

CHAPTER 24:26
ASSET MANAGEMENT ACT

Act 15/2004, 2/2013 (s. 37), 4/2013 (s. 109).

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AN ACT to regulate and control the business of asset management in Zimbabwe and to provide for matters connected therewith or incidental thereto.

[Long title amended by Act 2 of 2013]

[Date of commencement: 17th September, 2004.]

PART I
PRELIMINARY

1 Title

This Act may be cited as the Asset Management Act [*Chapter 24:26*].

2 Interpretation

(1) In this Act—

“asset manager” means a person who carries on the business of asset management;

“business of asset management” has the meaning given to it in section *three*;

“certificate of registration” means a certificate of registration as an asset manager issued in terms of subsection (3) of section *five*;

“Chief Executive Officer” means the Chief Executive Officer of the Commission;

[Definition inserted by Act 2 of 2013]

“client” means a person on whose behalf an asset manager, in pursuance of his or her business of asset management, invests property;

“collective investment scheme” means a collective investment scheme as defined in section 3 of the Collective Investment Schemes Act, 1997, and includes an external scheme, internal scheme and professional scheme as defined in section 2 of that Act;

“Commission” means the Securities and Exchange Commission established by section 3 of the Securities and Exchange Act [*Chapter 24:25*];

[Definition inserted by Act 2 of 2013]

“fit and proper person” means a person not disqualified to be appointed or employed as a director or principal officer of an asset manager in terms of section *nine*;

“invest”, in relation to investing property, includes—

(a) participate in the primary issue of Zimbabwe Government or other stocks and bonds;

(b) convert such property into a form that is capable of being invested in the money market or a recognised stock exchange;

(c) underwrite the issue of any stocks and shares;

“Minister” means the Minister of Finance and Economic Development or any other Minister to whom the President may from time to time assign the administration of this Act;

“money market” means the market consisting of the Reserve Bank and registered banking institutions in which offers to buy, sell or exchange cheques, bills of exchange, certificates of deposit, Zimbabwe Government or other stocks and bonds and other monetary instruments are made and accepted;

“officer” means a member of the board of an asset manager or principal officer;

“prescribe”

[Definition repealed by Act 2 of 2013]

“principal officer” means the person principally responsible for managing the operations and property of the asset manager;

“property” means currency and all other real or personal property of every description, whether situated in Zimbabwe or elsewhere, or tangible or intangible, and includes any interest in such property;

“recognised stock exchange” means the Zimbabwe Stock Exchange and such other stock exchange as the Commission may prescribe;

[Definition amended by Act 2 of 2013]

“Registrar”

[Definition repealed by Act 2 of 2013]

“Reserve Bank” means the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*].

(2) A reference in this Act to a male or female person includes, where appropriate, a corporate body.

3 Meaning of “business of asset management”

(1) Subject to subsection (2), a person carries on the business of asset management if he or she, on behalf of one or more clients, invests the property of such client or clients in any one or more of the following ways—

(a) in the money market; or

(b) in a recognised stock exchange; or

(c) a person whose portfolio of property for investment on behalf of other persons amounts to less than the prescribed amount;

[Paragraph substituted by Act 2 of 2013]

with a view to securing a profit for such client or clients, whether the investment is made pursuant to a trust deed or any other written or verbal agreement, and whether or not the property of any client is pooled with that of any other client.

(2) The following are not considered to carry on the business of asset management for the purposes of this Act—

(a) a person—

- (i) licensed as a manager or trustee of a collective investment scheme in terms of the Collective Investment Schemes Act, 1997;
- (ii) a person exempted from registration as a collective investment scheme in terms of the Collective Investment Schemes Act, 1997:

Provided that, to the extent that a person who is so licensed or exempted invests on behalf of one or more other persons property other than that which is pooled in a collective investment scheme, or property other than that qualifying for an exemption in terms of the Collective Investment Schemes Act, 1997, such person shall be considered to carry on the business of asset management for the purposes of this Act;

(b) a person registered as a estate agent, legal practitioner or public accountant in terms of any law providing for the registration of such persons, who invests property on behalf of any client of his or her professional services—

- (i) as an incident of, or in conjunction with, the ordinary professional services that the estate agent, legal practitioner or public accountant provides to his or her client; and
- (ii) without pooling the property of the client with that of any other client, except in terms of an agreement entered into between the clients concerned:

Provided that not more than five clients shall be associated together for the purposes of any such agreement;

(c) a person the value of whose portfolio of property for investment on behalf of one or more other persons averages less annually less than such amount as may be prescribed;

[Paragraph amended by Act 4 of 2013]

(d) a person who is a trustee or administrator of a pension fund registered in terms of the Pension and Provident Funds Act [*Chapter 24:09*]:

Provided that to the extent that such person invests property on behalf of one or more other persons other than property of the pension or provident fund, such person shall be considered to carry on the business of asset management for the purposes of this Act;

(e) a person which is registered—

- (i) as a banking institution in terms of the Banking Act [*Chapter 24:20*]; or
- (ii) as a building society in terms of the Building Societies Act [*Chapter 24:02*]; or
- (iii) as an insurer in terms of the Insurance Act [*Chapter 24:07*]:

Provided that if a person so registered invests property on behalf of one or more other persons through a subsidiary company, division or unit the accounts of which are not audited as part of the accounts of the primary banking institution, building society or insurer, such person shall be considered to carry on the business of asset management for the purposes of this Act.

PART II

REGISTRATION OF ASSET MANAGERS

4 Functions of Chief Executive Officer and Staff of Commission

(1) The Chief Executive Officer shall be responsible for registering asset managers and suspending or cancelling their registration and performing the other functions conferred or imposed upon him or her by this Act.

(2) The Chief Executive Officer shall perform his or her functions under this Act subject to such general directions as the Commission may give him or her.

(3) Other members of the Commission's staff shall perform such of the Chief Executive Officer's functions under this Act as the Chief Executive Officer may assign to them.

[Section substituted by Act 4 of 2013]

5 Asset managers to be registered

(1) Subject to this section, no person shall carry on the business of asset management unless the person—

- (a) is incorporated as a private or public company in terms of the Companies Act [*Chapter 24:03*]; and
- (b) in the case of—

- (i) a person who carried on the business of asset management before the 17th September, 2004, is registered in terms of Statutory Instrument 16 of 2004 on or before the 31st January, 2004;
- (ii) a person who wishes to carry on the business of asset management after the 17th September, 2004, is registered in terms of this Act before commencing the business.

(2) Any person who wishes to carry on the business of asset management shall submit to the Chief Executive Officer an application therefor in the prescribed form, together with the prescribed registration fee, a business plan, a copy of the memorandum and articles of association of the applicant and such other documents or information as may be prescribed or as the Chief Executive Officer may reasonably require.

- (3) If the Chief Executive Officer is satisfied that—
- (a) the person wishing to be registered as an asset manager is a fit and proper person to carry on the business of asset management; and
 - (b) every shareholder of the asset manager, and every person proposed as a director of the asset manager, and as the principal officer of the asset manager, is a fit and proper person to hold the office concerned; and
 - (c) the asset manager has a minimum paid-up share capital of the prescribed amount; and
 - (d) the name under which the asset manager proposes to operate is not a name—
 - (i) which has already been registered; or
 - (ii) which so closely resembles the name of an asset manager already registered that it is likely to be mistaken for it; or
 - (iii) which is likely to mislead the public;
 and
 - (e) the proposed asset manager complies with or will be able to comply with this Act; and
 - (f) the proposed asset manager is or will be financially sound;

the Chief Executive Officer shall register the person as an asset manager and issue the person with a certificate of registration and may, in so doing, impose such terms and conditions as he or she deems necessary.

(4) If the Chief Executive Officer is not satisfied as to any matter referred to in subsection (3), he or she shall reject the application and shall notify the applicant accordingly:

Provided that, before rejecting an application, the Chief Executive Officer shall notify the applicant of his or her intention to reject the application and of the reasons for the rejection, and shall give the applicant a reasonable opportunity to make representations in the matter.

(5) The Chief Executive Officer shall, as soon as practicable after registering an asset manager, publish a notice in the *Gazette* setting out—

- (a) the name and address of the asset manager; and
- (b) the date of registration of the asset manager; and
- (c) any terms or conditions imposed on the asset manager upon its registration.

(6) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen, and, in addition, every member of the board of an asset manager who contravenes subsection (1) shall be liable to such fine or imprisonment for a period not exceeding one year or both.

[Section amended by Act 2 of 2013]

6 Register of asset managers

(1) The Chief Executive Officer shall establish and maintain a register of asset managers registered in terms of section *five*, in which the following shall be recorded—

- (a) the name and address of the asset manager; and
- (b) the date of registration of the asset manager; and
- (c) any terms or conditions imposed on the asset manager upon registration in terms of section *five*; and
- (d) the particulars of the cancellation of any registration, and of the restoration of any such cancelled registration; and
- (e) any alterations to the particulars referred to in paragraph (a) or (c).

(2) Any person may inspect the register free of charge at all reasonable times at the premises of the Chief Executive Officer or at such other place as the Chief Executive Officer may direct.

[Section amended by Act 2 of 2013]

7 Business plan of applicant asset manager

The business plan of an applicant asset manager referred to in subsection (2) of section 5 shall include, or be accompanied by, the following projections based on normal assumptions and the most and least favourable assumptions—

- (a) a projected annual balance sheet for the first two years of operation;
- (b) a projected annual profit and loss account for the first two years of operation;
- (c) a projected cash flow statement for the first two years of operation.

[Section amended by Act 2 of 2013]

PART III

CONDUCT OF ASSET MANAGERS

8 Officers of asset managers

(1) Every asset manager shall have a principal officer.

(2) If the post of the principal officer is vacant for more than thirty days the asset manager concerned shall immediately notify the Chief Executive Officer in writing of that fact.

(3) Whenever an asset manager appoints or employs a new principal officer it shall transmit to the Chief Executive Officer, within thirty days of the appointment or employment—

- (a) the reasons, in writing, for the cessation of the employment of the previous principal officer; and
- (b) the particulars of the new principal officer required by the form provided by the Reserve Bank for the purpose, as completed by the new principal officer.

(4) An asset manager which contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level six.

[Section amended by Act 2 of 2013]

9 Disqualification for appointment as officer of asset manager

(1) No person shall be a fit and proper person to be appointed or employed, or to hold office, as a member of the board of an asset manager, or as a principal officer of an asset manager, if—

- (a) he or she is a member of the board of another asset manager which carries on business in Zimbabwe in competition with the first-mentioned asset manager; or
- (b) under the law of any country—
 - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) he or she has made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or
 - (iii) he or she has been convicted of theft, fraud, forgery, uttering a forged document, perjury, money-laundering or financing terrorist activities or any other offence, by whatever name called, that is similar to any of those offences, and has not received a free pardon.

[Subparagraph amended by Act 4 of 2013]

- (c) has knowingly been involved, whether in Zimbabwe or elsewhere, in money-laundering or financing terrorist activities as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (Act No 4 of 2013).

[Subparagraph inserted by Act 4 of 2013]

(2) If any information comes to the notice of the Chief Executive Officer to the effect that an officer of an asset manager is not or has ceased to be a fit or proper person to hold the office concerned, the Chief Executive Officer shall—

- (a) furnish the asset manager and the officer with full details of all the information the Chief Executive Officer has in his or her possession in that regard; and
- (b) request the officer in writing to make written representations to the Chief Executive Officer on the matter within thirty days of the request.

(3) The Chief Executive Officer may, after considering any representations received in terms of paragraph (b) of subsection (2), order the asset manager in writing to commence proceedings for the removal of the officer concerned within such period as the Chief Executive Officer shall specify.

(4) An asset manager which refuses to comply with an order made in terms of subsection (4) shall—

- (a) be guilty of an offence and liable to a fine not exceeding level six; and
- (b) be liable to have its registration cancelled.

[Section amended by Act 2 of 2013]

10 Complaints to asset managers by clients

(1) It shall be the duty of every asset manager to institute a procedure for dealing with complaints by clients which ensures that—

- (a) every such complaint is attended to within a reasonable time by a person having the authority to effect any remedial action that may be necessary; and
- (b) the complainant is made aware of his or her right to complain to the Chief Executive Officer in terms of section *twenty* if the complaint is not remedied:

Provided that the Chief Executive Officer shall not entertain any complaint before it has been considered by the asset manager unless, in the opinion of the Chief Executive Officer, the complaint has not been attended to within a reasonable time.

(2) An asset manager shall keep a record of every complaint duly made to it in terms of subsection (1) for a period of at least twelve months after it was made, and shall make the record available for inspection at the request of the Chief Executive Officer.

(3) An asset manager which contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six.

[Section amended by Act 2 of 2013]

11 Responsibility of officers for fraudulent conduct of business of asset manager

(1) A past or present principal officer of an asset manager, and every person who is or was a member of the board of an asset manager, shall be personally responsible, without limitation of liability, for all of the debts or

other liabilities of the asset manager if at any time they were knowingly parties to the carrying on of the business of the asset manager—

- (a) recklessly; or
- (b) with gross negligence; or
- (c) with intent to defraud any person or for any fraudulent purpose.

(2) The Chief Executive Officer may, in addition to the Master, or liquidator or judicial manager or any creditor of or contributory to the asset manager, make application to the court in terms of section 318 (“Responsibility of directors and other persons for fraudulent conduct of business”) of the Companies Act [*Chapter 24:03*] in relation to any asset manager whose business was carried on by any person in the manner or circumstances referred to in subsection (1).

[Section amended by Act 2 of 2013]

PART IV

FINANCIAL MATTERS

12 Chief Executive Officer may require certain property of asset managers to be invested in prescribed investments

(1) The Chief Executive Officer may require that a prescribed share not exceeding forty *per centum* of the property of every asset manager which is invested on behalf of their clients shall be invested in such prescribed investments as are considered by the Chief Executive Officer, with the approval of the Commission given after consultation with the Minister, to be productive investments.

(2) Failure by an asset manager to comply with subsection (1) shall constitute grounds for the deregistration of the asset manager.

[Section amended by Act 2 of 2013]

13 Appointment, duties and powers of auditors of asset managers

(1) Subject to this section, every asset manager shall appoint as its auditor a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) No person who is an officer or employee of the asset manager shall be qualified for appointment as an auditor of the asset manager.

(3) A person appointed as auditor of an asset manager shall be responsible for—

- (a) auditing the asset manager’s accounts and reporting on its balance sheet and profit and loss account; and
- (b) planning and carrying out audit procedures designed to detect irregularities and illegal acts in the conduct of the asset manager’s business; and
- (c) communicating to the Chief Executive Officer any evidence he or she may have that irregularities or illegal acts have been committed by—
 - (i) any officer or employee of the asset manager; or
 - (ii) any other person, if there is a reasonable possibility that they may significantly damage the asset manager’s financial stability.

(4) In every report referred to in paragraph (a) of subsection (3) the auditor shall state whether the accounts of the asset manager concerned fairly present the state of affairs and the business of the asset manager.

(5) Without derogation from subsection (4), in the report referred to in paragraph (a) of subsection (3) the auditor shall record—

- (a) any irregularity or illegal act which the auditor has ascertained, or which he or she suspects, has occurred in relation to the conduct of the business of the asset manager; and
- (b) any other matter which, in his or her opinion, requires rectification or attention by the asset manager; and
- (c) any recommendations for improving the asset manager’s financial administration.

(6) The auditor shall forthwith send to the Chief Executive Officer a copy of any report in which any matter referred to in subsection (5) is included.

(7) In addition to the report referred to in paragraph (a) of subsection (3), the auditor shall submit to the Chief Executive Officer such reports as the Chief Executive Officer may direct.

(8) The Chief Executive Officer may appoint an auditor for an asset manager if that asset manager for any reason fails to appoint an auditor, and such auditor shall be deemed to have been appointed by the asset manager.

(9) The auditor of an asset manager shall comply with his obligations under this section—

- (a) to submit reports or to include information in reports; and
- (b) to provide information;

notwithstanding any duty of confidentiality to the contrary, and shall not be held liable in any proceedings arising out of compliance with any such obligation unless it is proved that he or she acted in bad faith.

(10) The auditor of an asset manager shall—

- (a) have a right of access at all reasonable times to such of the asset manager's books, accounts, vouchers and securities; and
- (b) be entitled to require such information and explanations from any officer, employee or agent of the asset manager;

as, in the auditor's opinion, is required in order to enable him or her to perform his or her duties as an auditor.

(11) Any person who fails without just cause—

- (a) to permit an auditor the access referred to in paragraph (a) of subsection (10); or
- (b) to comply with a requirement in terms of paragraph (b) of subsection (10);

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or both.

[Section amended by Act 2 of 2013]

14 Accounts, financial statements and returns

(1) An asset manager shall—

- (a) keep proper accounts and other records relating thereto; and
- (b) at the end of each financial year, prepare financial statements;

reflecting, in accordance with sound accounting practices, the asset manager's operations and financial condition.

(2) The board of an asset manager shall submit to the annual general meeting of shareholders for approval, and furnish to the Chief Executive Officer copies of, the annual financial statements prepared in terms of paragraph (b) of subsection (1), together with the report of the board of the asset manager, within three months after the end of the financial year to which the statements and the report relate.

(3) The annual financial statements referred to in paragraph (b) of section (1) shall consist of—

- (a) a balance sheet dealing with the state of affairs of the asset manager; and
- (b) a profit and loss account; and
- (c) a report by the auditor of the asset manager; and
- (d) such other returns as the Chief Executive Officer may require.

(4) An asset manager which contravenes subsection (1) or (2), and every officer of the asset manager responsible for the contravention, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or both.

[Section amended by Act 2 of 2013]

PART V

AMALGAMATION, TRANSFER AND DEREGISTRATION OF ASSET MANAGERS

15 Amalgamations and transfers of asset managers

(1) Except with the approval of the Chief Executive Officer in terms of this section, no asset manager shall—

- (a) amalgamate with any other person or asset manager; or
- (b) transfer its business or any part thereof to any other person or asset manager; or
- (c) take transfer from another asset manager of the whole or part of any of its business.

(2) An application for the Chief Executive Officer's approval of an amalgamation or transfer referred to in subsection (1) shall be made in writing and shall be accompanied by—

- (a) a statement of the nature of the amalgamation or transfer; and
- (b) a copy of the proposed agreement under which the amalgamation or transfer is to be effected; and
- (c) copies of the resolutions of the meetings of the asset managers or persons concerned approving the amalgamation or transfer, certified by the principal officers of the asset managers and persons concerned.

(3) The Chief Executive Officer shall cause notice of any application received by him or her in terms of subsection (2) to be published at the applicant's expense in the *Gazette* and in one or more newspapers circulating in Zimbabwe, and in such notice the Chief Executive Officer shall—

- (a) make such provision for the publication or inspection of the documents submitted with the application as he or she considers desirable; and
- (b) call for objections or representations to be made in regard to the application within such period as may be specified in the notice, which period shall be not less than twenty-one days from the date on which the notice was published in the *Gazette*.

(4) After the expiry of the period referred to in subsection (3) the Chief Executive Officer shall consider the application, together with any objections or representations received, and if the Chief Executive Officer is of the opinion that the amalgamation or transfer will not be detrimental to the interests of the clients, debtors or creditors of the asset managers concerned or to the public interest, he or she shall approve it subject to such conditions as he or she thinks fit.

(5) When an amalgamation or transfer referred to in subsection (1) has been approved by the Chief Executive Officer in terms of subsection (4), he or she shall, at the expense of the asset managers or persons on behalf of

which the application was made, cause a notice to be published in the *Gazette* and in one or more newspapers circulating in Zimbabwe stating that the amalgamation or transfer has been approved.

(6) On and after the date of the publication of the notice referred to in subsection (5), the agreement effecting the amalgamation or transfer shall be binding on all parties concerned, and shall have effect notwithstanding any conflicting provision contained in the memorandum or articles of association of the asset managers concerned.

[Section amended by Act 2 of 2013]

16 Cancellation or variation of registration of asset managers

(1) The Chief Executive Officer may cancel the registration of an asset manager if he or she considers that the asset manager—

- (a) is in an unsound financial condition and is not operating in accordance with sound administrative and accounting practices and procedures; or
- (b) has failed to comply with the minimum prescribed financial requirements and considers that it is unlikely to comply with them.

(2) Subject to subsections (3) and (4), the Chief Executive Officer may at any time vary the registration of an asset manager or any term or condition subject to which the asset manager was registered—

- (a) to correct any error in the register; or
- (b) if the asset manager requests the variation; or
- (c) if the Chief Executive Officer considers the variation necessary to reflect the true nature of the service which the asset manager is providing; or
- (d) if for any other reason the Chief Executive Officer considers the variation necessary or desirable in the public interest.

(3) Before cancelling the registration of an asset manager in terms of subsection (1) or varying the registration of an asset manager in terms of subsection (2), otherwise than at the request of the asset manager, the Chief Executive Officer shall notify the asset manager in writing of the nature of the action he or she proposes to take and of his or her reasons for the action, and shall give the asset manager an adequate opportunity to make representations in the matter:

Provided that if, in the Chief Executive Officer's opinion, the interests of the clients of the asset manager will be prejudiced by any delay caused by acting in accordance with this subsection, the Chief Executive Officer may cancel or vary the registration of the asset manager immediately and notify the asset manager of its right of appeal under section *nineteen*.

(4) If the Chief Executive Officer refuses to vary the registration of an asset manager at the request of the asset manager, he or she shall, within ten days after reaching his or her decision, notify the asset manager in writing of his or her decision and of the reasons for it.

[Section amended by Act 2 of 2013]

17 Enforcement of conditions of registration in lieu of cancellation

(1) Without derogation from his or her powers in terms of section *sixteen*, where the Chief Executive Officer is satisfied that an asset manager is contravening, has contravened or is likely to contravene any of the conditions of its registration, the Chief Executive Officer may serve upon the asset manager an order—

- (a) requiring the asset manager to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of its registration; and
- (b) stipulating the period within which any requirement referred to in paragraph (a) shall be commenced and completed;

and notice of the order shall be published by the Chief Executive Officer in such manner as he or she considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention.

(2) Before serving an order in terms of subsection (1), the Chief Executive Officer shall serve a notice upon the asset manager concerned—

- (a) specifying the grounds upon which the order is to be issued and what the Chief Executive Officer considers is required for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the registration of the asset manager; and
- (b) stipulating the maximum period that the Chief Executive Officer considers reasonable for the implementation of any requirement he or she proposes to order; and
- (c) calling upon the asset manager, if it wishes to make representations, to make them to the Chief Executive Officer within such period from the date of service of the notice as the Chief Executive Officer shall specify.

(3) After considering any representations made in terms of paragraph (c) of subsection (2), the Chief Executive Officer may issue, or refrain from or defer issuing, an order in terms of subsection (1), or issue an order on different terms.

(4) An order issued in terms of subsection (1) may specify a penalty for each day that the asset manager subjected to the order is in default of compliance with the order, not exceeding the period and amount prescribed.

(5) The obligation to comply with an order made in terms of subsection (1) is a duty owed to any person who may suffer loss or damage by a contravention of it.

(6) Civil proceedings for specific performance, an interdict, damages, the recovery of any penalty imposed in terms of subsection (4) or other appropriate relief in respect of any contravention or threatened contravention of an order made in terms of subsection (1) may be brought against the asset manager concerned by the Commission and additionally, or alternatively, by any person referred to in subsection (5).

(7) Any asset manager which fails to comply with an order made in terms of subsection (1) within the period specified in the order or the period prescribed in terms of subsection (4), whichever is the longer period, shall be guilty of an offence and liable to a fine not exceeding level six.

[Section amended by Act 2 of 2013]

PART VI

GENERAL

18 Appointment and powers of inspectors

(1) Persons who have been appointed to be inspectors in terms of section 101 of the Securities and Exchange Act [*Chapter 24:25*] shall be inspectors for the purposes of this Act.

[Subsection substituted by Act 2 of 2013]

(2) The Chief Executive Officer shall furnish each inspector with a certificate signed by or on behalf of the Chief Executive Officer stating that he or she has been appointed as an inspector.

(3) An inspector or a police officer may require a person whom he or she has reasonable cause to suspect is a person required in terms of this Act to possess a certificate of registration to produce the certificate.

(4) If a person referred to in subsection (3) is unable to produce a certificate of registration on demand the inspector or police officer concerned may serve on the person a notice in the prescribed form requiring that person to produce the certificate to the police officer in charge of a police station within a period of seven days from the date of service of that notice.

[[Subsection substituted by Act 2 of 2013]

(5) If a person who has been served with a notice in terms of subsection (4) fails to comply with the requirement contained in that notice, he or she shall be presumed, until the contrary is proved, not to be the holder of the certificate.

(6) Subject to subsection (8), an inspector or a police officer may at all reasonable times enter premises—

(a) of an asset manager; or

(b) which are owned or occupied by a person whom he or she has reasonable cause to suspect is conducting the business of asset management in contravention of this Act;

and shall have power to make such examination, inspection and inquiry and do such things as may appear to him or her to be necessary for ascertaining whether compliance has been made with this Act.

(7) Subject to subsection (8), all books, records, accounts and documents required to be kept by an asset manager in terms of these regulations shall be open to inspection at all reasonable times by an inspector or by a police officer.

(8) The powers of entry and inspection conferred by this section shall not be exercised in a case other than one referred to in paragraph (a) of subsection (6), except with the consent of the person in charge of the premises concerned or in accordance with a search warrant issued in terms of section 50 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence in terms of this Act or for the obtaining of evidence relating to such an offence.

(9) An inspector or police officer may, in the exercise of the powers conferred upon him or her by this section, seize a book, record or document which he or she has reasonable cause to suspect will afford evidence of the commission of an offence against this Act, and may retain it for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry.

(10) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon him or her by this section, exhibit the certificate issued to him or her in terms of subsection (2).

(11) Any person who wilfully delays or obstructs an inspector or police officer in the exercise of the powers or duties conferred or imposed upon him or her by or under this Act shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or both.

19 Appeals

(1) Any person who is aggrieved by a decision of the Chief Executive Officer—

(a) to reject an application for the registration of an asset manager in terms of section *five*; or

(b) to cancel the registration of an asset manager in terms of subsection (1) of section *fifteen*; or

(c) to vary or refuse to vary the registration of an asset manager in terms of subsection (2) of section *fifteen*; may appeal to the Commission in writing, giving the grounds for the appeal, within thirty days of being notified of the Chief Executive Officer's decision.

[Subsection amended by Act 2 of 2013]

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed in rules and shall be lodged with the Commission within thirty days after the appellant was notified of the decision appealed against.

[Subsection substituted by Act 2 of 2013]

(3) In an appeal in terms of subsection (1), the Commission may conduct or cause to be conducted such inquiry into the matter as it thinks appropriate and may confirm, vary or set aside the decision appealed against: Provided that the Commission shall ensure that the appellant is given an adequate opportunity to make representations in the matter.

[Subsection substituted by Act 2 of 2013]

(4) The Commission shall ensure that the appellant is notified of any decision reached by the Commission in terms of subsection (3).

[Subsection inserted by Act 2 of 2013]

(5) Any person who is aggrieved by a decision of the Commission, whether on an appeal in terms of subsection (1) or otherwise, may appeal against the decision to the Minister.

[Subsection inserted by Act 2 of 2013]

(6) An appeal in terms of subsection (5) shall be made in writing and lodged with the Minister within thirty days after the appellant was notified of the decision, proposal or action appealed against.

[Subsection inserted by Act 2 of 2013]

(7) In an appeal in terms of subsection (5), the Minister may conduct or cause to be conducted such inquiry into the matter as he thinks appropriate and may confirm, vary or set aside the decision appealed against: Provided that the Minister shall—

- (i) ensure that the appellant and the Commission are given an adequate opportunity to make representations in the matter;
- (ii) deliver his or her decision in the appeal within thirty days after it was lodged.

[Subsection inserted by Act 2 of 2013]

(8) The Minister shall ensure that the appellant and the Commission are notified of his or her decision in an appeal in terms of subsection (5).

[Subsection inserted by Act 2 of 2013]

(9) Any person who is aggrieved by the Minister's decision in an appeal in terms of subsection (5) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

[Subsection inserted by Act 2 of 2013]

(10) In an appeal in terms of subsection (9), the Administrative Court may confirm, vary or set aside the decision appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.

[Subsection inserted by Act 2 of 2013]

20 Complaints referred to the Chief Executive Officer

Upon receiving a complaint in terms of paragraph (b) of subsection (1) of section *ten*, the Chief Executive Officer shall, if he or she considers the complaint to be justified, take such action to resolve it as he or she is lawfully empowered to take after affording the asset manager concerned an opportunity to make representations on the matter.

[Section amended by Act 2 of 2013]

21 Code of practice

(1) The Chief Executive Officer may, in consultation with registered asset managers, devise a code of practice regulating the conduct of asset managers as between each other and in relation to their clients.

(2) Any code of practice may provide for penalties for breaches of the code which may include—

- (a) a monetary penalty not exceeding the prescribed amount; or
- (b) the cancellation or variation of the registration of the asset manager concerned.

(3) A code of practice shall not have effect until it has been published in rules referred to in section 24.

[Subsection substituted by Act 2 of 2013]

22 False statements, etc.

Any person who in any form, return, report or other document required by this Act to be submitted to the Chief Executive Officer makes a statement that is false in a material particular, knowing the statement to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence and liable—

- (a) in the case of an individual, to a fine not exceeding level six or to imprisonment for a period not exceeding one year or both; or
- (b) in the case of an asset manager or other body corporate, to a fine not exceeding level fourteen.

[Section amended by Act 2 of 2013]

23 Destination of certain moneys paid in terms of this Act

The amount of any fee paid in terms of subsection (2) of section *five*, and penalty imposed and recovered in terms of subsection (4) of section *seventeen* or subsection (2) of section *twenty-one*, shall form part of the funds of the Commission.

[Subsection amended by Act 2 of 2013]

24 Rules

The Commission may make rules in terms of section 118 of the Securities and Exchange Act [*Chapter 24:25*] providing for all matters which in terms of this Act are required or permitted to be prescribed or which, in the Commission's opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act, including any matter that may be provided for in rules under the said section 118.

[Section substituted by Act 2 of 2013]