonged.”.

#### **19 Amendment of section 46 of Cap. 12:06**

Section 46 (“Regulatory powers of the Minister”) of the principal Act is amended-

- (a) in the heading by the deletion of the word “Minister” and the substitution of the word “Board”
- (b) in subsection (1) by the deletion of “Minister” wherever it occurs and the substitution of “Board”;
- (c) in subsection (2)—
  - (i) by the insertion of the following paragraphs after paragraph (h11)—
    - “(h12) the possession, use and provision of equipment designed or used for the purpose of broadcasting;
    - (h13) subject to section 10, the consideration of applications for licences and the circumstances in which such applications may be granted or refused;
    - (h14) prohibiting the use of any broadcasting service band for the emission or transmission of signals except by persons who have been licensed or authorised to do so;
    - (h15) preventing interference between different users of broadcasting service bands;
    - (h16) licensing, registering or certifying persons who possess, use or provide broadcasting apparatus and the prohibition of the possession, use or provision of broadcasting apparatus except by persons who have been so licensed, registered or certified;
    - (h17) licensing, registering or certifying suppliers of broadcasting apparatus and technicians who build, repair or maintain broadcasting apparatus;
    - (h18) the terms and conditions under which licences and authorities may be issued, granted, refused, renewed and transferred under this Act;

- (h19) the conditions, restrictions, tariffs and rates subject to which broadcasting services are operated;
  - (h20) fixing and enforcing technical standards for broadcasting apparatus;
  - (h21) restricting or prohibiting the ownership or control of, or the holding of an interest in-a broadcasting service of any category or kind; two or more broadcasting services of the same category or kind; a broadcasting service of one category or kind and another broadcasting service of a different category or kind;
  - (h22) prohibiting or limiting cross ownership and cross directorships between broadcasters, signal carrier licensees, newspapers, telecommunications licensees under the Postal and Telecommunications Act [Chapter 12:05] and advertising agents;
  - (h23) limiting the number of commercial radio or television broadcasting licences a person can hold or control;
  - (h24) prohibiting or limiting of cross directorships in different licensees;
  - (h25) licensing persons who provide broadcasting services;
  - (h26) subject to section *ten*, the consideration of applications for licences and the circumstances in which such applications may be granted or refused;
  - (h27) prohibiting the use of any broadcasting service band for the emission or transmission of signals except by persons who have been licensed or authorised to do so;
  - (h28) preventing interference between different users of broadcasting service bands;
  - (h29) licensing, registering or certifying persons who possess, use or provide apparatus, and the prohibition of the possession, use or provision of apparatus except by persons who have been so licensed, registered or certified;
  - (h30) licensing, registering or certifying suppliers of apparatus and technicians who build, repair or maintain apparatus;
  - (h31) the terms and conditions under which licences and authorities may be issued, granted, refused, renewed and transferred under this Act;
  - (h32) the conditions, restrictions, tariffs and rates subject to which broadcasting services are operated;
  - (h33) fixing and enforcing technical standards for apparatus;
  - (h34) any other matter which, in the Board's opinion, will lead to the efficient provision of broadcasting services in Zimbabwe.”;
- (ii) in paragraph (i) by the deletion of “Minister” and the substitution of “Board”;
  - (iii) by the insertion of the following paragraph after paragraph (i)—

:”(j) any other matter which, in the Board’s opinion, will lead to the efficient provision of broadcasting services in Zimbabwe.”;

(d) by the insertion of the following proviso to subsection (2) —

“Provided that—

(a) regulations referred to in paragraph (h29), (h30) and (h33) of subsection (2) shall not apply to members of the Defence Forces, the Police Force or the Prison Service in the exercise of their duties as such members;

(b) restrictions referred to in paragraph (h) of subsection (2) shall be imposed solely for the purpose of—

(i) ensuring fair competition between service providers; or

(ii) avoiding monopolies or undue concentration of control over broadcasting services.

(c) regulations referred to in this section shall not—

(i) terminate or shorten the period of validity of any existing licence, registration or authority; or

(ii) add any condition or restriction to any existing licence, registration or authority;

unless the licensee or registered or authorised person, as the case may be, consents to the termination, shortening, condition or restriction.”;

(e) in subsection (3) by the deletion of “Minister” and the substitution of “Board”;

(f) by the insertion after subsection (3) of the following subsections—

“(4) When making regulations, orders or notices in terms of subsection (1), the Board shall ensure compliance with Zimbabwe’s obligations under the International Telecommunication Constitution and any other international convention, treaty or agreement relating to telecommunications.

(5) Regulations or orders made in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level twelve or imprisonment for a period of six months or both such fine and such imprisonment.

(6) Regulations, orders or notices made in terms of subsection (2) shall not have effect until they have been approved by the Minister and published in the *Gazette*.”

## 20 New Schedule inserted in Cap. 12:06

The principal Act is amended by the insertion of the following Schedule after Sixth Schedule—

“SEVENTH SCHEDULE (*Section 11 (1) (b1)*)

REQUIREMENTS FOR CERTAIN LICENSEES

PART I

REQUIREMENTS FOR PUBLIC BROADCASTERS

The broadcasting service operated by a public broadcaster shall—

- (a) make programmes available to Zimbabweans in all the languages commonly used in Zimbabwe; and
- (b) reflect both the unity and diverse cultural and multilingual nature of Zimbabwe;; and
- (c) strive to be of high quality in all the languages served; and
- (d) provide news and public affairs programming which meets the highest standards of journalism, and which is fair and unbiased and independent from government, commercial or other interests; and
- (e) include significant amounts of educational programming, both curriculum-based and informal, including educative topics from a wide range of social, political and economic issues such as human rights, health, early childhood development, agriculture, culture, justice and commerce; and
- (f) enrich the cultural heritage of Zimbabwe by providing support for traditional and contemporary artistic expression; and
- (g) strive to offer a broad range of services aimed in particular at children, women, the youth and the disabled; and
- (h) include programmes commissioned from independent producers; and
- (i) include programmes featuring national sports as well as developmental and minority sports.

## PART II

### REQUIREMENTS FOR COMMERCIAL BROADCASTERS

Commercial broadcasting services, when viewed collectively, shall—

- (a) provide a diverse range of programmes addressing a wide section of the Zimbabwe public; and
- (b) make programmes available in all the languages commonly used in the areas which the broadcasters are licensed to serve; and
- (c) reflect the culture, character, needs and aspirations of the people in the regions which the broadcasters are licensed to serve; and
- (d) provide an appropriate but significant amount of Zimbabwean programming; and
- (e) regularly include news and information programmes, including discussion on matters of national and regional, and, where appropriate, local significance; and
- (f) meet the highest standards of journalism.

## PART III

### REQUIREMENTS FOR COMMUNITY BROADCASTERS

Every community broadcasting service shall reflect the needs of the people in the community concerned, including their cultural, religious, language and demographic needs, and shall—

- (a) provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the public broadcasters or commercial broadcasters whose services cover the same area; and
- (b) be informational, educational and entertaining; and

- (c) concentrate on providing programmes that highlight community issues such as developmental issues, health care, basic information and general education, environmental affairs, and the promotion of local culture; and
- (d) promote a sense of common purpose within the community.”.