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| Gazetted | 1st February 2002 |
| Commencement | 1st February 2002 |

**ZIMBABWE BROADCASTING CORPORATION
(COMMERCIALISATION) ACT, 2001**

Act 26/2001

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ACT

To provide for the formation of successor companies to take over the functions, assets, liabilities and staff of the Zimbabwe Broadcasting Corporation; to provide for the repeal of the Zimbabwe Broadcasting Corporation Act [*Chapter 12:01*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001.

2 Interpretation

(1) In this Act—

“broadcasting company” means the company referred to in section *four*;

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

“digital convergence signal carrier company” means the company referred to in section *three*;

“Minister” means the Minister of State for Information and Publicity in the President’s Office or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“successor companies” means the companies formed for the purposes referred to in sections *three* and *four*;

“transfer date”, in relation to any asset or right, means the date fixed in terms of subsection (1) of section *six* for the transfer of that asset or right from the Corporation to the digital convergence signal carrier company or the broadcasting company.

(2) Any word or expression to which a meaning has been assigned in the Broadcasting Services Act [*Chapter 12:06*] shall have the same meaning when used in this Act.

3 Formation of digital convergence signal carrier and broadcasting companies

The Minister shall take such steps as are necessary under the Companies Act [*Chapter 24:03*] to secure the formation of the following two successor companies, limited by shares, which shall be the successor companies to the Corporation for the purposes of this Act—

- (a) a broadcasting company, which will, subject to this Act, take over the functions of broadcasting, and such assets, liabilities and staff of the Corporation as are connected with those functions; and
- (b) a digital convergence signal carrier company, which will, subject to this Act, in addition to taking over the functions of signal carriage of the Corporation and such assets, liabilities and staff of the Corporation as are connected with those functions, carry on business arising from the convergence of broadcasting, telecommunication and computer technologies:

Provided that, if a company has been incorporated for the purpose before the date of commencement of this Act, the Minister may, by notice to the Corporation, direct that that company shall be the company responsible for signal transmission or for broadcasting, as the case may be, for the purposes of this Act.

4 Objects of companies

- (1) The objects of the digital convergence signal carrier company shall be—
 - (a) to provide signal transmitting services;

- (b) to migrate from the current terrestrial analogue broadcasting signal distribution to digital technology;
 - (c) to expand multimedia services by providing internet, web development and e-commerce services across the country;
 - (d) to provide satellite broadcasting services;
 - (e) to provide subscription television services;
 - (f) to provide integrated datacasting, roadcasting and webcasting services across the country;
 - (g) to establish a state of the art music production plant for cassette, compact disc and digital video disc reproduction;
 - (h) to establish sound recording studios and facilities for film and video production; and
 - (i) to perform any other function set out in its memorandum of association.
- (2) The objects of the broadcasting company shall be—
- (a) to provide broadcasting services;
 - (b) to provide video and audio production services; and
 - (c) to provide integrated datacasting, roadcasting and webcasting services across the country;
 - (d) to provide online multimedia news and programme services; and
 - (e) to perform any other function set out in its memorandum of association.

(3) In the performance of their functions, the successor companies shall give priority to serving the needs of the State, to the extent that it is compatible with sound business practice to do so.

5 Initial shareholding in successor companies

(1) All the shareholders of the digital convergence signal carrier company and the broadcasting company on incorporation shall be persons nominated by the Minister, after consultation with the President and in accordance with any directions that the President may give him, and shall hold their shares on behalf of the State.

(2) Any person so appointed to hold shares, shall do so nominally as an agent for the State.

6 Transfer of assets and obligations of Corporation to successor companies

(1) The assets and rights of the Corporation which—

- (a) immediately before the date of commencement of this Act were used or otherwise connected with the functions of signal transmission, data and television web casting and broadcasting; and

(b) are specified by the Minister, in consultation with the Minister responsible for finance; together with any liabilities or obligations attaching to them, shall be transferred to the successor companies with effect from such date and on such terms and conditions, whether relating to payment or otherwise, as the Minister may specify by written notice to the successor companies:

Provided that—

- (i) the Minister may specify different dates for the transfer of different assets and rights;
- (ii) this subsection shall not be construed as preventing the Government from leasing any of the State's assets to the successor companies or otherwise permitting the State to use any such assets, on such terms and conditions as may be agreed between the parties concerned.

(3) On the relevant transfer date, every asset and right of the Corporation which the Minister has directed shall be transferred to the broadcasting company or the digital convergence signal carrier company, together with any liability or obligation attaching to it, shall vest in the digital convergence signal carrier company or the broadcasting company, as the case may be, subject to any terms and conditions specified by the Minister in terms of subsection (1).

(4) All bonds, hypothecations, deeds, contracts, instruments, documents and working arrangements that subsisted immediately before the relevant transfer date and to which the Corporation was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the digital convergence signal carrier company or the broadcasting company, as the case may be, as if, instead of the Corporation, the digital convergence signal carrier company or the broadcasting company had been named therein.

(5) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his registers in respect of any immovable property, right or obligation which passes to the digital convergence signal carrier company or the broadcasting company under this section, but the Registrar of Deeds, when so requested in writing by the digital convergence signal carrier company or the broadcasting company, as the case may be, concerned in relation to any particular such property, right or obligation, shall cause the name of the digital convergence signal carrier company or the broadcasting company, as the case may be, to be substituted, free of charge, for that of the Corporation on the appropriate title deed or other document or in the appropriate register.

(6) Any licence, permit or authority held by the Corporation under any enactment immediately before the relevant transfer date shall continue in force on and after that date as if it had been issued or granted to the digital convergence signal carrier company or the broadcasting company, as the case may be, to which it was transferred, in terms of subsection (3), and may be amended, renewed or terminated accordingly.

(7) Any cause of action or proceeding which existed or was pending by or against the Corporation immediately before the relevant transfer date may be enforced or continued, as the case may be, on and after that date by or against the digital convergence signal carrier company or the broadcasting company, as the case may be, in the same way that it might have been enforced or continued by or against the Corporation had this Act not been passed.

(8) Any guarantee or suretyship which was given or made by the Government or any other person in respect of any debt or obligation of the Corporation and which was effective immediately before the transfer date of the principal debt or obligation shall remain fully effective against the guarantor or surety on and after that date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the digital convergence signal carrier company to which the principal debt or obligation was transferred.

7 Transfer of employees to successor companies and conditions of service of transferred employees

(1) Subject to the consent of the employees concerned, the successor companies shall engage such of the persons who were employed in the Corporation on the date of commencement of this Act as the Minister and the companies' boards of directors may mutually agree.

(2) A person engaged in terms of subsection (1) shall be engaged to the service of the digital convergence signal carrier company or the broadcasting company, as the case may be, on terms not less favourable than those enjoyed by him immediately prior to his transfer.

(3) Until such time as conditions of service are drawn up by the digital convergence signal carrier company or the broadcasting company, as the case may be, the terms and conditions of service applicable to employees of the Corporation shall continue to apply to every person transferred to the digital convergence signal carrier company or the broadcasting company, as if every such person were still in the service of the Corporation.

8 Minister may give directions to Corporation

(1) Notwithstanding anything to the contrary in the Zimbabwe Broadcasting Corporation Act [*Chapter 12:01*], the Minister may give the Board of the Corporation directions in writing in order to ensure the proper transfer of such of the assets and liabilities of the Corporation as are necessary for the operation of the successor companies and the Board shall without delay comply with every such direction.

(2) Without derogation from subsection (1), directions given under that subsection may provide for—

- (a) the assignment of functions of the Corporation to the successor companies;
- (b) the termination of any contract entered into between the Corporation and any person:

Provided that no such direction shall authorise the Corporation to commit an unlawful breach of any such contract;

- (c) the production of any report and the provision of any information concerning the conduct of the Corporation or the Board or anything done by or on behalf of the Corporation or the Board.

9 Successor companies deemed to be licensed

(1) Notwithstanding any other provision of this Act the digital convergence signal carrier company shall be deemed to be the holder of signal carrier, subscription satellite broadcasting, datacasting and webcasting licences and the broadcasting company shall be deemed to be the holder of a broadcasting licence issued in terms of the Broadcasting Services Act [*Chapter 12:06*] and authorising the successor companies to operate the same signal carrier, subscription satellite broadcasting, datacasting, webcasting and broadcasting services that were operated by the Corporation immediately before the date of commencement of this Act.

(2) The Minister shall without delay cause the relevant licences to be issued to the successor companies and those licences may be renewed, amended, suspended or cancelled in all respects as if they had been issued in terms of the Broadcasting Services Act [*Chapter 12:06*].

10 Amendment of Cap 12:06

The Broadcasting Services Act [*Chapter 12:06*] is amended—

(a) in section 1 by the deletion of “the Broadcasting Services Act, 2001” and the substitution of “the Broadcasting Services Act [*Chapter 12:06*]”;

(b) in section 2 by the insertion in subsection (1) of the following definition—

"foreign donation or contribution" means a donation or contribution made otherwise than for commercial reasons alone by—

(a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or

(b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or

(c) any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe;";

(c) in section 8 by the repeal of subsection (6) and the substitution of—

"(6) No person—

(a) whose broadcasting service or signal transmission station is wholly or partly funded by foreign donations or contributions; or

(b) which is a subsidiary company as defined in section 143 the Companies Act [*Chapter 24:03*], or whose broadcasting service is provided as agent for, or under a franchise from, another person; or

(c) convicted of an offence in terms of this Act, the Radiocommunication Services Act [*Chapter 12:04*] or the Postal and Telecommunications Act [*Chapter 12:05*];

shall be licensed.";

(d) by the insertion after Part VIII of the following Part—

“PART VIIIA

LISTENERS’ LICENCES

38A Interpretation in Part VIIIA

In this Part and section *forty-six*—

“broadcasting company” means the company formed in terms of section 3 of the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001, as the successor to the broadcasting functions of the Corporation;

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

“dealer” includes—

(a) a person who carries on a trade, business or industry in which receivers are assembled, manufactured, imported, bought, sold, hired or exchanged or offered or exposed for sale, hire or exchange; or

- (b) a person who deals in motor-vehicles in which receivers are installed;
or
- (c) an auctioneer of receivers; or
- (d) the employee or agent of a person referred to in paragraph (a), (b) or (c);

“digital convergence signal carrier company” means the company formed in terms of section 3 of the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001, as the successor to the signal carriage functions of the Corporation.

38B Licensing of listeners

(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 broadcasting company or its agents appointed in terms of section *forty-nine*.

(2) The fees payable on the issue of licences referred to in subsection (1) shall be fixed by the broadcasting company, with the approval of the Minister, by statutory instrument and the broadcasting company may fix different fees for different prescribed classes of listeners:

Provided that the Minister may, after consultation with the broadcasting company, exempt any class of listeners from payment of all or any of the fees referred to in this subsection.

(3) Subsection (2) shall not apply to a listener—

- (a) who is a *bona fide* tourist residing outside Zimbabwe and who has brought a receiver temporarily into Zimbabwe for a period not exceeding three months; or
- (b) whose receiver is capable of use solely in connection with a diffusion service.

38C Collection of licence fees

Licence fees referred to in section *forty-nine*, less such amounts as may be payable for the services of the agents of the broadcasting company shall be paid into the general funds of the company for the use of the company.

38D Powers of inspectors or police officers

(1) An inspector or police officer may require a person who he has reasonable cause to suspect is a listener to produce his licence for inspection.

(2) If a person referred to in subsection (1)—

- (a) is unable to produce his licence on demand; or
- (b) cannot be located at his usual or last known place of abode or business;

the inspector or police officer concerned may serve on that person a notice in the prescribed form requiring that person to produce that notice and his licence to the police officer in charge of a police station within a period of seven days from the date of service of that notice.

(3) It shall be the duty of a police officer to whom a notice and licence have been produced in terms of subsection (2) forthwith—

- (a) to issue to the person who produced the notice and licence a receipt in the prescribed form; and
- (b) to notify the inspector or police officer who served the notice that the notice and licence have been so produced.

(4) If a person referred to in subsection (1) who is unable to produce his licence on demand or cannot be located at his usual or last known place of abode or business is served with a notice referred to in subsection (2) and—

- (a) fails to comply with the requirement contained in that notice, he shall be presumed, until the contrary is proved, not to have been issued with a licence;
- (b) is subsequently prosecuted for failing to complying with the requirement contained in that notice, he shall be presumed, until the contrary is proved, not to have produced that notice and his licence in compliance with the requirement contained in that notice if the inspector or police officer who served that notice has not been notified in terms of paragraph (b) of subsection (3).

(5) An inspector or police officer may at all reasonable times enter premises—

- (a) in or on which a dealer carries on business; or
- (b) other than a dwelling-house, which are owned or occupied by a person whom he has reasonable cause to suspect is in possession of a receiver; or
- (c) in or on which he has reasonable cause to suspect an offence against this Act has been committed;

and shall have power to make such examination, inspection and inquiry and do such things as may appear to him necessary for ascertaining whether or not compliance has been made with this Act.

(6) An inspector or police officer may require a dealer to produce to the inspector or police officer such books, accounts or other documents relating to the business carried on by the dealer and required to be kept by the dealer as the inspector or police officer may specify.

(7) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon the inspector by this section, exhibit the certificates issued to him in terms of paragraph (c) of subsection (1) of section *fifteen*.”;

(e) in section 46 in subsection (2) by the insertion after paragraph (h) of the following paragraphs—

- “(h1) the registration with the broadcasting company of dealers as defined in that section and the information to be supplied to the broadcasting company in connection with applications for registrations;
- (h2) the keeping of books, records and documents, the furnishing of returns and the supply of information to the broadcasting company referred to in paragraph (h1) relating to dealings in receivers;

- (h3) the collection and transmission to the broadcasting company referred to in paragraph (h1) of the licence fees referred to in subsection (2) of section *thirty-eight B*;
 - (h4) prohibiting the delivery of a receiver by a dealer referred to in paragraph (h1) in pursuance of the sale, exchange, hire or repair of the receiver to a person who is not authorised by a licence referred to in subsection (2) of section *thirty-eight B* to possess the receiver;
 - (h5) the notification to the broadcasting company referred to in paragraph (h1) by listeners of changes in their place of abode or business;
 - (h6) any other matter in connection with the broadcasting company or the digital convergence signal carrier company that, in the opinion of the Minister, is required to be provided for in the public interest;”;
- (f) in subsection (3) of section 47 by the deletion of “three months from the date of commencement of this Act” and the substitution of “until the 28th February, 2002”.

11 Repeal of Cap 12:01

(1) When the President is satisfied that the assets and liabilities of the Corporation have been transferred to the successor companies and that nothing remains to be done under this Act, he shall, by statutory instrument, repeal the Zimbabwe Broadcasting Act [*Chapter 12:01*].

(2) Notwithstanding subsection (1)—

- (a) any regulation or notice which was made in terms of the repealed Act and which was in force immediately before the date of commencement of this Act shall continue in force, *mutatis mutandis*, as if it had been made in terms of the Broadcasting Services Act [*Chapter 12:06*];
- (b) any application or decision made or other thing whatsoever done or commenced under the repealed Act which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect, shall continue to have or to be capable of acquiring, as the case may be, the same legal effect, *mutatis mutandis*, as if it had been made, done or commenced under this Act.