

BROADCASTING SERVICES AMENDMENT

H.B. 9, 2024.]

BROADCASTING SERVICES AMENDMENT BILL, 2024

MEMORANDUM

The objective of the Broadcasting Services Amendment Bill, 2024, is principally to align the Broadcasting Services Act [*Chapter 12:06*] (the principal Act) with the Constitution and also with the Public Entities Corporate Governance Act [*Chapter 10:31*].

In more detail the individual clauses of the Bill provide as follows:

Clause 1 provides for the short title of the Bill which is Broadcasting Services Amendment Bill, 2024 and also the date of commencement.

Clause 2 amends section 2 of the principal Act by introducing additional definitions for new classes of broadcasting services licences introduced in section 7.

Clause 3 amends section 2A of the principal Act to provide that the role of the Broadcasting Authority of Zimbabwe (BAZ) is to regulate and manage the broadcasting service bands for sustenance rather than control broadcasting service bands. The intention is to move away from a perception that the legislation is intended to stifle the freedoms guaranteed by section 61 of the Constitution and instead to focus on necessary regulation of the airwaves. This is also in line with current international trends as contained in some international instruments among them, the African Charter on Broadcasting, the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights.

Clause 4 amends section 4 of the principal Act by reducing the number of board members from twelve (12) to seven (7) and also providing for gender balance within the Board of the Broadcasting Authority.

Clause 5 amends section 7(2) of the principal Act, which provides for classes of broadcasting services and systems which may be licensed by the Authority. The amendments have been necessitated by developments in technology, where classification of broadcasting services should be independent of the platform from where the service is delivered or received as developments in technology result in new platforms emerging or existing platforms evolving to deliver broadcasting services, which will require frequent reviews to the classification. The new classification will have commercial, community and subscription broadcasting services among others.

Clause 6 amends section 8 of the principal Act, which provides that licenses must be issued to persons who are Zimbabweans subject to the exemption by the Minister in terms of section 8(8) of the Act. The amendment seeks to allow foreign control in a broadcasting licence up to 40% as a measure of encouraging the development of this sector considering that it is a high capital venture and ensure that Zimbabweans remain in control of broadcasting services. The amendment will mean that the Minister will no longer be required to approve the licensing of any person. The amendment also seeks to repeal the requirement for Directors of licensees to be Zimbabwean citizens and places a limitation of 40% of the Directors to be foreigners. Amendments to section 8(3) will allow any person other than a natural person to apply for licences such as Community Radios. The clause also repeals section 8(6) (b) to allow subsidiary companies to be licenced.

Clause 7 amends section 10 of the principal Act mainly to introduce predictability in the applications for, granting or refusal of licences. The amendment to section 10 will allow licences that make use of the broadcasting frequency spectrum to be applied for once a year. Amendments to subsection 6 are to ensure that only services that make use of the band spectrum, a national public resource, go through a public inquiry (except for Community Radios) which are supposed to be owned by the Community.

Clause 8 amends section 11(4) and (5) of the principal Act by ensuring that broadcasting service licensees broadcast in all languages spoken in the area they serve to promote the use of officially recognised languages identified in the Constitution. This requirement will exclude services emanating from outside the country and community radio stations. The amendment in section 11(5) is to exempt licensees whose services emanate from outside the country from the requirement of allocating to the Government an hour weekly to explain government policies, free of charge to the nation as such requirement is impractical.

Clause 9 amends section 12 to align the section with amendments that have been effected in other provisions.

Clause 10 amends section 18 to allow for the transfer of a licence subject to the approval of the Authority.

Clause 11 amends Part IV of the principal Act. Amendment of section 22 allows up to 40% of foreigners to be Directors of licensees. The current Act prohibits foreigners to be Directors in licensees.

Clause 12 amends section 30 of the principal Act. Section 30 of the Act provides for the utilisation of the Broadcasting fund for objects stipulated in that section. In view of the non-profit making nature of Community Radios the amendment seeks to allow the Authority to utilise the Fund to also support the sustenance of 'Community Radios'.

Clause 13 amends section 37 by repealing subsection (2) and replacing it with a new subsection (2).

Clause 14 amends section 38A by broadening the definition of "dealer" in an effort to enhance compliance and to boost revenue collection for ZBC.

Clause 15 amends section 38B by inserting a new provision which prohibits the sell of a motor insurance cover to persons who do not have ZBC radio licences.

Clause 16 amends section 39 by deleting subsection (5) and replacing it with a new subsection (5) which requires every subscription broadcasting service licensee and subscription management service licensee to transmit up to 3 channels of the public broadcaster.

Clause 17 amends section 46 by adding new regulatory powers of the Board to include areas currently omitted in the Authority's regulatory function. Areas added are on migration issues due to changes in technology, powers to introduce monetary violation penalties to licensees for non-compliance with the terms and conditions of licenses, commissioning of independently produced content by broadcasters, language quotas within a license area to ensure that officially recognised languages find expression on broadcasting platforms and registration of persons who make use of social media platforms to broadcast events of national significance.

Clause 18 amends various paragraphs of the Third Schedule to the principal Act to bring the provisions applicable to the Authority in line with the provisions of the Public Entities Corporate Governance Act. Amongst other changes, terms of office of Board members are now limited to 4 instead of 5 years and vacancies on the board are to be filled within 3 months instead of 6 months.

Clause 19 amends paragraph 9 of the Fourth Schedule to the principal Act to provide that the appointment of the Chief Executive Officer and other employees of the Authority will be subject to sections 17 to 21 and section 23 of the Public Entities Corporate Governance Act [Chapter 10:31] which specify, among other things, a maximum of 2 fixed-term performance based contracts for the chief executive officer,

each term not exceeding 5 years; performance contracts of all other senior staff; the advertising of the post in a newspaper circulating in the area of the entity's activities; that appointments should be primarily on merit, with due regard to regional and gender representation; the filling of the post of chief executive officer within 6 months of a vacancy occurring; the requirement for disclosures of any conflicts of interest and the declaration of assets by senior staff; that conditions of service of all senior staff should be in line with any model service conditions formulated in terms of the Public Entities Corporate Governance Act, with due regard to qualifications, experience and functions of the entity and restrictions on remuneration of the chief executive officer and other senior staff, including restrictions on the terminal benefits.

Clause 20 deletes paragraph 9(1)(f) of the Fifth Schedule which requires that a licensee commences providing broadcasting services within six months of being allocated a licence; and amends paragraph 10(1) (c) of the Fifth Schedule to the principal Act to make it mandatory for licensees to ensure that members of the Community that it serves participate in the operations and selection of programmes and membership of its governing body. The amendment is on deletion of the word 'encourage' and replacement with 'ensure'. This will ensure Community participation in this class of licence.

Clause 21 amends the Sixth Schedule to the principal Act by deleting paragraph 2(2) and substituting it with a new section 2(2) which provide that a licensee with a sports channel shall broadcast 50% local content in view of the fact that sporting events are universal and international sports may bring commercial value to licensees. Amendments to paragraph 2(2) are to provide that a public broadcaster providing multiple channels shall broadcast 75% local content on all channels to ensure that they reflect the identity of the nation. Services emanating from outside the country will be excluded from this local content quota requirement.

Clause 22 is a transitional provision with respect to the terms of office of current senior officers. The terms of office of the officers will be subject to the limits introduced by this Bill and will therefore be reckoned from the dates of appointment. The amendment also seeks to provide those persons providing classes of broadcasting services shall continue to provide those services until expiry of the licences and an application for renewal or for an appropriate licence may be lodged prior to the expiry of the licence. Clause 23 inserts a new Schedule which contains the declaration to be signed by those who opt not to equip their cars with radios.

BILL

To amend the Broadcasting Services Act [*Chapter 12:06*] and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

5

PART I PRELIMINARY

1 Short title and date of commencement

(1) This Act may be cited as the Broadcasting Services Amendment Act, 2024.

10 (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Amendment of section 2 of Cap. 12:06

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

- 15 (a) by the deletion in the definition of “foreign donation or contribution” of “a permanent resident or” and “domiciled in Zimbabwe;”
- (b) by the insertion of the following definitions—
- ““public broadcasting service” means a service provided by a public broadcaster established by this Act;

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“satellite uplink” means the use of an earth station, whether fixed or mobile to transmit a broadcasting signal from the earth to the space satellite for distribution purposes;

“subscription management service” means a service which involves the provision of support services to a subscription broadcasting service which may include, among other things, subscriber management support, subscription fee collection, call centre operation, sales and marketing and technical and installation support.” 5

3 Amendment of section 2A of Cap 12:06

Section 2A (“Purpose and objectives of Act”) of the principal Act is amended— 10

- (a) in subsection (1) by the deletion of the words “provide for the control of the” and the substitution of “manage;”
- (b) in paragraph (c) by the insertion of “and be drawn from national and international sources” after “entertainment”;
- (c) by the insertion after paragraph (h) of the following paragraphs— 15
 - “(i) to encourage the development of freedom of expression by providing a wide range of programming that reflects Zimbabwean attitudes, opinions, ideas, values and artistic creativity;
 - (j) serve the needs and interests and reflect the circumstances and aspirations of Zimbabwean people and the cultural diversity of the Zimbabwean society.”. 20

4 Amendment of section 4 of Cap 12:06

Section 4 (“Establishment of the Broadcasting Authority of Zimbabwe Board”) of the principal Act is repealed and the following is substituted—

- (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. 25
- (2) Subject to subsection (3), the Board shall consist of the following seven members appointed by the President after consultation with the Minister—
 - (a) two persons chosen for their experience or professional qualifications in the field of broadcasting technology and broadcasting content respectively; and 30
 - (b) one 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 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 35
 - (d) one 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 representative of churches or other religious bodies chosen from a list of six nominees submitted by groups considered by the Minister to be representative of churches or other religious bodies; and 40
 - (f) one other member.
- (3) At least three of the members referred to in subsection 2 shall be women.
- (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. 45

(5) If any council or group 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).

5 Amendment of section 7 of Cap 12:06

Section 7 (“Broadcasting and signal carrier licences”) of the principal Act is amended by the repeal of subsection (2) and substitution of the following—

“(2) A broadcasting licence shall authorise the licensee to provide any one of the following classes of broad-casting service—

- (a) public broadcasting services;
- (b) a commercial broadcasting service;
- (c) a community broadcasting service;
- (d) a subscription broadcasting service;
- (e) subscription management service;
- (f) an open narrowcasting service;
- (g) satellite uplink system;
- (h) a data casting service.”.

6 Amendment of section 8 of Cap 12:06

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

(a) by the repeal of subsection (2) (a) and the substitution of the following—

“(2) For the purposes of subsection (1) “controlling interest” means—

- (a) in relation to the corporate structure of the body corporate—
 - (i) sixty *per centum* (60%) of the securities in the body corporate; or
 - (ii) sixty *per centum* (60%) of securities representing all of the share capital of the body corporate; or
 - (iii) securities equivalent in value to sixty *per centum* (60%) of the share capital of the body corporate; or
 - (iv) securities entitling the holders thereof to sixty *per centum* (60%) of the votes in the affairs of the body corporate.”;

(b) by the repeal of subsection (3) and substitution with the following—

“(3) A licence—

- (a) for a commercial broadcasting service and a subscription broadcasting service shall be issued to a company registered in terms of the Companies and Other Business Entities Act [*Chapter 24:31*];
- (b) for a community broadcasting service shall be issued to any person, other than a natural person or a company (unless it is a company limited by guarantee);

- (c) by the repeal of subsection (6)(b);
- (d) by the repeal of subsection (8).”.

7 Amendment of section 10 of Cap 12:06

Section 10 (“Application for licence”) of the principal Act is amended—

- (a) by the repeal of subsections (1) and the substitution of— 5
 “(1) The Authority shall, at least once every year and subject to the availability of band spectrum, publish a notice in the *Gazette* and in a national newspaper inviting applications from services that make use of the spectrum for licences to provide the broadcasting services or systems specified in the notice.”; 10
- (b) by the repeal of subsection 6 and substitution of the following—
 “(6) Save for community radio broadcasting services every applicant for a licence to provide a broadcasting service that requires allocation of the frequency spectrum 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 or its suitability to be licensed at a time and place to be determined in a written notice to such applicant.”. 15

8 Amendment of section 11 of Cap 12:06

Section 11 (“Terms and conditions of licence”) of the principal Act is amended— 20

- (a) by the repeal of subsection 4 and substitution with the following—
 “(4) Other than for broadcasting services emanating from outside the country, not less than ten *per centum* (10%) of the total programming content broadcast by any licensee shall be— 25
 - (a) in any of the officially recognised languages of Zimbabwe other than Shona and Ndebele.
 - (b) in the case of a television broadcasting licensee, in a manner that may be understood by audiences who have a hearing impairment.”;
- (b) by the insertion of the following proviso in subsection 4(b)— 30
 “Provided that a community broadcasting service licensee shall predominantly broadcast in languages spoken by the majority of members of the Community that it serves.”;
- (c) by the repeal of subsection (5) and the substitution of the following— 35
 “(5) Except for broadcasting services emanating from outside the country, a licensee shall make one hour cumulatively per week of its broadcasting time available for the purpose of enabling the Government of the day, at its request or where necessary, to explain its policies to the nation.”;
- (d) in subsection (6) by the deletion of “Copyright Act [*Chapter 26:01*]” and substitution of “Copyright and Neighbouring Rights Act [*Chapter 26:05*]”; and 40
- (e) in subsection (11) by the deletion of “Access to Information and Protection of Privacy Act [*Chapter 10:27*]” and the substitution of “Freedom of Information Act [*Chapter 10:33*]”. 45

9 Amendment of section 12 of Cap 12:06

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

(a) by the repeal of subsection (2) and substitution of the following—

5 “(2) A licence for a broadcasting service specified in paragraphs (a) to (e) of section 7(2) shall be valid for a period of ten years.”;

(b) by the repeal of subsection (3) and substitution of the following—

“(3) A licence for a broadcasting service specified in paragraphs (f) to (h) of section 7(2) shall be valid for a period of three years.”.

10 **10 Amendment of section 18 of Cap 12:06**

Section 18 (“Transfer of licence prohibited”) of the principal Act is amended by the repeal of section 18 and substitution with the following—

“18 Transfer of licence prohibited

15 Except with the written approval or consent of the Authority, no licensee shall assign, cede, pledge, transfer or sell his or her licence to any other person, or surrender his or her programming duties to another entity outside his or her establishment. Any such assignment, cession, pledge, transfer, sale or surrender shall be void.”.

11 Amendment of Part IV of Cap 12:06

20 Part IV (“LIMITATION OF CONTROL”) of the principal Act is amended—

(a) by the repeal of section 22 and substitution of the following—

“22 Prohibition against non-citizens becoming directors of licensees

25 No broadcasting licence shall be issued to a body corporate in which less than sixty *per centum* (60%) of the Directors are Zimbabwean citizens.”.

12 Amendment of section 30 of Cap 12:06

Section 30 (“Objects of fund”) of the principal Act is amended by the insertion of a new paragraph after (i) as follows—

30 “(j) to promote the establishment and sustenance of community broadcasting services.”.

13 Amendment of section 37 of Cap 12:06

Section 37 (“Licensing of the Public Broadcasters”) of the principal Act is amended in by the repeal of subsection 2 and substitution of the following—

35 “(2) The Authority in consultation with the Minister shall issue, public broadcasting service licences to the public broadcaster on application received from the public broadcaster or any person acting on its behalf and the licences shall be—

(a) for a specified term; and

(b) issued on payment of specified fee; and

40 (c) renewed or amended in accordance with sections 14 and 15 respectively.”.

14 Amendment of section 38A of Cap 12:06

Section 38A (“Interpretation in Part VIIIA”) of the Principal Act is amended by the deletion of the definition of “dealer” and the substitution of—

“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 ex-change; or
- (b) a person who deals in motor-vehicles in which receivers are installed; or
- (c) an auctioneer of receivers; or
- (d) a person who is a seller of motor vehicle licence and motor vehicle insurance policy; or
- (e) the employee or agent of a person referred to in paragraph (a), (b), (c) or (d).”.

15 Amendment of section 38B of Cap 12:06

Section 38B (“Licencing of listeners”) of the Principal Act is amended by the insertion of a new subsection after subsection (3) as follows—

“(4) The Zimbabwe National Road Administration (ZINARA) and every motor insurance company shall only issue a motor vehicle licence and motor insurance policy respectively to individuals who either hold a current radio licence issued by the Zimbabwe Broadcasting Corporation (ZBC) or a valid exemption certificate from (ZBC) unless the vehicle to be insured is not equipped with a radio receiver:

Provided the licence applicant shall sign a declaration as specified in the Eighth Schedule.”.

16 Amendment of section 39 of Cap 12:06

Section 39 (“Public service obligations of licensees”) of the principal Act is amended by the deletion of subsection (5) and the substitution of the following—

“(5) Every subscription broadcasting service licensee and subscription management service licensee shall transmit up to 3 channels of the public broadcaster one of which shall be unencoded.”.

17 Amendment of section 46 of Cap 12:06

Section 46 (“Regulatory powers of Board”) of the principal Act is amended in subsection (2) by the insertion of the following after paragraph (h33)—

- “(h33a) facilitating technological migration or upgrading to better broadcasting systems;
- (h33b) regulations providing for civil penalties for non-compliance with the terms and conditions of licenses;
- (h33c) the commissioning of independently produced content by broadcasters;
- (h33d) regulating on language quotas within a license area to ensure that officially recognised languages find expression on broadcasting platforms.”.

18 Amendment of Third Schedule to Cap 12:06

The Third Schedule (“Provisions applicable to Broadcasting Authority of Zimbabwe”) to the principal Act is amended—

- (a) by the repeal of paragraph 1 and the substitution of the following:

“Terms of office and conditions of service of members

5 1. (1) Subject to Part III of the Public Entities Corporate Governance Act [*Chapter 10:31*], a member shall hold office for a term of four years and the appointment may be renewed for only one further such term.

(2) Subject to paragraph 10, a member shall hold office on such terms and conditions as the Minister may fix in relation to members generally.

10 (3) The terms and conditions of office of a member shall not, without the member’s consent, be altered to his or her detriment during his or her tenure of office.”;

(b) in paragraph 4 (“Dismissal of Board”)—

15 (i) by the deletion in subparagraph (1) of “Subject to subparagraph (2)” and the substitution of “Subject to sections 11(9) and 16 of the Public Entities Corporate Governance Act [*Chapter 10:31*]”;

(ii) by the repeal of subparagraph (2);

(c) in paragraph 5 (“Filling of vacancies on Board”) by the deletion in the proviso of “section four” and the substitution of “paragraph 7(6)”;

20 (d) in paragraph 6 (“Chairman and vice-chairman of Board”) by the deletion of paragraph 1 and the substitution of the following—

“(1) The Minister shall designate one of the members as chairperson of the Board and another member of a different gender from the chairperson as vice-chairperson of the Board.”;

25 (e) in paragraph 7 (“Meetings and procedure of Board”) by the deletion—

(i) in subparagraph (1) of “Provided that the Board shall meet not less than six times in each year”;

(ii) of subparagraph (2) and the substitution of the following:

“(2) The chairperson of the Board—

30 (a) may at any time convene a special meeting of the Board; and

(b) shall convene a special meeting of the Board on the written request of—

35 (i) the Minister, within such period as the Minister may specify; or

(ii) not fewer than two members, not later than fourteen days after his or her receipt of such request;

and

40 (c) shall convene the meetings referred to in section 33(3) and (4) of the Public Entities Corporate Governance Act [*Chapter 10:31*].”;

(f) in paragraph 9 (“Remuneration and expenses of Board”) by the deletion of “Members” and the substitution of “Subject to sections 12 and 14 of the Public Entities Corporate Governance Act [*Chapter 10:31*], members”;

45 (g) in paragraph 11 (“Validity of decisions of Board”) by the deletion of “No” and the substitution of “Subject to section 33(2) of the Public Entities Corporate Governance Act [*Chapter 10:31*], no”.

19 Amendment of Fourth Schedule to Cap 12:06

50 The Fourth Schedule (“FINANCIAL AND MISCELLANEOUS PROVISIONS RELATING TO AUTHORITY”) to the principal Act is amended in paragraph 9 (“Chief Executive Officer and other employees of Authority”)—

- (a) by the repeal of subparagraph (1) and the substitution of—
- “(1) For the better exercise of the functions of the Authority, the Board shall, subject to sections 17 to 21 and section 23 of the Public Entities Corporate Governance Act [*Chapter 10:31*], appoint a chief executive officer and other senior staff of the Authority on such terms and conditions as are provided for in, or are fixed in terms of, the said sections of the Public Entities Corporate Governance Act [*Chapter 10:31*].”;
- (b) in subparagraph (3) by the insertion after “Minister” of “and the head of the Corporate Governance Unit referred to in section 5(1) of the Public Entities Corporate Governance Act [*Chapter 10:31*]”.

20 Amendment of Fifth Schedule to Cap 12:06

The Fifth Schedule (“STANDARD CONDITIONS OF LICENCES”) to the principal Act is amended—

- (a) in paragraph 9, by the repeal of subparagraph (1)(f).
- (b) in paragraph 10 by the deletion of (1)(c) and the substitution of the following—
- “(c) the licensee shall ensure members of the community that it serves participate in—
- (i) the operations of the licensee in providing the service; and
- (ii) the selection and provision of programmes under the licence;
- (iii) the membership of its governing body.”.

21 Amendment of Sixth Schedule to Cap 12:06

The Sixth Schedule (“LOCAL CONTENT CONDITIONS”) to the principal Act is amended by the repeal of paragraph 2 (2) and the substitution of—

“(2) Subject to subparagraph (1), a television broadcasting licensee providing a sport channel shall ensure that at least fifty *per centum* (50%) of its programming content consists of local television content and material from Africa.”.

22 Transitional provisions

(1) Any appointment of any person as a board member, chief executive officer or senior officer made in terms of the Broadcasting Services Act [*Chapter 12:06*] before the date of commencement of this Act which had effect immediately before that date shall continue to have effect and be deemed to have been made in terms of the said Act as amended by this Act and the service of such person shall be deemed to be continuous with the period served before the date of commencement of this Act.

(2) Any person who, immediately before the date of commencement of this Act was lawfully providing a broadcasting service shall be deemed to be licensed for the purpose of providing the same service or system until the expiry of the licence and an application for renewal or for an appropriate licence in terms of this Act may be lodged to the Authority prior to the expiry of the licence.

23 Insertion of a new Schedule

The principal Act is amended by the insertion of a new Schedule after the Seventh Schedule—

BROADCASTING SERVICES AMENDMENT

“EIGHTH SCHEDULE (Section 38B)

DECLARATION BY A MOTORIST IN TERMS OF SECTION 38B (4) OF THE BROADCASTING SERVICES ACT [CHAPTER 12:06]

I.....ID Number.....
Name

of.....
Address

do hereby state that

(1) I am the registered owner of a motor vehicle being
make
registration number.....

(2) I hereby state and declare that the said vehicle is not equipped with a radio receiver.

(3) I swear that the above information is true and correct.

Thus, stated and sworn at.....this day of.....202...

Sworn Date.....

Sworn and signed before me..... Date.....

