

GUIDELINES FOR ENFORCEMENT AND HANDLING OF COMPLIANCE BREACHES

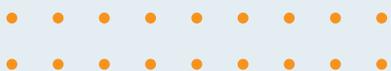


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INDEPENDENT BROADCASTING AUTHORITY

FOREWORD

The Independent Broadcasting Authority (IBA) has the mandate of ensuring that the sector is properly regulated and licensees comply with the terms and conditions issued. It is the desire of the Authority that all licenced broadcasters adhere to the regulations and the provisions of the law, but we are aware that some operators will be non-compliant. In such instances, the Authority has to enforce compliance.



However, from inception, the Authority did not have guidelines on actions to take before the final determination on a matter of non-conformity. The non-availability of guidelines gave discretionary powers to the Authority when considering cases of non-compliance.

To deal with the scenario given above, the IBA has documented the Guidelines for Enforcing and Handling Breaches. These Guidelines will ensure that all licensees are given the same treatment and conditions in determining their cases.

One key feature of these guidelines is that, despite the many stages involved in handling non-compliance matters, the IBA shall not negate to allow a licensee to be heard as provided for in Section 29 (7) of the IBA (Amendment) Act No. 26 of 2010. The right to be heard is at the core of natural justice.

The Authority is hopeful that broadcasters and other stakeholders will take a keen interest in reading and understanding the guidelines. On the other hand, the IBA must adhere to these Guidelines to avoid applying double standards in dealing with various breaches.

I wish to express my gratitude to the Board of Directors for insisting on having a standardised way of handling non-compliance matters. Your patience in scrutinising the document was commendable. I must also congratulate Management and staff for executing the directive of the Board. You worked hard in conceptualising and developing the draft document which was discussed at both Committee and Board levels. In addition, you facilitated the holding of provincial stakeholder meetings at which valuable input was received.

The Authority owes a debt of gratitude to all stakeholders that provided feedback on these Guidelines. Your contribution enriched the document.

Chikosola Chuula

A handwritten signature in black ink, appearing to be 'Ch' followed by a stylized flourish.

Board Chairperson

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1.0 INTRODUCTION AND BACKGROUND

The Independent Broadcasting Authority (IBA) is a statutory body established through an Act of Parliament No. 17 of 2002. The Principal Act was amended through the IBA (Amendment) Acts No. 26 of 2010 and No. 18 of 2017. The IBA draws its mandate from the provisions of Section 5 of Act No. 17 of 2002. It is responsible for regulating the broadcasting industry in Zambia. The Authority exists to promote a pluralistic and diverse broadcasting industry in the country. Further, enforcement of compliance to set standards and licencing conditions constitutes the major part of the mandate of the IBA. This is provided for in Section 5 (2) of the IBA Act No. 17 of 2002. Enforcement of compliance is highlighted in the following clauses:

- (e) To enforce the compliance of broadcasting with the conditions of the licences issued under this Act;
- (g) To oblige broadcasters to develop codes of practice and monitor compliance with those codes and
- (h) To develop program standards relating to broadcasting in Zambia and to monitor and enforce compliance with those standards.

The provisions of the law cited above are a testament to the important role that the Authority has in ensuring that the broadcasting sector is properly regulated and operators (licensees) comply with the conditions given and other legal requirements.

Some standards and conditions attached to the licences issued under the IBA relate to the following:

- 1) Infrastructure
- 2) Security
- 3) Content
- 4) Renewal of Licences
- 5) Display of Licences
- 6) Transfer, Selling, and Leasing of Broadcasting licence
- 7) Payment of Fees
- 8) Programming Character
- 9) Commencement of Broadcasting Within 120 Days
- 10) Miscellaneous Non-Compliance Matters
 - Duration of Final Warning
 - Duration of Suspension
 - Stations Going Off-Air
 - Non-Operational Stations



These Guidelines for Enforcement and Handling Compliance Breaches are meant to standardise the way the Authority makes decisions on various non-compliance matters. They will help to avert subjectivity and arbitrary decision-making. The steps to be followed when enforcing compliance will promote objectivity in the way the Authority presides over issues related to non-compliance. Further, the Guidelines form part of the licencing conditions and the Authority must ensure that licensees are aware of their existence and application. Through consultative meetings, licensees and other stakeholders were made aware of the Guidelines.

2.0 ENFORCEMENT OF COMPLIANCE THROUGH THE INSPECTORATE UNIT

The Inspectorate Unit's role has been expressly stated in the IBA Act. Sections 43 and 44 of the IBA Act No. 17 of 2002 provide as follows:

- (1) To ensure compliance with the provisions of this Act,
the Authority shall establish an Inspectorate Unit and may appoint such Inspectors as may be necessary for the performance of its functions.
- (2) Every Inspector shall be provided with a Certificate of Appointment which shall be *prima facie* evidence of the Inspector's appointment as such.
- (3) Any Inspector carrying out any functions under this Act shall
on demand by any person who is affected by the Inspector's exercise of power, produce for inspection, the Certificate referred to in subsection (2).
- (4) To ensure that the provisions of this Act are being complied with,
an Inspector shall have power, on production of the certificate of appointment issued under section *forty-three* to demand the production of, and to inspect or make copies of a licence issued under Part IV.
- (5) An inspector may upon probable cause shown on oath to a magistrate court obtain a warrant to enter upon and search or examine the premises prescribed in the warrant to ascertain whether any offence under this Act is being committed in such premises.



- (6) Where an inspector is satisfied that a person does not have a valid licence in respect of a matter for which a licence is required under this Act, the inspector or police officer may serve on that person's notification in the prescribed form.

The handling of non-compliance matters will go through several stages. However, one vital stage will involve allowing a licensee to be heard as demands natural justice.

Nonetheless, for minor breaches, Management can write a letter to caution the Station. In some instances, the station can be called and guided to rectify a particular issue related to the content or any other conditions of the licence. However, even with this approach the Authority will record the matter.

3.0 GAPS IN HANDLING OF NON-COMPLIANCE ISSUES

The Authority had noted gaps in the way non-compliance matters were handled. The IBA Act had general provisions but didn't prescribe the step-by-step actions that could be followed or taken before a final decision was made.

A lack of guidelines on actions to be taken before the final determination of the matter could potentially lead to the Authority or the Board applying different standards on similar cases. This could potentially have adverse repercussions on the credibility of the institution.

The situation gave discretionary powers to the Authority when considering cases of non-compliance. Discretion in decision-making without the application of standard operating procedure or guidelines for handling non-compliance matters may result in the perception that the Authority was subjective, lacked transparency and exercised favouritism in dealing with cases.

4.0 RATIONALE AND BENEFITS OF HAVING GUIDELINES FOR HANDLING COMPLIANCE BREACHES

Having documented Guidelines to provide steps to be taken or followed when enforcing compliance ensures that all licensees are given the same treatment and conditions in determining their cases. The way one station is treated would be the standard for others because the same measure would be used. The benefits that would accrue from this approach include among others:



1. Objective decisions because the same standards will apply to similar cases. Standardisation builds trust and transparency among stakeholders.
2. Avoidance of arbitrary decision-making which could result in using double standards when handling cases which could potentially lead to injustice.
3. Effective and efficient decision-making considering that clear guidance would have been provided. This will be in tandem with the mission of the IBA which is to promote professionalism and enhanced standards of the broadcasting industry in Zambia through effective regulation.
4. Less pressure on decision-makers to arrive at the course of action since guidance would have been provided.
5. Litigation may be minimised because the Authority would have exhausted all the procedures and guidelines in arriving at the final decision.
6. Avoidance of abuse of discretionary powers since guidelines will be binding on all decision-makers.
7. Enhanced reputation of the Authority in line with the institutional vision of being an effective and efficient regulator that ensures a quality and professional broadcasting industry in Zambia.

5.0 COMPLIANCE THEMES AND THE PROCESSES FOR HANDLING THE BREACHES

The development of the Guidelines took into account the current procedures and requirements as well as the provisions of the IBA (Amendment) Act No. 26 of 2010. In particular, Section 29 (1) (i) and subsections (2), (3) and (7) guides as follows:

- (1) Subject to the other provisions of this section, the Board may cancel a broadcasting licence if the broadcasting licensee has failed, despite written notice, to comply with the conditions of the broadcasting licence.
- (2) Where a broadcasting licensee does not comply with this Act or with the conditions of the broadcasting licence, the Authority shall notify the broadcasting licensee of the measures that the broadcasting licensee should undertake, within a specified period, to comply with the conditions of this Act or the broadcasting licence.
- (3) The Board shall, before cancelling or suspending a broadcasting licence under this section, allow the broadcasting licensee to be heard.



The provisions cited above assume that prior actions on the part of the Authority would have to be taken. In this regard, the Guidelines are meant to assist in managing such matters.

5.1 Infrastructure

The power to regulate the infrastructure to host the broadcasting station or where they should be situated is supported by the provisions in the IBA Act. Section 22 (1) and (5) of the IBA (Amendment) Act No. 26 of 2010 states:



22. (1) The Board may issue a broadcasting licence subject to the provisions of this Act and to such conditions as the Board may determine.
- (5) Without prejudice to the generality of subsection (1), the conditions of a broadcasting licence may:
- (a) Specify the site or sites at which any broadcasting station to be operated under the authority of the broadcasting licence are to be located, and regulate the manner of their installation.

The Authority is cognisant of the fact that erecting, maintaining and making alterations to infrastructure takes time and may involve a substantial investment. Further, changes to the infrastructure may impact other things. This being the case, non-compliance issues associated with infrastructure may emanate from the following:

- Poor physical building housing the broadcasting station,
- Poorly installed or lack of adequate broadcasting equipment,
- Uninhabitable working conditions for staff. For instance, overcrowding.
- Poor location of the infrastructure, such as near noisy places or inaccessible premises like poor road network,
- Low or poor quality of coverage, among others.



In handling breaches related to Infrastructure, the following steps shall be undertaken:

- i. The Authority shall issue a written directive to a station containing specific corrective measures to be undertaken within an appropriate timeframe. Depending on the scale of infrastructural change required or works to be done or remain to be done, a period not exceeding fourteen days shall be given.
- ii. Where the required changes are significant and require substantial construction changes and/or investment, the Authority shall engage the licensee to agree on the reasonable time but not exceeding three months within which the matter should be rectified.
- iii. Where the licensee still fails to comply, the Authority shall call the licensee for a hearing within five (5) working days from the date of expiry of the final extension.
- iv. The Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Ordinary Board meeting.
- v. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- vi. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

5.2 Security

The legal provisions guiding the enforcement of set standards in terms of infrastructure apply to the requirement regarding security at the place of operations. Section 22 (1) and (5) of the IBA (Amendment) Act No. 26 of 2010 is instructive on this matter because broadcasting stations are regarded as security installations. In this regard, it is a requirement



that all broadcasting houses be properly secured. As such, minimum but reasonable time should be given when handling matters relating to security at the premises of stations. Security requirements include the following:

- Secure the premise with a perimeter fence preferably a brick-erected wall fence or strong wire fence or any form of barricade that would impede access to the station, especially the on-air studio area,
- Engagement of security personnel. This can be armed state security or private firms or indeed security guards employed by the station,
- Access control system which may include deployment of biometric access, physical check-ups by personnel or any other system that can delay or completely deny access to the station and
- Where possible, installation of CCTV cameras.

In dealing with non-compliance matters associated with the security of a Station, the following steps shall be undertaken:

- i. The Authority will issue to a defaulting licensee specific written instructions on corrective action within which to rectify the breach but not exceed ten days.
- ii. Where the licensee fails to comply but appeals for an extension, the Authority shall grant a final extension of 5 days to effect the Authority's directives.
- iii. Where the licensee fails to comply and has not requested an extension, the Authority shall invite the Station for a hearing within five working days.
- iv. An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Ordinary Board meeting.
- v. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- vi. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.



5.3 Renewal of Broadcasting Licences

Section 28 (1) of the IBA (Amendment) Act No. 26 of 2010 provides for the renewal of broadcasting licences at expiry. The Section places the obligation to initiate the renewal of the licence on the licensee. The Act provides that those wishing to continue with



broadcasting should indicate their intention by applying for renewal at least six months before the expiry of the licence. This means they can apply earlier than six months but no later than six months before the expiry date. Breaches linked to the renewal of broadcasting stations can emanate from the following:

1. Failure to apply for renewal of the licence before the stated six months period.
2. Failure to apply for renewal of the broadcasting licence at all.
3. Broadcasting without a renewed licence.

Late or non-renewal of a broadcasting licence is such a serious offence and Section 28 of the IBA (Amendment) Act No. 26 of 2010 states:

- (1) A broadcasting licensee may, at least six months before the expiry of the broadcasting licence, apply to the Board for renewal of the broadcasting licence in the prescribed manner and form upon payment of the prescribed fee.
- (2) A broadcasting licence that is not renewed in accordance with subsection (1) is void.
- (3) A broadcasting licensee who provides a broadcasting service during any period in which the broadcasting licensee's broadcasting licence is void commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

Even though the responsibility to apply for renewal of the broadcasting licence rests with the licensee, the Authority shall undertake proactive measures to ensure that stations are compliant.



In dealing with matters related to the renewal of broadcasting licences, the following steps shall be undertaken:

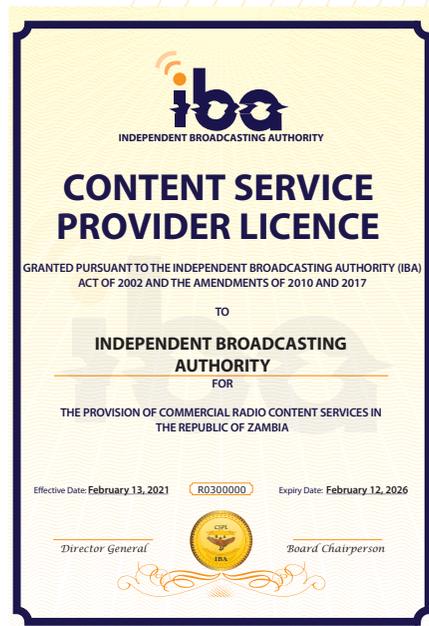
- i. The Authority will issue the first written notice three months before Section 28 is triggered.
- ii. Where a licensee has not made an application after the first notice, the Authority shall give a final notice one month before Section 28 is triggered.
- iii. Where a licensee still doesn't make an application after the final notice, ten (10) days, before Section 28 is triggered, the Authority shall call the Station for a Hearing to prepare for the official withdrawal of the licence in Line with Section 19(1), Section 28 (2) and Section 29 (1) (e) of the IBA (Amendment) Act No. 26 of 2010.
- iv. An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Ordinary Board meeting.
- v. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- vi. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.
- vii. The Authority shall not accept late applications for renewal of licences.



5.4 Display of Licence

The requirement to display the broadcasting licence is anchored on the provision of the IBA Act. Section 26 of the IBA (Amendment) Act, No. 26 of 2010 states; “A broadcasting licensee shall display the broadcasting licence in a conspicuous place at the place of business of the broadcasting licensee”.

It is expected that if the licence has been issued and delivered or collected the station should comply immediately.



Breach of Section 26 can constitute:

1. Failure to display the licence at all.
2. Failure to display the licence in a conspicuous place.
3. Failure to avail the licence to IBA officers upon demand.

In handling matters related to displaying of licences, the following steps shall be undertaken:

- i. Where a licensee has been issued with a licence but fails to display as per Section 26 above, the Authority shall, depending on the circumstances of the case direct the licensee to comply within 24 hours.
- ii. Where the Authority has not issued a certificate, a licensee may be permitted to display an offer letter until the actual certificate/licence is ready.
- iii. Where a licensee fails to display the licence after a reminder and within the specified period, the Authority shall issue a final reminder giving a licensee 48 hours to comply.
- iv. Where a licensee fails to comply with the final reminder, the Authority shall invite the Station for a Hearing.
- v. An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Board meeting.
- vi. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations



- to the Board upon receiving the Report from the Ad hoc Committee.
- vii. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

5.5 Content

Content monitoring constitutes the largest part of the work done by the IBA. Several provisions in both the IBA Act of 2002 and the (Amendment) Act of 2010 refer to the importance of



licensees providing ethical content. In addition, the Standard Operating Procedure Manual gives guidance on ethical content and professional standards in broadcasting.

For instance, Section 22 (5) (i) of the IBA (Amendment) Act of 2010 requires broadcasting licensees to provide programming which reflects Zambian circumstances in accordance with the provisions of the Act. It is also expected that the content of stations must meet the highest standards of journalistic professionalism.

Further, Section 33 of the IBA Act No. 17 of 2002 makes it mandatory for the Corporation and every licensed broadcasting service to develop a Code of Professional Standards, which shall comply with the following minimum requirements:

- (a) Respect for human dignity and human rights and freedoms And;
contribution to the tolerance of different opinions and beliefs;
- (b) Comprehensive, unbiased and independent news broadcast and current affairs programmes with commentary clearly distinguished from news;
- (c) Observance of procedures for correcting factual errors and redressing unfairness;
- (d) Observance of the principle of the right to reply;



- (e) Protection of the integrity of minors by clearly classifying and distributing programmes that could endanger the development of a child in a way with the least possibility for a child to use it; and
- (f) Clear separation of advertisements from other programme outputs.

Non-compliance can manifest in many ways including but not limited to the following:

- 1) Biased news coverage,
- 2) Failure to provide comprehensive news which is fair and accurate,
- 3) Failure to properly moderate live phone-in programs by being rude to callers and guests, failing to guide the guests or callers when they make unsubstantiated claims with the potential to cause tension in the country,
- 4) Providing content with the potential to threaten public safety, security, peace, welfare or good order,
- 5) Content that might corrupt the minds of minors such as broadcasting content of an adult nature during a non-watershed period,
- 6) Failure to protect children by broadcasting content about children who are victims of violent crimes such as rape and other abuses without hiding their identity,
- 7) Failure to retract or correct errors when they are made,
- 8) Failure to grant the right to reply to sources who wish to react to stories about them,
- 9) Playing of music or any content with vulgar language,
- 10) Swearing on air by an announcer, anchor or Disc Jockey,
- 11) Coverage that invades the privacy of sources or people and
- 12) Broadcasting any content that goes against professional ethical standards.

In handling matters related to non-compliance with expectable professional and ethical standards of broadcasting, the following steps shall be undertaken:

- i. Where a licensee commits a breach relating to content, but the offence does not include Section 29(1) (j) of the IBA (Amendment) Act No. 26 of 2010, the Authority shall



- notify the licensee about the issue and give the station 48 hours within which to make good of the breach.
- ii. Where a licensee fails to comply, the Authority shall issue a second notice and give the licensee further 48 hours to comply.
 - ii. Where a licensee fails to comply with a second notice, the Authority shall issue a final notice and give the station 48 hours within which to comply.
 - iii. Where all corrective measures have failed to bring the licensee into compliance, the Authority shall invite the station for a Hearing.
 - iv. However, where the breach in content is severe and borders on gross unprofessionalism, ethics, national security, peace, welfare or good order, the Authority shall engage the licensee immediately, conduct investigations, issue corrective directives and/or where appropriate invite the station for a hearing.
 - v. An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Board meeting.
 - vi. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
 - vii. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

5.6 Transfer, selling, leasing of Broadcasting licence

We wish to state that there is a lacuna in the Independent Broadcasting Authority Act in so far as the selling or buying of shares is concerned. This is premised on grounds that there is no express provision in the IBA Act which directly state whether Licensees can buy, sell or transfer shares. There is only a provision in Section 25, which prohibits the transfer, buying, selling, assigning, leasing, mortgaging or charging of a Licence of the Independent Broadcasting Authority (Amendment) Act No. 26 of 2010 which states, ***"A broadcasting licence issued under this part shall not be***



transferred, bought, sold, assigned, leased, mortgaged, or charged to a third party."

Offences relating to Section 25 may stem from the following:

- (1) Attempts to transfer the licence by putting up an advertisement announcing the sale of the licence.
- (2) Failure to seek authorisation from the Authority prior to effecting the transaction.
- (3) Actual selling, leasing, assignment, mortgaging or charging of the licence to the third party.

Notwithstanding the above, selling or buying of shares in radio and television stations is permissible under the following conditions:

- i. Prior authorisation from the IBA Board.
- ii. Before granting authorisation, the Board scrutinises those planning to buy the shares in stations.
- iii. By parity of reason, this would also apply to stations whose owners died and left shares in their "Wills".
- iv. The Board reserves the right to either cancel or suspend the licence, until suitable investors are found.

In handling any breach related to transferring, buying, selling, assigning, leasing, mortgaging or charging a licence to a third party or indeed the buying and selling of shares, the following steps shall be undertaken:

- i. Authority shall immediately conduct investigations and issue corrective directives.
- ii. Where a licensee fails to comply, the Station shall be invited for a hearing.
- iv. An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing.

The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Board meeting.



- iv. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- v. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

5.7 Payment of Fees



Payment of applicable fees is backed by provisions in the IBA Act. Section 22 (4) and (5) (c) of the IBA (Amendment) Act No. 26 of 2010 provide as follows: A broadcasting licensee shall pay such annual fee for the broadcasting licence as may be determined by

the Board. And subsection (5)(c) provides that the conditions of the licence may require the payment to the Authority of an annual fee.

Applicable fees include:

- Application Fee for new stations, those seeking expansion and renewal of licences,
- Licence Fees paid at the issuance of the licence and renewal of the licence,
- Annual Operating Fees, paid every year and is due on 1st January.

Non-compliance about payment of statutory obligations due to the Authority may manifest in the following:

- (1) Failure to pay the fees when they fall due.
- (2) Failure to pay the balance in the time agreed upon if the Station has been permitted to pay in instalments.
- (3) Failure to notify the Authority of the delay in paying the fees.
- (4) Non-payment of appropriate fees.

In avoiding breaches associated with financial obligations to the institution, the Authority shall comply with the following guidelines:



- i. Application Fee shall be received before officially admitting any application for the provision of broadcasting services.
- ii. Licence Fees shall be collected before a Licence is issued.
- iii. Annual Operating Fees shall be collected by the due date of 1st January each year.
- iv. Issue invoices by the end of October.
- v. Issue the first reminder by the end of November.
- vi. Issue a second reminder two weeks before the due date.

In handling non-compliance matters related to payment of the Annual Operating Fees, the following steps shall be undertaken:

- i. Where a licensee does not make a payment by the end of the due date, the Authority shall issue a notice giving the licensee a grace period of up to fourteen (14) days.
- ii. Where a licensee doesn't comply with the grace period, the licensee shall be invited for a hearing.
- iii. After the hearing, the Authority shall grant a licensee a final notice of 14 days to comply.
- iv. Where a licensee does not comply, the matter shall be tabled before the Licencing, Compliance and Consumer Affairs Committee.
- v. The Committee shall make appropriate recommendations to the Board.
- vi. The Board shall make a final determination on the breach taking into consideration the recommendations from the Committee.

5.8 Programming Character

This falls under Section 27 of the IBA (Amendment) Act, 2010. The law requires that a broadcasting licensee notifies the Board of any change of that broadcasting licensee's particulars relating to the issuance of the broadcasting licence.



Breaches linked to the altering of programming character may involve the following:

- (1) Changing the programming schedule without prior notification to the Authority.
- (2) Changing the name of the Station without notification to the Authority.
- (3) Change of the name of the Station without permission of the Authority.
- (4) Offering programming that is not licenced by the Authority such as changing the licence category in terms of content.

In handling breaches under Section 27, the following steps shall be undertaken:

- i. Where a Station fails to notify the Authority, the Station shall be given five (5) days to apply for the variation of their programming.
- ii. Where the licensee fails to make the stated application, the Authority invite the licensee for a hearing.
- iii. An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Ordinary Board meeting.
- iv. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- v. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

5.9 Commencement of Broadcasting Within 120 Days



By law, newly licenced radio and television stations are expected to commence their broadcasting within a stipulated time. Section 29 (1) (c) of the IBA (Amendment) Act, No. 26 of 2010 states that the Board may cancel or suspend a licence if the broadcasting licensee has not, within one hundred and twenty days of the issue of the broadcasting licence,



commenced the business for which the broadcasting licence was issued.

In handling matters related to failure to commence broadcasting within the stipulated period the following steps shall be applied:

- (i) Within one month of issuing the Conditional Offer, the Authority shall direct the licensee in writing to give an update on the status of the Station.
- (ii) The Authority shall issue a second notification to the licensee to provide progress made by the Station in the second month of issuance of the Conditional Offer.
- (iii) Upon expiry of the stipulated 120 days, the Authority shall direct the licensee to within 5 working days submit the status of the Station.
- (iv) For licensees that have officially submitted a request to go beyond the 120 days, the Authority shall grant permission to extend up to a maximum of 60 days.
- (v) The Authority shall give a second extension of up to a maximum of 30 days.
- (vi) The Authority shall issue a final extension of up to a maximum of 15 days.
- (vii). Once all the extensions are exhausted, and a licensee fails to comply, the Station shall be invited for a hearing.
- (viii). An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Board meeting.
 - i. The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
 - ii. The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.



6.0 HANDLING OF MISCELLANEOUS NON-COMPLIANCE

The following guidelines shall apply in handling matters related to various enforcement mechanisms:

6.1 Duration of Final Warning

In handling matters related to the issuance of a final warning, the following guidelines will apply:

- (i) The Authority shall specify in writing the actions that the licensee must take while the final warning is in force.
- (ii) The Authority shall indicate in writing, the duration of the final warning, but it should not exceed thirty days.
- (iii) Where a licensee complies with the directives given, the Authority shall within five working days, write to the licensee to remove the final warning tag.
- (iv) Where a licensee fails to comply with the contents of the final warning, the Authority shall invite the Station for a hearing.
- (v) An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the ordinary Board meeting.
- (vi) The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- (vii) The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

6.2 Duration of Suspension

In handling matters related to the duration of the suspension, the following guidelines will apply:

- (i) The Authority shall specify in writing the actions that the licensee must take while serving the suspension.
- (ii) The Authority shall indicate in writing, the duration of the suspension, but it should not exceed thirty days.
- (iii) Where a licensee complies with the directives given before the expiry period of the suspension, the



- Authority shall within five working days, investigate to ascertain the claims by the licensee.
- (iv) Where the Authority is satisfied with the corrective measures undertaken by the licensee, the Authority shall with immediate effect lift the suspension.
 - (v) Where the Authority is unsatisfied with the claims made by the suspended licensee, the Authority shall inform the licence in writing giving specific corrective measures to take.
 - (vi) Where a licensee fails to comply with the contents of the letter of suspension, the Authority shall invite the Station for a hearing.
 - (vii) An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Board meeting.
 - (viii) The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
 - (ix) The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

6.3 Stations Going Off-Air

One of the circumstances which can lead a licence to be suspended or cancelled is when a Station goes off-air frequently. Section 29 (1)(f) states that the Board may cancel or suspend a broadcasting licence if the broadcasting licensee, without a justified reason, has ceased to provide the broadcasting services, for which the broadcasting licence was obtained, for more than sixty consecutive days or ninety days with intermissions during the calendar year.



In handling matters related to a Station going off-air, the following guidelines will apply:



- (i) Where a licensee has not notified the Authority about going off-air, the Authority shall direct the Station in writing to go back on-air within 24 hours.
- (ii) Where a licensee has notified the Authority and given reasons, the Authority shall inform the Station specifying the period in which to get back on air but that timeframe should not exceed thirty days.
- (iii) Where a licensee fails to get back on air after the period stated in (ii) above, the Authority shall give the station an extension but not exceeding fifteen days.
- (iv) Where a licensee fails to commence broadcasting after the grace period, the Authority shall invite the Station for a hearing.
- (v) Where a licensee fails to comply with the provision of the law and has not notified the Board, the Authority shall invite the Station for a hearing.
- (vi) An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Ordinary Board meeting.
- (vii) The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- (viii) The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

6.4 Non-Operational Stations

An existing Station can become non-operational for various reasons including but not limited to; court action against the station, faulty equipment, non-availability of content, shifting from one premise to another, and the building housing the Station becoming inaccessible or squabbling over ownership.

In handling matters related to a Station becoming non-operational, the following guidelines will apply:

- (i) The Authority shall notify the licensee to provide reasons why the Station has become non-operational.
- (ii) Where a licensee has notified the Authority and given reasons, the Authority shall inform the Station specifying the period in which to resume operations but that timeframe should not exceed thirty days.



- (iii) Where a licensee fails to resume operations after the period stated in (ii) above, the Authority shall give the station an extension but not exceeding fifteen days.
- (iv) Where a licensee fails to become operational after the grace period, the Authority shall invite the Station for a hearing.
- (v) An Ad hoc Committee shall make appropriate recommendations to the Licencing, Compliance and Consumer Affairs Committee after the Hearing. The recommendation may include whether there is a need for a Special Committee and/or Board meeting to determine the issue or whether the matter could wait for the Ordinary Board meeting.
- (vi) The Licencing, Compliance and Consumer Affairs Committee shall make appropriate recommendations to the Board upon receiving the Report from the Ad hoc Committee.
- (vii) The Board shall make a final determination on the breach taking into consideration the recommendations from the Licencing, Compliance and Consumer Affairs Committee.

7.0 CONCLUSION

The Authority is optimistic that once these Guidelines are implemented, they will improve the operations of the Authority as far as handling non-compliance matters is concerned. The Guidelines are the Standard Operating Procedures by which the Authority is expected to operate and they are binding on all. Consequently, adherence to these Guidelines is non-negotiable.

Since regulation of the broadcasting sector involves and affects various stakeholders and chief among them are the licensees, the Authority will continue to create awareness among all licenced stations. The document has been shared with other key stakeholders such as the Media Owners Association, MISA Zambia, and the Ministry of Information and Media to create understanding among them.

These Guidelines will be reviewed from time to time as regulation is dynamic. The document could not have captured all the possible areas that may need to have guidelines, hence, reviews would offer opportunities to include circumstances and breaches that could have been omitted at the time of developing the document.

This document is also available in the electronic version on the IBA website (www.iba.org.zm).





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