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ZIMBABWE ELECTORAL COMMISSION BILL, 2004

MEMORANDUM

This Bill will establish an independent authority to administer all elections and referendums in Zimbabwe. The contents of the Bill are summarised under the clause-by-clause analysis below:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause contains definitions of terms used in the Bill.

Clause 3

This clause provides for the establishment, composition and proceedings of the Zimbabwe Electoral Commission. The Commission will consist of a Chairperson qualified to be a judge of the Supreme Court or the High Court appointed by the President after consultation with the Judicial Service Commission, and four other Commissioners appointed by the President from a list of seven nominees submitted by the Committee on Standing Rules and Orders.

Clause 4 and Second Schedule

This clause sets out the Commission's functions, which are primarily to conduct Presidential, Parliamentary and local elections and referendums, and to direct and control the registration of voters and ensure the proper custody and maintenance of voters' rolls. The Second Schedule provides for certain ancillary powers of the Commission not directly related to its core functions.

Clause 5 and First Schedule

This clause and the First Schedule provides for the qualifications, terms and conditions of office and removal or suspension therefrom of Commissioners.

Clause 6 and Third Schedule

This clause and the Third Schedule provides for the financial aspects of the Commission's operations.

Clause 7

This clause provides for the appointment of a Chief Elections Officer by the Commission whose principal task is to manage the affairs and property of the Commission.

Clause 8

This clause provides for the Commission to report to the Minister on any election or referendum as soon as possible after it is conducted. The Minister is then obliged to submit such report to Parliament within a certain period after receiving it. The clause also provides for the submission of financial and other reports by the Commission.

Clauses 9, 10, 11 and 12

These clauses will confer functions on the Commission with respect to the provision of voter education.

Clauses 13

This clause empowers the Commission to produce codes of conduct governing the conduct of political parties during elections and referendums.

Clause 14

This clause applies the State Liabilities Act [*Chapter 8:14*] to legal proceedings against the Commission.

Clause 15

This clause empowers the Commission to make regulations prescribing all matters which by this Bill are required or permitted to be prescribed or which, in its opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Bill.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and date of commencement.
2. Interpretation.

PART II

ZIMBABWE ELECTORAL COMMISSION

3. Establishment, composition and proceedings of the Zimbabwe Electoral Commission.
4. Functions of Commission.
5. Commissioners: qualifications, terms and conditions of office and removal or suspension therefrom.

PART III

FINANCES, STAFF AND REPORTS OF COMMISSION

6. Finances of Commission.
7. Chief Elections Officer and other employees of Commission.
8. Reports of Commission on elections, referendums and other matters.

PART IV

VOTER EDUCATION

9. Interpretation in Part IV.
10. Functions of Commission with respect to voter education.
11. Voter education by persons other than the Commission or political parties.
12. Foreign contributions or donations for the purposes of voter education.

PART V

GENERAL

13. Codes of conduct.
14. Legal proceedings against and limitation of liability of Commission.
15. Regulatory powers of Commission.

FIRST SCHEDULE: Provisions Applicable to Zimbabwe Electoral Commission.

SECOND SCHEDULE: Ancillary Powers of Commission.

THIRD SCHEDULE: Financial Provisions Relating to Commission.

ZIMBABWE ELECTORAL COMMISSION
PRESENTED BY THE MINISTER OF JUSTICE LEGAL AND PARLIAMENTARY
AFFAIRS

BILL

To establish the Zimbabwe Electoral Commission and provide for its functions;
and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

PART I
PRELIMINARY

1 Short title and date of commencement

- (1) This Act may be cited as the Zimbabwe Electoral Commission Act, 2004.
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

In this Act—

“Chief Elections Officer” means the Chief Elections Officer appointed in terms of subsection (1) of section *seven*;

“Commission” means the Zimbabwe Electoral Commission established by section *three*;

“Commissioner” means a member of the Commission, and includes the Chairperson of the Commission;

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

“election” means—

- (a) the election of a member of Parliament; or
- (b) an election to the office of President; or
- (c) an election for the purposes of the Rural District Councils Act [*Cap. 29:13*] or the Urban Councils Act [*Cap. 29:15*];

as the case may be;

“election period” means—

- (a) in the case of a general election or by-election, the period between the issue of a proclamation referred to in section 38 or 39 of the Electoral Act and the day

before the beginning of the poll at the election to which such proclamation relates;

- (b) in the case of a Presidential election, the period between the publication of a notice referred to in section 94 of the Electoral Act and the day before the beginning of the poll at the election to which such proclamation relates;
- (c) in the case of an election to the governing body of a local authority, the period between the publication of a notice referred to in section 116 of the Electoral Act and the day before the beginning of the poll at the election to which such notice relates;
- (d) in the case of a referendum, the period between the date of publication in the *Gazette* in terms of section 3 of the Referendums Act [*Chapter 2:10*] of a proclamation by the President declaring that a referendum is to be held and the day before the date appointed by that proclamation for the holding of the referendum;

“Electoral Act” means the Electoral Act [*Chapter 2:02*] or other Act of Parliament having effect for the purposes of section 58(4) of the Constitution which is for the time being in force;

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“political party” means an association of persons the primary object of which is to secure the election of one or more of its members to a local authority or Parliament, or to the office of President, or to campaign for a specified result at a referendum;

“referendum” means a referendum held in terms of the Referendums Act [*Chapter 2:10*];

“Registrar-General” means the Registrar-General of Voters referred to in section 15 of the Electoral Act.

(2) Any word or expression to which a meaning has been assigned in the Electoral Act shall have the same meaning when used in this Act.

PART II

ZIMBABWE ELECTORAL COMMISSION

3 Establishment, composition and proceedings of the Zimbabwe Electoral Commission

(1) There shall be a commission to be known as the Zimbabwe Electoral Commission which shall consist of—

- (a) a Chairperson appointed by the President after consultation with the Judicial Service Commission; and

(b) four other Commissioners appointed by the President from a list of seven nominees submitted by the Committee on Standing Rules and Orders.

(2) The Chairperson of the Commission shall be a person qualified to be appointed as a judge of the High Court or the Supreme Court.

(3) The First Schedule applies to the procedure to be followed by the Commission at its meetings.

4 Functions of Commission

(1) The Zimbabwe Electoral Commission shall have the following functions—

(a) to prepare for and conduct—

- (i) elections to the office of President and to Parliament; and
- (ii) elections to the governing bodies of local authorities; and
- (iii) referendums;

and to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law;

and

(b) to direct and control the registration of voters by the authority charged with that responsibility under an Act of Parliament; and

(c) to compile voters' rolls and registers; and

(d) to ensure the proper custody and maintenance of voters' rolls and registers; and

(e) to design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres; and

(f) to conduct voter education; and

(g) to accredit observers of elections and referendums in accordance with an Act of Parliament; and

(h) to give instructions to—

- (i) the Registrar-General in regard to the exercise of his or her functions under the Electoral Act; and
- (ii) other persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of elections; and

(i) to exercise any other functions that may be conferred or imposed on the Commission by the Electoral Act or any other enactment.

(2) Subject to the Constitution, the Commission shall not, in the exercise of its functions in terms of subsection (1), be subject to the direction or control of any person or authority.

(3) Subject to this Act, for the better exercise of its functions the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Second Schedule, either absolutely or conditionally and either solely or jointly with others.

5 Commissioners: qualifications, terms and conditions of office and removal or suspension therefrom

(1) The First Schedule applies to the qualifications, terms and conditions of office and vacation of office of Commissioners.

(2) Subsections (3) to (8) apply to the suspension and dismissal of Commissioners.

(3) For the purposes of subsections (6) and (7) there shall be a committee, hereafter in this section referred to as “the Independent Disciplinary Committee”, consisting of—

- (a) a person, not being a Commissioner, who shall be the Chairperson of the Committee appointed by the Minister from a list of three registered legal practitioners recommended by the Attorney-General; and
- (b) a Commissioner chosen by the Minister from a panel of two Commissioners nominated by the Commission; and
- (c) a person chosen by the Minister from a list of not less than three names submitted by the Committee on Standing Rules and Orders, who shall not be members of Parliament.

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

(5) A Commissioner shall vacate his or her office if the Commissioner—

- (a) has, subject to subsection (7), been found to have conducted himself or herself in a manner that renders him or her unsuitable as a Commissioner, including a contravention of paragraph 8 of the First Schedule; or
- (b) has failed to comply with any term or condition of his or her office fixed by the President in terms of subparagraph (3) of paragraph 1 of the First Schedule; or
- (c) is mentally or physically incapable of efficiently carrying out his or her functions as a Commissioner; or
- (d) has been absent without the permission of the Commission from two consecutive meetings of the Commission of which he or she was given at least seven days’ notice, and there was no just cause for the Commissioner’s absence.

(6) The Minister may suspend a Commissioner—

- (a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in paragraph (a) of subsection (5); or
- (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

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

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

(8) The Independent Disciplinary Committee shall, after—

- (a) considering any representations made by the Commissioner in terms of subsection (6), or after the expiry of the period referred to in that subsection, as the case may be; and
- (b) affording such Commissioner, the Minister and any other person whom it considers to have any interest or knowledge in the matter to make such further representations to it, written or oral, as it deems necessary;

require a Commissioner suspended in terms of subparagraph (a) of subsection (5) to vacate his or her office if it finds that the Commissioner is guilty of the misconduct alleged:

Provided that if it finds that the Commissioner is not guilty of the misconduct alleged, the suspension of the Commissioner shall immediately be rescinded by virtue of that finding.

PART III

FINANCES, STAFF AND REPORTS OF COMMISSION

6 Finances of Commission

- (1) There shall be charged upon and paid out of the Consolidated Revenue Fund—
 - (a) sufficient funds appropriated to the Commission to enable it to exercise its functions;
 - (b) to the Commissioners, the Chief Elections Officer and other members of the staff of the Commission such salaries, allowances, pension and other benefits as may from time to time be prescribed by or under an Act of Parliament.
- (2) The Third Schedule governs the financial aspects of the operation of the Commission.

7 Chief Elections Officer and other employees of Commission

- (1) For the better exercise of its functions of the Commission shall appoint a person to be the Chief Elections Officer.
- (2) The Commission shall, with the approval of the Minister responsible for finance, fix the terms and conditions of service of the Chief Elections Officer.
- (3) Subject to the general control of the Commission, the Chief Elections Officer shall—
 - (a) manage the affairs and property of the Commission;
 - (b) supervise and control the activities of the employees of the Commission in the course of their employment;
 - (c) be the accounting officer of the Commission in terms of the Audit and Exchequer Act [*Chapter 22:23*];
 - (d) perform any of the functions of the Commission as the Commission may entrust or assign to him or her:

Provided that the Commission shall not assign to the Chief Elections Officer any duty that has been assigned to the Chairperson of the Commission.

- (4) The Commission shall terminate the appointment of the Chief Elections Officer if he or she would be required in terms of paragraph (b) or (c) of paragraph 3 of the First Schedule to vacate his or her office had that paragraph and subparagraphs (a), (b) and (c) of

subparagraph (1) of paragraph 2 of the First Schedule, and subparagraph (2) of that paragraph, applied to him or her.

(5) The Commission shall not terminate the services of the Chief Elections Officer on a ground other than one referred to in subsection (4) without the approval of the Minister.

(6) The Commission shall employ such persons in addition to the Chief Elections Officer as it considers expedient for the better exercise of the functions of the Commission.

(7) Any assignment of functions in terms of paragraph (d) of subsection (3) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time.

(7) The Chief Elections Officer shall have the right to attend meetings of the Commission and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Commission as if he or she were a Commissioner, but shall not have a vote on any question before the Commission.

8 Reports of Commission on elections, referendums and other matters

(1) The Commission shall as soon as possible after the end of any election or referendum provide a report thereon to the Minister.

(2) The Minister shall, within the next fourteen days on which Parliament sits after he or she has received a report of the Commission in terms of subsection (1), lay it before Parliament.

(3) The Commission—

- (a) shall, as soon as possible after the end of each financial year, submit to the Minister a report on its activities during the financial year to which the report relates; and
- (b) shall submit to the Minister such other reports on any matter related to its activities as the President or the Minister may require; and
- (c) may submit to the Minister such other reports on any matter related to its activities as the Commission considers advisable.

(4) The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a report submitted to him by the Commission in terms of paragraph (a) of subsection (3), together with the statement of accounts and auditor's report for the preceding financial year of the Commission referred to in paragraphs 3 and 4 of the Third Schedule.

PART IV

VOTER EDUCATION

9 Interpretation in Part IV

In this Part—

“foreign contribution or donation” means a contribution or donation made 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;

“local contribution or donation” means a contribution or donation that is not a foreign contribution or donation;

“voter education” means any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law, civics or other subject for students at an educational institution;

“voter education materials” means printed, aural, visual or audio-visual materials intended for use in voter education.

10 Functions of Commission with respect to voter education

- (1) The Commission shall have the following functions with respect to voter education—
 - (a) to provide adequate, accurate and unbiased voter education; and
 - (b) to ensure that voter education provided by persons other than political parties is adequate and not misleading or biased in favour of any political party; and
 - (c) to ensure compliance otherwise by persons referred to in paragraph (b) with the provisions of subsection (1) of section *eleven*.
- (2) The Commission shall produce its own voter education materials or course or programme of instruction for use in voter education.
- (3) The Commission may appoint any person to assist it in providing voter education.

11 Voter education by persons other than the Commission or political parties

- (1) No person, other than the Commission, or a person appointed in terms of subsection (3) of section *ten*, or a political party, shall provide voter education unless—
 - (a) such person is a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe, or an association of persons, whether incorporated or unincorporated, consisting exclusively of citizens or permanent residents of Zimbabwe, domiciled in Zimbabwe; and
 - (b) such person is, in the case of—
 - (i) an association of persons, whether incorporated or unincorporated; or
 - (ii) a lawfully constituted trust, whether or not registered in terms of any law; registered as a private voluntary organisation in terms of the Private Voluntary Organisations Act [*Chapter 17:05*], and the constitution of such organisation or the deed of trust, as the case may be, specifically mandates it to provide voter education; and
 - (c) such person employs individuals who are citizens or permanent residents of Zimbabwe to conduct any voter education; and

- (d) such person conducts voter education in accordance with a course or programme of instruction furnished or approved by the Commission; and
- (e) the proposed voter education activities of such person are, subject to section *twelve*, funded solely by local contributions or donations; and
- (f) the voter education materials proposed to be used by the person and the course or programme of instruction in accordance with which the voter education will be conducted are adequate and not misleading or biased in favour of any political party; and
- (g) no fee or charge is levied for the provision of voter education or voter education materials.

(2) The Commission may in writing require any person, other than a political party, providing or proposing to provide voter education, to—

- (a) furnish the Commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted; and
- (b) furnish the Commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education; and
- (c) disclose the manner and sources of funding of its proposed voter education activities; and
- (d) satisfy the Commission that it is not otherwise disqualified in terms of subsection (1) from providing voter education.

(3) Any person who contravenes subsection (1) or who fails to comply with a requirement by the Commission in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

12 Foreign contributions or donations for the purposes of voter education

No foreign contribution or donation for the purposes of voter education shall be made except to the Commission, which may allocate such contribution or donation to any person referred to in subsection (3) of section *ten* or subsection (1) of section *eleven*.

PART IV

GENERAL

13 Codes of conduct

(1) The Commission may, by regulations made in terms of section *fifteen*, devise one or more codes of conduct regulating the conduct of political parties during an election period.

(2) Any code of conduct referred to in subsection (1) shall be devised in consultation with political parties participating in any election or campaigning in any referendum

(3) Any code of practice may provide for penalties for breaches of the code by a political party which may include a monetary penalty not exceeding level ten.

14 Legal proceedings against Commission

The State Liabilities Act [*Chapter 8:14*] applies with necessary changes to legal proceedings against the Commission, including the substitution of references therein to a Minister by references to the Chairperson of the Commission.

15 Regulatory powers of Commission

(1) The Commission may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in its opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

FIRST SCHEDULE (Sections 3(3)) AND 5 (1))

PROVISIONS APPLICABLE TO ZIMBABWE ELECTORAL COMMISSION

Terms of office and conditions of service of Commissioners

1.(1) Subject to this Schedule, a Commissioner shall hold office for five years.

(2) A Commissioner shall continue in office after the expiry of his or her term until he or she has been re-appointed or his or her successor has been appointed:

Provided that a Commissioner shall not hold office in terms of this subparagraph for longer than six months.

(3) Subject to paragraph 7, a Commissioner shall hold office on such terms and conditions as the President may fix in relation to Commissioners generally.

(4) A retiring Commissioner is eligible for re-appointment as a Commissioner:

Provided that no Commissioner may be re-appointed for a third term in office.

Disqualifications for appointment as Commissioner

2.(1) No person shall be appointed as a Commissioner and no person shall be qualified to hold office as a Commissioner who—

- (a) is not a citizen of Zimbabwe; or
- (b) has a financial interest in any business connected with the provision of services to the Commission, or is engaged in any activity connected with any such service, or is married or connected to or associated with a person who has such an interest or is engaged in such an activity, unless the President is satisfied that the interest or activity will not interfere with the person's impartial discharge of his or her duties as a Commissioner; or
- (c) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or

(d) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—

- (i) in Zimbabwe, of an offence; or
- (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who is—

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies;

shall not be appointed as a Commissioner, nor shall he or she be qualified to hold office as a Commissioner.

(3) For the purposes of subparagraph (b) of subparagraph (2) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

Vacation of office by Commissioner

3. A Commissioner shall vacate his or her office and his or her office shall become vacant—

- (a) three months after the date upon which he or she gives notice in writing to the President of his or her intention to resign, or on the expiry of such other period of notice as he or she and the President may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence; or
- (c) if he or she becomes disqualified in terms of subparagraph (a), (b) or (c) of subparagraph (1) of paragraph 2, or in terms of subparagraph (2) of that paragraph, to hold office as a Commissioner; or
- (d) if he or she is required in terms of paragraph 4 to vacate his or her office.

Filling of vacancies on Commission

4. On the death of, or vacation of office by, a Commissioner, the President may appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of Commissioners falls below the minimum number specified in subparagraph (6) of paragraph 6, the President shall fill the vacancy within three weeks.

Chairperson and Vice-Chairperson of Commission

5.(1) The President shall designate one of the Commissioners as Vice-Chairperson of the Commission.

(2) The Vice-Chairperson of the Commission shall perform the Chairperson's functions whenever the Chairperson is for any reason unable to perform them.

(3) The Chairperson or Vice-Chairperson of the Commission may at any time resign his or her office as such by one month's notice in writing to the President.

(4) Whenever the office of Chairperson or Vice-Chairperson of the Commission falls vacant, the President shall fill the vacancy within three weeks.

Meetings and procedure of Commission

6.(1) The Commission shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission shall meet not less than six times in each year.

(2) The Chairperson of the Commission—

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

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

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

(ii) at least two Commissioners, not later than fourteen days after his or her receipt of such request.

(3) Written notice of any special meeting convened in terms of subparagraph (2) shall be sent to each Commissioner not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the Chairperson or Minister, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

(a) such business as may be determined by the Chairperson of the Commission, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (a) of subparagraph 2; or

(b) the business specified in the request for the meeting, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (b) of subparagraph 2.

(5) The Chairperson or, in his or her absence, the Vice-Chairperson shall preside at all meetings of the Commission:

Provided that, if the Chairperson and the Vice-Chairperson are both absent from a meeting of the Commission, the Commissioners present may elect one of their number to preside at that meeting as Chairperson.

(6) Three Commissioners shall form a quorum at any meeting of the Commission.

(7) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present.

(8) Subject to paragraph 8, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all members and agreed to in writing by a majority of all Commissioners shall have the same effect as a resolution passed at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that, if a Commissioner requires that such proposal be placed before a meeting of the Commission, this subparagraph shall not apply to such proposal.

Remuneration and expenses of Commissioners

7.(1) Commissioners shall be paid—

- (a) such remuneration, if any, as the President, may from time to time fix for Commissioners generally; and
- (b) such allowances, if any, as the Minister, in consultation with the Minister responsible for finance, may from time to time fix to meet any reasonable expenses incurred by Commissioners in connection with the business of the Commission.

(2) The salary, allowances and other benefits payable to a Commissioner shall not be reduced during his or her tenure of office.

Commissioners to disclose certain connections and interests

8.(1) In this paragraph—

“relative” , in relation to a Commissioner, means the Commissioner’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

- (a) if a Commissioner—
 - (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
 - (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner’s private interests coming or appearing to come into conflict with his or her functions as a Commissioner; or
 - (iii) knows or has reason to believe that a relative of his or hers—
 - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or

- B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner;

or

- (b) if for any reason the private interests of a Commissioner come into conflict with his or her functions as a Commissioner;

the Commissioner shall forthwith disclose the fact to the Commission.

(3) A Commissioner referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) Any Commissioner who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Validity of decisions and acts of Commission

9. No decision or act of the Commission or act done under the authority of the Commission shall be invalid on the ground that—

- (a) the Commission consisted of fewer than the minimum number of persons prescribed in subparagraph (6) of paragraph 6; or
- (b) a disqualified person acted as a Commissioner at the time the decision was taken or act was done or authorised:

Provided that the Commission shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in subparagraph (a) or (b).

Minutes of proceedings of Commission

10.(1) The Commission shall cause minutes of all proceedings of and decisions taken at every meeting of the Commission to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the Chairperson of the meeting to which the minutes relate or by the Chairperson of the next following meeting of the Commission shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

(3) The Commission shall cause copies of all minutes that have been signed as provided in subparagraph (2) to be sent without delay to the Minister for his or her information.

Execution of contracts and instruments by Commission

11. Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.

SECOND SCHEDULE (Section 4 (3))**ANCILLARY POWERS OF COMMISSION**

1. To acquire by lease, purchase, or otherwise, immovable property and to construct buildings thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Commission may, with the approval of the Minister, determine.
5. To open bank and building society and post office accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.
8. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Commission thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
9. With the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Commission.
10. To employ, upon such terms and conditions as the Commission may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.
11. Subject to section 39 of the Audit and Exchequer Act [Chapter 22:03], to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay bonuses and the like to its employees as the Commission thinks fit.
12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.
13. With the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.

14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Commission.
15. To sell or let dwellings and land for residential purposes to its employees.
16. With the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.
17. To provide security in respect of loans guaranteed in terms paragraph 16 by the deposit of securities.
18. With the approval of the Minister, to make loans to any employee of the Commission—
 - (a) for the purpose of purchasing vehicles, tools or other equipment used by him or her in carrying out his or her duties; or
 - (b) not exceeding three months' salary or wages payable to him or her, for any purpose; on such security as the Commission considers adequate.
19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.
20. To provide such services as the Commission considers could properly be provided by the Commission.
21. With the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Commission, of benefit to the Commission.
22. Generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Commission under this Act or any other enactment.

THIRD SCHEDULE (Section 6 (2))

FINANCIAL PROVISIONS RELATING TO COMMISSION

Funds of Commission

1. In addition to the funds appropriated to it in terms of subsection (1) of section *six*, the funds of the Commission shall consist of—
 - (a) fees, charges and other income accruing to the Commission from things done by it in terms of this Act or the Electoral Law; and
 - (b) the proceeds of any monetary penalties imposed by the Commission; and
 - (c) deposits forfeited by candidates under the Electoral Law; and
 - (d) such other moneys as may vest in or accrue to the Commission, whether in the course of its operations or otherwise.

Financial year of Commission

2. The financial year of the Commission shall be the period of twelve months ending on the 31st December in each year.

Accounts of Commission

3.(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year of the Commission, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

Audit of Commission's accounts

4.(1) Subject to the Audit and Exchequer Act [*Chapter 22:03*], the Commission shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Commission in terms of subparagraph (1) of paragraph 3 shall be examined by the auditors appointed in terms of subparagraph (1).

(3) The auditors appointed in terms of subparagraph (1) shall make a report to the Commission and the Minister on the statement of accounts prepared in terms of subparagraph (2) of paragraph 3 and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's affairs.

(4) In addition to the report referred to in subparagraph (3), the Minister may require the Commission to obtain from its auditors appointed in terms of subparagraph (1) such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider expedient, and the Commission shall forthwith comply with any such requirement.

Powers of auditors

5.(1) An auditor referred to in paragraph 4 shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any Commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes of his audit.

(2) Any Commissioner or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor in terms of subparagraph (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Statement of accounts of and auditor's report to be laid before Parliament

6. The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a the statement of accounts and auditor's report for the preceding financial year of the Commission referred to in paragraphs 3 and 4.

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