

GOVERNMENT OF ZAMBIA

ACT

No. 21 of 2022

Date of Assent: 23rd December, 2022

An Act to amend the Securities Act, 2016.

[27th December, 2022

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Securities (Amendment) Act, 2022, and shall be read as one with the Securities Act, 2016, in this Act referred to as the principal Act.

Short title
Act No. 41
of 2016

2. Section 2 of the principal Act is amended by the—

Amendment
of section 2

(a) deletion of the definitions of “board” and “capital markets operator” and the substitution therefor of the following definitions in the appropriate places:

“board” means a board of a capital markets operator;
and

“capital markets operator” means a person whose securities are registered in accordance with this Act, or who is authorised, recognised or licensed in accordance with this Act to perform specific functions in the capital markets, including a person or entity, whether incorporated in the Republic or not, who is granted or receives authorisation from the Commission, an intermediary, nominee or a person conducting a professional development or asset management programme; and

(b) insertion of the following new definitions in the appropriate places in alphabetical order:

“debt fund” means a fund which invests primarily in debt securities of listed and unlisted investee companies according to the stated objectives of the fund;

“hedge fund” means a fund which pools funds from sophisticated investors, employs diverse or complex trading strategies, and invests and trades in securities having diverse risks or complex products including listed and unlisted derivatives;

“muted return” means a return on investment which may be lower than prevailing returns for similar investments;

“private equity fund” means a fund which pools funds from sophisticated investors to invest in a private company for the purpose of generating or making returns on their growth; and

“private fund” means a fund established in the form of a limited liability company or a trust or any other legal form that is acceptable to the Commission which —

(a) is a private equity fund, venture capital fund, social venture fund, hedge fund, debt fund or any type of fund declared by the Commission, from time to time, to be a private fund;

(b) is a privately pooled investment that collects funds from sophisticated investors for investing in accordance with a defined investment policy for the benefit of its investors;

(c) is a closed ended fund with specific tenure; or

(d) raises funds through subscriptions by way of private placements only and not through public subscription;

“sandbox framework” means a regulatory framework under which a company can test its proposed financial technology or other innovative products, services or solutions in a live environment under a pre-determined set of conditions and limitations;

“social venture fund” means a fund which invests primarily in social ventures, and which satisfies social performance norms laid down by the fund and whose investors may agree to receive restricted or muted returns; and

“sophisticated investor” means an experienced investor or a person to whom an offer is made and who has previous experience in investing in securities that allows that person to assess the —

- (a) merits of the offer;
- (b) value of the securities;
- (c) risks involved in accepting the offer;
- (d) person’s own information needs; and
- (e) adequacy of the information.

3. Section 9 of the principal Act is amended —

Amendment
of section 9

(a) in subsection (2), by the insertion of the following new paragraph immediately after paragraph (u):

- (v) vet a substantial shareholder in accordance with the vetting criteria contained in guidelines issued by the commission, including the substantial shareholder’s source of funds, and the beneficial owner of a company whose securities are registered, or which is authorised or licensed under this Act.; and

(b) by the insertion of the following new subsections immediately after subsection (2):

- (3) The Commission may, for the purposes of achieving the objectives of this Act, implement a risk-based approach in the supervision and regulation of capital markets, and in combating money laundering and countering the financing of terrorism, proliferation, proliferation financing or any other serious offence.
- (4) Subject to terms and conditions that the Commission may determine, the Commission may use a sandbox framework to supervise new market products, platforms and other innovations in a controlled environment.
- (5) In this section, “innovation” shall mean a proposed financial technology or financial product, service or solution that does not exist in the capital markets or has characteristics that are significantly different from existing ones.

4. The principal Act is amended by the repeal of sections 11 and 12.

Repeal of
sections 11
and 12

Insertion of
new Part IIA

5. The principal Act is amended by the insertion of the following new Part immediately after section 19.

PART IIA

SUPERVISORY POWER OF COMMISSION OVER CAPITAL MARKETS
OPERATOR

Commission to
prohibit certain
activities by
capital markets
operator

19A. (1) The Commission may, by notice in writing, prohibit a capital markets operator from doing any of the following:

- (a) entering into a securities transaction of a class or description specified in the notice or entering into the transaction otherwise than in circumstances so specified or to an extent so specified;
- (b) soliciting business from persons of a specified class or description or from persons other than persons of such a class or description; or
- (c) carrying on business in a specified manner.

(2) A prohibition notified in accordance with this section may relate to a transaction entered into for, or in connection with, the purposes of the business in respect of which the capital markets operator is licensed.

Supervisory
action over
capital markets
operator

19B. (1) The Commission shall take supervisory action against a capital markets operator where —

- (a) the capital markets operator fails or refuses, without reasonable excuse, to comply with an order or directive of the Commission under this Act;
- (b) the capital markets operator obstructs, or refuses, without reasonable excuse, to permit an inspection or review in accordance with this Act; or
- (c) an inspection, review or investigation of the capital markets operator shows that the capital markets operator —
 - (i) conducts its business in breach of a written law;
 - (ii) engages in conduct that is unsafe or unsound;
 - (iii) is unable, or likely to become unable, to continue its operations in the ordinary course of its business for any reason;

(iv) is insolvent; or

(v) has a capital adequacy that is less than the prescribed minimum.

(2) Supervisory action that the Commission may take includes —

(a) taking possession of a capital market operator;

(b) appointing a manager to run the affairs of the capital markets operator;

(c) suspending the licence of the capital markets operator for a specified period not exceeding six months; or

(d) revoking or cancelling the licence of the capital markets operator.

(3) Where the Commission appoints a manager under subsection (2)(b), the costs of managing the possession shall be borne by the capital markets operator.

(4) The Commission may, where the Commission takes possession of a capital markets operator or appoints a manager to run the affairs of a capital markets operator in accordance with subsection 2(a) and (b), take any of the following actions:

(a) freeze or restrict the use of assets, including bank accounts;

(b) place a member of staff of a capital markets operator on leave while the possession is in effect;

(c) close the capital markets operator;

(d) run the affairs of the capital markets operator;

(e) transfer all or part of the business of the capital markets operator to another capital markets operator;

(f) dispose of some or all of the assets of the capital markets operator;

(g) sell the capital markets operator as a going concern;

(h) restructure or reorganise the capital markets operator;
or

(i) take any other action that the Commission considers necessary for the protection of investor interests or to enable the Commission to carry out its functions under this Act.

(5) The Commission or a manager appointed to run the affairs of a capital markets operator shall, within ninety days of taking possession of a capital markets operator, prepare a statement of affairs showing the financial position of the capital markets operator.

(6) Where the Commission decides to close a capital markets operator in accordance with subsection (3)(c), the closure shall take effect by revoking or cancelling a licence issued under this Act and the Commission shall recommend to an appropriate authority to place the capital markets operator under liquidation.

(7) The qualifications and duties of a manager appointed under this section shall be as specified in guidelines issued by the Commission.

Commission's
power over
assets of capital
markets
operator

19C. (1) The Commission may, as regards an asset of a capital markets operator, whether in the Republic or elsewhere, by notice, in writing —

- (a) prohibit the capital markets operator from disposing of the asset or dealing with the asset in a manner specified in the notice;
- (b) require the capital markets operator to deal with the asset in a manner specified in the notice; or
- (c) prohibit the capital markets operator from pledging the assets as security or collateral for borrowings.

(2) The Commission shall, in addition to serving a notice on a capital markets operator, register the notice under subsection (1) with the relevant assets registry.

(3) The Commission may, by notice in writing, require a capital markets operator to maintain, in the Republic, assets of a value that the Commission considers necessary to ensure that the capital markets operator is able to meet that capital markets operator's liabilities in respect of the capital markets operator's business regulated under this Act.

(4) The Commission may, in writing, issue a directive to a capital markets operator for the purposes of any requirement in this section that assets of a specified class or description shall, or shall not, be taken into account.

19D. The Commission shall exercise supervisory powers over a capital markets operator to prevent and combat money laundering and counter the financing of terrorism, proliferation, proliferation financing or any other serious offence.

Supervisory powers of Commission on anti-money laundering and countering financing of terrorism or proliferation
Under-capitalised capital markets operator

19E. (1) The Commission shall, where a capital markets operator is or is likely to be under-capitalised, in addition to the actions specified under section 19B, take the following actions against the capital markets operator:

- (a) order the capital markets operator to submit to the Commission, a capital restoration plan within thirty days of the order;
- (b) require the capital markets operator to increase the capital to prescribed levels, within ninety days of the submission of a capital restoration plan; and
- (c) prohibit the capital markets operator from awarding a bonus or an increment to the emoluments and other benefits of a director and senior management of the capital markets operator.

(2) The Commission may, in addition to the actions under subsection (1), appoint a suitably qualified and competent person to advise and assist the capital markets operator in designing and implementing a capital restoration plan at the cost of the capital markets operator.

(3) A person appointed under subsection (2) shall report to the Commission on the progress being made on the design and implementation of the capital restoration plan, at intervals as the Commission may determine.

(4) The Commission shall, where the Commission takes action in accordance with subsection (1) or (2), and the capital markets operator fails, refuses or neglects to comply with a directive of the Commission —

- (a) impose restrictions on increasing the size of the assets or liabilities of the capital markets operator as the Commission may determine;

(b) require the capital markets operator to remove from office any senior management responsible for the non-compliance; or

(c) order the capital markets operator to take any appropriate action to correct the capital deficiency of the capital markets operator.

(5) In this section, a capital markets operator shall be considered to be under-capitalised if the capital markets operator does not fully comply with any prescribed capital adequacy requirements.

Significantly under-capitalised capital markets operator

19F. (1) The Commission shall, where a capital markets operator is significantly under-capitalised and in addition to the actions specified under sections 19B and 19E, take any of the following actions against the capital markets operator:

(a) direct the board of the capital markets operator to correct the significant under-capitalisation within ninety days of the issue of the directive, and restore capital adequacy within one hundred and eighty days of the issue of the directive or a shorter period as the Commission may specify in the directive;

(b) restrict the licence of the capital markets operator;

(c) vary the conditions of the licence of the capital markets operator;

(d) suspend the licence of the capital markets operator; or

(e) cancel the licence of the capital markets operator.

(2) For the purposes of this section the Commission shall determine what constitutes significant under-capitalisation in accordance with a risk based approach or other methodology adopted by the Commission.

(3) The Commission shall, in writing, prepare and submit a state of affairs for the Minister on the supervisory action taken against a capital markets operator in accordance with this section.

Supervisory actions to take precedence

19G The corrective actions carried out by the Commission under sections 19E and 19F shall take precedence over any discretionary corrective actions available to the Commission as specified in this Act.

<p>19H. Despite section 56 of the Corporate Insolvency Act, 2017, the Commission may, where the Commission considers it necessary to protect the interest of an investor, recommend to the investor to present a petition to court to wind-up a capital markets operator’s business under the Corporate Insolvency Act, 2017, on the ground that it is just and equitable that the capital markets operator is wound-up.</p>	<p>Recommendation to wind-up capital markets operator Act No. 9 of 2017 Act No. 9 of 2017</p>
<p>19I. (1) A capital markets operator that is aggrieved with a decision of the Commission under this Part may, within thirty days of the decision, appeal to the Tribunal.</p>	<p>Appeals against decisions under this Part</p>
<p>(2) The decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal.</p>	
<p>(3) Despite subsection (2), the Tribunal may, on sufficient grounds shown, stay the Commission’s decision.</p>	
<p>19J. (1) This part shall not apply to a person whose securities are registered with the Commission</p>	<p>Exemption of Part</p>
<p>(2) Despite subsection (1), section 19D shall apply to a person whose securities are registered with the Commission.</p>	
<p>6. Section 22 of the principal Act is amended by the insertion of the following new subsection immediately after subsection(2):</p>	<p>Amendment of section 22</p>
<p>(3) Where a holder of a securities exchange licence appoints a director or senior management after the grant of a securities exchange licence, that appointment shall not take effect until the appointment of that director or senior management is approved by the Commission, in writing.</p>	
<p>7. Section 23 of the principal Act is amended by the insertion of the following new subsection immediately after subsection (2):</p>	<p>Amendment of section 23</p>
<p>(3) Where a holder of a clearing and settlement agency licence appoints a director or senior management after the grant of a clearing and settlement agency licence, that appointment shall not take effect until the appointment of that director or senior management is approved by the Commission, in writing.</p>	
<p>8. Section 37 of the principal Act is amended by the insertion of the following new subsections immediately after subsection(2):</p>	<p>Amendment of section 37</p>

(3) The Commission shall not grant a licence under this Part unless the Commission has approved the appointment of directors and senior management of the applicant, in writing.

(4) Despite subsection (3), the Commission shall approve, in writing, the appointment of a director or senior management that is made subsequent to the grant of a licence.

Insertion of sections 46A and 46B

9. The principal Act is amended by the insertion of the following new sections immediately after section 46:

Appointment of auditor by licensed person

46A. (1) Despite the Accountants Act, 2008, a licensed person shall appoint an auditor who is a member of the Zambia Institute of Chartered Accountants, and the auditor shall not provide auditing services to the licensed person unless the auditor meets the minimum criteria specified by the Commission.

Act No. 13 of 2008

(2) An auditor shall audit the annual financial statements of a licensed person in accordance with the prescribed standards specified in the Accountants Act, 2008 and as provided under this Act.

(3) This section shall not apply to a person licensed as a representative under section 34.

Duty of auditor to report licensed person Act No. 13 of 2008

46B. (1) Despite the Accountants Act, 2008, an auditor shall provide a report to the Commission, on a licensed person's failure to provide audited results in a prescribed manner and form within four months of the end of a financial year, stating the reasons for the delay.

(2) A licensed person who fails to provide audited results or an auditor who fails to report a delay by a licensed person in submitting audited results, after due investigation by the Commission, commits an offence and is liable, on conviction, to a penalty not exceeding one hundred thousand penalty units and to a further penalty of ten thousand penalty units for each day that the offence continues.

(3) This section shall not apply to a person licensed as a representative under section 34.

Amendment of section 49

10. Section 49 of the principal Act is amended by the insertion of the following new subsections immediately after subsection (2):

(3) The Commission shall not grant a credit rating agency licence to a credit rating agency unless the Commission has approved the appointment of directors and senior management of the credit rating agency, in writing.

(4) Despite subsection (3), the Commission shall approve, in writing, the appointment of a director or senior management that is made subsequent to the grant of a credit rating agency licence.

11. Section 79(1) of the principal Act is amended by the deletion of the words “intends to transact” and the substitution therefor of the word “deals”. Amendment of section 79

12. Section 81 of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following: Amendment of section 81

(1) An issuer shall, once securities are registered, keep the public informed of all matters which affect the value of the securities immediately on their becoming known to the issuer, by placing an advertisement in a newspaper of general circulation in the Republic or in other media approved by the Commission, and shall submit reports to the Commission and to the securities exchange on which those securities are quoted or listed.

13. Section 84 of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following: Amendment of section 84

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

14. Section 128(1) of the principal Act is amended by the insertion of the following new paragraph immediately after paragraph (v): Amendment of section 128

(w) the formulation of a key facts statement relating to each collective investment scheme summarising the key features of the scheme.

15. The principal Act is amended by the insertion of the following new section immediately after section 130: Insertion of new section 130A

130A. This Part shall not apply to a pension fund established under any written law. Non-application of the Part

16. Section 148 of the principal Act is amended by the deletion of subsections (3) and (4) and the substitution therefor of the following: Amendment of section 148

(3) Despite the Accountant’s Act, 2008, an auditor shall, in writing, provide a report to the Commission, on the failure by a listed company or a company whose securities are registered with the Commission to produce audited results within four months of the end of a financial year, stating the reasons for the delay. Act No. 13 of 2008

(4) A listed company or a company whose securities are registered with the Commission who fails to provide audited results, or an auditor who fails to report a delay in submitting audited results, after due investigation by the Commission, commits an offence and is liable to the penalty provided in section 159.

Amendment of section 194

17. Section 194 of the principal Act is amended by the deletion of the words “licensed” in subsection (1).

Insertion of section 194A

18. The principal Act is amended by the insertion of the following new section immediately after section 194:

Orders of Tribunal

194A. (1) The Tribunal may, where on the application of the Commission it appears to the Tribunal that a person has contravened this Act or any conditions of the licence, make one or more of the following orders:

- (a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities or assets specified in the order;
- (b) in relation to a capital markets operator, an order appointing a person to administer the property of the capital markets operator;
- (c) an order declaring a contract relating to securities to be void or voidable;
- (d) an order directing a person to do or refrain from doing a specified act for the purpose of securing compliance with any other order under this section; or
- (e) any ancillary order that the Tribunal considers necessary under this section.

(2) The Tribunal shall, before making an order under this section, satisfy itself that the order would not unfairly operate to the detriment of a person.

(3) The Tribunal may, before making an order under subsection (1), direct that notice of the application referred to in subsection (1) be given to persons as the Tribunal considers necessary or direct that notice of the application be published in a manner as the Tribunal considers necessary, or both.

(4) The Tribunal may reverse, vary, or discharge an order made under this section or suspend the operation of the order.

19. The principal Act is amended by the repeal of section 195 and the substitution therefor of the following:

Repeal and replacement of Section 195

195 (1) A party to the proceedings before the Tribunal may, if dissatisfied with an order or a decision of the Tribunal, appeal to the Court of Appeal against that order or decision.

Appeal to Court of Appeal

(2) A party that intends to appeal against an order or decision of the Tribunal in accordance with subsection (1) shall —

(a) apply to the Tribunal for leave to appeal if the leave to appeal against the order or decision is not granted in the order or decision; or

(b) apply to a judge of the Court of Appeal for leave to appeal if the Tribunal refuses to grant the leave under paragraph (a).

20. The principal Act is amended by the insertion of the following new section immediately after section 195:

Insertion of section 195A

195A. An action or other proceeding shall not lie or be instituted against a member of the Tribunal or a member of staff of the Tribunal for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.

Immunity of members and staff of Tribunal

21. Section 208 of the principal Act is amended by the insertion of the following new subsection immediately after subsection (2):

Amendment of section 208

(3) An association established under this section shall apply to the Commission to be recognised as a self-regulatory organisation in the prescribed manner and form.

22. Section 209(8) of the principal Act is amended by the deletion of the words “subsection (6)” and the substitution therefor of the words “subsection (7)”.

Amendment of section 209

23. The principal Act is amended by the insertion of the following new sections immediately after section 218:

Insertion of sections 218A and 218B

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- General offences 218A. A person commits an offence if that person, without reasonable excuse, neglects or fails to comply with, a provision of —
- (a) this Act or a directive, order, condition, requirement, determination or request made under this Act; or
 - (b) any regulations or rules made pursuant to this Act or any directive, order, condition, requirement, determination or request made under those regulations or rules.
- General penalty 218B. A person who contravenes a provision of this Act for which a specific penalty is not provided is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.
- Amendment of First Schedule 24. The First Schedule to the principal Act is amended by the deletion of paragraph 7 and the substitution therefor of the following:
- Immunity 7. An action or other proceeding shall not lie or be instituted against a member of the Board or committee of the Board, or a member of staff of the Commission for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.
- General amendment 25. (1) The principal Act is amended by the deletion of the words “venture capital fund” and “venture capital funds,” wherever the words appear and the substitution therefor of the words “private fund” and “private funds”, respectively.
- (2) Despite subsection (1), this section shall not apply to section 2 of the Act.
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