

## **THE SECURITIES (COMPENSATION FUND) REGULATIONS [ARRANGEMENT OF RULES]**

### **Regulation**

1. Title
2. Interpretation
3. Ownership of compensation fund
4. Compensation fund to be kept in dedicated bank account
5. Accounts of compensation fund
6. Investment of compensation fund
7. Application of compensation fund
8. Claims against compensation fund
9. Notice calling for claims against compensation fund
10. Power of Committee in respect of claims
11. Appeals
12. Prosecution or conviction not a condition precedent to payment of compensation
13. Authority to pay claimant
14. Power of Committee to require production of securities, etc.
15. Subrogation of Commission to rights, etc., of claimant upon payment from fund
16. Payment of claims only from compensation fund
17. Provision where compensation fund insufficient to meet claims
18. Provision where claims exceed total amount payable
19. Power of Committee to enter into contracts of insurance
20. Application of insurance moneys

## **SECTION 27-SECURITIES (COMPENSATION FUND) REGULATIONS**

Regulations by the Minister

Statutory Instrument

162 of 1993

1. These Regulations may be cited as the Securities (Compensation Fund) Regulations.

Title

**2. In these Regulations, unless the context otherwise requires-**

Interpretation

"compensation fund" and "fund" mean the compensation fund established by the Minister under section sixty-four of the Act;

"Compensation Fund Committee" and "Committee" mean the Compensation Fund Committee appointed under section sixty-five of the Act;

"default", in relation to the failure by a licensee to perform a legal obligation, means a default arising from-

- (a) the bankruptcy, winding up or insolvency of the licensee;
- (b) any breach of trust committed by the licensee; or
- (c) any defalcation, fraud or misfeasance committed by the licensee, or by any representative, director or employee thereof;

"legal obligation" includes an obligation arising under a contract or quasi contract or under a trust (including a constructive trust);

"Licensee" means a dealer of an investment adviser, as the case may be, licensed under Part IV of the Act;

"prescribed" means prescribed by the Commission;

"representative" has the same meaning as section two of the Act.

**3. The assets of the fund shall be the property of the Commission but shall be kept separate from all other property and shall be held in trust for the purposes set out in these Regulations.**

Ownership of compensation fund

**4. All moneys forming part of the fund shall, pending the investment or application thereof in accordance with these Regulations, be paid or transferred into a dedicated bank account with a registered bank in Zambia.** Compensation fund to be kept in dedicated bank account

**5. (1) The Compensation Fund Committee shall establish and keep proper accounts of the fund and shall before 30th June, in each year cause a balance sheet in respect of such accounts to be made out as at the preceding 31st March.**

Accounts of compensation fund

(2) The Committee shall appoint an auditor to audit the accounts of the fund.

(3) The auditor appointed by the Committee shall regularly and fully audit the accounts of the fund and shall audit each balance sheet and cause it to be laid before the Committee not later than three months after the balance sheet was made out.

(4) The costs of audit pursuant to clause (3) shall be borne by the Commission.

6. Any moneys in the fund that are not immediately required for its purposes may be invested by the Committee in any manner in which trustees are for the time being authorised by law to invest trust funds.

Investment of compensation fund

7. (1) Subject to these Regulations, the fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss as referred to in section sixty-seven of the Act from any default committed by a licensee, or by any representative director or employee thereof, in relation to any money or other property which, in the course of or in connection with the business of that licensee-

Application of compensation fund

(a) was entrusted to or received by the licensee, or any representative director or employee thereof, for or on behalf of any other person; or

(b) (in the case of a licensee who, in respect of the money or other property, was either the sole trustee or trustee with any other person), was entrusted to or received by such licensee, or by any representative director or employee thereof, as trustee or for or on behalf of the trustees of that money or property.

(2) Subject to clause (3) the total amount of compensation that may be paid out of the fund under these Regulations to all persons who suffer loss through default by a licensee, or by any representative director or employee thereof, shall not exceed in respect of that licensee the sum of one million kwacha, which shall cover-

(a) all claims arising out of that default; and

(b) all claims arising out of any earlier default by that licensee which have not been the subject of a determination under regulation thirteen.

(3) Notwithstanding clause (2), the Minister may, by order, direct the Committee to increase the total amount in such sum as he may determine, which shall be applied from the fund in respect of a particular licensee in payment to persons who suffer loss through default by that particular licensee, or by any representative, director or employee thereof:

Provided that the total amount to be so applied shall not in the case of any default exceed by more than fifty per cent the maximum sum specified in clause (2).

8. (1) Subject to these Regulations, every person who suffers pecuniary loss as provided in clause (1) of regulation seven shall be entitled to claim compensation from the fund and to take proceedings in the Court against the Committee to establish such claim.

Claims against compensation fund

(2) Subject to these Regulations, the amount which any claimant shall be entitled to claim as compensation from the fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss.

(3) In addition to any compensation payable under these Regulations, interest shall be payable out of the fund on the amount of the compensation, less any amount attributable to costs and disbursements, at such rate as the Commission may determine, calculated from the day upon which the default was committed and continuing until the day upon which the claim is satisfied.

(4) Clause (1) does not entitle any licensee to make a claim against the fund.

**9.** (1) The Committee may cause to be published in a daily newspaper published and circulating generally in Zambia a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than three months after the said publication, on or before which claims for compensation from the fund, in relation to the person specified in the notice, may be made. Notice calling for claims against compensation fund

(2) A claim for compensation from the fund in respect of a default shall be made in writing to the Committee-

(a) on or before the date specified in the notice, where a notice under clause (1) has been published; or

(b) within six months after the claimant became aware of the default, where no such notice has been published;

and any claim which is not so made shall be barred unless the Committee otherwise determines.

(3) No action for damages shall lie against the Committee or against any member or officer of the Committee by reason of any notice published in good faith and without malice for the purposes of this regulation.

**10.** (1) Where the Committee is satisfied that a claim for compensation under these Regulations is a proper claim, it shall, subject to these Regulations, make a determination allowing the claim.

#### Power of Committee in respect of claims

(2) If the Committee is not satisfied as to the propriety of a claim for compensation, it shall make a determination disallowing the claim or, if it is satisfied as to the propriety of part of such a claim, it shall make a determination allowing the claim as to that part.

(3) The Committee after disallowing (whether wholly or partly) any claim for compensation from the fund shall serve notice of such disallowance in the prescribed form on the claimant or his legal representative.

(4) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the licensee or other person by whom it is alleged a default was committed shall be admissible to prove the commission of the default, notwithstanding that the licensee or other person is not the defendant in or a party to those proceedings, and all defences which would have been available to that licensee or person shall be available to the Committee.

**11.** (1) A person aggrieved by a decision of the Committee under regulation ten may appeal to the High Court.

Appeals

(2) No appeal shall be commenced after the expiration of three months after service of notice of disallowance under clause (3) of regulation ten.

(3) The Court shall have and may exercise, subject to the same limitations, the same powers as the Committee in determining the claim in respect of which an appeal has been brought.

**12.** The Committee or, where appeal proceedings are brought, the Court, if satisfied that the default on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the default has not been convicted or prosecuted therefor or that the evidence on which the Committee or Court (as the case may be) acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the default.

Prosecution or conviction not a condition precedent to payment of compensation

**13.** The determination of the Committee under regulation ten or the decision on appeal of the Court under regulation eleven shall be sufficient authority to the Commission to pay the claimant the amount allowed.

Authority to pay claimant

**14.** The Committee may at any time and from time to time require any person to produce and deliver any securities, documents or statements of evidence necessary-

Power of the Committee to require production of securities, etc.

(a) in order to substantiate any claim made against the fund; or

(b) for the purpose of enabling criminal proceedings to be brought against any person in respect of a default, being a default which is or involves the commission of a criminal offence.

(2) Where any claimant required to produce any securities, documents, or statements of evidence under clause (1) fails to produce them, the Committee may refuse to allow the claimant's claim until such time as he produces them.

**15.** On payment out of the fund of any moneys in respect of any claim under these Regulations, the Commission shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the default.

Subrogation of Commission to rights, etc., of claimant upon payment from fund

**16.** No moneys or other property belonging to the Commission, other than the fund, shall be available for the payment of any claim under these Regulations whether the claim is allowed by the Committee or, on appeal, by order of the court.

Payment of claims only from compensation fund

**17.** Where the amount at credit in the fund is insufficient to pay the whole amount of all claims against it which have been allowed, the amount at credit in the fund shall, subject to clause (2), be apportioned between the claimants in such manner as the Committee thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

Provision where compensation fund insufficient to meet claims

**18.** (1) Where the aggregate of all claims which have been allowed in relation to default by or in connection with a licensee exceeds the total amount which may pursuant to clause (2) of regulation seven be paid under these Regulations in respect of that licensee, then the said total amount shall be apportioned between the claimants in such manner as the Committee thinks equitable.

Provision where claims exceed total amount payable

(2) Upon payment out of the fund of the said total amount in accordance with such apportionment, all other claims against the fund which may thereafter arise or be made in respect of the same default shall be absolutely discharged.

**19.** (1) The Committee may in its discretion enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Zambia whereby the fund will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under these Regulations.

Power of Committee to enter into contracts of insurance

(2) Any such contract may be entered into in relation to licensees generally, or in relation to any particular licensee named therein, or in relation to licensees generally with the exclusion of any particular licensee named therein.

(3) No action shall lie against the Committee or against any member or officer of the Committee for injury alleged to have been suffered by any licensee by reason of the publication in good faith of a statement that any contract entered into under this regulation does or does not apply with respect to the licensee.

**20.** No claimant against the fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under these Regulations in respect of such contract, or have the right to claim in respect of any moneys paid by the insurer in accordance with any such contract.

Application of insurance moneys