

Volume 21

LAWS OF THE
REPUBLIC OF ZAMBIA

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Volume 21

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REPUBLIC OF ZAMBIA

THE INVESTMENT ACT

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THE INVESTMENT ACT

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CHAPTER 385

INVESTMENT

An Act to revise the law relating to Investment in Zambia so as to provide a comprehensive legal framework for investment in Zambia; to repeal the Investment Act, 1991; and to provide for matters connected with or incidental to the foregoing.

[8th September, 1993]Act No.

39 of 1993

13 of 1994

26 of 1995

5 of 1996

PART I

PRELIMINARY

1. This Act may be cited as the Investment Act.Short title

2. In this Act, unless the context otherwise requires-Interpretation

"Board" means the Investment Board of the Centre established by section six;

"bonded factory" means a factory which is a warehouse, bonded and licensed in terms of section fifty-five of the Customs and Excise Act, in which goods may be lodged, kept and secured without the payment of duty or until the requirements of that Act have been satisfied, and includes any store, house, shed, yard, or other place in which goods are so lodged;Cap. 322

"business enterprise" includes any undertaking, carrying on business in the field of manufacturing, agriculture, transport, communications, construction, tourism and services or know-how;

"Centre" means the Investment Centre constituted under section four;

"Chairman" means the person elected Chairman of the Board;

"Commissioner" means the Commissioner of Taxes appointed under the Income Tax Act;Cap. 323

"Controller" means the Controller of Customs and Excise appointed under the Customs and Excise Act;Cap. 322

"Director-General" means the chief executive officer of the Centre appointed by the Board;

"economic development zone or export processing zone" means any area declared to be an economic development zone or export processing zone under section twenty-eight;

"foreign investment" means investment brought in by an investor from outside, and invested in Zambia;

"investment" means contribution of capital, in cash or in kind, by an investor, to a new business enterprise, to the expansion or rehabilitation of an existing business enterprise or to the purchase of an existing business enterprise from the State;

"investor" means any person, natural or juridical, whether a Zambian citizen or not, investing in Zambia in accordance with the provisions of this Act;

"Investment Certificate" means a certificate issued by the Board under section ten;

"manufacturing" means the transforming, on a commercial scale, of raw materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products, but does not include mining;

"member" means a member of the Board;

"mineral" shall be construed in its general, extensive and comprehensive sense and shall include ore and mineral products, any substance whether in solid, liquid or gaseous form occurring naturally in or on the earth but shall not include public and private water when used for a primary, secondary or tertiary use as defined in the Water Act; Cap. 198

"mining" means the winning of any mineral;

"non-traditional products" means products other than raw copper, lead, zinc or cobalt;

"rural area" means any area in Zambia other than Kabwe Urban District, Kafue Township, Livingstone District, Lusaka Urban District and the Copperbelt Province excluding therefrom Ndola Rural District;

"Secretary" means the Secretary to the Board.

3. This Act shall be cumulative and in addition to, and not in derogation from, any other written law.

(As amended by Act No. 26 of 1995) Non-derogation from any other law

PART II

INVESTMENT CENTRE AND BOARD

4. Notwithstanding section thirty-nine, the Investment Centre as constituted under the Investment Act, 1991, shall continue to exist as if constituted under this Act. Constitution of Investment Centre Act No. 19 of 1991

5. (1) The functions of the Centre shall be to promote, co-ordinate Government policies on, and facilitate, investment in Zambia, so as to provide a one-stop support facility to investors. Functions of Centre

(2) Notwithstanding the generality of subsection (2) the functions of the Centre shall be to-

(a) promote investment in Zambia;

(b) monitor the performance of enterprises approved by it and enforce compliance with the terms and conditions of investment certificates approved under this Act;

(c) establish and maintain institutional liaison arrangements;

(d) assist in securing from any Ministry, government department, local authority or other relevant body any permission, exemption, authorisation, licence, bonded status, land and any other thing required for the purpose of establishing or operating a business enterprise;

(e) keep records of all technology transfer agreements relating to investments under this Act;

(f) provide consultancy services to investors;

(g) collect and disseminate information on relevant laws and regulations, and technical matters, including applicable standards, specifications and quality control procedures;

(h) undertake economic and sector studies, including market surveys, with a view to identifying investment opportunities;

(i) register investors;

(j) implement decisions made by the Board;

(k) exercise all functions and powers and perform all duties which under or by virtue of this Act or any other written law are, or may be, vested or delegated to it; and

(l) do all such things as are necessary or incidental or conducive to the functions specified in this Act.

6. (1) There is hereby established the Investment Board of the Centre which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of Board

(2) The provisions of the First Schedule shall apply as to the constitution of the Board and otherwise in relation thereto.

7. (1) Subject to the other provisions of this Act, the Board shall be responsible for the affairs of the Centre. Functions of Board

(2) Notwithstanding the generality of subsection (1) the Board shall-

(a) implement investment policies;

(b) formulate investment promotion strategies;

(c) establish investment guidelines for the Centre;

(d) issue investment certificates; and

(e) do all such things as are necessary or incidental to the better carrying out of the functions specified in this Act.

PART III

PROCEDURES FOR INVESTMENT IN ZAMBIA

8. Any person investing in a business enterprise may apply for an Investment Certificate under this Part:Investment Certificate

Provided that in respect of the industries specified in the Second Schedule, the Board shall not issue an Investment Certificate to an investor until the investor obtains the necessary licences, authorisations, or permits from the relevant ministry or body.

9. (1) An application for an Investment Certificate in the form set out in the Third Schedule shall be made to the Director-General and shall be accompanied by a non-refundable fee determined by the Board.Application for Investment Certificate

(2) The Director-General shall, on receipt of an application for an Investment Certificate, submit the application to the Board for its consideration at the next meeting of the Board.

10. (1) The Board shall, within six weeks of receipt of an application for an Investment Certificate issue an Investment Certificate, with general or special incentives, as the case may be, in the form set out in the Fourth Schedule, if-Issue of Investment Certificate

(a) the application is in accordance with the provisions of this Act; and

(b) the activity planned to be undertaken by the business enterprise does not contravene any laws and regulations in force in Zambia.

(2) A decision of the Board in respect of an application for an Investment Certificate shall be communicated to the applicant, in writing, within fourteen days of the Board's decision:

Provided that a decision of the Board rejecting an application shall be accompanied by the reasons for the rejection.

11. Any applicant for an Investment Certificate who is aggrieved by a decision of the Board rejecting the application may appeal to the Minister subject to a further appeal to the High Court.Appeal from decision of Board

12. An Investment Certificate issued under section ten shall-

(a) authorise the holder thereof to make all necessary arrangements for the commencement of the business enterprise described therein;

(b) contain terms and conditions of the certificate and any general or special incentives given; and

(c) have unlimited period of validity, subject to it being utilised within twelve months from the date of issue.Condition of Investment Certificate

13. (1) The holder of an Investment Certificate may at any time during the validity of the certificate, apply to the Board for variation of the terms and conditions of the certificate, the incentives granted thereunder or any matter relating to the certificate.Variation of Investment Certificate

(2) The Board shall consider the application referred to in subsection (1) and may after negotiations, if any, grant or refuse such application.

14. (1) Where the holder of an Investment Certificate is unable to commence operations within twelve months from the date of issue, he shall, at least sixty days before the expiry of his certificate, apply to the Board for an extension of that period, giving reasons thereof; and the Board shall, if satisfied with the reasons, extend the validity for such period as he may consider reasonable. Extension and surrender of Investment Certificate

(2) Where the holder of an Investment Certificate decides not to continue with any project to which the certificate relates, he shall so notify the Board in writing and shall agree with the Board the terms and conditions of the surrender of the certificate with particular reference to anything done or any benefit obtained under the certificate.

(3) Where the period of twelve months from the date of issue of an Investment Certificate has expired without the holder of the certificate commencing business operations and no application for its extension has been made in accordance with subsection (2) the certificate shall lapse and shall, subject to section seventeen, be cancelled and the holder of the licence shall cease to be entitled to any benefits obtainable under the certificate.

15. (1) An Investment Certificate shall not be transferred to a third party without the prior approval of the Board but such approval shall not be unreasonably withheld. Transfer of Investment Certificate

(2) Every application for approval to transfer an Investment Certificate shall be made to the Board and the Board may, within thirty days of the application, approve the application, in accordance with this Act.

16. The Board may amend an Investment Certificate-

(a) where some other person has succeeded to the interest in the business enterprise belonging to the holder of the Investment Certificate, by substituting for the name of the holder the name of the successor, or

(b) where the name of the business is altered, by substituting the name so altered. Amendment of Investment Certificate

17. (1) Subject to the other provisions of this Act, the Board may suspend or cancel any Investment Certificate if the investor-Suspension or cancellation of Investment Certificate

(a) obtained the Investment Certificate by fraud, deliberate or negligent submission of false information or statements;

(b) transfers or otherwise assigns an Investment Certificate without the prior approval of the Board;

(c) contravenes this Act or any terms and conditions of the certificate issued to him; or

(d) fails without reasonable cause to establish the business enterprise within the time stipulated in the certificate or any extension thereof.

(2) The Board shall, before suspending or cancelling an Investment Certificate in accordance with subsection (1), give its written notice to the investor of its intention to suspend or cancel the Investment Certificate and the grounds

for the suspension or cancellation and require the investor to show cause within a period of not more than thirty days why the certificate should not be suspended or cancelled.

(3) The Board shall not suspend or cancel an Investment Certificate under this section if the investor takes remedial measures to the satisfaction of the Board within the period of thirty days referred to in subsection (2).

(4) If the Investor notified under subsection (2) fails to show cause to the satisfaction of the Board or does not take remedial measures to the satisfaction of the Board within the time specified in that subsection, the Board may suspend or cancel the Investment Certificate.

(5) Where an Investment Certificate is suspended, the holder of the certificate shall cease to be entitled to the rights and benefits conferred under this Act for the period of the suspension.

(6) Where an Investment Certificate is cancelled the holder of the certificate shall cease to be entitled to the benefits conferred under this Act with effect from the date of such cancellation and shall return the licence to the Director-General.

(7) Any person who is aggrieved by any decision of the Board under this section may appeal to the Minister subject to further appeal to the High Court.

PART IV

GENERAL INCENTIVES

18. The general incentives provided in this Part shall apply to any investor investing in a business enterprise under this Act. Qualification for general incentives

19. An investor shall be taxed on that portion of income which is determined by the Commissioner as originating from the export of non-traditional products at a rate of fifteen per centum. Income tax of non-traditional products

20. An investor shall be taxed on that portion of income which is determined by the Commissioner General as originating from the export of non-traditional products at a rate of fifteen per centum. Income from non-traditional products

21. An investor shall be taxed on income received from a rural enterprise for each of the first five charge years for which such business enterprise is carried on, reduced by such amount as is equal to one-seventh of that tax which would otherwise be so chargeable on such income. Income tax on rural enterprises

22. (1) An Investor shall be entitled to capital allowances which shall be deducted in ascertaining the gains or profits at the following special rates: Income tax allowances

(a) buildings used for manufacturing, or hotels qualify for a wear and tear allowance of five per centum per year of the cost, plus an initial allowance of ten per centum of the cost in the year in which the building is first used;

(b) implements, machinery and plant used exclusively for farming, manufacturing or tourism qualify for a wear and tear allowance of fifty per centum per year of the costs in each of the first two years;

(c) capital expenditure on farm improvements qualify for a farm improvement allowance of twenty per centum of such expenditure for each of the first five years.

(2) An Investor who incurs capital expenditure on the growing of tea, coffee, or banana plants, citrus fruit trees or other similar plants or trees, shall be entitled to a development allowance of ten per centum of such expenditure which shall be deducted in ascertaining the gains or profits of that business enterprise for the charge year up to the first year of production.

(3) An Investor is entitled to a farm works allowance of one hundred per centum in respect of expenditure on farming land in his ownership or occupation, and for the purposes of farming, or stumping and clearing, works for the prevention of soil erosion, boreholes, wells, aerial and geophysical surveys, and water conservation.

(As amended by Act No. 26 of 1995)

23. An Investor shall be entitled to the following deductions in ascertaining gains or profits:

(a) any loss incurred by an investor, in any charge year shall be deducted only from the income of the investor from the same source as that in which the loss was incurred; such loss shall be deducted from his income of the following charge year, and so on from year to year;

(b) any payments made for the purpose of technical education relating to a business enterprise or for the purposes of obtaining further experience, training or qualifications, relating to that business enterprise;

(c) any expenditure, not being expenditure of a capital nature, incurred by a business enterprise during a charge year on experiments or research relating to that business enterprise.

(As amended by Act No. 26 of 1995)Income tax deductions

24. Income received by way of a dividend declared from farming shall be exempt from tax for the first five years of operations.Income tax exemption on dividend from farming

25. Where a double taxation agreement exists between Zambia and another country, foreign tax payable by an investor to the other country in respect of any foreign income shall be allowed as a credit for that investor against Zambian tax in respect of that foreign income.Double taxation agreements

26. Repealed by Act No. 26 of 1995.

27. An Investor may apply to be appointed and licensed by the Controller to establish and operate a bonded factory under section fifty-five of the Customs and Excise Act.Bonded factory
Cap. 322

28. The Controller shall, after consultation with the Minister, licence an area as an economic development zone or export processing zone under section fifty-five of the Customs and Excise Act.Economic development zone or export processing zone

Cap. 322

29. A small scale enterprise or a village enterprise registered under the Small Industries Development Act, shall be entitled to the following incentives:

(a) exemptions from payment of tax on income for-Small scale and village enterprises

Cap. 425

(i) the first three years of operations for an enterprise operating in an urban area;

(ii) the first five years of operations for an enterprise in a rural area;

(b) operation of a manufacturing enterprise for the first five years without a manufacturing licence required for such an enterprise under any law;

(c) for an enterprise with an investment in plant and machinery of less than five million kwacha, exemption from the payment of licensing fees required for such an enterprise under any law; and

(d) exemption from the payment of rates on factory premises for the first five years.

(As amended by Act No. 5 of 1996)

30. (1) Notwithstanding the provisions of the Immigration and Deportation Act, an investor who invests a minimum of two hundred and fifty thousand United States Dollars or the equivalent in convertible currency and who employs a minimum of ten persons shall be entitled to a self employment permit or resident permit. Immigration

Cap. 123

(2) The Centre shall assist an investor who meets the requirements of subsection (1) to obtain work permits for up to five expatriate employees.

PART V

SPECIAL INCENTIVES

30A. Repealed by Act No. 5 of 1996.

31. (1) Any investor who has been issued with an investment certificate with special incentives before the 27th of January, 1996, shall continue to enjoy such incentives. Savings for holders of investment certificate issued before 27/01/96 and small scale enterprises

(2) A small enterprise registered under the Small Enterprises Development Act before the 27th January, 1996, shall be entitled to exemption from customs duties and value added tax payable on imported equipment to be used in the enterprise if such equipment was ordered but not imported before the 27th January, 1996. Cap. 425

(As amended by Act No. 5 of 1996)

PART VI

SERVICES

32. (1) The Centre shall assist an investor in identifying suitable land for investment and shall assist the investor in applying to the responsible authorities for the land in accordance with established procedures. Land

(2) Where an application is made under subsection (1) and the land has been demarcated for the purpose applied for and such land has not been allocated to any other person, body or authority, the authority responsible for the allocation of land shall, upon payment, by the investor, of the prescribed fees, charges, or rates, allocate the land to the investor and the officer responsible for the registration of such land shall make such entries in the appropriate register and shall issue to the investor a certificate of title in respect of the said land.

33. The Centre shall assist an investor in obtaining water, electric power, transport and communication services and facilities required for the investment. Water, electricity, transport etc

34. The Centre shall assist an investor in obtaining any licence permit, registration or authorisation for the purpose of commencing or operating the business enterprise. Registration and licensing

PART VII

INVESTMENT GUARANTEES AND GENERAL

35. (1) No property of any description shall be compulsorily acquired, and no interest in or right over property of any description of an investor shall be compulsorily acquired, except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation in respect thereof. Protection from acquisition

(2) Any compensation payable under this section shall be made promptly at the market value and shall be fully transferable at the applicable exchange rate in the currency in which the investment was originally made, without deductions for taxes, levies, and other duties except where those are due.

36. Notwithstanding the provisions of any other written law relating to externalisation of funds, a foreign investor who has registered foreign capital with the Bank of Zambia, shall be entitled, in respect of a business enterprise to which the Investment Certificate relates, to transfer out of Zambia in foreign currency and after payment of the relevant taxes-

(a) dividends or after-tax income;

(b) the principal and interest of any foreign loan;

(c) management fees, royalties, and other charges in respect of any agreement; or

(d) the net proceeds of sale or liquidation of the business enterprise. Transfer of funds

37. An investor who, immediately prior to the commencement of this Act, holds-Transitional provisions

(a) a valid investment licence or permit, certificate of incentives or certificate of registration under the Investment Act, 1991; or

(b) any other valid certificate or licence issued under any other written law with respect to a business enterprise recognised by the Board; Act No. 19 of 1991

shall give written notice to that effect to the Board within six months after the commencement of this Act with a certified copy of the licence, permit or certificate, as the case may be, and the rights and benefits accruing to the holder of such licence, permit or certificate shall continue in accordance with the provisions of the Investment Act, 1991. Act No. 19 of 1991

38. (1) After consultation with the Board, the Minister may, by statutory instrument, provide for-Regulations

(a) anything which by this Act is required or permitted to be prescribed;

(b) the collection of industrial data and the procedure for such collection; and

(c) such other matters as are necessary or conducive to the better carrying out of the purposes of this Act.

(2) The Minister may, upon recommendation by the Board, by statutory instrument, amend any form set out in the Schedules to this Act.

39. (1) Subject to subsection (2), the Investment Act, 1991 is hereby repealed.

(2) Notwithstanding the repeal of the Investment Act, 1991-Repeal of Act No.

19 of 1991 and savings

Act No.

19 of 1991

(a) any agreement executed under that Act shall continue in force as if made under this Act;

(b) any applications pending before the Investment Board under that Act shall be deemed to have been made to the Board under this Act;

(c) any registration done, any other right or benefits accruing, or any liabilities suffered under that Act, other than those specified in section thirty-seven, shall continue in accordance with this Act:

(d) any regulations made or directions given under that Act shall, unless contrary to this Act, continue in force until revoked, as if made or given under this Act.

FIRST SCHEDULE

(Section 6)

INVESTMENT BOARD

1. (1) The Board shall consist of-

Composition of Board

(a) a representative of a senior rank from each of the Ministries responsible for finance, commerce and industry, legal affairs, land, home affairs, tourism and agriculture;

(b) a representative of the National Environmental Council;

(c) four persons, one each from-

(i) the chambers of commerce and industry;

(ii) the farmers;

(iii) Non-governmental Organisation Coordinating Committee; and

(vi) the agencies promoting small scale industries.

(d) three reputable private businessmen appointed by the Minister:

Provided that, notwithstanding section thirty, the persons appointed as members of the Investment Board under the Investment Act, 1991, except the Director-General, shall continue to hold office as members of the Board until the Minister appoints the members under this Act.

(2) The members referred to in items (a), (b), and (c) shall be nominated by their respective institutions and the Minister shall appoint those nominated persons as members of the Board.

(3) The Chairman and the Vice-Chairman shall be elected by the Board from amongst its members:

Provided that the members appointed under items (a) shall not be elected as Chairman or Vice-Chairman.

2. (1) The members referred to in paragraph 1 shall hold office for a period of three years from the date of appointment and may be re-appointed upon the expiration of that term.

Tenure of office and vacancy

(2) A member referred to in items (b), (c), and (d) of sub-paragraph (1) of paragraph 1 may resign upon giving one month's notice in writing to the institution which nominated him and to the Minister.

(3) The office of a member shall become vacant-

(a) upon his death;

(b) if he is absent without reasonable excuse from three consecutive meetings of the Board of which he has had notice;

(c) on ceasing to be a representative of the organisation which nominated him;

- (d) if he is an undischarged bankrupt; or
- (e) if he fails to disclose his interest as required by paragraph 7.

3. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary

Seal of Board

- (2) The Board may use a wafer or rubber stamp in lieu of the seal.
- (3) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman and the Secretary or one other person authorised in that behalf by a resolution of the Board.
- (4) Any contract or instrument which, if entered into or executed, by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Secretary or any other person generally or specifically authorised by the Board in that behalf.
- (5) Any document purporting to be a document with the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved. Act No. 19 of 1991

4. A member of the Board or any committee of the Board shall be paid such remuneration and allowances as the Board may determine.

Remuneration and allowances

- 5. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.
- (2) The Board shall meet for the transaction of business at least once in every three months at such places and at such times as the Chairman may decide.
- (3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairman; and shall be called if not less than five members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called by the Chairman, upon giving a shorter notice.

- (4) Nine members shall form a quorum at any meeting of the Board.
- (5) There shall preside at any meeting of the Board-
 - (a) the Chairman; or
 - (b) in the absence of the Chairman, the Vice-Chairman; or
 - (c) in the absence of the Chairman and the Vice-Chairman such member as the members present may elect for the purpose of that meeting.

(6) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(7) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(8) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(9) The Board shall cause minutes to be kept of the proceeding of every meeting of the Board and of every meeting of any committee established by the Board. Proceeding of Board

6. (1) The Board may, for the purpose of performing its functions under this Act, establish committees of members of the Board and delegate to any such committee such of its functions as it thinks fit.

(2) The Board may appoint the Director-General as a member of a committee established under subsection (1).

(3) Subject to any specific or general direction of the Board any committee established under subsection (1) may regulate its own procedure.

(4) A committee may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the committee but such person shall have no vote. Committees of Board

7. (1) If any person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter that person or his spouse is directly or indirectly interested in a private capacity that person shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made: Disclosure of interest

8. No action or other proceedings shall lie, or be instituted against any member or member of a committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act. Immunity of members

9. (1) The Board shall appoint, on such terms and conditions as it may determine, a Director-General who shall be the chief executive officer of the Centre, and who shall be responsible for the administration of the Centre and the implementation of the decisions of the Board.

(2) The Director-General may, subject to the approval of the Board, establish such organisational structures for the Centre as he may consider necessary for the discharge of the functions of the Centre.

(3) The Director-General shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting of the Board, may for good cause, require the Director-General to withdraw from such meeting.

(4) Paragraph 7 shall apply, with the necessary modifications, to the Director-General. Director-General

10. (1) There shall be a Secretary to the Board who shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Secretary shall be responsible for the day-to-day affairs of the Board under the general supervision of the Director-General.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff for the Centre as it considers necessary. Secretary and other staff

11. (1) No member of the Board or employee of the Centre, or any person invited to attend a meeting of the Board or committee shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of, his duties under this Act.

(2) Any person who knowingly contravenes the provisions of sub-paragraph (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of sub-paragraph (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(As amended by Act No. 13 of 1994) Prohibition of publication or disclosure of information

12. (1) The funds of the Board shall consist of such moneys as may-

(a) be appropriated by Parliament for the purposes of the Board;

(b) be paid to the Board by way of grants or donations;

(c) be paid to the Board by way of certificate fees; and

(d) vest in or accrue to the Board.

(2) The Board may-

(a) accept money by way of grants or donations from any source in Zambia;

(b) raise money by way of loans or otherwise from any source in Zambia and,

subject to the approval of the Minister, from any source outside Zambia, such moneys as it may require for the discharge of its functions; and

(c) charge and collect fees in respect of programmes, publications, seminars, consultancy services, and other services provided by the Centre.

(3) There shall be paid from the funds of the Board-

(a) the salaries, allowances and loans to the staff of the Board;

(b) such reasonable travelling, transport and subsistence allowance for members or members of any committee of the Board when engaged on the business of the Board at such rates as the Board may determine; and

(c) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions. Funds of Board

13. The financial year of the Board shall be the period of twelve months ending on 31st December, in each year. Financial year

14. (1) The Board shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Board shall be audited annually by independent auditors appointed by the Board.

(3) The auditor's fees shall be paid by the Board. Accounts

15. (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Board shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Board and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt referred to in sub-paragraph (1), lay it before the National Assembly.

Annual report

SECOND SCHEDULE

(Section 8)

Specified Industries

1. Any industry manufacturing arms and ammunition, explosives, military vehicles and equipment, aircraft and any other military hardware.
2. Any industry manufacturing poisons, narcotics, dangerous drugs and toxic, hazardous and carcinogenic materials.
3. Any industry producing currency, coins and security documents.

THIRD SCHEDULE

(Section 9)

Investment (Cap. 385 of the Laws of Zambia)

APPLICATION FOR AN INVESTMENT CERTIFICATE

The Director-General

Investment Centre

P.O. Box 34580

Lusaka

Application is hereby made under the provisions of the Investment Act for the grant and issuance of an Investment Certificate and the following information is submitted in support thereof:

1. (a) Full name of enterprise

(b) Plot No.
Street/Road

(c) Address
.....
.....

(d) Province: District
..... Telephone No.

(e) Date of incorporation or registration of business name
.....

2. State whether your enterprise is: Mark 'X' where applicable.

(a) Sole Ownership:
.....
.....(b) Partnership:

.....
(c) Private Company

(d) Co-operative Society

 .(e) Public Company

(f) Parastatal:

(g) Other:

3. Particulars of Ownership/Directors:

Name and Full Address

NationalityEquity

%Amount

KForegin equity

contributionForeign investment

4. Brief details of the:

(a) Project:

(b) Products:

5. Finance:

Foreign LocalTotalEquity capitalLoans and banks
Suppliers credit

6. Employment and Training:

CategoryNumber to be employed

Zambia Non-zambiaManagementTechnicalOperativesOther
 (Specify)Total

7. List all technological management agreements.

Please give brief details:

1.

2.

-
3.

4.

5.

6.

(You may use a separate sheet)

FOURTH SCHEDULE

(Section 10)

INVESTMENT CERTIFICATE

This is to certify that the investors in this certificate has/have been duly registered under the Investment Act, 1993, in the business enterprise specified hereunder:

Name of Investor

Business Enterprise

Investment Certificate number

Date day of
 19.....

OFFICIAL STAMP:

Investment Board

REPUBLIC OF ZAMBIA

THE PRIVATISATION ACT

CHAPTER 386 OF THE LAWS OF ZAMBIA

CHAPTER 386 THE PRIVATISATION ACTCHAPTER 386

THE PRIVATISATION ACT

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CHAPTER 386

PRIVATISATION ACT

An Act to provide for the privatisation and commercialisation of State owned enterprises; to provide for the establishment of the Zambia Privatisation Agency and to define the functions of the Agency; to provide for the sale of shares in State owned enterprises; and to provide for matters connected with or incidental to the foregoing.

[4th July, 1992]Act No.
21 of 1992
13 of 1994
9 of 1996

PART I

PRELIMINARY

1. This Act may be cited as the Privatisation Act.Short title
2. In this Act, unless the context otherwise requires-Interpretation

"Agency" means the Zambia Privatisation Agency established under section three;

"bank" means a commercial bank registered under the Banking and Financial Services Act.Cap. 387

"commercialisation" means the re-organisation of specified Government departments into commercialised enterprises which shall operate as profit making commercial ventures without the subvention of the Government and "commercialise" shall be construed accordingly;

"consultant" means any person employed by the Agency to undertake any work of a specialised nature connected with the privatisation programme in Zambia and shall include merchant banks, public accountants, lawyers and valuers;

"current value" means the market value of a State owned enterprise within three months of the completion of the sale;

"divestiture" means the disposing of the whole or part of the assets and shares of a State owned enterprise;

"divestiture sequence plan" means a list of State owned enterprises, as approved by Cabinet, categorised according to the sequence in which the whole or part of their shares will be disposed of over the period of the privatisation programme;

"established fund" includes pension funds, contributory social security schemes, compensation funds and superannuation funds;

"financial institution" means a company, or body not being a bank, which carries on financial business and which is registered under any other law;

"foreign investor" means a person, being a citizen of Zambia or not, who brings into Zambia foreign exchange for the purchase of shares in a State owned enterprise or for additional investment in a State owned enterprise;

"golden share" means a share with special rights to enable the Government in the national interest to intervene in the operations of a company which intervention is caused by specific actions undertaken by the company;

"investor" means an individual, company, established fund, mutual fund, financial institution or foreign government intending to invest in a State owned enterprise under this Act but does not include the Local Government, the Government of the Republic of Zambia and a State owned enterprise;

"mutual fund" means an investment fund which purchases shares in a portfolio of companies and subdivides such portfolio into individual units for sale of such units to investors;

"privatisation" means the transferring to the private sector of part or the whole of the equity or other interest held by the Government, directly or indirectly, in a State owned enterprise wholly or partly owned by the Government and "privatise" shall be construed accordingly;

"Privatisation Revenue Account" means an account established under section thirty-nine;

"Privatisation Trust Fund" means a fund established under section twenty-nine;

"property" means all property movable or immovable, and all estates, interests, easements, and rights, whether legal or equitable into or out of property, choses-in-action, money and good-will;

"specified Government department" means a department specified by the Minister under section thirty-seven;

"State owned enterprise" means a corporation, board, company, parastatal or body in which the Government has direct or indirect ownership, equity or interest and includes partnerships, joint ventures or any other form of business arrangement or organisation in which the Government has direct or indirect interest but does not include a Government department;

"stocks and shares" includes loans, stocks, debentures and debenture stock and options on any stocks, shares, loan, stock, debentures or debenture stock and rights, in relation to State owned enterprises;

"stock broker" means a person who carries on the business of buying and selling stocks or shares for and on behalf of other persons;

PART II

THE ZAMBIA PRIVATISATION AGENCY

3. There is hereby established the Zambia Privatisation Agency which shall be a body corporate with perpetual succession and a common seal capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of Agency

4. (1) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Director. Seal of Agency

(2) The Agency may use a wafer or rubber stamp in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman and the Secretary or any other person authorised in that behalf by a resolution of the Agency.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Secretary or any other person generally or specifically authorised by the Agency in that behalf.

(5) Any document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be deemed to be executed or issued, as the case may be, without further proof, unless the contrary is proved.

5. (1) The Agency shall consist of the following members who shall, subject to scrutiny by a Select Committee of the National Assembly and ratification by the National Assembly be appointed by the President: Composition of Agency

(a) the Permanent Secretary in the Ministry responsible for commerce, trade and industry;

(b) the Permanent Secretary in the Ministry responsible for finance;

(c) the Attorney-General;

(d) a representative of the Zambia Confederation of Chambers of Commerce and Industry;

(e) a representative of the Zambia Congress of Trade Unions;

(f) a representative of the Zambia Federation of Employers;

(g) a representative of the Law Association of Zambia;

(h) a representative of the Zambia Institute of Certified Accountants;

(i) the Dean of the School of Business of the Copperbelt University;

- (j) a representative of the churches in Zambia;
- (k) a representative of the Bankers Association of Zambia; and
- (l) a representative of the farmers.

(2) The Chairman and the Vice-Chairman shall be elected by the Agency from amongst its members:

Provided that the Permanent Secretary in the Ministry responsible for finance and the Permanent Secretary responsible for commerce, trade and industry shall not be elected as Chairman or Vice-Chairman.

6. (1) The members, except ex-officio members, referred to in section five shall hold office for a period of three years from the date of nomination and shall be eligible for further nomination upon the expiration of that term. Tenure of office and vacancy

(2) A member, except an ex-officio member, referred to in section five may resign upon giving one month's notice, in writing, to the organisation which nominated him and to the Minister.

(3) The office of a member, except an ex-officio member, shall become vacant-

- (a) upon his death;
- (b) if he is absent without reasonable excuse from three consecutive meetings of the Agency of which he has had notice;
- (c) on ceasing to be a representative of the organisation which nominated him; or
- (d) if he is an undischarged bankrupt.

7. A member shall be paid such remuneration and allowances as the Agency may, with the approval of the Minister, determine. Remuneration and allowances of Members

8. (1) It shall be the function of the Agency to plan, manage, implement and control the privatisation of State owned enterprises in Zambia. Functions of Agency

(2) Notwithstanding the generality of subsection (1) the functions of the Agency shall be to-

- (a) recommend privatisation policy guidelines to the Cabinet;
- (b) implement the privatisation programme according to the policy guidelines issued by the Cabinet;
- (c) oversee all aspects of the implementation of the privatisation programme in Zambia;
- (d) monitor progress of the privatisation programme in Zambia;
- (e) prepare the long term divestiture sequence plan and submit such plan to the Cabinet for approval;

- (f) recommend to the Cabinet the most appropriate method of sale for each State owned enterprise to be privatised;
- (g) carry out or cause to be carried out a valuation of a State owned enterprise that is to be privatised;
- (h) set pre-qualification criteria for the selection of potential buyers or investors of a State owned enterprise to be privatised;
- (i) evaluate offers from potential buyers with regard to the-
 - (i) price;
 - (ii) ability and commitment of buyers to develop the enterprise; and
 - (iii) track record of buyers and their expertise in the type of enterprise on offer;
- (j) ensure that monopolies are not created in the process of privatisation;
- (k) prepare or cause to be prepared the relevant documentation necessary to effect the privatisation of any state owned enterprise;
- (l) seek potential investors for State owned enterprises;
- (m) maintain records, safeguard information and establish administrative procedures to ensure confidentiality of information;
- (n) maintain close liaison with all relevant institutions in the process of privatisation;
- (o) publicise the activities of the privatisation programme; and
- (p) do all such things as are necessary or incidental or conducive to the better carrying out of the functions specified in this Act.

9. (1) Subject to the other provisions of this Act, the Agency may regulate its own procedure. Proceedings of Agency

(2) The Agency shall meet for the transaction of business at least once every two months at such places and at such times as the Chairman may decide.

(3) Upon giving notice of not less than fourteen days, the meeting of the Agency may be called by the Chairman and shall be called if not less than four members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Five members shall form a quorum at any meeting of the Agency.

(5) There shall preside at any meeting of the Agency-

(a) the Chairman;

(b) in the absence of the Chairman, the Vice-Chairman; or

(c) in the absence of both the Chairman and the Vice-Chairman such member as the members present may elect for the purpose of that meeting.

(6) A decision of the Agency on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have the casting vote in addition to his deliberative vote.

(7) The Agency may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Agency but such person shall have no vote.

(8) The validity of any proceedings or decisions of the Agency shall not be affected by any vacancy in the membership of the Agency or by any defect in the appointment of any member.

(9) The Agency shall cause minutes to be kept of the proceedings of every meeting of the Agency and of every meeting of any committee established by the Agency.

10. (1) The Agency may for the purpose of performing its functions under this Act establish Committees and delegate to any such committee such of its functions as it considers necessary. Committees of Agency

(2) The Agency may appoint as members of a committee established under subsection (1) persons who are or are not members of the Agency and such persons shall hold office for such period as the Agency may determine.

(3) Subject to any specific or general direction of the Agency any committee established under subsection (1) may regulate its own procedure.

11. If any person is present at a meeting of the Agency or any committee of the Agency at which any matter is the subject of consideration and in which matter that person or his immediate family or his professional and business partners, is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting disclose such interest and shall not, unless the Agency or the committee otherwise directs, take part in any consideration or discussion of or vote on, any question touching on such matter. Disclosure of interest

PART III

ADMINISTRATION

12. (1) The Agency shall appoint, on such terms and conditions as it may determine, a Director who shall be the Chief Executive Officer of the Agency. Director of Agency

(2) The Agency may appoint, on such terms and conditions as it may determine, a Deputy Director to assist the Director.

(3) The Director or in his absence the Deputy Director, shall attend meetings of the Agency and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting of the Agency, may for good cause, require the Director or Deputy Director to withdraw from such meeting.

(4) Section eleven shall apply, with the necessary modifications, to the Director and the Deputy Director.

13. (1) There shall be a Secretary to the Agency who shall be appointed by the Agency on such terms and conditions as the Agency may determine. Secretary and other staff

(2) The Secretary shall be responsible for the administration of the day-to-day affairs of the Agency under the general supervision of the Agency.

(3) The Agency may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions.

14. (1) An employee of the Agency, or a consultant to the Agency who is, or whose spouse is, directly or indirectly interested in a private or professional capacity, in any matter relating to the privatisation programme shall be required to disclose such interests. Disclosure of interest by employees

(2) A disclosure of interest made under this section shall be made to the Director who shall take such decision as he considers appropriate in each case.

15. (1) The employees of the Agency, consultants, members of the Agency and members of a committee of the Agency shall take an oath of secrecy as prescribed under this Act. Oath of secrecy

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding twenty thousand penalty units or to a term of imprisonment for a period not exceeding two years, or to both.

(As amended by Act No. 9 of 1996)

16. (1) No person shall, without the consent in writing given by, or on behalf of, the Agency, publish or disclose to any person, otherwise than in the course of his duties, the contents of any documents, communication or information, which relates to, and which has come to his knowledge in the course of his duties under this Act. Prohibition of publication or disclosure of information by unauthorised persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding four thousand penalty units or to a term of imprisonment not exceeding five years, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any person he shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding four thousand penalty units or to a term of imprisonment not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

PART III

PROCEDURE FOR PRIVATISATION AND COMMERCIALISATION

17. A State owned enterprise shall be privatised in accordance with the divestiture sequence plan. Privatisation of State owned enterprises

18. The Minister responsible for finance may, on the advice of the National Assembly, retain a share in a State owned enterprise and convert such share into a golden share. Golden share

19. The shares of a State owned enterprise shall be allotted by the Agency. Allotment of shares

20. The share holders in any State owned enterprise, when requested by the Agency, shall provide to the Agency such information as the Agency may require. Obligations of holding companies and share holders

21. (1) A State owned enterprise scheduled for privatisation shall-Obligations of State owned enterprises

(a) carry out any recommendations, made by the Agency, for preparing the company for privatisation;

(b) keep up to date all business records and books of account;

(c) prepare a two to three years' investment and financing plan and a manpower development plan;

(d) prepare statutory accounts and cause them to be audited not later than four months after each financial year;

(e) maintain a fixed asset register which shall be reconciled with the financial statement;

(f) not perform any action or actions that would result in the assets of the company being dissipated;

(g) not undertake any new capital investment programmes, unless a project appraisal document approved by the Agency, is prepared showing that-

(i) routine plant, equipment and vehicle renewal is required;

(ii) rehabilitation expenditure is essential to keep the operations of the State owned enterprise running or to improve the marketability of the enterprise;

(iii) new capital investment has a pay back period of less than two years;

(iv) capital investment will contribute to the promotion of export-import substitution;

(v) the State owned enterprise is not earmarked for divestiture within two years of the investment being completed; or

(vi) the State owned enterprise demonstrates that the investment will not allow a deterioration of the company's operations;

(h) clear as far as possible all contractual, legal and other obligations;

(i) not give any person information which might give undue advantage to that

person or any potential investor;

(j) pay all costs incidental to the privatisation of an enterprise relating to-

(i) valuation fees;

(ii) legal costs;

(iii) advertising charges;

(iv) marketing expenses; and

(v) any other expenses;

(k) when requested by the Agency, disclose all or any information about the enterprise; and

(l) refrain from taking any action or actions which may cause industrial unrest.

(2) Any person or officer of a State owned enterprise who knowingly contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifty-five thousand, five hundred and fifty-six penalty units or to a term of imprisonment not exceeding five years, or to both.

(As amended by Act No. 13 of 1994 and Act No. 9 of 1996)

22. The Agency may employ the following modes of privatisation: Modes of privatisation

(a) public offering of shares;

(b) private sale of shares through negotiated or competitive bids;

(c) offer of additional shares in a State owned enterprise to reduce Government share holding;

(d) sale of the assets and business of the State owned enterprise;

(e) reorganisation of the State owned enterprise before the sale of the whole or any part of the State owned enterprise;

(f) management or employee buyouts by management or employees in that State owned enterprise;

(g) lease and management contracts; or

(h) any other method the Agency may consider appropriate.

(As amended by Act No. 9 of 1996)

23. (1) The valuation State owned enterprises shall be performed by independent valuers who shall issue a certificate of valuation. Valuation of state owned enterprise

(2) The valuation of a State owned enterprise shall be done in accordance with

the following:

- (a) the valuation shall be based on the current value of the State owned enterprise;
 - (b) where the enterprise is not operational or the assets do not form part of a core of the business, the valuation shall be based on the net asset value of the State owned enterprise; or
 - (c) any other prudent and acceptable valuation method.
- (3) The net asset value shall be based on the-
- (a) valuation certificate of the market value of the real property valued by a real estate valuer;
 - (b) valuation certificate of the depreciated replacement value of tangible assets other than real property; or
 - (c) a fair value of other assets and liabilities valued by a consultant.
- (4) The Agency shall ensure that each State owned enterprise is sold for its market value.

(As amended by Act No. 9 of 1996)

24. The shares in a State owned enterprise shall be sold to a citizen of Zambia or a person who is not a citizen of Zambia. Eligible buyer

25. No member or members of a committee or any employee or consultant of the Agency or the spouse, child, mother, father, brother, sister or a professional business partner as the case may be, of the employee or consultant shall purchase shares unless the sale is by public offer of shares. Sale of shares to an employee and consultant

26. Political leaders and public officers shall publicly disclose their intention to bid for the purchase of shares in a State owned enterprise. Political leaders

27. A potential investor shall disclose his bid in a State owned enterprise, his direct personal interest and his indirect interest, either through share holdings or through a nominee or otherwise, in a State owned enterprise. Declaration by potential investor

28. An established fund may, with a consent of the contributors, purchase shares in a State owned enterprise on behalf of the contributors. Established fund

29. (1) The Minister responsible for finance shall establish a Privatisation Trust Fund in which the Government shall hold shares in trust for citizens of Zambia for divestiture. Purchase of shares by citizens of Zambia

(2) The following shall apply to citizens of Zambia-

- (a) shares may be offered at a discount to persons who purchase a small number of shares;

(b) a share bonus shall be given at the end of a prescribed period to small shareholders who hold onto shares;

(c) individuals, management and employees of the State owned enterprise may pay for shares in instalments; or

(d) individuals may participate in the acquisition of shares which have been transferred in a State owned enterprise to a Privatisation Trust Fund which shall be established under this Act.

(As amended by Act No. 9 of 1996)

30. Foreign investors shall be entitled to incentives under the Investment Act if such investor acquires shares in a State owned enterprise where-

(a) expertise is needed to upgrade efficiency of that State owned enterprise;

(b) participation is necessary to promote the export market;

(c) the nature of business requires global linkages and international exposure; or

(d) capital investment or foreign technology is required to expand the capacity of the business operations. Foreign investors

Cap. 385

31. Subject to provisions of section twenty-nine or any other written law, the shares of a State owned enterprise shall not be sold on credit. Mode of payment of shares

32. (1) The Agency shall appoint an independent negotiating team for each sale. Negotiations for offer of sale

(2) A person appointed on the negotiating team shall-

(a) have proper professional qualifications, experience and good business standing;

(b) take an oath of secrecy; and

(c) disclose any personal or professional interest before accepting the appointment.

33. The Agency may convert a State owned enterprise scheduled for privatisation, which is not a public company, into a public company in accordance with the provisions of the Companies Act. Conversion of private companies to public companies

Cap. 388

34. Notwithstanding any provision in any other written law and for purposes of this Act, a bank or financial institution may carry on the business of a stock broker or a dealer in stocks and shares. Trading in shares

35. The Agency may liquidate a State owned enterprise in accordance with the provisions of the Companies Act. Liquidation

Cap. 388

35A. The Agency may appoint a receiver to manage a State owned enterprise in financial difficulties or whose assets are being dissipated so as to enable the Agency to restructure or wind up the company in the interests of the greater community of creditors:Appointment of receiver

Provided that nothing in this section shall interfere with the rights under any written law of a debenture or mortgage holder.

(As amended by Act No. 9 of 1996)

36. (1) The Minister responsible for finance shall sign the final Sales Agreement to transfer shares to the selected bidder.Consummation of sale

(2) The transfer of shares shall be in accordance with the provisions of the Companies Act.Cap. 388

37. (1) The Minister, in consultation with the Ministry responsible for the department to be commercialised, may specify, by notice in the Gazette, any Government department for purposes of commercialisation under this Act.Commercialisation of specified Government departments

(2) A specified Government department may be incorporated under the Companies Act.Cap. 388

(3) A Government department specified under this section may-

(a) fix its own rates, prices and charges for goods and services provided;

(b) capitalise assets; and

(c) borrow debenture stocks.

(As amended by Act No. 9 of 1996)

38. (1) The Agency shall publish by notice in the Gazette-Publication of information

(a) the names of the approved State owned enterprises to be privatised;

(b) the registered consultants valuers, lawyers, public accountants and merchant banks dealing with the privatisation process;

(c) the bidders and bid prices;

(d) the successful bidders and the reason for selecting such bidders;

(e) the price of shares and any other special conditions of the sale of shares; and

(f) any other matters deemed appropriate.

(2) Any person having an interest in a State owned enterprise to be privatised, shall make a claim to the Agency within a period of thirty days after the notice referred to in subsection (1) is published.

(3) Any person having an interest in a State owned enterprise and who does not make a claim within thirty days of the notice referred to in subsection (1)

shall be deemed to have relinquished all interests in the State owned enterprise.

(As amended by Act No. 9 of 1996)

PART IV

FINANCIAL AND OTHER PROVISIONS

39. (1) Net proceeds from completed sales of shares and assets shall be paid into a Privatisation Revenue Account established by the Minister responsible for finance and held at the Bank of Zambia. Use of proceeds

(2) With the prior approval of the Minister responsible for finance the proceeds of sale referred to in subsection (1) may be used for-

- (a) funding the cost of privatisation and the Privatisation Trust Fund;
- (b) initial financing of mutual funds;
- (c) expanding existing productive capacities;
- (d) financing credit creation by the Government for Zambian investors;
- (e) rehabilitating existing plants;
- (f) supporting new capital investments;
- (g) funding the restructuring of State owned enterprises to be privatised;
- (h) supporting redundancy payment schemes in consultation with the Ministry responsible for labour;
- (i) supporting alternative income generating projects; or
- (j) funding of any social project that will be in the public interest.

(As amended by Act No. 9 of 1996)

40. (1) Subject to section thirty-nine the funds of the Agency shall consist of such moneys as may-Funds of Agency

- (a) be appropriated by Parliament, for the purposes of the Agency;
- (b) be paid to the Agency by way of grants or donations;
- (c) be retained by the Agency from the proceeds of sales as may be approved by the Minister responsible for finance; and
- (d) vest in or accrue to the Agency.

(2) The Agency may-

- (a) accept money by way of grants or donations from any source in Zambia;
- (b) raise money by way of loans from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia, such moneys as it may

require for the discharge of its functions; and

(c) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Agency.

(3) There shall be paid from the funds of the Agency-

(a) the salaries and allowances of the staff of the Agency;

(b) such loans to members of staff as may be approved by the Agency;

(c) such reasonable travelling, transport and other allowances for the members of the Agency or a committee of the Agency when engaged on the business of the Agency at such rates as the Agency may, with the approval of the Minister, determine; and

(d) any other expenses incurred by the Agency in the performance of its functions.

(4) The Agency may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

41. The financial year of the Agency shall be the period of twelve months ending 31st December, in each year. Financial year

42. (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts. Accounts

(2) The accounts of the Agency shall be audited annually by independent auditors appointed by the Agency.

(3) The auditors' fees shall be paid by the Agency.

43. (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Agency shall submit to the Minister a report concerning its activities during the financial year. Annual report

(2) the report referred to in subsection (1) shall include information on the financial affairs of the Agency and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Agency may consider appropriate.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next, after receipt of the report referred to in subsection (1), lay it before the National Assembly.

(4) The report shall be published for sale to the public.

44. (1) The Agency shall submit a report, at the end of June and at the end of December of each year, on its activities to the Minister giving details of bids received and reasons for preferring the successful bid. Progress report

(2) The Agency shall publish the report for sale to the public.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next, after receipt of the report referred to in subsection (1), lay it before the National Assembly.

45. Any property, real or personal procured or acquired for the purposes of the privatisation programme shall, after the commencement of this Act, vest in the Agency. Vesting of the property of Agency

46. (1) The procurement of goods and services of the Agency shall not be subject to the provisions of the Zambia National Tender Board Act: Procurement of goods and services under Cap. 394.

Provided that the procurement of goods and services above two million kwacha or ten thousand United States Dollars shall be approved by a committee of the Agency and the procurement of goods and services below two million kwacha or ten thousand United States Dollars shall be approved by a management tender committee of the Agency.

(2) The Agency shall, in procuring the goods and services, approve increases to the kwacha amount based on the percentage of the official rate of inflation.

47. Any dispute arising from the privatisation process shall be settled by arbitration in accordance with the Arbitration Act. Arbitration Cap. 40

48. (1) A person who knowingly falsifies any information or knowingly does not disclose any material facts or solicits for his own use or as agent of any other person any confidential information relating to the privatisation of a State owned enterprise shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years, or to both. Penalties for falsification of information

(2) A person found guilty under subsection (1) shall not thereafter participate in the purchase of shares in any State owned enterprise.

(As amended by Act No. 13 of 1994)

49. The Minister, on the advice of the Agency, may by Statutory Instrument prescribe the-

- (a) sale tender procedures;
- (b) public flotation procedures;
- (c) pre-qualification and registration of bidders procedures;
- (d) public announcement requirements;
- (e) tender evaluation procedures;
- (f) tender selection procedures;
- (g) negotiation guidelines;

- (h) final sale monitoring guidelines;
- (i) pre and post sale audit requirements;
- (j) any forms for the purpose of this Act;
- (k) any fees payable in respect of any service provided by the Agency; and
- (l) such other matters as are necessary or conducive to the better carrying out of the purposes of this Act.Regulations

50. All leases and agreements entered into in relation to enterprises to be privatised under this Act and in anticipation of the coming into force of this Act are hereby nullified.Prior leases and agreements

SUBSIDIARY LEGISLATION

PRIVATISATION (SALE OR DISPOSAL OF PROPERTY) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Application
3. Restriction of sale or disposal of property
4. Processing of applications
5. Returns on sale of property
6. Sale of disposal of real property
7. Restriction on lease of property
8. Lease information to be given to Agency

FIRST SCHEDULE-Form 1

SECOND SCHEDULE-Form 2

THIRD SCHEDULE-Form 3

SECTION 49-THE PRIVATISATION (SALE OR DISPOSAL OF PROPERTY) REGULATIONS.

Regulations by the Minister Statutory Instrument No.
41 of 1993

1. These Regulations may be cited as the Privatisation (Sale or Disposal of Property) Regulations.Title
2. These Regulations apply to state owned enterprises scheduled for privatisation under the Act.Application
3. (1) No state owned enterprise shall sell or otherwise dispose of property

of state owned enterprise without the prior approval, in writing, of the Agency. Restriction on sale or disposal of property

(2) The application for approval referred to in sub-regulation (1) shall be accompanied by-

(a) a board resolution of the applicant, authorising the sale or disposal of the property;

(b) a schedule containing a description of the property intended for sale or disposal;

(c) a statement indicating the manner in which the property will be sold or otherwise disposed of; and

(d) a statement showing that the property is-

(i) redundant, excess or obsolete; and

(ii) free, apart from these Regulations, from any prohibition or restriction on sale or disposal.

4. (1) The Agency shall process each application in the best interest of the state owned enterprise and on such terms and conditions as it thinks necessary or expedient. Processing of applications

(2) The decision of the Agency shall be communicated to the applicant not later than thirty days from date the application is received by the Agency.

(3) In granting an application for approval, the Agency shall in its absolute discretion satisfy itself that the sale or disposal of property is in the best interest of the applicant.

(4) The Agency may, in granting its approval, impose such terms and conditions as it may think fit and such conditions shall be binding on all persons.

5. As soon as a sale is completed, a state owned enterprise shall file with the Director information on the following-

(a) the date of completion;

(b) the amount realised;

(c) the date of removal of the property from the company register; and

(d) any other information the Agency may request. Returns on sale of property

6. Any sale or disposal of real property belonging to a state owned enterprise shall be conducted through a property management company, estate agent, auctioneer or such other class of persons the Agency may specify. Sale of disposal of real property

7. (1) No state owned enterprise shall lease property for a period exceeding one year without the prior approval, in writing, of the Agency. Restriction on lease of property

(2) An application for approval shall be accompanied by-

- (a) a schedule containing the description of the property intended for letting;
- (b) evidence that the intended lease is in the best interest of the state owned enterprise;
- (c) a resolution by the state owned enterprise authorising the leasing of the property;
- (d) a statement giving reasons for the proposed leasing; and
- (e) a draft lease agreement.

(3) This Regulation shall not apply to a state owned enterprise whose main business is the letting of property.

(4) The Agency may, in granting an approval under this Regulation, impose such terms and conditions as it thinks fit and such conditions shall be binding on all persons.

8. A state owned enterprise that signs an agreement for sale, disposal or letting of property after the coming into force of the Act but before the commencement of these Regulations shall communicate to the Agency the following information-

- (a) the parties;
- (b) the consideration;
- (c) the duration of the lease;
- (d) the date of expiration of the lease;
- (e) the nature of the transaction;
- (f) the reasons for the transaction;
- (g) the description of the property;
- (h) the effective date of the lease or date of sale of the property; and
- (i) any other information the Agency may request.

Lease information to be given to Agency

PRIVATISATION (TRADE SALES AND MANAGEMENT OR EMPLOYEE BUYOUTS (SALE TENDER) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Application for pre-qualification

3. Application by incorporated companies
4. Application for partnerships
5. Applications by individuals
- 6 Confidentiality agreements
7. References
8. Processing applications
9. Entitlement on pre-qualification
10. Submission of bids
11. Contents of bid documents
12. Evaluation and selection of bids
13. Negotiations

FIRST SCHEDULE-Form 1

SECOND SCHEDULE-Form 2

THIRD SCHEDULE-Form 3

SECTIONS 22 AND 29-THE PRIVATISATION (TRADE SALES AND MANAGEMENT OR EMPLOYEE BUYOUTS) (SALE TENDER) REGULATIONS.Statutory Instrument No. 40 of 1993

Regulations by the Minister

1. These Regulations may be cited as the Privatisation (Trade Sales and Management or Employee Buyouts) (Sale Tender) Regulations.Title

2. (1) Any person may participate in tenders relating to the privatisation of any state-owned enterprise by submitting an application for pre-qualification.Application for pre-qualification

(2) The Agency shall determine and publish the deadline for the submission of applications.

3. (1) An application by an incorporated company shall be in the form prescribed in the First Schedule to these Regulations.Application by incorporated companies

(2) An application by an incorporated company shall be submitted with certified copies of-

(a) the Board of Directors' resolution authorising the application;

(b) a certificate of incorporation;

(c) the memorandum and articles of association;

- (d) the current annual returns;
- (e) the Company Form No. 23; and
- (f) an audited financial statement.

4. (1) An application by a partnership shall be in the form prescribed in the Second Schedule to these Regulations. Application by partnerships

(2) An application for a partnership shall be submitted with certified copies of-

(a) the articles of partnership or a certificate of registration under the Registration of Business Names Act; and Cap. 389

(b) the last audited financial statement.

5. An application by an individual shall be in the form prescribed in the Third Schedule to these Regulations. Applications by individuals

6. (1) An applicant for pre-qualification shall enter into a confidentiality agreement with the Agency. Confidentiality agreements

(2) The Agency shall set out the terms and conditions of the confidentiality agreement.

(3) The confidentiality agreement shall be executed on or before submitting the application for pre-qualification.

7. A person applying for pre-qualification shall submit to the Agency references from his bankers or financiers or any other referee of good standing. References

8. (1) The Director shall ensure that an application is in accordance with these Regulations and contains the required information before submitting the application to the Agency for consideration. Processing applications

(2) The Agency may make consultations relevant to an application.

(3) The decision of the Agency shall be final and binding on the parties and shall be communicated to the applicant within thirty days from the date on which it was received.

9. A person who successfully bids for pre-qualification shall-

(a) be registered as having pre-qualified for that state-owned enterprise;

(b) on payment of a non-refundable fee determined by the Agency, be entitled to receive a tender package relating to the state-owned enterprise to which he pre-qualified; and

(c) be entitled to bid for the state-owned enterprise to which he pre-qualified. Entitlement on pre-qualification

10. (1) A person who pre-qualifies shall be requested by the Agency to submit to the Agency his bid for that state-owned enterprise. Submission of bids

(2) The bid shall be submitted to the Agency in a sealed envelope within a period determined by the Agency.

11. The bid document shall contain information regarding-

- (a) the price;
 - (b) the currency of payment;
 - (c) the manner of payment;
 - (d) the enhancement of competition;
 - (e) the enhancement of efficiency;
 - (f) the applicant's capital investments;
 - (g) the dissipation of assets;
 - (h) export promotion and import substitution;
 - (i) dependency on foreign exchange for working capital;
 - (j) dividend remittability;
 - (l) public participation;
 - (m) share ownership plans;
 - (n) employee expansion or retention plans;
 - (o) pension rights and liabilities for employees;
 - (p) training policy for employees; and
 - (q) any other information which, in the opinion of the bidder, is relevant to the bid.
- Contents of bid documents

(2) The bid document shall contain the following information relating to the bidder:

- (a) technical and managerial ability to manage the enterprise which is the subject of the bid;
- (b) the financial standing;
- (c) the performance record and reputation;
- (d) nationality;
- (e) the names and nationalities of the shareholders, together with the number of shares held by each; and
- (f) any other information the Agency may request.

12. (1) The Director shall submit a bids document to the Agency for evaluation after being satisfied that the document contains the required

information.Evaluation and selection of bids

(2) Where the bid document does not contain the required information, the Director shall request the bidder, within such period as he may determine, to supply the required information unless there is insufficient time for the submission of further information.

(3) When evaluating and selecting the bids, the Agency may make such consultations as it thinks fit.

(4) The evaluation and selection of bids shall be at the discretion of the Agency and its decision in that regard shall be final and binding on the parties.

(5) The decision of the Agency shall be communicated to the bidder not later than ninety days after the bid is submitted.

13. (1) The selected bidder and an independent negotiating team appointed by the Agency under section thirty-two of the Act shall negotiate the terms and conditions of a share or asset transfer agreement relating to the state-owned enterprise.Negotiations

(2) On the successful completion of the negotiation for the terms and conditions of a share or asset transfer, the parties to the negotiations shall sign a transfer agreement.

FIRST SCHEDULE

(Regulation 3)

FORM 1

PRE-QUALIFICATION APPLICATION FORM FOR INCORPORATED COMPANIES

To: The Director Date
Zambia Privatisation Agency
P.O. Box 30819
Lusaka

We hereby apply for pre-qualification as bidders in the privatisation of
Limited

1. Name of Company
2. Nationality of Company
3. Postal Address
4. Registered Office
5. Telephone
6. Telex No.
7. Telefax No.
8. Date of Incorporation
9. Place of Incorporation
10. Share Capital

Authorised	Issued	Paid-Up	Share
Share Capital	Share Capital	Capital	Capital

9. Particulars of share holders

Name	Residential	Occupation	Nationality	Number
	Address			of Shares
				Held

10. Particulars of Directors

Name	Residential	Occupation	Nationality
	Address		

11. Summary of curriculum vitae of senior management

12. Nature of business of the Applicant:

13. Details of any pending legal disputes:

14. State reason for interest in the particular state-owned enterprise:

15. State any relationship with the state-owned enterprise (i.e. customer, supplier, creditor, etc.)

Dated the day of
.....
..... 19.....

Signed by:

Signature

Name

Occupation

Residential Address

Postal Address

for and on behalf of

In the presence of:

Signature

Name

Occupation

Residential Address

Postal Address

NOTE: Attach certified copies of board of directors resolution authorising the application together with certified copies of certificate of incorporation, memorandum and articles of association, current annual returns, companies Form 23 and audited financial statement.

11. Details of any pending disputes:

12. State reasons for interest in the particular state-owned enterprise:

13. State any relationship with the state-owned enterprise (i.e. customer, supplier, creditor, etc.)

Date the day
of
.....
.... 19.....

Signed by:

Signature

Name

Occupation

Residential Address

Postal Address

for and on behalf of

In the presence of:

Name

Occupation

Residential Address

Postal Address

NOTE: Please attach certified copies of the Articles of Partnership (if any), certificate of registration under the Business Names Act, Cap. 389 (where applicable) and audited financial statements.

THIRD SCHEDULE

(Regulation 5)

FORM 3

PRE-QUALIFICATION FORM FOR INDIVIDUALS

To: To Director, Date
Zambia Privatisation Agency
P.O. Box 30819
Lusaka

I hereby apply for pre-qualification as bidder in the privatisation of
Limited

1. Name
2. Nationality
3. Occupation
4. Residential Address
5. Postal Address
6. Details of any pending disputes

7. State reasons for interest in the particular state-owned enterprise:

8. State any relationship with the state-owned enterprise (i.e. customer, supplier, creditor, etc.)

Dated the day of

.....
..... 19.....

Signed by:

Signature

In the presence of:

Signature

Name

Occupation

Residential Address

Postal Address

PRIVATISATION (OATH OF SECRECY) ORDER

ARRANGEMENT OF REGULATIONS

Regulation

- 1. Title
- 2. Oath of member
- 3. Oath of member of committee, consultant or employee

FIRST SCHEDULE-Oath of secrecy

SECTION 49-THE PRIVATISATION (OATH OF SECRECY) ORDER.

Order by the Minister Statutory Instrument
119 of 1992

- 1. This Order may be cited as the Privatisation (Oath of Secrecy) Order. Title
- 2. The Oath of Secrecy for a member of the Agency shall be as set out in the First Schedule to this Order. Oath of member
- 3. The Oath of Secrecy for a member of a Committee, consultant or employee of the Agency shall be as set out in the Second Schedule to this Order.

Oath of member of committee, consultant or employee

FIRST SCHEDULE

(Paragraph 2)

OATH OF SECRECY

I,

 having been appointed as a member of the Zambia Privatisation Agency, do swear/ affirm that I will not directly or indirectly, disclose the contents, or part thereof, of any document, communication or information which may come to my knowledge in the course of my duties without the authority of the Chairman or Director of the agency.

SO HELP ME GOD

(Signature)

SWORN/Declared before me this day of
..... 19.....

Before me,

(President)

SECOND SCHEDULE

(Paragraph 3)

OATH OF SECRECY

I,

.....
..... having been appointed as a member of a
Committee/Consultant/Employee of the Agency, do swear/affirm that I will not
directly or indirectly, disclose the contents or part thereof, of any document,
communication or information which may come to my knowledge in the course of my
duties without the authority of the chairman or the Director.

SO HELP ME GOD

(Signature)

SWORN/Declared before me this day of
..... 19.....

Before me,

(Judge)

PRIVATISATION (POLITICAL LEADERS AND PUBLIC OFFICERS) (BIDDING) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Interpretation
3. Disclosure of intention to bid
4. Disclosure of interest in companies
5. Unsuccessful bidders' fees, charges and expenses

SECTION 49-THE PRIVATISATION (POLITICAL LEADERS AND PUBLIC OFFICERS) (BIDDING)
REGULATIONS.

Regulations by the Minister Statutory Instrument
6 of 1994

25 of 1995

1. These Regulations may be cited as the Privatisation (Political Leaders and Public Officers) (Bidding) Regulations. Title

2. (1) In these Regulations, unless the context otherwise requires-

"Agency" means the Zambia Privatisation Agency established under section three of the Act;

"Director" means the Director of the Privatisation Agency;

"political leader" means any of the following persons;

(a) the President, Vice President, Speaker of National Assembly, Minister, Leader of the Official Opposition in Parliament, Deputy Speaker, Deputy Minister and Member of Parliament; and

(b) members of the executive of all registered political parties;

"public officer" means any of the following persons; Interpretation

State House Chief of Staff, Secretary to the Cabinet, Special Assistants to the President, Deputy Secretary to the Cabinet and Permanent Secretaries.

(2) For the purposes of these Regulations, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service as a public officer.

(As amended by Act No. 25 of 1995)

3. (1) A political leader or public officer who is desirous of purchasing shares in any state-owned enterprise or any of its assets shall-Disclosure of intention to bid

(a) not less than twenty-one days before bidding, disclose his intention to bid at least once in the Gazette or a national daily newspaper of general circulation; and

(b) when submitting his bid, lodge with the Director a copy of the issue of the Gazette or newspaper in which his intention was disclosed.

(2) A bid that does not comply with the provisions of these regulations shall not be considered by the Agency and shall be void.

4. (1) A political leader or public officer who has shares in a limited liability company or partnership which is desirous of bidding for shares or assets of a particular state-owned enterprise shall advertise at least once in the Gazette or a national daily newspaper of general circulation the intention of his company or partnership to bid. Disclosure of interest in companies

(2) When a company or partnership referred to in sub-regulation (1) submits its bid, it shall also submit a copy of the Gazette or newspaper in which the disclosure referred to therein was made.

(3) A bid that does not comply with the provisions of these regulations shall not be considered by the Agency and shall be void.

6. The Agency shall not refund costs, fees, charges or expenses incurred by unsuccessful bidders.

Unsuccessful bidders' fees, charges and expenses

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICES ACT

CHAPTER 387 OF THE LAWS OF ZAMBIA

CHAPTER 387 THE BANKING AND FINANCIAL SERVICES ACT.CHAPTER 387

THE BANKING AND FINANCIAL SERVICES ACT.

ARRANGEMENT OF SECTIONS

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FIRST SCHEDULE

SECOND SCHEDULE

CHAPTER 387

BANKING AND FINANCIAL SERVICES ACT

An Act to provide for the regulation of the conduct of banking and financial services; to provide safeguards for investors in and customers of banks and financial institutions; and to provide for matters connected with or incidental to the foregoing.

[3rd June, 1994]Act No.

21 of 1994

13 of 1994

28 of 1995

CHAPTER I

PRELIMINARY

1. This Act may be cited as the Banking and Financial Services Act.Short title

2. (1) In this Act, unless the context otherwise requires-

"bank" means a company that holds a banking licence;

"banking licence" means a licence granted under section four;

"Bank of Zambia" means the Bank of Zambia established under the Bank of Zambia Act.

"banking business" means the business of receiving deposits from the public and the use of such deposits, either in whole or in part, for the account of and at the risk of the person carrying on the business, to make loans, advances or investments, and includes any custom, practice or activity prescribed by regulation as banking business;

"branch" means any place of business of a bank or financial institution that is open to the public, and includes a mobile office and a banking machine installation;

"company" means a body corporate incorporated under the Companies Act or the Cooperative Societies Act;

"Court" means the High Court;

"deposit" means subject to subsection (2), a payment of a sum of money-

(a) on terms that it is to be repaid, with or without interest or premium of any kind, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(b) that is not referable to the provision of property or services or the giving of security,

whether or not evidenced by any entry in a record of the person receiving the sum, or by any receipt, certificate, note or other document;

"de facto control" of a company by a person means direct or indirect influence of a kind that, if exercised, would result in the person's controlling the company in fact, and includes any such influence exercisable by virtue of any such influence over, or the de jure control of, another company or other companies;

"de jure control" of a company means beneficial ownership of more than fifty per centum of any class of the issued voting shares of the company;

"financial institution" means a person that holds a financial institution's licence;

"financial institution's licence" means a licence under section ten;

"financial service" means any one or more of the following services:

(a) commercial or consumer financing services;

(b) credit reference services;

(c) deposit brokering;

- (d) factoring, with or without recourse;
 - (e) financial leasing;
 - (f) financing of commercial transactions, including forfeiting;
 - (g) the issue and administration of credit cards, debit cards, travellers' cheques or bankers' drafts;
 - (h) the issue of guarantees, performance bonds or letters of credit;
 - (i) lending on the security of or dealing in mortgages or any interest in real property;
 - (j) merchant banking services;
 - (k) money transfer or transmission services or the payment of cheques or other demand payment orders drawn or issued by customers and payable from deposits held by the payer;
 - (l) purchase and sale of foreign exchange;
 - (m) secured or unsecured credit services, and includes any other activity or service designated by regulation as a financial service, but does not include-
 - (i) the underwriting, marketing or administration of contracts of insurance or reinsurance; or
 - (ii) any services that are excluded from the scope of this definition by a provision of this Act or the regulations under this Act;
- "financial service business" means the business of performing or offering to perform any financial service to the public, but does not include banking business;
- "licence" means a licence in force under this Act and "licensed" and "licensee" have corresponding meanings;
- "non-performing loan" means a loan in respect of which any payment of principal or interest is in arrears in excess of ninety days;
- "person" includes an individual, a company, a partnership, an association and any group of persons acting in concert, whether or not incorporated;
- "Register" means the Register of Banks and Financial Institutions established under this Act;
- "Registrar" means the person holding office or acting as the Registrar of Banks and Financial Institutions under this Act;
- "Registrar of Companies" means the person holding office or acting as Registrar under the Companies Act;
- "regulated financial service" means a financial service of a kind prescribed by regulation;

"regulated financial service business" means the business of performing or offering to perform any regulated financial services to the public;

"voting shares" means common shares in the capital of the share issuer and any other shares of any designation or description that carry the right to vote on any general resolution at a general or special meeting of the share issuer.

Interpretation

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Cap. 388

Cap. 397

Cap. 27

Cap. 388

(2) In this Act, except as otherwise provided by regulation, "deposit" does not include a sum paid-

(a) by a bank;

(b) by one company to another at a time when the companies are associated with each other or affiliated;

(c) to a person by another person who, at the time it is paid, is by virtue of this section an associated person;

(d) by a person who, at the time it is paid, is a director, controller, manager or shareholder of the person receiving it;

(e) which is not to be repaid and may not be demanded within five years following the date of its payment;

(f) as the purchase price of a security, having a face amount of one million kwacha or greater, the issue or trading in which is lawful under the Securities Act.

(g) between persons or in circumstances prescribed by regulation.

(3) For the purposes of this Act-

(a) where two or more persons, each of whom beneficially owns shares of the same company, are associated with each other, each of them shall be regarded as a single person who beneficially owns the aggregate number of shares of the company;

(b) two persons are associated if-

(i) one person is a company of which the other person is an officer or director;

(ii) one person is a company that is controlled de jure or de facto by the other person;

(iii) one person is a partnership of which the other person is a partner;

(iv) both persons are members of a voting trust or other arrangement relating to the shares of a share issuer; or

(v) one person is the spouse, parent, child, brother or sister of the other

person, or of the other person's parent, child, brother or sister,

(c) two or more persons are affiliated if all are companies that are controlled, de jure or de facto, by the same person; and

(d) a company is the subsidiary of another company if more than fifty per centum of the issued voting shares of the company (except any qualifying directors' shares) are owned directly or indirectly by the other company.

3. This Act applies to all banks and financial institutions, whether or not constituted by any Act:Application of this Act

Provided that the requirements of this Act are not binding on the Bank of Zambia, except in so far as this Act expressly imposes a duty on that Bank.

(c) the Development Bank of Zambia;

(d) the Export and Import Bank; or

(e) the Bank of Zambia, except in so far as this Act confers or imposes any powers or functions on that bank.

CHAPTER II

LICENSING OF BANKS AND FINANCIAL INSTITUTIONS

Part 1-Licensing of Banks

4. (1) Upon application by a company, the Registrar, in consultation with the Minister, may grant a licence authorising the company to conduct banking business.Licensing of companies as banks

(2) The application shall be in such form and accompanied by such fees as may be prescribed by regulation, and the form of application shall require at least the following particulars to be supplied:

(a) the memorandum and articles of association of the company;Cap. 388

(b) the address where its head office is located and the names and permanent residential addresses of its directors and the name and permanent residential address of its chief executive officer, chief financial officer or chief operating officer;

(c) the name and permanent residential address of every subscriber for any class or series of shares issued by the company in a number that will exceed one per centum of all the shares of that class or series, whether such shares carry the right to vote in all circumstances or not;

(d) the addresses of each branch proposed to be opened by the company and, in the case of a mobile office, the area proposed to be served:

(e) full particulars of the business it proposes to conduct under the authority of the licence;

(f) the amount of its capital; and

(g) such assurances and evidence of the foregoing as the Registrar may require to be given by the applicant.

(3) An appeal shall lie under Chapter VIII against a decision of the Registrar to refuse to grant the application.

5. (1) Within one hundred and twenty days after the Registrar's receipt of a completed application for a banking licence, the Registrar shall determine the application. Determination of applications

(2) If within that time no reply is received by the applicant from the Registrar, the application shall be deemed to have been granted.

6. The Registrar shall refuse to grant a banking licence if the memorandum and articles of association of the applicant do not contain such provisions as may be prescribed by regulation in order to ensure adequate participation by the shareholders in the affairs of the bank. Application for licence to be refused in certain cases

7. In deciding whether or not to grant a banking licence, and in deciding what conditions should be attached to such a licence, the Registrar shall have regard to-

(a) the capital adequacy of the applicant;

(b) the financial condition, resources and history of the applicant and the applicant's associates and affiliates;

(c) the character and experience of the directors and major shareholders and of persons proposing to be concerned in the management of the business to be undertaken under the authority of the licence;

(d) the convenience and needs of the community intended to be served by that business; and

(e) the prospects for profitable operation of that business. Investigation of applicants

8. (1) Except where the conditions attached to a particular licence otherwise provide, a banking licence shall be taken to authorise its holder to engage in any of the following activities in addition to banking business: Authorised activities of banks in addition to taking of deposits

(a) making loans and extending credit to any person on the security of property of any kind or unsecured;

(b) dealing as a principal or as an agent in-

(i) bills of exchange, promissory notes, cheques, travellers' cheques and like instruments;

(ii) the currency of Zambia and, subject to the regulations made under this Act, in the currency of any other country and foreign exchange transactions; and

(iii) gold, silver or platinum bullion or coins;

- (c) providing money transfer services and facilities;
- (d) the issue and administration of payment, credit or debit cards and, in co-operation with others, the operation of payment, credit card and debit card systems;
- (e) providing guarantees, letters of credit and other assurances of payment;
- (f) financial leasing;
- (g) factoring, with or without recourse;
- (h) acting as a trustee of any trust, executor or administrator of any estate or in any fiduciary capacity for any person;
- (i) acting as a financial agent for any person;
- (j) acting as a selling agent in connection with any equity or debt securities that are in the course of distribution by the Privatisation Agency established under the Privatisation Act, or as an advisor to that Agency with respect to any aspect of the privatisation of any parastatal organisation;Cap. 386
- (k) provide safekeeping and custodial services for financial assets and securities;
- (l) providing merchant banking advice and services; and
- (m) dealing as a principal or as an agent for its customers in financial futures and options and in exchange, currency and interest rate swap agreements.

(2) Any service or activity that a bank may provide or perform by virtue of this section it may provide or perform through a subsidiary.

(3) The Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe the meaning to be given to any expression used in this section and not otherwise defined for the purposes of this Act.

9. (1) Unless the conditions of the licence limit or restrict the bank to one or more specific sites or locations, a bank may conduct at any place or places in Zambia any business it is licensed to conduct.Branches of banks

(2) Within fourteen days after opening a new branch, a bank shall notify the Bank of Zambia in writing of the fact and of its location.

(3) At least sixty days before closing a branch, a bank shall notify the Bank of Zambia in writing of its intention to do so.

(4) No bank shall, whether of itself or by a subsidiary, open a branch or any office outside Zambia without the prior consent of the Bank of Zambia, which consent may be granted on such terms as the Bank of Zambia may determine.

Part 2-Licensing of Financial Institutions

10. (1) Upon application by any person, the Registrar, in consultation with the Minister, may grant a licence authorising the applicant to conduct any regulated financial service business.Grant of licence

(2) The application shall be in such form and accompanied by such fees as may be prescribed by regulation.

(3) An appeal shall lie under Chapter VIII against a decision of the Registrar to refuse to grant the application.

11. The Minister, on the recommendation of the Bank of Zambia, may by regulation make provision for or with respect to the application, with such modifications as may be prescribed, of the provisions of Part 1 of this Chapter to all or to any class or description of incorporated financial institutions in connection with any financial institution's licence or any application for such a licence. Application of provisions of Part 1 to financial institutions

12. (1) Unless the conditions of the licence limit or restrict the financial institution to one or more specific sites or locations, a financial institution may conduct at any place or places in Zambia any financial service that it is licensed to conduct. Branches of financial institutions

(2) Within fourteen days after opening a new branch, a financial institution shall notify the Bank of Zambia in writing of the fact and of its location.

(3) At least sixty days before closing a branch, a financial institution shall notify the Bank of Zambia in writing of its intention to do so.

Part 3-Operation of Licences

13. (1) A licence is subject to such conditions as the Bank of Zambia thinks fit to specify in the licence when it is granted and, where those conditions are varied under this section, is subject to the conditions attached to the licence for the time being. Conditions of licences

(2) Without limiting the generality of subsection (1) the conditions of a licence may:

(a) contain such restrictions as to the nature and scope of the business to be conducted by the licensee as the Bank of Zambia thinks fit to impose; and

(b) provide for the payment, on such terms and calculated in such manner as the conditions may specify, of annual or other periodic licence fees.

(3) Upon application made by a licensee, the Bank of Zambia may, by order in writing, vary the conditions for the time being attached to a licence.

(4) In deciding whether to grant the variation, the Bank of Zambia is to have regard to such of the provisions of section seven as it considers relevant and to the public interest.

(5) An appeal shall lie under Chapter VIII against a decision of the Bank of Zambia to impose a particular condition on grant of a licence or to refuse a variation of the conditions pursuant to an application under this section.

14. A licence remains in force until revoked by the Registrar under this Part. Duration of licences

15. There is no property in a licence, and a licence is not capable of being bought, sold, leased, mortgaged or in any manner transferred, demised or

encumbered:Licences not transferable

Provided that a licence may be transferred, in the event of an amalgamation of banks in accordance with this Act, on such terms and conditions as the Bank of Zambia may approve.

16. (1) The Registrar may, after consultation with the Minister, revoke a licence if it appears to the Registrar that-Revocation of licences

(a) the application for the licence was fraudulent or contained a materially false statement;

(b) the licensee has failed to comply with any condition or qualification of its licence or with any order of the Bank of Zambia under this Act;

(c) the licensee is seriously or persistently in breach of any provision of this Act or the regulations under this Act or any of the conditions of its licence; or

(d) the licensee fails to commence to conduct the business authorised by the licence within a period of twelve months following the grant of the licence or ceases or announces its intention to cease to conduct that business.

(2) An appeal shall lie under Chapter VIII against a decision of the Registrar to revoke a licence.

(3) When a licence is revoked, the licensee shall surrender to the Registrar each copy of the licence that is on display in every place of business of the licensee and the Registrar shall, as soon as practicable, publish notice of the revocation in the Government Gazette and in a newspaper of general circulation in Zambia, and may take any additional steps which, in his opinion, are necessary to inform the public of the revocation.

Part 4-Prohibition of Unlicensed Business Etc.

17. (1) A person other than a bank shall not conduct or offer to conduct banking business.Unlicensed business

(2) A person other than a bank or financial institution shall not conduct or offer to conduct any regulated financial service business.

(3) A bank or financial institution shall not conduct any banking business or regulated financial service business-

(a) that it is not authorised, by this Act or the terms and conditions of its licence, to conduct; or

(b) in contravention of the conditions of its licence.

(4) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

18. (1) A person holding funds obtained by conducting any banking business or

regulated financial service business in contravention of this Part shall repay such funds in accordance with the Bank of Zambia's directions. Repayment of funds

(2) A person who fails to repay funds as required under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) To the extent that any funds repayable under this section remain unpaid at the end of the time limited by the directions of the Bank of Zambia for their repayment, they are a debt due to the Bank of Zambia upon trust for any persons appearing to the Bank of Zambia to be lawfully entitled to them and are recoverable at the suit of the Bank of Zambia in any court of competent jurisdiction.

(4) Nothing in this section relieves any person from liability to criminal proceedings under the other provisions of this Act arising out of the person's contravention of any provision of this Act.

(As amended by Act No. 13 of 1994)

Part 5-Register of Licences

19. The Registrar shall create and maintain a register, to be known as the Register of Banks and Financial Institutions, in which shall be entered the particulars of all licensees and of the licences they hold. The Register

20. (1) The Minister, on the recommendation of the Bank of Zambia, shall appoint a Registrar of Banks and Financial Institutions to administer the Register and to exercise and perform such other functions as are conferred or imposed upon him by or under this or any other Act or by the Governor of the Bank of Zambia, and may designate an employee of the Bank of Zambia as the Deputy Registrar of Banks and Financial Institutions who shall be subject to the control and directions of the Registrar and be competent to exercise and perform any of the powers and functions of the Registrar. The Registrar

(2) The Registrar and Deputy Registrar shall each hold office for a term of five years unless removed for negligence of duty or misconduct, and shall be eligible for reappointment.

(3) The Registrar shall enter into the Register the name, the head office address and such other particulars as the Registrar considers appropriate concerning each person granted a licence, and shall remove from the Register the name and particulars of every person whose licence is revoked.

(4) Except as otherwise provided by this Act, the Registrar and Deputy Registrar, in the exercise and performance of their powers and functions, are subject to the control and direction of the Bank of Zambia.

21. (1) For the purpose of ascertaining the facts concerning the licensing, or unlicensed status, of any person, entries made in the Register shall be prima facie evidence as to those facts. Use of Register in evidence

(2) A document certified by the Registrar as a true copy or extract from the Register shall be admissible in any court as prima facie evidence of the contents of the Register.

22. The Register or a copy of the Register shall be available for inspection by the public at the head office of the Bank of Zambia during regular business hours upon payment of such fee as may be prescribed by regulation. Inspection of Register

CHAPTER III

ORGANISATION AND ADMINISTRATION

Part 1-Ownership and Control of Banks

23. (1) Shares issued by a bank shall be only of such classes or series as may be approved by the Bank of Zambia. Limitation on voting control

(2) A person shall not, without the prior approval in writing of the Bank of Zambia-

- (a) acquire any beneficial interest in the voting shares of a bank; or
- (b) enter into any voting trust or other agreement,

that would enable the person to control more than twenty-five per centum of the total votes that could be cast on any general resolution at a general or special meeting of the bank.

(3) No bank shall register any transfer of its voting shares to any person if, as a result of the transfer, the person would contravene subsection (2).

(4) Where a person (in this subsection referred to as the "shareholder") acquires an interest in or control over voting shares in contravention of subsection (2), a person shall not, in person or by proxy, exercise the voting rights of any voting share owned or controlled by the shareholder other than such shares as are registered in the name of the shareholder on the share register of the bank.

(5) Where, on the date this section comes into force, a person owns or controls or is deemed, by the operation of any provision of this Act, to own or control shares in contravention of subsection (2), the person may retain any such shares or control, but may not sell or otherwise dispose of the same except in such a manner that no transferee from or successor to the person will thereby contravene that subsection.

(6) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

24. (1) A person who has de jure control or de facto control of a bank shall not own any share in the capital of, or acquire or maintain de jure or de facto control of, any other bank. Ownership

(2) This section does not preclude any person from acquiring all the voting shares in the capital of a bank for the purpose of implementing an amalgamation of two or more banks in accordance with this Act.

(3) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

Part 2-Amalgamation And Restructuring Of Banks

25. In this part, "corporate restructuring transaction" means-

- (a) the amalgamation of a bank with another company; or
- (b) the transfer by a bank to any other company of the whole or more than the prescribed part of its assets or liabilities in Zambia otherwise than in the ordinary course of its business. Meaning of "corporate restructuring transaction"

26. (1) A bank shall not effect a corporate restructuring transaction with another company that is not a bank. Prohibition of corporate restructuring transactions

(2) A bank shall not effect a corporate restructuring transaction with another bank without the prior written consent of the Bank of Zambia.

(3) A bank that contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units.

(As amended by Act No. 13 of 1994)

27. (1) An application for any consent of the Bank of Zambia to a corporate restructuring transaction shall include-Consent to corporate restructure etc.

- (a) a statement of the nature of the transaction proposed to be entered into;
- (b) the text of all material documents intended to evidence or implement the transaction; and
- (c) such other information, in such form, as the Bank of Zambia may reasonably require for the purposes of an informed consent or as may be prescribed by regulation.

(2) Each bank involved in the proposed corporate restructuring transaction shall be named in the application and is an applicant for the purposes of this Part.

28. (1) In considering an application for consent to a corporate restructuring transaction, the Bank of Zambia shall have regard to-Investigation of applicants for consent

- (a) the adequacy of the capital of each applicant in relation to the transaction;
- (b) the general financial condition, resources and history of each such applicant;
- (c) the character and experience of the directors and persons concerned in

the management of each such applicant;

(d) the prospects of each such applicant for profitable operation if the transaction is permitted; and

(e) the probable effects of the transaction upon competition in the banking business or the financial services business likely to be affected by the transaction.

(2) If the Bank of Zambia decides to grant its consent, it shall specify a date on which the corporate restructuring transaction will take effect.

(3) An appeal shall lie under Chapter VIII against a decision of the Bank of Zambia to refuse to grant the application.

29. (1) In this section: Effect of amalgamation or transfer

(a) a bank formed by an amalgamation, or to which assets and liabilities are transferred, in accordance with a corporate restructuring transaction to which consent has been given by the Bank of Zambia is referred to as "the new bank";

(b) an amalgamating bank or a bank transferring assets in accordance with such a transaction is referred to as "the old bank";

(2) When the corporate restructuring transaction takes effect-

(a) all assets and liabilities of the old bank or, in the case of a transfer of assets and liabilities, those assets and liabilities agreed to be transferred, shall vest in and become binding upon the new bank or transferee;

(b) the new bank shall have the same rights and shall be subject to the same obligations as were, immediately before the transaction took effect, binding upon the old bank or, in the case of a transfer of assets and liabilities, the same rights and obligations as were applicable to the old bank with respect to the assets and liabilities transferred;

(c) all agreements, appointments, transactions and documents relating to the subject-matter of the transaction and made, entered into, drawn or executed by, with or in favour of the old bank, and in force immediately before the transaction took effect, shall remain of full force and effect and shall be deemed to have been made, entered into, drawn or executed by, with or in favour of the new bank; and

(d) any mortgage, bond, pledge, guarantee or other instrument relating to the subject-matter of the transaction and made or given to secure future advances facilities or services by the old bank, which was in force immediately before the transaction took effect, shall remain of full force and effect and shall be deemed to be a mortgage, bond, pledge, guarantee or instrument given to or in favour of the new bank or transferee, as security for future advances, facilities or services by that bank.

(3) The Registrar of Companies, the Registrar of Lands and Deeds and every officer in charge of an office in which is registered any title to property belonging to, or any mortgage, bond or other right in favour of, the old bank shall-

(a) upon being satisfied that the Bank of Zambia has under this Part

consented to the corporate restructuring transaction and that the transaction has been duly effected; and

(b) upon the production to him of any relevant deed, instrument, mortgage, charge, bond, certificate, letter of appointment, licence or other document,

make such endorsements in the register concerned and such alterations thereto as may be necessary to record the transfer thereof and of any rights or liabilities thereunder from the old bank to the new bank.

(4) No transfer fees, stamp duty, registration fees, licence fees or other charges shall be payable in respect of the transfer or any endorsement or alteration made under subsection (3).

(5) The provisions of this section shall not affect the rights of any creditor of the old bank or of the new bank, except to the extent provided by this section.

Part 3-Organisation and Administration of Incorporated Financial Institutions

30. The Minister, on the recommendation of the Bank of Zambia, may by regulation make provision for or with respect to the application, with such modifications as may be prescribed, of the provisions of the foregoing Parts of this Chapter to all or to any class or description of incorporated financial institutions.

Part 4-Directors and Managers of Banks and Incorporated Financial InstitutionsApplication of Parts 1 and 2 to incorporated financial institutions

31. (1) Notwithstanding anything in the Companies Act, a person shall not be a director or an officer of a company that proposes to obtain a licence and shall not be elected as a director or an officer concerned in the management of a bank or incorporated financial institution-Directors' qualifications
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(a) if the person is not a natural person of or above the age of twenty-one years;

(b) if the person is an undischarged bankrupt;

(c) if the person has been convicted of a felony or any offence involving dishonesty and has not been fully pardoned for such offence;

(d) if the person has been declared or otherwise adjudged in any official proceedings to be mentally incompetent to manage affairs; or

(e) if the person is under suspension or has been removed from office by order of the Bank of Zambia under this Act.

(2) Any person who is a director or an officer concerned in the management of a bank or incorporated financial institution shall forthwith cease to hold office upon-

(a) becoming bankrupt, suspending payments or compounding or proposing a compromise with that person's creditors generally;

(b) being charged with a felony or any offence involving dishonesty;

(c) being declared or otherwise adjudged in any official proceedings to be mentally incompetent to manage affairs; or

(d) being suspended or removed from office by order of the Bank of Zambia under this Act.

(3) A person who has been a director or an officer concerned in the management of a licensee whose licence has been revoked shall not, without the approval of the Bank of Zambia, act or continue to act as a director or be directly concerned in the management of any bank or incorporated financial institution.

(4) A person shall not be a director of more than one bank or incorporated financial institution.

(5) Any person acting in contravention of subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

32. (1) A majority of the members of the board of directors of a bank shall be persons who are not officers or employees of the bank. Directors from outside to be in the majority

(2) The Minister, on the recommendation of the Bank of Zambia, may by regulation provide for the application of subsection (1) to any other class or type of incorporated financial institution.

33. Every director or officer concerned in the management of a bank or incorporated financial institution, in exercising the powers and discharging the duties of that person's office, shall-

(a) act honestly and in good faith and in the best interests of the bank or institution as a whole; and

(b) exercise the care, diligence and skill that a prudent person would exercise in comparable circumstances. Duties of directors and officers

34. (1) Except in respect of an action by or on behalf of the bank or institution concerned or the Bank of Zambia to procure a judgment in its favour, a bank or incorporated financial institution may, subject to subsection (2) and to the constitution, and the terms of any resolution, of the bank or institution, indemnify-Indemnity of directors and others

(a) a director or officer of the bank or institution;

(b) a former director or officer thereof; or

(c) any person who acts or acted at the request of the bank or institution as a director or officer of a company of which the bank or institution is or was a shareholder or creditor,

against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person

is made a party by reason of being or having been a person referred to in any of paragraphs (a) to (c).

(2) An indemnity referred to in subsection (1) is void unless-

(a) the director, officer or person acted in good faith and in the best interests of the bank or financial institution concerned; and

(b) in the case of a criminal or administrative action or proceeding enforced by a monetary fine, the director, officer or person was substantially successful.

35. (1) A director or officer of a bank or incorporated financial institution who-Disclosure of interests

(a) is a party to, or has a material interest in, a contract or a proposed contract with the bank or institution; or

(b) is a director or officer of, or has a material interest in or a material relationship to, any person who is a party to a contract or a proposed contract with the bank or institution,

shall disclose in writing to the bank or institution the nature and extent of his interest or relationship

(2) Subject to subsection (3), the disclosure required by this section shall be made by the director or officer forthwith after the contract or proposed contract comes to the attention of the director or officer.

(3) A general notice in writing to the board of directors by a director or officer, disclosing from time to time, and at least once annually, the names and addresses of his associates together with reasonably full particulars of every material commercial, financial, agricultural, industrial or other business or family interest that he has at the time, and stating that he is to be regarded as having a material interest in any contract between the bank or institution and any person named in the disclosure, shall be a sufficient declaration of his interest in relation to any such contract.

(4) A director who has a material interest or a material relationship within the scope of this section shall leave any meeting at which the contract concerned is discussed, and shall refrain from voting on any matter related thereto which becomes the subject of action by the board of directors of the bank or institution, but such an interest, if so disclosed, shall not disqualify the interested person for the purposes of constituting a quorum.

(5) For the purposes of this section.

(a) an interest is material if it is material with reference to the wealth, business or family interests of the person having the interest and, without limiting the generality of the foregoing, a person has a material interest in-

(i) any company of which he owns, directly or indirectly, more than ten per centum of any class of the voting shares, or of which he is a director; and

(ii) any partnership in which the person is a partner; and

(b) persons have a material relationship with each other if, by virtue of

paragraph (b) of subsection (3) of section two, they are associates.

(6) Where a director or officer fails to disclose a material interest in accordance with this section-

(a) the Court may, on the application of the bank or institution concerned, any of its shareholders or the Bank of Zambia, set aside the contract on such terms as it thinks fit; and

(b) the Bank of Zambia may, by order under section thirty-seven, suspend the director or officer from office.

36. A director, officer, employee, agent, appraiser, accountant or legal adviser of a bank or incorporated financial institution who-

(a) with intent to deceive, makes any false or misleading statement or entry, or omits any statement or entry that should be made in any book, account report or statement of the bank or institution; or

(b) obstructs or endeavors to obstruct-False statements and obstruction of examinations

(i) the proper performance by an auditor of his duties in accordance with the provisions of this Act; or

(ii) a lawful examination of the bank or institution by a duly authorised examiner appointed by the Bank of Zambia,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

(As amended by Act No. 13 of 1994)

37. (1) The Minister may, on the recommendation of the Bank of Zambia, by order in writing served on him, suspend from office for any period not exceeding six months, any director or officer concerned in the management of a bank or incorporated financial institution who fails to take all reasonable steps to secure compliance by the bank or institution with the requirements of this Act. Suspension or dismissal of directors and managers

(2) At any time before the expiry of the period of six months referred to in subsection (1), the Bank of Zambia may apply to the Court for an order extending the suspension and the Court may, by order, suspend from office the director or officer concerned for such period as it thinks fit or, if the Court is satisfied that such an order is justified, remove the director from office permanently.

(3) A director or officer who exercises or performs any power or duty pertaining to his office during any period of suspension imposed, or after removal from office, under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

Part 5-Constitution of Banks and Incorporated Financial Institutions

38. Notwithstanding anything to the contrary in the Companies Act, the Registrar of Companies shall not approve nor accept any document, the effect of which is to add, vary or delete any provision of or change in any way the legal effect of the memorandum or articles of association of a bank or incorporated financial institution unless the same is submitted together with written evidence of the knowledge and approval of the Registrar. Variation of corporate constitutions

39. Where the Bank of Zambia notifies a bank or incorporated financial institution in writing that the Bank of Zambia considers that any specified provision in its memorandum, articles of association or other corporate documents is inappropriate for a company carrying on a business for which it is licensed or has applied to be licensed, the bank or institution shall, before the conclusion of its next annual or special meeting of shareholders, amend its corporate documents so as to remove the offending provision or amend it according to the directions of the Bank of Zambia. Amendment of constitution by Bank of Zambia

CHAPTER IV

OPERATIONS

Part 1-Anti-Competitive Conduct

40. (1) A bank shall not make any agreement or arrangement with another bank with respect to-Interest rates and charges

(a) the rate of interest on a deposit by any person;

(b) the rate of interest or charge on a loan to any person;

(c) the amount of any charge to any person for the provision of a financial service; or

(d) the provision of, or refusal to provide any financial service to, any person.

(2) Any bank acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units.

(3) Subsection (1) does not apply to an agreement or arrangement-

(a) for the performance of a financial service by one bank to another;

(b) evidencing a syndication or other agreement for the provision of credit and other banking services to a person by two or more banks;

(c) for the underwriting or distribution of any security by a bank or a group of persons including a bank; or

(d) for the exchange of statistics or audit information, the development and use of systems, forms, methods, procedures and standards, the use of common facilities, joint research and development or any matter in connection therewith.

(As amended by Act No. 13 of 1994)

41. Any bank or financial institution that requires any person to contract to receive any financial service as a condition of being permitted to contract with it or any other person to receive any other financial service, or any goods or other service shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994) Collateral contracts

42. The provisions of this Part are in addition to, and do not limit the operation of, any other law in force for the promotion of competition and free trade.

Part 2-Business Practices and Dealings With The Public Other laws not affected

43. (1) Every bank shall maintain a principal administrative office in Zambia and shall have a chief executive officer and a chief financial officer. Principal office and officers

(2) In the case of a bank, one person may not hold more than one such office.

(3) Every bank shall inform the Bank of Zambia in writing of the location of its principal administrative office and of the name of each officer appointed as required by this section, and of any change thereof, within twenty-one days following their appointment or any such change.

44. (1) Every bank and financial institution shall, in easily legible letters in the English language, display its name and a statement of its licensed status as a bank or financial institution, as the case may be-Display of names

(a) prominently at the entrance to every place where it carries on any part of its business;

(b) on every letter, advertisement or other communication published or issued by or on its behalf; and

(c) in every written contract that it enters into or offers to enter into and in every receipt that it issues.

45. (1) A bank or financial institution shall not, without the prior written consent of the Bank of Zambia, alter the name under which it is licensed, or in the course of or for any purpose connected with its business, use or refer to itself by-Use of licensed name

(a) a name other than the name under which it is licensed;
or

(b) an abbreviation of that name.

(2) Nothing in this section shall prevent a bank or financial institution, with the consent of the Bank of Zambia, from using or referring to itself in conjunction with its licensed name by the name of a business or undertaking with which it has been amalgamated or, in the case of a change of name authorised under this section, by the name by which it was previously known.

46. (1) The Minister, on the the recommendation of the Bank of Zambia, may by

regulation prescribe one or more days to be a bank holiday on which no bank or financial institution may be open for business with the public, whether or not such a day is also a public holiday:Holidays

Provided that branches at airports and border posts shall remain open throughout.

(2) A bank or financial institution shall remain open for business with the public during hours agreed to by the Bank of Zambia.

(3) A private obligation that-

(a) can be discharged only with a designated bank or financial institution; and

(b) falls due on a day on which that person's premises are not open for business,

shall be deemed to fall due on the first following business day.

47. (1) When a bank or financial institution opens a new account for a person, it shall, at the same time, provide the person in writing with-Disclosure of interest rate and charges

(a) a statement of all charges for maintaining the account and accessing the funds on account;

(b) a statement of the interest to be paid by the bank or institution; and

(c) a statement of how the bank or institution will advise the person of any new charges or changes in the charges or interest disclosed.

(2) A bank or financial institution that agrees to make a loan or credit available to a person shall, at the same time, disclose the cost of borrowing to the person in writing.

(3) The Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe the form, content, method of calculation and of disclosure, and the means and frequency of publishing, any information or change of information required by this section to be disclosed.

48. A bank or incorporated financial institution shall-

(a) establish, and make available in writing to its customers in the public portion of each branch, procedures for dealing with complaints made by customers concerning their relations with the bank or institution;

(b) designate an officer or employee to be the customer service officer and to be responsible for implementing and administering those procedures, including receiving, dealing with or otherwise disposing of all complaints received; and

(c) create and maintain for two years, or such longer period as may be prescribed by regulation, a record of every complaint received and how it was dealt with or disposed of.Customer complaints

49. (1) A bank or financial institution that publishes or permits the publication of any advertisement concerning any financial service offered by it

or by any other bank or financial institution, or quoting a fee, rate or charge for any such service, that is false or misleading in a material particular shall be guilty of an offence. Advertisement by licensee

(2) Notwithstanding subsection (1), no licensee may be fined or penalised in any way for a contravention of that subsection if, after receiving written notice from the Bank of Zambia directing it to do so, and in accordance with any directions contained in the notice, it republishes the offending advertisement or within two business days takes reasonable steps to withdraw the offending advertisement and to correct its false or misleading particular.

(3) For the purposes of this section, an "advertisement" includes a paid radio or television announcement, a poster, billboard or handbill, and a paid advertisement in a regularly published newspaper or magazine.

50. (1) A bank or financial institution and every director, officer and employee thereof shall maintain the confidentiality of all confidential information obtained in the course of service to the bank or institution and shall not divulge the same except-Confidentiality

(a) in accordance with the express consent of the customer, or the order of a court; or

(b) where the interest of the licensee itself requires disclosure.

(2) For the purposes of this section, confidential information about a person includes information that is not public, concerning-

(a) the nature, amount or purpose of any payment made by or to the person;

(b) the recipient of a payment by the person;

(c) the assets, liabilities, financial resources or financial condition of the person;

(d) the business or family relations of the person; or

(e) any matter of a personal nature that the person disclosed to the bank in confidence.

(3) Notwithstanding the provisions of any law to the contrary, in any case where evidence of commission of an offence is to be found in the books, accounts or records of a bank or financial institution, such evidence shall not be sought or obtained from the bank or institution otherwise than in accordance with the provisions of any other written law.

51. (1) Every bank or incorporated financial institution shall prepare and maintain at its head office records containing-Records of constitution and of compliance with this Act

(a) its articles and memorandum of association and all amendments thereto;

(b) a register of its shareholders, including the number of shares registered in the name of each shareholder;

(c) minutes of meetings and resolutions of the directors;

(d) minutes of meetings and resolutions of the shareholders;

(e) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position in such a way as to enable the Bank of Zambia conveniently to determine whether the bank has complied with all the provisions of this Act;

(f) records showing, for each customer of the bank or institution on a daily basis, particulars of its transactions with or for the account of the customer and the balance owing to or by the customer; and

(g) such other records as are required by the regulations under this Act or by order of the Bank of Zambia served on the bank or institution.

(2) At all reasonable times, the records described in this section-

(a) shall be open to inspection by the directors; and

(b) shall (except for records described in paragraphs (c), (f) and (g) of subsection (1)) be open to inspection by the shareholders and creditors of the bank and their personal representatives.

52. (1) Every bank or financial institution shall cause to be created and shall maintain in its principal office in Zambia proper credit documentation and any other information concerning its business relations with its customers and other persons that the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe. Credit documentation

(2) For the purposes of this section, "credit documentation" means, with respect to a contract entered into by a bank or financial institution with any other person for the provision of a financial service, or in respect of a financial service performed or to be performed by the bank or institution-

(a) reasonably current financial statements of the indebtedness of the borrower and any guarantor of the borrower to the bank or institution;

(b) a description of any collateral over which the bank or institution has any mortgage or charge as security for the due payment of the indebtedness to it;

(c) a statement of the terms of the credit, including the principal amount, rate of interest, schedule of repayments and the borrower's objective or purpose for borrowing; and

(d) the signature of each person who authorised the credit on behalf of the bank or institution.

53. A register or record required or authorised by this Act or the regulations under this Act to be prepared and maintained by a bank or financial institution-

(a) may be in bound or loose-leaf form or in photographic film form; or

(b) may be entered or recorded by any system of mechanical or electronic data processing or any other device or process that is capable of reproducing any required information in intelligible written form within a reasonable time; and

(c) if kept in any one form, may be converted to any other form authorised by this Act. Manner of keeping records

54. The Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe the length of time that a register or record required or authorised by this Act to be prepared and maintained shall be retained by the bank or financial institution that prepared it. Retention of records

55. (1) Every bank or financial institution, and every officer, employee and agent thereof, shall take reasonable precautions to—Maintenance of records

(a) prevent loss or destruction of;

(b) prevent falsification of entries in;

(c) facilitate detection and correction of inaccuracies in; and

(d) ensure that no unauthorised person obtains access to or the use of information in,

every register and record required or authorised by this Act to be prepared and maintained by the bank or institution.

(2) A bank or financial institution may destroy any register or record kept under this Part at any time after the register or other record has been converted to another form.

CHAPTER V

FINANCIAL ACCOUNTABILITY

Part 1—Financial Statements of Banks

56. (1) The directors of a bank shall place before the shareholders at every annual meeting—Annual financial statement

(a) a comparative annual financial statement (in this Act referred to as an "annual statement") showing separately—

(i) the financial year immediately preceding the meeting; and

(ii) the financial year, if any, immediately preceding the financial year referred to in subparagraph (i);

(b) a balance sheet as at the end of each such financial year;

(c) a statement of income and expenses for each such financial year;

(d) a statement of change of financial position for the last financial year; and

(e) a statement of changes in the shareholders' equity for the last financial year.

(2) The information and particulars referred to in subsection (1) shall contain what in the opinion of the directors is necessary to present fairly, in accordance with generally accepted accounting principles consistently applied,

the financial position of the bank as at the end of the financial year to which it relates and the results of the operations and changes in the financial position of the bank for that financial year.

(3) The directors shall also place before the shareholders at every such meeting-

(a) the report of the auditor of the bank; and

(b) any additional information concerning the financial position of the bank and the results of its operations that is required by regulation to be placed before the shareholders at the annual meeting.

57. A bank shall include with its annual statement-

(a) a list of subsidiaries, other than subsidiaries acquired upon a realisation of security, showing with respect to each subsidiary-Statement as to subsidiaries

(i) its name and the address of its head or principal office;

(ii) the book value in the aggregate of any shares of the subsidiary beneficially owned by the bank and any other subsidiaries of the bank; and

(iii) the percentage of the voting shares of the subsidiary that is beneficially owned by the bank and by other subsidiaries of the bank; and

(b) such other information as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe.

58. In preparing its annual statement, a bank shall comply with any regulations relating to the creation of appropriate reserves for bad and doubtful debts.Bad debts

59. The directors shall approve the annual statement and their approval shall be evidenced by the signatures of the chief executive officer and the chief financial officer of the bank.Approval of statement

60. (1) Every bank shall deliver to the Bank of Zambia such number of copies, in such form and within such time after the end of each calendar month, as may be prescribed by regulation, of-Monthly statements

(a) a statement showing, as at the close of the last business day of that month-

(i) its liabilities to the public; and

(ii) the amount of each of the liquid assets specified in the First Schedule to this Act which it holds, its aggregate holding of such assets and the proportion that the aggregate holding of such assets bears to its liabilities to the public;

(b) a statement showing its assets and liabilities as at the close of the last business day of that month;

(c) the amount of its regulatory capital (as defined by regulation) and reserve funds and the ratio that the amount of its liabilities to the public

bears to the amount of its regulatory capital (as so defined) and reserve funds;

(d) a statement showing those of its loans that are non-performing or that have been restructured or the terms of repayment of which have been extended; and

(e) such other statements concerning its operations, financial condition and resources as may be prescribed by regulation.

(2) The Bank of Zambia may require any bank to supplement with further details or evidence any information provided by the bank in accordance with subsection (1).

61. (1) A bank shall, not later than twenty-one days before the date of each annual meeting, send to each shareholder and to the Bank of Zambia, a copy of its annual statement. Publication of financial statement

(2) Where a bank fails to send a copy of the annual statement to the Bank of Zambia and to each shareholder in accordance with subsection (1), the annual meeting of the bank shall be adjourned until such time as that requirement has been complied with.

(3) The Bank of Zambia shall cause to be published in a newspaper of general circulation throughout Zambia a copy of each annual statement provided to it by each bank.

(4) The Bank of Zambia shall cause to be published in a newspaper of general circulation throughout Zambia four times each year, a copy of monthly statements provided to it by each bank.

(5) Every bank shall display in a conspicuous place in each branch, at all times when it is open for business-

(a) a copy of the monthly statement last published in accordance with this Part; and

(b) a copy of the annual statement last published in accordance with this Part.

Part 2-Audit of Accounts of Banks

62. (1) Every bank shall appoint annually, at the beginning of each financial year, an auditor approved by the Bank of Zambia who shall be a member in good standing of a professional association of auditors recognized by the Bank of Zambia. Appointment of auditor

(2) The auditor's duties shall be to audit the accounts and to make a report to the shareholders of each such bank upon the annual balance sheet, profit and loss account and other matters as required by this Act.

(3) An auditor may be re-appointed from time to time.

(4) If a bank fails to appoint an auditor satisfactory to the Bank of Zambia, the Bank of Zambia shall have power to appoint such an auditor.

(5) The remuneration of the auditor, whether appointed by the bank or by the Bank of Zambia, shall be paid by the bank and, in the case of an auditor

appointed by the Bank of Zambia, shall be fixed by the Bank of Zambia.

(6) The auditors of the subsidiary of any bank in Zambia shall be the same as the auditors of the bank unless the Registrar gives approval for different auditors.

(7) An auditor who does not meet the requirements of subsection (1) but who:

(a) was engaged by a bank on the enactment of this Act; and

(b) is an otherwise professionally qualified person satisfactory to the Bank of Zambia,

may continue his engagement until it terminates in accordance with its terms.

63. A person shall not be qualified for appointment or to act as auditor of a bank if he is-

(a) a director, officer or employee of that bank or of any person associated or affiliated with it,

(b) the spouse, parent, child or partner of a director, officer or employee of that bank;

(c) a body corporate;

(d) an officer or servant of a company that is controlled by the bank; or

(e) a person who by himself, or his partner or his employee, regularly performs the duties of secretary or bookkeeper to the bank. Disqualification of auditor

64. (1) Every auditor of a bank shall have the right of access at all times to all books, accounts and records of the bank, and shall be entitled to require from its directors, officers and agents such information and explanations as the auditor requires to perform the auditor's duties under this Act. Auditor's report

(2) In every report made for the purposes of this Act by an auditor, the auditor shall-

(a) express whether, in his opinion, the bank made available all necessary information to enable the auditors to comply with the requirements of this Act:

(b) state whether, in his opinion, the balance sheet and profit and loss account are fully, fairly and properly drawn up, whether they exhibit a true and fair statement of the bank's financial condition and, if the auditor has called for explanation or information from the directors, officers or agents of the bank, whether a satisfactory response was received; and

(c) report any transactions or conditions that have come to the attention of the auditor affecting the well-being of the bank that, in the opinion of the auditor, are not satisfactory and require rectification and, without limiting the generality of the foregoing, shall, as occasion requires, report on-

(i) any transaction of the bank that has come to the attention of the auditor and which, in the opinion of the auditor, has not been within the powers of the bank or which was contrary to this Act or any other law; and

(ii) any loan owing to the bank by any person that is a non-performing loan, or that has been restructured or the terms of repayment of which have been extended, if the principal amount of the loan exceeds five per centum of the regulatory capital (as defined by regulation) of the bank.

(3) A copy of the report of the auditor, together with copies of the balance sheet and profit and loss account referred to in subsection (1), shall be sent to the Bank of Zambia and a copy of the opinion of the auditor as expressed in the auditor's report shall be sent to each shareholder of each bank within such period as may be prescribed by regulation.

65. (1) If the auditor resigns from being the auditor of a bank the auditor shall prepare and deliver to the Bank of Zambia within ten days after the delivery of the auditor's resignation a written statement of the reasons therefor. Statement of auditor

(2) If a bank does not renew the appointment of its auditor the auditor shall prepare and deliver to the Bank of Zambia, within ten days after being informed of the non-renewal, a written statement setting forth, to the extent known to the auditor, the reasons for the non-renewal and the auditor's comments thereon.

66. No person shall have any claim against an auditor for or with respect to any oral or written statement or report made by the auditor in good faith in the performance of the auditor's functions under this Act. Immunity of auditor

67. (1) The directors of each bank shall establish an audit committee of at least three directors, a majority of whom are persons who are not officers or employees of the bank or of any company that is associated or affiliated with it. Audit committee

(2) The audit committee shall-

(a) review the annual financial statement of the bank before it is approved by the directors;

(b) review or cause to be reviewed such other informational returns as the bank shall have made in accordance with the requirements of this Act and the regulations under this Act;

(c) ensure that appropriate internal control procedures are in place;

(d) review such investments and transactions that could materially adversely affect the financial condition of the bank as the auditor or any officer may bring to the attention of the committee;

(e) meet with the auditor to discuss the annual statement, the returns, investments and transactions referred to in this subsection; and

(f) meet with the chief internal auditor or the officer or employee of the bank acting in a similar capacity, and with the management, to discuss the effectiveness of the internal control procedures as practised in the bank.

(3) To ensure the proper discharge of its responsibilities under subsection (2), the audit committee or any member thereof may initiate inquiries and, upon majority vote of the committee, retain at the expense of the bank any expert legal, accounting and auditing advisers that the committee may reasonably

require and the audit committee shall report in writing to the board of directors the findings of any such inquiry undertaken by it.

(4) The audit committee shall report to the directors before any approval required by this Act or the regulations under this Act is given by the board to any financial statement of the bank.

(5) The audit committee may call a meeting of the board to consider any matter of concern to the committee.

(6) The audit committee shall meet at least once per quarter and at such other times as the board of directors may by resolution require, or as any member of the committee may request.

(7) A resolution of the audit committee shall require the affirmative votes of two members in order to pass.

(8) A member of the committee who votes against a resolution that is carried by a majority vote shall provide a written statement to the board of directors explaining the reasons for that dissent.

Part 3-Audit of Accounts of Financial Institutions

68. The Minister, on the recommendation of the the Bank of Zambia, may by regulation make provision for or with respect to the application, with such modifications as may be prescribed, of the provisions of Part 2 of this Chapter to all or to any class or description of financial institutions. Application of Part 2 to financial institutions

CHAPTER VI

SUPERVISION AND PRUDENTIAL REGULATION

Part 1-Provisions Relating to Banks

69. (1) A bank shall maintain a reserve account and before declaring any dividend shall transfer to its reserve account, out of the net profits of each year after due provision has been made for taxation, the minimum amount prescribed by regulation. Reserves

(2) The Bank of Zambia may by regulation prescribe the amount required to be transferred to the reserve account, the method of computing that amount, the form of the reserve account and any other matter it considers necessary to give effect to this section.

(3) No bank shall declare, credit or pay any dividend or make any other transfer from surplus if to do so would result in an impairment of the capital adequacy requirements of this Act.

(4) No bank shall, without the approval of the Bank of Zambia, declare, credit or pay any dividend or make any transfer from surplus if to do so would result in the impairment of the reserve account requirements of this Act.

(5) The Bank of Zambia may permit a reduction of the reserve account when the relevant payment or transfer is made for the purpose of increasing the capital, and when the Bank of Zambia is satisfied that that is the only practicable means of preventing an impairment of the bank's capital or of enabling the bank to

make provisions that the Bank of Zambia considers to be necessary.

70. (1) Every bank shall at all times maintain liquid assets amounting to not less than such percentage of its total or such portion of its liabilities to the public in Zambia as the Bank of Zambia may by instrument in writing prescribe specifically for it or, in default of such prescription, as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe for banks of its class or description: Liquid assets

Provided that-

(a) the percentage in either manner prescribed shall not be greater than fifty per centum;

(b) the distribution of amounts between the various classes of liquid assets may be made at the discretion of each bank; and

(c) no bank may be required to maintain any higher percentage than any other bank of the same class or type.

(2) Any variation in a regulation made for the purposes of subsection (1) shall take effect-

(a) if it provides for a decrease, immediately; or

(b) if it provides for an increase, only after reasonable notice thereof has been given in writing to each bank affected by the variation, and only if the variation does not increase the liquid asset requirement of any bank by more than fifteen per centum.

(3) Notwithstanding subsection (1), no bank shall be required to augment its liquid assets during any month of the year by an amount in excess of ten per centum of the aggregate of its liabilities as at the close of the last business day of the preceding month.

(4) For the purpose of this section, "liquid assets" means assets that are transferable free of any charge or lien whatsoever and that are of the classes described in the First Schedule to this Act.

71. Where the liquid assets of a bank are less than the amount for the time being prescribed in respect of it, the Bank of Zambia may order the bank to pay to the Bank of Zambia, as a fine, interest on the amount of the deficiency, with respect to each day or part of a day that the deficiency continues, at an annual rate not exceeding the highest annual rate fixed, at the time of the offence, by the Bank of Zambia under the Bank of Zambia Act for any of its operations. Deficiency of liquid assets

Cap. 360

72. A bank shall not-

(a) mortgage, charge or grant security to any person over any asset of the bank otherwise than-Prohibition of unsecured borrowing

(i) in the ordinary course of business; or

(ii) to the Bank of Zambia to secure short-term liquidity advances made by it under the Bank of Zambia Act; or

(b) acquire an asset that is subject to a mortgage, charge or other security interest in favour of any person, except to satisfy a debt or other liability to it. Cap. 360

73. (1) A bank shall not, directly or indirectly, except- Limitations on granting advances

(a) as provided in the Second Schedule to this Act; or

(b) with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe,

grant any advance or credit, or make any guarantee of the debts of any person, so that the total value of any such grants, advances and guarantees with or in respect of any one person is at any time more than twenty-five per centum of the regulatory capital (as defined by regulation) of the bank.

(2) A bank shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe, grant any advance against the security of its own shares.

(3) A bank shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe, grant or permit to be outstanding any secured or unsecured advances to-

(a) its directors, whether such advances are obtained by them jointly or severally;

(b) any person who has de jure control or de facto control of the bank; or

(c) any person of which any one or more of its directors has de jure or de facto control or is a director, partner, manager, agent or member, in an aggregate amount in excess of one hundred per centum of its regulatory capital (as defined by regulation):

Provided that any person who contravenes the foregoing provisions of this subsection by permitting any security to be outstanding, being a security that, at the time it was granted, was lawfully granted, shall have two years (or such longer period as the Bank of Zambia may allow) within which to comply with this paragraph in respect of the outstanding security.

(4) A bank shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe, grant or permit to be outstanding to an officer or employee of the bank unsecured advances, which in aggregate exceed the annual remuneration of the officer or employee.

(5) A bank shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe, engage in any trade or business except the business or businesses for which it is licensed, except in so far as may be necessary for a temporary period (and in

any event for not longer than twelve months or such longer period as the Bank of Zambia may allow) necessary in the conduct of its business or to obtain the satisfaction of debts due to it.

(6) A bank shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe, acquire ownership of or any interest in any commercial, agricultural, industrial or other business undertaking, except such interest as it may acquire for the purpose of securing or satisfying a debt or other liability payable to it and which is disposed of within two years or subsequently continued with the prior consent of the Registrar.

(7) A bank shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe, purchase, lease or otherwise acquire interests in real property except-

(a) as may be reasonably necessary for the purpose of conducting its business, including provision for future expansion and providing housing accommodation for its officers and employees; or

(b) as may be reasonably necessary for the purpose of securing or satisfying a debt or other liability to it and which is disposed of within two years or subsequently continued with the prior consent of the Registrar.

(8) A bank shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe, lease or otherwise contract to make available to any person, in consideration of periodic payments of rent or other instalment payment terms, any tangible personal property owned by it:

Provided that this paragraph shall not prevent a bank from lending on the security of any tangible personal property and taking title thereto for such purpose, including the purpose of satisfying a debt or obligation to it, if the lease or other arrangement is disposed of within two years or subsequently continued with the prior consent of the Registrar.

(9) In the application of the limitations imposed by subsections (1) and (3), if the Bank of Zambia determines that a group of two or more persons to whom any grants, advances or guarantees have been or are to be made are so inter-related that they should be considered as a unit, the total indebtedness of that group shall, if the Bank of Zambia by notice served on the bank concerned so provides, be combined and shall be deemed to be the indebtedness of a single person:

Provided that a bank shall not be taken to have contravened subsection (1) or (3) by virtue of a determination under this subsection, if the bank disposes of the indebtedness of the group, to the extent that it exceeds the relevant limitation, within such reasonable time as the Bank of Zambia may determine.

74. (1) For the purposes of this section, each person referred to in subsection (3) of section seventy-three is designated a "related person". Constraints on contracts with related persons

(2) A bank may enter into a contract with a related person only if-

(a) the board of directors approves of the contract in advance and the contract is on terms no less favourable to the bank than the terms of similar contracts that are entered into by the bank with persons who are not related; or

(b) the contract is for a nominal sum or is of a class or type exempted by regulation from the operation of this section.

75. (1) A bank shall not acquire an equity interest in any person, property or project in an amount greater than fifteen per centum of the total of all equity interests in the person, property or project. Investments

(2) A bank shall not invest, in the aggregate, more than seventy per centum of its regulatory capital (as defined by regulation) in equity interests in any person, property or project.

(3) Subsections (1) and (2) do not apply to an investment or investments by a bank in the shares of a subsidiary, if the aggregate of all such investments by the bank does not exceed one hundred per centum of its regulatory capital (as defined by regulation).

(4) Subsection (1) does not apply to an acquisition by a bank of an equity interest in realisation of any part of the collateral provided to the bank in a credit transaction with any person, if the bank, within two years following its acquisition or such longer period as the Bank of Zambia may allow, disposes of any equity interest in excess of the limits imposed by this section.

(5) In this section-

"equity interest in a person" means-

(a) in the case of a company, any share issued by the company, whether or not a voting share, and any other security issued by the company, the terms of which entitle the registered holder or bearer to a share in the profits of the company; and

(b) in the case of a partnership, association or other group of persons acting in concert, any right to share in the profits of the person;

"equity interest in a property or project" means an ownership interest and includes any right to share in the profits of operation or proceeds of disposition of the property or project.

76. (1) For the purposes of this section, any funds held or owing by a bank shall be presumed abandoned upon the expiration of the period of time provided in paragraph (a), (b) or (c) if the person in whose name the funds were held does not respond to a notice in writing sent by the bank by prepaid registered post to the last-known address for the person in the records of the bank, and the funds consist of-Unclaimed funds

(a) any demand, savings or matured time deposit together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, in respect of which the owner has not, within the last ten years-

(i) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest or dividends;

(ii) corresponded in writing with the bank; or

(iii) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the bank;

(b) any funds paid toward the purchase of a share or other interest in a security issued by a bank and any interest or dividends thereon, excluding any charges that may lawfully be withheld, in respect of which the owner has not, within the last ten years-

(i) increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(ii) corresponded in writing with the bank; or

(iii) otherwise indicated an interest in the funds as evidenced by a memorandum in the records of the bank; or

(c) any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping facility on which the lease or rental period has expired due to non-payment of rental charges or by reason of some other default by the lessee, or any surplus amounts arising from the sale thereof in accordance with law, that have been unclaimed by the owner for more than ten years from the date on which the lease or rental period expired.

(2) A bank holding funds presumed abandoned under this section shall report to the Bank of Zambia on the amount and nature of such funds in such form and at such time as may be prescribed by regulation, and shall pay such funds to the Bank of Zambia upon expiration of the time provided by this section for the presumption of abandonment to arise.

(3) The bank shall retain its records concerning funds paid by it under subsection (2) for six years after making the payment and may thereafter destroy them.

(4) A person whose funds have been paid to the Bank of Zambia in accordance with this section may claim them from the Bank of Zambia only before the end of the sixth year following receipt of the funds by the Bank of Zambia.

(5) No action to recover, and no other action in respect of, any funds that have been presumed abandoned and paid in accordance with this section may be brought against the paying bank or against the Bank of Zambia after the sixth year following payment to the Bank of Zambia, but where the Bank of Zambia considers it desirable, to avoid hardship or injustice, the Bank of Zambia may make a payment to a claimant in respect of funds presumed abandoned.

77. (1) Where, in the opinion of the Bank of Zambia, a bank or any person on behalf of a bank is committing or pursuing or is about to commit or pursue on behalf of the bank any act or course of conduct that is considered by the Bank of Zambia as unsafe or unsound practice, the Bank of Zambia may enter into one or more written agreements with the bank or its board of directors to establish a programme of action to counteract the unsafe or unsound practice and to establish or maintain safe and sound practices in the conduct of the business of the bank. Unsafe and unsound practices

(2) Where the Bank of Zambia is unable to obtain an agreement under subsection (1) within a time, and in a form and content, satisfactory to the Bank of

Zambia, or where the Bank of Zambia considers that the need for prompt action makes the negotiation of such an agreement impractical, the Bank of Zambia may direct the bank or any director, manager or other person concerned in its management to do either or both of the following:

(a) cease or refrain from doing the act or pursuing the course of conduct;

(b) perform such acts as, in the opinion of the Bank of Zambia, are necessary to rectify the situation.

(3) In particular, but without limiting the generality of subsection (2), the Bank of Zambia may-

(a) direct the bank to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) impose any limitation on the bank's acceptance of deposits, the granting of credit, the making of investments or the payment of dividends;

(c) prohibit the bank from soliciting deposits either generally or from specified persons or classes or persons;

(d) prohibit the bank from entering into any other transaction or class of transactions, or from commencing or continuing any activity which it is permitted under this Act to carry on; or

(e) require the suspension or removal from office of any director, officer or other person.

(4) Directions given under this section shall be given by notice in writing to the bank or person concerned and may in like manner be varied or revoked.

(5) A direction given under this section shall be effective immediately and shall remain in effect in accordance with its terms unless discontinued on appeal.

(6) Any person acting in contravention of the provisions of an agreement made or direction given under this section shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(7) An appeal lies under Chapter VIII against a decision of the Bank of Zambia to give a direction under this section.

(As amended by Act No. 13 of 1994)

78. (1) The Bank of Zambia may cause an examination to be made of a bank to determine whether it is in a sound financial condition and operating safely and that the requirements of this Act, the Bank of Zambia Act and other laws of Zambia have been complied with in the conduct of its business. Examination of banks

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(2) When, in conducting an examination of a bank under this section, the Bank of Zambia considers it necessary to do so, the Bank of Zambia may at the same time cause a like examination to be made of any other company in Zambia that is a subsidiary, associate or affiliate of the bank concerned.

79. (1) A bank shall: Scope of examination

(a) produce, and cause each company that is a subsidiary affiliate or associate of the bank to produce, for the inspection of any examiner appointed by the Bank of Zambia, at such times as the examiner specifies, all books, accounts and records relating to its business in Zambia; and

(b) supply all information concerning its business in Zambia as may reasonably be required by the examiner within such time as the examiner specifies.

(2) Where the most recent report of the auditor of a bank contains information that the Bank of Zambia reasonably considers justifies an examination of the bank to be conducted, the auditor shall co-operate with officials of the Bank of Zambia or the examiner to investigate, and in that connection, the auditors shall, at the request of the Bank of Zambia, produce any books, accounts and records in the possession of the auditor that, in the auditor's or the Bank of Zambia's opinion, would be of assistance in the investigation.

(3) The Bank of Zambia may from time to time arrange meetings with the auditor, or with the auditor and officers of the bank, to discuss any matters relevant to the Bank of Zambia's supervisory responsibilities which may have arisen in the course of the statutory audit of the bank.

80. (1) The Bank of Zambia may publish in whole or in part at such time as it may determine any information or data furnished under this Act: Publication of information

Provided that no information or data shall be published which might disclose the particular affairs of a bank or of a customer of a bank unless the consent of every interested party has been obtained in writing prior to such publication.

(2) The Bank of Zambia shall not, unless lawfully required to do so, reveal to any person any information as to the affairs of any individual customer of a bank obtained in the exercise of its powers under this Act.

81. (1) Where- Disciplinary measures

(a) a bank refuses to comply with an order of the Bank of Zambia under this Act;

(b) a bank refuses to permit an examination to be made as provided by this Act or has otherwise obstructed such an examination; or

(c) in the opinion of the Bank of Zambia, an authorised examination shows-

(i) that the bank concerned conducts its business in an unlawful manner or engages in a course of conduct that is unsafe or unsound; or

(ii) that for any reason (other than insolvency) the bank is unable or is likely to become unable to continue its operations in the ordinary course,

the Bank of Zambia may take disciplinary measures against the bank.

(2) The disciplinary measures the Bank of Zambia may take include-

(a) appointing a person (in this section called a curator) who in its opinion has had proper training and experience, to advise the bank on the implementation of such measures as may be specified by the Bank of Zambia to rectify the matter (and whose remuneration, as fixed by the Bank of Zambia, shall be paid by the bank concerned); or

(b) suspend the bank's licence for a period not exceeding six months; or

(c) revoke or restrict the bank's licence.

(3) For the purposes of paragraph (c) of subsection (2), the Bank of Zambia may, by notice in writing served on a bank, vary the conditions of its licence so as to impose any restriction.

(4) When a curator is appointed under this section, the bank and every director, officer, agent and employee of the bank shall act in accordance with every instruction given by the curator concerning the bank or any part of its property, administration, operations or business that is regulated by or under this Act.

(5) If a bank fails to comply with an instruction of a curator appointed under this section, disciplinary measures may be taken against the bank under paragraph (b) or (c) of subsection (2).

(6) The curator shall comply with any written instruction of the Bank of Zambia, and in all other matters shall act honestly and in good faith in what the curator reasonably believes to be the best way to restore the bank to a sound financial and operating condition.

(7) Acts or omissions of the bank in accordance with a direction of the curator shall be binding upon the bank, but no person shall have any right or claim against the curator or the Bank of Zambia as a result of any direction given by the curator in good faith in accordance with this Act.

(8) The curator shall advise the Bank of Zambia within six months following the curator's appointment whether in his opinion the bank can be restored to a safe operating condition within a reasonable time, or should be wound up.

(9) The Bank of Zambia shall not be bound to accept the advice of a curator under subsection (8).

82. A bank shall-

(a) maintain a special reserve account, to an amount which the Bank of Zambia considers adequate, reserved exclusively for the purpose of making good any loss resulting from the negligency or dishonesty of any of its directors, officers or employees;

(b) insure itself against such loss, to an amount which the Bank of Zambia considers adequate, with a person approved by the Bank of Zambia carrying on insurance business or the business of guaranteeing against such loss; or

(c) undertake such other commitment as the Bank of Zambia may consider acceptable for the purpose of this section. Special reserve or liability insurance

83. (1) The Minister, on the recommendation of the Bank of Zambia, may by

regulation prescribe the minimum required capital for every class or description of bank. Capital adequacy

(2) A bank shall maintain capital in an amount at least equal to the minimum amount prescribed by regulation in accordance with subsection (1).

(3) The minimum required capital of a bank-

(a) shall be of such kinds, computed in such manner and of such amount as the Minister, having due regard to internationally accepted guidelines and the nature of the bank's business, may be regulation prescribe;

(b) may include such part of the bank's reserve account, undivided profits, retained income and other reserves as may be specified by regulation; and

(c) may be fixed with reference to such of the assets and contingent liabilities or other exposures of the bank, or to such portion, type or class thereof, as may be prescribed by regulation.

(4) The minimum required capital to be prescribed shall be not less than six per centum of the bank's assets, contingent liabilities and other exposures calculated as may be specified by regulation.

(5) A bank shall not issue any share in its capital or other security (other than a bonus share or share in lieu of dividend or other prescribed security) unless it receives the full face amount thereof in Zambian kwacha or the foreign currency equivalent in kwacha at the time of issue.

(6) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

Part 2-Application of Part 1 To Financial Institutions

84. The Minister, on the recommendation of the Bank of Zambia, may by regulation make provision for or with respect to the application, with such modifications as may be prescribed, of the provisions of Part 1 of this Chapter to all or to any class or description of financial institutions. Application of Part 1 to financial institutions

CHAPTER VII

INSOLVENCY AND LIQUIDATION OF BANKS

Part 1-Preliminary

85. In the event of a conflict between the provisions of this Chapter and those of any other law of Zambia, the provisions of this Chapter shall prevail to the extent of the inconsistency. Conflict of laws

86. For the purposes of this Chapter, a bank is insolvent when it ceases to be able to meet its obligations as they fall due or when its assets are insufficient to meet its liabilities. Meaning of "insolvent"

87. (1) A bank shall not, while insolvent:Acceptance of deposits by insolvent banks

(a) receive any deposit; or

(b) enter into any new, or continue to conduct any existing, banking or financial service business.

(2) A director, officer or employee of a bank who knows or, in the proper performance of his duties, could reasonably be expected to know of the insolvency of the bank and who causes or permits any act in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

Part 2-Voluntary Winding up and Liquidation

88. (1) A bank shall not, except with the approval of the Bank of Zambia, pass any resolution for voluntary winding up under the Companies Act.Approval of Bank of Zambia required for voluntary winding up

(2) The Bank of Zambia shall grant approvals to a voluntary winding up on such terms and conditions as it may determine and only if it appears to the Bank of Zambia that the bank is solvent and has sufficient liquid assets to repay its depositors and all its other creditors in full and without delay.Cap. 360

89. (1) When a bank has received approval from the Bank of Zambia for voluntary winding up, it shall-Duties of bank on voluntary liquidation

(a) immediately surrender its licence to the Registrar, cease to do business and thereafter exercise its powers only to the extent necessary to effect its orderly liquidation;

(b) repay in full its depositors and other creditors; and

(c) wind up all operations undertaken prior to the receipt of the approval.

(2) A director, officer or employee of a bank who knows or, in the proper performance of his duties, could reasonably be expected to know of the insolvency of the institution and who causes or permits any act in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

90. (1) Within fourteen days after receiving approval for its voluntary winding up, a bank shall by registered mail notify-Notice of voluntary winding up and liquidation

(a) every depositor and other creditor of the bank; and

(b) any person otherwise entitled to any funds or property held by the bank as a trustee, fiduciary, lessor of a safe-keeping facility or bailee, of its intention to wind up.

(2) A notice for the purposes of subsection (1) shall set forth such information as the Bank of Zambia may require by notice to the bank concerned.

(3) A copy of the bank's notice shall be kept displayed in a conspicuous place in the public part of each branch of the bank and the bank shall publish it in the Government Gazette and in a newspaper of general circulation throughout Zambia.

91. (1) The approval by the Bank of Zambia under this Part for the voluntary winding-up of a bank shall not prejudice the rights of a depositor or other creditor to payment in full of a claim nor the right of an owner of funds or other property held by the bank to the return thereof. Rights of depositors and creditors

(2) All lawful claims shall be paid promptly and all funds and other property held by the bank shall be returned to their rightful owners within such maximum period as the Bank of Zambia may in writing direct.

92. (1) When in the judgment of the Bank of Zambia a bank has discharged all the obligations referred to under section eighty-nine, the remainder of its property shall be distributed to its rightful owner or owners. Distribution of assets on voluntary liquidation

(2) Distribution under subsection (1) shall not be made before-

(a) all claims of depositors and other creditors have been paid in full or, in the case of a disputed claim, the bank has turned over to the Bank of Zambia funds sufficient, in the opinion of the Bank of Zambia, to meet any liability that may be judicially determined; and

(b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the Bank of Zambia to be dealt with as unclaimed funds in accordance with this Act.

93. If the Bank of Zambia finds that the assets of a bank whose voluntary winding-up or liquidation it has approved will not be sufficient for the full discharge of all its obligations or that completion of the winding-up or liquidation is unduly delayed, it may, if it considers it proper to do so, take possession of the bank or petition the Court for the continuance of the winding-up to become subject to the supervision of the Court.

Part 3-Seizure of Banks Powers of Bank of Zambia if assets insufficient or completion unduly delayed

94. (1) An officer of the Bank of Zambia, or any person acceptable to the Bank of Zambia and willing to act, may be a receiver for the purposes of this Part. Seizure of bank by Bank of Zambia

(2) The Bank of Zambia may by resolution appoint and direct a receiver to take possession of any bank that in the opinion of the Bank of Zambia, is insolvent.

95. When taking possession of a bank, the receiver shall post in each branch of the bank a notice announcing its action and specifying the date and time at which such possession shall take effect, and shall transmit a copy of the notice to the Court. Notice of seizure

96. Within a period of twenty-one days after the date on which the receiver has taken possession of a bank, the bank or any interested person acting on its behalf may institute proceedings in the Court to require the Bank of Zambia to show cause why the seizure should not be terminated. Appeal for termination of seizure

97. (1) A receiver that takes possession of a bank is vested with the full and exclusive powers of management and control of the bank including, without limiting the generality of the foregoing, the power-Powers and duties of receiver upon seizure

(a) to continue or discontinue any operations;

(b) to borrow money, whether on the security of the assets of the bank or otherwise;

(c) to stop or limit the payment of any obligation;

(d) to employ any necessary officer, employee or professional advisor:

(e) to execute any instrument in the name of the bank and to initiate or defend and conduct in its name any action or legal proceeding; and

(f) to terminate possession by restoring the bank to the control of its board of directors or owners, as the case may be.

(2) After taking possession of a bank the receiver shall promptly make an inventory of the assets and property of the bank and transmit a copy thereof to the Registrar of the Court who shall make a copy available for examination by the public at the office of the Registrar of the Court.

98. (1) When a receiver has taken possession of a bank-Effect of seizure

(a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the bank would expire or be extinguished, shall be extended by six months from the date of such expiration or extinction;

(b) any attachment or lien (except an attachment or lien existing six months prior to the seizure of the bank) shall be vacated, and no attachment or lien except an attachment or lien created by the Bank of Zambia in the application of section ninety-seven shall attach to any of the assets or property of the bank so long as such possession continues; and

(c) every payment or transfer of an asset or property of the bank made-

(i) within a period of one hundred and twenty days before the receiver takes possession of the bank; or

(ii) to an affiliate or associate of the bank within a period of two hundred and seventy days before the receiver takes possession of the bank,

with the intent to effect a preference of the recipient over other creditors of the bank is void and of no effect.

(2) Where a payment or transfer referred to in paragraph (c) of subsection (1) has the effect of preferring the recipient it shall be presumed to have been made with that intent, except in the case of-

(a) a payment made by a bank to a creditor in the ordinary course of business to discharge in whole or in part a debt or other liability of the bank to the recipient; or

(b) a transfer of an asset or property by the bank made in a current exchange for valuable consideration equal to the fair market value of the asset or property transferred.

99. No writ of execution or garnishee order shall be issued or made against the assets or property of a bank in possession of a receiver except, in the discretion of the Court, a writ of execution or garnishee order issued or made under a judgment given prior to the date of the seizure by the receiver for an amount not exceeding one million kwacha. Restriction of rights of creditor as to execution and garnishee

100. (1) When a receiver has taken possession of a bank the Bank of Zambia shall, within ninety days after the effective date of seizure specified under section ninety-five-Limitation on duration of seizure

(a) make an order for compulsory liquidation under section one hundred and one; or

(b) commence reorganisation under section one hundred and two; or

(c) terminate the seizure.

(2) Notwithstanding the provisions of subsection (1), the Bank of Zambia may, if it considers it proper to do so-

(a) propose a plan to reorganise the bank by arranging with persons and on terms acceptable to the Bank of Zambia to increase its capital, add new shareholders or reconstitute its board of directors or management; or

(b) if a bank that is acceptable to the Bank of Zambia is willing, on terms that are acceptable to the Bank of Zambia, authorise the amalgamation of the two banks in accordance with this Act.

101. (1) Compulsory liquidation of a bank may be ordered by resolution of the Bank of Zambia. Compulsory liquidation

(2) Upon making an order under subsection (1), the Bank of Zambia shall notify each director, shareholder, other owner, depositor and other creditor of the bank and every other interested party of such order by written notice to such of those persons for whom the Bank of Zambia discovers a name and address, and by published or other form of public notice.

(3) Each person notified shall have a period of thirty days to file an objection or appeal to the Court.

(4) The Court shall render its decision in any such application or appeal within a period of thirty days after the end of the period during which objections to the liquidation were admissible and in so doing may make any order it considers just in the circumstances.

102. (1) If the Bank of Zambia, acting under subsection (1) of section one hundred, decides to commence the reorganisation of a bank, the Bank of Zambia

shall, after granting a reasonable opportunity for a hearing of all interested parties, send a copy of the reorganisation plan to each depositor and other creditor who, under the plan, would not receive full payment. Reorganisation

(2) The copy of the reorganisation plan shall be accompanied by a notice stating that, if the reorganisation plan is not refused in writing within a period of thirty days by persons holding at least one-third of the aggregate amount of deposits and creditors comprising at least one-third in value of the aggregate of the claims of creditors (other than subordinated creditors), or if within the same period of thirty days the Court does not order a stay of proceedings, the Bank of Zambia will proceed to carry out the reorganisation plan.

103. When depositors and other creditors refuse a reorganisation plan prepared by the Bank of Zambia under this Part, or when in the course of reorganisation it appears to the Bank of Zambia that circumstances render the plan inequitable or its execution impossible or undesirable, the Bank of Zambia may-

(a) modify the plan; or

(b) order the compulsory liquidation of the bank in accordance with the provisions of this Part. Refusal of reorganisation plan

104. (1) In effecting compulsory liquidation of a bank under this Act, the Bank of Zambia may exercise any of the powers of the bank, whether express or implied, except that it shall obtain approval from the Court for any of the following actions: Powers and duties of Bank of Zambia in effecting compulsory liquidation

(a) the sale of any asset of the bank having a value in excess of five million kwacha or such higher amount as the Minister may by statutory instrument prescribe;

(b) the creation of a security interest in any asset of the bank in favour of a creditor who extends new credit to the institution in an amount exceeding five million kwacha, or such higher amount as the Minister may by statutory instrument prescribe;

(c) the compromise or release of any claim if the amount of the claim exceeds five hundred thousand kwacha, or such higher amount as the Minister may by statutory instrument prescribe;

(d) the payment of any claim other than a claim in respect of an obligation incurred by the Bank of Zambia in the exercise of its powers in liquidation before the liquidation schedule filed with the Court under this Part has been approved by the Court.

(2) Within a period of six months after the date of its order for the compulsory liquidation of a bank, the Bank of Zambia may terminate-

(a) the contracts of employment of any person with the bank;

(b) any contract for services to which the bank was a party; or

(c) any obligation of the bank as a lessee of real property:

Provided that a lessor, who shall have received ninety days' notice that the Bank of Zambia is exercising its discretionary powers to terminate the lease, shall have no claim for rent other than rent accrued on the date of termination of the lease, nor any claim for damages by reason of such termination.

(3) As soon as possible after the decision to liquidate a bank, the Bank of Zambia shall-

(a) take any necessary steps to terminate all fiduciary functions performed by the bank, return all assets and property held by the bank as a fiduciary to the owner thereof, and settle its fiduciary account; and

(b) send by registered mail, at the address shown in the bank's records, to all depositors, other creditors, safe-keeping services customers and bailors of property held by the bank, a statement (in this Part called "the customer's statement") of the nature and amount for which their claim is shown in the bank's records.

(4) The customer's statement shall note that any claim must be filed with the Bank of Zambia before a specified date not earlier than sixty days thereafter and shall call upon safe-keeping services customers and bailors to withdraw their property.

(5) Any property held in safe-keeping on the premises of the bank that has not been withdrawn before the date specified in the customer's statement shall be taken into possession by the Bank of Zambia in the manner prescribed by regulation.

(6) Any unclaimed funds and property held by the bank as a bailee, together with inventories pertaining thereto, shall be deemed to be unclaimed funds for the purposes of the provisions of this Act dealing with unclaimed funds and shall be dealt with accordingly.

(7) No action of the Bank of Zambia that is otherwise valid shall be invalidated by reason of a failure to obtain any approval of the Court under this section.

105. Within six months after the last day specified in the customer's statement for the filing of claims the Bank of Zambia shall-

(a) defer payment of any claim that is out of time and reject any claim that appears to be of doubtful validity;

(b) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his claim in accordance with this Part;

(c) prepare for filing with the Court a Schedule of the steps it proposes to take (in this Part called a "liquidation schedule"); and

(d) notify each person whose claim has not been allowed in full and publish once a week for three consecutive weeks, in a newspaper of general circulation in every place in Zambia where the bank had a branch, a notice of the date and place where the liquidation schedule will be available for inspection, and the date, not earlier than thirty days after the date of the third publication of the notice, on which the Bank of Zambia will file the schedule with the Court.

Limitation of filing of claims

106. (1) Within twenty days after the filing of the liquidation schedule, any depositor, other creditor or owner of a bank, and any other interested party, may file with the Court an objection to any step proposed. Objections to liquidation schedule

(2) Any objection so filed shall be considered by the Court, upon such notice to the Bank of Zambia and interested parties as the Court may by order direct to be given.

(3) If an objection is sustained, the Court shall direct that appropriate modification of the schedule be made.

(4) After filing the schedule the Bank of Zambia may, from time to time, make partial distribution to the holders of the claims which are undisputed or which have been allowed by the Court, on condition that a proper reserve is established for the payment of disputed claims.

(5) As soon as possible after all objections have been decided upon, the Bank of Zambia shall make final distribution.

107. (1) In any compulsory liquidation of a bank there shall be paid in priority to all other debts in the following order: Priority of creditors

(a) necessary and reasonable expenses incurred by the Bank of Zambia in the application of the provisions of this Part;

(b) taxes and rates due, whether payable to the Government or to a local authority;

(c) wages and salaries of officers and employees of the bank for the three-month period preceding the effective date of seizure, within the limit of an amount not exceeding one hundred thousand kwacha per person or such higher amount as may be prescribed by regulation;

(d) fees and assessments due to the Bank of Zambia;

(e) deposits up to an amount not exceeding five hundred thousand kwacha per depositor or such higher amount as may be prescribed by regulation;

(f) other deposits; or

(g) other claims against the bank in such order of priority as the Court may determine upon application by the Bank of Zambia.

(2) After payment of all claims filed, with interest thereon at a rate to be fixed by the Bank of Zambia, remaining claims which were not filed within the time allowed under this Part shall be paid.

(3) If the amount available for payment for any class of claims listed under subsection (1) is insufficient to provide payment in full, the said claims shall abate in equal proportions.

(As amended by Act No. 28 of 1995)

108. (1) Once all assets of a bank have been distributed under a compulsory liquidation, the Bank of Zambia shall render an account to the Court. Account to Court and revocation of licence in compulsory liquidation

(2) Upon approval of this account by the Court, the licence of the bank shall be revoked and the Bank of Zambia shall be relieved of any liability in connection with the liquidation.

109. Any unclaimed funds remaining after a final distribution provided for under this Part shall be taken into possession and held by the Bank of Zambia and subsequently dealt with in accordance with this Act. Unclaimed funds

110. Any assets remaining after all claims have been paid upon compulsory liquidation of a bank shall be distributed among the owners in accordance with their respective rights and interests. Final distribution in compulsory liquidation

CHAPTER VIII

APPEALS

111. (1) Where the Registrar or the Bank of Zambia makes any decision against which, as provided by this Act, an appeal lies under this Chapter, the Registrar or the Bank of Zambia as the case may require, shall, by notice in writing-Reasons for decisions and right to be heard

(a) inform the applicant or other person affected by the decision of the reasons for the decision; and

(b) invite the applicant or person to make such written representations as he wishes within a time limited by the notice.

(2) The decision of the Registrar or of the Bank of Zambia, as the case may be-

(a) does not take effect until the expiry of the time limited by a notice under paragraph (b) of subsection (1) for making representations; and

(b) where representations are made in that time, is further stayed pending expiry of the time limited by this Chapter for lodgment of an appeal to the Minister.

(3) The Registrar or the Bank of Zambia may, on receipt of any representations referred to in paragraph (b) of subsection (1), reaffirm, revoke or vary his or its decision and shall notify the applicant or other person accordingly.

112. (1) If, after receipt of any representations from the applicant or person affected by its decision, the Registrar or the Bank of Zambia reaffirms his or its decision, the applicant or other person (hereinafter called the "appellant") may, within seven days of receipt of the notice reaffirming the decision, notify the Minister that he desires to appeal against the decision. Right of appeal

(2) The decision of the Registrar or of the Bank of Zambia, as the case may be-

(a) does not take effect until the expiry of the period limited by subsection (1) for giving notice of an appeal; and

(b) where a notice of appeal is lodged within that time, is further stayed pending the outcome of the appeal.

113. Within seven days after receipt of a notice of appeal, the Minister

shall convene an Appeal Tribunal, consisting of a Chairman who is an advocate of the Court of not less than seven years' standing and two other persons having such qualifications as may be prescribed by regulation in relation to the kind of appeal concerned or, in default of such prescription, as the Minister may consider appropriate. Convening of Tribunal

114. (1) The Appeal Tribunal is to determine the appeal on its merits, having regard to the provisions of this Act and the public interest, and may confirm, vary or quash the decision the subject of the appeal. Powers of Tribunal

(2) The Tribunal may determine its own procedure and is not bound by the rules of evidence, and may inform itself of any matter in such manner as it sees fit.

(3) The Appeal Tribunal shall afford the appellant the right to appear by himself or by counsel or agent.

115. The decision of the Tribunal is final and binding on the parties to the appeal except as to any point of law, and in cases where the appeal is allowed, it is the duty of the Registrar or the Bank of Zambia, as the case may require, to give effect to the decision of the Tribunal. Decisions of Tribunal

CHAPTER IX

MISCELLANEOUS

116. (1) Whenever the Bank of Zambia has reason to believe that any person is carrying on banking business or regulated financial service business on any premises without a licence or in contravention of the conditions of a licence, or for the purpose of ascertaining whether the provisions of this Act or the regulations under this Act are being complied with, the Bank of Zambia shall have the right by its servants or agents to enter the premises to ascertain the facts of the matter and may for that purpose- Investigations

(a) require any person apparently having access to them to deliver to the Bank of Zambia the books, accounts and records of the person; and

(b) examine any such books, accounts and records and take copies of or make extracts from them.

(2) A person who refuses to make available for examination the person's books, accounts and records within five business days after having been duly requested to do so by the Bank of Zambia shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

117. (1) A person other than a bank shall not, without the consent of the Bank of Zambia, use the word "bank" or any of its derivatives in any language, or any other word or symbol indicating the transaction of banking business, in its name or in any prospectus, advertisement or statement of any kind published or made to describe its business in Zambia Use of the word "bank"

(2) A person shall not falsely represent to the public or any member of the public-

(a) that the person holds a licence to conduct any financial service

business; or

(b) that the person is licensed to conduct any financial service business of a particular kind.

(3) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

118. A licence shall not be granted to any person under a name that so closely resembles the name of an existing licensee as would be likely, in the opinion of the Registrar, to mislead the public, unless the person is associated or affiliated with the licensee or otherwise has the consent of the licensee. Misleading and unlicensed names

119. Notwithstanding anything in the Companies Act to the contrary, the Registrar of Companies shall, upon being notified by the Bank of Zambia that any company-

(a) incorporated under a name that includes the word "bank" or any of its derivatives in any language; or

(b) whose memorandum of articles prescribed, as its object or one of its objects, carrying on a banking business or a regulated financial service business, or a particular kind of banking or financial service business,

is in fact not licensed to carry on such a business and is not going to be granted a licence of the appropriate kind, the Registrar of Companies is hereby empowered to, and shall forthwith, take such steps as are necessary to dissolve and deregister the company. Certain incorporations prohibited

120. (1) A transaction entered into in contravention of this Act is not void or ineffective by reason only of the contravention, and is not voidable at the instance of the bank, except in a court's discretion. Validity of certain acts by banks

(2) Subject to its memorandum and articles, it shall not be necessary for a bank to pass a by-law in order to exercise any power conferred by this Act.

121. A bank does not comply with a provision of this Act requiring it to furnish or supply a document to the Bank of Zambia unless-

(a) in the case of a document prepared by that bank, the form of which has not been prescribed by regulation, the document is- Documents

(i) signed by the chief executive officer and the chief accounting officer of the bank; or

(ii) signed by such other person as is required by a provision of this Act to sign or certify the document; and

(b) in the case of a document prepared by that bank, the form of which has been prescribed by regulation, the document is signed by the person holding the office or offices required by the text of the prescribed form.

122. At the request of a bank or financial institution or other person, the Bank of Zambia may extend from time to time any period within which a bank or financial institution is, in accordance with the provisions of this Act, obliged to furnish any document or information. Extension of time limits

123. No act, matter or thing done by any officer or person employed by the Bank of Zambia or by any other person in the exercise or performance or purported exercise or performance, in good faith, of any power or function under this Act shall give rise to any action, claim, liability, suit or demand against the officer or person concerned. Immunity of Bank of Zambia officials, etc.

124. (1) The Minister, on the recommendation of the Bank of Zambia, may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed by regulation or that is necessary or convenient to be so prescribed for carrying out or giving effect to this Act. Regulations

(2) The regulations may provide for fines not exceeding fifty thousand penalty units, and for terms of imprisonment not exceeding two years, or both, for any contravention of the regulations.

(As amended by Act No. 13 of 1994)

125. The Bank of Zambia shall have power to prescribe and publish such guidelines, bulletins or other regulatory statements as the Bank of Zambia may consider necessary or desirable for the administration or execution of this Act. Guidelines

126. (1) The Bank of Zambia shall, within six months from the 1st day of January in each year, submit to the Minister a report on the operations of banks and financial institutions in Zambia during the twelve months ended on the preceding 31st December. Bank of Zambia's report

(2) The Minister shall lay a copy of the report before the National Assembly within fourteen days of its receipt by him or, if the National Assembly is not then in session, within fourteen days after the commencement of its next sitting.

127. (1) Subject to subsection (2), if a person issues or takes part in the issue of a document referred to in this Act which is false in any material particular, that person and every other person who signed it shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding two years, or to both. False documents

(2) A person shall not be guilty of an offence under this section if the person did not know and could not reasonably be expected to have known that the document was false when the person signed it, issued it or took part in its issue as the case may be.

(As amended by Act No. 13 of 1994)

128. A person who-

(a) contravenes a provision of this Act that is not expressly stated to be an offence but for which no other fine or sanction is provided; or

(b) fails to comply with any direction given to the person under this Act,

shall be guilty of an offence and is liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(As amended by Act No. 13 of 1994)General offence

129. If a body corporate is convicted of an offence against this Act or the regulations, every person-

(a) who is a director of the corporation; or

(b) who is concerned in the management of the corporation,

shall be deemed to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.Offences by bodies corporate

130. The Minister, on the recommendation of the Bank of Zambia, may by regulation, on such terms and conditions as the Minister considers appropriate, exempt any financial institution from all or any of the provisions of this Act and may provide for the variation or revocation, by regulation or by notice in writing to the affected person or persons, of any such exemption at any time.Exemptions

131. (1) The Banking Act is hereby repealed.Repeal of Cap. 700 and savings of the 1971 Edition

(2) Notwithstanding the repeal of the Banking Act-

(a) a commercial bank, within the meaning of that Act, that was, immediately before the commencement of this Act, registered as a bank under that Act shall be deemed to be the holder of a licence under section four of this Act that is subject to the same limitations and conditions as pertained to its registration;

(b) a financial institution, within the meaning of that Act, that was, immediately before the commencement of this Act registered as such under that Act shall be deemed to be the holder of a licence under section ten of this Act that is subject to the same limitations and conditions as pertained to its registration;

(c) any applications pending under that Act shall be deemed to have been made under the corresponding provisions of this Act, and shall be dealt with under this Act;

(d) any right or benefit accruing, or liability incurred, under that Act shall continue in accordance with and subject to this Act; and

(e) any regulation, order, notice or direction made or given and in force, immediately before the commencement of this Act, under that Act shall, unless contrary to this Act, continue in force until revoked, as if made or given under this Act.

(3) The Minister may by regulation make such savings and transitional provisions as he may consider just or expedient in consequence of the enactment of this Act and the repeal of the Banking Act.

FIRST SCHEDULE

(Section 70)

The following are the classes of assets that qualify as liquid assets for the purposes of this Act:

- (1) Notes and coins constituting the currency of Zambia and such foreign exchange in the form of currency notes as may from time to time be prescribed by regulation for the purposes of this clause.
- (2) Reserves in excess of those required under the Bank of Zambia Act, 1985 that are held by way of demand deposits in current account in the Bank of Zambia.
- (3) The net balance by which all credit balances held at branches in Zambia or at any branch in a country prescribed by regulation for the purposes of this clause exceed all debit balances so held.
- (4) Treasury bills and other securities issued by the Government and with an original term to maturity of not more than one hundred and eighty-two days.
- (5) Bills of exchange, promissory notes and other negotiable instruments eligible for re-discount by the Bank of Zambia, within such limits as may be prescribed by regulation for the purposes of this clause.

SECOND SCHEDULE

(Section 73)

The prohibition in section 73 (1) (a) of this Act does not apply to the following transactions:

- (1) A transaction-
 - (a) secured by a pledge of bills of exchange or promissory notes that have been issued for the price of goods purchased and sold in the ordinary course of trade; and
 - (b) having an original term to maturity no greater than one hundred and eighty-two days or such longer period as may be prescribed by regulation.
- (2) A transaction having an original term to maturity not greater than two hundred and seventy days and which is-
 - (a) secured by readily marketable assets, covered to their full insurable value by all perils insurance and having an ascertainable market or other value, as security, as found in good faith by an officer of the bank concerned, of at least fifty per centum more than the amount of the obligations thereby secured;
 - (b) secured in some other manner satisfactory to the Bank of Zambia; or
 - (c) a loan made to or guaranteed by the Government, a board or agency of the Government or a local authority that is enforceable by the bank within sixty days after demand following default.

SUBSIDIARY LEGISLATION

BANKING (DESIGNATION OF URBAN AND RURAL
AREAS) ORDER

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Designation of rural and urban areas

THE BANKING AND FINANCIAL INSTITUTIONS (DESIGNATION OF URBAN AND RURAL AREAS)
ORDER. Statutory Instrument
92 of 1989

1. This Order may be cited as the Banking and Financial Services (Designation of Rural and Urban Areas) Order. Title
2. (1) The areas specified in the First Schedule to this Order are hereby designated as urban areas. Designation of rural and urban areas

(2) The area specified in the Second Schedule to this Order are hereby designated as rural areas.

FIRST SCHEDULE

(Paragraph 2 (1))

URBAN AREAS

Central Province

Kabwe

Mumbwa

Serenje

Kapri Mposhi

Mkushi

Copperbelt Province

Ndola

Kitwe

Chingola

Mufulira

Chililabombwe

Luanshya

Kalulushi

Eastern Province

Chipata

Petauke

Luapula Province

Mansa

Lusaka Province

Lusaka

Kafue

Northern Province

Kasama

Mpika

Isoka

Mbala

North-Western Province

Solwezi

Zambezi

Southern Province

Choma

Livingstone

Mazabuka

Monze

Kalomo

Siavonga

Maamba

Western Province

Mongu

SECOND SCHEDULE

(Paragraph 2(2))

RURAL AREAS

Those areas not specified in the First Schedule.

BANKING REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Interpretation
3. Application for registration as commercial bank or financial institution
4. Registered commercial bank to submit monthly statements to Registrar
5. Registered financial institution to submit monthly and quarterly statements to Registrar
6. Rate of conversion of non-Zambian money to Zambian currency to be stated

Continued in force by virtue of Section 15 of the Interpretation and General Provision Act.*THE BANKING REGULATIONS

Regulations by the Minister

* Continued in force by virtue of Section 15 of the Interpretation and General Provision Act.Statutory Instrument
226 of 1973

1. These Regulations may be cited as the Banking Regulations.Title
2. In these Regulations, unless the context otherwise requires-Interpretation
"form" means the appropriate form prescribed in the Schedule.
3. An application for registration as a commercial bank or a financial institution made in terms of paragraphs (a) and (b) of subsection (1) of section four, or of section five of the Act shall be in revised Form ZBK No. 1 and shall be accompanied by the following documents:
 - (a) a true copy, certified by the chairman and a director of the applicant, of the memorandum and articles of association, or other document relating to the incorporation or registration of the applicant as a body corporate, and regulating the conduct of the business of the applicant; and
 - (b) a true copy, certified by the Registrar of Companies, of the certificate of incorporation of the applicant, issued in terms of the law relating to companies; and
 - (c) a statement certified by the chairman, a director and the auditors of the

applicant showing the authorised and paid-up capital of the applicant at a date not earlier than thirty days before the date of the application. Application for registration as commercial bank or financial institution

4. (1) The monthly statement which a registered commercial bank is required to prepare and submit to the Registrar in terms of-Registered commercial bank to submit monthly statements to Registrar

(a) paragraph (a) of subsection (1) of section sixty of the Act shall be in revised Form ZBK No. 2;

(b) paragraph (b) of subsection (1) of section sixty of the Act shall be in revised Form ZBK No. 3.

(2) For the purposes of paragraph (c) of subsection (1) of section sixty of the Act, a registered commercial bank shall prepare and submit to the Registrar within twenty-eight days after the last day of every calendar month a supplementary statement of the assets and liabilities of its offices and branches in Zambia at the close of the last business day of that month.

(3) The supplementary statement referred to in sub-regulation (2) shall be in revised Form ZBK No. 3.

* Continued in force by virtue of Section 15 of the Interpretation and General Provisions Act.

5. (1) The monthly statement which a registered financial institution is required to prepare and submit to the Registrar in terms of paragraph (a) of subsection (1) of section sixty of the Act shall be in revised Form ZBK No.

4.(2) The quarterly statement which a registered financial institution is required to prepare and submit to the Registrar in terms of paragraph (b) of subsection (1) of section sixty of the Act shall be in revised Form ZBK No.

5.Registered financial institution to submit monthly and quarterly statements to Registrar

(3) For the purposes of paragraph (c) of subsection (1) of section twenty-nine of the Act, a registered financial institution shall prepare and submit to the Registrar within thirty-five days after the last day of each quarter ending on the 31st March, the 30th June, the 30th September and the 31st December a supplementary statement of the assets and liabilities of its offices and branches in Zambia at the close of the last business day of that quarter.

(4) The supplementary statement referred to in sub-regulation (3) shall be in revised Form ZBK No. 5.

6. If in a document furnished to the Registrar in terms of these Regulations a sum of money is not stated in the currency of Zambia, the appropriate rate of conversion of the sum of money to Zambian currency shall be stated in the document or in an annexure thereto.

Rate of conversion of non-Zambian money to Zambian currency to be stated

SCHEDULE

(Regulation 2)

PRESCRIBED FORMS

Form ZBK No. 1 (Revised): Application for registration as a commercial bank or financial institution.

Form ZBK No. 2 (Revised): Monthly Statement of-

(a) Liabilities to the Public; and

(b) Liquid Assets;

of a Commercial Bank in Zambia.

Form ZBK No. 3 (Revised): Monthly Statement of Assets and Liabilities and Supplementary Statement of a Commercial Bank in Zambia.

Form ZBK No. 4 (Revised): Monthly Statements of-

(a) Liabilities to the Public;

(b) Capital; and

(c) Liquid Assets;

of a Financial Institution in Zambia.

Form ZBK No. 5 (Revised): Quarterly Statement of Assets and Liabilities and Supplementary Statement of a Financial Institution in Zambia.

Form ZBK No. 1 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICES ACT

(Section 4)

THE BANKING REGULATIONS

(Regulation 3)

APPLICATION FOR REGISTRATION AS A COMMERCIAL BANK OR A
FINANCIAL INSTITUTION

1. Name

(The name under which the applicant(s) wants/want to be registered)

2. Nature of business

(The business in respect of which the application is made)

3. Address of applicant's head office

4. Address of applicant's principal administrative office

5. In the case of a Commercial Bank:

(a) Names of Directors

(b) Names of Local Directors

(These must be Zambian citizens and/or established residents of Zambia)

(c) What is the proposed authorised capital and paid-up capital of the
Commercial Bank to be registered?

K

6. In the case of a Financial Institution:

(a) What is the proposed authorised capital and paid-up capital of the
Financial Institution to be registered? K

(b) State the amount of unimpaired reserve funds which the Financial Institution to be registered intends to maintain K

7. Name of General Manager
8. Name of Chief Executive Officer
9. Name of Chief Accounting Officer
10. Name and qualifications of applicant's auditors
11. Please lodge with your application the following documents:
 - (a) Memorandum and Articles of Association;
 - (b) Statement of paid-up capital; and
 - (c) Certificate of incorporation under the Companies Act of Zambia.
12. I/We* hereby certify that to the best of my/our* knowledge and belief the information given above is correct and true.

Chairman

Director

Date

Chief Executive Officer

Form ZBK No. 2 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICING

(Section 60 (1) (a))

THE BANKING REGULATIONS

(Regulations 4 (1) (a))

MONTHLY STATEMENT OF

(a) LIABILITIES TO THE PUBLIC

(b) LIQUID ASSETS

OF A COMMERCIAL BANK IN ZAMBIA

REPORTING COMMERCIAL BANK

DATE TO WHICH THIS RETURN REFERS ,19

I. Liabilities to the Public

- 1. Demand Deposits
- 2. Savings Deposits
- 3. Time Deposits
- 4. Bills payable

TOTAL LIABILITIES TO THE PUBLIC

II. Liabilities to the Public at the end of the previous month

III. Liquid Assets

- (a) Gold coin and bullion

(b) Notes and coin in the currency of Zambia

(c) Balances at the Bank of Zambia including the minimum reserve balances referred to in paragraph (b) of subsection (1) of section thirty-nine of the Bank of Zambia Ordinance No. 33 of 1964

(d) Money at call with any bank.

(e) Treasury Bills issued by the Government

(f) Bills of exchange and promissory notes eligible for discount at the Bank of Zambia

(g) Local registered securities which are issued or guaranteed by the Government and which have a final maturity date of not more than six years (at book value) and such other securities as the Minister may have approved.

(h) Items in transit between banks, between branches of banks and between branches of head office of banks

(i) Other assets approved by the Minister under paragraph (e) of subsection (3) of section twenty-one of the Banking Act, 1971

TOTAL LIQUID ASSETSK

Total liquid assets as a percentage of total liabilities to the public . .
.per cent

Total liquid assets (as stated above) as a percentage of total liabilities to
the public at the end of
the previous month
.....per cent

Form ZBK No. 3 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICING

(Section 60 (1) (b) and (c))

THE BANKING REGULATIONS

(Regulations 4 (1) (b), (2) and (3))

MONTHLY STATEMENT OF ASSETS AND LIABILITIES AND SUPPLEMENTARY
STATEMENT OF A BANK OF ZAMBIA

REPORTING BANK

DATE TO WHICH THIS RETURN REFERS ,19

Supplementary
statement in terms of section 28 (1) (c) of the ActStatement in terms of section
28 (1) (b) of the Act. (For publication where applicable in the Government
Gazette)

ASSETS

1. Notes and coin

- (a) Zambian notes
- (b) Zambian coin
- (c) Other notes and coin

2. Balances held with the Bank of Zambia

- (a) Statutory Reserves
- (b) Other balances

3. Balances held with registered Commercial Banks in Zambia

- (a) Assets in transit
- (b) Other items

4. Balances held with Banks abroad

(a) head office and/or branches in-

- (i) Britain
- (ii) Zimbabwe
- (iii) Malawi
- (iv) Republic of South Africa
- (v) Other countries

(b) Other banks in-

- (i) Britain
- (ii) Zimbabwe
- (iii) Malawi
- (iv) Republic of South Africa
- (v) Other Sterling Area countries.
- (vi) Dollar Area countries
- (vii) Other countries

5. Government of Zambia Securities (at book value)

6. Other investments in Zambia (at book value)

7. Treasury Bills issued by the Government of Zambia

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Supplementary

statement in terms of section 28 (1) (c) of the ActStatement in terms of section
28 (1) (b) of the Act. (For publication where applicable in the Government
Gazette)ASSETS

8. Bills of Exchange

- (a) discounted and purchased.
- (b) receivable.

9. Loans and advances to

- (a) The public
- (b) Government
- (c) Statutory Bodies, Municipalities, T.M.B.s, Local
Authorities, etc.
- (d) Non-residents.
- (e) Parastatal organisations

10. Balances held with branches

- (a) Assets in transit
- (b) Other items

11. Bank premises

12. Acceptances

13. Other Assets

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TOTAL ASSETS

LIABILITIES

- 1. Demand Deposits
 - (a) Public Deposits
 - (b) Government Deposits
 - (c) Deposits of Statutory Bodies, Municipa- lities, T.M.B.s, Local Authorities, etc.
 - (d) Non-residents' Deposits
 - (e) Parastatal organisations
- 2. Savings Deposits
 - (a) Public Deposits
 - (b) Government Deposits
 - (c) Deposits of Statutory Bodies, Municipa- lities, T.M.B.s, Local Authorities, etc.
 - (d) Non-residents' deposits
 - (e) Parastatal organisations
- 3. Time Deposits
 - (a) Public Deposits
 - (b) Government Deposits
 - (c) Deposits of Statutory Bodies, Municipa- lities, T.M.B.s, Local Authorities, etc.
 - (d) Non-residents' deposits
 - (e) Parastatal organisationsK

Supplementary

statement in terms of section 28 (1) (c) of the ActStatement in terms of section
28 (1) (b) of the Act. (For publication where applicable in the Government
Gazette)LIABILITIESS

4. Amounts owing to registered Commercial Banks in Zambia

- (a) Liabilities in transit
- (b) Other items.

5. Amounts owing to banks abroad

- (a) Head office/or branches in-
 - (i) Britain
 - (ii) Zimbabwe
 - (iii) Malawi
 - (iv) Republic of South Africa
 - (v) Other countries
- (b) Other banks in-
 - (i) Britain
 - (ii) Zimbabwe
 - (iii) Malawi
 - (iv) Republic of South Africa
 - (v) Other Sterling Area countries
 - (vi) Dollar Area countries
 - (vii) Other countries

- 6. Bills Payable
 - 7. Amounts owing to branches
 - (a) Liabilities in transit
 - (b) Other items
 - 8. Capital
 - 9. Reserves
 - 10. Acceptances
 - 11. Amounts owing to Bank of Zambia
 - 12. Other Liabilities
- TOTAL LIABILITIE\$K

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Form ZBK No. 4 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICES ACT

(Section 60 (1) (a))

THE BANKING REGULATIONS

(Regulation 5 (1))

MONTHLY STATEMENT OF

(a) LIABILITIES TO THE PUBLIC

(b) CAPITAL

(c) LIQUID ASSETS

OF A FINANCIAL INSTITUTION IN ZAMBIA

REPORTING FINANCIAL INSTITUTION

DATE TO WHICH THIS RETURN REFERS 19

I. Liabilities to the Public

Deposits repayable

- (a) at seven days' notice
- (b) at thirty days' notice
- (c) at more than thirty days' but more than six months' notice
- (d) at more than six months' but not more than twelve months' notice
- (e) after twelve months' notice

TOTAL LIABILITIES TO THE PUBLIC

II. Liabilities to the Public at the end of the previous month
. . .

III. Capital

1. Paid up equity capital
2. Unimpaired reserve funds

TOTAL CAPITAL

IV. Liquid Assets

1. Notes and coin in the currency of Zambia
2. Balances with registered commercial banks in Zambia
3. Money at call with any bank.
4. Treasury Bills issued by the Government
5. Bills of exchange and promissory notes accepted, endorsed or made,
as
the case may be, by a bank, maturing in not more than ninety days exclusive of
days of grace and payable at any place in Zambia.
6. Local registered securities which are guaranteed by the Government
and
which have a final maturity date of not more than six years and such other
securities as the Minister may have approved.

TOTAL LIQUID ASSETSK

Total liabilities to the public (net of liquid assets) as a percentage of paid-up equity

capital and unimpaired reserve fundsper cent

Total liquid assets as a percentage of total liabilities to the publicper cent

Total liquid assets (as stated above) as a percentage of total liabilities to the public at the end of the previous monthper cent

Form ZBK No. 5 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICES ACT

(Section 60 (1) (b) and (c))

THE BANKING REGULATIONS

(Regulation 5 (2), (3) and (4))

QUARTERLY STATEMENT OF ASSETS AND LIABILITIES AND SUPPLEMENTARY STATEMENT OF A FINANCIAL INSTITUTION IN ZAMBIA

REPORTING FINANCIAL INSTITUTION

.....

DATE TO WHICH THIS RETURN REFERS

..... 19

Supplementary statement in terms of section 29 (1) (c) of the Act

Statement in terms of section 29 (1) (b) of the Act. (For publication where applicable in the Government Gazette)KK

ASSETS	1. Notes and Coin	..	.
Commercial Banks in	2. Balances held with registered	.....
Zambia	3. Money at call with any bank	..	4.
.....	Treasury Bills issued by the Government of Zambia	..	5.
.....	Amounts owing under agreement for Hire Purchase	.....	under the
.....	Laws of Zambia	..	6. Bills receivable
.....	.....	..	7. Notes receivable
.....	.....	..	8. Advances
.....	(a) internal-	(i) individuals	..
.....	(ii) companies	(b) external	..
.....	.....	..	9. Securities
.....	(a) of the Government of Zambia	..	..
(b) of	Zambian Municipalities	..	(c) Other
.....	.....	..	10. Other investments
.....	.....	..	11. Other assets
.....	(a) buildings and premises	..	..
other	.....	..	(b)

TOTAL ASSETS

Supplementary statement in terms of section 29 (1) (c) of the Act
Statement in terms of section 29 (1) (b) of the Act. (For publication where applicable in the
Government Gazette)

LIABILITIES		1. Deposits	. . . . .
_____	(a)	internal-	(i) individuals	. . . . .
.	(ii)	companies	. . . . .	(b) external
.		2. Loans, advances and acceptances	. . . . .
_____	(a)	loans from shareholders-	(i)	
individuals in Zambia	. . . . .	(ii)	companies in Zambia	. . . . .
.	(iii)	external shareholders	. . . . .
(b) other loans, advances and acceptance:	. . . . .	3. Amounts owing		
to registered Commercial Banks in _____	Zambia	. . . . .	
.	4. Other liabilities	. . . . .	
_____	(a)	paid-up equity capital-	(i) internal	. . . . .
.	(ii)	external	. . . . .	(b)
other paid-up capital-	(i)	internal	. . . . .
(ii) external	. . . . .	(c) Reserves and		
unappropriated profits	. . . . .	(d) Other liabilities	. . . . .
.				

TOTAL LIABILITIES

SECTIONS 124 AND 47-THE BANKING AND FINANCIAL SERVICES (COST OF BORROWING)
REGULATIONS
Statutory Instrument
179 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Cost of Borrowing) Regulations. Title

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

"borrower" includes a person to whom a loan is proposed to be made;

"cost of borrowing" includes administrative charges for services or transactions and any similar charges, but excludes-

- (a) a charge for arranging or renewing the loan;
- (b) a charge for the issuance of a certificate of search, the provision for examination or the making of copies or a registered document, or the provision of similar services;
- (c) a charge for a survey;
- (d) a charge or disbursement for the services of a lawyer or notary;
- (e) a charge for an appraisal or inspection of assets;
- (f) a charge for insurance;
- (g) an administrative charge in respect of an overdrawn account, including a charge for honouring a cheque written on an overdrawn account;

(h) a charge for making a pre-payment on the loan; or

(i) a commitment fee as compensation for funds being made available by the lender for use by the borrower and which could be deployed elsewhere.

"principal" means the amount of money borrowed and outstanding at any time, but does not include any portion of the cost of borrowing.

3. These Regulations shall not apply to-

(a) a loan in respect of which the principal amount is less than K250,000 and the cost of borrowing on that loan is disclosed to the borrower as an amount expressed in Kwacha and ngwee;

(b) a loan made under any Act of Parliament where the rate of interest or the discount that may be charged to the borrower is prescribed under that Act and is disclosed to the borrower;

(c) a loan resulting from the discount or negotiation by a bank or financial institution of a promissory note or other instrument payable by a person other than the borrower; and

(d) a loan made pursuant to a letter of credit.

Application

4. (1) For loans obtained through the use of a line of credit, an overdraft, a payment, credit or charge card, a bank or financial institution shall express the rate of interest charged to a customer as "the annual effective rate of interest" or the annual percentage rate (APR). Determination of annual rate of interest

(2) The annual percentage rate shall be determined as follows:

$$APR = (1 + r)^q - 1$$

Where: q = the frequency of compounding in a year, and
r = the nominal rate of interest

5. (1) For loans repayable in equal instalments, the cost of borrowing is determined by the following formula: Cost of borrowing for loans repayable in equal instalments

$$R = \frac{C}{T \times P}$$

where:

"C" is the total cost of borrowing over the term of the loan, expressed as an amount and includes interest plus all other charges of borrowing;

"P" is the average of the principal of the loan that is outstanding at the end of each interest calculation period before applying any payment due at that time;

"R" is the cost of borrowing over the term of the loan, expressed as a rate per annum; and

"T" is the term of the loan, expressed in years.

(2) For the purpose of the calculation set out in sub-regulation (1)-

(a) the rate per annum of the cost of borrowing shall be rounded off to the nearest eighth of a per cent; and

(b) a year shall be calculated as having 365 days.

6. (1) For the purposes of regulations 7 to 9, where information is to be disclosed by means of a written statement, the information shall be delivered to the borrower personally or sent to the last address of the borrower shown in the records of the bank or financial institution. Disclosure requirements

(2) The statement through which the disclosure is made shall contain the information set out in the Schedule.

7. (1) A bank or financial institution shall disclose the cost of borrowing to the borrower, at or before the time at which the loan is made.

Disclosure of cost of borrowing

(2) The disclosure referred to in sub-regulation (1) shall-

(a) in the case of an overdraft, be made by means of a written statement or by a notice displayed in each branch of the bank or financial institution; and

(b) in the case of a loan made under the security of a letter of credit or any other arrangement, or where the loan is repayable on demand in amounts that are not fixed or on dates that are not fixed, by means of-

(i) a written statement in the loan agreement or proposed loan agreement;

(ii) a separate written statement; or

(iii) a notation on the promissory note signed or to be signed by the borrower; and

(c) in any other case, by means of a written statement disclosing the information set out in the attached Schedule.

(3) Where a loan referred to in paragraph (b) or sub-regulation (2) is made, the bank or financial institution shall also disclose to the borrower in the manner described in clauses (i) to (iii) of that paragraph-

(a) the manner of calculating the cost of borrowing and determining it as a rate per annum; and

(b) in the case of a loan made pursuant to a line of credit or other arrangement, the maximum principal that can be borrowed under the line of credit or other arrangement.

(4) Where the cost of borrowing in respect of a loan is subject to variation,

the bank or financial institution shall by means of a written statement or by a notice displayed in each branch of the bank or financial institution, and within a reasonable time, disclose to the borrower any variation that affects the amount of any periodic payments to be made by the borrower.

8. A bank or financial institution shall disclose to the borrower the information required by sub-section (2) of section forty-seven of the Act, at or before the time at which the loan is made-

(a) by means of a written statement in the loan agreement or proposed agreement between the bank or financial institution and the borrower; or

(b) through a separate statement in writing, Manner of disclosure of information

9. (1) A bank or financial institution shall disclose to each holder of a payment, credit or charge card, at or before the time at which the card is issued-Payment, credit or charge card

(a) the particulars of the holder's rights and obligations relating to-

(i) the credit limit authorised under the card and the maximum amount of indebtedness that may be outstanding at any time;

(ii) the period of time for which each statement of account is issued;

(iii) the manner, if any, in which the holder may use the card and avoid any charge;

(iv) the minimum amount, if any, that must be paid at the end of each statement period, which amount may be stated as a percentage of the amount outstanding; and

(v) the maximum amount of the card-holder's liability for authorised use of the card where it is lost or stolen;

(b) the amount of any charge for which the holder is responsible by reason of accepting or using the card and the manner in which the charge is calculated;

(c) the cost of borrowing and the manner in which it is calculated; and

(d) any charges or penalties to be paid by the borrower as a result of the failure to repay or pay in accordance with the contract governing the loan.

(2) Where a bank or financial institution intends to change any of the matters disclosed to a card-holder in accordance with sub-regulation (1), other than a disclosure under clause (i) of paragraph (a), the bank or financial institution shall send or deliver to the card-holder a written statement of the change at least fourteen days before the effective date of the change.

10. (1) A bank or financial institution shall not impose on a borrower any charge or penalty as a result of the failure by the borrower to repay or pay in accordance with the contract governing the loan other than-No charge or penalty for failure to pay

(a) interest on an overdue payment on a loan;

(b) legal costs incurred in collecting or attempting to collect a payment on a loan; or

(c) costs, including legal costs, incurred in protecting or realising the security on a loan.

(2) A bank or financial institution shall not impose a charge or penalty on a borrower for making a pre-payment of the principal or an instalment of the principal before its due date where-

(a) the amount of the repayment exceeds K50,000 or extinguishes the debt;

(b) the loan is made to a natural person; and

(c) the loan is not secured by a mortgage on real property.

11. A bank or financial institution may disclose an estimate of an amount or of other information required to be disclosed under these Regulations instead of the actual amount or information where-

(a) at the time of disclosure, the amount or information is unknown or unavailable to the bank or financial institution;

(b) the bank or financial institution has made all reasonable efforts to ascertain the amount or information;

(c) the estimate is clearly identified as such; and

(d) the estimate is based on the best information available. Disclosure of estimates

SCHEDULE

(Regulation 6)

CONTENTS OF DISCLOSURE STATEMENT

1. The name and address of the bank or financial institution.

2. The name and address of the borrower.

3. A description of any property to be used as security and its location.

4. A description of any guarantees and/or other collateral.

5. The date when the first payment on the loan is due.

6. In the case of a mortgage, whether it is first, second, etc.

7. The principal of the loan, including:

(a) the total amount of all charges to be financed; and

(b) the net amount of money to be paid to the borrower or to be disbursed at the borrower's direction.

8. The rate of interest expressed as a rate per annum, if that rate does

not vary.

9. The initial rate of interest expressed as a rate per annum, if the rate varies from time to time.

10. A description of any factors that would cause the rate of interest to vary.

11. The length of the term of the loan.

12. The period during which an offer letter to a customer is valid, before it expires.

13. A description of any factors that would cause the term of the loan to vary.

14. The total cost of borrowing over the term of the loan, expressed as a rate per annum.

15. A list of each charge to be financed.

16. A description of any terms and conditions applicable to pre-payment of the principal.

17. A description of any charge or penalty that would be imposed for failure to make a payment or to repay the loan when due.

18. The date of the statement.

19. The name and signature of the representative of the bank or financial institution.

SECTIONS 124, 4, 10, 13 AND 22-THE BANKING AND FINANCIAL SERVICES (PAYMENT OF FEES) REGULATIONS Statutory Instrument
180 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Payment of Fees) Regulations. Title

2. The fees set out in the Schedule, shall be paid in respect of the services set out in that Schedule. Fees

3. Fees payable under these Regulations shall be paid by a bank certified cheque, postal order or money order in favour of the Bank of Zambia, provided that such payments may be allowed where the fee is delivered by hand. Method of payment of fees

4. The fees paid under these Regulations shall not be refundable. Fees non-refundable

5. (1) A bank or financial institution which is operational during the month of January of a particular year shall pay the annual licence fee not later than the 31st of January of that year. Annual licence fee

(2) A bank or financial institution which is registered after the 31st of

January of a particular year shall, before the end of the month in which it is so registered, pay a proportion of the annual licence fee equivalent to the number of full months it would be in operation for that year, multiplied by the annual licence fee.

6. A bank or financial institution which fails to pay the full amount of the applicable licence fee prescribed for a particular period shall, in addition to such licence fee, pay for each month or part thereof during which it remains in contravention, a penalty calculated at the rate of twenty per centum of the licence fee remaining unpaid from the date the payment became due. Penalty for failure to pay a fee

7. Fees and penalties collected under these Regulations shall accrue to the Bank of Zambia and shall be used for the benefit of the Bank of Zambia. Fees and penalties to accrue to Bank of Zambia

SCHEDULE

(Regulation 2)

Fee Units

1. Application for a licence to conduct banking services 50,000
2. Application for a licence to conduct a regulated financial service business 30,000
3. Annual licence fee-banking business 25,000
4. Annual licence fee-financial service business 15,000
5. Inspection of the Register of Banks and Financial Institutions 10,100

SECTIONS 124 AND 76-THE BANKING AND FINANCIAL SERVICES (RETURN OF UNCLAIMED FUNDS) REGULATIONS Statutory Instrument
181 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Return of Unclaimed Funds) Regulation. Title

2. A bank or financial institution shall, within sixty days of the end of each calendar year, submit to the Registrar annual returns in the form set out in the First and Second Schedules, in respect of all funds in Zambian currency in that bank or financial institution for which no transaction has taken place and no statement of account has been requested or acknowledged by the person in whose name the funds were being held, for a period of ten years or more. Annual returns of unclaimed funds

3. The period of 10 years referred to in regulation 2 shall commence-

(a) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated; or

(b) in the case of other funds, from the day on which the last transaction by customer took place or a statement of account was last requested or acknowledged by the person in whose name the funds were held, whichever is the later. Computation of the period

4. An annual return made under regulation 2 shall indicate, in so far as is known to the bank or financial institution-

- (a) the name of each person for whom funds are held;
- (b) the recorded address of each person for whom funds are held;
- (c) the classification of funds;
- (d) the outstanding amount;
- (e) the date on which the bank last transaction took place in respect of the funds; and
- (f) the branch of the bank or financial institution in which transactions took place in respect of these funds. Content of return

5. The information required under regulation 4 may be excluded from the annual returns when the total amount outstanding in the name of a person is less than ten thousand Kwacha.

Amounts under ten thousand kwacha

FIRST SCHEDULE

(Regulation 2)

Return of Unclaimed Funds (Section 76(2))

Name of Bank

This return relates to the calendar year ended 31st December, 19

1. Total amount of items reported in detail on attached sheets numbered 1 to .

of Second Schedule K

2. Total of accounts and instruments under K1,000 not reported in detail

K

3. Interest accrued on interest bearing accounts not added to individual accounts

K

4. Total amount of unclaimed funds as at 31st December, 19

K

We declare that, having regard to the latest information available to us, this

return is, to the best of our knowledge and belief, correct according to the books and records of the bank and presents fairly the information required by the Banking and Financial Services Act.

Signature Title

Signature Title

Dates at this day of 19
.....

SECOND SCHEDULE

(Regulation 2)

Return of Unclaimed Funds (Section 76(2)) for Calendar year ended 31st December, 19

Name of Bank

Name of person

AddressClassificationAmount
outstanding

DateBranch
Address

(1) Classify as a, b or c according to the following:

- (a) Demand, savings or matured time deposit (Section 76 (1)(a));
- (b) Funds paid toward the purchasing of a share or other interest in a security issued by the bank (Section 76 (1)(b));
- (c) Funds or other personal property tangible or intangible removed from a safekeeping facility (Section 76 (1)(c)).

SECTIONS 69 AND 124-THE BANKING AND FINANCIAL SERVICES (RESERVE ACCOUNT)
REGULATIONS Statutory Instrument
182 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Reserve Account) Regulations. Title

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

"reserve fund" means a fund of a bank or financial institution generated from actual earnings or by way of recoveries, or a surplus on the realization of the scale of capital assets, but does not include any surplus resulting from a revaluation of assets.

3. A bank or financial institution shall maintain a reserve fund and shall, out of its retained earnings of distributable profits from the current financial year, before any dividend is declared, transfer to that fund a sum equal to not less than-

(a) fifty per centum of such profits, whenever the amount of the reserve fund does not exceed half of its paid-up equity capital; or

(b) twenty per centum of such profits or such sum as shall make the amount of the reserve fund equal to the paid-up equity capital, whenever the amount of the reserve fund exceeds half of its paid-up equity capital, but is less than the paid-up equity capital. Transfers to a reserve fund

SECTION 47-THE BANKING AND FINANCIAL SERVICES (DISCLOSURE OF DEPOSIT CHARGES AND INTEREST) REGULATIONS Statutory Instrument
183 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Disclosure of Deposit Charges and Interest) Regulations. Title

2. (1) A bank or financial institution shall, by means of a written statement, disclose to its customers and to the public all charges on deposit accounts with that bank or financial institution for any of the following services in respect of such deposit accounts, namely-Disclosure of charges

(a) acceptance of deposits;

(b) acceptance of coins, cheques or Bank of Zambia notes for deposit;

(c) issuance of cheques;

(d) certification of cheques;

(e) handling of a cheque presented or issued by a customer that is subsequently returned because there are no sufficient funds, or for technical reasons such as where words and figures do not agree, etc;

- (f) holding of a cheque for deposit;
- (g) handling of a cheque or negotiable item, such as a draft or a money order drawn in a foreign currency;
- (h) processing of a stop payment on a cheque or other instrument;
- (i) handling of overdrafts;
- (j) transfers between accounts;
- (k) supplying of account statements;
- (l) handling of account confirmations;
- (m) conducting searches related to an account;
- (n) providing information in regard to an account balance; and
- (o) closing of an account.

(2) A bank or financial institution shall display and make available copies of the written statement referred to in sub-regulation (1) to customers and to the public at each branch of the bank or financial institution at which such account is kept.

(3) The written statement referred to in sub-regulations (1) and (2) may be in the form of a tariff and shall indicate that the statement-

(a) sets out all charges for services provided in respect of deposit accounts with the bank or financial institution; or

(b) does not set out all of the charges for services in respect of deposit accounts with the bank or financial institution and that charges for services not included in the statement shall be disclosed on request or at the time the service is offered.

3. (1) Where a bank or financial institution increases a charge on a service referred to in sub-regulation (1) of regulation 2, it shall disclose the increased charge in a notice: Disclosure of increased charge

Provided that this Regulation shall not apply to a customer who has agreed in writing that the bank or financial institution shall charge an amount, other than an amount required to be disclosed under sub-regulation (1) or regulation 2.

(2) The notice referred to in sub-regulation (1) shall be displayed for a period of at least 30 days immediately before the effective date of the increase at all branches of the bank or financial institution.

4. A bank or financial institution shall-

(a) maintain, at each branch, a list of all charges applicable to deposit accounts and services provided by the bank or financial institution to its customers and to the public; and

(b) on request, make available at each branch the list requested to in

paragraph (a) to its customers and to the public for inspection during business hours. Maintenance of list of charges

5. (1) A bank or financial institution shall disclose to a person who wishes to open an interest bearing deposit account with it, the rate of interest applicable to the account and the manner in which the amount of interest shall be calculated. Disclosure of interest rates

(2) The disclosures referred to in sub-section (1) shall-

(a) be in writing, copies of which shall be made available and displayed in each branch of the bank or financial institution where such accounts are kept; or

(b) be made by way of a general notice displayed in each branch of the bank or financial institution where such account is kept.

(3) The disclosure referred to in sub-regulation (1) shall include-

(a) the annual rate of interest;

(b) the frequency of payment of interest;

(c) the manner, if any, in which the balance in the interest bearing deposit account will affect the rate of interest; and

(d) any other circumstances that affects the rate of interest.

6. Where there is a change in the rate of interest, or in the manner of calculating the amount of interest on an interest bearing deposit account, the bank or financial institution shall disclose the changes by means of-

(a) a written statement, delivered to the person in whose name the account is maintained;

(b) a written statement, copies of which are available and displayed in each branch of the bank or financial institution where such account is kept;

(c) a general notice that is displayed in each branch of the bank or financial institution where such account is kept; or

(d) an advertisement in a daily newspaper. Changes in rate of interest

7. Where a bank or financial institution renews a fixed term deposit account, it shall disclose the rate of interest and the manner of calculating the amount of interest on the deposit account in accordance with sub-regulation (1) of regulation (5) and clauses (1) and (ii) of paragraph (b) of sub-regulation 2 of regulation 5. Renewal of fixed term deposit account interest.

8. Where a bank or financial institution makes an advertisement in respect of interest bearing deposits or debt obligations, a bank or financial institution shall disclose how the amount of interest applicable to each deposit and debt obligation shall be calculated by clearly indicating in the advertisement-

(a) in respect of interest-bearing deposits, the manner, if any, by which the balance of the account shall affect the rate of interest;. and

(b) any other circumstances that may affect the rate of interest. Disclosure of advertisement

SECTIONS 83 AND 84-THE BANKING AND FINANCIAL SERVICES (CAPITAL ADEQUACY) REGULATIONS Statutory Instrument
184 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Capital Adequacy) Regulations. Title

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

"associate" means a company in which more than 20 per cent but not more than 50 per cent of the outstanding voting shares (except any qualifying directors' shares) are owned directly or indirectly by the reporting bank or financial institution and the business activities and financial affairs of which the reporting bank or financial institution or its subsidiaries are able to materially influence;

"capital deficiency" means a shortfall in the minimum capital required by these Regulations.

"common shareholders equity" includes common shares and related contributed surplus, retained earnings, general reserves and the statutory reserve fund;

"goodwill" means the difference between cost and the acquired company's interest in the identifiable net assets;

"off balance sheet risks" means all items not shown on the balance sheet where the bank's or financial institution's capital is potentially at risk, and includes letters of credit, guarantees, commitments to re-purchase loans or securities, acceptances, performance bonds and other items deemed to constitute credit risk by the Bank of Zambia;

"regulatory capital" means instruments comprising the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy;

"general reserves" means an appropriation of retained earnings to reflect additional potential losses based on an assessment of the bank's overall situation by management;

"revaluation reserves" means the increment in the recorded or book value of a bank or financial institution's own premises, fixed assets or long term equity investments arising from a formal revaluation to reflect their current value or an amount closer to their current value than historical cost;

"subordinated debt" means a security which is, by its terms, subordinated in right of payment to all deposit liabilities and all other liabilities of the entity that issued the security other than liabilities that, by their terms, rank equally with, or are subordinated to, that security;

"subsidiary" means a company in which more than 50 per cent of the issued voting shares of the company (except any qualifying director's shares) are owned

directly or indirectly by the reporting bank or artificial institution. Interpretation

3. (1) Every bank shall commence operations with primary paid-up capital of not less than two thousand million kwacha, or such other higher amount as may be prescribed by the Bank of Zambia from time to time and shall maintain this minimum amount at all times. Minimum capital of a bank

(2) A bank which does not meet the minimum capital requirement at the coming into force of these Regulations shall enter into negotiations with the Bank of Zambia to progressively build up its primary capital to at least one billion, two hundred and fifty million kwacha by not later than 30th June, 1996, and to two billion by 31st December, 1996.

4. (1) Every financial institution shall, subject to such other higher amounts as may be prescribed by the Bank of Zambia commence operations with primary paid-up capital of not less than, for- Minimum capital of a financial institution

(a) deposit-taking institutions, two thousand million kwacha;

(b) leasing companies, two hundred and fifty million kwacha; and

(c) other types of financial institutions, an amount prescribed by the supervisory authority, to be not less than twenty-five million kwacha;

and shall maintain that minimum amount at all times.

(2) A financial institution which is operational at the coming into force of these Regulations which does not meet the applicable minimum capital requirement at the coming into force of these Regulations shall enter into negotiations with the Bank of Zambia to progressively build up its primary capital to at least the level prescribed by the Bank of Zambia by not later than 12 months after the coming into force of these Regulations.

5. Regulation 4 applies to a bank or financial institution which is a subsidiary of an adequately capitalised bank or other financial institution, irrespective of the amount of control exercised by the holding bank. Application of regulation 4 to subsidiary

6. (1) Every bank and financial institution shall at all times maintain a minimum total capital equivalent of not less than 10 per cent of its total risk-weighted assets and off balance sheet exposures. Minimum capital ratio

(2) Primary or tier one capital shall be a minimum of 5 per cent of the bank's or financial institution's total risk-weighted assets.

(3) A bank or financial institution operating at or near the level referred to in sub-regulation (2) but which has serious weaknesses in the quality of its assets, diversification of risk, liquidity or earnings, shall maintain capital levels well in excess of those prescribed in sub-regulation (1).

7. (1) In determining which funds should be included in the capital base of a bank or financial institution for purposes of the required minimum capital and for measuring capital adequacy, three criteria shall be considered, namely- Determination of regulatory capital

(a) permanence;

(b) being free of mandatory fixed charges against earnings;
and

(c) the subordinated legal position to the rights of depositors and other creditors of the bank or financial institution.

(2) Regulatory capital shall be determined in accordance with the Second Schedule.

8. For purposes of assessing capital adequacy for regulatory purposes, a bank's or financial institution's primary or tier one capital includes-

(a) common shareholders' equity; and

(b) the following categories of preferred shares-Primary or tier one capital

(i) perpetual preferrers;

(ii) compulsory convertible preferrers, where conversion to securities which would qualify as primary capital represents the only redemption option; and

(iii) preferrers which have an original term to maturity of 20 years or more, where no redemption occurs within the first ten years, and where the maximum redemption obligation in any one year is restricted to five per cent or less of the original amount.

9. Minority interests or common shareholders' equity attributable to consolidated subsidiaries shall qualify as primary or tier one capital if they possess the three essential criteria for capital and shall be designated as a legitimate add-on component of the consolidated primary or tier one capital. Conditions for securities of subsidiaries to qualify as primary or tier one capital

10. For purposes of assessing capital adequacy for regulatory purposes, a bank's or financial institution's secondary or tier two capital includes preferred shares issued by a bank or financial institution which meet the requirements under regulation 13. Secondary or tier two capital

11. Failure by a bank or financial institution to meet a preferred dividend payment shall not constitute grounds for bankruptcy, but an omission or an interest payment on any form of debt shall constitute grounds for bankruptcy. Failure to meet preferred dividend payment not to constitute grounds for bankruptcy

12. Notwithstanding the separate legal status of secondary or tier two capital, securities of subsidiaries shall qualify for inclusion in consolidated secondary or tier two capital for measuring capital adequacy for regulatory purposes, provided that:

(a) there are no parent guarantees or other contractual features governing the issue that could in effect rank the investors' claims equal to or ahead of the claims of depositors;
and Conditions for securities of subsidiaries to qualify as secondary or tier two capital

(b) they are fully subordinated to the other liabilities of the subsidiary;

(c) they meet the minimum criteria referred to in paragraph (b) of sub-regulations (1) and (3) of regulation 13 for qualifying debentures.

13. (1) A preferred share shall qualify as secondary or tier two capital if-Qualifications for inclusion in secondary or tier two capital

(a) there is subordination to all of the deposit obligations of the bank; and

(b) it has an initial term greater than five years, with no redemptions permitted in the first five years.

(2) A share referred to in sub-regulation (1) may be redeemed before maturity only with the prior written approval of the Bank of Zambia.

(3) A loan stock or capital and other subordinated debentures issue shall not be included in secondary capital unless it meets the standards set in sub-regulation (1) and is free of restrictive covenants which could potentially interfere with a bank's or financial institution's ability to conduct normal banking operations, such as covenants mandating accelerated redemption in the event of failure to meet particular earnings coverage tests or in the event of missing dividend.

14. Any bank or financial institution intending to issue capital instruments shall seek the opinion of the Bank of Zambia as to whether or not these instruments qualify as capital. Bank's opinion to be sought

15. (1) For purposes of determining adequacy under these regulations, a bank or financial institution shall submit to the Bank of Zambia its state of affairs, and the results of its operations and those of all of its subsidiaries and associates which conduct banking or financial services business. Submission of state of affairs and results of operations to bank

(2) A bank or financial institution shall provide the Bank of Zambia with details of the activities of each subsidiary and associate to enable the Bank of Zambia to verify which enterprises, if any, should not be considered.

16. Primary or tier one capital includes-

(a) paid-up common shares;

(b) qualifying preferred shares referred to in regulation 8;

(c) contributed surplus (including premium on issues of shares, less any payments of premium on redemption; and capital contribution by shareholders without the issuance of shares);

(d) retained earnings;

(e) general reserves;

(f) statutory reserves; and

(g) minority interests (in the equity of subsidiaries which are less than wholly owned). Components of primary or tier one capital

17. Secondary or tier two capital is composed of residual financial

instruments which possess some of the features of capital and which meet the standards set out in regulation 13 and any other form of capital as may be determined and announced by the Bank of Zambia, and includes-

- (a) forty per cent of the reserves arising from the revaluation of tangible fixed assets;
- (b) subordinated term debt, or loan stock or capital with a minimum original term of maturity of over five years, subject to a straight-line amortization during the last five years leaving no more than 20 per cent of the original amount outstanding in the final year before redemption; and Components of secondary or tier two capital
- (c) other instruments or forms of capital which the Bank of Zambia may allow:

Provided that no part of accumulated goodwill shall be considered as capital.

18. In determining the amount of available capital for purposes of computing the minimum capital and the capital ratio required under these Regulations, the following items shall be deducted from the amount of capital derived under regulations 16 and 17:

- (a) goodwill and other intangible assets;
- (b) investments in unconsolidated subsidiaries and associates where the bank or financial institution has a direct and indirect ownership of 20 per cent or more;
- (c) lending of a capital nature to subsidiaries and associates;
- (d) holdings of other banks' or financial institutions' capital instrument; and
- (e) the value of assets pledged to secure liabilities if such assets are not available to meet the liabilities of the bank or financial institution. Deductions from primary or tier one capital

19. In computing the minimum total capital required under regulation 6-

- (a) part of revaluation reserves shall not be considered as primary capital;
- (b) the total of secondary or tier two capital shall be limited to a maximum of 100 per cent of primary or tier one capital;
- (c) revaluation reserves shall only qualify as secondary capital if-Limitations and restrictions
 - (i) they relate to the revaluation of long-term investments and immovable fixed assets which have been formally identified as strategic long term investments by the board of directors of the bank of financial institutions;
 - (ii) the revaluation is made by an independent appraiser or another appropriate independent party, whose qualifications are considered appropriate by the respective bank's auditors, at intervals in accordance with the accounting policy of the reporting institution and generally accepted accounting practice;
 - (iii) the assets being revalued are of a similar nature, e.g., investments in

premises, and the revaluation of all such assets is undertaken at the same time;

(iv) a reduction in the value of any such assets is taken into account where current market values are no longer supportive of balance sheet values; and

(v) details of all such revaluations are disclosed in the annual financial statements of the reporting institution.

20. (1) Eligible supplementary capital described in sub-regulation (b) of regulation 17 components shall be subject to straight-line amortization in the final five years prior to maturity or the effective dates governing shareholders' retraction rights. Amortization of outstanding balances

(2) When subordinated debentures and qualifying subsidiary debt instruments approach maturity, redemption or retraction, outstanding balances shall be amortized on the basis of the following criteria:

YEARS TO MATURITY	AMOUNT INCLUDED IN CAPITAL
5 years or more	100%
4 years but less than five years	80%
3 years but less than 4 years	60%
2 years but less than 3 years	40%
1 year but less than 2 years	20%
Less than 1 year	0%

21. (1) For the purposes of this regulation, risk assets in relation to a bank or financial institution means assets that are normally recorded on the balance sheet and obligations which are assumed by the bank or financial institution and which are recorded off balance sheet. Risk weighted assets

(2) For the purposes of calculating the risk-weighted capital ratio, risk assets are classified into the following categories-

(a) cash and equivalent items, generally considered riskless, carrying a risk weight of zero per cent;

(b) assets with little risk and a high degree of liquidity, carrying a risk weight of twenty per cent;

(c) assets with a moderate degree of risk and having more credit and liquidity risk than those in paragraphs (a) and (b), carrying a risk weight of fifty per cent;

(d) the remaining assets typically found in the portfolio of a bank or financial institution, carrying a risk weight of one hundred per cent.

(3) Assets and their associated risk weights are as set out in parts 1 and 2 of the First Schedule.

22. (1) Any guarantees made by a bank or financial institution applicable to the liabilities of a subsidiary and which are already incorporated into the consolidated balance sheet shall be excluded to avoid double counting. Guarantees made by bank

(2) The inclusion for off-balance sheet items shall apply to arms' length

contingent liabilities of the bank or financial institution and its subsidiaries, and shall exclude corresponding inter-company commitments.

23. The Bank of Zambia shall, in implementing capital adequacy standards, do so on an individual institution basis and shall rely on the criteria set out below:

- (a) the size of the institution;
- (b) the diversification of its assets and liabilities;
- (c) degree of risk exposures;
- (d) level of profitability; and
- (e) management strength including liquidity management. Implements of capital adequacy standards

24. The total risk-weighted assets of each bank or financial institution shall be determined by multiplying the outstanding book value of its assets, net of allowance for losses and depreciation, by the prescribed risk weight factors of such assets, and aggregating the risk adjusted values of those assets following the format shown in Parts 1 and 2 of the First Schedule. Calculation of risk weighted assets

25. If the Bank of Zambia, after conducting a review of both on and off balance sheet risks, finds that a bank or financial institution has insufficient capital to meet the requirements under regulation 6, the Bank of Zambia, in accordance with its powers to correct unsafe and unsound practices under Section seventy-seven of the Act, shall direct that such bank or financial institution effect an increase of its capital or a reduction of its assets and off-balance sheet exposures, within a period of three months. Capital deficiency

26. (1) Any bank or financial institution which, for a continuous period of fourteen days, incurs capital deficiencies shall automatically stop to grant new loans and other credit facilities, including the issuance of letters of credit and guarantees, without the prior approval of the Bank of Zambia. Suspension of banks or financial institutions, branch networks, etc.

(2) A bank or financial institution to which sub-regulation (1) applies shall have its branch network and all capital expenditures suspended.

(3) The suspension of a bank's or financial institution's lending privilege, branch expansion and capital expenditures shall remain in force for as long as the bank or financial institution is unable to increase its capital or reduce its assets or off-balance sheet exposures as directed by the Bank of Zambia, or to restructure its balance sheet risks to the satisfaction of the Bank of Zambia.

27. (1) Any director, officer or employee of a bank or financial institution who sanctions or votes for the approval of any loan or credit facility, branch expansion or capital expenditure while the bank remains under suspension as provided under regulations 25 and 26 shall be considered automatically suspended from office. Suspension of Director

(2) The suspension referred to in sub-regulation (1) shall be without prejudice to any other punitive measures which may be applied against the director, officer or employee and which have been provided for in the Act.

28. Every bank and financial institution shall maintain suitable records to facilitate verification of its capital position. Maintenance of records

29. For the purpose of computing its capital position, the principal office of each bank or financial institution in Zambia, all of its branches, agencies, subsidiaries, and associated companies regardless of country of domicile, shall be considered as a single unit. Consolidated reports

30. Every bank and financial institution shall-

(a) submit to the Bank of Zambia a monthly report on its capital position within 21 days following the reference month, in the form set out in the First and Second Schedules; and

(b) require its external auditors-Submission of reports

(i) to compute its capital position at the end of each financial year taking into account the requirements of the Act and all relevant prudential guidelines and regulations issued by the Bank of Zambia; and

(ii) to render a statement to the bank or financial institution on the adequacy or inadequacy of its capital and send a copy to the Bank of Zambia.

FIRST SCHEDULE

(Regulations 21 and 24)

PART 1

CALCULATION OF RISK-WEIGHTED ASSETS

Name of Bank/Financial Institution

As at

(1)	(2)	(3)
	Balance (Net	Risk-
Risk	of allowance	Weighted
weight	for losses)	assets (1 2)
%	(K millions)	(K million)s

ASSETS

Notes and Coins

-Zambian notes and coins 0

-other notes and coins 0

Balances held with the Bank of Zambia

-statutory reserves 0

-other balances 0

Balances held with commercial banks

in Zambia

-with residential maturity of up to
12 months 20

-with residential maturity of more
than 12 months 100

Abroad

-with residential maturity of up to
12 months 20

-with residential maturity of more
than 12 months 100

Assets in transit

-from other commercial banks 50

-from branches of reporting bank 20

Investment in Debt Securities

-treasury bills 0

-other government securities 20

-issued by Local Government Units 100

-Private securities 100

Bills of Exchange

-portion secured by cash or treasury bills 0

-others 100

Loans and Advances

-portion secured by cash or treasury bills 0

-loans to or guaranteed by the
Government of Zambia 50

-loans repayable in instalments and
secured by a mortgage on owner-
occupied residential property 50

-loans to or guaranteed by local
Government Units 100

-loans to parastatals	100	
Inter-bank advances and loans/ advances guaranteed by other banks		
-with a residual maturity of 12 months		20
-with a residual maturity of more than 12 months	100	
Bank premises	100	
Acceptances	100	
Other assets	100	
Investment in equity of other companies	100	
TOTAL RISK-WEIGHTED ASSETS		<u> </u>
(on balance sheet)		<u> </u>

PART 2

OFF-BALANCE SHEET OBLIGATIONS

(1)	(2)	(3)
Risk weight	Balance (Net of allowance for losses)	Risk-Weighted assets (1 2)
%	(K millions)	(K millions)
Letters of Credit		
-sight import Letters of credit	20	
-portion secured by Cash/Treasury bills		0
-standby Letters of credit	100	
-portion secured by Cash/Treasury bills		0
-export Letters of credit confirmed	20	
Guarantees and Indemnities		
-guarantees for loans, trade and securities	100	

-portion secured by Cash/Treasury bills	0	
-performance bonds	50	
-portion secured by Cash/Treasury bills	0	
-securities purchased under resale agreement	100	
-other contingent liabilities	100	
-net open position in foreign currencies	100	
TOTAL RISK-WEIGHTED ASSETS	_____	_____
(off balance sheet)		
TOTAL RISK-WEIGHTED ASSETS	_____	_____
(on and off balance sheets)		
	_____	_____

SECOND SCHEDULE

(Regulation 7)

COMPUTATION OF CAPITAL POSITION

As at

Name of Bank/Financial Institution

I. PRIMARY (TIER 1) CAPITAL (K millions)

- (a) Paid-up common shares
- (b) Eligible preferred shares
- (c) Contributed surplus
- (d) Retained earnings
- (e) General reserves
- (f) Statutory reserves
- (g) Minority interests (common shareholders' equity)
- (h) Sub-total

LESS

- (i) Goodwill and other intangible assets
- (j) Investments in unconsolidated subsidiaries and associates
- (k) Lending of a capital nature to subsidiaries and associates
- (l) Holding of other bank's or financial institution's capital instruments
- (m) Assets pledged to secure liabilities
- (n) Sub-total
- (o) Total primary capital (h-n)

II. SECONDARY (TEIR 2) CAPITAL

- (a) Eligible preferred shares (regulations 13 and 17)
- (b) Eligible subordinated term debt (regulation 23 (b))
- (c) Eligible loan stock\capital (regulation 23 (b))
- (d) Revaluation reserves (regulation 23 (a))
- (e) Other (regulation 23 (c)) specify
- (f) Total secondary capital

III. ELIGIBLE SECONDARY CAPITAL

(the maximum amount of secondary capital is limited to 100% of primary capital)

IV. ELIGIBLE TOTAL CAPITAL (I (o) + III)

(Regulatory capital)

V. MINIMUM CAPITAL REQUIREMENT:

(10% of total on and off balance sheet risk-weighted assets as established in the First Schedule, or K2,000 million, whichever is the higher)

VI. EXCESS (DEFICIENCY)

(IV minus V)

SECTION 124-THE BANKING AND FINANCIAL SERVICES (FIXED ASSETS INVESTMENT)
REGULATIONS Statutory Instrument
185 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services

(Fixed Assets Investment) Regulations. Title

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

"fixed assets of a bank or financial institution" include bank premises (including land), furniture, fixtures, equipment and vehicles, whether such assets are owned or leased, and any leasehold improvements;

"primary capital" includes-

(a) paid up common shares;

(b) the following qualifying preferred shares;

(i) perpetual preferreds;

(ii) compulsory convertible preferreds, where conversion to securities which would qualify as primary capital represents the only redemption option; and

(iii) preferreds which have an original term to maturity of 20 years or more, where no redemption occurs within the first ten years, and where the maximum redemption obligation in any one year is restricted to five per cent or less of the original issued amount;

(c) contributed surplus (including premium on issues of shares, less any payments of premium on redemption; and capital contribution by shareholders without the issuance of shares);

(d) retained earnings;

(e) general reserves;

(f) statutory reserves; and

(g) minority interests (in the equity of subsidiaries which are less than wholly owned).

"secondary capital" means residential financial instruments that possess some of the features of capital and which meet the standards set out in regulation 13 of the Banking and Financial Services (Capital Adequacy) Regulations, and any other form of capital as may be determined and announced from time to time by the Bank of Zambia, and, subject to a limit which shall not exceed 100 per cent of primary capital and includes the following: Cap. 387

(a) forty per cent of the reserves arising from the revaluation of tangible fixed assets;

(b) subordinated term debt, or loan stock or capital with a minimum original term of maturity of over five years, subject to a straight-line amortization during the last five years leaving no more than 20 per cent of the original amount outstanding in the final year before redemption;

(c) other instruments or forms of capital which the Bank of Zambia may allow, provided that no part of accumulated goodwill shall be considered as capital;

"regulatory capital" means those instruments which comprise the capital

resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule of the Banking and Financial Services (Capital Adequacy) Regulations. Cap. 387

3. A bank or financial institution shall not, without the approval of the Bank of Zambia-

(a) invest directly in fixed assets;

(b) invest in the stock, bonds, debentures or obligations of any corporation holding the fixed assets of such bank or financial institution; or

(c) make loans to or on the security of the stock of any such corporation;

if the aggregate of all such investments and loans exceed the amount of the regulatory capital of such bank or financial institution. Prohibition of investments without Bank of Zambia approval

4. A bank or financial institution shall obtain the approval of the Bank of Zambia before making any investment in fixed assets which will result in all such investments exceeding the amount of its regulatory capital. Approval before investment in fixed assets

5. Where a bank or financial institution whose fixed assets exceed regulatory capital at the coming into force of these Regulations, such excess shall be covered, within a reasonable period of time to be determined by the Bank of Zambia, either by a reduction of such assets or an increase in capital which will result in its fixed assets being in compliance with these Regulations. Covering of excess assets

6. All fixed assets acquired by a bank or financial institution shall be booked at cost, and shall be stated in the balance sheet of the bank or financial institution at cost less accumulated depreciation or amortization. Fixed assets to be booked at cost

7. For book purposes, a bank or financial institution shall depreciate assets over their useful life, using a straight line method. Method of depreciation of assets

8. (1) A bank or financial institution shall capitalise all leases relating to fixed assets in its report to the Bank of Zambia. Capitalisation of leases

(2) In reports to the Bank of Zambia, the Bank shall require that the amount of all leases pertaining to fixed assets obligations be capitalized.

(3) The amount capitalized under sub-regulation (2) shall be the present value of the minimum required payments over the non-cancellable term of the lease and the rate of interest shall be not more than the bank or financial institution's prime lending rate.

9. A bank or financial institution which contravenes these Regulations shall be liable to a penalty of one thousand penalty units per day for the period during which the contravention continues. Penalty for contravening Regulations

10. (1) A bank or financial institution shall report, twice a year to the Bank

of Zambia, as at the end of June and December, the amount of its fixed assets and how these relate to regulatory capital. Report on fixed assets

(2) The report referred to in sub-regulation (1) shall be made in the form set out in the Schedule.

SCHEDULE

(Regulation 2)

STATEMENT OF INVESTMENTS IN FIXED ASSETS OF A BANK OR FINANCIAL INSTITUTION INCORPORATED IN ZAMBIA

Name of Bank/Financial Institution (K'000)

At close of business on 19

1. TOTAL REGULATORY CAPITAL

(As calculated by using the Second Schedule of the Banking and Financial Services (Capital Adequacy) Regulations, Cap. 387. Attach calculation.

2. FIXED ASSETS

- (a) Bank Premises (including land)
- (b) Furniture and Fixtures
- (c) Equipment
- (d) Vehicles
- (e) Leasehold improvements
- (f) Other

Total

3. INVESTMENTS IN CORPORATION HOLDING FIXED ASSETS OF THE REPORTING BANK OR FINANCIAL INSTITUTION

- (a) Stock
- (b) Bonds
- (c) Debentures
- (d) Obligations

Total

4. ADVANCED/LOANS MADE TO OR ON THE SECURITY OF THE

STOCK OF THE REPORTING BANK OR FINANCIAL INSTITUTION

(a) Advances

(b) Loans

Total

5. TOTAL INVESTMENT IN FIXED ASSETS (Items 2 + 3 + 4)

6. TOTAL REGULATORY CAPITAL (line 1) A
A PERCENTAGE OF FIXED ASSETS (line 5)

Authorised Signature Authorised Signature

SECTIONS 73 AND 124-THE BANKING AND FINANCIAL SERVICES (INSIDER LENDING)
REGULATIONS Statutory Instrument
97 of 1996

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services
(Insider Lending) Regulations. Title

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

"control" in relation to a company, bank or financial institution means a
situation where one or more persons, acting in concert, directly or indirectly-

(a) own, control, or have the power to vote twenty-five per centum or more of
any class of voting shares of another person;

(b) control in any manner the election of a majority of the directors of a
company, bank or financial institution; or

(c) have the power to exercise controlling influence over the management
policies of a company, bank or financial institution;

but does not include a person who has control or ability to exercise a
controlling influence over the management policies of a company, bank or
financial institution solely by virtue of his position as an officer or director
of the company, bank or financial institution;

"director" means-

(a) any person who occupies the position of a director in accordance with the
Companies Act; Cap. 388

(b) any director of a bank or financial institution, whether or not receiving
compensation;

(c) any director of a holding company of which the bank or financial
institution is a subsidiary;

(d) any director of any other subsidiary of a holding company of a bank or financial institution; or

(e) any person who participates, or who has the authority to participate, other than in that person's capacity as a director, in major policy making functions of a company, bank, or financial institution, whether or not-

(i) that person is an employee of the company, bank or financial institution; or

(ii) that person is serving without a salary or compensation;

"holding company" in relation to a bank or financial institution means any company which has control over a bank or financial institution;

"immediate family" means the spouse and children of a person;

"insider" means-

(a) any officer, director or principal shareholder of a company, bank or financial institution;

(b) any person who participates or has the authority to participate in major policy-making functions of a company, bank or financial institution whether employed or not by that institution;

(c) a company where an insider of a bank or financial institution owns, directly or indirectly, alone or together with one or more other insiders, more than twenty per centum of the shares of the company or exercises control over the management of the company; or

(d) a company where the bank or financial institution owns more than ten per centum of the outstanding shares of the company or, in the opinion of the Bank of Zambia, is likely to exercise influence over the management of the company;

"large loan" means an exposure of a bank or financial institution to any person in an amount equal to, or exceeding, ten per centum of the bank's or financial institution's regulatory capital;

"loans and extensions of credit" means-

(a) any direct or indirect advance of funds to an insider-

(i) made on the basis of any obligation of that insider to repay the funds; or

(ii) repayable from specific property pledged by that insider or by any other person on behalf of that insider;

(b) all credit risk arising from actual claims, potential claims of all kinds and credit substitutes; or

(c) commitments to extend credit and any commitment to acquire a debt security or other right to payment of a sum of money;

"principal shareholder" means a person that directly or indirectly, or acting

through or in concert with one or more persons, owns, controls or has the power to vote more than ten per centum of any class of voting shares of a company, bank or financial institution;

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule to the Banking and Financial Services (Capital Adequacy) Regulations; Cap. 387

"related interest" means a company that is controlled by a person, the funds or services of which will benefit that person;

"subsidiary" means any company which is controlled by another company, bank or financial institution.

3. These Regulations shall apply to-Application

(a) all banks and financial institutions licenced under the Act, and all directors and principal shareholders of these banks and financial institutions;

(b) the holding company of which a bank or financial institution is a subsidiary, and to any other subsidiary of that holding company;

(c) any company included within the meaning of an insider as defined in these Regulations; and

(d) a political or campaign committee that benefits or is controlled by an insider.

4. A bank or financial institution shall not make a loan or extend credit to any of its directors, principal shareholders or any related interest of that person or to any persons included within the meaning of an insider as defined in these Regulations, unless the loan, advance or extension of credit-Credit worthiness

(a) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank or financial institution with other persons that are not covered by these Regulations and who are not employed by the bank or financial institution; and

(b) does not involve more than the normal risk of repayment.

5. A bank or financial institution shall not extend credit to any insider or the insider's related interest, when-Lending limits

(a) the aggregate of any new and outstanding loans, advances or extensions of credit to that person and his related interests exceeds ten per centum of the bank's or financial institution's regulatory capital; or

(b) the aggregate of all loans, advances or extensions of credit, including any proposed new extension of credit, to all insiders and their related interests, exceeds one hundred per centum of the bank's or financial institution's regulatory capital.

6. (1) A bank or financial institution shall not make any loans, advances or

extensions of credit to any of its directors, or principal shareholders or to any related interest of that person if the aggregate of any new extension of credit and all outstanding loans and extensions of credit to that person and his related interests exceeds five per centum of that bank's or financial institution's regulatory capital unless-Prior approval

(a) all outstanding amounts of loans or extensions of credit have first been acknowledged, in writing, by the Board of Directors of the bank or financial institution;

(b) the new loans or extensions of credit have been approved in advance by a majority of the members of the Board of Directors of the bank or financial institution; and

(c) the interested party has abstained from participating directly or indirectly in the voting.

(2) Any participation in the discussion, or any attempt to influence the voting by the Board of Directors of a bank or financial institution regarding a loan, advance or extension of credit to any director, principal shareholder, or to any related interest of that person shall constitute indirect participation in the voting by the Board of Directors and shall nullify the authorization by the Board of Directors of the loan, advance or extension of credit.

7. The total amount of credit extended by a bank or financial institution to a partnership shall be deemed to be extended to any member of the partnership.Partnership interests

8. Any director of a bank or financial institution who becomes indebted to any bank or financial institution other than the bank or financial institution of which he is a director, in an aggregate amount greater than five per centum of the regulatory capital of the bank or financial institution of which he is a director shall, within ten days from the date the indebtedness reached that level, make a written report to the Board of Directors of the bank or financial institution of which he is a director, which report shall state-Reports by directors

(a) the lender's name;

(b) the date of the loan;

(c) the amount of the loan, advance or extension of credit;

(d) the intended use of the proceeds;

(e) the source of repayment; and

(f) security pledged as collateral.

9. Any loan, advance or extension of credit by a bank or financial institution to an insider shall be approved in advance, and in writing, by a majority of the members of the Board of Directors of the bank or financial institution or by a special committee consisting of a majority of the members of the Board of Directors specially constituted for that purpose.Credit approval

10. (1) Every bank or financial institution shall-Submission of reports

(a) submit to the Bank of Zambia within ten working days following its month-end, in the Form prescribed in the Schedule, a monthly report of its insider loans;

(b) if requested by the Bank of Zambia submit further detailed information on all or any outstanding exposure to an insider; and

(c) report to the Bank of Zambia any loan, advance or extension of credit which is outstanding to an insider-

(i) where that loan, advance or extension of credit is outstanding on the date of coming into force of the Regulations and that loan, advance or extension of credit has a balance owing that would have contravened these Regulations if the loan had been made on or after the date of the coming into force of these Regulations;

(ii) if the aggregate of the loans or extensions of credit to insiders exceeds the maximum amount authorised under regulation 5.

(2) The report referred to in sub-regulation (1) shall be made not later than twenty-one days from the date of coming into force of these Regulations and shall set out details of the exposure and a period, not exceeding one year, within which the exposures shall be brought within the limits set by regulation 5.

11. Any renewal of a loan, advance or extension of credit on or after the date of coming into force of these Regulations shall be made only on such terms as shall bring the facility into compliance with the limits prescribed by regulation 5. Renewal of loan, advance or extension of credit

12. (1) A bank or financial institution which contravenes these Regulations shall be guilty of an offence and liable, for every day that the contravention continues, to a fine assessed by the Bank of Zambia not exceeding six hundred penalty units or, on conviction, to a fine not exceeding the fine prescribed in the Act, and all its insiders, including directors and shareholders, and any person concerned in the management of the bank or financial institution shall be personally liable to the same fine and upon conviction, to imprisonment for a term not exceeding two years, or to both. Penalty for non-compliance

(2) Any director or any person referred to in sub-regulation (1) shall, in addition to the penalties prescribed in that sub-regulation, be liable for removal from office and barred from holding office in the banking and financial sector.

SCHEDULE
(Regulation 10)

BANK OF ZAMBIA INSIDER LENDING EXPOSURE REGULATIONS

Reporting Bank:

Month ending:

Regulatory Capital (item IV of Regulatory Capital Calculation): K

Name

of Borrower

Relation

-ship

to InstitutionLoans,

Advances

and

Extensions

of Credit

Authorised

K'Millions

As a

% of

Regulat-ory

Capital

Amount

Outstan

-ding

K'Millions

As a

% of

Regulat

-ory

Capital

Rate of

Interest

%Interest

Capitalised

Included

in

Amounts

Outstanding

K'Millions

Expiry

Date

of

Facility

Security

Status

Current\ Non-Current

Total

SECTIONS 73 AND 124-THE BANKING AND FINANCIAL SERVICES (LARGE LOAN EXPOSURES)
REGULATIONS Statutory Instrument
96 of 1996

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services
(Large Loan Exposures) Regulations. Title

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

"common enterprise" means-

(a) two or more persons constituting a single risk arising from the direct or indirect control of one of those persons over the others; or

(b) two or more persons having no relationship of control over one another, but who constitute a single risk as a result of being interconnected to the extent that if one of them experienced financial problems, the other or all of them would, in the opinion of the Bank of Zambia encounter repayment difficulties;

"control" in relation to a common enterprise, means a situation where-

(a) one or more persons acting in concert, directly or indirectly, own, control or have the power to vote twenty-five per centum or more of any class of voting shares of another person;

(b) one or more persons, acting in concert, control in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions, of another person; or

(c) any circumstances exist which indicate that one or more persons acting in concert, directly or indirectly, exercise a controlling influence over the management, policies or affairs of another person;

"corporate group" means-

(a) a corporation and all its subsidiaries; or

(b) a subsidiary of any person which directly or indirectly owns or controls more than fifty per centum of the voting shares of a corporation;

"large loan" means an exposure of a bank or financial institution to any person or common enterprise which equals or exceeds ten per centum of the bank's or financial institution's regulatory capital;

"loans and extension of credit" means-

(a) any direct or indirect advance of funds to a person or common enterprise-

(i) made on the basis of an obligation of that person or common enterprise to repay the funds; or

(ii) repayable from specific property pledged by, or on behalf of, a person or common enterprise;

(b) all credit risk arising from actual claims, potential claims of all kinds and credit substitutes; or

(c) commitments to extend credit and any commitment to acquire a debt security or other right to payment of a sum of money;

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the

minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule to the Banking and Financial Services (Capital Adequacy) Regulations. Cap. 387

3. These Regulations shall apply to all banks and financial institutions licensed under the Act, and which accept deposits, money market instruments or the equivalent of deposits or money market instruments. Application

4. A bank or financial institution shall not incur an exposure to any single person in an amount which, in the aggregate, exceeds twenty-five per centum of the bank's or financial institution's regulatory capital. Limit on single exposures

5. Where a loan or an extension of credit has been made to a common enterprise, the total exposure of the bank or financial institution to that group shall be aggregated and considered as a single exposure and shall not exceed, in the aggregate, twenty-five per centum of the bank's or financial institution's regulatory capital. Limit on exposures to a common enterprise

6. Notwithstanding the limits prescribed in regulations 4 and 5, a bank's or financial institution's large loans exposures to persons and common enterprises shall not exceed, in the aggregate, six hundred per centum of the bank's or financial institution's regulatory capital. Limit on the aggregate of large loans exposures

7. (1) There shall be no limits on loans and extensions of credit to the Government. Exceptions, exemptions and other limits

(2) There shall be a limit of fifty per centum of the bank's or financial institution's regulatory capital on loans and extensions of credit to the following organisations:

(a) a foreign government, its agencies and instrumentalities; and

(b) the International Monetary Fund and the World Bank.

(3) The limit referred to in sub-regulation (2) shall apply to the aggregate of the loans and extensions of credit to each of the organisations referred to in that sub-regulation.

(4) In the case of loans, advances and extensions of credit in the inter-bank market-

(a) there shall be no limit where the inter-bank exposure is fully secured by the Government, including treasury bills and Government bonds with a residual maturity of less than one year.

(b) a bank or financial institution may grant another bank or financial institution a loan and an extension of credit on the security of a Government bond with a residual maturity of one year, but not more than five years, for any amount not exceeding seventy-five per centum of the face value of the pledged securities; and

(c) there shall be an exposure limit of fifty per centum of a bank's or financial institution's regulatory capital in respect of unsecured exposures.

(5) The loans, advances or extensions of credit referred to in sub-regulation

(4) shall comprise repayment terms which shall not exceed five working days.

(6) Any treasury bills and Government bonds pledged as security against loans, advances or extensions of credit shall be deducted from the bank's or financial institution's holdings reported to the Bank of Zambia and shall not be counted towards the calculation of the minimum liquidity requirements of the bank.

8. Where a bank or financial institution agrees with one or more other banks or financial institutions to collectively make a loan or extend credit to a person, only that portion of the loan or credit which is actually advanced by the bank or financial institution and representing its pro rata share of the syndicated loan shall be subject to the loan limits prescribed by regulations 4, 5, 6 and 7. Loan syndications

9. The lending limits prescribed by regulations 4, 5, 6 and 7 shall not apply to any portion of a loan, advance or extension of credit that represents accrued or discounted interest, unless such interest has been capitalised or is, in any other manner, converted to principal. Interest or discount on loans

10. The Bank of Zambia shall have the authority-

(a) to determine whether or not, and if so determined, when a loan, advance or extension of credit made to one person shall be attributed to, or combined with, those of another person;

(b) to combine the loans, advances or extensions of credit of one or more persons with those of another person when-Combining of loans to separate borrowers

(i) the proceeds of the loans or extensions of credit are used for the direct benefit of the other person;

(ii) a common enterprise is deemed to exist between the persons.

11. All large loans, advances and extensions of credit together with any other loans, advances or extensions of credit which, added to an already existing facility equals or exceeds ten per centum of a bank's or financial institution's regulatory capital shall be approved in advance, and in writing, by a majority of the members of the Board of Directors of the bank or financial institution or a special committee consisting of a majority of the members of that Board specially constituted for that purpose. Credit approval

12. Every bank or financial institution shall-

(a) within ten days following its month-end and in the Form prescribed in the Schedule, submit to the Bank of Zambia a monthly report of its large loans; and

(b) if requested by the Bank of Zambia, submit further detailed information on all or any other credits. Submission of reports

13. (1) Every loan, advance or extension of credit which is outstanding on the coming into force of these Regulations and which would violate these Regulations if the loan, advance or extension of credit was made after that date shall be reported to the Bank of Zambia not later than twenty-one days following the coming into force of these Regulations. Compliance with limits of these Regulations

(2) Subject to sub-regulation (3), the report referred to in sub-regulation (1) shall set out the details of the loan, advance or extension of credit and a period, not exceeding one year or such other period as may be provided for in the original loan agreement, within which to progressively bring the loan, advance or extension of credit within the limits of these Regulations.

(3) Notwithstanding sub-regulation (2), any renewal of a loan, advance or extension of credit done on or after the effective date of these Regulations shall be made only on such terms as shall bring the renewal of a loan, advance or extension of credit into compliance with the limits of these Regulations.

14. (1) A bank or financial institution which contravenes these Regulations shall be guilty of an offence and liable, for every day during the contravention continues, to a fine assessed by the Bank of Zambia not exceeding six hundred penalty units or, on conviction, to a fine not exceeding the fine prescribed in the Act, and every director, and any person concerned in the management of the bank or financial institution shall be personally liable to the same fine, or upon conviction, to imprisonment for a term not exceeding two years, or both. Penalty for non compliance

(2) Any director or any person referred to in sub-regulation (1) shall, in addition to the penalties prescribed in that sub-regulation, be liable for removal from office and barred from holding office in the banking and financial sector.

SCHEDULE
(Regulation 12)

BANK OF ZAMBIA LARGE LOAN EXPOSURES REGULATIONS

Reporting Bank:

Month ending:

Regulatory Capital (item IV of Regulatory Capital Calculation): K

Name

of BorrowerLoans,

Advances

and

Extensions

of Credit

Authorised
K'Millions

As a
% of
Regulat-ory
Capital

Amount
Outstan
-ding
K'Millions

As a
% of
Regulat
-ory
Capital

Rate of
Interest
%Interest
Capitalised
Included

in

Amounts

Outstanding

K'Millions

Expiry

Date

of

Facility

Security

Status

Current\ Non-Current

Total

SECTIONS 58 AND 124-THE BANKING AND FINANCIAL SERVICES (CLASSIFICATION AND PROVISIONING OF LOANS) REGULATIONS

Regulations by the Minister Statutory Instrument
142 of 1996

PART I

PRELIMINARY

1. These Regulations may be cited as the Banking and Financial Services (Classification and Provisioning of Loans) *The Banking and Financial Services (Classification and Provisioning of Loans) Regulations came into operation on the 1st January, 1997.*Regulations.

*The Banking and Financial Services (Classification and Provisioning of Loans) Regulations came into operation on the 1st January, 1997.Title

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

"allowance for loan losses" means a balance sheet valuation account established, through charges to the income statement, to absorb anticipated losses in respect of a bank's or a financial institution's on-balance sheet and off-balance sheet loans and commitments;

"Board" means the Board of Directors of a bank or a financial institution;

"capitalisation of interest" means-

(a) the process whereby accrued but uncollected interest is added to the unpaid principal balance at the payment date or maturity of a loan; or

(b) interest which is refinanced or rolled-over into a new loan facility;

"in the process of recovery" means that the efforts of collecting a debt are proceeding on course with the final recovery not expected to exceed one hundred and twenty days, either through-

(a) legal action against the borrower; or

(b) collection efforts which do not involve legal action, but which, in the near future, are expected to result in the repayment of the loan, including interest or, in its restoration to current status through payment of all the principal and the interest due;

"loan" means-

(a) any direct or indirect advance of funds, whether secured or unsecured, made on the basis of any obligation of the recipient or on the recipient's behalf to repay the funds; or

(b) leasing, and all credit risks, arising from actual claims and potential claims of all kinds, overdrafts, credit substitutes or commitments to extend credit and to acquire a debt security or other right of payment of a sum of money;

"non-accrual loan" means a loan-

(a) on which interest is no longer being taken into income unless paid by the borrower in cash;

(b) which has been placed on a cash basis for the purpose of financial reporting;

(c) on which principal or interest is due and unpaid for ninety days or more; or

(d) on which interest payments equal to ninety days' interest or more have been capitalised, refinanced, or rolled-over;

"non-performing loan" has the same meaning as in the Act;

"past due loan" means a loan where payment of principal or interest is contractually past due, but which has not yet been included in non-accrual loans;

"provision for loan losses" means a charge against income which is added to the Allowance for Loan Losses Account to ensure that the account is maintained at an adequate level in order to cover all anticipated loan losses, after taking into account any write-offs or recoveries of specific loans;

"renegotiated loan" means a loan which has been refinanced, rescheduled, rolled-over, or otherwise modified on such terms and conditions as may have been agreed by the parties thereto because of the weakened financial condition of the borrower resulting in the borrower's inability to repay in accordance with the original terms of the loan;

"senior management" means the officers responsible for the administration of a bank or a financial institution;

"well secured" means securing a loan by-

(a) collateral in the form of perfected liens on, or pledges of, real or personal property;

(b) securities that have realisable value net of realisation costs which is documented in writing and available for examination and which is sufficient to

repay the debt and accrued interest in full; or

(c) the guarantee of a financially responsible party, irrevocable guarantees issued by banks which are internationally rated as "first class" banks, multi-national companies, and governments where the beneficiary bank has performed the financial analysis necessary to determine that the issuer is financially sound, well-capitalised, and able to pay the guarantee on demand or upon the default of the borrower and which guarantee is properly acknowledged by the issuer through independent confirmation.

3. These Regulations shall apply to all banks and financial institutions licensed under the Act.Application

PART II

LOAN REVIEW SYSTEM AND RELATED POLICIES AND PROCEDURES

4. The Board shall adopt a loans policy which shall specify, at a minimum-

(a) standards for loans and extensions of credit; and

(b) the bank's or financial institution's functions of lending and approving of loans, delegation of responsibilities, and the process of reviewing the quality of loans.Loans policy

5. (1) The Board shall establish, in writing, a loan review system which shall identify risk, assure the adequacy of the Allowance for Loan Losses Account, and properly reflect such result in its financial statements.Loan review system

(2) The loan review system referred to in sub-regulation (1) shall, at a minimum, ensure that-

(a) the loan portfolio and lending function of a bank or a financial institution conforms to the loans policy referred to in regulation 4;

(b) the executive management and the Board are at all times adequately informed about portfolio risk;

(c) all loans are regularly evaluated using an objective grading system which is consistent with these Regulations;

(d) loans which have, or are likely to have, a problem are properly identified, classified and placed on non-accrual status, in accordance with these Regulations;

(e) timely, appropriate provisions and write-offs of identified losses are made to the Allowance for Loan Losses Account, so as to maintain the account at a level which will-

(i) accurately reflect the fair and realisable value of the loans in the balance sheet; and

(ii) meet the overall minimum provisioning levels specified in these Regulations;

(f) allowances and provisions are properly reflected in the bank's or the financial institution's financial statements.

(3) The loan review system referred to in sub-regulation (1) shall be reassessed on a regular basis in the light of current circumstances and shall be submitted to the Board at least once a year, for review and approval.

6. (1) There shall be a Loans Review Committee in every bank or financial institution which shall consist of not less than three members. Loans Review Committee

(2) The Chief Executive Officer of the bank or the financial institution shall be a member of the Loans Review Committee referred to in sub-regulation (1).

(3) The members of the Loans Review Committee referred to in sub-regulation (1) shall be appointed by the Board from amongst the members of the Board.

(4) A bank or a financial institution shall, through the Loans Review Committee and at least once every calendar quarter, review the quality and collectability of all loans in its loan portfolio, including any accrued and unpaid interest.

(5) The Loans Review Committee shall, immediately after the review referred to in sub-regulation (4), make a detailed report of such review directly to the Board, which shall take appropriate action on the report.

(6) A bank or a financial institution shall at all times maintain reasonable records in support of the evaluations and related entries of those records and shall make the records available for inspection as and when requested by the Bank of Zambia.

PART III

DETERMINATION AND TREATMENT OF NON-ACCRUAL LOANS AND RELATED ACCOUNTS

7. (1) A bank or a financial institution shall place a loan in non-accrual status if-

(a) there is reasonable doubt about the ultimate collectability of the principal or the interest;

(b) a specific provision has already been established on the loan;

(c) except in the case of a restructured loan, the loan has been partially or entirely written off; or

(d) the principal or the interest has been in default for a period of ninety days or more, or the account has been inactive for ninety days and deposits are insufficient to cover the interest capitalised during the period. Transfer to non-accrual status

8. Where a loan is placed in non-accrual status under these Regulations-

(a) all previously accrued but uncollected interest taken into income shall be reversed, at the latest, by the end of the quarter in which the loan was placed in non-accrual status;

(b) interest which has accrued during a current quarter shall be reversed against the income of that quarter; and

(c) interest accrued in periods other than the current quarter shall be charged to the Allowance for Loan Losses Account. Treatment of income on non-accrual loans

9. (1) Where a loan is placed in non-accrual status, any cash payments received shall first be applied to reduce the amount of the principal outstanding and due. Treatment of cash payments on non-accrual loans

(2) Where the principal outstanding of the loan which is due has been fully recovered, any further excess payments may be taken into income, provided the amount of income recognised is limited to the amount which would have been due to the bank or the financial institution if the loan had been current at its contractual rate.

(3) Any further excess payments referred to in sub-regulation (1) shall be applied against any additional balance outstanding on the loan.

(4) Where a renegotiated or a restructured loan exists, payments shall be taken into income on the basis of the revised terms of the loan agreement.

(5) Any determination by senior management or the Board that a loan is ultimately collectable shall be supported by-

(a) a current, well-documented credit evaluation of the borrower's financial condition and prospects for repayment; and

(b) a consideration of the borrower's historical repayment performance.

10. (1) A non-accrual loan shall only be restored to accrual status when-

(a) all payments of the principal and interest become fully current and senior management has determined that there is no reasonable doubt the ultimate collectability of the principal or the interest of the loan; or Restoration to accrual status

(b) when the loan otherwise becomes well-secured and is in the process of recovery.

(2) For the purposes of paragraph (a) of sub-regulation (1), a bank or financial institution shall have received repayment of all the principal and the interest in arrears, unless the loan has been formally restructured and qualifies for accrual status.

(3) Until a loan is restored to accrual status, any cash payments received shall be treated in accordance with the provisions of regulation 9.

11. (1) A renegotiated loan shall return to performing status-

(a) When the rate charged for the loan is equivalent to the rate that would be charged on a new fully performing loan of similar merit; and

(b) where all payments are fully current and senior credit management has determined, based on available and documented information, that there is no reasonable doubt about ultimate collectability of the principal or the interest. Renegotiated loans

(2) Where a loan is reclassified from non-current to performing status, all

existing specific provisions shall be extinguished prior to that reclassification.

12. Where a bank or a financial institution has a number of loans outstanding to a single borrower, and one of those loans meets the criteria from non-accrual status, the bank or the financial institution shall evaluate all other loans to that borrower and if the bank or the financial institution considers it appropriate, place one or more of such other loans in non-accrual status. Treatment of multiple loans to one borrower

13. (1) A bank or a financial institution shall maintain at all times a balance, in the Allowance for Loan Losses Account, that is the best possible estimate of probable loan related losses existing in the portfolio of on-and off-balance sheet items in the light of current conditions. Allowance for Loan Losses Account

(2) The Allowance for Loan Losses Account shall-

(a) in the case of balance sheet assets, except for acceptances, appear as deduction from the applicable asset; and

(b) in the case of acceptances and off-balance sheet items such as guarantees or letters of credit, appear as a separate item with other liabilities.

14. (1) Any additions to, or reductions from, the Allowance for Loan Losses Account shall be made through charges or credits to the Provision for Loan Losses Account in the income statement, and all loan write-offs or recoveries shall be charged or credited directly to the Allowance for Loan Losses Account. Additions and reductions to the Allowance for Loan Losses Account

(2) A loan loss or recovery shall not be charged or credited directly to "retained earnings" or to any other capital related account.

15. (1) The amount of the provision for loan losses that is charged to the income statement shall be the amount that is required to establish a balance in the Allowance for Loan Losses Account which management considers adequate to absorb all credit related losses in its portfolio of on-and off-balance sheet items and which, at a minimum, meets the provisioning requirements specified in these Regulations. Provision for loan losses

(2) All loans that are written off shall be charged directly to the Allowance for Loan Losses Account.

(3) Where no provisions are established, a provision shall be made in an amount sufficient to cover the loan amount that is to be written off, and shall be written off against the Allowance for Loan Losses Account.

PART IV

DETERMINATION OF AMOUNT OF POTENTIAL LOSS AND CLASSIFICATION OF LOANS

16. (1) In determining the amount of potential loss related to individual loans and to the aggregate of the loans portfolio of a bank or a financial institution, the following factors shall be considered:

(a) the historical loan loss experience;

- (b) the current economic conditions;
- (c) the delinquency trends;
- (d) the effectiveness of the bank's or financial institution's lending policies and collection procedures; and
- (e) the timeliness and accuracy of the bank's or financial institution's loan review function. Determination of amount of potential loss

17. (1) Subject to regulation (2), all loans of a bank or a financial institution shall be classified by the bank or the financial institution in one of the categories outlined in sub-regulations (3) to (6). Classification of loans

(2) Notwithstanding sub-regulation (1), an adverse classification may be warranted and appropriate where-

(a) a significant departure from the intended source of repayment develops even if a loan is current and supported by underlying collateral value; or

(b) where repayment terms originally were too liberal or a delinquency has been cured by modifications, refinancing, or additional advances.

(3) A loan shall be classified in the "pass" category if it is-

(a) considered current and performing in accordance with its contractual terms and expected to continue doing so; and

(b) fully protected by the current sound worth and paying capacity of the borrower or of the collateral pledged.

(4) A loan shall-

(a) be classified "standard" if it-

(i) is inadequately protected by the current sound worth and paying capacity of the borrower or of the collateral pledged; or

(ii) has well-defined weaknesses that may jeopardize the orderly repayment of the debt.

(b) at a minimum, be classified "substandard" if it is in arrears as to the principal or interest for ninety days or more, but less than one hundred and twenty days.

(5) A loan shall-

(a) be classified "doubtful" loan if-

(i) it is considered to have all the weaknesses inherent in a substandard loan; and

(ii) collection or orderly repayment in full, on the basis of currently existing facts, conditions and values, is highly questionable.

(b) at a minimum, be classified "doubtful" if it is in arrears as to principal or interest for one hundred and twenty days or more, but less than one

hundred and eighty days.

18. (1) The loan classification set out in the First Schedule shall apply to the corresponding minimum percentages set out in that Schedule. Minimum provisioning requirements

(2) Any loan or portion of a loan which is fully secured by cash, by a segregated deposit in the lending bank, or by a security issued by the Government of Zambia shall be exempt from the provisioning requirements referred to in sub-regulation (1).

(3) Any loan or portion of a loan which is assigned a "Loss" classification shall be fully provisioned at the time the loss is identified.

(4) The Bank of Zambia may, under exceptional circumstances, with its prior written approval and under such terms and conditions as it may consider necessary, vary a provisioning level for a period not exceeding one year.

19. (1) A bank or a financial institution shall maintain reasonable records in support of its evaluation of potential loan losses and of the entries made to ensure that an adequate provisioning level is maintained in the Allowance for Loan Losses Account. Examiner review

(2) The records and entries referred to in sub-regulation (1) shall be made available to the Bank of Zambia for review in order to enable it to assess management's estimation procedures, the reliability of the information on which estimates are based, and the adequacy of the Allowance for Loan Losses Account.

20. A bank or a financial institution shall, within ten days after the last day of every month, or such other reporting period as may be determined by the Bank of Zambia, submit to the Bank of Zambia-

(a) a balance sheet which reflects the Allowance for Loan Losses Account in an amount which is adequate to absorb potential losses within the bank's or the financial institution's on-and-off-balance sheet exposures;

(b) an income statement which reflects the provision for loan losses which is necessary to maintain the Allowance for Loan Losses Account at an adequate level;

(c) details of the classification of its loan portfolio in the Form set out in the Second Schedule; and

(d) such other information, report or detailed information as may be requested by the Bank of Zambia in the format and within such time as the Bank of Zambia may request.

Reporting requirements

FIRST SCHEDULE
(Regulation 18)

BANK OF ZAMBIA

MINIMUM PROVISIONING PERCENTAGES APPLYING TO LOAN CLASSIFICATION

Loan Classification	Provisioning Percentage
---------------------	-------------------------

Pass	At bank discretion
Substandard	Twenty per centum (90-119 days)
Doubtful	Fifty per centum (120-179 days)
Loss	One hundred per centum (180 days +)

SECOND SCHEDULE
(Regulation 20)

BANK OF ZAMBIA

CLASSIFICATION OF LOANS AND PROVISIONS

Name of institution:

As at: (month/year):

(in K'000)

	Total of Specific	Total Gross and General Net	
(I) PASS	Balances	Provisions	Balances
Number of accounts	-----	-----	-----
(II) SUBSTANDARD			
(a) List names of accounts (K10m and above)	-	-	-
	-	-	-
(b) Others (number of accounts below K10m)	-----	-----	-----
Sub-total (II) (a + b)	-----	-----	-----
(III) DOUBTFUL			

(a) List names of
accounts (K10m
and above)

-
-
-
-
-

(b) Others (number
of accounts
below K10m)

Sub-total (III) (a + b)

(V) LOSS

(a) List names of
accounts (K10m
and above)

-
-
-
-

(b) Others (number
of accounts
below K10m)

Sub-total (IV) (a + b)

TOTAL (I) to (IV)

NOTES: The total of the "Total Gross Balances" column must agree with the Loans
account balance appearing in a bank's or financial institution's balance sheet.

The total of the "Net Balances" column must agree with the net of the Loans

account balance less the Allowance for the Loan Losses Account in a bank or financial institution's balance sheet.

SECTION 124-THE BANKING AND FINANCIAL SERVICES (FOREIGN EXCHANGE RISK MANAGEMENT AND EXPOSURE) REGULATIONS Statutory Instrument
57 of 1996

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Foreign Exchange Risk Management and Exposure) Regulations. Title

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

"currency" means the legal tender of any country and includes precious metals and other similar tradeable commodities;

"fixed forward contract" means a foreign exchange bought or sold forward in advance for delivery on a fixed value date longer than spot, at a pre-determined specified rate of exchange;

"option forward contract" means a forward exchange contract which gives the counterparty the right to exercise the contract over a defined period instead of solely on one value date;

"foreign exchange option contract" means a contract which gives the holder the right, but not the obligation, to sell or buy an agreed sum of money on an agreed date, or at any time between agreed dates at an agreed price or rate, on payment of a non-refundable fee or premium to the writer of the option;

"long position" means the excess of assets over liabilities in a particular currency;

"net forward position" means all amounts to be received less all amounts to be paid in the future as a result of foreign exchange transactions which have already taken place;

"open position" means a situation where assets in a particular currency do not equal liabilities in that currency, including unhedged forward commitments to purchase or sell the currency;

"overnight position" means the holdings of any open positions in foreign currencies of a bank or financial institution at the close of each business day;

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule to the Banking and Financial Services (Capital Adequacy) Regulations; Cap. 387

"short position" means the excess of liabilities over assets in a particular currency;

"spot exchange rate" means the latest market price for a currency;

"spot foreign exchange contract" means an agreement with a counterparty to buy

or sell a given amount of one currency against the agreed countervalue of another, usually for settlement in two working days' time.

3. These Regulations shall apply to all banks and financial institutions licensed under the Act.

4. (1) Every bank or financial institution shall manage its foreign exchange risk exposures within the framework of a comprehensive risk management plan, setting out its policies, procedures and other safeguards necessary to prudently manage and control exposure to foreign exchange risk.

(2) The risk management plan referred to in sub-regulation (1) shall be drawn in the context of other risks and considerations and shall-

(a) take into account the ability of the bank or financial institution to absorb a potential loss;

(b) at a minimum, include-

(i) the establishment and implementation of sound and prudent foreign exchange risk management policies; and

(ii) the development and implementation of appropriate and effective foreign exchange risk management and control procedures.

(3) The policies and control procedures referred to in sub-regulation (2) shall be reviewed and reassessed at least once in a year and shall be submitted to the board of directors of the bank or financial institution for review and approval.

(4) The bank or financial institution shall, after the policies and control procedures referred to in sub-regulation (3) have been dealt with by its board of directors in accordance with that sub-regulation, refer them to the Bank of Zambia.

5. (1) Every bank or financial institution engaged or proposing to engage in foreign exchange activities shall set forth in its risk management plan a well-articulated policy of the objectives of its foreign exchange risk management strategy, and shall include, at a minimum-

(a) a statement of risk principles and objectives governing the extent to which the bank or financial institution is willing to assume foreign exchange risk;

(b) subject to the limits specified in regulation 7, explicit and prudent limits on the bank's or financial institution's exposure to foreign exchange risk;

(c) the currency or currencies in which the institution is prepared to incur exposure; and

(d) clearly defined levels of delegation of trading authorities.

6. (1) Every bank or financial institution engaged or proposing to engage in foreign exchange activities shall-

(a) as part of its risk management plan, develop, implement and oversee procedures to manage and control foreign exchange risk in accordance with its foreign exchange risk management policies; and

(b) be of a level of sophistication commensurate with the size, frequency and complexity of the institution's foreign exchange activities. Foreign exchange risk management and control procedures

(2) The foreign exchange risk management and control procedures referred to in sub-regulation (1) shall include, at a minimum-

(a) the use of accounting and management information systems to measure, monitor and reconcile, on a daily basis, foreign exchange positions, foreign exchange risk and foreign exchange gains or losses;

(b) regular monitoring and reporting techniques to senior management;

(c) controls governing the management of foreign currency activities; and

(d) regular independent inspections or audits to assess compliance with, and the integrity of, the foreign exchange policies and procedures.

7. A Bank or financial institution's foreign exchange positions and exposures shall be calculated in accordance with the First, Second and Third Schedules. Foreign exchange exposure limits

8. (1) The Bank of Zambia may, where it considers that the financial institution of a bank or financial institution warrants a lower limit, prescribe such lower limit as it may consider appropriate. Overall currency exposure

(2) Notwithstanding sub-regulation (1), every bank or financial institution shall-

(a) maintain its overall foreign exchange risk exposure as at the close of each business day to a maximum of twenty-five percentum of its regulatory capital; and

(b) ensure that its intra-day overall foreign exchange risk exposure is maintained within the objectives set out in its risk management policies and managed prudently and responsibly;

Provided that at no time shall the total of the foreign exchange risk exposure exceed forty percentum of the bank's or financial institution's regulatory capital.

9. (1) The Bank of Zambia may, where it considers that the financial situation of a bank or financial institution warrants a lower limit, prescribe such lower limit as it may consider appropriate. Single currency exposure

(2) Notwithstanding sub-regulation (1), every bank or financial institution shall-

(a) maintain its foreign exchange risk position as at the close of each business day in any single currency to a maximum of twenty percentum of its regulatory capital; and

(b) ensure that its intra-day foreign exchange risk position in any single

currency is maintained within the objectives set out in its risk management policies and managed prudently and responsibly:

Provided that at no time shall the total in any single currency exceed thirty percentum of the bank's or financial institution's regulatory capital;

(3) In this regulation-

"overall foreign exchange risk exposure" means the sum of the domestic currency equivalent amount, currency by currency, of all foreign currency denominated assets and liabilities, including the net forward or off balance sheet currency, of all net short and net long positions in currencies in which the bank or financial institution has positions, at the currently prevailing spot foreign exchange rates in connection with which the bank or financial institution shall be subject to gain or loss if there is a variation in the exchange rate of these currencies.

"foreign exchange risk" in any given single currency is the domestic currency equivalent amount, including the net forward position in that currency, at the currently prevailing spot foreign exchange rate of the foreign currency amount in connection with which the bank or financial institution will be subject to gain or loss if there is a variation in the exchange rate of that currency.

10. Every bank and financial institution which engages in foreign exchange operations shall submit to the Bank of Zambia, within ten working days following the reference month, a report of its foreign exchange positions and exposures, in the forms set out in the First, Second and Third Schedules.

Submission of reports

FIRST SCHEDULE

(Regulations 7 and 8)

1. Total Regulatory Capital
(as calculated by using the Second Schedule of the Banking and Financial Services (Capital Adequacy) Regulations, Cap. 387). Attach calculation K
2. Overall Foreign Currency Exposure
Item 3 of the Second Schedule K
As a percentage of Regulatory Capital (item 1 above) %
3. Foreign Currency Exposure on a Per Currency Basis

Currency

Long (short)As a percentage of

Regulatory Capital DEMFFRZARGBPUSDOTHERS (specify)

SECOND SCHEDULE

(Regulations 7 and 8)

Positions in Domestic Currency Equivalent of the
Spot and Forward Positions of Foreign Currencies (1)
(using prevailing rates quoted in the third schedule) Currency Balance
Sheet Forward Overall Long Short Long Short Long Short DEMFFRZARGBPUSDOTHERS (SPECIFY) NET
POSITION OVERALL EXPOSURE

(1) Report all unhedged positions, including interest rate hedges, forward contracts, derivatives, etc.

(2) The net position is the difference between the " total long" and " total short" positions.

(3) The overall foreign currency exposure is the sum total of all long and short positions.

THIRD SCHEDULE

(Regulations 7 and 8)

Positions in Foreign Currencies and Net Domestic Currency
Equivalent Positions

(- sign indicates a short position)

Currency

Net Balance Off Balance Sheet *(Forward)

Total Prevailing Spot Forex Rate (at Date of this Return) Net Domestic Currency
Equivalent Position DEMFFRZARGBPUSDOTHERS

(SPECIFY)

*Report all unhedged positions, including options, interest rate hedges forward contracts, derivatives, etc.

REPUBLIC OF ZAMBIA

THE COMPANIES ACT

CHAPTER 388 OF THE LAWS OF ZAMBIA

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THE COMPANIES ACT

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CHAPTER 388

COMPANIES²⁶ of 1994
6 of 1995

An Act to provide for the formation, management, administration and winding-up of companies; to provide for the registration of charges over the undertakings or properties of companies; to provide for the registration of foreign companies doing business in Zambia; and to provide for matters connected with or incidental to the foregoing.

[12th July, 1994]

PART I

PRELIMINARY

1. This Act may be cited as the Companies Act.Short title
2. In this Act, unless the context otherwise requires-Interpretation

"accounting records" includes-

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) such working papers and other documents as are necessary to explain the methods and calculations by which the accounts are made up;

"accounts" means profit and loss accounts and balance sheets together with any statements, reports and notes attached to or intended to be read with any of

those profit and loss accounts or balance sheets, but, subject to section one hundred and seventy-four, does not include the auditors' reports or directors' reports;

"alternate director" means an alternate director of a company referred to in section two hundred and thirteen;

"annual accounts" means the annual accounts referred to in section one hundred and sixty-four;

"annual general meeting" means an annual general meeting of a company referred to in section one hundred and thirty-eight;

"annual return" means the return referred to in section one hundred and eighty-four, together with any document required by this Act to accompany the return;

"articles" means the articles of a company described in section seven;

"auditors' report" means the report of the auditors of a company referred to in section one hundred and seventy-three;

"body corporate" means a company or corporation incorporated under or by virtue of the laws of Zambia or of any other country, other than a corporation sole;

"book" includes accounts, deed, writing, register, document, accounting record, and any clear record of information, however compiled and whether recorded or stored in written or printed form or by electronic or photographic process or otherwise;

"branch register" means a branch register of a company established under section fifty-one;

"capital redemption reserve" means the reserve referred to in section sixty;

"certificate of incorporation" means a certificate of incorporation of a company issued by the Registrar under section ten, or a replacement of such a certificate issued under this Act;

"certificate of share capital" means a certificate of share capital of a company issued by the Registrar under section ten, or a replacement of such a certificate issued under this Act;

"certified copy" means a copy of a document of a company which has endorsed thereon or annexed thereto-

(a) a certificate by a notary public; or

(b) a declaration made and signed by an officer of the company or by some person interested therein otherwise than on behalf of the company;

to the effect that it is a true and complete copy of the original, together

with, in the case of an original in a language other than English, an English translation similarly certified to the effect that it is an accurate translation of the original;

"charge" means a charge created in any way and includes-

- (a) mortgage;
- (b) an agreement to give or execute a charge or mortgage whether on demand or otherwise; and
- (c) until such time as the whole of the purchase price is paid, an agreement for sale and purchase of land under which the seller remains in occupation;

"class meeting" means a meeting of those members of a company who, under the articles, belong to a particular class;

"committee of inspection" means a committee of inspection appointed in the course of a winding-up under section two hundred and ninety-five or three hundred and fifteen;

"company" means-

- (a) a company incorporated under this Act; or
- (b) subject to section four and Division 14.3, an existing company;

"company limited by guarantee" means a company incorporated as such, being a company satisfying section nineteen;

"company with share capital" means a public company, a private company limited by shares or an unlimited company;

"court" means the High Court for Zambia;

"creditors' voluntary winding-up of" means a voluntary winding-up with respect to which no declaration of solvency was made in accordance with section three hundred and eight;

"current liability", means a liability that would in the ordinary course of events be payable within twelve months after the end of the financial year to which the accounts or group accounts concerned relate;

"debenture" means a document issued by a body corporate that evidences or acknowledges a debt of the body corporate, whether or not it constitutes a charge on property of the body corporate, in respect of money that is or may be deposited with or lent to the body corporate, other than a document of the following kinds-

(a) a document acknowledging a debt incurred by the body corporate in respect of money that is or may be deposited with or lent to the body corporate by a person-

(i) in the ordinary course of a business carried on by the person;
and

(ii) in the ordinary course of such business of the body corporate as is not part of a business of borrowing money and providing finance;

(b) a document issued by a bank in the ordinary course of its banking business that evidences or acknowledges indebtedness of the bank arising in the

ordinary course of that business;

(c) a cheque, order for the payment of money or bill of exchange;

(d) a document of a kind prescribed, and in the circumstances prescribed in the regulations for the purposes of this paragraph;

and includes-

(a) a unit of a debenture;

(b) debenture stock; and

(c) bonds and any other securities issued by a company, whether constituting a charge on the assets of the company or not;

"debenture holder" includes a debenture stockholder;

"declaration of guarantee" means a declaration of guarantee made under section nineteen;

"declaration of solvency" means a declaration made in accordance with section three hundred and eight;

"default" means, in reference to a person who is "in default," that the person wilfully authorised or permitted an act or omission that constitutes a contravention by a body corporate of the provision of this Act in which the expression appears;

"designating number" means the number assigned to a company or foreign company by the Registrar for the purposes of identification;

"director" means a person appointed as a director of a company under section two hundred and six; and "the directors" means the directors acting collectively as described in section two hundred and three;

"director- report" means the report by the directors of a company referred to in section one hundred and seventy-six;

"document" includes-

(a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(b) a disc or tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device;

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice;

"equity share" means a share comprised in the equity share capital of a body corporate;

"equity share capital" means the issued share capital of a body corporate,

excluding any part thereof which neither as respects dividends nor as respects capital carries any right to participate beyond a specified amount in a distribution;

"executive director" means a director to whom has been delegated any of the powers of the directors to direct and administer the business and affairs of the company;

"executive officer" means a person, by whatever name called and whether or not a director of a body corporate, who is concerned, or takes part, in the management of the body corporate;

"existing company" means a body corporate which immediately prior to the commencement of this Act was a company under the former Act;

"expert" includes an engineer, valuer, accountant, assayer, and any other person whose profession or calling gives authority to a statement by the person on the subject matter concerned;

"extraordinary general meeting" means a general meeting of a company that is not an annual general meeting;

"extraordinary resolution" means an extraordinary resolution for the purposes of section one hundred and fifty-six;

"financial year"

(a) in relation to a company, means the financial year of the company under section forty-two;

(b) in relation to a foreign company, means the financial year of the foreign company under section two hundred and forty-two; and

(c) in relation to any other body corporate, means a period in relation to which the body corporate, in conformity with the law of the place of its incorporation, produces accounts;

"former Act" means the Companies Act repealed by section four hundred and two; Cap. 686 of the 1971 Edition

"former name" does not include-

(a) a name changed or disused before the person bearing the name attained the age of eighteen years;

(b) a name changed or ceased to be used more than twenty years previously; or

(c) the name by which a married woman was known prior to her marriage;

"general meeting" means an annual general meeting or an extraordinary general meeting;

"general accounts" means the accounts of a group of companies referred to in section one hundred and sixty-five;

"group of companies" means a company that is a holding company together with all its subsidiaries;

"holding company" means a body corporate that is a holding company under section forty-three;

"invitation to the public" means an invitation described in section one hundred and nineteen;

"limited company" means a company limited by shares or a company limited by guarantee;

"liquidator" includes a provisional liquidator;

"managing director" means the managing director of a company appointed under section two hundred and fourteen;

"member" means a member of a company under section forty-five;

"members voluntary winding-up" means a voluntary winding-up with respect to which a declaration of solvency was made in accordance with section three hundred and eight;

"monetary unit" means an amount of one thousand kwacha;

"non-current liability" means a liability that is not a current liability;

"number", in relation to shares, includes an amount of stock;

"officer" includes-

- (a) a director, secretary or executive officer of a body corporate;
- (b) a local director of a foreign company;
- (c) a receiver of any part of the undertaking of a body corporate appointed under a power contained in any instrument; and
- (d) a liquidator of a body corporate appointed by the members in a voluntary winding-up;

but does not include-

- (i) a receiver of any part of the undertaking of a body corporate appointed by the court;
- (ii) a liquidator of a body corporate appointed by the court or by the creditors of the body corporate; or
- (iii) an auditor of a body corporate;

"official receiver" means-

- (a) an official receiver appointed under the Bankruptcy Act; or Cap. 82
- (b) an officer appointed for the purpose by the Minister, if no such official receiver is appointed;

"ordinary resolution" means an ordinary resolution for the purposes of section

one hundred and fifty-six;

"prescribed" means prescribed in the regulations made under this Act;

"private company" means a private company limited by shares, a company limited by guarantee or an unlimited company;

"private company limited by shares" means a company incorporated as such, being a company satisfying section seventeen;

"profit and loss account" includes income and expenditure account, revenue account or any other account showing the results of the business of a company for a period;

"public company" means a company incorporated as such, being a company satisfying section fourteen;

"receiver" includes an official receiver and a receiver and manager; and any reference to a receiver of the property of a company includes a reference to a receiver of part only of that property and to a receiver only of the income arising from that property, or from part thereof;

"register of foreign companies" means the register referred to in section two hundred and forty-four;

"registered accountant" means a registered accountant for the purposes of the Accountants Act; Cap. 390

"registered member" means a person registered as a member of a company under section forty-eight;

"registered office" means-

(a) in relation to a company, the registered office of the company under section one hundred and ninety; and

(b) in relation to a foreign company, the registered office of the company under section two hundred and forty-five;

"registered records office" means the registered records office of a company referred to in section one hundred and ninety-one;

"Registrar" means the Registrar of Companies established by section three hundred and sixty-six;

"related" means related for the purposes of section forty-three;

"resolution for reducing share capital" means a resolution described in section seventy-six;

"seal" means the common seal of a company or other body corporate;

"secretary"-

(a) in relation to a company, means a person appointed as the secretary pursuant to section two hundred and five;

(b) in relation to a body corporate other than a company, means a person occupying the position of secretary, by whatever name called;

"share" includes stock;

"shareholder" includes a stockholder;

"share premium account" means the share premium account referred to in section sixty-one;

"share warrant" means a share warrant issued pursuant to section sixty-nine;

"special resolution" means a special resolution for the purposes of section one hundred and fifty-six;

"Standard Articles" means the Standard Articles in the First Schedule;

"subsidiary" means a body corporate that is a subsidiary of another body corporate for the purposes of section forty-three;

"unlimited company" means a company incorporated as such, being a company satisfying section twenty;

"waiting period" means the period of seven days after the first publication of a prospectus which has been registered, or such longer period after that date as may be stated in the prospectus as the period before the expiration of which applications, offers, or acceptances in response to the prospectus will not be accepted or treated as binding;

"wholly owned subsidiary" means a body corporate that is the wholly owned subsidiary of another body corporate for the purposes of section forty-three.

3. A declaration made for the purposes of paragraph (b) of the definition of certified copy in section two shall be deemed to be a statutory declaration. Effect of declaration in certified copy

4. Subject to this Act, this Act applies to an existing company as if it had been duly incorporated under this Act as-

(a) a public company, if it was a public company under the former Act;

(b) a private company limited by shares, if it was a private company limited by shares under the former Act; or

(c) a company limited by guarantee, if it was a private company limited by guarantee under the former Act. Application of Act to existing companies

5. (1) Subject to this section, an association or partnership that-Prohibition of large partnerships

(a) consists of more than twenty persons; and

(b) is not a body corporate;

shall not carry on any business for gain by the association or partnership or individual members of the association or partnership.

(2) Subsection (1) shall not apply to a partnership-

(a) formed for the purpose of carrying on a prescribed profession or calling;
and

(b) having not more than the number of partners prescribed for the purposes
of that profession.

(3) If an association or partnership contravenes this section, each member of
the association or partnership shall be guilty of an offence, and shall be
liable on conviction to a fine not exceeding five hundred monetary units.

PART II

INCORPORATION AND MODIFICATION OF COMPANIES

Division 2.1-Incorporation

6. (1) Subject to this Act, any two or more persons associated for any purpose
may form an incorporated company by subscribing their names to an application
for incorporation that satisfies this section and lodging it with the Registrar,
together with-Application for incorporation

(a) any proposed articles of the company;

(b) a statutory declaration in accordance with section nine;

(c) a signed consent from each person named in the application as a director
or secretary of the company to act in the relevant capacity; and

(d) a declaration of guarantee by each subscriber, if the company is to be
limited by guarantee.

(2) An application for incorporation shall be in the prescribed form, shall be
signed by each subscriber and shall specify-

(a) the proposed name of the company;

(b) the physical address of the office to be the registered office of the
company;

(c) a postal address to be the registered postal address of the company;

(d) the type of company to be formed;

(e) if the company is to have share capital-

(i) the amount of share capital of the company;

(ii) the division of the share capital into shares of fixed amount; and

(iii) the number of shares each subscriber agrees to take;

(f) the particulars referred to in subsection (2) of section two hundred and
twenty-four of at least two persons who are to be the first directors of the
company;

(g) the particulars referred to in subsection (3) of section two hundred and twenty-four of the person or persons who are to be the first secretary or joint secretaries of the company;

(h) the name and address of the individual lodging the application; and

(i) such other information respecting the application, the company and the nature of its proposed business as the prescribed form may require.

(3) The application for incorporation may also specify a date, being a date not more than fifteen months after the date of lodgement of the application, on which the second financial year of the company will begin.

(4) The application for incorporation and the documents lodged with it shall be printed or typewritten.

(5) The application for incorporation shall be signed by each subscriber in the presence of at least one witness who attests to the signature.

(6) An individual shall not subscribe to an application for incorporation if he-

(a) is under eighteen years of age;

(b) is an undischarged bankrupt under the laws of Zambia;

(c) subject to an order by the court, is an undischarged bankrupt under the laws of another country; or

(d) is of unsound mind and has been declared to be so by the court or a court of competent jurisdiction of another country.

(7) The incorporation of a company shall not be invalid by reason only that an individual or individuals subscribed to the application for incorporation in contravention of subsection (6).

7. (1) A company may have articles regulating the conduct of the company. The articles of a company

(2) The articles may contain restrictions on the business that the company may carry on.

(3) Where a provision in the articles is inconsistent with this Act or any other written law, the provision is invalid to the extent of the inconsistency.

(4) The articles of a company may adopt the regulations of the Standard Articles, or any specified regulations thereof.

(5) The articles of a public company or a private company limited by shares shall be deemed to have adopted the regulations of the Standard Articles except insofar as the articles exclude or modify those regulations.

(6) The articles of a company shall be divided into paragraphs numbered consecutively.

8. (1) Subject to this Act, and to its articles, a company may amend its articles if it passes a special resolution approving the amendment. Amendment of

articles

(2) If a company passes a special resolution approving the amendment of its articles, it shall within twenty-one days after the date of the resolution lodge a copy of the resolution with the Registrar together with a copy of each paragraph of the articles affected by the amendment, in its amended form.

(3) The articles have effect in their amended form on and from the day of their lodgment with the Registrar or such later date as may be specified in the resolution.

(4) If a company fails to comply with subsection (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

9. (1) An application for incorporation shall be accompanied by a statutory declaration that the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, made by-Statutory declaration as to compliance with the Act

(a) a legal practitioner having a practising certificate who was engaged in the formation of the company; or

(b) a person named in the application as a first director or secretary of the company.

(2) The Registrar may accept the declaration as prima facie evidence of compliance.

10. (1) Where an application for incorporation and the documents referred to in section six have been duly lodged, the Registrar shall, subject to this Act, issue a certificate in the prescribed form stating that the company is, on and from the date specified in the certificate, incorporated and that the company is the type of company specified in the application for incorporation. Certificates of incorporation and of share capital

(2) If the company has share capital, the Registrar shall, at the same time, issue a certificate stating-

(a) the amount of share capital of the company; and

(b) the division of the share capital into shares of a fixed amount.

(3) The Registrar shall keep a copy of each certificate issued under this section, and this Act shall apply to the copies as if they were documents lodged with the Registrar.

11. On and from the date of incorporation specified in the certificate of incorporation, but subject to this Act, there shall be constituted an incorporated company by the name set out in the certificate. Incorporation of the company

12. (1) The Registrar shall maintain a register of companies in which is entered, in respect of each company-Register of companies

(a) a chronological record of the prescribed particulars, and of any other

particulars which the Registrar thinks fit, in relation to the company; and

(b) a record of the documents lodged under this Act in respect of the company, other than documents whose only effect is to change particulars recorded under paragraph (a).

Division 2.2-Types of company

13. A company incorporated under this Act shall be-

- (a) a public company; or
- (b) a private company being-Types of company
 - (i) a private company limited by shares;
 - (ii) a company limited by guarantee; or
 - (iii) an unlimited company

14. (1) A public company shall have share capital. Public companies

(2) The articles of a public company shall state-

(a) the rights, privileges, restrictions and conditions attaching to each class of shares, if there are two or more classes; and

(b) the authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series in a class of shares, if the class of shares may be issued in series.

(3) All shares shall rank equally apart from differences due to their being in different classes or series.

(4) Where a public company is wound-up, a member shall be liable to contribute, in accordance with Part XIII, an amount not exceeding the amount, if any, unpaid on the shares held by him.

(5) The articles of a public company shall not impose any restriction on the right to transfer any shares of the company other than-

(a) a restriction on the right to transfer any shares on which there is unpaid liability; or

(b) a restriction on the right to transfer shares issued to directors or other officers or employees exercising any rights or options granted under section seventy-three, or issued in pursuance of any scheme adopted under that section; or

(c) a provision for the compulsory acquisition, or rights of first refusal, of shares referred to in paragraph (b), in favour of other members of the company or trustees appointed under any scheme adopted under section seventy-three.

15. (1) A public company shall not transact any business, exercise any borrowing powers or incur any indebtedness, except for a purpose incidental to

its incorporation or to the obtaining of subscription to, or payment for, its shares, unless the Registrar has issued it with a certificate under this section. Public company may not operate until certificate issued that minimum capital requirements are satisfied

(2) The Registrar shall issue a company with a certificate for the purposes of this section if, on an application made to him in the prescribed form by the company and accompanied by a statutory declaration complying with subsection (3), he is satisfied that the nominal value of the company's allotted share capital is not less than the authorised minimum.

(3) The statutory declaration shall be in the prescribed form and signed by a director or secretary of the company and shall state-

(a) that the nominal value of the company's allotted share capital is not less than the authorised minimum;

(b) the amount paid up at the time of the application on the allotted share capital of the company; and

(c) the amount, or estimated amount of the preliminary expenses that have been paid or are payable.

(4) For the purposes of this section, a share allotted in pursuance of an employee's share scheme shall be disregarded in determining the nominal value of the company's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

(5) The Registrar may accept the statutory declaration as prima facie evidence of the matters stated therein.

(6) A certificate under this section in respect of a company is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

(7) If a company does business or exercises borrowing powers in contravention of this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding thirty monetary units for each day that the company does business or remains indebted.

(8) If a company enters into a transaction in contravention of this section and fails to comply with its obligations in connection therewith within thirty days after being called upon to do so, the directors of the company shall be jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the failure of the company to comply with those obligations.

(9) The liability imposed by subsection (8) shall be in addition to any liability of the company.

(10) In this section "the authorised minimum" means one million kwacha or such larger or smaller amount as may be prescribed instead.

(11) A regulation which increases the authorised minimum may specify a period within which any public company having an allotted share capital of which the nominal value is less than new authorised minimum shall be required to increase

that value to not less than the new authorised minimum or apply to be converted into a private company.

(12) Where a regulation is made increasing the authorised minimum and specifying a period under subsection (11), the authorised minimum that applied immediately before the entry into effect of the regulation shall continue to apply in relation to a company which, at that time, had an allotted share capital less than the new authorised minimum until-

(a) the company increases its allotted share capital above the new authorised minimum; or

(b) the end of the specified period;

whichever is earlier.

(13) Where a regulation is made increasing the authorised minimum and specifying a period under subsection (11), the authorised minimum that applied immediately before the entry into effect of the regulation shall continue to apply in relation to a company which, at that time, had an allotted share capital less than the new authorised minimum until the company increases its allotted share capital above the new authorised minimum.

16. (1) Subject to this section, the articles of a private company shall limit the number of its members to a specified number, being a number not more than fifty. Private companies

(2) The regulations may provide that the articles of an unlimited company may, subject to any specified conditions, limit the number of its members to a number larger than fifty.

(3) The articles of a private company shall not impose any restriction on the transferability of shares after they have been issued unless all the shareholders have agreed in writing.

(4) For the purposes of subsection (1)-

(a) joint holders of shares are counted as one person; and

(b) a member is not counted if he is in the employment of the company or of a related body corporate, or if he was a member while previously in the employment of the company or a related body corporate and has been a member continuously since that time.

(5) If a private company-

(a) has more members than permitted by its articles; or

(b) invites the public to acquire shares or debentures in the company in contravention of section one hundred and twenty-two;

the Registrar may give notice to the company requiring the company to give reasons why the company should not be converted into a public company.

(6) If, one month after the issue of the notice, the contravention concerned has not been rectified, the court may, on the application of the Registrar, if not satisfied that the contravention was inadvertent and not likely to be

repeated, order-

(a) that the company shall be deemed to have made an application for conversion to a public company, or conversion to a private company followed by conversion to a public company, as appropriate, and to have passed any resolutions necessary for such an application or applications in the form specified in the order; and

(b) that the directors, or any of them, shall be liable for the costs of the application of the Registrar and the conversion of the company.

17. (1) The articles of a private company limited by shares shall state-Private companies limited by shares

(a) the rights, privileges, restrictions and conditions attaching to each class of shares, if there are two or more classes; and

(b) the authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series, if a class of shares may be issued in series.

(2) All shares shall rank equally apart from differences due to their being in different classes or series.

(3) Where a private company limited by shares is wound-up, a member shall be liable to contribute, in accordance with Part XIII, an amount not exceeding the amount, if any, unpaid on the shares held by him.

18. (1) A private company limited by shares shall not transact any business, exercise any borrowing powers or incur any indebtedness, except for a purpose incidental to its incorporation or to the obtaining of subscription to, or payment for, its shares, unless-Minimum capital for private company limited by shares

(a) consideration (whether in cash or otherwise) to the value of not less than fifty thousand kwacha, or such larger or smaller amount as may be prescribed instead, has been paid to it for the issue of its shares; and

(b) it has furnished to the Registrar a declaration signed by one of the directors or by the secretary, stating that the requirement of paragraph (a) has been complied with.

(2) For the purposes of subsection (1), the value of-

(a) the goodwill of a business; or

(b) services rendered or to be rendered to the company;

shall not be counted.

(3) Where a new amount is prescribed for the purposes of subsection (1), a private company that satisfied this section immediately before the new amount was prescribed shall be deemed to continue to satisfy it.

19. (1) Each subscriber to an application for incorporation as a company limited by guarantee shall sign a declaration of guarantee specifying the amount that he undertakes to contribute to the assets of the company in the event of

its being wound-up. Companies limited by guarantee

(2) Each subscriber to the application for incorporation shall, on the incorporation of the company, be a member of the company.

(3) Subject to any additional requirements imposed by the articles of the company-

(a) a person shall become a member of the company, on approval by a resolution of the company, by signing a declaration of guarantee and delivering it to the company; and

(b) a person shall cease to be a member on delivering to the company a signed notice in writing to that effect.

(4) Within seven days after a person becomes a member or ceases to be a member of the company, the company shall lodge with the Registrar a notice in the prescribed form, together with, in the case of a person's becoming a member, the declaration of guarantee by the person.

(5) The company shall not carry on business for the purpose of making profits for its members or for anyone concerned in its promotion or management.

(6) Where a company limited by guarantee is wound-up, a member shall be liable to contribute, in accordance with Part XIII, an amount not exceeding the amount specified in the declaration of guarantee made by him.

(7) If the company carries on business for the purpose of making profits for its members or for anyone concerned in its promotion or management-

(a) those officers and members of the company who wilfully authorise or permit the business to be carried on for that purpose shall be jointly and severally liable for the payment and discharge of all debts and liabilities of the company incurred in carrying on the business so authorised or permitted; and

(b) each of the officers and members referred to in paragraph (a) shall be guilty of an offence, and shall be liable on conviction to a fine of not more than thirty monetary units for each day on which that business is carried on.

(8) If the company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

20. (1) An unlimited company shall have share capital and its articles shall state-Unlimited companies

(a) the rights, privileges, restrictions and conditions attaching to each class of shares, if there are two or more classes; and

(b) the authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series, if a class of shares may be issued in series.

(2) All shares shall rank equally apart from differences due to their being in different classes or series.

(3) Where an unlimited company is wound-up, a member shall be liable to contribute, in accordance with Part XIII, without limitation of liability.

Division 2.3-General provisions

21. Subject to this Act, the incorporation of a company shall have the same effect as a contract under seal between the company and its members from time to time and between those members themselves, in which they agree to form a company whose business will be conducted in accordance with the application for incorporation, the certificate of share capital from time to time, the articles of the company from time to time, and this Act. Contractual effect of incorporation

22. (1) A company shall have, subject to this Act and to such limitations as are inherent in its corporate nature, the capacity, rights, powers and privileges of an individual. Capacity and powers of a company

(2) A company shall have the capacity to carry on its business and exercise its powers in any jurisdiction outside Zambia to the extent that the laws of Zambia and of that jurisdiction permit.

(3) A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor exercise any of its powers in a manner contrary to its articles.

23. No act of a company, including any transfer of property to or by a company, shall be invalid by reason only that the act or transfer is contrary to its articles or this Act. Validity of acts

24. No person dealing with a company shall be affected by, or presumed to have notice or knowledge of, the contents of a document concerning the company by reason only that the document has been lodged with the Registrar or is held by the company available for inspection. Notice not presumed

25. A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company that-

(a) any of the articles of the company has not been complied with;

(b) a shareholder agreement has not been complied with;

(c) the persons named in the most recent annual return or notice under section two hundred and twenty-six are not the directors of the company;

(d) the registered office of the company is not an office of the company;

(e) a person held out by a company as a director, an officer or an agent of the company has no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such a director, officer or agent; No disclaimer allowed

(f) a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or genuine; or

(g) the financial assistance referred to in section eighty-three or the sale or disposal of property referred to in section two hundred and sixteen was not

authorised; except where that person has, or ought to have had by virtue of his position with or relationship to the company, knowledge of the fact asserted.

26. (1) If at any time the number of members of a company is reduced below two and it carries on business for more than six months without at least two members, a member or director of the company who was aware that the business was being carried on with fewer than two members shall be severally liable for the payment of all the debts and liabilities of the company incurred after the end of that period of six months. Companies ceasing to have at least two members

(2) The court, in any proceeding against the member or director or on application being made to it by any person interested, may relieve the member or director either wholly or partly from liability under subsection (1) on such terms as it thinks fit, if it is satisfied that the member or director had made reasonable efforts to prevent the business from being continued, or that it is otherwise just and reasonable to do so.

(3) The liability imposed under subsection (1) shall be in addition to any liability of the company.

27. A member of a company shall be bound by an alteration made in the articles on a date (in this section called the "alteration date") after the date on which he became a member only to the extent that the alteration does not require him-

(a) to take or subscribe for more shares than the number held by him on the alteration date;

(b) in any way to increase his liability as at the alteration date; or

(c) to contribute to the share capital of the company or otherwise to pay money to it;

unless he agrees in writing, either before or after the alteration date, to be bound thereby. No increase in a member's liability or contribution without consent

28. (1) If a person purports to enter into a contract not evidenced in writing in the name of or on behalf of a company before it comes into existence, the person shall be bound by the contract and entitled to the benefits thereof. Pre-incorporation contracts

(2) If a person purports to enter into a contract evidenced in writing in the name of or on behalf of a company before it comes into existence, the person shall be bound by the contract (in this section called "the relevant contract") and entitled to the benefits thereof except as provided in this section.

(3) The company may, not later than fifteen months after its incorporation, adopt the contract by an ordinary resolution, and upon the adoption, subject to subsection (4)-

(a) the company shall for all purposes be bound by the contract and entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party thereto; and

(b) the person who purported to act in the name of or on behalf of the company shall cease to be bound by or entitled to the benefits of the contract.

(4) Subject to subsection (5), whether or not the relevant contract is adopted by the company, the other party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and the person who purported to act in the name of or on behalf of the company, and upon such application the court may make any order it thinks just and equitable.

(5) Subsection (4) does not apply if the relevant contract expressly provides that the person who purported to act in the name of or on behalf of the company before it came into existence shall not in any event be bound by the contract nor entitled to the benefits thereof.

29. (1) A company shall supply to any member on request copies of-Copies of certificate of incorporation, certificate of share capital and articles to be given to members

(a) the certificate of incorporation;

(b) the certificate of share capital, in the case of a company with share capital; and

(c) The articles of the company;

within seven days after receiving payment of the sum of one monetary unit, or such lesser sum as may be prescribed by the company, for each set of copies.

(2) A company limited by guarantee shall supply to any member on request a list of the members with the amounts guaranteed by each in the declaration of guarantee.

(3) A copy of the articles supplied under subsection (1) shall have endorsed on it the registered address, the postal address and the address of the registered records office of the company.

(4) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

Division 2.4-Conversion of a company from one type to another

30. (1) A private company limited by shares may be converted into a company limited by guarantee if-Conversion of a private company limited by shares to company limited by guarantee

(a) there is no unpaid liability on any of its shares;

(b) all its members agree in writing to such a conversion;

(c) a special resolution amending the articles to satisfy section nineteen is passed, if the articles do not satisfy that section; and

(d) each member makes a declaration of guarantee.

31. A private company limited by shares may be converted into an unlimited company if all its members agree in writing to its conversion.Conversion of

private company limited by shares to unlimited company

32. A company limited by guarantee may be converted into a company limited by shares or an unlimited company if-

(a) all the members agree in writing-Conversion of company limited by guarantee to company limited by shares or unlimited company

(i) to convert the company into such a company; and

(ii) to a share capital for the company and the division thereof into shares of fixed amounts; and

(b) each member agrees in writing to take up a specified number of shares.

33. (1) An unlimited company may be converted into a private company limited by shares or a company limited by guarantee if-Conversion of unlimited company to private limited company

(a) all its members agree in writing to its conversion;

(b) a special resolution amending the articles to satisfy section seventeen or nineteen, as appropriate, is passed, if the articles do not satisfy section seventeen and nineteen, as appropriate; and

(c) each member makes a declaration of guarantee, in the case of conversion to a company limited by guarantee.

(2) In the case of a conversion to company limited by shares, the special resolution may-

(a) increase the nominal amount of the company's share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company's being wound-up; or

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purpose of the company's being wound-up.

34. A public company may be converted into a private company limited by shares if a special resolution is passed that-

(a) approves the conversion; and

(b) amends the articles to satisfy sections sixteen and seventeen, if the company's articles do not satisfy those sections.Conversion of public company to private company limited by shares

35. (1) A private company limited by shares may be converted into a public company if a special resolution is passed that-Conversion of private company limited by shares to public company

(a) approves the conversion; and

(b) amends the articles to satisfy section fourteen, if the company's articles do not satisfy that section.

36. (1) If the requirements of section thirty, thirty-one, thirty-two, thirty-three, thirty-four or thirty-five (in this section called "the conversion section") are satisfied with respect to a company, the company shall, within twenty-one days after the conversion section's becoming satisfied, lodge with the Registrar an application in the prescribed form for conversion of the company in accordance with the resolution or agreement, together with the documents referred to in subsection (4).Method of conversion

(2) On receiving the application the Registrar shall-

(a) issue a replacement certificate of incorporation in the prescribed form worded to meet the circumstances of the case and stating the date of conversion of the company; and

(b) make such entries in such registers as he considers appropriate.

(3) On and from the date stated in the certificate as the date of conversion.

(a) the company shall be converted into a company of the status sought;

(b) if the company is being converted from a company with share capital to a company limited by guarantee, the shares therein shall be validly surrendered and cancelled notwithstanding section seventy-six;

(c) the articles of the company shall be amended in accordance with the documents lodged with the application; and

(d) where this Act requires different words to be the last words of the name of a company of the new status, the name of the company shall be changed accordingly.

(4) The documents to be delivered to the Registrar are the following:

(a) the company's certificate of incorporation;

(b) a copy of each paragraph in the articles affected by any amendment, in its amended form;

(c) a copy of the special resolution or written agreement by the members referred to in the conversion section;

(d) the declarations of guarantee by each member, if the company is being converted to a company limited by guarantee;

(e) a statutory declaration by a director and the secretary of the company stating-

(i) that the conditions of the conversion section have been complied with; and

(ii) that in their opinion the company is solvent;

(f) a certificate by the auditors of the company, made not more than three months before the date of the application, that they have investigated the affairs of the company and that the company is solvent at the date of the certificate;

(g) certified copies, certified by a director and the secretary of the company, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to the members of the company in the preceding twelve months, if the company is being converted from a public company to a private company and has been incorporated as a public company for more than fifteen months.

(5) The conversion of the company under this section shall not alter the identity of the company, nor affect any rights or obligations of the company except as mentioned in this section, nor render defective any legal proceedings by or against the company.

(6) Where an unlimited company is converted to a limited company and is wound-up within three years after the conversion, a member of the company who was a member immediately before the conversion shall not be entitled to a limitation of liability under section two hundred and sixty-six.

(7) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

(8) If a director, secretary or auditor of a company makes a declaration or certificate for the purposes of subsection (4) that in his opinion the company is solvent, without having reasonable grounds for the opinion, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

Division 2.5-The name of a company

37. (1) A public company shall have a name the last word of which is "PLC".Name of company

(2) Subject to this Division, a private company limited by shares or a company limited by guarantee shall have a name the last word of which is "Limited".

(3) The Registrar shall not register as the name of a company a name which in his opinion is likely to cause confusion with the name of another company or is otherwise undesirable.

(4) The Registrar shall not, without the written consent of the Minister, register as the name of a company a name which in the Registrar's opinion suggests that the company enjoys the patronage of the President.

(5) The Registrar may, at the request of persons who intend to form an incorporated company, give an opinion on the acceptability of a proposed name.

38. (1) A person or persons who propose to form a company may, subject to this section, reserve a name for the company by lodging with the Registrar an application in the prescribed form specifying the name proposed to be reserved (in this section called "the reserved name").Reservation of name

(2) If the reserved named is acceptable to the Registrar and the Registrar is satisfied that-

(a) the reserved name is a registered business name of the person or persons;

(b) the reserved name is the name of an unincorporated association consisting of or represented by the person or persons;

(c) the reserved name is a name under which the person or persons are trading or conducting business, or is such a name with minor modifications or additions; or

(d) the person is a body corporate other than a company and the reserved name is the name of the body corporate or that name with minor modifications or additions;

the Registrar shall register the name as reserved by the person or persons for a period of three months.

(3) While the name is so registered-

(a) subject to this Act, the person or persons shall be entitled to incorporate a company under the name; and

(b) the Registrar shall treat the proposed name as the name of a company incorporated by the person or persons for the purposes of determining the acceptability of any other name as the name of a company.

39. (1) The Registrar may, on the application of a company limited by guarantee, grant the company written permission to omit the word "Limited" from its name for the purposes of this Act apart from this Part. Registrar may allow company to dispense with "Limited" in its name

(2) The Registrar may grant the permission on such conditions as he thinks fit, and those conditions shall be binding on the company and shall, if the Registrar so directs, be inserted in the articles of the company.

(3) The Registrar may revoke the permission at any time, after giving written notice to the company of his intention to do so and considering any objections of the company.

40. (1) A company may pass a special resolution to change its name. Change of name

(2) Within twenty-one days after the date of the resolution, the company shall notify the Registrar in the prescribed form that the company intends to change its name to the name specified in the resolution (in this section called the "new name").

(3) The Registrar, after considering the new name, shall notify the company that-

(a) the new name is acceptable; or

(b) in the opinion of the Registrar, the new name of a company would be likely to cause confusion with the name of another company or is otherwise undesirable, and that the Registrar will not register the new name.

(4) If the new name is acceptable, the company shall, within twenty-one days after receiving the notice of the fact, lodge with the Registrar-

(a) the company's certificate of incorporation; and

(b) a copy of the resolution.

(5) On receiving the documents referred to in subsection (4), the Registrar shall enter the new name on the Register in place of the former name, and shall issue a replacement certificate of incorporation worded to meet the circumstances of the case.

(6) A certificate under this section shall be conclusive evidence of the alteration to which it relates.

(7) A change of name by a company shall not affect any rights or obligations of the company nor render defective any legal proceedings that could have been continued or commenced against it by its former name, and any such legal proceedings may be continued or commenced against it by its new name.

41. (1) If, in the opinion of the Registrar, the name of a company is likely to cause confusion with the name of another company or is otherwise undesirable, the Registrar may direct that the company shall change its name in accordance with this Division. Registrar may require change of name

(2) If the company does not change its name within fifty days, or such longer period as the Registrar may allow in writing, after receiving a direction under subsection (1), the Registrar shall register the designating number of the company, together with the word "Limited" or "PLC" if required by section thirty-seven, as the name of the company, and shall issue a new certificate of incorporation for the company worded to meet the circumstances of the case.

(3) A change of name under subsection (2) shall not affect any rights or obligations of the company nor render defective any legal proceedings that could have been continued or commenced against it by its former name, and any such legal proceedings may be continued or commenced against it by its new name.

Division 2.6-Miscellaneous

42. (1) For the purposes of this Act, the "financial year" of a company is the period, whether or not a period of twelve months, that begins on one accounting date of the company and ends on the day before the next. Financial year of a company

(2) The first "accounting date" of a company is the date of its incorporation.

(3) Subject to this section, the subsequent accounting dates of a company are-

(a) the date specified in the application for its incorporation as the date on which the second financial year of the company will begin, and anniversaries of that date, if the application for incorporation specified such a date; or

(b) the anniversaries of the date of its incorporation, if the application for incorporation did not specify such a date.

(4) A company may change an accounting date by lodging a notice of the change in the prescribed form with the Registrar, provided that-

(a) the notice is lodged with the Registrar and notice of the change is given to each registered member and to the auditors (if any) of the company not later

than the accounting date previous to the one to be changed; and

(b) the change does not result in a financial year's being longer than fifteen months.

(5) Where a company changes an accounting date under this section, the subsequent accounting dates of the company are, unless changed under this section, the anniversaries of that changed date.

43. (1) For the purposes of this section, "company" means a body corporate, whether or not a company for other purposes of this Act and whether or not incorporated in Zambia. Holding companies, subsidiaries and related companies

(2) For the purposes of this Act, a company is a "holding company" of another company if the other company is a subsidiary of it under subsection (3).

(3) For the purposes of this Act, the "subsidiaries" of a company (in this subsection called "the holding company") are the following companies:

(a) any company in which the holding company holds-

(i) more than half in nominal value of the equity share capital, if the company is incorporated in a jurisdiction that has nominal value of share capital; or

(ii) more than half in value of the equity share capital, if the company is incorporated in a jurisdiction that does not have nominal value of share capital;

(b) any company of which the holding company is a member and the composition of whose board of directors is controlled by the holding company;

(c) any subsidiary under paragraph (a) or (b) of a company which is itself a subsidiary of the holding company under paragraph (a) or (b) or by the repeated application of this paragraph.

(4) For the purposes of this Act, the "wholly owned subsidiaries" of a holding company are the following companies:

(a) any company with no members other than the holding company and its nominees;

(b) any company with no members other than-

(i) the holding company;

(ii) nominees of the holding company;

(iii) companies which are themselves wholly owned subsidiaries of the holding company under paragraph (a) or the repeated application of this paragraph;

(iv) nominees of companies referred to in subparagraph (iii).

(5) For the purposes of this Act, a company is "related" to a second company if-

(i) the first company is a subsidiary of the second;

(ii) the first company is a holding company of the second; or

(iii) both companies are subsidiaries of a third company.

(6) For the purposes of this section, the composition of a company's board of directors is controlled by another company if, and only if, in relation to each of more than half of the directorships-

(a) the other company is able, without the consent or concurrence of any other person, to appoint or remove the holder of the directorship; or

(b) a person's appointment to the directorship follows necessarily from his appointment as director of the other company.

(7) In determining whether the composition of a company's board of directors is controlled by another company-

(a) subject to this subsection, any shares held or power exercisable by a person who is the effective nominee of the other company shall be deemed to be held or exercisable by the other company;

(b) any shares held or power exercisable in a fiduciary capacity shall be disregarded;

(c) any shares held or power exercisable by any persons by virtue of the provisions of any debentures of the company or of a trust deed for securing any issue of such debentures shall be disregarded; and

(d) any shares held or power exercisable by a person only by way of security for the purposes of a transaction entered into in the ordinary course of business shall be disregarded if the ordinary business of the person includes the lending of money.

(8) For the purposes of this section, a member of a company is the effective nominee of another company if he is-

(a) a nominee of the other company;

(b) a subsidiary of the other company;

(c) a person who is the effective nominee under paragraph (a) or (b) of a person who is himself an effective nominee of the other company under paragraph (a) or (b) or by the repeated application of this paragraph.

44. (1) A company shall, within one month after another body corporate has become related to it, lodge with the Registrar a notice of that fact together with particulars identifying the body corporate. Registration of related bodies corporate

(2) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

PART III

MEMBERSHIP AND REGISTERS

45. (1) The members of a company with a share capital shall be the shareholders and stockholders of the company. Membership of company

(2) On the incorporation of a company with share capital and until the first allotment of shares by the company, the members shall be those subscribers to the application for incorporation who have not given the company written notice of their ceasing to be members.

(3) The members of a company limited by guarantee shall be the persons who are members in accordance with section nineteen.

46. (1) Except as provided in this section, a company shall not be a member of itself or of a body corporate which is its holding company. Membership by company of itself or of holding company

(2) A company may, in the capacity of personal representative or trustee, be a member of itself or a body corporate which is its holding company unless it or the holding company or a subsidiary of either of them has a beneficial interest in the membership.

(3) A company may be a member of itself or a body corporate which is its holding company by way of security for the purposes of a transaction entered into in the ordinary course of a business which includes the lending of money, but in that case shall have no right to vote at meetings of the holding company or of any class of members thereof.

(4) This section shall not prevent a subsidiary which was a member of a body corporate before it became a subsidiary of the body corporate from continuing to be a member.

(5) This section shall not prevent a subsidiary which was, immediately before the commencement of this Act, a member of its holding company from continuing to be a member.

(6) A subsidiary that continues to be a member of its holding company under subsection (4) or (5)-

(a) shall have no right to vote at meetings of the holding company or any class of members thereof;

(b) shall not acquire further shares in the holding company except upon a general issue of fully-paid bonus shares, if the holding company is a company with share capital; and

(c) shall not, as a member, increase any interest in, or liability in relation to, the holding company, if the holding company is a company limited by guarantee.

(7) For the purposes of this section, a company is deemed to be a member of a body corporate if a nominee of the company is a member.

47. If a private company fails to comply with the provisions of its articles on the number of its members, the company, and each officer and member in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units. Offence if membership of private

company exceeds number specified in articles

48. (1) A company shall maintain a register of its members and enter therein the following particulars: Register of members

- (a) the full name and address of each member of which it has received notice;
- (b) the occupation of the member, if the member is an individual;
- (c) the fact that the member is a body corporate or an unincorporated association, as the case may be, if the member is not an individual;
- (d) the date on which the company received the notice;
- (e) if the company has share capital-
 - (i) the shares held by each member with the share numbers (if any); and
 - (ii) the amount paid or agreed to be considered as paid on the shares of each member;
- (f) the amount that each member has guaranteed in his declaration of guarantee, if the company is limited by guarantee;
- (g) the date on which the company received notice of any person's ceasing to be a member.

(2) If the company has more than fifty members, the register shall contain an index of the names of the members in a form that enables the account of each member to be found readily.

(3) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

(4) If the company fails to comply with this section because of the default of an agent charged with maintaining the register, the agent shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

49. (1) Subject to this Part, the register and index of the names of the members of the company shall be available for inspection by any member of the company or other person in accordance with section one hundred and ninety-three. Inspection of register

(2) A company may, on giving notice by advertisement in a newspaper circulating generally throughout Zambia, close for any time or times not exceeding in total thirty days in each year the register of members of the company or the part thereof relating to members holding shares of any class.

50. (1) If-Power of court to rectify register

- (a) a company fails to correct an error in its register of members; or
- (b) an error in the register causes a loss to a person;

the person aggrieved or any member of the company may apply to the court for an order that the register be rectified and the person aggrieved may apply for an order that the company pay compensation for the loss.

(2) If an application is made under this section, the court may make such orders as it thinks fit.

(3) On an application under this section, the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or removed from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or convenient to be decided for rectification of the register.

(4) If an order is made under this section, the company shall, within twenty-one days after the making of the order, lodge a certified copy of the order with the Registrar.

(5) If the company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

51. (1) A company with share capital may, subject to its articles, keep a part of its register of members (in this Act called a "branch register"), being the part relating to members resident in a specified foreign country or countries, at a place in the foreign country, or one of the foreign countries. Company may keep branch register

(2) The shares registered in a branch register shall be distinguished from the other shares of the company while they are held by members resident in a country to which the branch register applies.

(3) The company shall arrange for the information as to any entry in a branch register to be transmitted to its registered records office as quickly as practicable, and shall maintain there, as part of its register of members, a duplicate of the branch register.

(4) The company shall lodge with the Registrar notice of the physical address of the office where any branch register is kept, and of any change in that address and, if it is discontinued, of its discontinuance, and any such notice shall be given within twenty-one days after the initial keeping of the register in that office or of the change or discontinuance, as the case may be.

(5) A branch register shall be maintained and shall be open for inspection in the manner required in sections forty-eight and forty-nine, or as nearly as is practicable, except that the advertisement before closing the register shall be inserted in some newspaper circulating generally in the country where the branch register is kept.

(6) If a company fails to comply with subsection (3), (4) or (5), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

52. An instrument of transfer of any share registered in a branch register

shall be deemed to transfer property situated outside Zambia, and, unless executed in any part of Zambia, shall be exempt from any duty chargeable in Zambia. Duties in case of securities registered in branch register

53. The regulations may provide that sections forty-eight and forty-nine shall, subject to any modifications and adaptations specified in the regulation, apply to a register of members kept in Zambia by a specified body corporate, or class of bodies corporate, incorporated under the law of a foreign country or countries. Branch registers of foreign companies kept in Zambia

54. (1) Subject to section seventy, no notice of any trust, express, implied or constructive, need be entered on the register of members of a company, or be received by the company or the Registrar. No notice of trust

(2) A company shall not be bound to see to the execution of any trust, whether express, implied or constructive in respect of any of its shares.

(3) A receipt given by a member in whose name a share stands in the register of members shall be a valid and binding discharge of the company for any dividend or other money payable in respect of such share, whether or not notice of any trust relating to the share has been given to or received by the company.

55. The register of members shall be prima facie evidence of any matter by this Act directed or authorised to be inserted therein. Register to be evidence

PART IV

SHARES AND SHARE CAPITAL

Division 4.1-Interpretation

56. In this Part, unless the context otherwise requires, "company" means a company with share capital.

Division 4.2-Issue and transfer of shares Interpretation

57. (1) The shares or other interest of a member in a company shall be personal estate and movable property, transferable by a written transfer in a manner provided by the articles of the company or by this Act. Nature and transferability of shares

(2) If an instrument of transfer of fully paid shares in a company is in the prescribed form, executed by both the transferor and the transferee, or by persons duly authorised on behalf of the transferor or the transferee, the company shall not refuse registration of the transfer on the ground of form.

(3) Subsection (2) shall not affect-

(a) the validity of any instrument which would be effective to transfer shares apart from that subsection;

(b) any powers of the directors to accept in their discretion an instrument in any other form which may seem to them sufficient; or

(c) any right of the directors to refuse to register a person as the holder of shares on any ground other than the form in which those shares purport to be transferred to him.

58. (1) Subject to this section, each issued share in a company shall be assigned a distinguishing number. Numbering of shares

(2) If at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up, none of those shares need thereafter have a distinguishing number so long as the shares, or the shares in that class, remain fully paid up.

59. (1) The articles of a company may provide for the issue of shares which are to be redeemed, or are liable to be redeemed at the option of- Redeemable shares

(a) the company;

(b) the share-holder, or

(c) either the company or the shareholder.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares shall not be redeemed unless they are fully paid.

(4) The terms of redemption shall provide for payment on redemption.

(5) Redeemable shares may be redeemed only out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.

(6) Any premium payable on redemption shall be paid either-

(a) out of distributable profits of the company; or

(b) out of the company's share premium account (including any sum transferred to that account in respect of premiums on a fresh issue made for the purposes of the redemption).

(7) The manner and terms of the redemption shall be as provided by the articles.

(8) Where shares are redeemed

(a) the shares shall be deemed to be cancelled on redemption;

(b) the amount of the company's issued share capital shall be diminished by the nominal value of the shares redeemed; and

(c) the amount of the company's authorised share capital shall not be affected.

(9) Without prejudice to subsection (8), where a company is about to redeem any shares under this section, it may issue shares up to the nominal amount of the shares to be redeemed as if those shares had never been issued.

(10) Subject to subsection (11), for the purposes of this Act, shares issued by a company-

(a) up to the nominal amount of any shares which the company has redeemed under this section; or

(b) in pursuance of subsection (9), before the redemption of shares which the company is about to redeem under this section;

shall be regarded as issued in place of the shares redeemed, or about to be redeemed, under this section.

(11) Shares issued under subsection (9) shall not be regarded as issued in place of the shares about to be redeemed unless those shares are redeemed within one month after the issue of the new shares.

(12) If a company redeems any redeemable shares, it shall, within fourteen days after doing so, lodge a notice of the redemption in the prescribed form with the Registrar.

(13) If a company fails to comply with subsection (12), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

60. (1) Where under section fifty-nine any shares of a company are redeemed wholly out of the profits of the company, the amount by which the company's issued share capital is diminished in accordance with subsection (8) of that section on cancellation of the shares redeemed or purchased shall be transferred to a reserve, to be called "the capital redemption reserve".Capital redemption reserve

(2) Where any shares of a company are redeemed wholly or partly out of the proceeds of a fresh issue of shares and the aggregate nominal value of the shares redeemed or purchased is greater than that of the shares issued, the amount of the difference shall be transferred to the capital redemption reserve.

(3) The provisions of this Act relating to the reduction of the share capital of a company shall apply to a reduction in the capital redemption reserve as if that reserve were paid up share capital of the company, except that the reserve may be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

61. (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of value of the premiums on these shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.Share premium account

(2) The share premium account may be applied by the company-

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;

(b) in writing off-

(i) the preliminary expenses of the company; or

(ii) the expenses of, the commission paid or the discount allowed on any issue of shares or debentures of the company; or

(c) in providing for the premium payable on redemption of any redeemable preference shares or of any debenture of the company.

62. (1) For the purposes of this section-Variation of class rights

(a) the abrogation of any rights attached to a class of shares; and

(b) any resolution of a company, other than a resolution for the creation or issue of further shares, the implementation of which would have the effect of-

(i) diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class; or

(ii) reducing the proportion of the dividends or other distributions payable at any time to the holders of the existing shares of a class;

shall be deemed to be a variation of the rights of that class.

(2) If at any time the shares of a company are divided into different classes, the rights attached to any class may not be varied except to the extent and in the manner provided by the section.

(3) If the articles expressly forbid any variation of the rights of a class, or contain provision for such a variation and expressly forbid any alteration of the provision, the rights or the provision for variation may not be varied except in accordance with the provision, or with the written consent of all the members of that class, or with the sanction of the court under a scheme of arrangement in accordance with section two hundred and thirty-four.

(4) If subsection (3) does not apply, the rights attached to any class of shares may be varied with the written consent of the holders of three fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of shares of that class.

(5) An application for the resolution to be cancelled may be made to the court within twenty-one days after the date of the resolution by the holders of not less in the aggregate than fifteen per centum of the issued shares of that class, and on such an application the court may confirm or cancel the resolution.

(6) An application under subsection (5) may be made on behalf of the persons referred to in that subsection or by such of their number as they may appoint in writing for the purpose.

(7) If no application is made under subsection (5) the company shall, within fourteen days after the end of the period for making such an application, lodge with the Registrar a copy of each paragraph of the articles affected by the variation, in its amended form.

(8) If an application is made under subsection (5) and the court makes an order, the company shall, within fourteen days after the date of the order, lodge with the Registrar-

(a) a copy of the order; and

(b) a copy of each paragraph of the articles affected by the variation, in its amended form, if the order confirms the resolution.

(9) The articles shall have effect as amended on and from the date of their lodgement.

(10) If a company fails to comply with subsection (7) or (8), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

(11) Nothing in this section shall affect or derogate from the powers of the court under sections two hundred and thirty-four and two hundred and thirty-nine.

63. (1) Whenever a company makes an allotment of its shares, the company shall within one month thereafter lodge with the Registrar-Return as to allotment of shares

(a) a return of the allotments in the prescribed form, stating the number and the nominal amount of the shares comprised in the allotment, the names and addresses of each allottee, whether each allottee is an individual, a body corporate or an unincorporated association, and the amount (if any) paid or due and payable on each share; and

(b) subject to subsection (3), in the case of shares allotted as fully or partly paid up otherwise than in cash-

(i) any contract constituting the title of the allottee to the allotment;

(ii) any contract of sale, or for services or other consideration in respect of which that allotment was made; and

(iii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid-up and the consideration for which they have been allotted.

(2) Where a contract referred to in subsection (1) is not in writing, the company shall lodge with the Registrar particulars of the contract.

(3) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

64. (1) Subject to section sixty-nine, a company shall not register a transfer of shares unless-Transfer of shares

(a) a proper instrument of transfer has been delivered to the company; or

(b) the right to the shares has been transmitted by operation of law.

(2) Transfers may be lodged with the company by either the transfer or transferee.

(3) If a company refuses to register a transfer, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and transferor notice in writing of the refusal, together with a statement of the facts which are considered to justify refusal.

(4) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.

(5) If a company fails to comply with subsection (3)-

(a) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues; and

(b) the transfer shall be deemed to have been registered on the day on which the transfer was lodged with the company.

65. (1) Save as expressly provided in a company's articles and in this Act, shares shall be transferable without restriction by a written transfer in accordance with section fifty-seven. Restrictions on transferability

(2) The articles of a private company shall not impose any restriction on the transferability of shares after they have been issued unless all the shareholders have agreed in writing.

(3) A company may refuse to register a transfer of shares to any person who-

(a) is under eighteen years of age; or

(b) is of unsound mind and has been declared to be so by the court or a court of competent jurisdiction of another country.

66. (1) A company shall, within two months after the allotment of any of its shares or after the registration of the transfer of any shares, deliver to the registered holder thereof a certificate under the common seal of the company stating- Issue of share certificates

(a) the number and classes of shares held by him, and the distinguishing numbers thereof (if any);

(b) the amount paid on such shares and the amount (if any) remaining unpaid; and

(c) the full name and address of the registered holder and whether the holder is an individual, a body corporate or an unincorporated association.

(2) If a share certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the shares, shall renew the same on payment of a fee not exceeding one monetary unit and on such terms as to evidence and indemnity and the payment of the company's expenses of investigation evidence as the company may reasonably require.

(3) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

67. (1) If the holder of any shares wishes to transfer to any person part only of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates may be delivered to the company with a request to endorse the instrument of transfer. Endorsement of transfer

(2) If a company endorses on an instrument of transfer the words "certificate lodged", or words to the like effect, this shall be a representation to anyone acting on the faith of the endorsement that there has been produced to and retained by the company such certificates as show a prima facie title to the shares in the transferor named in the instrument of transfer, but not a representation that the certificates are genuine or that the transferor has any title to the shares.

(3) If a person acts on the faith of a false representation made by the company under subsection (2), the company shall be liable to compensate the person for any loss suffered as a result of so acting.

(4) For the purposes of this section, an endorsement under this section shall be deemed to be made by a company if it is made or signed by the secretary or any other person apparently authorised to endorse instruments of transfer on the company's behalf.

68. A share certificate shall be prima facie evidence of the title to the shares of the person named therein as the registered holder and of the amounts paid and payable thereon. Share certificates as evidence

69. (1) A company may, with respect to any fully paid-up shares (or stock) issue a warrant (in this Act called a "share warrant") stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares included in the warrant. Share warrants to bearer

(2) A share warrant shall entitle the bearer to the shares therein specified, and the shares may be transferred by the delivery of the share warrant.

(3) The bearer of a share warrant shall be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares therein specified without the share warrant being surrendered and cancelled.

(4) The articles of the company may provide that the bearer of a share warrant shall have any or all of the rights of a registered member of the company for the purposes of this Act (other than the right to receive notices).

(5) The company shall record the issue of a share warrant in its register of members as if the shareholder had ceased to hold those shares together with-

(a) the fact of the issue of the warrant;

(b) a statement of the shares included in the warrant, distinguishing the shares by their share numbers (if any); and

(c) the date of the issue of the warrant.

(6) Until the warrant is surrendered, the particulars referred to in subsection (5) shall be deemed to be the particulars required by this Act to be entered in the register of members in relation to the shares.

(7) On the surrender of the share warrant, the date of the surrender shall be entered as if it were the date on which the company received notice of the transfer of the shares to the bearer.

70. (1) In the case of the death of a shareholder of a company, the survivor or survivors where the deceased was a joint holder, and the legal personal or representative of the deceased where he was a sole holder or last survivor of joint holders, shall be the only persons recognised by the company as shareholders. Transmission of shares by operation of law.

(2) A person (in this section called "the representative") upon whom the ownership of a share devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law may, upon such evidence being produced as the company may reasonably require-

(a) be registered himself as the holder of the share; or

(b) transfer the share to some other person without first registering himself as the holder of the share.

(3) A company shall have the same right, if any, to decline registration of a transfer by the representative as it would have had in the case of a transfer by the registered holder, but shall have no right to refuse registration of the representative himself.

(4) The representative shall, prior to registration of himself or a transferee, be entitled to the same dividends and other advantages as if he were the registered holder and to the same rights and remedies as if he were a member of the company, except that he shall not, subject to any order by the court under section one hundred and forty-four, before being registered as a member in respect of the share, be entitled to vote at any meeting of the company.

(5) The company may at any time give notice requiring the representative to elect either to be registered himself or to transfer the share, and, if the notice is not complied with within three months, the company may thereafter suspend payment of all dividends or other moneys payable in respect of the share until the notice has been complied with.

71. The production to a company of any document which is by law sufficient evidence that the ownership of a share has been transmitted by the operation of law shall be accepted by the company as sufficient evidence of the transmission of ownership. Evidence of transmission of shares by operation of law

72. A company shall not have or claim a lien on shares on which there is no unpaid liability, nor shall any such lien extend to any sums due from the shareholder except in respect of the unpaid liability on the shares. Company's lien on shares

73. (1) Subject to this section and to its articles, a company may create and issue, whether in connection with the issue of any of its shares or otherwise, rights or options in favour of any directors, officers or employees of the company or of any subsidiary of the company, being rights or options that

entitle the holders to acquire from the company, upon such consideration, terms and conditions as may be fixed by the board of directors, shares of any class. Rights and options to subscribe for share issue to directors, officers and employees

(2) The terms and conditions of such rights or options, including the time or times at or within which and the price or prices at which they may be exercised and any limitations on transferability, shall be set forth or incorporated by reference in the instrument or instruments evidencing the rights or options.

(3) Where a company proposes to issue such rights or options to one or more of the persons referred to in subsection (1) as an incentive to service or continued service with the company or any related company, or where it proposes to issue such rights or options to a trustee on behalf of such persons, the issue shall be authorised at a general meeting by special resolution, or shall be authorised by and be consistent with a scheme adopted at a general meeting by special resolution.

(4) If there are any pre-emptive rights in any of the shares proposed under subsection (3) to be subject to rights or options, the issue or scheme, as the case may be, shall also be approved by the vote or written consent of the holders of a majority of the shares entitled to exercise pre-emptive rights with respect to such shares, and the vote or written consent shall release the pre-emptive rights.

(5) The special resolution authorising the issue such rights or options, or the scheme adopted by special resolution, shall include-

(a) the material terms and conditions upon which the rights or options are to be issued, including any restrictions on the number of shares that eligible individuals may have the right or option to acquire;

(b) the method of administering the scheme, in the case of a scheme;

(c) the terms and conditions of payment for shares in full or by instalments;

(d) any limitations on the transferability of the shares; and

(e) the voting and dividend rights to which the holders of the shares may be entitled.

(6) The terms and conditions shall not provide for any share certificate to be delivered to a shareholder, or confer any right to vote in respect of such shares, prior to full payment therefor.

(7) In the absence of fraud in the transaction, the decision of the directors (or, where the directors or a sufficient quorum thereof are not themselves disinterested in the issue or scheme, the decision of the general meeting) shall be conclusive as to the adequacy of the consideration, tangible or intangible, received or to be received by the company for the issue of rights or options and for the acquisition pursuant thereto of shares in the company.

(8) This section shall not apply to the right of holders of convertible debentures to acquire shares upon the exercise of a conversion option.

Division 4.3-Alteration of share capital

74. (1) A company may, unless its articles provide otherwise, by special resolution alter its share capital as stated in the certificate of share capital by doing any of the following: Alteration of share capital

(a) increasing its share capital by new shares of such an amount as it thinks expedient;

(b) consolidating and dividing all or any of its share capital into shares of a larger amount than its existing shares;

(c) converting all or any of its paid up shares into stock, and re-converting that stock into paid up shares of any denomination;

(d) subdividing its shares, or any of them, into shares of smaller amounts than is stated in the certificate of share capital;

(e) cancelling shares which, at the date of the passing of the resolution, have not been allotted to any person, and diminishing the amount of its share capital by the amount of the shares so cancelled.

(2) Where shares are subdivided under this section, the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(3) A cancellation of un-allotted shares under this section shall be deemed not to be a reduction of share capital for the purposes of this Act.

(4) Where a company has made any alteration referred to in subsection (1), it shall within one month after so doing lodge with the Registrar-

(a) a notice in the prescribed form specifying, as the case may be, the shares increased, consolidated, divided, subdivided, converted, redeemed or cancelled or the stock reconverted; and

(b) a copy of the resolution authorising the alteration.

(5) Where an alteration under this section alters a particular stated in the company's certificate of share capital, the Registrar shall issue a replacement certificate of share capital worded to meet the circumstances of the case.

(6) If a company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

75. (1) If a company has accumulated a sum of undivided profits, which with the approval of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, the company may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid up capital of the company, the unpaid capital being thereby increased by a similar amount. Power to return accumulated profits in reduction of paid up share capital

(2) Within twenty-one days after making a special resolution under subsection (1), the company shall lodge with the Registrar a return in the prescribed form giving the details required in the case of a special resolution reducing share capital.

(3) The resolution shall take effect as from the date of lodgement.

(4) The provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid up share capital under this section, except as provided in subsection (2).

76. (1) Subject to confirmation by the court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—Special resolution for reduction of share capital

(a) extinguish or reduce the liability on any of its shares;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is in excess of the wants of the company; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, reduce the amount of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

77. (1) If a company has passed a resolution for reducing share capital, it shall, within twenty-one days after the making of the resolution, apply to the court for an order confirming the reduction. Creditors may object to reduction in capital

(2) If the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, subsections (5) and (6) shall apply to the reduction unless the court directs otherwise.

(3) In giving a direction under subsection (2), the court may direct that subsections (5) and (6) shall not apply to a specified class or classes of creditors.

(4) If subsection (2) does not apply, subsections (5) and (6) shall not apply unless the court directs that they shall apply.

(5) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would entitle the creditor to benefit from the distribution under the winding-up, shall be entitled to object to the reduction.

(6) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days after which creditors not yet entered on the list will lose their right to object if they have not presented a claim to be entered on the list.

(7) If a creditor entered on the list whose debt or claim is not discharged or

has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company's securing payment of his debt or claim by appropriating-

(a) the full amount of the debt or claim, if the company admits the full amount of the debt, or claim, or, though not admitting it, is willing to provide for it; or

(b) an amount fixed by the court after the like inquiry and adjudication as if the company were being wound-up by the court, if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained.

78. (1) The court, if satisfied with respect to every creditor of the company who is entitled to object to the reduction, that-Order confirming reduction and powers of court in making such order

(a) his consent to the reduction has been obtained;

(b) his debt or claim has been discharged or determined; or

(c) his debt or claim has been secured;

may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) The order may require the publication of a notice of the reduction in capital on the issue of the replacement certificate of share capital under section seventy-nine.

(3) Where the court makes any such order it may, if for any special reason it thinks it proper so to do, make an order-

(a) directing that the company shall, during a period specified in the order, add to its name as the last words thereof the words "and reduced"; or

(b) requiring the company to publish as the court directs the reasons for the reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public.

(4) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

79. (1) The Registrar, on the lodgement of an order of the court confirming the reduction of the share capital of a company and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order-Lodgement of order and issue of replacement certificate of share capital

(a) the amount of the share capital;

(b) the number of shares into which it is to be divided;

(c) the amount of each share; and

(d) the amount, if any, at the date of lodgement deemed to be paid up on each

share;

shall issue a replacement certificate of share capital of the company, worded to meet the circumstances of the case.

(2) On the issue of the certificate, the resolution for reducing share capital as confirmed by the order shall take effect.

(3) The issue of the certificate of share reduction shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is as stated in the certificate.

80. (1) Subject to this section, where the share capital of a company is reduced, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share fixed by the reduction and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be. Liability of members in respect of reduced shares

(2) If any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable within the meaning of the provisions of this Act with respect to the winding-up by the court to pay the amount of his debt or claim, then-

(a) every person who was a member of the company at the date of issue of the replacement certificate of share capital shall be liable to contribute as if the company had commenced to be wound-up on that date; and

(b) if the company is wound-up, the court, on the application of any such creditor and proof of his ignorance, may if it thinks fit settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the persons on the list as if they were ordinary contributories in a winding-up.

(3) Nothing in this section shall affect the rights of the members amongst themselves.

81. (1) Where a company has passed a resolution for reducing share capital, an officer of a company who-Offence of concealing name of creditor

(a) wilfully conceals the name of any creditor entitled to object to the reduction;

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation;

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(2) An officer referred to in subsection (1) shall be personally liable to pay to the creditor the amount of his debt or claim to the extent that it is not

paid by the company, whether or not he has been convicted of an offence under subsection (1).

Division 4.4-Restrictions on financial assistance

82. (1) Subject to this Part, where a person is acquiring or is proposing to acquire any shares in a company, the company or any of its subsidiaries shall not give financial assistance directly for the purpose of that acquisition. Restrictions on financial assistance in acquisition of shares

(2) Subject to this Part, where a person has acquired any shares in a company and any liability has been incurred (by that or any other person) for the purpose of that acquisition, the company and its subsidiaries shall not give any financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) This section shall not prohibit a company from giving any financial assistance for the purpose of any acquisition of shares in the company or its holding company if-

(a) the giving of the assistance is an incidental part of some larger purpose of the company, and the principal purpose of the company in giving that assistance is not to reduce or discharge any liability incurred by a person for the purpose of any such acquisition; and

(b) the assistance is given in good faith in the interest of the company.

(4) This section shall not prohibit-

(a) any distribution of a company's assets by way of dividend lawfully made or any distribution made in the course of winding-up of the company;

(b) the allotment of any bonus shares;

(c) anything done in pursuance of an order of the court made under this Act;

(d) anything done under an arrangement made in pursuance of section two hundred and thirty-four;

(e) anything done under an arrangement made between a company and its creditors which is binding on the creditors under section three hundred and twenty-five;

(f) any reduction of capital confirmed by order of the court under this Part; or

(g) a redemption of any share in accordance with this Part.

(5) This section shall not prohibit-

(a) the lending of money by the company in the ordinary course of its business, if the lending of money is part of the ordinary business of the company;

(b) the provision by a company, in accordance with an employee's share scheme, of money for acquisition of fully paid shares in the company to be held by or for the benefit of employees of the company (including any director

holding a salaried position in the company); or

(c) the making by a company of loans to persons, other than directors, employed in good faith by the company, with a view to enabling those persons to acquire fully paid shares otherwise than as nominees of the company.

(6) In giving financial assistance to any person under subsection (5), a public company shall not reduce its net assets, other than distributable profits.

(7) A reference in this section to a person incurring any liability includes a reference to his changing his financial position by making any agreement or arrangement (whether enforceable or unenforceable and whether made on his own account or with any other person) or by any other means.

(8) If a company fails to comply with subsection (1) or (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

(9) In this section-

"financial assistance" means:

(a) financial assistance given by way of gift;

(b) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver;

(c) financial assistance given by way of-

(i) a loan;

(ii) any other agreement under which any of the obligations of any other party to the agreement remains unfulfilled; or

(iii) innovation of, or the assignment of, any rights arising under any such loan or agreement; or

(d) any other financial assistance given by a company which has no net assets, or whereby the net assets of the company are reduced to a material extent;

"net assets", in relation to the giving of financial assistance by a company, means the amount by which the aggregate amount of the company's assets exceeds the aggregate amount of its liabilities taking the amount of both assets and liabilities to be stated in the company's accounting records immediately before the financial assistance is given;

"liabilities" includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

83. (1) A private company may give financial assistance for the acquisition of shares in itself in accordance with this section. Relaxation of restrictions for private companies

(2) A private company may give financial assistance for the acquisition of shares in a private company that is its holding company in accordance with this section unless it is the subsidiary of-

(a) a body corporate not incorporated in Zambia; or

(b) a public company;

that is also a subsidiary of the holding company concerned.

(3) Financial assistance shall not be given under this section unless-

(a) the company proposing to give the financial assistance is a wholly owned subsidiary; or

(b) the giving of the assistance is approved by special resolution of the company.

(4) Where the financial assistance to be given by a company is for the acquisition of shares in its holding company, financial assistance shall not be given unless approved by special resolutions of-

(a) that holding company; and

(b) any other company which is both the company's holding company and a subsidiary of that holding company, other than a wholly owned subsidiary.

(5) The directors of the company proposing to give the financial assistance and, where the shares to be acquired are shares in its holding company, the directors of the companies referred to in paragraphs (a) and (b) of subsection (4), shall, not more than seven days before the special resolution is put to a meeting, make a statutory declaration in the prescribed form complying with subsection (6) and make it available, together with the auditors' report annexed thereto, for inspection by members of the company at the meeting at which the resolution is to be voted on.

(6) A statutory declaration for the purposes of subsection (5) shall-

(a) contain such particulars of the assistance to be given and of the business of the company of which they are directors as may be prescribed;

(b) identify the person to whom the assistance is to be given;

(c) state that, to the best of the directors' knowledge and belief, the company will be able to pay its debts-

(i) in full within twelve months of the commencement of the winding-up of the company, if it is intended to commence the winding-up of the company within twelve months of the date of the declaration; or

(ii) as they fall due during the year immediately following that date, in any other case.

(7) In forming their views for the purposes of the statutory declaration, the directors shall take into account any liabilities of the company which the court would be required by section two hundred and seventy-two to take into account in

determining for the purposes of that section whether the company was unable to pay its debts.

(8) The statutory declaration shall have annexed to it a report by the auditors of the company, addressed to the directors who made the declaration, stating that the auditors have enquired into the state of affairs of that company and are not aware of any thing to indicate that the opinion expressed by the directors in the declaration is unreasonable in all the circumstances.

(9) Where a special resolution is required under this section to be passed approving the giving of financial assistance, financial assistance shall not be given less than one month after the date on which-

(a) the special resolution is passed; or

(b) the last of the resolutions is passed, where more than one such resolution is passed;

unless each member of the company who was entitled to vote on the resolution, or any of the resolutions, voted in favour of the resolution concerned.

(10) Where an application for the cancellation of any such resolution is made under this section, financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

(11) Financial assistance shall not be given under this section more than two months after-

(a) the date on which the directors of the company proposing to give the financial assistance made the statutory declaration under subsection (5); or

(b) the date on which the earliest of the declarations under subsection (5) is made, where the company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration;

unless the court, on an application for the cancellation of any of the resolutions, otherwise orders.

(12) Where a special resolution under this section is passed by a company, an application may be made to the court for the cancellation of that resolution by not fewer than one fifth of the members, being persons who did not consent to or vote in favour of the resolution, within twenty-one days after the making of the resolution.

(13) Within twenty-one days after-

(a) the passing of a special resolution under this section, if there was no application under subsection (12); or

(b) the decision by the court, if there was an application made under subsection (12) but the court rejected the application;

the company shall lodge with the Registrar-

(i) the statutory declaration together with any auditors' report annexed thereto; and

(ii) a copy of the special resolution.

(14) If a company fails to comply with subsection (13), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

(15) A director of a company who makes a statutory declaration for the purposes of this section without having reasonable grounds for the opinion expressed in that declaration shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

(16) In this section, "financial assistance" and "net assets" have the same meaning as in section eighty-two.

Division 4.5-Miscellaneous

84. No dividend shall be payable to the shareholders of a company except out of the profits arising or accumulated from the business of the company. Dividends may be paid only out of profits

85. Company shares that are listed on any stock exchange in Zambia shall be exempt from the provisions of the Property Transfer Tax Act, 1984. Exemption from Property Transfer Tax Act
Cap. 422

PART V

DEBENTURES AND CHARGES

Division 5.1-Debentures

86. (1) A company may raise loans by the issue of a debenture or of a series of debentures. Issue of debentures

(2) Debentures may either be secured by a charge over property of the company or be unsecured by any charge.

(3) All debentures which by their terms, or by the terms of any resolution authorising their creation, or by the terms of any trust deed, are declared to be of the same series shall rank equally in all respects notwithstanding that they may be issued on different dates.

(4) Any debenture stock shall be created-

(a) by deed under the common seal of the company in favour of trustees for the debenture stockholders; and

(b) as stock of a specified total amount, parts of which, represented by debenture stock certificates, are issued to separate holders.

(5) A contract with a company to take up and pay for any debenture of the company may be enforced by an order for specific performance.

(6) A condition contained in a debenture or in a trust deed for securing a debenture shall not be invalid by reason only of the fact that the debenture is

hereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

87. (1) A company shall, within two months after the allotment of any of its debentures or after the registration of the transfer of any debentures, deliver to the registered holder thereof the debentures or a certificate of the debenture stock under the common seal of the company. Documents of title to debentures

(2) Sections sixty-four and sixty-six to seventy-one shall apply, with the necessary modifications, in relation to debentures and debenture holders.

(3) If any restriction is imposed on the right to transfer any debentures, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and, in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value whether or not he has notice of the restriction.

(4) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

88. (1) A company shall not-Trustees for debenture holders

(a) indemnify a person who is a trustee for debenture holders of the company or a related company against any liability which under law would otherwise attach to him in respect of any breach of trust or failure to show the degree of care and diligence required of him as trustee having regard to the powers, authorities or discretion conferred on him by the trust deed; or

(b) compensate such a person for the cost of meeting any such liability.

(2) A provision of a contract between the company and such a trustee shall be void if it purports to indemnify or compensate him in contravention of subsection (1).

(3) A release in respect of anything done or omitted to be done by a trustee may be made by a special resolution of the debenture holders.

(4) The court may remove a trustee for the holders of any debentures and appoint another in his place if, on the application of any debenture holder, it is satisfied that the trustee has interests which conflict or may conflict with those of the debenture holders or that for any other reason it is undesirable that the trustee should continue to act.

(5) Upon such an application the court may order the applicant to give security for the payment of the costs of the trustee.

89. (1) The following persons shall not be eligible for appointment or competent to act as trustee for the holders of debentures of a company: Eligibility for appointment as trustee for debenture holders

(a) an individual under the age of eighteen years;

(b) a person under any legal disability;

(c) a person prohibited or disqualified from so acting by order of a court of competent jurisdiction;

(d) an undischarged bankrupt;

(e) a person who is an officer or auditor of the company or a related company or who has been such an officer or auditor within the preceding two years, save with the leave of the court;

(f) a person who has been convicted within the preceding five years of an offence involving fraud or dishonesty;

(g) a person who has been removed within the preceding five years from an offence of trust by order of a court of competent jurisdiction.

(2) A person who, in contravention of this section, acts or continues to act as a trustee for debenture holders shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the contravention continues.

90. (1) A copy of any trust deed for securing an issue of debentures shall be provided to a holder of those debentures at his request and on payment of the sum of one monetary unit, or such lesser sum as may be required by the company, within seven days after the receipt of the request. Right to copies of trust deed

(2) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

91. (1) No unsecured debenture or debenture stock certificate, or prospectus relating to unsecured debentures, shall be issued by a company unless the term "debenture", or such other term as is used to denote the debenture, is qualified by the word "unsecured". Unsecured debentures to be so described

(2) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

92. (1) A company which issues or has issued debentures shall maintain a register of debenture holders. Register of debenture holders

(2) Sections forty-eight to fifty-five shall apply, with the necessary modifications, in relation to the register.

(3) A company shall, on the demand of any trustee for its debenture holders, within seven days furnish to him the names, addresses and other registered particulars of the debenture holders for which he is a trustee.

(4) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day for which the failure continues.

93. (1) Subject to this section, sections one hundred and thirty-nine to one hundred and fifty-five shall apply, with the necessary modifications, in relation to the holders of debentures of a company that are secured by a trust

deed. Meetings of holders of debentures secured by a trust deed

(2) Unless the trust deed provides otherwise, the registered debenture holders shall have votes in proportion to the value of the debentures they hold.

94. (1) The terms of any debentures not secured by a trust deed may provide for the convening of general meetings of the debenture holders or of classes of debenture holders, and for the passing at such meetings of resolutions binding on all the debenture holders or on all the debenture holders of those classes. Meetings of other debenture holders

(2) Whether or not provision for meetings is made under the debentures, the court may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as it thinks fit to consider such matters as it may direct, and may give such ancillary or consequential directions as it thinks fit.

(3) Subject to subsection (4) and unless the debentures provide otherwise, sections one hundred and forty-six to one hundred and fifty-two shall apply, with the necessary modifications, to a meeting held in accordance with this section.

(4) Unless the terms of the debentures provide otherwise, the registered debenture holders shall have votes in proportion to the value of the debentures they hold.

95. (1) A company shall not re-issue any debenture which has been redeemed. Re-issue of redeemed debentures

(2) A company shall not issue a new debenture in place of a redeemed debenture on terms that the new debenture shall have the same priorities as the redeemed debenture.

(3) The issue of a new debenture in place of a redeemed debenture shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures which may be issued.

(4) A purported issue or re-issue of debentures that contravenes this section shall be void.

Division 5.2-Charges

96. Where a charge is expressed to be made to secure an indeterminate amount, or a fluctuating amount advanced on current account by, or due and owing to, the person entitled to the charge, the charge shall not be considered to be redeemed by reason only that the current account ceases to be in debit or by reason only that no amount is due or owing, as the case may be. Charge to secure fluctuating amount

97. (1) This section applies to any charge on property of the company, whether or not it is required to be registered under section ninety-eight. Company's register of charges

(2) A company which has any property subject to a charge shall open and maintain a register of charges over its property in which it shall, on the creation of a charge over property of the company, or on the acquisition of property subject to a charge, enter the following particulars of each charge:

- (a) the date of creation of the charge or the date of acquisition of the property, as the case may be;
 - (b) a short description of the liability (whether present or prospective) secured by the charge;
 - (c) a short description of the property charged;
 - (d) the name of the trustee, if the charge secures debentures under a trust deed;
 - (e) if the charge does not secure debentures under a trust deed-
 - (i) the name of the chargee; and
 - (ii) the name of the person whom the company believes to be the holder of the charge.
- (3) The register shall be open for inspection-
- (a) by any member or creditor of the company or by the Registrar or his agent, without charge; and
 - (b) by any other person on payment of an amount required by the company, not exceeding ten monetary units or such higher amount as may be prescribed.
- (4) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

98. (1) The Registrar shall maintain a register containing, with respect to each company, the particulars of the charges of the company that are lodged in accordance with this Part. Registrar's register of charges

(2) The register shall include, with respect to each company, a chronological index of the charges of the company.

99. (1) This section applies to the following charges over the property or undertaking of a company: Registration of charges by companies

- (a) a charge for the purpose of securing any issue of a series of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge to which the Trade Charges Act applies; Cap. 415
- (d) a floating charge on the whole or part of the undertaking or property of the company;
- (e) a charge on land, wherever situated, or any interest therein;
- (f) a charge on any present or future book debts of a company;
- (g) a charge on calls made but not paid;
- (h) a charge on a ship or aircraft or any share in a ship or aircraft;

(i) charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright;

(j) a charge overshares in another body corporate, not being-

(i) a charge in favour of a broker who has paid for a share purchased or applied for on behalf of the company; or

(ii) a charge created by or accompanied by delivery of the certificates for such shares.

(2) Subject to this section, if a company-

(a) creates any charge to which this section applies; or

(b) acquires property that is subject to a charge to which this section applies;

the company shall, within twenty-one days after the date of the creation of the charge, or after the acquisition of the property, as the case may be, lodge with the Registrar in the prescribed form the particulars referred to in subsection (3) together with-

(i) particulars of the instrument by which the charge is created or evidenced sufficient to identify the instrument, if the charge is created or evidenced by an instrument by which it is already registered under this or any other Act; or

(ii) a certified copy of the instrument, if any, by which the charge is created or evidenced, in any other case.

(3) The particulars required for the purposes of subsection (2) are-

(a) the date of creation of the charge;

(b) the date of acquisition of the property by the company, where the property was subject to the charge when acquired by the company;

(c) the amount secured by the charge;

(d) short particulars of the property charged;

(e) the names of the charges; and

(f) any other prescribed particulars of the charge.

(4) Where the property subject to a charge includes property outside Zambia, this section applies in relation to any instrument creating or evidencing or purporting to create or evidence the charge, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(5) Where a negotiable instrument has been given to a company to secure the payment of any debts owed to the company, the deposit of the instrument for the purposes of securing an advance to the company shall for the purposes of this section be deemed not to be a charge on those debts owed to the company.

(6) Debentures entitling the holder to a charge on land shall for the purposes of this section be deemed not to be an interest in land.

(7) Where a series of debentures is created by a company and contains, or gives by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled in all respects equally, subsection (3) shall be satisfied by the lodgement of the following particulars:

(a) the total amount secured by the whole series;

(b) the date of the resolution authorising the issue of the series and the date of the document, if any, by which the security is created or defined;

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders, together with a certified copy of the document containing the charge, or, if there is no such document, a certified copy of one of the debentures of the series;

together with, where more than one issue is made of debentures in the series, the lodgement, within twenty-one days after any issue, of particulars of the date and amount of the issue.

(8) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be lodged under this section shall include particulars as to the amount or rate per centum of the commission, discount, or allowance to be paid or made.

(9) The deposit of any debentures as security for any debt of the company shall not for the purposes of this section be regarded as the issue of such debentures at a discount.

(10) Lodgement of documents for the purposes of this section may be effected on the application of any person interested in the charge concerned, and if lodgement is effected by a person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the lodgement.

(11) If the particulars and documents relating to a charge that are required by this section to be lodged with the Registrar are not lodged within the time required-

(a) the charge shall be void against the liquidator and any creditor of the company; and

(b) the full debt secured by the charge shall become payable immediately by the company.

(12) Nothing in this section shall affect the provisions of any other written law relating to the registration of charges.

100. If the particulars and documents relating to a charge that are required by this Part to be lodged with the Registrar are lodged within the time

required, the Registrar shall issue a certificate of the registration of the charge stating the date of lodgement and, if applicable, the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with. Certificate to be issued by Registrar

101. (1) Subject to any consent (express or implied) given by the person who would otherwise be entitled to priority, charges required by this Part to be registered shall have priority in relation to one another in accordance with the times at which they were lodged. Priorities

(2) Where another written law by its terms accords priority as between successive charges affecting the same property, subsection (1) shall not affect the priorities between those charges set by that written law.

(3) Subject to subsection (2), where a charge (other than a floating charge) gives security over property of such a kind that this Part would require its registration, and also over other property, subsection (1) shall apply in respect of the first-mentioned property, but not in respect of the other property.

102. (1) If there is lodged with the Registrar a statement in the prescribed form, signed on behalf of a company and by the person entitled to charge, to the effect that—Entries of satisfaction and release of property from charge

(a) the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

then—

(i) the Registrar shall enter the fact in the register of charges;

(ii) the statement shall, in favour of the liquidator and any creditor of the company, be binding on the person entitled to the charge who signed the statement and on any other person claiming through him.

103. (1) If a variation is made in the terms of a charge registered under this Part, other than a satisfaction or release to which section one hundred and two applies, particulars after the variation in the prescribed form shall be lodged with the Registrar within twenty-one days of the making of the variation. Variation of registered charge

(2) The particulars shall identify the terms of the original charge that have been varied and shall indicate the nature of the variation made in each such term.

(3) Where the effect of the variation is to increase the extent of the security or the amount for which security is available, the increase shall, for the purposes of priorities, be treated as if it were a charge, being a charge for an amount which is the amount of the increase and whose particulars were lodged at the time that the particulars of the variation were lodged.

(4) Where by its terms a registered charge secures a fluctuating amount, or an initial sum together with the words "further advances", the making of a further

advance to the company shall not, for the purposes of this section, constitute a variation in the terms of the charge.

(5) Lodgement of documents for the purposes of this section may be effected on the application of any person interested in the charge concerned, and if lodgement is effected by a person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the lodgement.

(6) If the particulars and documents relating to a charge that are required by this section to be lodged with the Registrar are not lodged within the time required-

(a) the charge shall be void against the liquidator and any creditor of the company; and

(b) the full debt secured by the charge shall become payable immediately by the company.

104. (1) If a person enters into possession of any of the property of a company as mortgagee under any powers contained in a charge, he shall, within seven days after so doing, lodge a notice to that effect in the prescribed form with the Registrar. Registration of enforcement of security by mortgagee

(2) Where a person who is in possession as mortgagee of property of a company goes out of possession, he shall, within fourteen days thereafter, lodge a notice to that effect in the prescribed form with the Registrar.

(3) A person who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

105. (1) Where a company issues a debentures forming one of a series of debentures, or a certificate of debenture stock, and the payment of the debenture is secured by a charge registered under this Part, the company shall endorse on the debenture or certificate of debenture stock a statement that registration has been effected and the date of registration. Endorsement of registration on debentures of a series

(2) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.

(3) A person who-

(a) causes to be endorsed on any debenture or certificate of debenture stock a statement that registration has been effected, which he knows to be false in any particular, or

(b) authorises or permits the delivery of any debenture or certificate of debenture stock bearing an endorsed statement that registration has been effected, which he knows to be false in any particular;

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.

106. This Division shall bind the State in respect of all charges to which the State is entitled.

Division 5.3-ReceiversCharges in favour of the State

107. This Division shall apply in relation to a receiver of property of a company who is appointed after the commencement of this Act, even if the appointment arose out of a transaction entered into before that commencement.Application of Division

108. (1) When a charge over property of a company has become enforceable, the court may, on the application of the chargee, appoint-Appointment of receiver by court

(a) a receiver who is not also a manager; or

(b) a receiver and manager;

of the property.

(2) In the case of floating charge, the court may, whether or not the charge has become enforceable, on the application of the chargee, appoint-

(a) a receiver who is not also a manager; or

(b) a receiver and manager;

of the property and undertaking of the company if it is satisfied that events have occurred or are about to occur which render it unjust to the chargee that the company should retain power to dispose of its assets.

(3) A receiver shall not be appointed as a means of enforcing debentures not secured by any charge.

109. (1) A person who obtains an order for the appointment of a receiver of property of a company, or who appoints such a receiver under a power contained in an instrument, shall, within seven days after obtaining the order or making the appointment, lodge a notice with the Registrar of the order or appointment.Notification of appointment of receiver

(2) A person who is appointed as a receiver of property of a company shall, within fourteen days after the appointment, lodge with the Registrar a notice in the prescribed form of the physical address of the person's office, and a postal address.

(3) Where a person who has been appointed receiver of property of a company ceases to act as receiver, he shall, within seven days after so ceasing to act as receiver, lodge with the Registrar a notice that he has ceased to act as receiver.

(4) On lodgement of a notice under subsection (1) or (3), the Registrar shall cause a notice of the appointment of the person as receiver, or that the person has ceased to act as receiver, as the case may be, to be published in the Gazette.

110. (1) Where-Payment of preferential creditors

(a) a receiver is appointed, on behalf of the holder or trustee of any debenture of a company that is secured by a floating charge; or

(b) possession is taken by or on behalf of such a person;

of property comprised in or subject to the charge, then, if the company is not at the time in the course of being wound-up, the debts which in every winding-up are, under section three hundred and forty-six (relating to preferential payments), to be paid in priority to all other debts shall be paid out of any assets coming to the hands of the receiver or the person taking possession in priority to any claim for principal or interest in respect of the debentures.

(2) For the purpose of applying section three hundred and forty-six, the date of the appointment of the receiver or of possession being taken, as the case may be, shall be deemed to be the date of commencement of the winding-up.

111. (1) A body corporate shall not be appointed as a receiver of the property or undertaking of a company. Eligibility for appointment as receiver

(2) An individual shall not be appointed, act or continue to act as a receiver of the property or undertaking of a company if he is-

(a) under the age of eighteen years;

(b) under any legal disability;

(c) prohibited or disqualified from so acting by any order of a court of competent jurisdiction;

(d) a mortgagee or chargee of the company;

(e) an undischarged bankrupt;

(f) a person who is, or has been within the previous two years, a director or officer of the company or any related body corporate, save with the leave of the court;

(g) a trustee under any trust deed for the benefit of debenture holders of the company, save with the leave of the court;

(h) a person who has been convicted, within the previous five years, of an offence involving fraud or dishonesty; or

(i) a person who has been removed, within the previous five years, from an office of trust by order of a court of competent jurisdiction.

(3) Where a company is being wound-up, the liquidator may not be appointed receiver.

(4) Any person who in contravention of this section acts or continues to act as a receiver shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

112. A receiver of any property or undertaking of a company appointed by the court shall be an officer of the court and shall be deemed, in relation to the property or undertaking, not to be an officer of the company, and shall act in

accordance with the directions and instructions of the court.Receivers appointed by the court

113. (1) A receiver of any property or undertaking of a company appointed, otherwise than by a court, under a power contained in any instrument shall, subject to section one hundred and fourteen, be deemed in relation to the property or undertaking to be an agent and officer of the company and not an agent of the persons by or on behalf of whom he is appointed, and he shall act in accordance with the instrument under which he is appointed and with any directions of the court made under this section.Receivers appointed otherwise than by the court

(2) The court may, on the application of such a receiver, make any order it thinks fit giving directions in relation to any matter arising in connection with the performance of the receiver's functions or declaring the rights of persons before the court or otherwise.

(3) The court may, on the application of the company or any liquidator of the company, by order fix the amount to be paid by way of remuneration to any such receiver and may from time to time, on application made by the company or liquidator or by the receiver, vary or amend the order.

(4) The power of the court under subsection (3) shall-

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor, if the court is satisfied that there are special circumstances making it proper to do so;

(b) be exercisable notwithstanding that the receiver had died or ceased to act before the making of the order or the application therefor; and

(c) extend to requiring the receiver or his personal representatives to account for any amount that the receiver may have been paid or retained for his remuneration, before the making of the order, that is in excess of the remuneration so fixed for that period.

114. (1) A receiver of any property or undertaking of a company shall be personally liable on any contract entered into by him as receiver except insofar as the contract expressly provides otherwise.Liabilities of receivers on contracts

(2) Where the contract was entered into by the receiver in the proper performance of his functions, he shall have, subject to the rights of any prior encumbrances, an indemnity in respect of liability thereon out of the property in respect of which he has been appointed to act as receiver.

(3) Where the receiver was appointed, otherwise than by a court, under a power contained in any instrument, and the contract was entered into by him with the express or implied authority of those appointing him, he shall also have an indemnity in respect of liability thereon from those appointing him to the extent to which he is unable to recover in accordance with subsection (2).

115. (1) Where a receiver of any property or undertaking of a company has been appointed, every invoice, order or business letter issued by or on behalf of the company, the receiver or the liquidator, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.Fact that receiver has been appointed to appear on correspondence

(2) If the company fails to comply with this section, the company, and each officer, liquidator and receiver in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units in respect of each document not containing the statement.

116. Where a receiver is appointed of the whole or substantially the whole of the undertaking of any company on behalf of the holders of any debentures secured by a floating charge, section two hundred and eighty-eight and three hundred and thirty-eight shall apply as regards the submission of a statement of affairs and of periodical accounts by the receiver as if the company had been ordered to be wound-up under this Act and as if the receiver had been appointed liquidator. Statement of affairs and accounts where receiver of undertaking appointed

117. (1) Except where section one hundred and sixteen applies, a receiver of any property of a company shall—Accounts of receivers

(a) within one month, or such longer period as the Registrar may allow, after the end of the period of twelve months from the date of his appointment and of every subsequent period of twelve months until he ceases to act, lodge with the Registrar an abstract showing the receiver's receipts and payments during that period of twelve months; and

(b) within one month, or such longer period as the Registrar may allow, after he ceases to act as receiver, lodge with the Registrar an abstract showing the receiver's receipts and payments during the period from the end of the twelve months to which the last abstract (if any) related, and the total of those receipts and payments during the whole period of his appointment.

(2) A receiver who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

118. (1) If a receiver, in the course of the performance of his duties as receiver of property or undertaking of a company, is satisfied that—Reports by receivers

(a) there has been a contravention of, or failure to comply with, any of the provisions of this Act; and

(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any holding company of the company;

he shall as soon as is practicable report the matter to the Registrar in writing.

(2) The court may, on its own motion or on the application of the Registrar or of any person interested in the appointment of a receiver of the property of a company, require the receiver to submit a report to the Registrar on any matter relating to the company on which the receiver may have information.

PART VI

PUBLIC ISSUE OF SHARES, ETC.

Division 6.1-Interpretation

119. (1) In this Part, an "invitation to the public" to acquire shares or debentures of a company means an offer of, or invitation to make an offer for, shares or debentures of a company other than one-Meaning of "invitation to the public"

(a) made to fifteen or fewer persons; or

(b) made-

(i) to fifty or fewer persons; or

(ii) of the company exclusively to its existing shareholders, debenture holders or employees;

on the basis that a person who accepts the invitation may not renounce or assign the benefit of any shares or debentures to be obtained thereunder in favour of any other person.

(2) For the purpose of this Part, the issue of any kind of application form for shares or debentures of a company shall be deemed to be an invitation to acquire those shares or debentures.

120. (1) Where a company allots or agrees to allot any of its shares or debentures to a person with a view to the public's being invited to acquire any of those shares or debentures, then, for the purposes of this Act-Offer of sale deemed to be made by the company

(a) an invitation to the public so made shall be deemed to be made by the company as well as by the person who in fact made it; and

(b) a person who acquires any of the shares or debentures in response to the invitation shall be deemed to be an allottee from the company of those shares or debentures.

(2) Where a company allots or agrees to allot any of its shares or debentures to a person and an invitation to the public is made in respect of any of the shares or debentures-

(a) within six months after the allotment or agreement to allot; or

(b) before the company has received the whole of the consideration in respect of the shares or debentures;

it shall be presumed that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those shares or debentures.

121. (1) The first publication of the prospectus shall be presumed to be on the date of registration thereof.First publication of a prospectus

(2) Where the shares or debentures to which the invitation relates are dealt in on a stock exchange or where the prospectus states that application has been or will be made for permission to deal therein on any stock exchange, and it is necessary to advertise the prospectus in one or more newspapers to comply with

the requirements of that stock exchange, the first publication of the prospectus shall be deemed to occur when the prospectus is first so advertised.

Division 6.2-Invitations to the public and prospectuses

122. (1) In this section, "company" includes a company proposed to be formed. Restrictions on invitations to the public to acquire shares and debentures

(2) A person shall not make an invitation to the public to acquire shares in a company unless-

(a) the company is a public company and the invitation complies with this Division; or

(b) the invitation is supervised by the court.

(3) A person shall not make an invitation to the public to acquire debentures in a company unless-

(a) all of the following conditions are satisfied:

(i) the company is a public company;

(ii) the debentures are created by deed under the common seal of the company in favour of trustees for the debenture holders; and

(iii) the invitation complies with this Division; or

(b) the invitation is supervised by the court.

(4) A person shall not make an invitation to the public to acquire equity shares in a company unless all the equity shares in the company already issued and all those to which the invitation relates carry an unrestricted right to vote at general meetings of the company and, on a poll, a constant number of votes which, in proportion to nominal value, is the same in the case of every share.

(5) Subsection (4) shall not prohibit an invitation to acquire equity shares that do not comply with that subsection if-

(a) the rights making them equity shares are expressed by the terms of issue to be conditional upon the exercise by the holder of an option; and

(b) the shares will comply with that subsection if the option is exercised.

(6) Subsection (4) shall not prohibit an invitation to acquire equity shares that do not comply with that subsection if the shares are issued, and the invitation made, in fulfilment of an obligation entered into by the company before the commencement of this Act.

(7) If a person acquires shares or debentures in a company as a result of any invitation to the public in contravention of this section, he shall be entitled to recover compensation for any loss sustained by him from any person making the invitation, and where a person making the invitation was a body corporate, from any officer in default.

(8) If an invitation to the public is made in contravention of this section, each person making the invitation and, where such a person is a body corporate, each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

123. (1) Subject to this section, a person may invite the public to acquire shares or debentures of a public company or of a public company proposed to be formed only if-Prospectus required for invitations to the public to purchase share or debentures

(a) within six months prior to the making of the invitation there was registered by the Registrar a prospectus relating to the shares or debentures that complies with this Division;

(b) every person to whom the invitation is made is supplied with a true copy of the prospectus at the time when the invitation is first made to him; and

(c) every copy of the prospectus states on its face that it has been registered by the Registrar and the date of registration.

(2) An invitation published in a newspaper or magazine advertisement that summarises the contents of a prospectus shall be deemed to satisfy paragraph (b) of subsection (1) if the advertisement-

(a) does not contain or accompany any kind of application form for shares or debentures;

(b) states with reasonable prominence where copies of the full prospectus may be obtained, the fact that it has been registered and the date of registration; and

(c) is in terms previously approved in writing by the Registrar.

124. (1) A prospectus shall not be lodged with the Registrar unless-Contents of prospectus

(a) it does not contain any untrue or misleading statement;

(b) it contains all information that prospective purchasers of the shares or debentures and their advisors would reasonably expect to be provided in order to make a decision on purchase; and

(c) either-

(i) it deals with the matters and provides the reports specified in the Fourth Schedule; or

(ii) the invitation concerned is an invitation made only to existing members or debenture holders of the company (whether or not an applicant for shares or debentures will have the right to renounce in favour of other persons).

125. (1) This section applies to a prospectus that includes a statement purporting to be made by an expert.Expert's consent

(2) The prospectus shall not be lodged with the Registrar unless it is accompanied by the written consent of the expert to the publication of the

prospectus with the inclusion of the statement in the form and context in which it is included.

(3) The prospectus shall include a statement that the expert has given his consent to the inclusion of the statement and has not withdrawn his consent.

(4) If the expert withdraws his consent to the inclusion of the statement, he shall immediately notify the Registrar and the persons responsible for issuing the prospectus.

(5) A person responsible for issuing a prospectus shall cease to issue the prospectus after receiving a notice from an expert under subsection (4).

(6) A person who contravenes subsection (5), and, if that person is a body corporate, each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

126. (1) The Registrar shall not register a prospectus for shares or debentures in a company or in a company proposed to be formed unless the copy lodged conforms with this section. Registration of prospectuses

(2) The copy shall be signed by-

(a) each individual named therein as a director or proposed director of the company or by his agent authorised in writing; and

(b) each other person making the invitation, or his agent authorised in writing.

(3) For the purpose of paragraph (b) of subsection (2), where the invitation is made by a body corporate or members of a firm, it shall be sufficient if the copy is signed on behalf of the body corporate by not fewer than two directors or on behalf of the firm by not fewer than half the partners, and any such director or partners may sign by his agent authorised in writing.

(4) The copy shall have endorsed thereon or attached thereto-

(a) the consent of any expert required by section one hundred and twenty-five; and

(b) a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 49 of the Fourth Schedule.

(5) If a copy or translation referred to in paragraph (b) of subsection (4) has already been lodged with the Registrar by the company, the Registrar may waive the requirement that it be attached or endorsed if he is satisfied that the copy originally delivered is readily identifiable and accessible.

(6) The prospectus shall state at its head that a copy has been registered by the Registrar and also state immediately after that statement that the Registrar assumes no responsibility as to its contents.

(7) The copy shall be accompanied by a statutory declaration by a director and the secretary of the company stating that the prospectus conforms to the requirements of this Division.

(8) On registering the prospectus, the Registrar shall issue a certificate

stating that the prospectus has been registered.

127. (1) A company shall not accept or retain subscriptions to a debentures issue in excess of the amount of the issue disclosed in the prospectus unless the prospectus specifies-Over-subscription in debenture issue

(a) that the company expressly reserves the right to accept or retain over-subscriptions; and

(b) a limit, expressed as a specific sum or money, on the amount of over-subscriptions that may be accepted or retained, being an amount not exceeding twenty-five per centum above the amount of the issue as disclosed in the prospectus.

(2) Subject to the Fourth Schedule, where a company specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions-

(a) the prospectus shall not contain any statement of, or reference to, the asset backing for the issue, other than a statement or reference to the total tangible assets and the total liabilities of the company and of its guarantor companies; and

(b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

128. (1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures offered in the prospectus to be listed for quotation on the official list of a stock exchange, then, subject to subsection (8), no allotment of shares or debentures shall be made on an application made pursuant to the prospectus except in accordance with this section. Reference to stock exchange listing in prospectus-allotment of shares

(2) An allotment may be made-

(a) if the permission has been applied for in the form required by the stock exchange before the third day on which the stock exchange is open after the date of issue of the prospectus; or

(b) if the permission has been granted before the determination day.

(3) If, on the determination day, the conditions of subsection (2) are not satisfied, the company shall, within fourteen days after the determination day, repay without interest any money received from any applicant in pursuance of the prospectus.

(4) If the company fails to repay money in accordance with subsection (3), the directors shall, in addition to the liability of the company but subject to subsection (5), be jointly and severally liable to repay that money with interest at the ruling bank rate from the end of that period of fourteen days.

(5) A director shall not be liable under subsection (4) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) The company shall, for so long as the conditions of subsection (2) are not satisfied, keep in a separate bank account all money received in pursuance of a prospectus.

(7) A condition purporting to require or bind an applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(8) The Registrar may, on the application of the company made before the determination day, by notice in the Gazette provide that this section shall not apply to the allotment of the shares or debentures.

(9) For the purposes of this section, a statement in a prospectus to the effect that the articles comply with, or have been drawn up so as to comply with, a condition imposed by a stock exchange shall, unless the contrary intention appears, be deemed to imply that application has been, or will be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the stock exchange.

(10) For the purposes of this section, where a stock exchange grants the permission subject to a condition, the permission shall be deemed to be granted if and when the directors of the company give to the stock exchange a written undertaking to comply with the condition.

(11) For the purposes of this section, the determination day is, subject to subsection (12), the day forty-two days after the day of issue of the prospectus.

(12) If, before the day referred to in subsection (11), the stock exchange notifies the applicant for the permission that a later day, being a day not more than three months after the day of issue of the prospectus, will be the determination day, the determination day is that later day.

129. (1) Where a prospectus-Civil liability for misstatements or omissions in prospectus

(a) contains a statement which is untrue or, in the context, misleading;

(b) omits any matter which is material; or

(c) omits to state any of the particulars or to set out any of the reports which, under this Act, it is required to state or set out;

then, subject to this section, the persons specified in subsection (2) shall be liable to pay compensation to any persons who acquire any shares or debentures on the faith of the prospectus for any loss they may have sustained by reason of the untrue statement or omission.

(2) The persons liable to pay compensation under subsection (1) are the following:

(a) every person making the invitation to which the prospectus relates;

(b) every person who was a director of a body corporate making the invitation at the time when the prospectus was published;

(c) where the invitation was made by the company to whose shares or

debentures the invitation relates-

(i) every person who has authorised himself to be named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time; and

(ii) every promoter of the company who was a party to the preparation of the prospectus;

(d) the expert, if the untrue statement or omission occurs in a statement by an expert who has consented to the publication of the prospectus in accordance with section one hundred and twenty-five.

(3) A person shall not be liable under this section if he proves-

(a) that as regards any untrue statement, not purporting to be-

(i) a statement or report made by an expert (other than himself);

(ii) a public official document or statement; or

(iii) an extract from a document referred to in paragraph (i) or (ii);

he had reasonable ground to believe and did believe up to the time of the publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period, that the statement was true;

(b) that as regards any untrue statement purporting to be a statement or report by an expert (other than himself) or an extract therefrom-

(i) it was a correct and fair copy of the statement, report or extract; and

(ii) he had reasonable ground to believe and did believe up to the time of the publication of the prospectus that the person making the statement was competent to make it and had given the consent required by section one hundred and twenty-five and had not withdrawn that consent before the date of registration of the prospectus;

(c) that as regards any untrue statement purporting to be a copy of or extract from a public official document or a statement made by an official person, it was a correct and fair copy of or extract from the document or statement;

(d) that as regards any omission, he was not aware of the matter omitted, or that the matter omitted was material, up to the time of the publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period;

(e) that after the publication of the prospectus but before the expiration of the waiting period he, on becoming aware of any untrue statement therein or omission therefrom, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(f) that the prospectus was published without his knowledge and that, on becoming aware of its publication, he forthwith gave reasonable public notice that it was published without his knowledge.

(4) A person shall not be liable under this section by reason that subparagraph (c) (i) of subsection (2) applies to him if he proves that, having consented to being named as a director or as having agreed to become a director, he withdrew his consent before the registration of the prospectus and that it was published without his authority or consent.

(5) A person shall not be liable under this section by reason that paragraph (d) of subsection (2) applies to him if he proves-

(a) that as regards any untrue statement made by him, he was competent to make the statement and that he had reasonable ground to believe and did believe, up to the date of publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period, that the statement was true; or

(b) that, after the lodgement of the prospectus with the Registrar but before publication thereof, or, where the waiting period applies, before the expiration of the waiting period, on his becoming aware of the untrue statement or omission, he withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor.

(6) Where-

(a) a person is named in a prospectus as a director of a company or as having agreed to become a director of a company and he has not consented to become a director or has withdrawn his consent before the publication of the prospectus and has not authorised or consented to the publication thereof; or

(b) the consent of a person is required under section one hundred and twenty-five to the publication of the prospectus and he either has not given that consent or has withdrawn it before the publication of the prospectus;

every person making the invitation to which the prospectus relates and every person who was a director of any body corporate making the invitation at the time when the prospectus was published (except any person without whose knowledge or consent the prospectus was published) shall be liable to indemnify the person referred to in paragraph (a) or (b) against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any legal proceeding brought against him in respect thereof.

130. (1) Where any prospectus, advertisement or circular published in relation to any invitation to the public to acquire shares or debentures of a company contains any untrue statement or omits truthfully to state any of the matters which, under this Act, it is required to state, any person who authorised the publication of the prospectus, advertisement or circular shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding seven thousand monetary units or to imprisonment for a period not exceeding seven years, or to both. Offence of misstatement or omission in prospectus

(2) It is a defence to a charge under subsection (1) that-

(a) the untrue or omitted statement was immaterial; or

(b) the person had reasonable ground to believe and did believe, up to the time of publication of the prospectus, that the statement was true.

(3) For the purposes of this section, a person shall not be regarded as having authorised the publication of a prospectus by reason only of his having given the consent required by section one hundred and twenty-five, and the Registrar shall not be regarded as having authorised the publication of an advertisement or circular by reason of his having given the certificate referred to in section one hundred and twenty-six.

131. (1) Where a prospectus has been registered and it appears to the Registrar that it-

Stop trading order

(a) contains a statement, promise, estimate or forecast that is false or misleading, whether or not the statement or other particular was false or misleading at the time the prospectus was lodged;

(b) fails to comply in any material respect with this Division or with the Fourth Schedule; or

(c) conceals or omits to state a material fact so that a statement in the prospectus is rendered misleading in the context in which it appears;

the Registrar may apply to the court for an order under subsection (2).

(2) If the court is satisfied that the ground for the application is established, it may make an order-

(a) cancelling the registration of the prospectus and directing the persons making the invitation to the public to which the prospectus relates-

(i) to withdraw the prospectus;

(ii) to cease to accept further subscriptions or purchases of shares or debentures offered in the prospectus; and

(iii) to repay with interest any money received from applicants in pursuance of the prospectus;

(b) declaring any contract for the subscription or purchase of shares or debentures offered in the prospectus to be voidable;

(c) directing the persons making the invitation to the public to which the prospectus relates to reissue forthwith the prospectus amended in such terms as the court directs; or

(d) protecting the rights of persons injuriously affected by the issue of the prospectus, in such terms as it thinks fit.

(3) In exercising its powers under this section, the court may, on the application of the Registrar and on being satisfied of the existence of a prima facie case, make such interim orders as it considers necessary to apply for a period of not more than fourteen days after the date of the order.

132. Where an invitation is made to the public to acquire shares or debentures of a public company or of a public company proposed to be formed, an agreement for the acquisition of the shares or debentures made before the end of the waiting period, other than a bona fide underwriting agreement, shall not be enforceable by the company or the promoters. Waiting period

133. Where an invitation is made to the public in respect of any shares or debentures of a public company, an application for such shares or debentures shall not be revocable during a period of seven days commencing on the expiry of the waiting period unless, before the expiry of that period of seven days, some person responsible for the prospectus has given a notice to the public which has the effect under section one hundred and twenty-nine of excluding or limiting the responsibility of the person giving it for any misstatement or omission in the prospectus. Withdrawal of application after waiting period

134. (1) No allotment of shares offered to the public shall be made unless- Allotment and minimum subscription

(a) the minimum subscription has been subscribed as required by section fifteen; and

(b) the sum payable on application for the shares so subscribed has been received by the company.

(2) Where a cheque is given in payment of a sum under subsection (1), the sum shall not be regarded as having been received by the company until the cheque is paid by the bank on which it is drawn.

(3) The minimum subscription shall be calculated-

(a) on the nominal value of each share, if the shares are not issued at a premium; or

(b) on the nominal value of each share plus the premium payable, if the shares are issued at a premium.

(4) The amount payable on application on each share offered to the public shall not be less than five per centum of the nominal amount of the share.

(5) If the conditions of subsection (1) have not been satisfied after the expiry of four months from the first issue of the prospectus, any money received from applicants for shares shall forthwith be repaid to them without interest.

(6) Subject to subsection (7), if any money received under subsection (5) is not repaid within five months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the ruling bank rate from the expiry of the period of five months.

(7) A director shall not be liable under subsection (6) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(8) An allotment made by a company to an applicant in contravention of this section shall, notwithstanding that the company is in the course of being wound-up, be voidable at the option of the applicant by written notice given to the company within one month after the date of the allotment.

(9) A director who wilfully contravenes, or wilfully authorises or permits the contravention of, this section shall be liable to compensate the company and the allottee for any loss, damages or costs which the company or the allottee has sustained or incurred thereby.

(10) Proceedings for the recovery of any compensation under subsection (9) shall not be commenced more than two years after the date of the allotment.

(11) A condition purporting to require or bind an applicant for shares to waive compliance with any requirement of this section shall be void.

(12) A company shall not allot, and an officer or promoter of a company or a proposed company shall not authorise or permit the allotment of, shares or debentures to the public on the basis of a prospectus more than six months after the publication of the prospectus.

(13) An allotment of shares or debentures shall not be voidable or void by reason only that it was made in contravention of subsection (12).

135. (1) A public company that does not issue a prospectus on, or with reference to, its formation shall not allot any of its shares or debentures unless it has, not later than three days before the first allotment of the shares or debentures, lodged with the Registrar a statement in lieu of a prospectus. Statement in lieu of prospectus

(2) The statement in lieu of a prospectus shall-

(a) be signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing; and

(b) be in the form of a prospectus and deal with such matters specified in Part A of the Fourth Schedule as apply to the formation of a company.

136. A condition purporting to require or bind any person to waive compliance with this Part or purporting to attribute to him notice of any contract document or other matter not specifically referred to in any prospectus advertisement or circular, shall be void. Prohibition of waiver and notice clauses

PART VII

MEETINGS AND RESOLUTIONS

137. (1) In this Part, unless the context otherwise requires, "meeting" means any of the following meetings of a company: Interpretation

(a) an annual general meeting;

(b) an extraordinary general meeting; and

(c) a class meeting.

138. (1) Subject to this section, a company shall hold, within three months after the end of each financial year of the company, a meeting to be called the annual general meeting of the company. Annual general meeting

(2) If, after any financial year, no annual general meeting is held in accordance with subsection (1), the Registrar may, on the application of any member of the company, convene, or direct the convening of, an annual general meeting of the company and give such ancillary or consequential directions as the Registrar thinks expedient, including directions modifying or supplementing, in relation to the convening, holding and conducting of the meeting, the operation of the company's articles, or a direction that one member of the

company present in person or by proxy shall be deemed to constitute a meeting.

(3) If the company fails to comply with subsection (1), or with any direction of the Registrar under subsection (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units.

(4) If the company is a private company, the annual general meeting in relation to a financial year, other than the first financial year, may be dispensed with if all the members of the company entitled to attend and vote at any annual general meeting so agree in writing before the end of the financial year.

139. (1) An extraordinary general meeting of a company may be convened in accordance with other provisions of this Act, or-Extraordinary general meetings

(a) by the directors whenever they think fit; or

(b) if the articles so provide, by any other person in accordance with those provisions.

140. (1) Unless the articles provide otherwise, a meeting of members of a particular class may be convened-Class meetings

(a) by the directors whenever they think fit; or

(b) by two or more members of that class, holding, at the time that notice of the meeting is sent out, not less than one-twentieth of the total voting rights of all the members having a right to vote at meetings of that class.

141. (1) A member or members of the company may make a requisition for a general meeting to be held under this section if they hold, at the time when the requisition is made, not less than one-twentieth of the total voting rights of all the members having a right to vote at general meetings of the company.Requisition of a general meeting

(2) The requisition shall state the nature of the business to be transacted at the meeting, and shall be signed by the requisitionists and deposited at the registered office of the company or posted to its registered postal address, and may consist of several documents in like form each signed by one or more requisitionists.

(3) Where a requisition is made in accordance with this section, the directors shall proceed duly to convene a general meeting of the company.

(4) If the directors do not proceed duly to convene a meeting to be held within the requisition period, the requisitionists or any of them may themselves convene a meeting, but any meeting so convened shall not be held more than three months after the receipt of the requisition by the company.

(5) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Notwithstanding anything in the articles, the notice period for a meeting convened under this section shall be the period set out in section one hundred and forty-three for the type of meeting concerned.

(7) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and the sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as wilfully authorised or permitted the failure.

(8) For the purposes of this section, the requisition period is the period of-

(a) twenty-eight days, if the meeting is to be an annual general meeting or a meeting for the passing of a special resolution; or

(b) twenty-one days, in any other case;

beginning on the date of receipt by the company of the requisition.

(9) For the purposes of this section, the directors fail duly to convene a meeting if-

(a) they do not convene it within the requisition period; or

(b) they do not give such notice thereof as is required by section one hundred and forty-three for a meeting at which a special resolution is to be proposed, if the requisition states that a resolution is to be proposed as a special resolution at the meeting.

142. (1) Where a meeting of a company is to be convened, any person who is, on the day before the latest day on which notice of the meeting may be given under this Act-Entitlement to receive notice of meetings

(a) a registered member having the right to vote at a meeting of that kind;

(b) a person upon whom the ownership of a share devolves by reason of his being a legal personal representative, receiver or trustee in bankruptcy of such a member and of whom the company has received notice;

(c) a director of the company;

(d) an auditor of the company; or

(e) a person entitled under the articles to receive such notice;

shall be entitled to receive notice of the meeting.

(2) The proceedings of a meeting shall not be invalid by reason only of-

(a) the accidental omission to give notice of a meeting to a person entitled to receive notice; or

(b) the non-receipt of notice of a meeting duly sent to such a person.

143. (1) Subject to this section, notice of a meeting of a company shall be given in writing served in accordance with this Act on each person entitled to receive such notice and shall be given not less than-Length of notice for convening a meeting

(a) twenty-one days, in the case of an annual general meeting;

(b) twenty-one days, in the case of a meeting at which a special resolution will be proposed; or

(c) fourteen days, in any other case;

and not more than fifty days before the meeting is to be held.

(2) The articles may substitute for the minimum periods of notice provided in subsection (1) longer periods, being periods of not more than thirty days.

(3) Where a meeting of the company is convened with a shorter period of notice than that required under this section, full notice shall be deemed to have been given if it is so agreed-

(a) by all the members entitled to attend and vote at the meeting, in the case of a meeting convened as the annual general meeting;

(b) by a majority in number of the members having a right to attend the meeting and vote on the resolution concerned, being a majority holding not less than ninety-five per centum of the total of such voting rights, in the case of a meeting convened as a meeting at which a special resolution will be moved, and in relation to that resolution; and

(c) by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per centum of the total of such voting rights, in the case of any other meeting.

144. (1) If for any reason it is impracticable to convene or to conduct a meeting of a company in compliance with this Act and the articles, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be convened, held and conducted in such a manner as the court thinks fit, and, where any such order is made, may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. Power of court to order meeting

(2) A meeting convened, held and conducted in accordance with an order under this section shall for all purposes be deemed to be a meeting of the company duly convened, held and conducted.

145. Unless the articles provide otherwise, or all the members entitled to vote at that meeting agree in writing to a meeting at a place outside Zambia, a meeting of a company shall be held in Zambia. Place of meetings

146. The following persons shall be entitled to attend and to speak at a meeting of a company:

(a) each member of the company having the right to vote at the meeting;

(b) each person upon whom the ownership of a share devolves by reason of his being a legal personal representative, receiver or trustee in bankruptcy of such a member;

(c) each director of the company;

- (d) the secretary of the company;
- (e) each auditor of the company;
- (f) each person entitled under the articles to do so;
- (g) any other person permitted to do so by the chairman. Attendance at meetings

147. (1) Unless the articles of a company provide otherwise, members shall have votes at any meeting of the company as follows: Conduct of meetings and voting

- (a) a member of a company with share capital shall have one vote for-
 - (i) each share; and
 - (ii) each whole unit of stock;

that he is registered as holding;

- (b) each member of a company limited by guarantee shall have one vote.

(2) The articles may provide that a member shall have rights in respect of shares not registered in respect of the person, but a person who is not a member of the company shall not be entitled to vote at a meeting of the company.

(3) Unless the articles provide otherwise, the quorum for a meeting of the company shall be two members of the company holding not less than one-third of the total voting rights in relation to the meeting.

(4) Unless the articles provide otherwise-

- (a) a meeting of the company may elect a chairman; and
- (b) on matters not provided for in this Act or in the articles, the meeting may provide for the conduct of its business.

(5) The articles may provide that a member shall not be entitled to attend a meeting of the company unless all sums presently payable by him in respect of shares in the company have been paid.

(6) For the purposes of this section, a "unit of stock" of a company is the amount of stock having the nominal value arrived at by adding together the nominal values of all the shares of the company other than stock, and dividing the sum by the number of those shares.

148. Unless the articles of a company provide otherwise, a statement by the chairman of a meeting of the company that a motion or resolution at a meeting was passed by a specified majority shall be conclusive evidence that it was so passed unless a poll was demanded on the motion or resolution. Chairman's declaration as to result of a vote

149. A poll may be demanded at a meeting of a company on any question other than the election of the chairman of the meeting or the adjournment of the meeting by-

(a) not fewer than three members having the right to vote on the question, representing not less than one-twentieth of the total voting rights of all members having the right to vote on the question, where there are more than eight such members present; or

(b) not fewer than one third of the members present having the right to vote on the question, where there are eight or fewer such members present. Right to demand a poll

150. On a poll taken at a meeting of company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way. Voting on a poll

151. (1) A member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as his proxy to attend and vote instead of him. Proxies

(2) An appointment as proxy shall be in writing under the hand of the appointer or his agent duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or agent duly authorised.

(3) A proxy appointed under this section shall have, subject to any instructions from the member in the instrument of appointment, all the rights and powers of the member in relation to the meeting.

(4) If voting rights attach to shares in a company having share capital, a shareholder may appoint separate proxies to represent respectively such of the shares held by him as may be specified in their instruments of appointment.

(5) An appointment of a director as a proxy shall not authorise the director to vote as proxy on the following business transacted at an annual general meeting:

(a) the declaration of a dividend;

(b) the consideration of the accounts and the directors' and auditors' reports;

(c) the election of directors in place of those retiring;

(d) the fixing of the remuneration of the directors; and

(e) the appointment of the auditors and the fixing of their remuneration.

(6) In every notice convening a meeting of a company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote instead of him, and, unless the articles provide otherwise, that a proxy need not also be a member.

(7) A company shall not provide a member with a form for the appointment of a proxy unless the form permits the member to direct the proxy as to how to use his vote on different matters.

(8) A company's articles shall not have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of appointment of a proxy, to be received by the company or any other person more

than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(9) If a company fails to comply with subsection (6) or (7), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.

(10) If a company, for the purpose of any meeting of the company, issues invitations to appoint as proxy a person specified or listed in the invitation, and issues the invitations to some only of the members entitled to be sent a notice of the meeting and to vote thereat, the company, and every officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.

(11) A company shall not be regarded as issuing an invitation for the purposes of subsection (10) if the name or list is available on request to every member entitled to vote at the meeting, and is not sent to any such member except on request.

152. (1) A body corporate or an unincorporated association may, if it is a member of a company, by resolution of its directors or other governing body, authorise any person as it thinks fit to act as its representative at any meeting of the company. Representation of bodies corporate and unincorporated associations at meetings

(2) A person so authorised may exercise the same powers on behalf of the body corporate or unincorporated association which he represents as it could exercise if it were an individual member of the company.

153. (1) A member of a company entitled to attend and vote at a meeting may, in accordance with this section, require the company to circulate, at the company's expense-Circulation of members' resolutions and supporting circulars

(a) notice of any resolution which may properly be moved and is intended to be moved at the meeting; and

(b) a statement of not more than five hundred words with respect to the matter referred to in the proposed resolution or any other business to be dealt with at the meeting.

(2) A requisition for the purposes of this section shall be in writing and posted to the company's registered postal address or deposited at the company's registered office.

(3) If a meeting of the company is proposed and the company receives a requisition-

(a) not less than seven days before the end of the period during which notice of the meeting is required to be given; or

(b) at a time when it is practicable to include the notice and statement required with the notice of the meeting;

the company shall send the notice and statement to each person entitled to receive notice of the meeting before the end of period during which notice of the meeting is required to be given.

(4) If the company receives a requisition and subsection (3) does not apply, the company shall include the notice and statement required with the notice of the next meeting of the company for which it is practicable to do so.

(5) If a requisition is made under this section and the resolution is not passed, a requisition shall not be made in relation to the same resolution, or one substantially to the same effect, to be moved at a meeting within three months after the meeting at which the resolution was moved unless-

(a) the directors otherwise agree; or

(b) the requisition is supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.

154. (1) A company shall, at the written request of any member entitled to attend and vote at a meeting, circulate to members of the company a statement of not more than one thousand words with respect to any business to be dealt with at that meeting. Circulation of members' circulars

(2) Unless the company otherwise resolves, the circulation of the statement shall be at the expense of that member.

(3) The statement shall be circulated to members of the company in any manner permitted for service of notice of the meeting and at the same time as notice of the meeting or as soon as practicable thereafter.

(4) A company shall not be bound to circulate the statement unless-

(a) the request, signed by the member concerned, together with the statement, is received at the registered postal address of the company or deposited at the registered office of the company not less than ten days before the meeting; and

(b) there is also deposited with the request a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

155. (1) A company shall not be bound under section one hundred and fifty-three or one hundred and fifty-four to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by those sections are being abused to secure publicity for defamatory matter. General provisions in regard to members' circulars

(2) On hearing an application under subsection (1), the court may order the company's costs to be paid in whole or in part by the member making the request, notwithstanding that he is not a party to the application.

(3) A company shall not incur liability to any person by reason only that it has circulated a resolution or statement in compliance with section one hundred and fifty-three or one hundred and fifty-four.

(4) If a company fails to comply with section one hundred and fifty-three or one hundred and fifty-four, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

156. (1) A resolution shall be an ordinary resolution if it is passed by a simple majority of votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a meeting duly convened and held. Ordinary extraordinary and special resolutions

(2) A resolution shall be an extraordinary resolution if it is passed by a majority of not less than three-fourths of the votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a meeting duly convened and held.

(3) A resolution shall be a special resolution if it is passed by a majority of not less than three-fourths of the votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a meeting duly convened as a meeting at which the resolution will be moved as a special resolution, and duly held.

(4) Any reference in-

(a) this Act;

(b) the articles of a company;

(c) any debentures or debenture trust deed;

to an ordinary, extraordinary or special resolution of a meeting of creditors or debenture holders or of any class of creditors or debenture holders shall, unless the context otherwise requires, bear a like meaning to that specified in this section, with the necessary modifications.

157. (1) The members of a private company may, in accordance with this section, pass a resolution in writing without holding a meeting, and such a resolution shall be as valid and effective for all purposes as if it had been passed at a meeting of the appropriate kind duly convened, held and conducted. Written resolutions for private companies

(2) The resolution shall be signed by each member who would be entitled to vote on the resolution if it were moved at a meeting of the company, or by his duly authorised representative.

(3) The resolution shall be passed when signed by the last member referred to in subsection (2), whether or not he was a member when other members signed.

(4) If the resolution is described in the writing as a special resolution, it shall be deemed to be a special resolution for the purposes of this Act.

(5) If the resolution states a date as being the date of the signature thereof by any member, the statement shall be prima facie evidence that it was signed by the member on that date.

(6) This section shall not apply to a resolution to remove an auditor or to remove a director.

158. (1) A certified copy of every special resolution made by a company, or by a class of members of a company, shall, within fifteen days after the making thereof, be lodged with the Registrar. Registration of copies of certain resolutions

(2) Subject to this section, every copy of the articles of a company issued by it shall have embodied in it or attached to it a copy of every special resolution of the company in force at the time of issue.

(3) For the purposes of subsection (2), where the sole effect of a special resolution is to amend the articles, a copy of the articles that embodies the effect of the passing of the special resolution embodies the resolution.

(4) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

(5) If a copy of the articles is issued that fails to comply with subsection (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units in respect of each copy.

159. (1) Where a resolution is passed on a poll, it shall for all purposes be deemed to have been passed on the day on which the result of the poll is declared. Date of certain resolutions

(2) Subject to subsection (1), where a resolution is passed at an adjourned meeting of a company or of the directors be deemed to have been passed on the date of the adjourned meeting.

160. (1) A company shall cause minutes of all proceedings of- Minutes of proceedings of meetings of company and of creditors

(a) meetings of the company;

(b) meetings of its directors and of any committee of directors;

(c) meetings of its debenture holders or other creditors;

to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the Chairman of the meeting at which the proceedings took place or of the subsequent meeting, shall be prima facie evidence of the facts stated in the minute in relation to the proceedings.

(3) Where minutes have been made in accordance with this section, the meeting shall be presumed to have been duly convened, held and conducted and all appointments of directors, officers, auditors and liquidators shall be presumed to be valid.

(4) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

161. The books containing the minutes of proceedings of any meeting referred to in section one hundred and sixty shall be kept at the registered records office of the company and shall be open to inspection by any member, officer, auditor, receiver or liquidator of the company, and by the Registrar or his delegate. Inspection of minute books

PART VIII

ACCOUNTS, AUDIT AND ANNUAL, RETURNS

Division 8.1-Accounts

162. (1) A company shall-Accounting records to be kept

(a) keep such accounting records as correctly record and explain the transactions of the company (including any transactions as trustee) and the financial position of the company; and

(b) keep its accounting records in such a manner as will enable-

(i) the preparation from time to time of true and fair accounts of the company; and

(ii) the accounts of the company to be conveniently and properly audited in accordance with this Act.

(2) The company shall retain the accounting records for a period of ten years after the completion of the transactions to which they relate.

(3) If any accounting records of the company are kept at a place other than its registered records office, the company-

(a) shall keep at the registered records office such statements and records with respect to the matters dealt with in those accounting records as would enable the company to prepare true and fair accounts together with any documents required by this Act to be attached to the accounts; and

(b) for that purpose, shall, within fourteen days after the creation of any accounting record, transmit the appropriate statement or record to the registered records office.

(4) The accounting records of the company shall be kept in writing in English, or in any form that enables the accounting records to be readily accessible and readily convertible into such writing.

(5) The company shall make its accounting records kept at its registered records office available, at all reasonable times, for inspection without charge by the directors, secretary and auditors of the company.

(6) The company shall, on being given fourteen days' notice in writing by any director, secretary or auditor of the company that he wishes to inspect specified accounting records, make the accounting records, wherever kept, available for inspection without charge at the registered records office or such other place as may be agreed with the person giving the notice.

(7) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units.

163. (1) Subject to this section, the directors of a company which is a holding company shall take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding company coincides with the financial year of the holding company. Financial year of holding and subsidiary

(2) The action referred to in subsection (1) need not be taken if the directors of the holding company lodge with the Registrar a statutory declaration that-

(a) the action would cause unreasonable expense or difficulty; and

(b) the members of the holding company will not be disadvantaged if the action is not taken.

164. (1) Subject to this Division, the directors of a company shall, after the end of each financial year of the company but not later than twenty-one days before the annual general meeting of the company for that financial year, or, if no annual general meeting of the company is held within three months after the end of the financial year of the company, not later than twenty-one days before the end of that period of three months, caused to be made out-Annual accounts to be prepared after each financial year

(a) a profit and loss account for the financial year just ended, being a profit and loss account that gives a true and fair view of the profit or loss of the company for that financial year;

(b) a balance sheet as at the end of the financial year just ended, being a balance sheet that gives a true and fair view of the state of affairs of the company as at the end of that financial year;

(c) group accounts, if the company is a company required to provide group accounts, dealing with-

(i) the profit or loss of the company and its subsidiaries for their respective financial years most recently ended, giving a true and fair view of the profit or loss; and

(ii) the state of affairs of the company and its subsidiaries as at the end of their respective financial years most recently ended, giving a true and fair view of the state of affairs so far as it concerns members of the holding company.

(2) The accounts referred to in subsection (1) (in this Act called the "annual accounts") shall comply with such of the requirements of the Second Schedule as are relevant to those accounts, but where accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts, the directors of the company shall add such information and explanations as will give a true and fair view of those matters.

(3) The directors shall take reasonable steps to ensure that the annual accounts of the company and, if it is a holding company for which group accounts are required, the group accounts, are audited as required by this Part within the time allowed by subsection (1).

(4) The directors shall cause the auditors' report relating to the annual accounts that is furnished to the directors in accordance with this Part to be attached to, or endorsed upon, the annual accounts.

(5) The directors shall, before the profit and loss account and balance sheet referred to in subsection (1) are made out, take reasonable steps-

(a) to ascertain what action has been taken in relation to the writing off of

bad debts and the making of provisions for doubtful debts;

(b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(c) to ascertain whether any current assets, other than current assets to which paragraph (a) or (b) applies, are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause-

(i) those assets to be written down to an amount that they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

(d) to ascertain whether any non-current asset is shown in the books of the company at an amount that, having regard to its value to the company as a going concern, exceeds the amount that it would have been reasonable for the company to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(6) The directors shall cause to be attached to the annual accounts, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by at least two directors stating whether, in the opinion of the directors-

(a) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the company for the financial year;

(b) the balance sheet is drawn up so as to give a true and fair view of the state of affairs of the company as at the end of the financial year;

(c) there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due; and

(d) the group accounts are drawn up so as to give a true and fair view of-

(i) the profit or loss of the company and its subsidiaries for their respective last financial years; and

(ii) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years, so far as they concern members of the company;

if the company has group accounts.

165. (1) Where at the end of its financial year a company was a holding company, the company shall, subject to this section, prepare-Group accounts

(a) a set of consolidated accounts for the group of companies;

(b) separate accounts for each body corporate in the group; or

(c) a combination of sets of consolidated accounts and separate accounts together covering the group;

(in this Act called the "group accounts") for inclusion in its annual accounts for that financial year.

(2) This section shall not oblige a company to make out group accounts if it is, at the end of its financial year, a wholly-owned subsidiary of another body corporate incorporated in Zambia.

(3) Group accounts need not deal with a subsidiary of the company if a statutory declaration made by each director has been lodged with the Registrar to the effect that-

(a) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expenses or delay out of proportion to the value to members of the company; or

(b) the result would be misleading or harmful to the business of the company or any of its subsidiaries;

and the omission of the subsidiary from the group accounts has been approved in writing by the Registrar.

166. (1) The directors of a subsidiary shall, at the request of the directors of the holding company, supply all such information as is required for the preparation of group accounts of the holding company and its subsidiaries, and of the report of the directors of the holding company. Delays in preparing group accounts

(2) The directors of a holding company shall take all reasonable steps to ensure that, when they prepare the group accounts and the directors' report, they have available to them all the information from each subsidiary that is to be included in the group necessary for the completion of the group accounts and directors' report of the group.

(3) The directors of a holding company are, unless they know or have reason to suspect that any matter in any accounts, report or information furnished by the directors of a subsidiary is false or misleading, entitled to rely on the accounts, report or information for the purpose of the preparation of the group accounts and their report, so far as they relate to the affairs of the subsidiary.

(4) Where the directors of a holding company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary any accounts, report or other information required for the preparation of the group accounts and the directors' report of the group, they may cause the group accounts to be made out and make the directors' report without those accounts, report or other information relating to the subsidiary, but with such qualifications and explanations as are necessary to prevent the group accounts and directors' report from being misleading.

(5) Where the directors of a holding company have caused the group accounts to be made out and have made the directors' report in accordance with subsection (4), they shall send to the members of the holding company, within one month after receiving the accounts, report or other information from the directors of

the subsidiary, a copy of the accounts and report or a statement embodying the other information, as the case may be, together with a statement by the directors of the holding company containing such qualifications and explanations of the group accounts and of their report as are necessary having regard to the accounts, report or information received from the subsidiary.

167. (1) The annual accounts of a company shall, subject to this section, show-Annual accounts to include amounts paid to directors

(a) the total amount of the emoluments paid to or receivable by the directors for their services;

(b) the total amount of pensions paid to or receivable by the directors or past directors for their services;

(c) the total amount of any compensation paid to or receivable by the directors or past directors in respect of loss of office;

in the financial year concerned.

(2) The amount to be shown under paragraph (a) of subsection (1) shall include any emoluments paid to or receivable by any person in respect of his services, while a director of the company-

(a) as director of the company;

(b) as director of any subsidiary; or

(c) otherwise in connection with the management of the affairs of the company or any subsidiary.

(3) The amount to be shown under paragraph (b) of subsection (1)-

(a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions to the scheme paid in respect of the directors are adequate for the maintenance of the scheme; and

(b) shall include any other pension paid or receivable in respect of any of the services of a person, while a director of the company-

(i) as director of the company;

(ii) as director of any subsidiary; or

(iii) otherwise in connection with the management of the affairs of the company or any subsidiary;

whether the pension is paid to or receivable by the person himself or, on his nomination or by virtue of any connection with him, to or by any other person.

(4) The amount to be shown under paragraph (c) of the subsection (1) shall include any sums paid to or receivable by a director or past director by way of compensation for-

(a) loss of office as director of the company; or

(b) loss of any other office in connection with the management of the affairs

of the company or of a subsidiary, where the loss arose from or in connection with the loss of office as director of the company.

(5) The accounts shall also show, with the total amounts to be shown under subsection (1), the subtotals of the amounts that are receivable or to be paid-

(a) in relation to emoluments and pensions, in respect of-

(i) services as director of the company or a subsidiary; and

(ii) other services; and

(b) in relation to compensation for loss of office, in respect of-

(i) loss of office as director of the company or a subsidiary; and

(ii) loss of any other office.

(6) Where an amount to be shown under subsection (1) or (5) includes an amount to be paid by or receivable from a person other than the company, the accounts shall also show the subtotals of the amounts receivable from or paid by-

(a) the company;

(b) the company's subsidiaries; and

(c) any other person.

(7) For the purposes of this section-

"compensation for loss of office" includes sums paid as consideration for or in connection with a person's retirement from office;

"contributions" means any payment into a pension scheme (including an insurance premium paid for the purposes of the scheme) by or in respect of which pensions will or may become payable under the scheme, other than a payment in respect of two or more persons where the amount paid in respect of each of them is not ascertainable;

"emoluments" includes fees and percentages paid to a director, any sums paid by way of expenses and allowances, any contributions paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash;

"pension" includes any superannuation allowance, superannuation gratuity or similar payment;

"pension scheme" means a scheme for the provision of pensions which is maintained in whole or in part by means of contributions.

168. (1) The annual accounts of a company shall show the particulars of any relevant loan made during the financial year to which the accounts apply, including any such loan which was repaid during that year. Annual accounts to include particulars of loans to officers

(2) The accounts shall also show the amount of any relevant loan, whenever made, that remained outstanding at the end of the financial year.

(3) If this section is not complied with, the auditors shall include in the auditors' report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) For the purposes of this section, a relevant loan is a loan, other than a loan referred to in subsection (5), made to-

(a) an officer of the company; or

(b) any person who, after the making of the loan, became during that financial year an officer of the company;

that was made by-

(i) the company or a subsidiary of the company; or

(ii) any other person under a guarantee from or on a security provided by the company or a subsidiary of the company.

(5) This section does not apply to a loan that was-

(a) made in the ordinary course of its business by the company or a subsidiary of the company, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or

(b) made by the company to an employee of the company, or by a subsidiary to an employee of the subsidiary, if the loan does not exceed fifty monetary units and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees;

and was not made under a guarantee from or on a security provided by the company or any subsidiary.

(6) For the purposes of this section, a subsidiary of the company is a body corporate that was a subsidiary of the company at the end of the financial year of the company during which the loan concerned was made, whether or not it was a subsidiary at the date of the loan.

169. (1) A person who is, or has at any time within the previous five years been, a director or officer of a company shall, on the request of the company, provide the company with such information relating to himself as may be necessary for the purposes of sections one hundred and sixty-seven and one hundred and sixty-eight. Director to make disclosure of loans and receipts

(2) A person who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

170. (1) The balance sheet of a company's annual accounts, and every copy of the balance sheet which is laid before the company in general meeting or delivered to the Registrar, shall be signed on behalf of the company by two directors. Balance sheet to be signed by directors

(2) In the case of a company authorised by law to conduct banking business, the balance sheet shall be signed by the secretary and-

- (a) by both the directors, where there are two only; or
- (b) by at least three directors, where there are three or more.

(3) If a copy of the balance sheet-

(a) is laid before the company in general meeting or delivered to the Registrar and is not signed as required by this section; or

(b) not being a copy so laid or delivered, is issued, circulated or published-

(i) when the balance sheet has not been signed as required by this section; or

(ii) without a copy of the signatures;

the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(4) If a copy of the balance sheet is issued, circulated or published without having annexed thereto copies of-

(a) the profit and loss account;

(b) any group accounts required under section one hundred and sixty-four to be annexed; and

(c) the auditors' report;

the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

Division 8.2-Auditors

171. (1) A company shall, within three months after its incorporation, appoint an auditor or auditors of the company, who shall hold office until the close of its first annual general meeting. Appointment of auditors

(2) An appointment under subsection (1) may be made by the directors or by an ordinary resolution of the company.

(3) A company shall at each annual general meeting appoint an auditor or auditors of the company, who shall hold office until the close of the next annual general meeting held by the company.

(4) A company shall not appoint a person as auditor unless he has previously consented in writing to the appointment and has not withdrawn the consent.

(5) Notwithstanding any agreement between a company and an auditor, the company may, by ordinary resolution, remove the auditor before the expiration of his term of office.

(6) If a company-

- (a) appoints an auditor;
- (b) removes an auditor from office;
- (c) fails to appoint an auditor under subsection (1) or at an annual general meeting; or
- (d) for any reason ceases to have an auditor;

the company shall within fourteen days after the event lodge a notice of that fact in the prescribed form with the Registrar.

(7) If a company fails to comply with subsection (6), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

(8) The directors of a company, or the company by ordinary resolution, may fill any casual vacancy in the office of auditor, and an auditor so appointed shall hold office until the close of the next annual general meeting held by the company.

(9) If a company does not have an auditor for a period of three months, the Registrar may appoint an auditor of the company.

(10) The remuneration of an auditor of the company, including any sums to be paid by the company in respect of the auditors' expenses-

(a) may be fixed by the directors, where the appointment is made by the directors;

(b) may be fixed by the Registrar, where the appointment is made by the Registrar; and

(c) shall be fixed by ordinary resolution of the company, or in such manner as the company may determine by ordinary resolution, in any other case.

(11) Where an individual or firm holds office as auditor of a company on the commencement of this Act-

(a) he or it shall be deemed to have been appointed under this Act; and

(b) he or it shall hold office until the close of the next annual general meeting held by the company.

(12) Where a company has no auditor on the commencement of this Act, this section shall apply as if the company had been incorporated on that commencement.

(13) Nothing in subsection (5) shall deprive a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

172. (1) A private company may appoint an individual or a firm as auditor of the company. Qualifications of auditor

(2) A public company may appoint-

(a) a registered accountant having a practice certificate issued by the Zambia Institute of Certified Accountants under the Accountants Act, or Cap. 390

(b) a firm of such registered accountants;

as auditor of the company.

(3) Where a firm is appointed as auditor of a company, each partner of the firm shall be deemed to be an auditor of the company.

(4) An individual or firm shall not-

(a) consent to be appointed as auditor of a company; or

(b) act as auditor of a company;

if the individual or firm is disqualified under this section.

(5) For the purposes of this section, an individual is disqualified in relation to a company if-

(a) he is-

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company; or

(b) he, or a company in which more than half the shares are beneficially owned by him, owes a debt of more than five hundred monetary units to the company concerned or to a related body corporate, not being a debt entered into by the company or related body corporate in the ordinary course of its business where the ordinary business of the company or related body corporate, as the case may be, includes the lending of money.

(6) For the purposes of this section, a firm is disqualified in relation to a company if any member of the firm is disqualified under subsection (5).

(7) An auditor of a company shall not take any action that would result in his being disqualified under this section.

(8) A person who contravenes subsection (4) or (7) shall be guilty of an offence, and shall be liable on conviction to a fine of five hundred monetary units.

(9) For the purposes of this section, a reference to an officer of a company includes a reference to-

(a) an officer of a related body corporate; and

(b) a person who has, at any time within the immediately preceding period of twelve months, been an officer or promoter of the company or of a related company, unless the Registrar, if he thinks fit in the circumstances of the case, directs in writing that this paragraph shall not apply to the person.

(10) For the purposes of this section, a person shall not be regarded as an officer of a company by reason only of his being or having been the liquidator of that company.

(11) A report, notice or consent that purports to be made or given by a firm appointed as auditor of a company shall not be duly made or given unless it is signed in the firm name and in his own name by a partner of the firm.

173. (1) The auditors of a company shall make a report (in this Act called the "auditors' report") to the members of the company on the annual accounts and on the company's accounting records and other records relating to those accounts. Auditors' rights and duties and auditors' report

(2) The auditors' report shall be furnished by the auditors to the directors of the company in sufficient time to enable the company to circulate the report in accordance with section one hundred and eighty-two.

(3) The auditors' report shall state whether in the auditors' opinion-

(a) the annual accounts have been properly prepared in accordance with this Act; and

(b) the accounting records, other records and registers required by this Act to be kept by-

(i) the company; and

(ii) by any subsidiaries for which the auditors, or any of them, have acted as auditor;

have been properly kept in accordance with this Act; and

(c) a true and fair view is given-

(i) of the state of the company's affairs as at the end of its financial year, in the case of the balance sheet;

(ii) of the company's profit or loss for its financial year, in the case of the profit and loss account; and

(iii) of the state of affairs and profit or loss of the company and its subsidiaries so far as concerns members of the company, in the case of group accounts;

and set out any defect or irregularity in the annual accounts, and any matter not set out therein without regard to which a true and fair view of the matters dealt with by the annual accounts would not be obtained.

(4) Where the annual accounts include group accounts, the auditors' report shall also state-

(a) the names of the subsidiaries (if any) for which none of the auditors has acted as auditor;

(b) whether the auditors have examined the accounts and auditors' reports of all such subsidiaries that are covered by the group accounts;

(c) whether they are satisfied that the accounts of subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether they have received satisfactory information and explanations as required by them for that purpose;

(d) whether the auditors' report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under subsection (3), and, if so, particulars of the qualification or comment; and

(e) the auditors' reason for not being satisfied as to any matter referred to in paragraph (a), (b) or (c), if he is not so satisfied.

(5) The auditors of a company, in preparing their report under this section, shall make such investigations as will enable them to form an opinion, and shall form an opinion, as to-

(a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and

(b) whether the company's balance sheet and profit and loss account are in agreement with the accounting records and returns;

(c) whether the procedures and methods used by the company and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation, where any group accounts include consolidated accounts; and

(d) whether they agree with the reasons given by the directors for preparing any group accounts in the form in which they are prepared, where group accounts are prepared otherwise than as one set of consolidated accounts for the group;

and if the auditors are of the opinion that there is any deficiency in a matter referred to in this subsection, they shall state that opinion in the report.

(6) Every auditor of a company shall have a right of access at all reasonable times to the accounting records and other records, including registers, of the company and to require from any officer such information and explanations as he thinks necessary for him to perform his duties as auditor.

(7) Every auditor of a holding company for which group accounts are required shall have a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary, and shall be entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relations to the affairs of the subsidiary as he requires for the purpose of reporting on the group accounts.

(8) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(9) If the auditors are unable to agree on the contents of an auditors' report, they shall provide a single report on the matters on which they agree, together with separate comments or reports on the matters on which they disagree.

(10) An auditor of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting on any part of the business of the meeting which concerns him as auditor, notwithstanding that he retires at that meeting or a resolution to remove him from office is passed at that meeting.

(11) If an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that-

(a) there has been a contravention of, or failure to comply with, any of the provisions of this Act; and

(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by-

(i) comment in the auditors' report on the annual accounts; or

(ii) bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any holding company of the company;

he shall forthwith report the matter to the Registrar in writing.

174. (1) A reference in this Act to a document annexed or required to be annexed to a company's annual accounts shall not include the directors' report or the auditors' report except as provided in this section. Circumstances in which accounts may include the auditors' report or directors' report

(2) Any information which is required by this Act to be given in the annual accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts, and if any such information is so given the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors' report shall report thereon only so far as it gives the said information.

(3) Where an item is shown in the directors' report instead of in the accounts, the report shall also show the corresponding amount of that item for (or, as the case may be as at the end of) the immediately preceding financial year, except where that amount would not have had to be shown had the item been shown in the accounts.

Division 8.3-The Directors' report

175. In this Division, a reference to a subsidiary of a company that is a holding company includes only those subsidiaries which the holding company is required to cover in its group accounts. Interpretation

176. (1) The directors shall prepare, in conjunction with the annual accounts, a report (in this Act called "the directors' report") with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves. Directors' report to be attached to balance sheet

(2) The report shall deal with any change during the financial year in-

- (a) the nature of the business of the company or its subsidiaries; or
- (b) the classes of business in which the company or any subsidiary has an interest, whether as member of another company or otherwise;

so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries.

(3) A director of a company who wilfully fails to take all reasonable steps to comply with subsection (1) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

(4) In any proceedings against a person for an offence under this section, it shall be a defence to prove that he reasonably believed that a competent and reliable person was charged with the duty of seeing that the provisions of that section were complied with and was in a position to discharge that duty.

177. (1) The directors' report shall state-General matters in directors' report

(a) the names of the persons who at any time during the financial year were directors of the company;

(b) the principal activities of the company and of its subsidiaries in the course of that year; and

(c) any significant change in those activities in that year.

(2) The directors' report shall contain particulars of-

(a) any significant changes in the fixed assets of the company or of any of its subsidiaries in the financial year that occurred; and

(b) any significant differences between the values, as included in the balance sheet, of such assets as consist of interests in land and the market values thereof.

(3) If the company has issued any shares or debentures in that year, the directors' report shall state-

(a) the reasons for making the issue;

(b) the classes of shares issued;

(c) as respects each class of shares-

(i) the number issued; and

(ii) the consideration received by the company for the issue; and

(d) as respects each class of debentures-

(i) the amount issued; and

(ii) the consideration received by the company for the issue.

(4) If, at any time in that year, arrangements subsisted to which the company was a party, being arrangements at least one of whose objects was to enable directors of the company to acquire benefits by means of the acquisition of shares in or debentures of the company or of any other body corporate, the directors' report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired under the arrangements.

(5) The directors' report shall contain-

(a) particulars of any important events affecting the company or any of its subsidiaries which have occurred during the year;

(b) an indication of likely future developments in the business of the company and of its subsidiaries; and

(c) an indication of the activities (if any) of the company or its subsidiaries in the field of research and development.

(6) A directors' report for a company of a class prescribed for the purposes of this paragraph shall contain prescribed information about the arrangements in force during that year for securing the health, safety and welfare at work of employees of the company and its subsidiaries, and for protecting other persons against risks to health or safety arising out of or in connection with the activities at work of those employees.

(7) The particulars required by subsection (6) may be given by way of notes to the company's accounts in respect of the financial year in question, instead of being stated in the directors' report.

(8) Regulations made for the purposes of subsection (6) may-

(a) make different provision in relation to companies of different classes;

(b) enable any requirements of the regulations to be dispensed with or modified in particular cases by any specified person or by any person authorised to do so by a specified authority; and

(c) contain such transitional provisions as the Minister thinks necessary or expedient in connection with any provision made by the regulations.

(9) Any expression used in subsection (6) that is also used in-

(a) Part I of the Factories Act; or Cap. 441

(b) Part I of the Public Health Act;

shall have the same meaning as in that Part. Cap. 295

178. (1) If in the course of a financial year, a company has carried out business of two or more classes that in the opinion of the directors differ substantially from each other, the directors' report relating to that year shall state-Where a company carries on more than one kind of business, attribution of turnover and profitability

(a) the proportions in which the turnover for that year (so far as stated in the annual accounts for that year) is divided amongst those classes (describing them); and

(b) as regards business of each class, the extent or approximate extent (expressed, in either case, in monetary terms) to which, in the opinion of the directors, the carrying on of business of that class contributed to or restricted, the profit of or loss,

before taxation of the company for that year.

(2) If-

(a) a company has subsidiaries at the end of its financial year and submits in respect of that year group accounts prepared as consolidated accounts; and

(b) the company and the subsidiaries dealt with by the consolidated accounts carried on between them in the course of the year business of two or more classes that, in the opinion of the directors, differ substantially from each other;

the directors' report relating to that year shall also state the matters referred to in subsection (1) in relation to the company and its subsidiaries.

179. (1) The directors' report of a company relating to a financial year shall state-Average number by the month of a company's employees and amount, by the year, of their wages

(a) the average number of persons employed by it in each month in that year; and

(b) the total remuneration paid or payable in respect of that year to the persons employed by it.

(2) If, at the end of a financial year, a company has subsidiaries, the directors' report relating to the year shall also state the matters referred to in subsection (1) in relation to the company and the subsidiaries.

(3) If the average number of employees for the purposes of subsection (1) or (2) is less than one hundred, the directors' report may state only that the average number of employees for that financial year was less than one hundred.

(4) This section shall not apply to a company that is a wholly owned subsidiary of a company incorporated in Zambia.

(5) For the purposes of this section, the average number of persons employed in a month shall be calculated as follows:

(a) for each whole calendar month during the financial year, the number of persons who, under contracts of service, were employed during the month (whether throughout it or not) by the employer or employers concerned is ascertained;

(b) the numbers so ascertained are added together;

(c) the sum is divided by the number of whole calendar months in the financial year;

(d) the quotient is the average number of persons employed in a month.

(6) For the purposes of this section, no regard shall be had to a person who worked wholly or mainly outside Zambia.

(7) In this section, "remuneration" means gross remuneration including bonuses (whether payable under contract or not).

180. (1) If a company, during a financial year, makes gifts or donations for any purpose with a total value of more than fifty monetary units, the directors' report relating to the year shall state the total value. Particulars of gifts and donations

(2) If, at the end of a financial year, a company has subsidiaries, subsection (1) shall apply to the company as if any gift or donation made by a subsidiary during the financial year had been made by the company, whether or not the subsidiary was a subsidiary at the time when the gift or donation was made.

181. (1) Where the business of a company consists of or includes the supplying of goods, the directors' report in relation to a financial year shall, unless the turnover for that year did not exceed five hundred monetary units-Particulars of exports

(a) state the value of any goods exported by the company from Zambia; or

(b) state that no goods were exported by the company from Zambia during that year, if no goods were exported.

(2) If, at the end of a financial year, a company whose business consists of or includes the supplying of goods, has subsidiaries, the directors' report relating to that year shall, unless the turnover of the company and its subsidiaries for that year did not exceed five hundred monetary units, state the matters referred to in subsection (1) in relation to the company and its subsidiaries.

(3) For the purposes of this section, goods exported by a company or subsidiary as the agent of another person shall be disregarded.

(4) This section shall not require the disclosure of information if-

(a) it is in the national interest that the information should not be disclosed; and

(b) the Minister issues a certificate to that effect.

Division 8.4-Provision of accounts and reports to members

182. (1) Not later than twenty-one days before an annual general meeting of a company, or, if no annual general meeting is to be held within three months after the end of a financial year, twenty-one days before the end of that three months, a copy of-Circulation of annual accounts

(a) the annual accounts (including any group accounts);

(b) the auditors' report or reports on the accounts; and

(c) the directors' report;

relating to the previous financial year shall be sent to-

- (i) each person entitled to receive notice of the annual general meeting; and
- (ii) each registered debenture holder of the company.

(2) If the copies of the documents are not sent within the period allowed by subsection (1), they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed in writing by all the members entitled to attend and vote at the meeting.

(3) Where a firm has been appointed as auditor to the company, this section shall not require copies to be sent to each member of the firm who is an auditor of the company if a copy of each document is sent to the firm.

(4) Any member or debenture holder of a company, whether or not he is entitled to receive notice of the company's annual general meeting, may require the company to send him, without charge and within seven days after the requisition is made, a copy of the most recent annual accounts of the company, together with a copy of the relevant auditors' report and directors' report.

(5) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(6) If the company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred monetary units unless it is proved that the person making the demand has already been furnished with a copy of the document.

(7) This section shall not apply in relation to the annual accounts, auditors' report and directors' report of a company for a financial year that began before the commencement of this Act, and the right of any person to be furnished with a copy of any of those documents, and the liability of the company in respect of a failure to satisfy that right, shall be same as they would have been if this Act had not been passed.

183. At an annual general meeting of a company-

- (a) the annual accounts (including any group accounts);
- (b) the auditors' report; and
- (c) the directors' report; relating to the previous financial year shall be laid before the company and shall-
 - (i) remain open and accessible throughout the meeting to any person attending the meeting; and
 - (ii) be read at that meeting, if any member requests it.

Division 8.5-Annual returns

184. (1) A company shall, after the end of each financial year of the company, lodge with the Registrar a return (in this Act called the "annual return") in

accordance with this Division-Annual return to be made to the Registrar

(a) within one month after the annual general meeting, if an annual general meeting is held within three months after the end of the financial year; or

(b) within three months after the end of the financial year, in any other case.

(2) The annual return shall be signed by a director and by the secretary of the company.

(3) The annual return shall state the position as at the date of the annual general meeting of the company, or if there was no annual general meeting, as at the date on which the annual return was made.

(4) The Registrar may cause to be published from time to time, in the Gazette or in any newspaper, a list of companies whose annual returns are overdue.

(5) No liability shall attach to the Registrar for any publication made in good faith under subsection (4).

185. (1) The annual return of a public company shall-Annual return to be made by a public company

(a) deal with the matters specified in the Third Schedule; and

(b) be in the prescribed form or as near thereto as circumstances admit.

(2) The annual return may, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the Third Schedule, give only such of the particulars required by that Schedule as related to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

186. A public company shall lodge with its annual return a certified copy, certified by both a director and the secretary of the company, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to members and debenture holders of the company in accordance with section one hundred and eighty-two since the last annual return was made. Documents to be annexed to annual return of a public company

187. (1) The annual return of a private company shall state-Annual return to be made by a private company

(a) the registered office of the company;

(b) the registered postal address of the company;

(c) the registered records office of the company;

(d) all the particulars with respect to any person who at the date of the return is a director or secretary of the company that this Act requires to be contained in the register of the directors and secretary of a company; and

(e) particulars identifying the bodies corporate related to the company at the date of the return.

(2) There shall be annexed to the annual return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

188. (1) A private company shall lodge with its annual return a certificate that the company has not since the date of the last return or, where there has been no return since the company was incorporated as or converted to a private company, since the date of the incorporation or conversion, issued any invitation to the public to subscribe for any shares or debentures of the company. Additional certificates to be lodged by a private company

(2) If the company has more than fifty members, the company shall lodge with its annual return a certificate that the excess consists wholly of persons who under section sixteen are to be excluded in reckoning the number of members.

(3) The certificates required by this section shall be signed by a director and by the secretary of the company.

189. If a company fails to lodge an annual return and the other documents in accordance with this Division, or lodges documents which do not comply with this Division, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units. Offence relating to annual return

PART IX

MANAGEMENT AND ADMINISTRATION

190. (1) For the purposes of this Act, on the incorporation of a company-Registered office and postal address

(a) the registered office of the company is the place the physical address of which was notified in the application for incorporation; and

(b) the registered postal address is the postal address notified in the application.

(2) A company may change its registered office or registered postal address by lodging a notice in the prescribed form with the Registrar, specifying the date from which the change will take effect.

191. For the purposes of this Act, a company's registered records office is-

(a) the place specified as the company's registered records office in a notice in the prescribed form lodged with the Registrar, if such a notice has been lodged and not revoked by the company; or

(b) company's registered office, if no such notice is current. Registered records office

192. (1) Any record, register or book required by this Act to be kept by a company may be kept either in a bound or loose leaf form, or by a system of mechanical or electronic recording or otherwise. Records and registers of a company

(2) A company and its officers shall take adequate precautions to prevent loss or destruction of the records, registers and books, to prevent the falsification of entries and to facilitate the detection and correction of inaccuracies therein.

(3) Where any system of mechanical or electronic recording is adopted, adequate arrangements shall be made for making the information therein available in written form in English to anyone lawfully inspecting the record, register or book.

(4) Where a record, register or book is kept by means of a system of electronic recording, a company shall for the purposes of this Act be deemed to keep the record, register, or book at any place where the information therein is made available for inspection.

(5) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

193. (1) Subject to this Act, where this Act requires any record, register or book kept by a company to be made available for inspection by a person, the record, register or book shall, during business hours, be open to inspection by the person at the company's registered records office. Inspection by members and others

(2) Where an inspection is made under subsection (1)-

(a) by a member, director, or auditor of the company, or by the Registrar or his delegate, no charge may be made by the company; and

(b) by any other person, the company may make a charge not exceeding one monetary units, or such larger amount as may be prescribed, for each inspection.

(3) The company may by ordinary resolution restrict the hours during which a record, book or register shall be available for inspection provided that it is available for inspection during not less than two hours in any working day.

(4) Any person who is entitled to inspect any such record, register or book may require a copy of the whole or any part thereof on payment of a charge not exceeding one monetary unit, or such larger amount as may be prescribed, for every hundred words or part thereof required to be copied.

(5) The company shall cause any copy so required by any person to be sent to that person not more than ten days after the day on which the requirement is received by the company.

(6) If the company fails to comply with this section-

(a) the court, on the application of a person aggrieved, may order-

(i) that the company comply immediately; and

(ii) that the company, and any officer in default, shall be liable to pay all costs of and incidental to the application for the order;

whether or not any person has been convicted under paragraph (b); and

(b) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

194. (1) A company shall-Publication of name of company

(a) paint or affix, and keep painted or affixed, its name, in easily legible Roman letters above or adjacent to the principal entrance to its registered office, its registered records office and to every other office or place in which its business is carried on; and

(b) have its-

(i) name in Roman letters; and

(ii) designating number in Arabic numerals;

accurately stated in all business letters, invoices, receipts, notices and other publications of the company, and in all negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company.

(2) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(3) If any officer of the company or other person signs, endorses or authorises the signing or endorsement on behalf of the company of any negotiable instrument or order for money, goods or services that does not comply with paragraph (b) of subsection (1), the person shall be personally liable to discharge the obligation thereby incurred unless it is duly discharged by the company or otherwise, but without prejudice to any right of indemnity which the person may have against the company or any other person.

195. (1) A company shall have a common seal bearing its name and the words "common seal" thereon in legible Roman letters. Seal of company

(2) The common seal shall not be used except with the authority of a resolution of the directors of a committee of the directors specifically empowered to authorise the affixing of the seal.

196. (1) A company may, subject to its articles, have for use in any place outside Zambia an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of the places where it is to be used. Official seal for use abroad

(2) Every document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) The company may, by writing under its common seal, authorise any agent appointed for that purpose to affix the official seal to any document to which the company is a party in that place.

(4) Any person dealing with such an agent in reliance on the writing conferring the authority shall be entitled to assume that the authority of the agent continues during the period, if any, specified in the writing or, if no period is therein specified, until that person has actual notice of the revocation or

determination of the authority.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the document to which the seal is affixed the date on which and the place at which it is affixed.

197. (1) Any contract or instrument which, if entered into by a person other than a body corporate, would not be required to be under seal may be entered into or executed without seal on behalf of a company by the secretary, a director, or any person generally or specifically authorised by the directors to do so. Form of contracts and instruments

(2) Any document purporting to be a document under the seal of a company, or issued on behalf of the company, shall be received in evidence and shall be presumed to be duly executed or issued.

198. A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied. Bills of exchange and promissory notes

199. (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place outside Zambia. Execution of deeds abroad

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal of the company.

200. (1) A document may be served on a company by-Service of documents on company

(a) leaving it at the registered office of the company; or

(b) personal service on a director or secretary.

(2) A document sent by post to the registered postal address of the company shall be deemed to have been served on the company if it is proved, by a receipt issued or otherwise, that the document, or a post office notification of the document, was delivered to the registered postal address.

(3) Nothing in the section shall affect any provision in this Act relating to the service of any document, or detract from the power of any court to direct how service shall be effected of any document relating to legal proceedings before the court.

201. (1) For the purposes of this Act, a document may be served by a company on any member, debenture holder, director or secretary of the company-Service of documents by company

(a) personally;

(b) by sending it by registered post in a prepaid letter addressed to him at his registered postal address or at any other address supplied by him to the company for the giving of notices to him; or

(c) by leaving it for him at his registered address with some person apparently over the age of eighteen years.

(2) A document may be served by a company on the joint holders of any share of debenture of the company by serving it on the joint holder named first in the register of members of debenture holders in respect of the share of debenture.

(3) A document may be served by a company on the person upon whom the ownership of any share or debenture has devolved by reason of his being a legal personal representative, receiver, or trustee in bankruptcy of a member of debenture holder-

(a) personally;

(b) by sending it by registered post in a prepaid letter addressed to him at a postal address notified by him to the company;

(c) by serving it in any manner in which it might have been served if the death, receivership or bankruptcy had not occurred, if the company has not received notice of a postal address for the person; or

(d) by leaving it for him at a place the address of which has been notified by him to the company, with some person apparently over the age of eighteen years.

(4) Where a document is sent by registered post, service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document and to have been effected at the expiration of seven days or, if it is sent to an address outside Zambia, twenty-one days, after the letter containing the same is posted.

(5) For the purposes of subsection (4), where a letter is sent to an address outside Zambia, it shall be despatched by airmail.

202. Where a company would be liable for the acts of any officer or agent, the company shall be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company. Liability of company not affected by officer's fraud or forgery

PART X

DIRECTORS AND SECRETARY

Division 10.1-Appointment and powers

203. (1) For the purposes of this Act, any person who is appointed by the members of a company to direct and administer the business of the company shall be deemed to be a director of the company, whether or not he is called a director. The directors of a company

(2) In this Act, unless the context otherwise requires-

(a) a reference to "the directors" is a reference to the directors acting collectively;

(b) where a decision of the directors is required for them so to act, the decision shall be made by resolution of the directors;

(c) a requirement that a document be signed by the directors shall be read as a requirement that a majority of the directors sign the document.

(3) A person, not being a duly appointed director of the company, who holds himself out, or knowingly allows himself to be held out, as a director of the company-

(a) shall be deemed to be a director for the purposes of all duties and liabilities (including liabilities for criminal penalties) imposed on directors by this Act; and

(b) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(4) A person, not being a duly appointed director of a company, on whose directions or instructions the duly appointed directors are accustomed to act shall be deemed to be a director for the purposes of all duties and liabilities (including liabilities for criminal penalties) imposed on directors by this Act.

(5) If a company-

(a) holds out a person; or

(b) allows a person to hold himself out;

as a director of the company, knowing that the person is not a duly appointed director, the company shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(6) No limitation upon the authority of a director of a company, whether imposed by the articles or otherwise, shall be effective against a person who does not have knowledge of the limitation unless, taking into account his relationship with the company, he ought to have had such knowledge.

(7) For the purposes of this section, a person shall not be considered to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

204. (1) A company shall have at least two directors. Company to have at least two directors

(2) If a company carries on business for a period of more than two months with fewer than two directors, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day after that period of two months that the company carries on business.

205. (1) A company shall have a secretary. The secretary

(2) The persons named in the application for incorporation as the first secretary or joint secretaries of a company shall, on the incorporation of the company, be deemed to have been appointed as such for a term of one year.

(3) Unless the articles provide otherwise, the secretary, other than the first secretary, shall be appointed by the directors for such a term as they think

fit.

(4) A secretary shall be appointed on such remuneration and other conditions as the directors think fit, and may be removed by them, subject to his right to claim damages from the company if removed in breach of contract.

(5) The secretary may be a body corporate.

(6) Two or more persons may act jointly as the secretary of a company.

(7) The secretary of a company shall be-

(a) resident in Zambia, if an individual;

(b) incorporated in Zambia, if a body corporate.

(8) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially for that purpose by the directors.

(9) If a company carries on business for more than two months without a secretary or in contravention of subsection (7), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day after that period of two months that the business is carried on.

206. (1) The number of directors of a company shall be the number of first directors named in the application for incorporation, or such other number as the company may decide by ordinary resolution. Appointment of directors

(2) The persons named in the application for incorporation as the first directors of a company shall, on the incorporation of the company, be deemed to have been appointed as such with a term of office that expires at the end of the first annual general meeting.

(3) Subsections (4) to (16) apply to a company unless the articles provide otherwise.

(4) Where the company changes the number of directors it may, by ordinary resolution, determine in what rotation the increased or decreased number is to retire from office.

(5) At all annual general meetings held by the company, other than the first annual general meeting, one third of the directors, or, if one third is not a whole number, the whole number next largest than one third, shall retire from office.

(6) The directors to retire under subsection (5) shall be those who have been longest in office, but, as between those who were appointed on the same day, those to retire shall (unless they agree otherwise among themselves) be determined by lot.

(7) The company may, at the meeting at which a director retires under subsection (2) or (5), appoint a person to fill the office by ordinary resolution.

(8) A retiring director is eligible for re-appointment.

(9) If an office is not filled under subsection (7), and the retiring director offers himself for re-appointment and is not disqualified under this Act from holding office as a director, the retiring director shall be deemed to have been re-appointment unless at the meeting-

(a) it is expressly resolved not to fill the vacated office; or

(b) a resolution for the re-appointment of the director is put and lost.

(10) If there are fewer directors than the number set in accordance with this section, the directors may appoint a person to be a director.

(11) A director appointed under subsection (10) holds office only until the next annual general meeting held by the company, and at that meeting shall not be taken into account in determining the number of directors to retire.

(12) A director appointed under subsection (10) shall be eligible for re-appointment as a director at the next annual general meeting.

(13) Where a director's office becomes vacant otherwise than under subsection (5), the company may, by ordinary resolution, appoint a replacement, who shall be subject to retirement as if he had become a director on the day on which the person he replaced as director had last been appointed or re-appointed.

(14) The directors shall be paid such remuneration as is from time to time determined by the company by ordinary resolution.

(15) The remuneration shall accrue from day to day.

(16) If the company by ordinary resolution so decides, the directors shall be paid, subject to the resolution, all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors, or any committee of the directors or general meetings of the company, or otherwise in connection with the business of the company.

207. (1) A person shall not be appointed as or continue to hold office as a director of a company if the person is-

(a) a body corporate;

(b) an infant or any other person under legal disability;

(c) any person prohibited or disqualified from so acting by any order of a court; or

(d) an undischarged bankrupt.

(2) A director of a company shall cease to hold office as such if-

(a) he is adjudged bankrupt; or

(b) he is removed by order of a court from an office of trust on account of misconduct.

(3) A person who, in contravention of subsection (1) or (2), takes office, or continues to hold office, as a director of a company shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

(4) The articles of a company may provide further restrictions or qualifications on the appointment or continuation in office of its directors.

(5) A person shall not be appointed as a director of a company unless he has consented in writing to be so appointed.

(6) A contravention of this section shall not invalidate any transaction entered into by a company.

208. (1) More than half of the directors of a company, including-Residential requirements of directors

(a) the managing director, if the company has a managing director; and

(b) at least one executive director, if the company has executive directors;

shall be resident in Zambia.

(2) Any contravention of subsection (1) which continues for more than two months shall constitute grounds for winding-up of the company by the court on the application of the Registrar.

209. (1) Unless the company's articles otherwise provide, a director need not be a member of the company or hold any shares therein.Directors' share qualification

(2) Where the articles require a director to hold a specified share qualification, a person appointed as a director shall obtain his qualification within two months after his appointment or such shorter period as may be fixed by the articles.

(3) If a company amends its articles so as to introduce or increase the requirement of a share qualification, every director holding office at the date of the amendment shall obtain his qualification within two months after the amendment or such shorter period as may be fixed by the articles.

(4) A director who-

(a) fails to comply with subsection (2) or (3); or

(b) ceases to hold the specified share qualification, at any time after so complying;

shall cease to hold office.

(5) A person who ceases to hold office under subsection (4) shall not be re-appointed as a director of the company until he has obtained his qualification.

210. (1) A director may resign his office by notice in writing to the company.Vacation office of director

(2) In addition to the other circumstances specified in this Act, an office of director shall become vacant if the director-

(a) is absent from meetings of the directors held during a period of six months, without the consent of the directors;

(b) holds any office of profit under the company, except that of managing director or principal executive officer, without the consent of the company by ordinary resolution; or

(c) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare his interest as required by this Act.

(3) The articles of a company may provide for the termination or vacation of office in circumstances additional to those specified in this Act.

211. (1) A company may, by ordinary resolution at a general meeting of the company remove from office all or any of the directors, subject to their rights to claim damages from the company if removed in breach of contract. Removal of director

(2) A resolution to remove a director shall not be moved at any general meeting unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting.

(3) On receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned and the director (whether or not he is a member of the company) shall be entitled-

(a) to be heard on the resolution at the meeting;

(b) to send to the company a written statement (in this section called "the director's statement"), copies of which the company shall, subject to this section, send with every notice of the general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled to notice of the meeting in the same manner as notices of meetings are required to be given; and

(c) to require that the director's statement be read to the meeting.

(4) The company shall not be obliged to send or circulate the director's statement if it is received by the company less than seven days before the meeting.

(5) The court, on application by the company or any other person who claims to be aggrieved and on being satisfied that the director's statement is unreasonably long or that the rights conferred by this section are being abused to secure publicity for defamatory matter, may order-

(a) that the company shall not send or circulate the director's statement and that the statement not be read at the meeting; and

(b) that the costs of the applicant are to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(6) On a resolution to remove a director no share shall, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.

(7) A vacancy created by the removal of any director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

212. (1) A person shall not give directions or instructions to the duly appointed directors of a company if the person is not eligible to be a director of the company. No directions or instructions to be given to directors by a person not eligible to be a director

(2) A person who contravenes this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or imprisonment for a period not exceeding six months, or to both.

213. (1) Subject to any restriction in the articles of a company, a director may-Alternate directors

(a) either generally, or in respect of a specified period or specified circumstances; and

(b) with the approval of the directors;

appoint a person who is not a director as his alternate director.

(2) An appointment as alternate director shall be in writing signed by the director making the appointment and the person appointed and lodged with the company.

(3) A person shall not be appointed as an alternate director by more than one director.

(4) Subject to this section, this Act, including the provisions on registration of directors' particulars and interests, shall apply to an alternate director as if he were a director and not the agent of the director who appointed him.

(5) An appointment of a person as an alternate director shall confer on him-

(a) the right to attend any meeting of the directors or any committee of directors at which the director who appointed him is not present; and

(b) one vote at such a meeting or committee.

(6) Except in relation to meetings, both the director who appointed an alternate director and the alternate director may act as director of the company.

(7) An alternate director shall not be required to hold any shares.

(8) An alternate director shall not himself appoint an alternate director.

(9) The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director.

(10) The articles may provide that an alternate director shall be entitled to receive from the company during the currency of his appointment the remuneration

to which the director who appointed him would, but for the appointment, have been entitled, and that the director who appointed him shall not be entitled to that remuneration, but, in the absence of such a provision, the alternate shall not be entitled to be remunerated otherwise than by the director who appointed him.

(11) The appointment of an alternate director shall cease-

(a) at the expiration of the period, if any, for which he was appointed;

(b) if the director who appointed him gives written notice to that effect to the company;

(c) if the director who appointed him ceases for any reason to be a director; or

(d) if the alternate resigns by notice in writing to the company.

214. (1) This section applies to a company unless the articles provide otherwise. Managing director

(2) The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

(3) The managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall terminate automatically if he ceases for any reason to be a director.

(4) The managing director shall receive remuneration, subject to the terms of any agreement entered into in a particular case, as determined by the directors.

215. (1) Subject to this Act, the business of a company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by this Act or the articles, required to be exercised by the company by resolution. Powers and duties of directors

(2) Subsections (2) to (6) shall apply to a company unless the articles provide otherwise.

(3) Without limiting the generality of subsection (1), the directors may exercise the powers of the company to borrow money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

(4) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such periods and subject to such conditions as they think fit.

(5) A power of attorney under subsection (5) may contain such provisions for the protection and convenience of persons dealing with the attorney as the

directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

(6) All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, by any two directors or in such other manner as the directors determine.

216. (1) The directors of a company shall not, without the approval in accordance with this section of an ordinary resolution of the company-Limitations on powers of directors

(a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company;

(b) issue any new or unissued shares in the company; or

(c) create or grant any rights or options entitling the holders thereof to acquire shares of any class in the company.

(2) The approval for a transaction referred to in paragraph (a) of subsection (1) shall be an approval of the specific transaction proposed by the directors.

(3) The approval for a transaction referred to in paragraph (b) of subsection (1) shall be given not less than one year before the issue of the shares, unless the issue is in accordance with a scheme relating to the issue of shares to or for the benefit of persons bona fide in the employment of the company or of any related companies.

(4) This section shall not prohibit-

(a) the issue of any shares under a bona fide underwriting agreement; or

(b) the issue to a director of such shares, if any, as, under the articles of the company, he is required to hold by way of share qualification.

(5) The validity of any transfer or disposition of property to a person dealing with the company in good faith shall not be affected by a failure to comply with this section.

(6) This section shall not limit the powers of any liquidator or receiver of the property of a company.

217. (1) This section shall apply to a company unless the articles provide otherwise.Proceedings of directors

(2) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

(3) A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.

(4) A question arising at a meeting of directors shall be decided by a majority of votes of directors present and voting, and any such decision shall for all purposes be deemed a decision of the directors.

(5) In case of an equality of votes, the chairman of the meeting, in addition

to his deliberative vote (if any), has a casting vote.

(6) The directors may delegate any of their powers to a committee or committees of directors, and such a power duly exercised by the committee shall be deemed to have been exercised by the directors.

(7) If all the directors eligible to vote on a resolution sign a document or documents containing the terms of the resolution and a statement that they are in favour of the resolution, the resolution shall be deemed to have been passed at the time at which the document is signed by the last director to sign.

Division 10.2-Interests of directors

218. (1) For the purposes of this section, a director has an interest in a contract of the company if-Contracts in which directors are interested

(a) he will derive any material benefit, whether direct or indirect, from the contract; or

(b) another party to the contract is a firm or body corporate and he has a material interest, whether direct or indirect, in the firm or body corporate;

but he shall not be considered to have a material interest in a body corporate by reason only that-

(i) he holds debentures of the body corporate; or

(ii) he holds shares in the body corporate comprising less than five per centum of the shares, or, where the company has classes of shares, less than five per centum of the shares in each class.

(2) For the purposes of paragraph (a) of subsection (1), a benefit accruing to a spouse of the director or to a child under the age of twenty-one shall be deemed to be a benefit accruing to the director.

(3) Unless the articles of a company provide otherwise, a director shall be entitled, subject to this Act, to enter into a contract with the company, and such a contract shall not be voidable, nor shall the director be liable to account for any profit made thereby, by reason only of his being a director or of the fiduciary relationship thereby established.

(4) A director who is interested in any contract or proposed contract of the company shall declare the nature and extent of his interest at a meeting of the directors or shareholders of the company.

(5) If the director is interested in a proposed contract at the time that it is first considered at a meeting of the directors or shareholders, the declaration shall be made at that meeting or an earlier one.

(6) If the director becomes interested in a contract or proposed contract at some later time, the declaration shall be made at the next meeting after he becomes so interested.

(7) For the purposes of this section, a general declaration in writing by a director that-

(a) states that he has an interest in a specified body corporate or firm;

(b) specifies the nature and extent of the interest; and

(c) states that he is to be regarded as interested in any contract which may, after the date of the notice, be made with that body corporate or firm;

shall be a sufficient declaration of interest in relation to any contract so made unless, at the time the question of confirming or entering into any contract is first taken into consideration by the company, the extent of his interest in the body corporate or firm is greater than is stated in the declaration.

(8) Subject to this section and the articles, where a contract or arrangement in which a director is interested is considered at a meeting-

(a) the director shall not be counted in the quorum required for that business; and

(b) the director shall not vote in respect of that business.

(9) Subsection (8) shall not apply in respect of-

(a) an arrangement for giving the director any security or indemnity in respect of money lent by him to, or obligation undertaken by him for the benefit of, the company;

(b) an arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility in whole or in part under a guarantee or indemnity, or by the deposit of a security; or

(c) a contract by the director to subscribe for or underwrite shares or debentures of the company.

(10) A director who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

219. (1) This section shall apply to the following companies: Prohibition of loans by companies to directors

(a) a public company;

(b) a company related to a public company;

(c) a company in a prescribed class of company.

(2) A company to which this section applies shall not-

(a) make a loan to a director of the company or of a related body corporate;

(b) enter into any guarantee or provide any security in connection with a loan made by any other person to a director of the company or of a related body corporate; or

(c) subject to this section-

(i) make a loan to; or

(ii) enter into any guarantee or provide any security in connection with a loan made by any other person to;

a body corporate in which a director or directors of the company, or their nominees, hold shares having in total one-fifth or more of the value of its issued share capital.

(3) This section shall not prohibit a company from making a loan to a related body corporate, or entering into a guarantee or providing security in connection with a loan made by any other person to a related body corporate.

(4) This section shall not prohibit a company whose ordinary business includes the lending of money, or the giving of guarantees in connection with loans made by other persons, from making a loan to, or entering into a guarantee or providing security in connection with, a director or a body corporate referred to in paragraph (c) of subsection (2)-

(a) if the prior approval of the company has been given at a general meeting at which the purposes of the expenditure and the amount of the loan, or the extent of the guarantee or security, were disclosed; or

(b) on condition that the loan shall be repaid, or the liability under the guarantee or security shall be discharged, within eighteen months, if approval is not given by the company within twelve months at a general meeting at which the purposes of the expenditure and the amount of the loan, or the extent of the guarantee or security, are disclosed.

(5) A company may advance to director of the company or of a related body corporate funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purposes of enabling him properly to perform his duties as an officer or employee of the company, provided that the total amount advanced to such persons does not exceed one per centum of the assets of the company less the liabilities of the company as shown in the last audited balance sheet of the company.

(6) If a company fails to comply with this section-

(a) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units; and

(b) the directors who authorised the making of the loan or the entering into the guarantee or the providing of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(7) This section shall not apply in relation to a loan, guarantee or security made or provided before the commencement of this Act.

220. (1) If a director of a company, having acquired in that capacity any special information which may substantially affect the value of the share or debentures of the company or any related body corporate, buys or sells any such shares or debentures without disclosing such information to the seller or purchaser thereof, the purchase or sale shall be voidable at the option of the seller or purchaser within twelve months after the date of the agreement to sell or buy. Duties of directors in connection with sales or purchases of the

company's securities

(2) For the purposes of this section, any shares or debentures bought or sold shall be deemed to have been bought or sold by a director if he held before or after the transaction, directly or indirectly, any beneficial interest therein, unless it is proved that the sale or purchase was not made by him or on his instructions or advice or on the instructions or advice of any other person to whom he had imparted any special information affecting the value of the shares or debentures obtained by him in the capacity of director.

(3) Nothing in this section shall derogate from any right or remedy which may be available under any other law.

Division 10.3-Payments to directors

221. (1) For the purposes of this Division "payment"-Interpretation

(a) does not include the payment of damages awarded or approved by any court for breach of an independent service agreement or the bona fide payment of any pension or superannuation benefit in respect of past services in accordance with a service agreement; and

(b) includes any other benefit or advantage whether in cash or in kind.

(2) For the purposes of this Division-

(a) a service agreement shall be considered independent only if it was not entered into in contemplation of such a transfer as is referred to in subsection (1) of section two hundred and twenty-two or such an offer as is referred to in section two hundred and twenty-three;

(b) a service agreement shall be presumed to have been entered into in contemplation of such a transfer or offer unless it was made more than one year before the date of the agreement to transfer or the making of the offer, and

(c) if-

(i) any payment (not being remuneration properly payable) is received by a director or former director within a period of one year before or two years after the date of the agreement to make such a transfer or offer; and

(ii) the company or the person to whom the transfer or by whom the offer was made was privy to the making of the payment; the payment shall be presumed to have been received by him in connection with the transfer or offer.

222. (1) A company shall not make to any director or former director of the company or of a related body corporate any payment by way of compensation for loss of any office in the company or in a related body corporate, or as consideration for or in connection with his retirement from office, unless the particulars relating to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by an ordinary resolution of the company. Payments to directors for loss of office or on transfer of undertaking

(2) A person shall not make a payment to a director or former director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company or of a related body corporate, whether

the payment is expressed to be by way of compensation for loss of office or otherwise, unless the particulars relating to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by an ordinary resolution of the company.

(3) If a payment is made in contravention of this section, the amount of the payment shall be deemed to have been received in trust for the company.

223. (1) Where—Payments to directors in connection with takeover bids

(a) an offer is made for the acquisition of any shares of a company on the terms that the offer is available for acceptance—

(i) by all the shareholders of the company or by all the holders of shares of the class to which the offer related; or

(ii) by the holders of shares which, together with any shares already beneficially owned by the person making the offer or any body corporate in which that person is a controlling shareholder, confer the right to exercise or control the exercise of not less than one-third of the votes at any general meeting of the company; and

(b) in connection with the offer a payment (in this section called "the relevant payment") is made, or has been made or is proposed to be made to a person (in this section called the "payee director") who is a director or former director of the company or of a related body corporate, being a payment other than payment to purchase shares held by the payee director at the same price receivable under the offer by other holders of shares in that class;

the director or former director shall take all reasonable steps to ensure that particulars of the relevant payment are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If the payee director fails to comply with subsection (1), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(3) If a person who has been properly directed by the payee director to include in, or send with, a notice of offer referred to in subsection (1) the particulars referred to in that subsection fails to do so, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.

(4) If the relevant payment, or a part thereof, is made to the payee director, then subsection (5) shall apply unless—

(a) the payee director has complied with subsection (1); and

(b) the making of the relevant payment has been—

(i) agreed to by all the holders of the shares to which the offer relates; or

(ii) approved by an ordinary resolution passed at a meeting of such holders, summoned for the purpose.

(5) If this subsection applies, then, subject to this section—

(a) the person making the payment and the payee director shall be jointly and severally liable to distribute the amount of the relevant payment among any persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them;

(b) the payee director shall hold any amounts received by him in connection with the relevant payment on trust for such persons; and

(c) the expenses incurred in distributing the payment shall be borne by the persons liable to make the distribution and not retained out of the payment.

(6) If, in proceedings instituted less than three months after the first transfer of any shares in pursuance of the offer, the court awards or approves the payment of damages to the payee director for breach of an independent service agreement, the amount of the damages, and of any costs awarded to the payee director in the proceedings, shall be paid to or retained by the payee director out of the amount of the relevant payment and subsection (5) shall apply only to the balance thereof, if any.

(7) If the offer does not apply to all the shareholders or to all shareholders of a class, a meeting called for the purposes of subparagraph (b) (ii) of subsection (4) shall be convened, held and conducted as nearly as may be as if it were a meeting of the shareholders or of a class of shareholders.

(8) The notices convening a meeting called for the purposes of subparagraph (b) (ii) of subsection (4) shall include a statement to the effect that, if the resolution approving the payment is not passed, the payment will be distributable among the persons who have sold their shares in pursuance of the offer, except to the extent that the court may award or approve the payment to the payee director of damages for breach of an independent service agreement.

(9) The offer shall not include any provision that the offer is conditional upon approval of the relevant payment, and any provision purporting to have that effect shall be void.

(10) For the purposes of this section-

(a) shares shall be deemed to be beneficially owned by a body corporate if they are owned beneficially by-

(i) the body corporate;

(ii) another body corporate related to the body corporate;

(iii) a controlling shareholder of a body corporate referred to in paragraph (i) or (ii);

(b) a person shall be deemed to be a controlling shareholder of a body corporate if-

(i) the body corporate or its directors are accustomed to act in accordance with the directions or instructions of the person or his nominee; or

(ii) at a general meeting of the body corporate, the person is entitled to exercise or control the exercise of one-third or more of the votes.

Division 10.4-Registers

224. (1) A company shall keep a register of its directors and secretary or secretaries. Register of directors and secretaries

(2) The register shall contain the following particulars of each director:

(a) his present forenames and surname;

(b) any former forename and surname;

(c) his residential and his postal address;

(d) his business or occupation, if any;

(e) his present nationality and National Registration Card Number or foreign passport number;

(f) any directorship held by him in another body corporate, whether or not formed in Zambia, at any time during the previous five years;

(g) any local directorship held by him in a foreign company at any time during the previous five years;

(h) any secretaryship held by him in another body corporate, whether or not formed in Zambia, at any time during the previous five years.

(3) The register shall contain, in the case of each secretary who is an individual, the particulars referred to in subsection (2) and, in the case of a secretary that is a body corporate, the following particulars:

(a) its name;

(b) its registered office and registered postal address and, if different, the address of its principal office;

(c) any secretaryship held by it in another body corporate.

(4) If all the partners in a firm are joint secretaries of the company, the register may contain, instead of the name and address of each partner, the name and the address of the principal office of the firm and, if the principal office of the firm is outside Zambia, the address of the principal office of the firm in Zambia.

(5) The register shall be available for inspection by any person.

(6) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(7) A director or secretary of a company shall give notice in writing to the company of such matters relating to himself as may be necessary for the purposes of this section, and a person who fails to do so shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

225. (1) A company shall keep a register showing in respect of each director and of the secretary the number, description and amount of any shares in or

debentures of the company or any related body corporate which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not). Register of shares and debentures held by or in trust for directors and secretary

(2) The register need not include shares in a body corporate which is the wholly-owned subsidiary of another body corporate.

(3) Where a transaction involving any shares results in change in the register, the register shall also show the date of, and price or other consideration for, the agreement for the transaction.

(4) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the register shall, if he so requires, be indicated in the register.

(5) For the purposes of this section-

(a) a director shall supply the company with the information relating to himself required to be registered; and

(b) the company shall be entitled to rely on the information provided by the director.

(6) This section shall not require the company to make any inquiry into the rights of any person in relation to any shares, nor shall the company be taken to have, as a result of anything done under this section, any notice of a matter relating to the rights of any person in relation to the shares other than actual notice.

(7) The register shall be open to inspection-

(a) by any member or holder of debentures of the company during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion; and

(b) by any person acting on behalf of the Registrar, at that or any other time.

(8) The register shall be produced at the commencement of the company's annual general meeting and remain open and accessible throughout the meeting to any person attending the meeting.

(9) If the company fails to comply with a provision of this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(10) A director who fails to comply with subsection (5) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(11) If the company fails to allow inspection of the register in accordance with this section, the court may order an immediate inspection of the register.

(12) For the purposes of this section-

(a) any person in accordance with whose directions or instructions the

directors of a company are accustomed to act shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold or have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either-

(i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

226. (1) A company shall, within twenty-one days after any change occurs among its directors or in its secretary or in any of the particulars contained in the register of directors and secretaries, lodge with the Registrar notice of the change in the prescribed form, specifying the date of the change. Registration of particulars of directors and secretaries

(2) Any notification of a person's having become a director or secretary of the company shall state that the person has consented in writing to act in the relevant capacity.

(3) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

Division 10.5-Miscellaneous

227. (1) A company to which this section applies shall not state, in any form, the name of any of its directors (otherwise than in the text or as a signatory) on any business letter, trade catalogue, circular or showcard on which the company's name appears unless it also states in legible characters the Christian name, or the initial thereof, and surname of every director (other than an alternate director) of the company. Where one director is named in letters, etc, all are to be named

(2) For the purposes of this section-

"Christian name" includes a recognised abbreviation of a Christian name;

"director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"showcard" means a card or pamphlet containing or exhibiting articles dealt with or samples of representations thereof.

228. (1) In a limited company, the liability of the directors and managers may, if the articles so provide, be unlimited. Limited company may have directors with unlimited liability

(2) In a limited company in which the liability of directors or managers is unlimited, a person shall not be elected or appointed to the office of director or manager unless he has signed a statement that he understands and accepts that the liability of the person holding that office will be unlimited.

(3) If a person is elected or appointed to the office of director or manager in contravention of this section-

(a) the person will have unlimited liability;

(b) the member who proposed the person for election or appointment to the office or director or manager, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company shall indemnify the person against his liability under paragraph (a); and

(c) the persons referred to in paragraph (b) shall each be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

229. A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary. Avoidance of acts in dual capacity as director and secretary

230. (1) Where- Restraining fraudulent persons from managing companies

(a) a person is convicted, whether in Zambia or elsewhere, on an indictment, or on any other process analogous to or in substitution of indictment-

(i) of any offence involving fraud or dishonesty; or

(ii) of any offence in connection with the promotion, formation or management of a body corporate; or

(b) in the course of winding-up a body corporate, whether in Zambia or elsewhere, a person has been found guilty of-

(i) any fraud in relation to the body corporate; or

(ii) any breach of duty in relation to the body corporate;

the court, on its own motion or on the application of any of the persons referred to in subsection (3), may order that the person shall not, without leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company, or act as secretary, auditor or liquidator of any company, or as receiver of the property or as trustee for the debenture holders of any company, for such period not exceeding five years as may be specified in the order.

(2) In subsection (1), "the court" means the High Court for Zambia or-

(a) in relation to the making of an order against a person under paragraph (a) thereof, the court before which he

(b) in relation to the making of an order against a person under paragraph (b) thereof, the court having jurisdiction to wind-up the body corporate, if that court is in Zambia; or

(c) in relation to the granting of leave, the court which made the order from which leave is sought.

(3) An application for an order under this section may be made by-

(a) the Registrar;

(b) the trustee in bankruptcy of the person concerned; or

(c) the liquidator of any body corporate.

(4) A person intending to apply for the making of an order under this section shall give not less than twenty-eight days' written notice of his intention to the person against whom the order is sought.

(5) A person against whom an order has been made under this section who intends to apply for leave to act as a director or in any other capacity in relation to the property or affairs of a company shall, unless the court otherwise orders, give at least twenty-eight days' written notice of his intention to any person on whose application the order was made, and that person may be a party to the proceedings.

(6) Where any order is made or leave is granted under this section-

(a) the person who sought the order or leave shall lodge a copy thereof with the Registrar; and

(b) the Registrar shall cause a summary thereof to be published in the Gazette.

(7) A person who contravenes an order made under this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or imprisonment for a term not exceeding two years, or to both.

231. A director or other officer of a company shall not assign his office to another person, and any purported assignment of the office shall be void. Prohibition of assignment of offices

232. An act done by a director, the directors or the secretary shall not be invalid only because it is afterwards discovered that there was some defect in the appointment or qualification of a person to be a director or secretary or a member of a committee of directors, or to act as a director or secretary. Validity of acts of officers

233. (1) Subject to this Act, a company shall not indemnify a director or other officer of the company or a related body corporate against, or compensate him for, any liability which under law would otherwise attach to him in respect of any civil or criminal liability for any negligence, default, breach of duty or breach of trust which he may commit in relation to the company or a related body corporate after the commencement of this Act. Company may not indemnify officers

(2) Any provision in a contract between the company and such a director or officer purporting to indemnify or compensate him in contravention of subsection (1) shall be void.

(3) This section shall not prevent a company from indemnifying or compensating such a director or officer from any costs or liability incurred by him in defending any proceedings, whether civil or criminal, in which-

- (a) judgement is given in his favour;
- (b) he is acquitted; or
- (c) relief is granted to him by the court.

PART XI

SCHEMES OF ARRANGEMENT, TAKE-OVERS AND THE PROTECTION OF MINORITIES

234. (1) In this section, "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares in shares of different classes or by both methods. Power to compromise with creditors and members

- (2) Where a compromise or arrangement is proposed between-
 - (a) a company and its creditors or any class of its creditors; or
 - (b) a company and its members or any class of its members;

the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound-up, of the liquidator, order a meeting of the creditors, the class of creditors, the members or the class of members, as the case may be, to be convened, held and conducted in such manner as it thinks fit to consider the compromise or arrangement.

(3) Subject to the order of the court, Part VII shall apply to a meeting of members or a class of members ordered to be convened pursuant to this section.

(4) Subject to the order of the court, sections one hundred and forty-six to one hundred and fifty-two shall apply, with the necessary modifications, to a meeting of creditors or a class of creditors ordered to be convened pursuant to this section.

(5) Unless the court orders otherwise, the voting power at the meeting of creditors ordered to be convened pursuant to this section shall be assigned to the creditors in proportion to the amount of the debt outstanding from the company to each creditor.

(6) If a meeting, by extraordinary resolution, agrees to any compromise or arrangement, the compromise or arrangement-

- (a) shall be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be; and
- (b) shall be binding on the company if and when-
 - (i) it has been approved by order of the court; and
 - (ii) a copy of the order has been lodged with the Registrar.

(7) Where an extraordinary resolution agreeing to a compromise or arrangement has been passed at a meeting convened pursuant to this section, the company or any person who was entitled to vote at the meeting may apply to the court for approval of the compromise or arrangement.

(8) At the hearing by the court of the application for approval of the compromise or arrangement, any member or creditor of the company claiming to be affected thereby shall be entitled to be represented and to object.

(9) The court may prescribe such terms as it thinks fit as a condition of its approval, including a condition that any member shall have the right to require the company to purchase his shares at a price fixed by the court or to be determined in a manner provided in the order, and, in that case, for the reduction of the company's capital accordingly.

(10) Where an order is made approving the compromise or arrangement-

(a) the company shall lodge a copy with the Registrar within twenty-one days after the making of the order; and

(b) a copy of the order shall be annexed to or incorporated in every copy of the articles issued after the order has been made.

(11) Where an order under this section has the effect of altering the share capital of the company, the Registrar, on lodgement of the copy of the order, shall issue a replacement certificate of share capital for the company, worded to meet the circumstances of the case.

(12) If the company fails to comply with paragraph (a) of subsection (10), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

(13) If the company issues a copy of the articles that fails to comply with paragraph (b) of subsection (10), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units in respect of each copy issued.

235. (1) In this section, "arrangement" has the same meaning as in section two hundred and thirty-four. Information as to compromises with creditors and members

(2) Where a meeting of creditors or any class of creditors or of members or any class of members is convened under section two hundred and thirty-four the company shall prepare a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors in the company or a related body corporate, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the same explanation as respects the debenture holders of the company or any trustees of any instrument for securing the issue of the debentures as it is required to give as respects the company's directors.

(4) A copy of the statement shall be sent to every creditor or member with the notice of the meeting.

(5) Every notice of the meeting given by advertisement shall include either a copy of the statement or notice of the way in which the members or creditors entitled to attend the meeting may obtain copies of the statement.

(6) Where notice of the meeting is given by advertisement, the company shall supply a copy of the statement, free of charge, to any creditor or member who applies in the way indicated in the advertisement.

(7) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(8) It shall be a defence to a prosecution under subsection (7) to show that failure was due to the refusal of any other person to supply the necessary particulars as to his interests in the company or a related body corporate.

(9) A person who is director of the company or a trustee for debenture holders of the company shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and a person who fails to do so shall be guilty of an offence, and shall be liable on conviction to a fine of five hundred monetary units.

236. (1) Where an application is made to the court under section two hundred and thirty-four to approve a compromise or arrangement referred to in that section, and it is shown to the court that-Reconstruction and amalgamation of companies

(a) the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for-

(i) the reconstruction of any company or companies; or

(ii) the amalgamation of any two or more companies; and

(b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "the transferor company") is to be transferred to another company (in this section referred to as "the transferee company");

the court may, either by the order approving the compromise or arrangement or by a subsequent order, provide for all or any of the following:

(i) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;

(ii) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like interests in the transferor company which under the compromise or arrangement are to be allotted or appropriated by the transferor company to or for any person;

(iii) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;

(iv) the dissolution, without winding-up, of the transferor company;

(v) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(vi) such incidental, consequential and supplementary matters as are necessary to secure that the reconstruction or amalgamation is fully and

effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities-

(a) the property shall, by virtue of the order, be transferred to and vest in the transferee company and shall, if the order so directs, be freed from any charge which is under the compromise or arrangement to cease to have effect; and

(b) the liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be lodged with the Registrar within fifteen days after the making of the order.

(4) If a company fails to comply with subsection (3), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

(5) In this section-

(a) "property" includes property rights and powers of every description; and

(b) "liabilities" includes duties of every description;

notwithstanding that such rights, powers or duties are of such a character that under the common law they could not be assigned or performed vicariously.

237. (1) This section shall apply where body corporate, whether a company within the meaning of this Act or not, (in this section referred to as "the transferee company"), has made an offer to the holders of shares in a company (in this section referred to as "the transferor company") and each of the following conditions is satisfied: Power to acquire shares of minority on take-over

(a) the offer by the transferee company is made to the holders of the whole of the shares in the transferor company, other than those already held by the transferee company or any of its related companies or by nominees for the transferee company or any of its related companies;

(b) the consideration for the acquisition or a substantial part thereof is either-

(i) the allotment of shares in the transferee company; or

(ii) the allotment of shares in the transferee company or, at the option of the holders, a payment of cash;

(c) the same terms are offered to all the holders of the shares to whom the offer is made or, where there are different classes of shares, to all the holders of shares of the same class;

(d) the notice of the offer sent to the shareholders included-

(i) a description of the effect of this section;

(ii) a statement that, if paragraph (e) is satisfied, the transferee company intends to take advantage of this section; and

(iii) a statement that the shareholder may apply to the court under subsection (3);

(e) within four months after the making of the offer it has been accepted in respect of sufficient shares in each class to make up, together with any shares held by the transferee company, nine-tenths of the shares of that class.

(2) If this section applies, the transferee company may, within the period of two months beginning when subsection (1) is satisfied, give to each shareholder who has not accepted the offer in respect of all his shares a notice stating-

(a) that it desires to acquire his shares;

(b) that if no action is taken by the shareholder, the shares will be compulsorily acquired under this section;

(c) the alternative that will apply unless the shareholder directs otherwise, if the offer consists of alternatives.

(3) A copy of the notice referred to in subsection (2) shall be sent to the transferor company.

(4) At any time within the period beginning when the offer is made and ending three months after subsection (1) is satisfied, the shareholder may apply to the court for an order that-

(a) the shares may not be compulsorily acquired under this section; or

(b) the terms of the offer applying to the shareholder in respect of the shares, or of the shares of a particular class, shall be varied as specified by the court;

and the court may make such an order.

(5) Where the court makes an order that the terms of the offer shall be varied, then, unless the court orders otherwise, the transferee company shall give notice of the varied terms to all other holders of shares of the same class and to all former holders of shares of the same class who accepted the original offer, and at any time within two months after receiving the notice-

(a) a holder of shares of that class shall be entitled to accept either the original offer or the offer as varied by the court; and

(b) a former holder of shares of that class who accepted the original offer shall be entitled to require the transferee company to pay or transfer to him any additional consideration to which he would have been entitled, had his shares been acquired under the offer as varied by the court.

(6) If a shareholder has not accepted the offer by the end of the acquisition day, the transferee company shall, unless the court has directed otherwise, within seven days after that day send to the transferor company an instrument of transfer of the shares of that shareholder executed-

(a) on behalf of the shareholder by a person appointed by the transferee company; and

(b) on its own behalf by the transferee company;

and transfer to the transferor company the consideration (whether shares, cash or any other consideration) payable by the transferee company for the shares, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(7) For the purposes of this section, the acquisition day is the day-

(a) three months after the day on which subsection (1) is satisfied: or

(b) on which the last of any applications under subsection (4) is disposed of;

whichever is the later.

(8) Any sums received by the transferor company under subsection (6) shall be paid into a separate bank account and any such sums and all shares or other consideration so received shall be held by the transferor company in trust for the several persons entitled to them.

238. (I) Where-Rights of minority on take-over

(a) an offer is made to the shareholders of a company (in this section called "the transferor company") or any of them for the purchase of their shares;

(b) in pursuance of the offer, shares in the transferor company are transferred to another body corporate (referred to in this section as "the transferee company"), whether the body corporate is a company within the meaning of this Act or not; and

(c) after the transfer of shares, the transferee company holds more than three-fourths of the shares in the transferor company or in a class of those shares;

then-

(i) the transferee company shall within one month after the date of the transfer, unless after a previous transfer it has already complied with this requirement, give notice of that fact to the holders of the remaining shares or of the remaining shares of that class, as the case may be; and

(ii) any such holder may, within three months after the giving to him of the notice require the transferee company to acquire all or any of his shares.

(2) For the purposes of subsection (1), where a share is transferred to or held by-

(a) a body corporate related to the transferee company; or

(b) a nominee of the transferee company or of a body corporate related to the transferee company; the share shall be deemed to be transferred to or held by the transferee company.

(3) Where a shareholder under subsection (1) requires the transferee company to acquire any shares, the transferee company shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed or as the court, on the application of either the transferee company or the shareholder, thinks fit to order.

239. (1) In this section, "oppressive" means-

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of a company; or

(ii) contrary to the interests of the members as a whole;

whether in the capacity of the member or members concerned as a member or members of the company, or otherwise. Remedy against oppression

(2) The court may, on the application of a member of a company, make an order or orders under this section if it is of the opinion-

(a) that the affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner that is oppressive; or

(b) that-

(i) some act or omission, or proposed act or omission, by or on behalf of the company has been done or is threatened; or

(ii) some resolution of the members, or any class of them, has been passed or is proposed;

which was or would be oppressive;

for the purpose of remedying the situation of the member or members concerned.

(3) Subject to this section, an order or orders under this section may include, but is not limited to, one or more of the following;

(a) an order directing or prohibiting any act or cancelling or varying any transaction or resolution;

(b) an order regulating the conduct of the company's affairs in the future;

(c) an order for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, for the reduction of the company's capital accordingly;

(d) an order that the company be wound-up;

(e) an order appointing a receiver of property of the company.

(4) Where an order under this section makes any alteration to the company's share capital or articles then, notwithstanding anything in any other provision of this Act but subject to any provisions of the order, the company shall not without the leave of the court make any further alteration to the share capital or articles inconsistent with the order.

(5) Where an order is made under this section that a company be wound-up, Part

XIII shall apply to the winding-up, with any necessary modifications, as if the order had been made upon an application duly filed by the company for a winding-up by the court.

(6) A copy of any order under this section altering the company's share capital or articles shall be lodged by the company with the Registrar within fifteen days after the making of the order.

(7) Where the order alters the company's share capital, the Registrar, on the lodgement of the order, shall issue a replacement certificate of share capital for the company, worded to meet the circumstances of the case.

(8) A person who contravenes an order under this section that is applicable to the person shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units or to imprisonment for a period not exceeding twelve months, or to both.

(9) If the company fails to comply with subsection (6), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

PART XII

FOREIGN COMPANIES

240. (1) In this Part, unless the context otherwise requires-

"documentary agent" means a person appointed as a documentary agent of a foreign company for the purposes of section two hundred and forty-five;

"established place of business" means a place of business of a foreign company that is an established place of business under section two hundred and forty-one;

"existing foreign company" means a body corporate incorporated outside Zambia which immediately before the commencement of this Act was registered as a foreign company under the former Act;

"foreign company" means-Interpretation

(a) a body corporate formed outside Zambia that has registered under this Part; or

(b) an existing foreign company, subject to section two hundred and forty-three;

"local director" means a local director of a foreign company appointed under section two hundred and forty-eight;

"registered principal office" means the office of a foreign company registered under section two hundred and forty-five as its principal place of business.

241. (1) For the purposes of this Part, and subject to this section, a body corporate formed outside Zambia has an "established place of business" if it has any of the following in Zambia;Established place of business

- (a) a branch or management office;
- (b) an office for the registration of transfer of shares;
- (c) a factory or mine; or
- (d) any other fixed place of business.

(2) An agency in Zambia of a body corporate formed outside Zambia in which the agent-

- (a) does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the body corporate; and
- (b) does not maintain a stock of merchandise belonging to that body corporate from which he regularly fills orders on its behalf;

is not an established place of business of the body corporate for the purpose of this Part.

(3) If a body corporate formed outside Zambia carries on business dealings in Zambia through a broker or general commission agent acting in the ordinary course of his business as such, the office of the broker or agent is not an established place of business of the body corporate for the purposes of this Part.

(4) If a body corporate formed outside Zambia has a subsidiary which is incorporated in Zambia or has an established place of business in Zambia, then-

- (a) an office of the subsidiary; or
- (b) an established place of business of the subsidiary;

shall not be regarded for that reason only as an established place of business of the body corporate.

242. (1) For the purposes of this Act, the "financial year" of a foreign company is the period, whether or not a period of one year, that begins on one accounting date of the company and ends on the day before the next. Financial year of a foreign company

- (2) The first "accounting date" of a foreign company is
 - (a) the date of its registration as a foreign company; or
 - (b) the date on which it first had an established place of business;

whichever is earlier.

(3) Subject to this section, the subsequent accounting dates of a foreign company are-

- (a) the date specified in the application for its registration as the date on which the second financial year of the company will begin, and anniversaries of that date, if the application for registration specified such a date; or
- (b) the anniversaries of the date of its incorporation, if the application

for registration did not specify such a date.

(4) A foreign company may change an accounting date by lodging a notice of the change in the prescribed form with the Registrar, provided that the change does not result in a financial year's being longer than fifteen months.

(5) Where a foreign company changes an accounting date under this section, the subsequent accounting dates of the company are unless changed under this section, the anniversaries of that date.

243. (1) Subject to this Act, this Act applies to an existing foreign company as if Application Part to listing foreign companies

(a) it had been duly registered under this Act as a foreign company; and

(b) any document that, in accordance with the former Act, was duly lodged by it with the Registrar, or duly registered by the Registrar, had been duly lodged or registered under this Act.

244. The Registrar shall maintain a register of foreign companies for the purposes of this Part. Register of foreign companies

245. (1) A body corporate formed outside Zambia (in this section called an "external company") may register under this section as a foreign company by lodging with the Registrar the application for registration and the other documents required to accompany it under this section. Registration of a foreign company

(2) The application shall be in the prescribed form and contain the following particulars relating to the company:

(a) its name;

(b) the nature of its business or businesses or other main objects;

(c) the relevant particulars of each of one or more individuals resident in Zambia, or bodies corporate incorporated in Zambia, authorised to accept on behalf of the company service of process or any notice required to be served on the company (in this Part called "documentary agents");

(d) the relevant particulars of the persons who are to be local directors of the company, specifying which is to be the local chairman;

(e) if the company has shares, the number and nominal value, if any, of its authorised and issued shares, and the amount paid thereon, distinguishing between the amounts paid and payable in cash and the amounts paid and payable otherwise than in cash;

(f) the address of the company's registered or principal office in the country of its incorporation;

(g) subject to subsection (5), the physical address of an office in Zambia to be its registered office;

(h) a postal address in Zambia.

(3) The application may also specify a date, being a date, not more than

fifteen months after the date of lodgement of the application, on which the second financial year of the company will begin.

(4) The application shall be accompanied by-

(a) a certified copy of the charter, statutes, regulations, memorandum and articles, or other instrument constituting, or defining the constitution of, the company;

(b) in relation to each documentary agent and local director, a statement signed by him accepting appointment as such; and

(c) the particulars and documents referred to in subsection (2) of section ninety-nine relating to any charge on any property in Zambia acquired by the company more than fourteen days before the lodgement of the application, of, if there are no such charges, a statement in the prescribed form to that effect.

(5) If an external company has not set up or acquired an established place of business when it lodges an application for registration as a foreign company, it shall do so within twenty-eight days after the lodgement.

(6) For the purposes of this section, the relevant particulars of a person are the following:

(a) in the case of an individual-

(i) his present forenames or surname;

(ii) any former forename or surname;

(iii) his residential and postal address;

(iv) his business occupation (if any);

(b) in the case of a body corporate-

(i) its name and, if a company, its designating number;

(ii) its registered office; and

(iii) its registered postal address.

246. (1) If a body corporate formed outside Zambia sets up or acquires an established place of business in Zambia, it shall, within twenty-eight days after so doing, apply for registration as a foreign company under section two hundred and forty-five. External company must register if it has an established place of business

(2) If a body corporate fails to comply with subsection (1), the body corporate, and any officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

247. (1) If any alteration is made in the charter, statutes, regulations, memorandum and articles, or other instrument relating to a foreign company referred to in paragraph (4) (a) of section two hundred and forty-five the company shall, within two months after the date on which that alteration takes

effect, lodge with the Registrar a notice in the prescribed form giving details of the alteration. Returns required on alteration of registered particulars

(2) If any alteration is made in any of the particulars contained in the application referred to in subsection (2) of section two hundred and forty-five the company shall, in accordance with this section, lodge with the Registrar a notice in the prescribed form giving details of the alteration.

(3) In the case of any alteration in any of the particulars referred to in paragraphs (a), (b), (e) or (f) of subsection (2) of section two hundred and forty-five the notice required by subsection (2) shall be lodged within two months after the date of effect of the alteration.

(4) In the case of any alteration in any of the particulars referred to in subparagraphs (c), (d), (g) or (h) of subsection (2) of section two hundred and forty-five the notice required by subsection (2) shall be lodged within twenty-eight days after the date of the alteration.

(5) Where the particulars lodged pursuant to this section include the name of a person appointed as a documentary agent or as a local director or manager, the notice shall be accompanied by a consent signed by the person to act in that capacity.

248. (1) A foreign company shall have at all times at least one and no more than nine individuals (in this Act called "local directors") empowered and authorised to conduct and manage all the affairs, properties, business and other operations of the company in Zambia. Foreign company must appoint local directors

(2) At least one local director of the company shall be resident in Zambia, and if the company has more than two local directors, more than half of them shall be residents of Zambia.

(3) A contravention of subsection (2) which continues for more than two months shall constitute grounds for winding-up of the company by the court on the application of the Registrar.

(4) The company shall not decrease the number of its local directors if the Registrar directs it in writing not to do so.

(5) The company shall designate one of the local directors, being a local director who is a resident of Zambia, as the local chairman.

(6) The company shall not appoint as a local director a person who, under Part X, is not qualified to be a director of a company incorporated under this Act.

249. (1) If a person registered as a local director of a foreign company does an act ostensibly on behalf of the company in the course of carrying on the business of the company in Zambia, the act shall bind the company unless-Responsibilities of local directors

(a) the local director has no authority so to act; and

(b) the person with whom he is dealing has actual knowledge of the absence of authority, or, having regard to his position with, or relationship to, the company, ought to know of the absence of authority.

(2) The company shall, in all trade circulars and business correspondence on or

in which the company's name appears, and which are despatched by or on behalf of the company-

- (a) in Zambia, whether to persons in Zambia or not;
- (b) outside Zambia exclusively to persons in Zambia; or
- (c) exclusively for the purposes of the company's operations in Zambia;

state in legible Roman characters in respect of each local director-

- (i) his forenames or the initials thereof and his surname; and
- (ii) any former forename or surname.

(3) The Registrar may, if in his opinion special circumstances exist which justify it, by notice published in the Gazette, and subject to any conditions specified in the notice, exempt the company from the requirements of subsection (2).

(4) The company shall maintain a register of its local directors, to be kept at its registered office or the office notified to the Registrar for the purposes of section two hundred and fifty-two, and section two hundred and twenty-four shall apply to the register with the necessary modifications.

250. (1) A document may be served on a foreign company by-Service on foreign company

(a) leaving it at an address registered as the address of a documentary agent of the company;

(b) personal service on a documentary agent of a company, if the agent is an individual;

(c) service in accordance with this Act on the documentary agent, if the documentary agent is a company;

(d) leaving it at the registered office of the company, if the company has no registered documentary agent, or no registered address for such an agent;

(e) personal service on a local director;

(f) leaving it at the registered office or principal place of business of the company in the country of its incorporation; or

(g) personal service on a director or secretary of a company in the country of its incorporation.

(2) A document sent by registered or other receipted post to the address registered as the postal address of a documentary agent of the company shall be deemed to have been served on the company if it is proved, by a receipt issued or otherwise, that the document, or a post office notification of the document, was delivered to the registered postal address.

(3) Service in accordance with subsection (1), other than paragraph (d), shall continue to be effective in relation to the company for a period of two years after the company ceases to be registered as a foreign company.

(4) Nothing in this section shall derogate from the power of any court to direct how service shall be affected of any document relating to legal proceedings before the court.

251. (1) A foreign company shall, within three months after the end of each financial year of the company, lodge with the Registrar annual accounts and an auditors' report corresponding as nearly as practicable with the annual accounts and auditors' report in relation to the operations and assets in Zambia of the company that would be required under Part VIII if those operations and assets were the whole operations and assets of a public company incorporated under this Act. Annual accounts of foreign company

(2) For the purposes of subsection (1), the foreign company shall appoint an auditor or auditors.

(3) An auditor of a foreign company shall be-

(a) a registered accountant having a practice certificate issued by the Zambia Institute of Certified Accountants under the Accountants Act, 1982; or Cap. 391

(b) a firm of such registered accountants.

(4) If the foreign company is required under its articles or other provisions of the constitution regulating its conduct, or under the laws of the country in which it is incorporated, to circulate annual accounts to its members or lay them before its members in general meeting, the company shall, within twenty-eight days after complying with those requirements, lodge with the Registrar a certified copy of the accounts together with, if the accounts are in a language other than English, a certified translation of them into English.

(5) In the profit and loss account in the accounts referred to in subsection (1), the company may make such apportionments and add such notes and explanations as are, in its opinion, necessary or desirable in order to give a true and fair view of the profit or loss on its operations in Zambia, and for this purpose may debit a reasonable rate of interest on capital employed in Zambia.

(6) In relation to the accounts and reports referred to in subsection (1), the Registrar may, on the application or with the consent of the local directors of the company, modify, in relation to the company, any of the requirements of this section or Part VIII to suit the circumstances of the company, provided that the accounts and reports give a true and fair view of the profit or loss on the operations of the company, and of the state of affairs of the company, in Zambia.

252. (1) A foreign company shall-Keeping of accounting records by foreign company

(a) keep such accounting records as correctly record and explain the transactions of the company relating to its operations and assets in Zambia (including any transactions as trustee) and the financial position of the company in relation to those operations and assets; and

(b) keep its accounting records in such a manner as will enable-

(i) the preparation from time to time of true and fair accounts of those operations and assets of the company; and

(ii) those accounts of the company to be conveniently and properly audited in accordance with this Part.

(2) The company shall retain the accounting records for a period of ten years after the completion of the transactions to which they relate.

(3) The company shall keep at its registered office, or at another office notified to the Register in writing, such statements and records with respect to the matters dealt with in its accounting records as would enable the company to prepare true and fair accounts together with any documents required by this Part to be attached to the accounts.

(4) The accounting records of the company shall be kept in writing or in any form that enables the accounting records to be readily accessible and readily convertible into writing.

(5) The accounting records of the company shall be kept in English, unless the use of another language is approved in writing by the Registrar.

(6) The company shall make its accounting records available in writing at all reasonable times for inspection without charge by the local directors and auditors of the company and by the Registrar or his delegate.

(7) If the company fails to comply with this section-

(a) the Registrar may apply for an order that the company be wound-up in accordance with section two hundred and fifty-seven; and

(b) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to a term of imprisonment not exceeding two years, or to both.

(8) The Registrar may, if he considers that the special circumstances of the company justify it, exempt the company, generally or in respect of any particular financial year, from any of the provisions of this section.

253. (1) Subject to this section, the name of a foreign company in Zambia shall be-Name of foreign company

(a) the name of the company in the country of its incorporation, if that name is in English; or

(b) the name of the company in the country of its incorporation or a translation thereof, as the company chooses, if that name is in Roman characters in a language other than English;

(c) a translation or transliteration of the name of the company in the country of its incorporation, as the company chooses, if that name is not in Roman characters.

(2) The Registrar may, on the application of the foreign company, whether before or after registration of the company, permit the company to have a different name in Zambia.

(3) If, in the opinion of the Registrar, whether formed before or after the registration of a foreign company, the name of the foreign company is likely to cause confusion with the name of another body corporate or is otherwise undesirable, the Registrar may direct that the foreign company shall adopt another name for use in Zambia, being a name approved by the Registrar.

(4) If the Registrar makes a direction under subsection (3) in the case of a body corporate applying for registration as a foreign company, he shall not register the body corporate until it adopts such a new name.

(5) If the Registrar makes a direction under subsection (3) in the case of a foreign company already registered, and it does not adopt such a name within forty-two days after the issue of the direction, he shall register the designating number of the company, together with the words "Foreign Company", as the name of the company.

(6) A change of name under this section, or the use of a name different from the name used by the foreign company in the country of its incorporation shall not affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

254. (1) Section one hundred and ninety-four shall apply to a foreign company as if its name included at the end-Publication of name of foreign company

(a) the words "incorporated in "followed by the country of its incorporation; and

(b) the words "with limited liability", if the liability of the members is limited;

but shall not apply in relation to business correspondence of the company despatched outside Zambia.

255. Section ninety-nine shall apply in relation to a foreign company as if-

(a) a reference to a company were a reference to the foreign company;Registration of charges by foreign company

(b) a reference to a charge were a reference to a charge over property of the company situated in Zambia; and

(c) a reference to the acquisition of property by the company included a reference to the acquisition of property before it registration as a foreign company.

256. (1) Where, in the case of a foreign company-Notification of winding-up of foreign company

(a) a winding-up order is made by a court of the country of its incorporation;

(b) a resolution is passed or other appropriate proceedings are taken in that country to lead to the voluntary winding-up of the company; or

(c) the company is dissolved or otherwise has ceased to exist according to the law of the country of its incorporation.

the company, or, if the company is dissolved, the documentary agents and local directors of the company, shall lodge a notice thereof with the Registrar within twenty-eight days after the event.

(2) Where an event referred to in paragraph (a) or (b) of subsection (1) has occurred, the company shall cause a statement to appear in legible Roman characters on every invoice, order or business letter thereafter issued in Zambia by or on behalf of the company, being a document on or in which the company's name appears, to the effect that the company is being wound-up in the country of its incorporation.

(3) A person who carries on, or purports to carry on, in Zambia business on behalf of a foreign company after the date on which it was dissolved or otherwise ceased to exist in the country of its incorporation shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding thirty monetary units for each day that he carries on or purports to carry on the business.

(4) Nothing in this section shall derogate from the provisions of section two hundred and fifty-seven.

257. (1) The undertaking in Zambia of a foreign company may be wound-up in accordance with this section whether or not the company has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation. Winding-up of foreign company in Zambia

(2) For the purposes of a winding-up under this section, the foreign company shall be treated as if it were a company incorporated in Zambia whose whole operations and assets were the operations and assets in Zambia of the foreign company.

(3) Subject to this section, Part XIII shall apply, with any necessary modifications, to the winding-up of a foreign company.

(4) A foreign company may be wound-up by the court on the following grounds in addition to those referred to in section two hundred and seventy-two;

(a) if it is in the course of being wound-up, voluntarily or otherwise, in the country of its incorporation;

(b) if it is dissolved in the country of its incorporation or has ceased to carry on business in Zambia, or is carrying on business for the purposes only of winding-up its affairs;

(c) if the court is of the opinion that the company is being operated in Zambia for any unlawful purpose.

(5) The court may, in the winding-up order or on subsequent application by the liquidator, direct that all transactions in Zambia by or with the foreign company shall be deemed to be or have been validly done notwithstanding that they occurred after the date when the company was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make the order on such terms and conditions as it deems fit.

258. (1) If a foreign company ceases to have an established place of business in Zambia, it shall, within twenty-eight days after so ceasing, lodge a notice of that fact in the prescribed form with the Registrar. Cessation of business of foreign company

(2) The Registrar shall register the notice and the company shall, subject to this section, thereupon cease to be registered as a foreign company.

(3) The company shall maintain a documentary agent, and continue to notify the Registrar of the particulars of its documentary agents, for a period of two years after lodging the notice of its ceasing to have an established place of business.

(4) Where the Registrar has reason to believe that a foreign company has ceased to have an established place of business in Zambia, he shall serve a notice on the company of that fact and stating the effect of subsection (5).

(5) If, at the end of three months after the giving of a notice under subsection (4), the Registrar is not satisfied that the foreign company is maintaining an established place of business in Zambia, the company shall be deemed to have lodged a notice under subsection (1) on that day.

(6) Any person who, while a body corporate was registered as foreign company, would have had the right to inspect a document or register held by the Registrar in relation to the company, shall have the right to do so during the period of two years following the lodging of a notice by the company under subsection (1).

259. (1) If a foreign company fails to comply with any of the obligations imposed upon it by this Part, the foreign company and any officer or documentary agent in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units. Penalties and disabilities

(2) If a local director or a documentary agent of a foreign company wilfully fails to comply with any of the obligations imposed upon him by this Part, the local director or documentary agent shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(3) Subsections (1) and (2) shall not apply in respect of any act or omission which constitutes an offence under another provision of this Part, or of this Act as applied by this Part.

(4) Subject to this section, if a foreign company fails to lodge with the Registrar any document required by this Part to be so lodged, the rights of the foreign company under or arising out of or incidental to any contract made in Zambia while the failure continues shall not be enforceable by action or other legal proceedings.

(5) A court may, on the application of a foreign company to which subsection (4) applies and if it is satisfied that it is just and equitable to do so, grant relief, either generally or on conditions, from any disability imposed by subsection (4).

(6) Nothing in this section shall prejudice the rights of any other parties against the foreign company in respect of a contract referred to in subsection (4).

(7) If another party commences an action or proceedings against a foreign company to which subsection (4) applies, this section shall not preclude the foreign company from enforcing in the action or proceedings by way of counter-claim, set-off or otherwise, such rights as it may have against the party in respect of that contract.

260. (1) Part VI shall apply in relation to foreign companies, with the necessary modifications, as if a foreign company were a public company. Invitations to the public relating to foreign companies

(2) At the request of a foreign company, the Registrar may, if he thinks fit, waive or modify the provisions of Part VI in relation to the company.

(3) Any prospectus registered by a foreign company for the purposes of an invitation to the public to acquire shares or debentures shall, in addition to complying with Part VI and subject to any modifications made under subsection (2), also contain particulars of-

(a) the instrument constituting or defining the constitution of the company;

(b) the law, or provisions having the force of law, by or under which the incorporation of the company was effected;

(c) an address in Zambia where copies of the foregoing, or, if the same are in a language other than English, certified translations thereof, can be inspected;

(d) the date on which and the country in which the company was incorporated; and

(e) whether the liability of the members is limited.

(4) A breach of subsection (3) shall be deemed to be a breach of section one hundred and thirty.

261. (1) In this section, "non-Zambian company" means any body corporate formed or proposed to be formed outside Zambia, other than a foreign company. Invitations to the public relating to other external bodies corporate

(2) Part VI shall apply, with the necessary modifications, in relation a non-Zambian company as if it were a public company.

(3) At the request of a non-Zambian company, the Registrar may, if he thinks fit, waive or modify the provisions of Part VI in relation to the company.

(4) Any prospectus registered by a non-Zambian company for the purposes of an invitation to the public to acquire shares or debentures shall, in addition to complying with Part VI and subject to any modifications made under subsection (2), also contain particulars of-

(a) the instrument constituting or defining the constitution of the company;

(b) the law, or provisions having the force of law, by or under which the incorporation of the company was effected;

(c) an address in Zambia where copies of the foregoing, or, if the same are in a language other than English, certified translations thereof, can be

inspected;

(d) the date on which and the country in which the company was incorporated;
and

(e) whether the liability of the members is limited.

(5) A breach of subsection (4) shall be deemed to be a breach of section one hundred and thirty.

PART XIII

WINDING-UP

Division 13.1-General

262. For the purposes of this Part, a reference to a member of a company includes, unless the context otherwise requires, a reference to a person claiming or alleged to be liable to contribute to the assets of the company in a winding up, for the purpose of any proceedings for determining, and of all proceedings prior to the final determination of, the persons who are so liable (including the presentation of a winding-up petition). Interpretation

263. (1) The winding-up of a company under this Part shall be—Modes of winding-up

(a) a winding-up by the court; or

(b) a voluntary winding-up, being—

(i) a members' voluntary winding-up; or

(ii) a creditors' voluntary winding-up.

264. The provisions of this Act relating to the winding-up of a company shall not apply in relation to a winding-up that was commenced before the commencement of this Act, and such a winding-up shall be continued as if this Act had not been passed. Application of repealed Act

265. (1) This section shall apply only in the case of a company limited by guarantee, an unlimited company and a company having shares which are not fully paid up. Liability of members on winding-up

(2) When a company is wound-up, every member at the time of the commencement of the winding-up shall, subject to section two hundred and sixty-six, be liable to contribute to the assets of the company an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the members among themselves.

(3) A sum due to any member in his capacity as a member by way of dividends or otherwise—

(a) shall not be regarded as a debt of the company payable to that member in a case of competition between himself and any other creditor not a member; and

(b) may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

266. (1) In the case of a public company or a private company limited by shares, section two hundred and sixty-five shall not require from any member a contribution exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a member. Limitation of liability

(2) In the case of a company limited by guarantee, section two hundred and sixty-five shall not require from any member a contribution exceeding the amount that he undertook, in the declaration of guarantee, to contribute to the assets of the company in the event of its being wound-up.

267. The liability of a member shall create a debt in the nature of a specially accruing debt due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability. Nature of liability of a member

268. (1) If a member dies, whether before or after he has been placed on the list of those liable to contribute to the assets of the company, his personal representatives shall be so liable in due course of administration and, if they fail to pay any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased member and for compelling payment therefrom of the money due. Liability in case of death of bankruptcy of a member

(2) If a member becomes bankrupt, either before or after he has been placed on the list of those liable to contribute to the assets of the company-

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be liable to contribute accordingly; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as to calls already made.

269. (1) The court shall have jurisdiction to wind-up, in accordance with this Act-Jurisdiction to wind-up companies

(a) a body corporate incorporated in Zambia;

(b) a body corporate incorporated in a foreign country and-

(i) registered as a foreign company; or

(ii) having any business or undertaking or assets in Zambia.

Division 13.2-Winding-up by the court

270. This Division shall apply in the case of the winding-up of a company by the court. Application of Division

271. (1) Subject to this section, a company may be wound-up by the court on the petition of-Persons who may petition for a company to be wound-up by the court

(a) the company;

(b) any creditor, including a contingent or prospective creditor, of the company;

- (c) a member;
- (d) any person who is the personal representative of a deceased member;
- (e) the trustee in bankruptcy of a bankrupt member;
- (f) any liquidator of the company appointed in a voluntary liquidation; or
- (g) the Registrar.

(2) In the case of a public company or a private company limited by shares, a member shall not be entitled to present a winding-up petition unless his shares, or some of them-

- (a) were originally allotted to him;
- (b) have been held by him, and registered in his name for at least six months; or
- (c) have devolved on him by operation of law.

(3) The court shall not hear a winding-up petition presented by a contingent or prospective creditor until-

(a) such security for costs has been given as the court thinks reasonable; and

(b) A prima facie case for winding-up has been established to the satisfaction of the court.

(4) Where a company is being wound-up voluntarily, the court shall not make a winding-up order unless it is satisfied that the voluntary winding-up cannot be continued with due respect to the interests of the creditors or members.

272. (1) The court may order the winding-up of a company on the petition of a person other than the Registrar if-Circumstances in which company may be wound up by court

(a) the company has by special resolution resolved that it be wound-up by the court;

(b) the company does not commence its business within twelve months after its incorporation or suspends its business for twelve months;

(c) the company is unable to pay its debts;

(d) the period, if any, fixed for the duration of the company by the articles expires of the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved;

(e) the number of members is reduced below two; or

(f) in the opinion of the court, it is just and equitable that the company should be wound-up.

(2) The court may order the winding-up of a company on the petition of the Registrar on the grounds specified in paragraph (b), (d), (e or f) of subsection

(1) or on the ground that the company has persistently failed to comply with any of the provisions of this Act.

(3) For the purposes of this section, a company is unable to pay its debts if-

(a) there is due from the company to any creditor (including a creditor by assignment) an amount exceeding fifty monetary units, and-

(i) the creditor has, more than twenty-one days previously, served on the company a written demand under his hand requiring the company to pay the amount so due; and

(ii) the company has failed to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) the company is unable to pay its debts as they fall due.

(4) In determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

273. (1) Where, before the presentation of the petition for the winding-up of a company by the court, a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the court otherwise directs, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken. Commencement of winding-up by court

(2) In any other case the winding-up shall be deemed to have commenced at the time of the presentation of the petition for the winding-up of the company by the court.

274. (1) The person, other than the company itself or the liquidator thereof, on whose petition a winding-up order is made shall at his own cost prosecute all proceedings in the winding-up until a liquidator has been appointed. Payment of preliminary costs

(2) The liquidator shall, unless the court orders otherwise, reimburse to the petitioner, out of the assets of the company, the taxed costs incurred by the petitioner in any such proceedings.

(3) Where any winding-up order is made upon the petition of the company or the liquidator thereof, the costs incurred shall, subject to any order of the court, be paid out of the assets of the company in like manner as if they were the costs of any other petitioner.

275. (1) On hearing a winding-up petition, the court may-Powers of court on hearing petition

(a) dismiss it with or without costs;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any interim order or other order that it thinks fit;

but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets or, in the case of a petition by a member, that there will be no assets available for distribution amongst the members.

(2) The court may, on the petition's coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition-

(a) direct that any notices be given or any steps taken before or after the hearing of the petition;

(b) dispense with any notices being given or steps being taken which are required by or under this Act, or by any prior order of the court;

(c) direct that oral evidence be taken on the petition or any matter relating thereto;

(d) direct a speedy hearing or trial of the petition or any issue or matter;

(e) allow the petition to be amended or withdrawn; and

(f) give such directions as to the proceedings as the court thinks fit.

(3) Where the petition is presented by members on the ground that it is just and equitable that the company should be wound-up, and the court is of opinion that-

(a) the petitioners are entitled to relief either by winding-up the company or by some other means; and

(b) in the absence of any other remedy, it would be just and equitable that the company should be wound-up; the court shall make a winding-up order unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound-up instead of pursuing that other remedy.

276. At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company or the creditor or member may, where any action or proceeding against the company is pending, apply to the court to stay or restrain further proceedings in the action or proceeding, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit. Power to stay or restrain proceedings against company

277. Any disposition of the property of the company including things in action, and any transfer of shares or alteration in the status of the members of the company made after the commencement of winding-up by the court shall be void unless the court otherwise orders. Avoidance of dispositions

278. Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a winding-up by the court shall be void. Avoidance of attachments

279. (1) Within fifteen days after the making of a winding-up order the

petitioner shall-Copy of order to be registered

- (a) lodge a copy of the order with the Registrar;
- (b) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the court directs;
- (c) deliver a copy to the official receiver, if the official receiver has not been appointed as liquidator or if no liquidator has been appointed; and
- (d) deliver a copy to the liquidator (if any) with a statement that the requirements of this subsection have been complied with.

(2) Within fifteen days after receiving a copy of a winding-up order under subsection (1), the Registrar shall cause a notice of the making of the order to be published in the Gazette.

(3) If the petitioner fails to comply with subsection (1), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

280. (1) The court may appoint the official receiver or any other person to be liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order. Provisional liquidator

(2) The provisional liquidator shall have and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as may be prescribed, or as the court specifies in the order appointing him.

281. When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose. Stay of actions

282. (1) The court may in the winding-up order appoint a liquidator, or may give directions as to the appointment of a liquidator, by the members or creditors of a company or otherwise as it thinks fit. Appointment and style of liquidator

(2) If the order makes no direction as to the liquidator, the official receiver shall be the liquidator of the company.

(3) Where a provisional liquidator has been appointed before the making of the winding-up order, he shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(4) Where no provisional liquidator has been appointed before the making of the winding-up order, the official receiver shall become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(5) The official receiver shall be the liquidator during any vacancy or at any time when there is no liquidator capable of acting.

(6) Any vacancy in the office of the liquidator appointed by the court may be filled by the court.

(7) A liquidator appointed by the court may resign or on cause shown be removed by the court.

(8) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator" or where the official receiver is liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed, and not by his individual name.

(9) If more than one liquidator is appointed by the court, the court shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

283. (1) If a person other than the official receiver is appointed liquidator in the winding-up of a company by the court, that person-Provisions where a person other than official receiver is appointed liquidator

(a) shall not be capable of acting as liquidator until he has lodged a notice of his appointment with the Registrar and given such security as may be directed by the court, or by the official receiver, to the satisfaction of the official receiver; and

(b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling the official receiver to perform his duties under this Act.

(2) Paragraph (a) of subsection (1) shall not apply in the case of a provisional liquidator unless the court so orders.

284. (1) Where, in the winding-up of a company by the court, a person other than the official receiver is the liquidator, the official receiver shall take cognizance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the respect to the performance of his duties, or if any complaint is made to the official receiver by any creditor or member in regard thereto, the official receiver shall inquire into the matter, and take such action as he thinks fit. Control of liquidators by official receiver

(2) The official receiver may at any time require any liquidator of a company which is being wound-up by the court to answer any inquiry in relation to any winding-up in which he is engaged, and may apply to the court to examine him or any other person on oath concerning the winding-up.

(3) The official receiver may direct an investigation to be made of the books and vouchers of a liquidator.

285. (1) A liquidator other than the official receiver shall be entitled to receive such salary or remuneration by way of commission otherwise as is determined-Remuneration of liquidators

(a) by agreement between the liquidator and the committee of inspection (if any);

(b) by an extraordinary resolution passed at a meeting of creditors convened by the liquidator by a notice to each creditor to which was attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him, failing such an agreement or where there is no committee of

inspection; or

(c) by the court, failing a determination under paragraph (a) or (b).

(2) Where the salary or remuneration of a liquidator is determined under paragraph (a) of subsection (1), the court may, on the application of one or more members whose shareholdings represent in total not less than five per centum of the issued capital of the company (or who, in the case of a company having no share capital, constitute not less than five per centum of the members), confirm or vary the determination.

(3) Where the salary or remuneration of a liquidator is determined under paragraph (b) of subsection (1), the court may, on the application of the liquidator or one or more members as described in subsection (2), confirm or vary the determination.

(4) Subject to any order of the court, the official receiver when acting as a liquidator or provisional liquidator of a company shall be entitled to receive such remuneration by way of commission or otherwise as may be prescribed.

286. (1) Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled. Custody and vesting of company's property

(2) The court may, on the application of the liquidator, by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator, and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the court directs, bring or defend any action or other legal proceedings which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.

(3) Where an order is made under this section, the liquidator of a company in relation to which the order is made shall within fifteen days after the making of the order-

(a) lodge a copy of the order with the Registrar; and

(b) in the case of property vested in the liquidator in respect of the transfer of which any written law provides for registration, deliver a copy of the order to the proper officer of the appropriate authority for the registration of the transfer, together with a written application to the officer for the registration of the order.

(4) A liquidator who fails to comply with subsection (3) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

(5) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting any such property as is referred to in paragraph (b) of subsection (3) until delivered to the appropriate authority as required by the written law.

287. (1) Unless the court directs otherwise, the company shall prepare and submit to the liquidator a statement as to the affairs of the company as at the

date of the winding-up order showing-Statement of company's affairs

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by each of the creditors;
- (d) the dates when the securities were respectively given; and
- (e) such further information as may be prescribed or as the liquidator requires.

(2) The statement shall be verified by the statutory declaration of-

- (a) at least one director as at the date of the winding-up order or;
- (b) the secretary of the company at that date.

(3) The liquidator, subject to the direction of the court, may by notice in writing, require a person-

- (a) who is, or was within two years before the date of the winding-up order, an officer of the company; or
- (b) who took part in the formation of the company, if the company was formed less than two years before the date of the winding-up order;

to verify, by statutory declaration, such parts of the statement as he is in a position to verify.

(4) The liquidator may serve a notice on a person under subsection (3) either personally or by sending it by post to the address of that person last known to the liquidator.

(5) A person required to verify the statement shall, within fourteen days after receiving the notice or within such extended time as the liquidator or the court for special reasons specifies, submit a statutory declaration verifying those matters in the statement which he is in a position to verify and specifying any matters in the statement which in his opinion are incorrect.

(6) Within seven days after receiving the statement or any statutory declaration under subsection (3), the liquidator shall cause copies to be-

- (a) filed with the court;
- (b) lodged with the Registrar; and
- (c) delivered to the official receiver, if the official receiver is not the liquidator.

(7) Any person required under this section to verify the statement may be allowed, and be paid out of the assets of the company, such costs and expenses incurred in and relating to doing so as the liquidator considers reasonable, subject to an appeal to the court.

(8) If a company fails to comply with subsection (1), the company, and each

officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(9) A person who fails to comply with subsection (5) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.

(10) A statement made under this section may be used as evidence in any proceedings against any person making it.

(11) A liquidator who fails to comply with subsection (6) shall be guilty of an offence, and shall be liable to a fine of three monetary units for each day that the failure continues.

288. (1) The liquidator shall, as soon as practicable after receipt of the statement of affairs, submit a preliminary report to the court as to-Report by liquidator

(a) the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(b) the cause of the failure of the company, if it has failed; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business.

(2) The liquidator may also make further reports stating-

(a) the manner in which the company was formed;

(b) whether in his opinion any fraud has been committed or any material fact has been concealed-

(i) by any person in its promotion or formation; or

(ii) by any officer in relation to the company since its formation;

(c) whether any officer of the company has contravened or failed to comply with any of the provisions of this Act; and

(d) any other matter which in his opinion it is desirable to bring to the notice of the court.

289. (1) The liquidator may, during the four weeks following the date of the winding-up order, carry on the business of the company so far as is necessary for the satisfactory winding-up thereof. Powers of liquidator

(2) The liquidator may, with the authority either of the court or of the committee of inspection-

(a) carry on the business of the company, so far as is necessary for the beneficial winding-up thereof, after the four weeks following the date of the winding-up order;

(b) pay any class of creditors in full, subject to section three hundred and

forty-six;

(c) make any compromise or arrangement with creditors, persons claiming to be creditors, or persons having or alleging themselves to have any claim against the company, whether present or future, certain or contingent, ascertained or sounding only in damages or whereby the company may be rendered liable;

(d) compromise any debts and liabilities capable of resulting in debts and any claims of any kind, whether present or future, certain or contingent, ascertained or sounding only in damages, that subsist or are supposed to subsist between the company on the one hand and a member, a debtor or person apprehending liability on the other;

(e) make agreements on all questions in any way relating to or affecting the assets or the winding-up of the company; and

(f) take any security for the discharge of any such debt, liability or claim, and give a complete discharge in respect thereof.

(3) For the purpose of winding-up the affairs of the company and distributing its assets the liquidator may-

(a) bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) compromise any debt due to the company, other than a debt due from a member, where the amount claimed by the company to be due to it does not exceed fifty monetary units;

(c) sell the real and personal property and things in action of the company by public auction, public tender or private contract either by transferring the whole thereof to any person or company or selling the same in parcels;

(d) execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose use when necessary the company's seal;

(e) prove, rank and claim in the bankruptcy of any member or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors;

(f) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(g) raise on the security of the assets of the company any money necessary;

(h) take out letters of administration of the estate of any deceased member or debtor, and do any act necessary for obtaining payment of any money due from a member or debtor or his estate which cannot be conveniently done in the name of the company, in which case, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, the money due shall be deemed due to the liquidator himself;

(i) appoint a legal practitioner to assist him in his duties;

(j) appoint an agent to do any business which the liquidator is unable to do himself;

(k) give notice of the winding-up in any jurisdiction where the company does business; and

(l) do all such other things as are necessary for winding-up the affairs of the company and distributing its assets.

(4) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the court, and any creditor or member may apply to the court with respect to any exercise or proposed exercise of any of these powers.

290. (1) Subject to this Act, the liquidator shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions given by resolution of the creditors or members at any general meeting or by the committee of inspection, and any directions so given by the creditors or members shall in case of conflict override any directions given by the committee of inspection. Exercise and control of liquidator's powers

(2) The liquidator may summon general meetings of the creditors or members for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or members by resolution direct or whenever requested in writing to do so by-

(a) members whose shareholdings represent in total not less than one twentieth of the issued capital of the company, in the case of a company with share capital;

(b) not fewer than one tenth of the members, in the case of a company limited by guarantees; or

(c) creditors representing in the aggregate not less than one twentieth of the value of the creditors of the company.

(3) The liquidator may apply to the court for directions in relation to any particular matter arising under the winding-up.

(4) Subject to this Act, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.

291. When the liquidator-

(a) has realised all the property of the company or so much thereof as can in his opinion be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the members among themselves and made a final return, if any, to the members; or

(b) has resigned or has been removed from his office;

he may apply to the court for an order-

(i) that he be released; or

(ii) that he be released and that the company be dissolved. Release of liquidator and dissolution of company

292. (1) In deciding whether to grant an application under section two hundred and ninety-one, the court-Orders for release or dissolution

(a) may cause a report on the accounts of a liquidator (not being the official receiver) to be prepared by the official receiver or by an auditor appointed by the court; and

(b) shall take into consideration-

(i) the report;

(ii) any objection which is made against the release of the liquidator by the official receiver, auditor or any creditor or member or other person interested; and

(iii) whether the liquidator has complied with all the requirements of the court.

(2) If the court does not grant the release of a liquidator, the court may, on the application of any creditor or member or person interested, if it thinks it just and equitable, make an order that the liquidator shall be liable to the person or persons concerned for any damages caused to them by any act or omission, or specified acts or omissions, the liquidator may have done or made contrary to his duty.

(3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal from office.

(5) Where the court has made-

(a) an order that the liquidator be released; or

(b) an order that the liquidator be released and that the company be dissolved;

a copy of the order shall within twenty-one days after the making thereof be lodged by the liquidator-

(i) with the Registrar; and

(ii) with the official receiver, of the liquidator.

(6) A liquidator who fails to comply with subsection (5) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

293. Where the court has made an order that the company be dissolved, the

Registrar shall, upon lodgement with him of a copy of the order, strike the name of the company off the register and notify the same in the Gazette, and the company shall thereupon be dissolved as at the date of the publication of the notice in the Gazette. Dissolution of the company

294. (1) The liquidator may, and if requested by any creditor or member shall, summon separate meetings of the creditors and members for the purpose of Meetings to determine whether committee of inspection to be appointed

(a) determining whether or not the creditors or members require a committee of inspection to act with the liquidator;

(b) appointed members of the committee, if a committee is required.

(2) If there is a difference between the determinations of the meetings of the creditors and members, the court shall decide the matter and make such order as it thinks fit.

295. (1) The committee of inspection shall consist of creditors and members of the company or persons holding-Constitution and proceedings of committee of inspection

(a) general powers of attorney from creditors or members; or

(b) special authorities from creditors or members authorising the persons named therein to act on such a committee;

and shall be appointed by the meetings of creditors and members in such proportions as are agreed or, if there is no agreement, as are determined by the court.

(2) The committee shall meet at such times and places as they from time to time decide, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The committee may act by a majority of members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee-

(a) becomes bankrupt;

(b) assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy; or

(c) is absent from five consecutive meetings of the committee without the prior leave or subsequent consent of a majority of those members who together with himself represent the creditors or members, as the case may be;

his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of members, if he

represents members, of which meeting seven days' notice in writing has been given stating the object of the meeting.

(7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or member or person holding a general power or special authority as referred to in subsection (1).

(8) The liquidator may at any time of his own motion, and shall within seven days after the request in writing of a creditor or member, summon a meeting of creditors or of members, as the case requires, to consider any appointment made under subsection (7), and the meeting may-

(a) confirm the appointment; or

(b) revoke the appointment and make another appointment.

(9) The continuing members of the committee, if not fewer than two, may act notwithstanding any vacancy in the committee.

296. (1) At any time after an order for winding-up has been made, the court may, on the application of the liquidator or of any creditor or member and if it is satisfied that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings either altogether or for a specified time on such terms and conditions as the court thinks fit. Power to stay winding-up

(2) On any such application the court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.

(3) A copy of an order made under this section shall be lodged by the company with-

(a) the Registrar, and

(b) the official receiver;

within twenty-one days after the making of the order.

(4) If the company fails to comply with subsection (3), the company, and each officer in default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

297. (1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or members generally, require the appointment of a special manager of the estate or business of the company other than himself, request the court to appoint a special manager of the estate or business to act during such time as the court directs with such powers, including any of the powers of a receiver or receiver and manager, as are entrusted to him by the court. Appointment of special manager

(2) The special manager-

(a) shall give such security and account in such a manner as the court directs;

(b) shall receive such remuneration as is fixed by the court;

(c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign; and

(d) may, on cause shown, be removed by the court.

298. (1) The court may fix a date on or before which creditors are to prove their debts or claims and after which they will be excluded from the benefit of any distribution made. Claims of creditors and distribution of assets

(2) The court shall adjust the rights of the members among themselves and distribute any surplus among the persons entitled thereto.

(3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the court thinks fit.

299. The court may, at any time after making a winding-up order, make any order for inspection of the books and papers of the company by creditors and members that the court thinks fit, and any books and papers in the possession of the company may be inspected by creditors or members in accordance with the order. Inspection of books by creditors and members

300. (1) The court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court thinks capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company. Power to summon persons connected with company

(2) The court may examine the officer or person on oath concerning the matters referred to in subsection (1) either orally or on written interrogatories and may reduce his answers to writing and require him to sign them.

(3) Any writing so signed may be used in evidence in any legal proceedings against the officer or person.

(4) The court may require him to produce any books and papers in his custody or power relating to the company, but, if he claims any lien on books or papers, the production shall be without prejudice to that lien, and the court shall have jurisdiction to determine all questions relating to that lien.

(5) An examination under this section may, if the court so directs, be held before the Registrar of the High Court.

(6) Any person summoned for examination under this section may at his own cost employ a legal practitioner who shall be at liberty to put to him such questions as the court thinks just for the purpose of enabling him to explain or qualify any answers given by him.

(7) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful excuse made known to the court at the time of its sitting and allowed by it, the court may cause him to be apprehended and brought before the court for examination.

301. (1) Where the liquidator has made a report stating that, in his opinion-Power to order public examination

(a) a fraud has been committed;

(b) any material fact has been suppressed or concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation; or

(c) any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company;

the court may, after consideration of the report, direct that-

(i) the person or officer;

(ii) any other person who was previously an officer of the company, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company; or

(iii) any person whom the court thinks capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company;

shall attend before the court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, and, in the case of an officer or former officer, as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or member may take part in the examination either personally or by a legal practitioner.

(3) The court may put or allow to be put such questions to the person examined as the court thinks fit.

(4) The person examined shall be examined on oath and shall answer all such questions as the court puts or allows to be put to him.

(5) If a person directed to attend before the court under this section applies to the court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the court to any matters which appear to him to be relevant, and if the court, after hearing any evidence given or witnesses called by the liquidator, grants the application, the court may allow the applicant such costs as it thinks just.

(6) A person ordered to be examined under this section-

(a) shall before his examination be furnished with a copy of the liquidator's report; and

(b) may at his own cost engage a legal practitioner, who shall be at liberty to put to him or any other person giving evidence such questions as the court thinks just.

(7) Notes of the examination-

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

(c) may thereafter be used in evidence in any legal proceedings against him;
and

(d) shall at all reasonable times, be open to the inspection of any creditor or member.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, be held before the Registrar of the High Court.

(10) For the purposes of this section, "officer" includes a banker, legal practitioner or auditor of the company.

302. (1) The court, at any time before or after the making of a winding-up order, on proof of probable cause for believing that a member or officer or former member or officer of the company is about to-
Power to arrest absconding member or officer

(a) quit Zambia;

(b) otherwise to abscond; or

(c) remove or conceal any of his property for the purpose of evading payment of any money due to the company or of avoiding examination respecting the affairs of the company;

may cause the member, officer or former member or officer to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the court orders.

(2) For the purposes of this section, "officer" includes a banker, legal practitioner or auditor of the company.

303. Any powers by this Act conferred on the court shall be in addition to and not in derogation of any power of instituting proceedings against any member or debtor of a company or the estate of any member or debtor for the recovery of any debt or other sum.

Division 13.3-Voluntary Winding-up Powers of court cumulative

304. This Division shall apply to every voluntary winding-up of a company. Voluntary winding-up

305. (1) A company may be wound-up voluntarily if the company so resolves. Circumstances in which a company may be wound-up voluntarily

(2) The resolution shall be a special resolution unless the period, if any, fixed by the articles for the duration of the company has expired or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved.

(3) Upon the passing of a resolution for voluntary winding-up, the company shall within seven days thereafter lodge a copy of the resolution with the Registrar, and the Registrar shall within seven days after the lodgement cause notice thereof to be published in the Gazette.

(4) If the company fails to comply with subsection (3), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

306. For the purposes of this Act, a voluntary winding-up commences at the time of the passing of the resolution for voluntary winding-up. Commencement of voluntary winding-up

307. (1) The company shall from the commencement of the winding-up cease to carry on its business, except so far as in the opinion of the liquidator is required for the beneficial winding-up thereof, but the corporate state and corporate powers of the company shall continue until it is dissolved. Effect of voluntary winding-up

(2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members after the commencement of the winding-up, shall be void.

308. (1) Where it is proposed to wind-up a company voluntarily, the directors of the company may, before the date on which notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out, at a meeting of directors make a written declaration to the effect that they have made a full inquiry into the affairs of the company, and have formed the opinion that the company will be able to pay its debts and liabilities in full within a period specified in the declaration, being a period of not more than twelve months after the commencement of the winding-up. Declaration of solvency

(2) There shall be attached to the declaration a statement of affairs of the company showing-

(a) the assets of the company, and the total amount expected to be realised therefrom;

(b) the liabilities of the company; and

(c) the estimated expenses of winding-up, made up to the latest practicable date before the making of the declaration.

(3) The declaration shall have no effect for the purposes of this Act unless-

(a) it is made at the meeting of directors referred to in subsection (1);

(b) it is made less than five weeks before the passing of the resolution for voluntary winding-up; and

(c) it is lodged with the Registrar on or before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out.

(4) A director who makes a declaration under this section without having

reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

(5) If the company is wound-up in pursuance of a resolution for voluntary winding-up passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed that the director did not have reasonable grounds for his opinion.

Division 13.4-Provisions applicable only to members' voluntary winding-up

309. This Division shall apply to a members' voluntary winding-up of a company. Provisions applicable only to members' voluntary winding-up

310. (1) After the commencement of the winding-up of the company, the company shall by ordinary resolution appoint one or more liquidators for the purposes of winding-up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them. Appointment of liquidator

(2) On the appointment of the liquidator, all the powers of the directors shall cease except so far as the liquidator, or the company by ordinary resolution with the consent of the liquidator, approves the continuance thereof.

(3) Subject to any direction of the court on the application of any member, creditor or liquidator, the company may, by special resolution, of which the requisite notice has been given not only to the members but also to the creditors and the liquidator, remove any liquidator.

(4) If a vacancy occurs by resignation, removal or otherwise in the office of a liquidator, the company by ordinary resolution may fill the vacancy and for that purpose a general meeting may be convened by any member, or, if there were more liquidators than one, by the continuing liquidators.

311. (1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the solvency declaration, he shall forthwith convene a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company. Duty of liquidator to call creditors

(2) The notice of the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (3).

(3) The creditors may, at the meeting convened under subsection (1), appoint some other person to be liquidator of the company instead of the liquidator appointed by the company.

(4) Within seven days after a meeting has been held pursuant to subsection (1), the liquidator shall lodge with-

(a) the Registrar; and

(b) the official receiver;

a notice that the meeting has been held, stating the decisions, if any, taken at

the meeting.

(5) Where the liquidator has convened a meeting under subsection (1), the winding-up shall thereafter proceed as if the winding-up were a creditors' voluntary winding-up, but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting held under subsection (1) was held less than three months before the end of that year.

(6) A liquidator who fails to comply with subsection (1) or (4) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

312. (1) At any time during the course of a voluntary winding-up prior to the dissolution of the company, the company may, by special resolution, resolve that the winding-up proceedings be stayed. Staying of members' voluntary winding-up

(2) After the passing of the special resolution, application may be made to the court by the liquidator or any member of the company and the court may, in its discretion and subject to such terms and conditions as it thinks fit, order that the winding-up be stayed, that the liquidator be discharged, and that the directors resume the management of the company.

(3) Not less than twenty-eight days' written notice of the hearing of any application to the court under subsection (2) shall be given by the applicant to the official receiver, to every director of the company, and to any liquidator of the company, and the official receiver shall cause a copy of the notice to be published in the Gazette not later than seven days before the hearing.

(4) The official receiver and any director, liquidator, member or creditor of the company shall be entitled to appear on the hearing of the application and to call witnesses and give evidence.

(5) If the court makes an order confirming the resolution, the company shall within twenty-one days thereafter lodge a copy of the order and resolution with the Registrar, who shall cause a notice thereof to be published in the Gazette.

(6) On the publication of the notice, the winding-up shall cease and the company shall continue as a going concern subject to any terms or conditions in the order.

(7) If the company fails to comply with subsection (5), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

Division 13.5-Provisions applicable only to creditors' voluntary winding-up

313. This Division shall apply to a creditors' voluntary winding-up of a company. Provisions applicable only to creditors' voluntary winding-up

314. (1) Where a resolution for the voluntary winding-up of a company has been proposed, and no declaration of solvency made, the company shall cause a meeting of the creditors of the company (in this section called "the meeting") to be convened for the day, or the day after the day, on which the meeting is to be held at which the resolution for voluntary winding-up is to put, or on which the resolution is expected to be passed under section one hundred and

fifty-seven.Meetings of creditors

(2) The company shall cause notice of the meeting of creditors to be sent to each creditor, being notice-

(a) not less than the notice to members of any meeting for the purposes of the resolution for voluntary winding-up; and

(b) in any case, of not less than seven days.

(3) The notice to the creditors shall be accompanied by a statement showing the names of all creditors and the amounts of their claims.

(4) The company shall cause notice of the meeting of the creditors to be published at least seven days before the date of the meeting in the Gazette and in any newspaper circulating generally in Zambia.

(5) The company shall-

(a) cause a full statement of the company's affairs to be laid before the meeting of creditors, showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims; and

(b) appoint a director to attend the meeting.

(6) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding-up.

(7) The creditors at the meeting may appoint one of their number, or the director appointed under subsection (5), to preside at the meeting.

(8) If the meeting of the company is adjourned and the resolution for winding-up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding-up.

(9) The company shall nominate a liquidator for the company.

(10) The creditors may, by ordinary resolution, nominate at the meeting a liquidator for the company.

(11) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator.

(12) If no person is nominated by the creditors, the person nominated by the company shall be liquidator.

(13) Where different persons are nominated as liquidator, any director, member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(14) If a liquidator, other than a liquidator appointed by or by the direction of the court, resigns or otherwise vacates that office, the creditors may fill

the vacancy and, for that purpose, a meeting of the creditors may be summoned by any two of their number.

(15) If the company fails to comply with subsection (1), (2), (3), (4) or (5), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(16) If the nominated director or the secretary of the company fails to comply with subsection (6), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.

315. (1) There shall be a committee of inspection for the winding-up of a company if the creditors, at the meeting convened under section three hundred and eleven or three hundred and fourteen or at any subsequent meeting, so decide by ordinary resolution and appoint not more than five persons, whether creditors or not, to be members of the committee. Appointment of committee of inspection

(2) The company may, at the time of the passing of the resolution for voluntary winding-up is passed or at any time subsequently, by ordinary resolution, appoint not more than five persons to be, subject to this section, members of any committee of inspection.

(3) The creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this subsection the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) Subject to this section, section two hundred and ninety-five shall apply with respect to a committee of inspection appointed under this section.

316. (1) The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator. Fixing of liquidator's remuneration and vesting of directors' powers in liquidator

(2) On the appointment of a liquidator, all the powers of the directors shall vest in the liquidator, and the powers and authority of every director shall cease, except so far as the committee of inspection, or, if there is no such committee, the creditors, sanction the continuance thereof.

317. (1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding-up shall be void. Stay of proceedings

(2) After the commencement of the winding-up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court directs.

Division 13.6-Provisions applicable to every voluntary winding-up

318. This Division shall apply to every voluntary winding-up of a company. Provisions applicable to every voluntary winding-up

319. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding-up, be applied pari passu in satisfaction of its liabilities, and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company. Distribution of property of company

320. (1) If for any reason there is no liquidator acting, the court may appoint a liquidator. Review by court of liquidators appointment and remuneration

(2) The court may on cause shown remove a liquidator and appoint another liquidator.

(3) Any member or creditor or the liquidator may at any time before the dissolution of the company apply to the court to review the remuneration of the liquidator, and the decision of the court shall be conclusive.

321. (1) The liquidator may - Powers and duties of liquidators

(a) with the approval of -

(i) a resolution of the company, in the case of a members' voluntary winding-up; or

(ii) the court or the committee of inspection, in the case of a creditors' voluntary winding-up;

exercise any of the powers given by section two hundred and eighty-nine to a liquidator in a winding-up by the court;

(b) exercise any of the other powers by this Act given to the liquidator in a winding-up by the court; and

(c) convene meetings of the company for the purpose of obtaining the sanction of the company in respect of any matter or for any other purpose he thinks fit.

(2) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such a determination, by any number not less than two.

322. (1) Where it is proposed that the whole or part of the business or property of a company (in this section called "the company") be transferred or sold to another body corporate (in this section called "the corporation"), the liquidator may, with the approval of - Power of liquidator to accept shares, etc., as consideration for sale of property of company

(a) a special resolution of the company, in the case of a members' voluntary winding-up; or

(b) the court or the committee of inspection, in the case of a creditors' voluntary winding-up;

receive, in compensation or part compensation for the transfer or sale, fully paid shares, debentures or other like interests in the corporation for distribution among the members of the company or may enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures or other like interests or in addition thereto, participate

in the profits of or receive any other benefit from the corporation.

(2) If, within one year after the date of the passing of such a special resolution, the winding-up becomes a winding-up by the court because of an order made under section two hundred and seventy-two, the transfer or sale and distribution or arrangement shall not be valid unless approved by the court.

(3) Subject to this section, any transfer or sale and distribution of arrangement under this section shall be binding on the company and all the members thereof and each member shall be deemed to have agreed with the corporation to accept the fully-paid shares, debentures, or other like interests to which he is entitled under the distribution or arrangement.

(4) If any member of the company, in respect of any shares held by him, expresses his dissent in writing addressed to the liquidator and served upon the liquidator within twenty-eight days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase the shares that he holds at a price to be determined by agreement or by arbitration in the manner provided by subsection (7).

(5) If the liquidator elects to purchase the member's shares, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(6) A special resolution shall not be valid for the purposes of this section unless it is passed before or concurrently with the resolution for voluntary winding-up.

(7) For the purposes of an arbitration under this section-

(a) the Arbitration Act shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party. Cap. 41

(b) the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any two or more of the liquidators; and

(c) the court may give any directions necessary for the initiation and conduct of the arbitration and the directions shall be binding on the parties.

(8) Nothing in this section shall authorise any variation or abrogation of the rights of any creditors of the company.

323. (1) If a winding-up continues for more than one year, the liquidator shall convene-Annual meetings of members and creditors

(a) a general meeting of the company, in the case of a members' voluntary winding-up; and

(b) separate meetings of the creditors and of the company, in the case of a creditors' voluntary winding-up;

within three months after the end of the first year after the commencement of the winding-up and of each succeeding year, and shall lay before every such meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) In the case of a creditors' voluntary winding-up, the meeting of the company shall be held after, but not more than one month after, the meeting of the creditors.

(3) A liquidator who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

324. (1) As soon as the affairs of the company are fully wound-up, the liquidator shall make up a report showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall convene-Final meeting and dissolution of company

(a) a general meeting of the company, in the case of a members' voluntary winding-up; and

(b) separate meetings of the creditors and of the company, in the case of a creditors' voluntary winding-up;

for the purpose of laying before the meetings the report and giving any explanation thereof.

(2) In the case of a creditors' voluntary winding-up, the meeting of the company shall be held after, but not more than one month after, the meeting of the creditors.

(3) A notice of the meetings shall be published in one issue of the Gazette and in one issue of a newspaper in general circulation throughout Zambia, which notice shall specify the time, place and object of each meeting and shall be published one month at least before each such meeting.

(4) The liquidator shall, within seven days after the meeting or the later of the meetings, lodge with the Registrar and with the official receiver a return in the prescribed form of the holding of the meetings or meeting and of the date or dates thereof, with a copy of the report attached to the return.

(5) The quorum at a meeting of the company shall be two members and at a meeting of the creditors shall be two creditors.

(6) If a quorum is not present at a meeting, the liquidator shall, in lieu of the return referred to in subsection (4), lodge with the Registrar and the official receiver a return (with account attached) that the meeting or meetings were duly summoned and that no quorum was present thereat.

(7) Upon the lodgement of the return, the Registrar shall strike the name of the company off the register and cause notice thereof to be published in the Gazette, and the company shall thereupon be dissolved as at the date of the publication of the notification in the Gazette.

(8) A liquidator who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

325. (1) Any arrangement entered into between a company about to be or in the course of being wound-up and its creditors shall, subject to the right of appeal under this section, be binding on the company if approved by a special resolution, and on the creditors if approved by a special resolution of the

creditors. When an arrangement is binding on creditors

(2) Any dispute with regard to the value of any security or lien or the amount of a debt or set-off the subject of the arrangement may be settled by the court on the application of the company, the liquidator, or the creditor.

(3) Any creditor or member may, within twenty-one days after the completion of the arrangement, appeal to the court against it, and the court may thereupon amend, vary or confirm the arrangement, as it thinks just.

326. (1) The liquidator or any member or creditor may apply to the court—Application to court to have questions determined or powers exercised

(a) to determine any question arising in the winding-up of a company; or

(b) to exercise all or any of the powers which the court might exercise if the company were being wound-up by the court.

(2) The court, if satisfied that the determination of the question or the exercise of power will be just or beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

327. All proper costs, charges and expenses of and incidental to the winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims. Costs

328. Where a petition has been presented to the court to wind-up a company on the ground that it is unable to pay its debts, the company shall not resolve that it be wound-up voluntarily, except with the leave of the court.

Division 13.7—Provisions applicable to every mode of winding-up Limitation on right to wind-up voluntarily

329. This Division shall apply to every winding-up of a company. Provisions applicable to every mode of winding-up

330. The court may at any time during the course of a winding-up direct a meeting of the creditors of any class to be held and conducted in such manner as it thinks fit to consider such matters as it shall direct, and may give such ancillary or consequential directions as it thinks fit. Meetings of creditors

331. (1) A person shall be accounted a creditor of a company for the purposes of a meeting of creditors under this Part if, upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the company, there appears to be a balance due to him. Conduct of meetings of creditors

(2) At a meeting of creditors, unless the court directs otherwise—

(a) each creditor shall have votes in proportion to amount of the balance apparently due to him by the company upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the company; and

(b) sections one hundred and forty-six to one hundred and fifty-two shall apply with the necessary modifications.

(3) Subject to this Part and to any direction by the court, fourteen days' notice of a meeting of creditors shall be given either personally or in a newspaper circulating generally in Zambia.

332. (1) A person shall not be eligible for appointment or competent to act or to continue to act as liquidator of a company if he is-Eligibility for appointment as liquidator

(a) a body corporate;

(b) an infant or any other person under legal disability;

(c) a person prohibited or disqualified from so acting by any order of a court;

(d) an undischarged bankrupt;

(e) a director or secretary of the company or any related company, or any person who has been such a director or secretary within the two years before the commencement of the winding-up, save with the leave of the court;

(f) a person who has at any time been convicted of an offence involving fraud or dishonesty; or

(g) a person who has at any time been removed from an office of trust by order of a court.

(2) An auditor of a company may be appointed as liquidator of that company.

(3) Any appointment made in contravention of this section shall be void.

(4) A person who acts or continues to act as liquidator of a company in contravention of this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to a term of imprisonment not exceeding six months, or to both.

333. (1) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Acts of liquidator valid

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator, be valid in favour of any person taking such property bona fide and for value and without notice of the defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to the person.

(4) For the purposes of this section a disposition of property includes a payment of money.

334. (1) A liquidator shall keep proper books at his office in which he shall cause to be made entries or minutes of proceedings at meetings and of such other

matters, if any, as may be prescribed. General provisions as to liquidators

(2) Any creditor or member may, subject to the control of the court, personally or by his agent inspect the liquidator's books at his office in accordance with section one hundred and ninety-three.

(3) The court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the court, or if any complaint is made to the court by any creditor or member or by the official receiver in regard thereto, the court shall inquire into the matter and take such action as it thinks fit.

(4) The Registrar or the official receiver may report to the court any matter which in his opinion is misfeasance, neglect or omission on the part of the liquidator, and the court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.

(5) The court may at any time require a liquidator to answer any inquiry in relation to the winding-up and may examine him or any other person on oath concerning the winding-up, and may direct an investigation to be made of the books and vouchers of the liquidator.

(6) The court may require any member, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith, or within such time as the court directs, any money, property, books and papers in his hands to which the company is prima facie entitled.

335. (1) Where a person other than the official receiver is the liquidator and there is no committee of inspection, the official receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee. Powers of official receiver where no committee of inspection

(2) Where the official receiver is the liquidator and there is no committee of inspection, the official receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

336. Any person aggrieved by any act or decision of the liquidator may apply to the court, which may confirm, reverse, or modify the act or decision complained of and make such order as it thinks just. Appeal against decision of liquidator

337. (1) A liquidator shall, within fourteen days after his appointment, lodge with the Registrar and with the official receiver notice of his appointment and of the situation of his office and of his postal address and, in the event of any change in the situation of his office or in his postal address, shall within twenty-one days after the change lodge with the Registrar and with the official receiver notice of the change. Notice of appointment and address

(2) Service made by leaving any document at the office of the liquidator given in such a notice, or by sending it in a properly addressed and prepaid registered letter posted to the postal address given in such a notice, shall be good service upon the liquidator and upon the company.

(3) A liquidator shall, within twenty-one days after his resignation or removal from office, lodge notice thereof with the Registrar and with the official receiver.

(4) If a liquidator fails to comply with this section, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

338. (1) A liquidator shall, within one month after-Liquidator's accounts

(a) the end of the period of six months from the date of his appointment;

(b) the end of every subsequent period of six months; and

(c) ceasing to act as liquidator or obtaining an order of release;

lodge with the Registrar and, if the liquidator is not the official receiver, with the official receiver, accounts of his receipts and payments and a statement of the position in the wind-up, verified by a statutory declaration.

(2) The official receiver may cause the accounts of any liquidation to be audited by an auditor approved by him, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(3) A copy of the accounts or, if audited, a copy of the audited accounts, shall be kept by the liquidator at his office and shall there be open to the inspection of any member or creditor or of any other person interested in accordance with section one hundred and ninety-three.

(4) The liquidator shall, when he is next forwarding any report or notice to the creditors and members generally-

(a) give notice to every member and creditor that the accounts have been prepared; and

(b) in the notice inform members and creditors that the accounts may be inspected at his office and state the times during which inspection may be made.

(5) The cost of an audit under this section shall be fixed by the official receiver and be part of the expenses of winding-up.

(6) A liquidator other than the official receiver who fails to comply with this section shall be guilty of an offence, and shall be liable to a fine not exceeding five hundred monetary units.

339. (1) Where a company is being wound-up, every invoice, order of goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver of any property of the company, being a document on or in which the name of the company appears, shall have the words, "in liquidation" added after the name of the company where it first appears therein. Notification that a company is in liquidation

(2) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on

conviction to a fine not exceeding three monetary units in respect of each document.

340. (1) Where a company is being wound-up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding-up of the company shall, as between the members and creditors of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded. Books of company

(2) Subject to this section, when a company has been wound-up, the liquidator shall retain the books and papers referred to in subsection (1) (other than vouchers) for a period of seven years from the date of dissolution of the company.

(3) The books and papers referred to in subsection (1) may be destroyed within a period of seven years after dissolution of the company-

(a) in accordance with the directions of the court, in the case of a winding-up by the court;

(b) as the company by resolution directs, in the case of a members' voluntary winding-up; and

(c) as the committee of inspection, or, if there is no such committee, as the creditors of the company direct, in the case of a creditors' voluntary winding-up.

(4) A liquidator who fails to comply with subsection (2) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

(5) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if the book or paper has been destroyed in accordance with this section.

341. (1) Whenever the cash balance standing to the credit of a company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands on the company, the committee may authorise the liquidator, unless the court on application by any creditor directs otherwise, to invest the sum or any part thereof in securities issued by the Government of Zambia or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the company. Investment of surplus funds

(2) Where there is no committee of inspection, the liquidator, may form the opinion for the purposes of subsection (1), and the authorisation of the committee referred to in that section shall be dispensed with.

(3) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the company's estate, the committee of inspection may direct the sale or realisation of such part of the securities as is necessary.

(4) If there is no committee of inspection, subsection (2) shall apply as if a reference to the committee were a reference to the liquidator.

342. (1) Where a liquidator has in his hands or under his control-Unclaimed assets

(a) any unclaimed dividend or other moneys which have remained unclaimed for more than six months from the date when the dividend or other moneys became payable; or

(b) any unclaimed or undistributed moneys arising from the property of the company after making final distribution;

he shall forthwith pay those moneys to the official receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to a certificate or receipt for the moneys so paid, which certificate shall be an effectual discharge to him in respect thereof.

(2) The court may at any time-

(a) on the application of the official receiver, order any liquidator to submit to it accounts of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control, verified by affidavit;

(b) direct an audit thereof; and

(c) direct the liquidator to pay those moneys to the official receiver to be placed to the credit of the Companies Liquidation Account.

(3) This section shall not deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(4) If a claimant makes any demand for any moneys placed to the credit of the Companies Liquidation Account, the official receiver, upon being satisfied that the claimant is the owner of the money, shall authorise payment thereof to be made to him out of the Account.

(5) A person dissatisfied with the decision of the official receiver in respect of a claim made in pursuance of subsection (5) may appeal to the court, which may confirm, disallow or vary the decision.

(6) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Account, but such a person may have recourse against the claimant to whom the unclaimed moneys have been paid.

(7) Any unclaimed moneys paid to the credit of the Companies Liquidation Account, to the extent to which they have not been under this section paid out of the Account, shall, on the expiration of six years from the date of the payment of the moneys to the credit of the account, be paid into the General Revenues of the Republic.

343. (1) Unless expressly directed to do so by the official receiver pursuant to subsection (2), a liquidator shall not incur any expense in relation to the winding-up of a company unless there are sufficient available assets. Expenses of winding-up where assets insufficient

(2) The official receiver may, on the application of any creditor or member, direct a liquidator to incur a particular expense on condition that the creditor or member indemnify the liquidator in respect of the recovery of the amount

expended and, if the official receiver so directs, gives such security to secure the amount of the indemnity as the official receiver thinks reasonable.

344. (1) The court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the members or creditors as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the members or creditors to be convened, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court. Meetings to ascertain wishes of members or creditors

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of members, regard shall be had to the number of votes held by each member under this Act or the articles.

345. (1) In every winding-up, subject to this section, debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value. Proof of debts

(2) Subject to section three hundred and forty-six, the same rules shall apply in the winding-up of an insolvent company with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as apply in relation to the estates of bankrupt persons under the law relating to bankruptcy.

346. (1) Subject to this Act, in a winding-up there shall be paid in priority to all other unsecured debts-Preferential debts

(a) the costs and expenses of the winding-up including the taxed costs of a petitioner payable under section two hundred and seventy-four, the remuneration of the liquidator, and the costs of any audit carried out pursuant to section three hundred and thirty-eight;

(b) all amounts due-

(i) by way of wages or salary (whether or not earned wholly or in part by way of commission) accruing to any employee within the period of three months before the commencement of the winding-up;

(ii) in respect of leave accruing to any employee within the period of two years before the commencement of the winding-up;

(iii) in respect of any paid absence (not being leave) accruing to any employee within the period of three months before the commencement of the winding-up;

(iv) by way of recruitment expenses or other amounts reimbursable under any contract of employment;

(c) an amount equal to three months' wages or salary, by way of severance pay, to each employee;

(d) all amounts due in respect of workers' compensation under any written law relating to workers' compensation accrued before the commencement of the winding-up;

(e) any tax, duty or rate payable by the company in respect of any period prior to the commencement of the winding-up, whether or not payment has become due after that date;

(f) all Government rents not more than five years in arrears at the commencement of the winding-up; and

(g) all rates from the company to a local authority having become due and payable within the period of three years before the date of commencement of the winding-up.

(2) Debts having priority shall rank as follows-

(a) firstly, the debts referred to in paragraph (a);

(b) secondly, the debts referred to in paragraphs (b), (c) and (d);

(c) thirdly, the debts referred to in paragraphs (e) and (f);

(d) fourthly, the debts referred to in paragraph (g);

of subsection (1).

(3) Debts having the same priority shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(4) Where a payment has been made to any employee of the company on account of wages or salary out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding-up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding-up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1) and any amount payable in priority by virtue of subsection (3), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(6) Where the company is, under a contract of insurance entered into before the commencement of the winding-up, insured against liability to third parties, then if any such liability is incurred by the company (either before or after commencement of the winding-up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting the amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the

debts referred to in subsection (1).

(7) If the liability of the insurer to the company is less than the liability of the company to the third party nothing in subsection (5) shall limit the third party in respect of the balance.

(8) Subsections (5) and (6) shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(9) Notwithstanding anything in subsection (1)-

(a) paragraph (d) of that subsection shall not apply in relation to the winding-up of a company in any case where-

(i) the company has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation;

(ii) the company is being wound-up voluntarily merely for the purpose of reconstruction or of amalgamation with another company; and

(iii) the right to the compensation has, on the reconstruction or amalgamation, been preserved to the person entitled thereto; and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (e), (f) or (g) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from the security.

(10) Where, in any winding-up-

(a) assets have been recovered under an indemnity for costs of litigation given by certain creditors;

(b) assets have been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or

(c) expenses in relation to which a creditor has indemnified a liquidator have been recovered;

the court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.

(11) Subject to this Act, all debts proved in the winding-up shall be paid *pari passu*.

(12) An amount paid to an employee under paragraph (c) of subsection (1) shall be deducted from any amount payable as severance pay due to the employee under any law or agreement.

(13) This section shall be deemed to have commenced on 1st November, 1994.

(As amended by Act No. 6 of 1995)

347. (1) Any conveyance, transfer, mortgage, delivery of goods, payment,

execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy under the law of bankruptcy be void or voidable, shall, if the company is wound-up, be void or voidable in the same way. Avoidance of preference

(2) For the purposes of this section, the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be the date upon which the winding-up commenced.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

348. A floating charge on the undertaking or property of the company created within twelve months before the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time, or subsequently, in consideration for the charge, together with interest on that amount at the rate fixed by the terms of the charge. Avoidance of floating charge

349. (1) Where any property, business or undertaking has been acquired by a company within the period of two years before the commencement of the winding-up of the company-Liquidator's right to recover in respect of certain sales to or by company

(a) from a person who was at the time of the acquisition a director of the company; or

(b) from a second company of which, at the time of the acquisition, a person was a director who was also a director of the first company;

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the value of the consideration given exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company within the period of two years before the commencement of the winding-up of the company-

(a) to a person who was at the time of the sale a director of the company; or

(b) to a second company of which at the time of the sale a person was a director who was also a director of the first company; the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the value of the consideration received.

(3) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking and any similar consideration.

350. (1) Where any part of the property of a company consists of-Disclaimer of onerous property

(a) any estate or interest in land which is burdened with onerous covenants;

(b) shares in any body corporate that are subject to restrictions on transfer;

(c) unprofitable contracts; or

(d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money;

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court or the committee of inspection and subject to this section, by writing signed by him, disclaim the property at any time within twelve months after-

(i) the commencement of the winding-up; or

(ii) the property in question came to the knowledge of the liquidator, if it did not do so within one month after the commencement of the winding-up;

or within such extended period as is allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, alter the rights or liabilities of any other person.

(3) The court or committee of inspection, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other orders in the matter, as the court or committee thinks just.

(4) The liquidator shall not disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as is allowed by the court, given notice to the applicant that he intends to apply to the court or the committee for leave to disclaim.

(5) In the case of a contract, if the liquidator, after an application referred to in subsection (4), does not within that period or further period disclaim the contract, the liquidator shall be deemed to have adopted it.

(6) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding-up.

(7) The court may, on the application of a person who claims an interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to-

(a) any person entitled thereto;

(b) any person to whom it seems just that the property should be delivered by way of compensation for such liability; or

(c) a trustee for such a person;

on such terms as the court thinks just.

(8) On any such vesting order being made and a copy thereof being lodged with-

(a) the Registrar;

(b) the official receiver; and

(c) the appropriate authority concerned with the recording or registration of dealings in the land, if the order relates to land;

the property shall vest accordingly without any further conveyance, transfer or assignment.

(9) Notwithstanding anything in subsection (7), where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person-

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order.

(10) A mortgagee or under-lessee who declines to accept a vesting order on the terms referred to in subsection (9) shall be excluded from all interests in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court may vest the estate and interest of the company in the property in any person liable personally or in a representative capacity and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(11) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

351. (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound-up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before-Restriction of rights of creditor as to execution or attachment

(a) the date on which he had any notice of a meeting at which a resolution for voluntary winding-up was to be proposed; or

(b) the date of the commencement of the winding-up, if he had no such notice.

(2) A person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall, in all cases, acquire a good title to them against the liquidator.

(3) The rights conferred by subsection (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks just.

(4) For the purposes of this section-

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

(5) For the purposes of this section, "goods" includes all chattels personal.

352. (1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that-Duties of sheriff as to goods taken in execution

(a) a provisional liquidator has been appointed;

(b) a winding-up order has been made; or

(c) a resolution for voluntary winding-up has been passed;

the sheriff shall, on being required, deliver to the liquidator the goods and any money seized or received in part satisfaction of the execution.

(2) The costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(3) Subject to this section, where, under an execution in respect of a judgement for a sum exceeding fifty monetary units, the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid, and shall retain the balance for fourteen days.

(4) If, within that period of fourteen days, notice is served on him of an application for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up, the sheriff shall, when an order is made or a resolution is passed for the winding-up, pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(5) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as

the court thinks fit.

(6) For the purposes of this section, "goods" includes all chattels personal.

353. (1) A person who, being a past or present officer or a past or present member of a company which is being wound-up-Offences by officers of companies in liquidation

(a) does not to the best of his knowledge and belief fully and truly reveal to the liquidator all the property real and personal of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator, or as he directs-

(i) all the real and personal property of the company in his custody or under his control and which he is required by law to deliver up; or

(ii) all books and documents in his custody or under his control belonging to the company and which he is required by law to deliver up;

(c) within twelve months before the commencement of the winding-up or at any time thereafter-

(i) has concealed any part of the property of the company having a value of more than ten monetary units, or has concealed any debt due to or from the company;

(ii) has fraudulently removed any part of the property of the company having a value of more than ten monetary units;

(iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or document affecting or relating to the property or affairs of the company;

(iv) has made or has been privy to the making of any false entry in any book or document affecting or relating to the property or affairs of the company;

(v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;

(vii) has obtained on credit, or for or on behalf of the company, under the false pretence that the company is carrying on business, any property which the company has not subsequently paid for; or

(viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, except where the pawning, pledging or disposing was in the ordinary way of the business of the company;

(d) makes any material omission in any statement relating to the affairs of the company;

(e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the liquidator thereof;

(f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(g) within the period of twelve months before the commencement of the winding-up or at any time thereafter has attempted to account for any part of the property of the company by fictitious losses or expenses; or

(h) within the period of twelve months before the commencement of the winding-up or at any time thereafter has made any false representation or committed any other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up;

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

(2) It shall be a defence to a charge under paragraph (a), (b) or (d) or subparagraph (i), (vii) or (viii) of paragraph (c) of subsection (1) if the accused proves that he had no intent to defraud, and to a charge under paragraph (f) or subparagraph (iii) or (iv) of paragraph (c) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (viii) of paragraph (c) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

354. Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing the appointment of the person, or of any other person, as the company's liquidator shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both. Inducement to be appointed liquidator

355. Every officer or member of any company being wound-up who destroys, mutilates, alters or falsifies any books, documents or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both. Penalty for falsification of books

356. If, when a company is wound-up, it is shown that the company failed to keep accounting records in accordance with section one hundred and sixty-two for any period during the period of two years before the commencement of the winding-up, each officer in default, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the failure was excusable, shall be guilty of an offence, and shall be liable on

conviction to a fine not exceeding one thousand monetary units or to imprisonment for a period not exceeding twelve months, or to both. Liability where proper accounts not kept

357. (1) If an officer of a company who is knowingly a party to the contracting of a debt by the company has, at the time the debt is contracted, no reasonable or probable ground of expectation (after taking into consideration the other liabilities, if any, of the company at the time) of the company's being able to pay the debt, the officer shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both. Liability for contracting debt

(2) Where a person has been convicted of an offence against this section, the court, on the application of the liquidator or any creditor or member of the company, may make an order that the person shall be personally responsible, without any limitation of liability, for the debts or other liabilities of the company or for such of those debts or other liabilities as the court directs.

(3) An order under this section may provide for measures to give effect to the liabilities of the person under the order, and in particular may provide that those liabilities shall be a charge on any debt or obligation due from the company to him, or on any interest in the company of which he has, directly or indirectly, the benefit.

(4) The court may make such further orders as it thinks necessary to enforce any charge imposed under this section.

358. (1) If, in the course of winding-up, it appears that any person who has taken part in the formation or promotion of the company, or any past or present liquidator or officer—Power of court to assess damages against delinquent officers

(a) has misapplied or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust or duty in relation to the company;

the court may, on the application of the liquidator or of any creditor or member, inquire into the conduct of that person, liquidator or officer and compel him to repay or restore the money or property, or any part thereof, with interest at such rate as the court thinks just, or to contribute such a sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the court thinks just.

(2) This section shall apply to and in respect of the receipt of any money or property by an officer of the company during the two years preceding the commencement of the winding-up, whether by way of salary or otherwise, that appears to the court to be unfair or unjust.

(3) This section shall apply to the conduct of a person notwithstanding that the person is criminally liable for the conduct.

359. (1) If it appears to the court, in the course of either a winding-up by the court or a voluntary winding-up, that any past or present officer, or any

member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding-up or of its own motion, direct the liquidator to report the matter to the Director of Public Prosecutions. Prosecution of delinquent officer and members

(2) If-

(a) it appears to the liquidator, in the course of a voluntary winding-up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable; or

(b) the liquidator in any winding-up is given a direction under subsection (1);

he shall forthwith report the matter to the Director of Public Prosecutions and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Director of Public Prosecutions with such information and give to him such access to and facilities for inspecting and taking copies of any documents as he may require.

(3) Where the Director of Public Prosecutions receives a report under this section, he may refer the matter to the Registrar for further inquiry, and the Registrar shall thereupon investigate the matter, and may apply to the court for an order conferring on any person designated by the court for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding-up by the court.

(4) If the Director of Public Prosecutions institutes proceedings in a matter reported to him under this section, the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Director of Public Prosecutions all assistance in connection with the prosecution which he is reasonably able to give.

(5) For the purposes of subsection (4) "agent of the company" includes any banker or legal practitioner of the company and any person appointed by the company as auditor.

(6) If any person fails to comply with subsection (4), the court may, on the application of the Director of Public Prosecutions, direct that person to comply with that subsection, and where any application is made under this subsection with respect to a liquidator, the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

360. A person who, while an officer of a company which is subsequently ordered to be wound-up by the court or which subsequently passes a resolution for voluntary winding-up-

(a) induced any person to give credit to the company by false pretences or by means of any other fraud;

(b) with intent to defraud creditors of the company, made or caused to be made any gift or transfer of charges on, or caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, concealed or removed any part of the property of the company within two months before the date of any unsatisfied judgement or order for payment of money obtained against the company;

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

Division 13.8-Dissolution of defunct companiesFrauds by officers of companies which have gone into liquidation

361. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by registered post a letter to that effect and also stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the Gazette with a view to dissolving the company under this section. Power of Registrar to strike defunct company off register

(2) If the Registrar, at the expiration of the period of one month after the sending of the letter, is not satisfied that the company is carrying on business or is in operation, he may at any time thereafter cause to be published in the Gazette and send to the company by registered post a notice that at the expiration of three months from the date of that notice, unless cause is shown to the contrary, the company will be dissolved.

(3) Where a company is being wound-up and the Registrar has reasonable cause to believe that-

(a) no liquidator is acting;

(b) the affairs of the company are fully wound-up and for a period of six months the liquidator has been in default in lodging any return required to be made by him;

(c) the affairs of the company have been fully wound-up and there are no assets, or the assets available are not sufficient to pay the costs of obtaining an order of the court dissolving the company; or

(d) the affairs of the company have been fully wound-up and that it is not necessary in the circumstances of the case to obtain an order of the court dissolving the company;

he may cause to be published in the Gazette and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) Where a company-

(a) by ordinary resolution requests the Registrar to strike it off the register; and

(b) lodges with the Registrar a copy of the resolution, summary of accounts, and a statutory declaration of two or more directors showing what disposition the company has made of its assets and that the company has no debts or

liabilities;

the Registrar shall cause to be published in the Gazette a notice to the same effect as that referred to in subsection (2).

(5) After the expiration of three months from the publication in the Gazette of a notice under this section, the Registrar shall, unless cause to the contrary is shown, strike the name of the company off the register, and shall cause notice thereof to be published in the Gazette.

(6) On the publication in the Gazette of the notice that name of the company has been struck off the register, the company shall be dissolved, but-

(a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the court to wind-up a company which has been dissolved under this section.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.

(8) The fees of the Registrar in respect of the dissolution of a company under this section and the costs incurred by him in publishing notices in the Gazette shall be payable by the company and recoverable from it.

362. (1) Where a company has been dissolved under section two hundred and ninety-three, three hundred and twenty-four or three hundred and sixty-one, the court may at any time within two years after the date of dissolution, on application by the liquidator of the company or by any other person who appears to the court to be interested, make an order upon such terms as the court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved, except that, for the purposes of any period of limitation, time shall not be deemed to run during the period between the dissolution and the date of the order, or of such other date as the order specifies. Power of court to declare dissolution of company void

(2) The court may by the order give such directions and make such provisions as it thinks just for placing the company and all other persons in the same position as nearly as may be as if the company had never been dissolved.

(3) The person on whose application the order is made shall, within seven days after the making of the order or such further time as the court may allow, lodge with the Registrar and with the official receiver a copy of the order, and the Registrar shall thereupon cause notice thereof to be published in the Gazette or otherwise as the court may direct.

(4) If the person fails to comply with subsection (3), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

363. (1) Where, after a company has been dissolved, the Registrar is satisfied-Registrar to act as representative of defunct company in certain events

(a) that the company, if still existing, would be legally or equitably bound

to carry out, complete or give effect to some dealing, transaction or matter;
and

(b) that in order to carry out, complete or give effect thereto, some purely administrative and not discretionary act should have been done by or on behalf of the company, or should be done by or on behalf of the company if it were still existing;

the Registrar may, as representing the company or its liquidator; do or cause to be done any such act.

(2) The powers of the Registrar under subsection (1) shall include the powers to execute or sign any relevant instrument or document, and the Registrar shall, when so executing or signing an instrument or document, endorse thereon a note or memorandum to the effect that he has done so under this section, and such an execution or signature shall have the same force, validity and effect as if the company had been in existence and had executed the instrument or document.

(3) Neither the Registrar nor the Government shall incur any liability to any person by reason of any act done or caused to be done by the Registrar under this section.

Division 13.9-Winding-up of other bodies corporate

364. (1) Subject to this section, this Part shall apply, with the necessary modifications, to any body corporate incorporated in Zambia, not being a company. Winding-up of other Zambian bodies corporate

(2) This section shall not apply to a body corporate incorporated by or under any written law of Zambia if the law makes specific provisions for the winding-up of bodies corporate formed by or under it.

(3) A winding-up by the court under this section may be made only on the petition of the body corporate.

365. (1) In this section, "external company" means a body corporate incorporated in a foreign country, not being a foreign company, that has assets or an undertaking in Zambia. Winding-up of other foreign bodies corporate

(2) Subject to this section, this Part shall apply with the necessary modifications to the operations and business and assets in Zambia of an external company, as if it were a company incorporated in Zambia, carrying on the operations or business of the external company in Zambia, whose only assets are the assets of the external company in Zambia.

(3) An external company may be wound-up under this section whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation.

(4) An external company may be wound-up under this section on the following grounds in addition to those referred to in section two hundred and seventy-two:

(a) if it is in the course of being wound-up, voluntarily or otherwise, in the country of its incorporation;

(b) if it is dissolved in the country of its incorporation or has ceased to carry on business in Zambia, or is carrying on business for the purposes only of

winding-up its affairs;

(c) if the court is of the opinion that the company is being operated in Zambia for any unlawful purposes.

(5) The court may, in the winding-up order or on subsequent application by the liquidator, direct that all transactions in Zambia by or with the external company shall be deemed to be, or have been, validly done notwithstanding that they occurred after the date when the body corporate was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make the order on such terms and conditions as it deems fit.

PART XIV

MISCELLANEOUS

Division 14.1-Administration of Act

366. (1) There is hereby established an office to be known as the Office of the Registrar of Companies. The Office of the Registrar of Companies

(2) There shall be-

(a) a Registrar of Companies;

(b) at least one Deputy Registrar of Companies; and

(c) at least one Assistant Registrar of Companies.

(3) The Office of the Registrar of Companies shall consist of the Registrar, the Deputy Registrars and Assistant Registrars and the staff referred to in section three hundred and sixty-eight.

(4) The Registrar shall exercise the powers conferred on the Registrar under this Act, and shall administer the Act through the Office of the Registrar of Companies.

(5) Anything in this Act, including the signing of a document, permitted or required to be done to or by the Registrar may be done to or by a Deputy Registrar or Assistant Registrar or to or by a member of the staff of the Office of the Registrar of Companies authorised in writing for the purpose by the Registrar or a Deputy Registrar or Assistant Registrar.

(6) The Registrar shall have a seal and the seal shall bear the words "Registrar of Companies, Republic of Zambia".

367. (1) The Registrar, the Deputy Registrars and the Assistant Registrars shall be persons appointed under the Service Commissions Act, 1991. Appointment of Registrar and Deputies
Cap. 259

(2) A person shall not be appointed as Registrar or Deputy Registrar unless he is, or is qualified to be, a legal practitioner and has been so qualified for a period of three years.

368. The staff of the Office of the Registrar of Companies required for the purposes of this Act shall be persons appointed or employed under the Service

369. (1) The Registrar shall maintain the registers required under this Act together with any other registers that he thinks necessary or convenient for the purposes of this Act. Keeping of registers and lodged documents

(2) Where a document is lodged under this Act, the Registrar shall keep the document, or a copy thereof, and register it.

(3) The registers and other documents may be recorded or stored in written or printed form or by electronic or photographic process or otherwise.

(4) The Registrar shall ensure that, as far as practicable-

(a) all the particulars in the registers; and

(b) all the documents, or the copies thereof, lodged with the Registrar,

in respect of a particular company can be made available to a person who requests them within two hours after the making of the request.

(5) For the purposes of this section-

(a) the information in any register kept under the former Act shall, if it is information that would have been required to be kept on a register had this Act been in force, be deemed to be information required to be kept on a register under this Act; and

(b) any document lodged for the purposes of the former Act shall be deemed to be a document lodged under this Act.

370. (1) Where this Act requires any document or particulars to be lodged with the Registrar, the Registrar shall register them in the manner prescribed or, if no manner is prescribed for the document or particulars, as determined by the Registrar. Registration of documents

(2) For the purposes of this Act, a document or particulars shall be deemed not to have been lodged with the Registrar until any fee prescribed under section three hundred and seventy-seven has been paid to the Registrar.

(3) Subject to this Act, where this Act requires a document or particulars to be lodged under this Act, each company concerned shall lodge a separate document or set of particulars.

(4) All documents and particulars which are lodged with the Registrar shall be printed or typewritten on good quality paper to the satisfaction of the Registrar.

(5) If the Registrar is of opinion that any document or particulars lodged with him-

(a) contain matter or matters contrary to law;

(b) by reason of any error, omission or misdescription have not been duly completed;

- (c) are insufficiently legible;
- (d) are written on paper insufficiently durable; or
- (e) otherwise do not comply with the requirements of this Act;

he may refuse to register the document or particulars in that state and direct that they be amended or completed in a specified manner and re-submitted.

(6) If the Registrar gives a direction under subsection (5), the document or particulars shall be deemed not to have been lodged.

(7) The Registrar may require that a document or a fact stated in a document lodged with him shall be verified by statutory declaration.

(8) Where the Registrar is required or permitted under this Act to cause a copy or particulars of a document lodged with him to be published in the Gazette, he may require the lodgement with him of any such document in duplicate, or the provision of any such particulars, and may withhold registration of the document until the requirement has been complied with.

(9) The Registrar may alter a document if so authorised by the person who lodged the document or his representative.

371. (1) Where under this Act a document is required to be lodged with the Registrar within a specified period, the period shall be extended by fourteen days in relation to a document executed or made in a place outside Zambia. Extension of time for lodgement

(2) The Registrar may, before the end of any period fixed for the lodgement of a document or particulars, at the request of the person concerned, extend the period for lodgement by such a period, and on such terms, as he thinks reasonable in the circumstances.

(3) Subject to this section, where any document or particulars are lodged with the Registrar after the end of the period fixed for its lodgement, the Registrar shall accept it for registration upon payment of such additional fee as may be prescribed.

(4) The Registrar may reduce or waive any additional fee imposed under subsection (3) if he is satisfied that the failure to lodge the document or particulars was caused or continued solely through administrative oversight and that no person is likely to have suffered damage or to have been prejudiced as a result of the failure.

372. (1) Subject to this Act, where this Act requires a document or register to be prepared, kept, maintained or lodged, the document shall be in English. Documents to be in approved language

(2) Where the Registrar approves the lodgement of a document all or part of which is in a language other than English, he may require a certified translation into English to be annexed to it.

373. (1) Where this Act provides that a document to be lodged shall be "in the prescribed form", the Registrar shall accept for lodgement and registration a document that contains all the information required and varies from the prescribed form in inessential respects only. Prescribed forms

(2) In the period of six months from the commencement of this Act, where this Act provides that a document to be lodged shall be "in the prescribed form" and no form has been prescribed by the regulations for the purposes of the provision, the document shall be in a form approved by the Registrar.

374. (1) A person may inspect any document registered by the Registrar upon payment of such fee as may be prescribed for each inspection of the documents relating to one company. Inspection copies and evidence

(2) On the payment of the appropriate prescribed fee, the Registrar shall provide a person with-

- (a) a certificate of incorporation of a company;
- (b) a certificate of share capital of a company; or
- (c) a copy of any other document, or any part of any other document, registered by the Registrar;

certified under the hand of the Registrar.

(3) A document kept by the Registrar shall not be required to be produced for the purpose of any proceedings except by an order of the court.

375. (1) A copy of, or extract from, any document registered by the Registrar, being a copy or extract certified by the Registrar to be a true copy or extract, shall be admitted in any proceedings as of equal validity to the original document. Evidentiary provisions

(2) In any proceedings, a court shall take judicial notice of the office of the Registrar.

(3) A document purporting-

(a) to be-

(i) an order, certificate, licence or approval made or issued by the Registrar for the purposes of this Act; or

(ii) a revocation of such an order, certificate, licence or approval; and

(b) to be sealed with the seal of the Registrar or to be signed by him, or on his behalf by a Deputy Registrar or other authorised officer;

shall be presumed to be such a document, or to be duly sealed or signed.

(4) A certificate signed by the Registrar that an order made, certificate issued, or act done is the order, certificate, or act of the Registrar shall be conclusive evidence of the fact certified.

376. (1) For the purpose of ascertaining whether a company or an officer is complying with this Act or any regulations made under this Act, the Registrar may, on giving fourteen days written notice to the company, call for the production of or inspect any book required to be kept by the company. Enforcement of duty to make returns

(2) If a body corporate or any officer, receiver or liquidator of a body corporate;

(a) fails to comply with any provision of this Act which requires it, or him, to lodge or deliver any return, account, or other document, or to give notice of any matter;

(b) continues to fail to comply with the provision for the period of fourteen days after the service of a notice on it or him requiring him to do so;

the court may, on an application by the Registrar or by any member or creditor of the body corporate, or by any other person claiming an interest which the court thinks sufficient, make an order directing the body corporate and any officer thereof, or the receiver or liquidator, to comply with the provision within such time as may be specified in the order, and may provide that all costs of and incidental to the application shall be borne by the body corporate or by any officer, receiver or liquidator of the body corporate responsible for the failure.

377. (1) The regulations may prescribe fees in respect of-Fees

(a) the performance by the Registrar of his functions under this Act, including the receipt by him of any notice or other document which under this Act is required to be lodged with him; and

(b) the inspection of documents kept by him under this Act.

(2) Where the regulations provide that an additional fee is payable, by reason of the late lodgement of a document for registration or otherwise, the Registrar may in his discretion remit the whole or any part of the additional fee.

(3) Where the regulations provide that an additional fee is payable, by reason of the late lodgement of a document for registration or otherwise, the additional fee shall be payable notwithstanding that the company or any other person may be criminally liable in respect of the same act or omission.

(4) Where a provision in this Act refers to a prescribed fee and no fee has been prescribed for the purposes of the provision, the provision shall be read as if the reference were omitted.

378. (1) Fees paid to the Registrar under this Act shall be paid by him into the General Revenues of the Republic, or such other account as may be directed by the Minister of finance. Fees to be paid into general revenues

379. Subject to this Act, a person aggrieved by a decision of the Registrar may within fourteen days after the date on which he is notified of the decision, appeal to the court against the decision, and the court may confirm, reverse or vary the decision or make such order or give such directions in the matter as it thinks fit. Appeal against a decision of the Registrar

380. (1) The Registrar may issue an order requiring companies generally, or any class of companies, to furnish, by the time specified in the order, specified information or statistics with regard to their constitutions or working, in relation to periods specified in the order. Collection of information and statistics from companies

(2) The Registrar may issue an order requiring a person, being a company or a

person who is, or has at any time been, an officer or employee of the company, to furnish, by the time specified in the order, specified information or statistics with regard to the company's constitution or working, in relation to periods specified in the order.

(3) An order under this section shall not have the effect of requiring a person to furnish any information less than fourteen days after the date on which the person was notified of the order.

(4) An order under subsection (1) shall be published in the Gazette and may, as the Registrar thinks fit, be published in a newspaper or newspapers circulating generally in Zambia or served on individual companies.

(5) An order under subsection (2) shall be served on the person subject to the order.

(6) A person shall be deemed to have been notified of an order on the earliest of the following dates:

(a) the date on which the order was served on the person;

(b) the date on which the order was published in the Gazette;

(c) the date on which the order was published in a newspaper circulating generally in Zambia.

(7) For the purpose of satisfying himself that any information or statistics furnished in pursuance of an order under this section is correct and complete, the Registrar may require a person subject to the order-

(a) to produce specified records or documents in his possession or under his control for inspection, before a specified officer and at a specified time; or

(b) to furnish specified further information or statistics within a specified time.

(8) The Registrar may, in writing, authorise a person to make an inquiry-

(a) for the purpose of obtaining any information or statistics which a company has failed to furnish as required of it by an order under subsection (1); or

(b) for the purpose of-

(i) satisfying the Registrar that any information or statistics furnished by a company in pursuance of an order made under subsection (1) is correct and complete; and

(ii) obtaining such information or statistics as may be necessary or make the information or statistics furnished correct and complete;

and the person authorised shall, for the purposes of such an inquiry, have such powers as may be prescribed.

(9) If a company fails to comply with an order under this section to provide information and statistics about itself, or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the

company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.

(10) A person who wilfully fails to comply with an order under this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.

(11) For the purposes of this section, where a body corporate incorporated outside Zambia carries on business in Zambia having established an office within Zambia, a reference to a company in this section includes a reference to the body corporate in relation, and only in relation, to that business.

Division 14.2-Penalties and liabilities

381. (1) A person who, in any return, report, certificate, account or other document required by or for the purposes of this Act makes a statement that he knows to be false in any material particular shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a term not exceeding two years, or to both. Penalty for false statements

(2) This section shall not affect the liability of a body corporate or other person under another section of this Act or any other written law, but the penalties imposed by this section shall be alternative, and not additional, to any penalties imposed by the other section or written law.

382. (1) A person who, not being a body corporate, trades or carries on business in Zambia under a name or title which includes the word "incorporated", "corporation" or any contraction or imitation thereof, or any equivalent in a language other than English shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that he trades or carries on business under that name or title. Penalty for improper use of "Incorporated" or "Limited"

(2) A person who, not being a body corporate whose members have limited liability under the laws of the country of its incorporation, trades or carries on business in Zambia under a name or title the last word of which is "limited" or any contraction or imitation thereof, or any equivalent in a language other than English, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that he trades or carries on business under that name or title.

383. (1) In the course of the winding-up of a company or any proceedings against a company, the court may, on the application of the liquidator or any creditor or member of the company, if it is satisfied that a person was knowingly a party to the carrying on of any business of the company for a fraudulent purpose, make an order that the person shall be personally responsible, without any limitation of liability, for the debts or other liabilities of the company or for such of those debts or other liabilities as the court directs. Civil liability for fraudulent trading

(2) An order under this section may provide for measures to give effect to the liabilities of the person under the order, and in particular may provide that those liabilities shall be a charge on any debt or obligation due from the company to him or on any interest in the company of which he has, directly or

indirectly, the benefit.

(3) The court may make such further orders as it thinks necessary to enforce any charge imposed under this section.

(4) This section shall apply whether or not the person concerned has been convicted of an offence against section three hundred and eighty-four or of any other offence in respect of the matters on the ground of which the order is made.

384. A person who is knowingly a party to the carrying on of any business of the company for a fraudulent purpose shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units or to imprisonment for a period not exceeding twelve months, or to both. Offence of fraudulent trading

385. Where a court issues a warrant under section three hundred and eleven of the Criminal Procedure Code for the commitment of a person to prison for a failure by him to pay a fine imposed on him for an offence under this Act, the period of imprisonment specified in the warrant shall not exceed one day for every three monetary units of the fine that remain unpaid. Imprisonment for failure to pay fine
Cap. 160

386. Where a body corporate with limited liability is a plaintiff in any legal proceedings, the court may, if the court is satisfied that there is reason to believe that the body corporate will be unable to pay the costs of the defendant if the defendant is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given. Costs in actions by limited companies

387. Where more than one person is liable (whether as an officer of a body corporate or otherwise) to pay any damages, costs, compensation, debt or monetary penalty to an aggrieved party under, or in respect of any breach of, any section of this Act-

(a) the persons shall have a right of contribution amongst themselves; and

(b) in any action to enforce liability or in an action to recover contribution, the court may-Contributions between joint wrongdoers

(i) award contribution on such terms as it considers equitable in all the circumstances; and

(ii) exempt any person from liability to make contribution or direct that the contribution to be recovered from any other person shall amount to a complete indemnity.

388. (1) If the court is satisfied that a member, officer, receiver, liquidator, auditor, or trustee for debentures of a company might be civilly liable under this Act in respect of some matter, but that he had acted honestly and reasonably in the matter and that, having regard to all the circumstances of the case, he ought fairly to be excused, the court may relieve him in whole or in part from his liability on such terms as the court thinks fit. Power to grant relief from civil liability

(2) Relief of a person under this section may be granted-

- (a) in proceedings against the person in relation to the matter, or
- (b) on the application of the person, if he has reason to apprehend that such proceedings may be instituted.

389. No person shall be liable to any action in damages for anything done or omitted to be done by any person in the exercise or performance of any power or function conferred or imposed on him by or under this Act unless the act or omission was in bad faith or was due to a want of reasonable care of diligence.

Division 14.3-Transitional provisions
Exemption from liability for acts or omissions of public officers

390. (1) Any certificate or document made, executed, or issued under the former Act and in force and operative at the commencement of this Act, shall so far as it could have been made, executed, or issued under this Act, have effect as if made, executed or issued under this Act. Certificates and documents made or lodged under former Act

(2) Any document that, in accordance with the former Act, was duly lodged by it with the Registrar, or duly registered by the Registrar, shall be deemed to have been duly lodged or registered under this Act.

391. (1) An existing company shall be deemed to have, on and from the commencement of this Act, articles consisting of- Articles of existing companies

(a) those provisions of the memorandum of association and articles of association of the company, within the meaning of the former Act, which regulate the operation of the company and are not inconsistent with the former Act; and

(b) any provisions of Table A of the former Act which, under the former Act, applied to the company;

whether or not the articles so deemed are consistent with this Act.

(2) The articles of an existing company under subsection (1) shall be valid, and this Act shall not apply to the company to the extent of any inconsistency with them, until-

(a) the company adopts new articles in accordance with subsection (3); or

(b) the last day of the first financial year of the company to commence after the commencement of this Act;

whichever is earlier.

(3) An existing company shall, not later than the last day of the first financial year of the company to commence after the commencement of this Act, in accordance with section eight, adopt articles expressed in terms of and consistent with this Act.

(4) Where an existing company has lodged with the Registrar new articles for the purposes of subsection (3), the Registrar shall issue to the company-

(a) a replacement certificate of incorporation; and

(b) a replacement certificate of share capital, in the case of a company with share capital;

worded to meet the circumstances of the case.

(5) An existing company shall not amend its articles unless, after the amendment, the articles are expressed in terms of and consistent with this Act.

(6) Until subsection (3) has been complied with, an existing company may satisfy the requirements of section twenty-nine in relation to the articles of the company and the certificate of share capital by supplying to a member a copy of its memorandum of association and articles of association within the meaning of the former Act.

(7) If an existing company fails to comply with subsection (3), the company, and each officer of the company in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

392. (1) Section fifteen shall not apply to an existing company that is a public company from the commencement of this Act until-Minimum capital for existing companies

(a) the end of the period of six months after the commencement of this Act; or

(b) it receives a certificate under subsection (2) of section fifteen;

whichever is earlier, but the provisions of the former Act relating to minimum capital shall continue to apply to it during that period while it remains a public company.

(2) An existing company that, immediately before the commencement of this Act, satisfied the provisions of that Act applying to the company relating to minimum capital, shall be deemed to satisfy section eighteen.

393. (1) The register of members of an existing company kept for the purposes of the former Act shall be deemed to be part of the register of members for the purposes of this Act.Registers, accounts etc., of existing companies

(2) Where both a provision of the former Act and a corresponding provision of this Act require a fund or account to be kept or opened, such a fund or account kept or opened by an existing company to satisfy the provision of the former Act shall be deemed to satisfy the corresponding provision of this Act.

394. Where an existing company has, immediately before the commencement of this Act, property which is subject to a charge of any kind, the company shall, within three months after the commencement of this Act-

(a) enter in the register referred to in section ninety-seven the particulars referred to in that section in relation to each such charge; and

(b) lodge with the Registrar a statement containing the particulars referred to in section ninety-nine in relation to each such charge to which that section applies.Registration of charges

395. Sections one hundred and seventy-seven to one hundred and eighty-one

shall not apply to a directors' report in respect of a financial year of an existing company that began before the commencement of this Act. Director's reports for existing companies

396. Section forty-four shall not apply to an existing company until the date on which it is required to lodge its first annual return after the commencement of this Act. Related bodies corporate of existing companies

397. (1) A corporation which holds office as a director of an existing company immediately before the commencement of this Act shall, on that commencement, cease to hold office and the vacancy may be filled as a casual vacancy in accordance with this Act and the articles. Directors of existing companies

(2) Where an existing company has, immediately before the commencement of this Act, a single director, the company shall not be required to appoint a second director until-

(a) the director vacates his office; or

(b) three months after the end of the first financial year of the company to be completed after the commencement of this Act.

398. For the purposes of section two hundred and forty-six, a body corporate incorporated outside Zambia, being a body corporate which was not registered as a foreign company under the former Act but which, immediately before the commencement of this Act, had an established place of business in Zambia, shall be deemed to have established that place of business on the date of commencement of this Act.

Division 14.4-General Bodies corporate formed outside Zambia with existing business in Zambia

399. Nothing in this Act shall abrogate or affect any special legislation relating to companies carrying on the business of banking, insurance or any other business. Companies subject to other legislation

400. (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, other than a matter required or permitted to be prescribed by the Minister or any other person or body. Regulations

(2) Without limiting the generality of subsection (1), such regulations may be made on the following matters;

(a) the conduct of the business of the office of the Registrar;

(b) the form and content of any application, notice, return, account, book, record, certificate, licence or other document required for the purposes of this Act;

(c) the payment of fees and charges in respect of any matter or anything done or supplied under this Act;

(d) the procedure to be followed in connection with any application or request to the Registrar or any proceeding before him;

- (e) the provision of copies of any documents under this Act, and the certification of such copies;
 - (f) the making of inspections and searches under this Act, including the times when they may be made;
 - (g) the conduct of any winding-up or other proceeding or transaction under this Act;
 - (h) the service of notices and other documents under this Act;
 - (i) any matter necessary or convenient to be provided for in relation to the transition between the former Act and this Act.
- (3) The regulations may be made so as-
- (a) to make prescription vary depending on the circumstances;
 - (b) to be of general or specifically limited application; or
 - (c) to permit any matter to be determined from time to time by any person or body specified in the regulations.

401. The Chief Justice may make Rules of Court governing the practice and procedure for the winding-up of companies in Zambia and with respect to the procedure in any application to the court under this Act, and enabling all or any of the powers and duties conferred and imposed on the court in respect of the winding-up of companies to be exercised or performed by the Registrar or by the official receiver, or by the liquidator as an officer of the court and subject to the control of the court. Rules of court

402. The Companies Act is hereby repealed. Repeal of former Act Cap. 686 of the former edition

FIRST SCHEDULE

(Section 2)

STANDARD ARTICLES

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Table of Divisions

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2. Share Capital and Variation of Rights
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4. Lien
5. Forfeiture of Shares
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12. Directors
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15. Managing Director
16. Associate Directors
17. Secretary
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21. Capitalisation of Profits
22. Winding up
23. Indemnity

1-Interpretation

1. (1) In these regulations, unless the context otherwise requires:

"Act" means the Companies Act, 1994;

"prescribed rate of interest" means the rate of interest prescribed in regulations made under the Act for the purposes of the Standard Articles;

"seal" means the common seal of the company and includes any official seal of the company;

"resolution" means an ordinary resolution of the company;

"secretary" means any person appointed to perform the duties of a secretary of the company.

(2) Unless the context otherwise requires an expression, if used in a provision of these regulations that deals with a matter dealt with by a particular provision of the Act, has the same meaning as in that provisions of the Act.

2-Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the

holders of any existing shares or class of shares, but subject to the Act, shares in the company may be issued by the directors and any such share may be issued with such preferred deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the director, subject to a resolution, determine.

3. The directors shall not issue any rights or options to shares in favour of any persons unless the issue has been authorised at a general meeting by a special resolution.

4. Subject to the Act, any preference shares may, with the sanction of a resolution, be issued on the terms that they are, or at the option of the company are liable to be redeemed.

5. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound-up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.

(2) The provisions of the Act and these regulations relating to general meetings apply so far as they are capable of application and with the necessary modifications to every such class meeting except that-

(a) where a class has only one member-that member shall constitute a meeting;

(b) in any other case- a quorum shall be constituted by two persons who, between them, hold or represent by proxy one-third of the issued shares of the class; and

(c) any holder of shares of the class, present in person or by proxy, may demand a poll.

(3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

6. (1) The Company may make payments by way of brokerage or commission on the issue of shares.

(2) Such payments shall not exceed the rate of 10 per cent of the price at which the shares are issued or an amount equal to 10 per cent of that price, as the case may be.

(3) Such payments may be made in cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

7. (1) Except as required by law, the company shall not recognise a person as holding a share upon any trust.

(2) The company shall not be bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other

right in respect of a share except an absolute right of ownership in the registered holder.

8. (1) A person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate in respect of the share under the seal of the company in accordance with the Act but, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate.

(2) Delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

(3) If a share certificate is defaced, lost or destroyed, it may be renewed on payment of the fee allowed by the Act, or such lesser sum, and on such terms (if any) as to evidence and the payment of costs to the company of investigating evidence as the directors decide.

3-Calls on Shares

9. (1) The directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one-quarter of the sum of nominal values of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.

(2) Each member shall, upon receiving at least fourteen days notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified the amount called on his shares.

(3) The directors may revoke or postpone a call.

10. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

11. The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

12. If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding the prescribed rate of interest as the directors determine, but the directors may waive payment of that interest wholly or in part.

13. Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

14. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

15. (1) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.

(2) The directors may authorise payment by the company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at a rate agreed upon between the directors and the member paying the sum subject to subregulation (3).

(3) For the purposes of subregulation (2), the rate of interest shall not be greater than-

(a) if the company has, by resolution, fixed a rate-rate the so fixed; and

(b) in any other case the prescribed rate of interest.

4-Lien

16. (1) The company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.

(2) The company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the company.

(3) The directors may at any time exempt a share wholly or in part from the provisions of this regulation.

(4) The company's lien (if any) on a share extends to all dividends payable in respect of the share.

5-Forfeiture of Shares

17. (1) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.

(2) The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

18. (1) If the requirements of a notice served under regulation 17 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

(2) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

19. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors

think fit.

20. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall remain liable to pay to the company all money that, at the date of forfeiture, was payable by him to the company in respect of the shares (including interest at the prescribed rate of interest from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but his liability shall cease if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.

21. A statement in writing declaring that the person making the statement is a director or a secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, shall be prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

22. (1) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(2) Upon the execution of the transfer, the company shall register the transferee as the holder of the share.

(3) The transferee shall not be bound to see to the application of any money paid as consideration.

(4) The title of the transferee to the share shall not be affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

23. The consideration referred in regulation 22 shall be applied by the company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares immediately before the transfer.

24. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the shares or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

6-Transfer of Shares

25. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in a form prescribed for the purposes of section fifty-seven of the Act or in any other form that the directors approve.

(2) An instrument of transfer referred to in subregulation (1) shall be executed by or on behalf of both the transferor and the transferee.

26. The instrument of transfer shall be left for registration at the registered office of the company, together with such fee (if any) not exceeding two monetary units as the directors require, accompanied by the the certificate

of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these regulations, register the transferee as a shareholder.

27. The directors may decline to register a transfer of shares, not being fully paid shares, to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

28. The directors may refuse to register any transfer that is not accompanied by the appropriate share certificate, unless the company has not yet issued the share certificate or is bound to issue a renewal or copy of the share certificate.

29. The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine, provided that the periods do not exceed in the aggregate thirty days in any year.

7-Transmission of Shares

30. In the case of the death of a member, the survivor where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares, but this regulation does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.

31. (1) Subject to any written law relating to bankruptcy, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of the share.

(2) If the person becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(3) If he elects to have another person registered, he shall execute a transfer of the share to that other person.

(4) All the limitations, restrictions and provisions of these regulations relating to the right to transfer, and the registration of the transfer of share are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representatives or the trustee of his estate, as the case may be, shall be upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purposes of these regulations, be deemed to be joint holders of the shares.

8-Conversion of Shares into Stock

33. The company may, by resolution, convert all or any of its paid up shares into stock and reconvert any stock into paid up shares of any nominal value.

34. (1) Subject to subregulation (2), where shares have been converted into stock, the provisions of these rules relating to the transfer of shares apply, so far as they are capable of application, to the transfer of the stock or of any part of the stock.

(2) The directors may fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the aggregate of the nominal values of the shares from which the stock arose.

35. (1) The holders of stock shall have, according to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as they would have if they held the shares from which the stock arose.

(2) No privilege or advantage shall be conferred by any amount of stock that would not, if existing in shares, have conferred that privilege or advantage.

36. The provisions of these regulations that are applicable to paid up shares shall apply to stock, and references in those provisions to share and shareholder shall be read as including references to stock and stockholder, respectively.

9-Alteration of Capital

37. The company may by resolution-

(a) increase its authorised share capital by the creation of new shares of such amount as is specified in the resolution;

(b) consolidate and divide all or any of its authorised share capital into shares of larger amount than its existing shares;

(c) subdivide all or any of its shares into shares of smaller amount than is fixed by the certificate of share capital, but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived; and

(d) cancel shares that, at the date of passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited, and reduce its authorised share capital by the amount of the shares so cancelled.

38. (1) Subject to any resolution to the contrary, all unissued shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances allow, to the sum of the nominal values of the shares already held by them.

(2) The offer shall be made by notice specifying the number of shares offered and delimiting a period within which the offer, if not accepted, will be deemed

to be declined.

(3) After the expiration of that period or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the company.

(4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with sub-regulation (1), the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.

39. Subject to the Act, the company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

10-General Meetings

40. (1) A director may, whenever he thinks, fit, convene a general meeting.

(2) If no director is present within Zambia, any two members may convene a general meeting in the same manner, or as nearly as possible, as that in which such meetings may be convened by a director.

(3) A general meeting shall be held in Zambia unless all the members entitled to vote at that meeting agree in writing to a meeting at a place outside Zambia.

41. (1) A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by subregulation (2), shall state the general nature of the business to be transacted at the meeting.

(2) It shall not be necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of annual accounts and the reports of the directors and auditors, the election of directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

11-Proceedings at General Meetings

42. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate or association that is a member, shall be deemed to be a member.

43. If a quorum is not present within half an hour after the time appointed for the meeting-

(a) where the meeting was convened upon the requisition of members-the meeting shall be dissolved; or

(b) in any other case-

(i) the meeting shall stand adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and

(ii) if a quorum is not present at the adjourned meeting within half an hour after the time appointed for the meeting-

(a) two members shall constitute a quorum; or

(b) the meeting shall be dissolved, if two members are not present.

44. (1) If the directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.

(2) Where a general meeting is held and-

(a) a chairman has not been elected as provided by sub-regulation (1); or

(b) the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act;

the member present shall elect one of their number to be chairman of the meeting.

45. (1) The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Except as provided by subregulation (2), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

46. (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded-

(a) by the chairman;

(b) by at least three members present in person or by proxy;

(c) by a member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The demand for a poll may be withdrawn.

47. (1) If a poll is duly demanded, it shall be taken in such manner and (subject to sub-regulation (2)) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(2) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

48. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliberative vote (if any), shall have a casting vote.

49. (1) Subject to any rights or restrictions for the time being attached to any class or classes of shares at meetings of members or classes of members-

(a) each-

(i) registered member, or registered member of that class;

(ii) person on whom the ownership of a share of such a registered member has evolved by operation of law;

(iii) proxy or attorney of a person referred to in paragraph (i) or (ii), if the person is not present at the meeting;

shall be entitled to vote;

(b) on a show of hands, each person present who is entitled to vote shall have one vote; and

(c) on a poll, every person present who is entitled to vote shall have votes in accordance with section one hundred and forty-seven of the Act.

50. In the case of joint holders, the vote of the senior who tenders a vote whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

51. If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

52. A member shall not be entitled to vote at a general meeting unless all polls and other sums presently payable by him in respect of shares in the company have been paid.

53. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered

(2) Any such objection shall be referred to the chairman of the meeting, whose decision shall be final.

(3) A vote not disallowed pursuant to such an objection shall be valid for all purposes.

54. (1) An instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or

attorney duly authorised.

(2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides the proxy shall not be entitled to vote in the resolution except as specified in the instrument.

(3) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(4) A proxy need not be member of the company.

(5) An instrument appointing a proxy shall be in the following form or in as similar a form as the circumstances allow.

(name of Company)

I/we , of

being a

member/members of the above named company, hereby

of

or, in his absence.

of

as my/our proxy to vote for

me/us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the day of 19..... and at any adjournment of that meeting:

*in favour of/
against resolution No.....

*in favour of/
against resolution No.....

*in favour of/
against resolution No.....

Unless otherwise instructed, the proxy will vote as he thinks fit.

Signed.....

Date.....

*Strike out whichever is not desired.

55. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or

authority, is or are deposited, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place in Zambia as is specified for that purpose in the notice convening the meeting.

56. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney shall be valid notwithstanding the previous death of unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, unless notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

12-Directors

57. The company may by ordinary resolution fix a share qualification for directors, but unless and until a qualification is so fixed, there shall be no share qualification.

58. In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director shall become vacant if the director makes any arrangement or composition with his creditors generally.

13-Borrowing powers

59. (1) Subject to subregulation (2), the directors may exercise the powers of the company to borrow money, to charge any property or business of the company or all, or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

(2) The amount of any borrowings outstanding at any time shall not exceed the amount of issued share capital of the company at the time.

14-Proceedings of Directors

60. The provisions of subsection (7) of section two hundred and eighteen of the Act (providing that a director who is materially interested in a contract or arrangement to be considered at a meeting of the company or of the directors should not be counted in the quorum or vote on the matter) may be suspended or relaxed, whether generally or in respect of a particular transaction, by a resolution of the company.

61. (1) A director may, if the other directors approve, appoint a person as an alternate director in accordance with the Act.

(2) An alternate director shall be entitled to notice of meetings of the directors.

(3) An alternate director may, subject to the instrument of appointment, exercise any powers that the appointer may exercise.

62. At a meeting of directors, the quorum shall be two, or such larger number as is determined by resolution of the company.

63. In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.

64. (1) The directors shall elect one of their number as chairman of their meetings and may determine the period for which he shall hold office.

(2) Where meeting of directors is held and-

(a) a chairman has not been elected as provided by subregulation (1); or

(b) the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present shall elect one of their number to be a chairman of the meeting.

65. (1) The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

(2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.

(3) The members of such a committee may elect one of their number as chairman of their meetings.

(4) Where such a meeting is held and-

(a) a chairman has not been elected as provided by subregulation (3); or

(b) the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present may elect one of their number to be chairman of the meeting.

(5) A committee may meet and adjourn as it thinks proper.

(6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

(7) In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

15-Managing Director

66. (1) The directors may, upon such terms and conditions and with such restrictions as they think fit, appoint a managing director in accordance with the Act and confer upon him any of the powers exercisable by them.

(2) Any powers so conferred may be concurrent with, or be to the exclusion of

the powers of the directors.

(3) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

16-Associate Directors

67. (1) The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.

(2) The directors may from time to time determine the powers, duties and remuneration of any person so appointed.

(3) A person so appointed shall not be required to hold any shares to qualify him for appointment but, except by the invitation and with the consent of the directors, shall not have any right to attend or vote at any meeting of directors.

17-Secretary

68. A secretary of the company shall hold office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

18-Seal

69. (1) The directors shall provide for the safe custody of the seal.

(2) The seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

19-Inspection of Records

70. Subject to the Act, the directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open to the inspection of members other than directors, and a member other than a director shall not have the right to inspect any document of the company except as provided by law or authorised by the directors or by a resolution of the company.

20-Dividends and Reserves

71. (1) The company by resolution may declare a dividend if, and only if, the directors have recommended a dividend.

(2) A dividend shall not exceed the amount recommended by the directors.

72. The directors may authorise the payment by the company to the members of such interim dividends as appear to the directors to be justified by the profits of the company.

73. Interests shall not be payable by the company in respect of any dividend.

74. A dividend shall not be paid except out of profits of the company.

75. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.

(2) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.

(3) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

76. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share shall rank for dividend accordingly.

(3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this regulation to be paid or credited as paid on the share.

77. The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to shares in the company.

78. (1) If the company declares a dividend it may by resolution direct the directors to pay the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation.

(2) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and in particular may issue fractional certificates and fix the value for distribution of the specific assets or any part of those assets, and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.

79. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to-

(a) the registered address of the holder or, in the case of joint holders, to the registered address of the joint holder named first in the register of members; or

(b) to such other address as the holder or joint holders in writing directs or direct.

(2) Any one of two or more joint holders may give effectual receipts for any

dividends, interests or other money payable in respect of the shares held by them as joint holders.

21-Capitalisation of Profits

80. (1) Subject to subregulation (2), the company may resolve-

(a) to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members; and

(b) to apply the sum, in any of the ways mentioned in subregulation (3), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

(2) The company shall not pass a resolution under subregulation (1) unless it has been recommended by the directors.

(3) The ways in which a sum may be applied for the benefit of members under subregulation (1) shall be-

(a) in paying up any amounts unpaid on shares held by members;

(b) in paying up in full unissued shares or debentures to be issued to members as fully paid; or

(c) partly under paragraph (a) and partly under paragraph (b).

(4) The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may-

(a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and

(b) authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the paying up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in paragraph (b) shall be effective and binding on all the members concerned.

22-Winding up

81. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.

(2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the

benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

23-Indemnity

82. Every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to him by the court.

SECOND SCHEDULE

(Section 164)

ANNUAL ACCOUNTS

Preliminary

1. The annual accounts of a company shall give a true and fair view of the state of affairs and the operation and results thereof of the company, together with any material matters not specifically described by the Act or this Schedule which have affected or are likely to affect the business of the company.

2. The view shall be given both by way of figures, and by narrative report complementing and explaining, where necessary, figures in financial statements.

3. A company may, in addition to matter expressly permitted by this Schedule to be given in notes, give any information required by this Schedule to be stated in a balance sheet or profit and loss account in the form of a note or annexure thereto if such presentation would be more effective or convenient.

4. Nothing in this Schedule shall require disclosure of items that are not material.

Interpretation

5. (1) In this Schedule, unless the context otherwise requires:

"distributable reserve" means, subject to subclause (2), any amount which has been carried to reserves and which may, in accordance with generally acceptable accounting practice and legal principles, be treated as income and distributed by way of dividend, and does not include any amount retained by way of providing for any known liability and "non distributable reserve" shall be construed accordingly;

"listed investment" means an investment in regard to which permission has been granted to deal therein on any stock exchange of repute: and "unlisted investment" shall be construed accordingly;

"material", in relation to an amount or a fact in respect of a company's accounts, means material from the point of view of the interests of the members of the company;

"provision" means, subject to subclause (2), any amount-

(a) written off or retained by way of providing for depreciation, renewals or diminution in the value of assets; or

(b) retained by way of providing for any known liability, including the liability for income or any other tax;

where the amount cannot be determined with substantial accuracy.

(2) If the directors are of the opinion that-

(a) any amount written off or retained by way of provision for depreciation, renewal or diminution in value of assets; or

(b) any amount retained by way of provision for any known liability;

is in excess of that which in the opinion of the directors and the auditor is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision, but, if the auditor disagrees with the directors on the point, he shall report specifically on the subject in the auditor's report.

PART A-BALANCE SHEET

Share capital and shares

6. The balance sheet shall state-

(a) the authorised and issued share capital;

(b) the classes of shares into which the authorised share capital is divided and their respective numbers and nominal values;

(c) the number of the issued shares and the amount of the issued shares capital in respect of each class of shares;

(d) in respect of redeemable preference shares-

(i) the earliest and latest dates on which the company has power to redeem them;

(ii) whether they must be redeemed in any event or are liable to be redeemed at the option of the company; and

(iii) the premium, if any, payable on redemption; and

(e) in respect of preference shares or other shares or liabilities convertible into ordinary shares-

(i) the conditions of conversion; and

(ii) rights of conversion;

or a place where these conditions may be inspected.

Reserves and provisions

7. The balance sheet shall state the respective aggregate amounts, if material, of reserves and provisions (other than provisions for depreciation, or diminution in value of assets) under separate headings and subheadings indicating the types of reserves and provisions.

8. The balance sheet shall state, in respect of the financial year concerned-

(a) the source of and the amount of any transfers to reserves and aforesaid provisions; and

(b) the amount and the application of any transfer from reserves and aforesaid provisions.

unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material.

LIABILITIES

General

9. (1) The liabilities shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and subheadings appropriate to the company's business (including a statement of current liabilities).

(2) Where the amount of any class of liability is not material, it may be included under the same heading as some other class.

Debentures

10. The balance sheet shall state-

(a) the amount and classes of debentures issued and, if convertible into shares, the conditions of conversion and the dates on which debentures may, or shall, be redeemed, or the place where these conditions may be inspected;

(b) the nominal amount of any debentures held by a nominee and the amount at which they are stated in the books of the company; and

(c) particulars of any redeemed debentures which the company has power to reissue.

Overdrafts, loans and dividends

11. There shall be shown under separate headings-

(a) the aggregate amount of bank borrowings and overdrafts;

(b) in relation to each loan made to the company-

(i) the amount;

(ii) whether the date of repayment of the loan is more than one year after the accounting date;

(iii) the dates of repayment and, if repayable in instalments, the amounts thereof; and

(c) the aggregate amount which has been declared or is recommended for distribution by way of dividend.

(2) The matters referred to in paragraph (b) of subclause (1) may be set out in a note.

Secured liabilities

12. Where any liability of the company is secured over any assets of the company, otherwise than by operation of law, that fact shall be stated, specifying the liability and the assets over which it is secured, and the amount at which such assets are shown in the balance sheet.

Indebtedness to related bodies corporate

13. There shall be shown under separate headings-

(a) the amount of indebtedness (whether by way of loan or otherwise) to each of the company's subsidiaries; and

(b) the amount of the company's indebtedness to every other related body corporate, distinguishing between indebtedness in respect of debentures and otherwise.

ASSETS

General

14. (1) The assets shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and subheadings appropriate to the company's business.

(2) Where the amount of any class of assets is not material, it may be included under the same heading as some other class.

15. Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.

16. The method or methods used to arrive at the amount of the fixed assets and the assets which are neither fixed nor current, under each heading, shall be stated.

Fixed assets

17. (1) The method of arriving at the amount of any fixed asset (and asset neither fixed nor current) shall be, subject to subclause (2), to take the difference between-

(a) its cost, or if it stands at the company's books at a valuation, the amount of the valuation; and

(b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, by way of depreciation or diminution of value.

(2) Subclause (1) shall not apply-

(a) to any listed and unlisted investments;

(b) to interests of the company in its subsidiaries; or

(c) to goodwill or intellectual property.

(3) In respect of the assets under each heading whose amount is arrived at in accordance with subclause (1), there shall be stated-

(a) the aggregate of the amounts referred to in paragraph (1) (a); and

(b) the aggregate of the amounts referred to in paragraph (1) (b).

(4) As regards any land and buildings which are fixed assets, there shall also be stated-

(a) a description of the land and buildings and the situation thereof, distinguishing between land owned absolutely and land owned for a term of years or other period;

(b) the date of their acquisition by the company;

(c) their purchase price; and

(d) the costs of additions or improvements since the date of acquisition or valuation, which costs shall be analysed to indicate the years in which the additions and improvements to buildings were carried out.

(5) The information required under subclause (4) may be provided in a schedule or register, in which case the balance sheet shall state that the schedule or register shall be open for inspection by members or their duly authorised agents at the registered records office of the company in accordance with section one hundred and ninety-three of the Act. Such a schedule or register shall be part of the company's accounting records.

(6) As regards any fixed asset referred to in subclause (4), the amount of which is arrived at by reference to a valuation, the provisions of paragraphs (4) (b) and (c) shall not apply, but there shall be stated the years in which the assets were severally valued and the several values and, in the case of assets that have been valued during the financial year concerned, the names and qualifications of the persons who valued them and the basis of valuation used by them.

(7) Where there are more than five different items of land and buildings which have over the years been severally valued for the purposes of subclause (6), a company may, if it considers that compliance with that subclause would be inconvenient or cumbersome, include the information in a schedule or register, in which case the balance sheet shall state that the schedule or register shall be open for inspection by members or their duly authorised agents at the registered records office of the company in accordance with section one hundred and ninety-three of this Act.

Interests in subsidiaries

18. If the company has subsidiaries, the amount of interests of the company consisting of shares of its subsidiaries or amounts owed to it (whether by way

of loan or otherwise) by its subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from the other assets of the company.

Indebtedness of related bodies corporate

19. The amount of the indebtedness to the company of all related bodies corporate, shall be set out, distinguishing between indebtedness in respect of debentures and otherwise.

Loans to employees and other persons

20. The aggregate amounts of any outstanding loans under sections eighty-three and one hundred and sixty-eight of this Act shall be shown under separate headings. The amount outstanding of loans to each person who is, or at any time during the currency of the loan has been, a director shall be shown separately.

Goodwill and intellectual property

21. (1) If the amount of the goodwill and of any intellectual property, or part of that amount, is shown as a separate item in, or is otherwise ascertainable from, the accounting records, from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company, the amount so shown or ascertainable, so far as it is not written off, shall be stated as a separate item.

(2) Nothing in this clause shall require the amount of the goodwill and intellectual property to be stated otherwise than as a single item.

Investments

22. (1) There shall be shown under separate headings the aggregate amounts respectively of the company's listed and unlisted investments, other than interests in those subsidiaries of the company covered by group accounts (if any).

(2) There shall be shown-

(a) in respect of the company's listed investments, the aggregate market value where it differs from the amount of the investments as stated; and

(b) in respect of the company's unlisted investments and unless they are dealt with under subclause (3), the aggregate of the directors' valuation of the investments.

(3) Where no directors' valuation is shown for the purposes of subclause (2), the following information shall be stated in a note to be annexed to the balance sheet:

(a) the aggregate amount of the company's income for the financial year concerned that is ascribable to the investments;

(b) the amounts of the company's share, before and after taxation, of the net aggregate profits or losses of the companies of which shares are held (and the extent by which such profits have been affected by abnormal items), being profits for the several financial years in respect of which they have issued

accounts during the company's financial year concerned, after deducting those companies' losses for those periods;

(c) the amount of the company's share of the aggregate of the share capital, distributable and non-distributable reserves and undistributed profits accumulated by the companies of which shares are held since the dates when the investments were acquired, after deducting the losses accumulated by them since that time; and

(d) the manner in which any losses have been dealt with in the company's accounts.

23. (1) There shall be shown in the balance sheet or in an annexure thereto, unless the aggregate amount of the interest of the company consisting of shares in other bodies corporate and amounts owing to it (whether by way of loan or otherwise) by other bodies corporate is not material, the names of all bodies corporate of which the company beneficially owns shares and, in each case, either the number of shares so held or the percentage of the amount of such shares in the aggregate amount of the listed or unlisted investments.

(2) Where a percentage is so given there shall be a statement as to whether this is a percentage of the aggregate book value, market value or directors' valuation, as the case may be.

(3) For the purposes of this clause, a company shall not be regarded as beneficially owning shares in a body corporate by reason only that it owns shares in a holding company of the body corporate.

24. (1) Where the proceeds or any part of the profit made on the realisation of any investments is applied to write down the amount of the remaining investments, that fact and the amount so applied shall be stated in the balance sheet.

(2) This clause shall not apply in respect of the proceeds or profits on the realisation of investments dealt with under paragraph 36 (1) (a).

Current Assets

25. (1) For the purposes of this clause, "stock" includes any property, whether corporeal or incorporeal, which the company, in the ordinary course of its business, buys, manufactures, processes, develops for sale or sells.

(2) The amount of stock shall be shown as a separate item and, where the amount of stock and work in progress is material in relation to either the trading results or the financial position, it shall be classified under appropriate subheadings which shall include, where applicable-

(a) raw materials (including component parts);

(b) finished goods;

(c) merchandise, including any form of stock not mentioned in subclause (1) and which may itself be shown under appropriate subheadings;

(d) consumable stores (including maintenance spares);

(e) work in progress (including standing crops); and

(f) contracts in progress.

(3) Where directors are of the opinion that classification into some or all of the categories referred to in subclause (2) would result in a failure to present a fair view, the classification should be reduced to those categories where a fair view would be obtained, and the reasons given for not indicating all categories.

(4) In regard to the method of determining the value of stock, there shall be stated-

(a) whether it is consistent with the method of the previous financial year;

(b) whether it is the lower of cost or net realisable or replacement value or some other expressly specified value or values;

(c) the accounting basis which has been used in determining the value of stock to have been used or, if the directors are of the opinion that a statement of all the bases used would be the little value to the shareholders, an intelligible summary of the bases used;

(d) whether the value includes both direct costs and overheads; and

(e) in the case of spares held for maintenance purposes, the method employed in providing for obsolescence.

(5) There shall be stated any additional information required fairly to present the value of the stock including, in the case of contracts in progress, whether profits or losses have been taken into account and, if so, to what extent.

(6) If the directors are of the opinion that any of the current assets do not have a value on realisation in the ordinary course of the company's business at least equal to the amount at which they are stated, the fact that the directors are of that opinion and the extent of the estimated shortfall shall be stated.

Preliminary expenses, commission and discounts

26. There shall be stated under separate subheadings so far as they are not written off-

(a) the preliminary expenses incurred in incorporation;

(b) any expenses incurred in connection with any issue of shares or debentures;

(c) any sums paid by way of commission in respect of any shares or debentures; and

(d) any sums allowed by way of discount in respect of any debentures.

Corresponding amounts of preceding year

27. Except in the case of the first balance sheet, the corresponding amounts at the end of the immediately preceding financial year in respect of all items shown in the balance sheet shall be stated.

Notes to balance sheet

28. The matters stated in clause 29 to 35 may be stated by way of a note or in a statement or report annexed to the balance sheet.

Shares or debentures held by subsidiary or nominee

29. There shall be stated the number, description and amounts of the shares and debentures of the company held by its subsidiaries or their nominees, but excluding any such shares or debentures which a subsidiary holds in a representative capacity or as a trustee under a trust in which neither the company nor any subsidiary is beneficially interested otherwise than by way of security for the purposes of a transaction entered into by it in the ordinary course of business which includes the lending of money.

Options and preferential rights to shares

30. The number, description and amount of any shares of the company which any person has an option to subscribe for or in respect of which any person has any preferential right of subscription, shall be stated together with the following particulars-

- (a) the period during which the option or right is exercisable; and
- (b) the price, or the formula for fixing the price, to be paid for shares subscribed for under it.

Directors' authority to issue shares

31. The amount of any share capital or the number of shares which the directors are authorised to issue by resolution of the shareholders, the terms of such authority and the period for which it was granted, shall be stated.

Arrear dividends

32. The amount of any arrears of fixed cumulative dividends on each class of the company's shares and the period for which the dividends are in arrears, shall be stated.

Contingent liabilities

33. (1) Particulars of any encumbrance on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured, shall be stated.

(2) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate or estimated amount of those liabilities if it is material, shall be stated.

Contracts for capital expenditure

34. Where practicable, the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, not otherwise provided for and the aggregate amount or estimated amount, if it is material, of capital expenditure authorised by the directors which has not been contracted for, shall be stated. There shall also be stated the source from which funds to meet such expenditure will be provided.

Basis for currency conversion

35. The basis on which foreign currencies have been converted into Zambian currency, where the amount of the assets or liabilities affected is material, shall be stated.

PART B-PROFIT AND LOSS ACCOUNT

36. (1) The profit and loss account shall show separately-

(a) profits or losses on share transactions, showing the application of profits or part thereof to write down the amount of the remaining investment, if not already dealt with under clause 24;

(b) the amount of income from investment, distinguishing between listed and unlisted investment;

(c) the aggregate amount of income from related bodies corporate, stating whether dividends, interest, fees or other specified income;

(d) the aggregate amount of the dividends paid and proposed, and if such dividends are provided partly or wholly from capital profits, a statement to that effect;

(e) the aggregate amount of profits and losses on the realisation, scrapping or other disposal of non-trading, fixed and other non-current assets;

(f) the amount charged to revenue by way of provisions (other than provisions for diminution in values of current assets, unless material to the understanding of the accounts) specifying the nature of each provision or the amount withdrawn from such provisions and not applied for the purpose thereof;

(g) the amount provided for taxation (specifying, where material, the origin and different classes of taxes) in respect of the financial year concerned and the amount, if any, so provided in respect of any other financial year;

(h) the amounts respectively set aside for redemption of shares and of loans;

(i) the amount set aside or proposed to be set aside to, or withdrawn from, reserves;

(j) the amount of any credit or charge arising in consequence of an event in a preceding financial year;

(k) the amount of interest (or other consideration) on any loans made to the company, including debentures and bank overdrafts;

(l) the amount paid by way of leasing charges for the use of any asset, other than immovable property, which would have been subject to a charge for depreciation if owned by the company;

(m) the respective amounts paid as remuneration for managerial, technical, administrative or secretarial services, however described, other than to the bona fide employees of the company;

(n) the amount of the remuneration of the auditor, distinguishing between the

fee for the audit, the fee for other services and his expenses; and

(o) the total amount of any gifts or donations made by the company.

(2) Nothing in this clause shall require the separate listing of any item that is not material.

37. (1) There shall be shown separately the information required by section one hundred and sixty-seven of this Act in relation to directors' emoluments.

(2) The amounts to be shown for any financial year shall be the sums receivable in respect of that year whenever paid or, in the case of sums not receivable in respect of a period, the sums paid during that year, except that any sums paid in advance of the financial year to which they are expressed to relate shall be shown in the accounts for the financial year in which they are paid.

(3) Where it is necessary so to do for the purpose of making any distinction required by this clause, the directors may apportion any payments in such manner as they think appropriate between the matter in respect of which they have been paid or are receivable.

38. (1) There shall be shown-

(a) the aggregate amount of the turnover for the financial year concerned; or

(b) the increase or decrease of the aggregate turnover for the financial year concerned expressed as a percentage of the aggregate turnover for the preceding financial year.

(2) If the nature of the business is such that there could be any doubt as to what is meant by turnover, there shall be indicated (by way of note) the basis upon which turnover has been determined.

(3) The method employed to determine the amount of turnover shall be stated and, if a method different to that employed in the preceding financial year is used, that fact shall be stated.

39. Except in the case of the first profit and loss account, the corresponding amount for the immediately preceding financial year for all items shown in the profit and loss account shall be stated.

Notes to the profit and loss account

40. The matters referred to in clauses 41 and 42 shall be stated by way of a note, or in a statement or report annexed to the balance sheet.

41. (1) If provision for depreciation, replacement or the diminution in value of fixed assets is made by some method other than a depreciation charge, or provision for renewals or diminution in value or is not provided for, the method by which it is provided for, or the fact that it is not provided for, shall be stated.

(2) If any of the items are shown net of income or any other tax, that fact shall be stated.

42. There shall be stated any material respects in which any items included in the profit and loss account (stating in each case the amount involved) are

affected by-

- (a) transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non recurrent nature;
- (b) any change in the basis of accounting; or
- (c) any change in the methods for the determination of the amount of any assets.

PART C-STATEMENT OF SOURCE AND APPLICATION OF FUNDS

43. There shall be annexed to the balance sheet or separately contained therein a statement showing the source and the application of any funds received and applied during the financial year specifying-

(a) funds derived from-

(i) net income (before deduction of taxes, dividends paid and proposed, and internal provisions and retentions);

(ii) the disposal of specified fixed and other non-current assets;

(iii) the proceeds of loans raised and debentures issued;

(iv) the proceeds of shares issued;

(v) repayments received on loans and advances made; and

(vi) any reduction in net working capital (being current assets less current liabilities); and

(b) funds applied to-

(i) meeting any loss;

(ii) the acquisition of specified fixed and other non-current assets;

(iii) the redemption of any loans and debentures;

(iv) loans and advances made and the purposes for which they were made;

(v) liability for taxes;

(vi) dividends paid and proposed; and

(vii) any increase in net working capital (being current assets less current liabilities).

PART D-GROUP ACCOUNTS

Preliminary

44. Clauses 45 to 48 shall apply to all forms of group accounts and shall also apply in respect of the requirements of clauses 54 to 57 in relation to

subsidiaries not dealt with in group accounts.

45. Any material profit or loss arising from transactions within the group of companies (other than bona fide arm's-length transactions), insofar as those profits or losses were realised or incurred in respect of a transaction with a person outside the group, shall be excluded in determining the total group profit or loss, or the interest of the holding company in the profit or loss of any subsidiary.

46. Inter-group balances, were shown, shall be excluded in determining the total assets and liabilities of the group.

47. (1) Dividends declared by a subsidiary out of profits accrued prior to the date on which it became a subsidiary of the holding company, being pre-acquisition profits so far as they are material and reasonably ascertainable, shall not, in the hands of that holding company, form part of its profits available for distribution by way of dividends unless-

(a) the holding company is itself the subsidiary of another body corporate incorporated or registered in Zambia;

(b) the shares in the subsidiary were acquired by the holding company from the other body corporate;

(c) the subsidiary was, before the acquisition, a subsidiary of the other body corporate; and

(d) the profits out of which the dividend is declared accrued after the subsidiary had become a subsidiary of the other body corporate.

(2) For the purposes of establishing whether any profit accrued prior to the acquisition of the shares of the subsidiary, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reference to the facts, be treated as if it had accrued from day to day during that financial year and be apportioned accordingly.

48. There shall be stated any qualifications contained in the reports of the auditors of the subsidiaries on their financial statements and any note or saving contained in those financial statements to call attention to the matter which, apart from the note or saving, would properly have been referred to in such a qualification, insofar as the matter which is the subject of the qualification is not covered by the holding company's own accounts of the group accounts and is material from the point of view of its members.

Group accounts in the form of consolidated accounts

49. Subject to clauses 50 to 52, the consolidated balance sheet and the consolidated profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with in the consolidated accounts, with such adjustment as may be appropriate and necessary to give a true and fair view of the state of affairs of the group of companies as at the end of the financial year and the results of the operations of the group of companies during the financial year.

50. Subject to clauses 51 and 52 the consolidated accounts shall, in giving the information, comply as far as is practicable with the requirements of this

Act and this Schedule as if they were the accounts of a single company.

51. Section one hundred and sixty-seven of this Act shall not require the disclosure in consolidated accounts of the remuneration of directors of the subsidiaries of the holding company.

52. In relation to any subsidiaries of the holding company not dealt with in the consolidated accounts-

(a) clause 13 (concerning indebtedness to bodies corporate in the group), clause 18 (concerning interests in subsidiaries) and clause 29 (concerning shares or debentures held by subsidiaries), shall apply for the purposes of such consolidated accounts as if those accounts were the accounts of a single company of which they were the subsidiaries; and

(b) there shall be annexed the information required by clauses 54 to 57 in respect of subsidiaries not dealt with in group accounts but as if reference therein to a holding company's accounts were a reference to the consolidated accounts.

Group accounts in a form other than consolidated accounts

53. (1) Where group accounts are prepared in a form other than consolidated accounts, they shall, as far as practicable, present the same or equivalent information concerning the state of affairs and the results of the operations of the group as would be contained in the consolidated accounts, including the aggregate amounts of-

(a) the excess (if any) of the cost of the shares of the subsidiaries in the group over the net asset value of the shares at the date of acquisition and the non-distributable reserve (if any) arising in consequence of the excess of the net value of the assets at the date of acquisition over the cost of shares of the subsidiaries;

(b) the holding company's shares of the non-distributable reserves of subsidiaries;

(c) the interest of outside shareholders, being shareholders other than the holding company and its subsidiaries or their nominees, in subsidiaries of the group; and

(d) the interest of the holding company, insofar as it has been disclosed in the group accounts in-

(i) the accumulated revenue profits or losses and accumulated distributable reserves of subsidiaries for the period after the dates on which they respectively became subsidiaries to the end of the preceding financial year; and

(ii) the revenue profits or losses of subsidiaries for the financial year.

(2) For the purposes of paragraph (1) (a), non-distributable reserves arising from the acquisition of shares in a subsidiary may be set off against shares of other subsidiaries over the net asset

Requirements in respect of subsidiaries not dealt with in group accounts

54. Where a subsidiary is not dealt with in group accounts under subsection (3) of section one hundred and sixty-five of this Act and the interest in the subsidiary is material in relation to the financial position or the results of the holding company, there shall be included in the accounts of the holding company the information required to be stated under clauses 55 to 57 or, if any such information is not obtainable, the reasons why it is not obtainable.

55. The reasons shall be stated why the subsidiaries or any of them are not dealt with in the group accounts.

56. (1) In regard to the shareholders' equity, liabilities and assets of the subsidiaries not dealt with in group accounts, there shall be stated the aggregate amounts of-

(a) the cost of the holding company's investment in shares of the subsidiaries;

(b) the excess (if any) of the cost of the shares of the subsidiaries over the net asset value of the shares at the date of acquisition, and the non-distributable reserve (if any) arising in consequence of the excess of the net value of the assets at the date of acquisition over the cost of the shares of subsidiaries;

(c) the holding company's shares of the non-distributable reserves of subsidiaries;

(d) the interest of outside shareholders, being shareholders other than the holding company and its subsidiaries or their nominees, in the subsidiaries;

(e) long-term loans owing to the subsidiaries by the bodies corporate in the group;

(f) fixed assets;

(g) net current assets;

(h) goodwill (if any) shown in the books of the subsidiaries insofar as it has not already been absorbed in the calculation referred to in paragraph (b); and

(i) separately stated assets not included in paragraphs (f), (g) and (h).

(2) For the purposes of paragraph (1) (b), non-distributable reserves arising on the acquisition of shares in a subsidiary may be set off against any excess of the cost of shares of other subsidiaries over the net value of such shares.

57. In regard to revenue profits or losses and distributable reserves not dealt with in group accounts, there shall be stated the aggregate interest of the holding company in-

(a) the accumulated revenue profits or losses and accumulated distributable reserves of the subsidiaries for the period from the dates on which they respectively became subsidiaries to the end of the preceding financial year;

(b) the revenue profits or losses and distributable reserves attributable to any shares of the subsidiaries disposed of during the financial year;

- (c) the revenue profits or losses of the subsidiaries for the financial year;
- (d) dividends paid or declared by the subsidiaries during the financial year;
and
- (e) the revenue profits or losses and distributable reserves at the end of the financial year not dealt within the accounts of the holding company.

THIRD SCHEDULE

(Section 185)

ANNUAL RETURN

In this Schedule, a reference to the date of a return is a reference to the date as at which the return states the position of the company in accordance with section one hundred and eighty-four of this Act.

An annual return shall contain the information specified below.

1. The name of the company.
2. The nature of the business of the company or, if the company is not carrying on a business, the nature of its objects.
3. The address of the registered office and the registered postal address of the company.
4. The address of the registered records office of the company.
5. The address of the company's principal place of business in Zambia.
6. All such particulars with respect of the persons who at the date of the return are the directors and secretary of the company as are required by section two hundred and twenty-four of this Act to be contained in the register of directors and secretary.
7. Particulars of the total amount of the indebtedness of the company in respect of all charges to which section ninety-nine of this Act applies.
8. The names, countries of incorporation, and nature of the business of-
 - (a) all bodies corporate related to the company; and
 - (b) all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25 per cent of the votes exercisable at a general meeting of the body corporate.
9. If the company has share capital-
 - (a) the amount of the share capital of the share capital of the company and the number of shares into which it is divided;
 - (b) the number of its authorised shares of each class;
 - (c) the number of its issued shares of each class;

(d) the total amount of any unpaid instalments or calls which are due and payable and the number and class of shares concerned;

(e) the total amount of any unpaid liability, on shares of each class, which is not yet due for payment;

(f) the total number of shares forfeited; and

(g) the total amount of share capital for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.

10. A list-

(a) containing the names and addresses of all persons who are registered members of the company and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(b) stating the number of shares held by each registered member, at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers; and

(c) having annexed thereto an index sufficient to enable the name of any person therein to be easily found, if the names are not arranged in alphabetical order.

FOURTH SCHEDULE

(Sections 124, 126, 127, 131 and 135)

CONTENTS OF PROSPECTUS

1. In this Schedule, unless the context otherwise requires-

"company" includes a company proposed to be formed;

"proposed subsidiary", in relation to a company, means a body corporate in which the company proposes to acquire securities and which, by reason of the acquisition or anything to be done in consequence thereof or in connection therewith, will become a subsidiary of the company.

2. The prospectus shall state at its head:

"A copy of this prospectus has been delivered to the Registrar of Companies for registration. The Registrar has not checked and will not check the accuracy of the statements made and accepts no responsibility therefor or for the financial soundness of the company or the value of the securities concerned."

3. The reports set out in a prospectus for purposes of Part B shall be made by a person or persons duly qualified under Part VIII of this Act to be appointed as auditors of the company.

4. Where reports prepared for the purposes of Part B would not otherwise give a true and fair view of the matters required to be covered by the reports, the persons charged with the preparation of the reports shall add such information and explanations as well give a true and fair view of those matters.

5. If any of the information required for the purposes of reports for the purposes of Part B is for reasons beyond the power of the company not available, that fact and the reasons therefor shall be stated.

PART A-MATTERS TO BE SPECIFIED IN PROSPECTUS

6. The full name of the company.

7. (1) A full description of the securities which the public are being invited to acquire, and of the terms on which they are being invited to acquire them, including-

(a) the date prior to the expiration of which applications will not be accepted or treated as binding;

(b) the total amount payable for each share or debenture and the amount thereof payable on application and allotment, if securities are being offered for subscription or purchase; and

(c) the policy which will be adopted if applications exceed the shares or debentures on offer.

(2) Where the securities are unsecured debentures they shall be described as "unsecured".

8. Whether or not an application has been or is being made to a stock exchange for permission to deal in the securities concerned, and-

(a) if so, the name of the stock exchange; or

(b) if not, a statement that there will not be a market for the securities and that any holder wishing to dispose of his securities may be unable to do so.

9. The full name (including any former or other names), residential and postal addresses and business occupation of each person making the invitation, other than the company.

10. The situation of the company's registered office, and its postal address.

11. The full name (including any former or other names), residential and postal addresses and business occupation of every director or proposed director and of the secretary or proposed secretary of the company, and particulars of all other directorships held by each director or proposed director.

12. Other than for a proposed company, the names, addresses and professional qualifications of the company's auditors.

13. The name and address of any underwriter of the invitation.

14. The names and addresses of the company's bankers, stockbrokers and legal practitioners.

15. If the invitation relates to debentures, the names and addresses of any trustees for debentureholders, the date of the resolutions creating the debentures, and short particulars of the security therefor or, if the debentures are unsecured, a statement to that effect.

16. The nature of the business or businesses of the company or, if the company has no business, its principal objects.

17. The restrictions, if any, upon the business of the company contained in the articles.

18. A brief summary of the history of the company.

19. The names, countries of incorporation, and nature of the businesses of all subsidiaries of the company and of all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25 per cent of the votes exercisable at a general meeting of the body corporate.

20. If the company is a subsidiary, the name, country of incorporation and nature of the business of each holding company and, in the case of a holding company that is a member of the company, the number of shares in each class of the company held by the holding company.

21. The name, country of incorporation, and nature of the business of any proposed subsidiary of the company.

22. Where the company is proposing to acquire a business, a full description, of the nature of that business.

23. The situation, area and tenure (including, where appropriate, the rent and unexpired term of any lease or concession) of the main places of business of the company and its subsidiaries and proposed subsidiaries.

24. A statement as to-

(a) the financial and trading prospects of the company together with any material information which may be relevant thereto; and

(b) any material changes in the financial or trading position of the company which may have occurred since the end of the last completed financial year of the company.

25. A statement by the directors of the company that in their opinion the company's working capital is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.

26. The amount or estimated amount of the expenses incidental and preliminary to the invitation (including the expenses of any application to a stock exchange for permission to deal in the securities concerned in the invitation) and by whom such expenses are payable.

27. Particulars of any commissions payable, or paid within the two preceding years, as commission for acquiring any shares or debentures of the company or of any of its subsidiaries and proposed subsidiaries.

28. Where the company is inviting the public to subscribe for any of its

shares or debentures-

(a) a statement or an estimate of the net proceeds of the issue and a statement as to how such proceeds were or are to be applied;

(b) the minimum amount which in the opinion of the company's directors must be raised by the issue in order to provide the sums, or, if part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any expenses incidental and preliminary to the invitation and issue (including the expenses of any application to a stock exchange for permission to deal in the shares or debentures) payable by the company, and any commission be payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for any share or debentures of the company;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(iv) working capital; and

(c) the amounts to be provided in respect of the matters stated in paragraph (b) otherwise than out of the proceeds of the issue, and the sources out of which these amounts are to be provided.

29. Where a person other than the company is inviting the public to purchase any shares or debentures of the company (whether or not the invitation is also made by the company)-

(a) if the shares or debentures were issued by the company for cash-a statement of the price per share or debenture at which those shares or debentures were issued, and of the total net proceeds of the issue;

(b) if the shares or debentures were issued by the company for a consideration other than cash-a statement of the nature of the consideration and an estimate by the directors of its fair value and of the price per share or debenture which it represents;

(c) if the person making the invitation did not acquire the shares or debentures directly from the company on their issue-

(i) if he purchased them for cash-a statement of the price per share or debenture at which he purchased them (or, if purchased over a period of time at different prices, the lowest and highest prices) and the total purchase price paid by him; or

(ii) if he acquired them for a consideration other than cash-a statement of the nature of the consideration and an estimate by him of its fair value and of the price per share or debenture which it represents.

30. The authorised capital of the company and the number and description of the company's authorised shares of each class and issued shares of each class.

31. The amount paid on the issued shares of each class-

(a) in cash; and

(b) otherwise than in cash.

32. The amount, if any, remaining payable on the shares of each class previously issued, distinguishing between the amount presently due for payment and the amount not yet due for payment.

33. The number of unissued shares of each class agreed to be issued and the amounts payable therefor, distinguishing between amounts payable in cash and amounts payable otherwise than in cash.

34. If the company's shares are divided into different classes, the rights in respect of voting, repayment, and dividends and other special rights attached to the several classes and a statement as to the consents necessary for the variation of such rights.

35. The amounts of the dividends (if any) per share paid by the company in respect of each class of shares in each of the ten completed financial years of the company immediately preceding the date of publication of the prospectus, or in respect of each of the financial years since the incorporation of the company if this occurred less than ten years before the publication, and particulars of any cases in which no dividends have been paid in respect of any class of shares in any of those years.

36. If any of the company's shares are redeemable preference shares, the earliest date on which the company has power to redeem them.

37. The name of each person who holds more than 25 per cent of the company's shares or any class of shares and the number and description of the shares held or owned.

38. So far as is known to the company, the name of each person who is the beneficial owner of more than 25 per cent of the company's shares or any class of shares and the number and description of the shares held or owned.

39. The amount of the outstanding debentures issued or agreed to be issued by the company and any of its subsidiaries and proposed subsidiaries or, if none, a statement to that effect.

40. Particulars of any bank overdrafts of the company and any of its subsidiaries and proposed subsidiaries as at the latest practical date (which shall be stated) or, if there are no bank overdrafts, a statement to that effect.

41. The nature of the consideration for the issue of any of the company's shares or debentures issued or proposed to be issued otherwise than for cash.

42. Particulars of any share or debentures of any of the company's subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued otherwise than for cash and the nature of the consideration.

43. Particulars of any shares or debentures of the company or any of its

subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, for cash, the price and terms upon which the same have been or are to be issued and (if not already fully paid) the dates when any instalments are payable.

44. Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which are under option, or agreed conditionally or unconditionally to be put under option, with the price to be paid for the securities option, the duration of the option, the consideration for which the option was granted, and-

(a) where the option is to all the shareholders or debenture holders or any class thereof or to employees generally-a statement of that fact; or

(b) in any other case-the name and address of each grantee.

45. (1) Subject to subclause (2), where any property has been acquired or is proposed to be acquired by the company or any of its subsidiaries and proposed subsidiaries-

(a) the names and addresses of the vendors;

(b) the amount paid or to be paid in cash, shares, debentures or otherwise to the vendor, and, where there is more than one separate vendor or the company or subsidiary or proposed subsidiary is a sub-purchaser, the amount so paid or to be paid to cash vendor, distinguishing between the amounts paid or to be paid-

(i) in cash;

(ii) in shares;

(iii) in debentures;

(c) the nature of, and value attributed to, any other consideration;

(d) the amount (if any) paid or payable for goodwill;

(e) full particulars of the nature and extent of the interest, direct or indirect, of every director or proposed director of the company or any of its subsidiaries and proposed subsidiaries in the property; and

(f) short particulars of the property.

(2) Subclause (1) shall not apply where the contract for the acquisition of the property was-

(a) completed, and any purchase money fully paid, more than two years before the date of publication of the prospectus; or

(b) entered into in the ordinary course of business and there is no connection between the contract and the invitation.

46. Unless more than two years have elapsed since the registration of the company-

(a) the amount or estimated amount of the expenses incidental or preliminary

to the promotion and registration of the company and by whom those expenses have been paid or are payable;

(b) the names of the promoters of the company;

(c) the amount of any cash or securities paid, or benefit given or proposed to be given, to any promoter and the consideration for such payment or benefit; and

(d) full particulars of the nature and extent of the interest of every director and proposed director in the promotion of the company.

47. Where the prospectus includes a statement purporting to be made by an expert, a statement that the expert has given and has not withdrawn his written consent to the publication of the prospectus with the statement included in the form and in the context in which it is included.

48. The dates of, parties to, and general nature of, every material contract (other than contracts entered into in the ordinary course of business or completed more than two years before the date of publication of the prospectus).

49. (1) A reasonable time (not being less than twenty-eight days) during which, and place at which, subject to this clause, the following documents (or certified copies thereof), may be inspected-

(a) the company's certificate of incorporation, certificate of share capital and articles;

(b) where the invitation relates to debentures-the debenture trust deed;

(c) each contract disclosed pursuant to clause 48 of this Schedule or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof;

(d) the annual accounts (including any group accounts), auditor's report and directors' report for each of the last five financial years, or, where part of that period fell before the commencement of this Act, all similar accounts and reports produced by the company in respect of that part of the period;

(e) the annual accounts (including any group accounts), auditors' report and directors' report in respect of each subsidiary and proposed subsidiary, for each of the last five financial years, or where-

(i) part of that period fell before the commencement of this Act; or

(ii) the subsidiary or proposed subsidiary is not a company to which this Act applies;

all similar accounts and reports produced by the subsidiary or proposed subsidiary in respect of that period or part of the period;

(f) all other reports, letters, balance sheets, valuations and statements by an expert any part of which is extracted or referred to in the prospectus; and

(g) a written statement, signed by the accountants making the report required under Part B of this Schedule, setting out the adjustments made by them in arriving at the figures shown in their report and giving the reasons therefor.

(2) If any part of any of the above-mentioned documents is in a language other than English, a certified translation into English of that part of the document shall be made available for inspection instead of the original or a certified copy.

(3) Paragraph (1) (e) shall not require to be made available for inspection the profit and loss accounts and balance sheets of a subsidiary or business in respect of any financial years in which the profits or losses and assets and liabilities of the subsidiary or business are dealt with in the accounts or group accounts of the company.

50. The names and addresses of the persons making the reports required under Part B of this Schedule.

PART B-REPORTS TO BE SET OUT IN PROSPECTUS

51. A report with respect to-

(a) the profits or losses of the company in respect of-

(i) each of the ten completed financial years immediately proceeding the publication of the prospectus, (or since the incorporation of the company if less than ten years); and

(ii) the period from the end of the last financial year to the latest practicable date being a date less than three months before the date of the publication of the prospectus, if the last financial year of the company ended three months or more before the date of the publication of the prospectus; or

(b) if the company has subsidiaries-a report as required by paragraph (a) with respect to the profits or losses of the company and of its subsidiaries, so far as such profits or losses can properly be regarded as attributable to the interests of the company.

52. A report with respect to-

(a) the assets and liabilities of the company as at the end of its last financial year or, if the financial year ended three months or more before the date of publication of the prospectus, as at the latest practicable date, being a date less than three months before the date of publication of the prospectus; or

(b) if the company has subsidiaries-a report of the kind required by paragraph (a) with respect to the assets and liabilities of the company, and of its subsidiaries so far as such assets can properly be regarded as attributable to the interests of the company.

53. A report with respect to the aggregate emoluments paid by the company to the directors of the company or any related body corporate during the last period for which the accounts have been made up and the amount, if any, by which such emoluments would differ from the amounts payable under any arrangement in force at the date of publication of the prospectus.

54. (1) A report with respect to profits or losses of-

(a) each proposed subsidiary of the company;

(b) each business acquired by the company within ten years before the date of publication of the prospectus; and

(c) each body corporate that became a subsidiary of the company within ten years before the date of publication of the prospectus;

in respect of-

(i) each of the ten financial years immediately preceding the publication of the prospectus, (or each financial year since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary, if less than ten years); and

(ii) if the last financial year of that business, subsidiary or proposed subsidiary ended three months or more before the date of the publication of the prospectus-the period from the end of the last financial year to the latest practicable date, being a date less than three months before the date of the publication of the prospectus.

(2) The report shall deal with such of the profits or losses of a subsidiary or proposed subsidiary as can properly be regarded as attributable to the interests of the company.

(3) Where the report relates to any financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only such of its profits or losses shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the subsidiary or proposed subsidiary which it holds at the date of publication of the prospectus or proposes to acquire.

(4) Where any such subsidiary or proposed subsidiary itself has subsidiaries, the report shall extend to the profits or losses of its subsidiaries so far as the same can properly be regarded as attributable to the interests of the company.

(5) The report need not extend to any period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the report required under clause 51.

55. (1) A report with respect to the assets and liabilities of each proposed subsidiary of the company and each business or subsidiary acquired since the latest date up to which the accounts of the company have been made, as at the end of the last financial year of the business, subsidiary or proposed subsidiary, or, if the financial year ended three months or more before the date of publication of the prospectus, as at the latest practicable date not being more than three months before the date of publication of the prospectus.

(2) The report shall deal with the assets and liabilities of the business, subsidiary or proposed subsidiary so far as such assets and liabilities can properly be regarded as attributable to the interests of the company.

(3) In relation to a proposed subsidiary, only such assets and liabilities shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the proposed subsidiary which it proposes to acquire.

(4) Where any such subsidiary or proposed subsidiary itself has subsidiaries, the report shall extend to the assets and liabilities of its subsidiaries so far as the same can properly be attributable to the interest of the company.

56. A report with respect to any other matters which appear to the persons charged with making the reports to be relevant having regard to the purposes of the reports.

SUBSIDIARY LEGISLATION

SECTION 400-THE COMPANIES (TRANSITIONAL PROVISIONS) REGULATIONS Statutory Instrument
15 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Companies (Transitional Provisions) Regulations. Title

2. (1) The operation of sections three hundred and sixty-seven and three hundred and sixty-eight of the Act is hereby suspended until-Suspension of staff provisions

(a) 31st December, 1997; or

(b) such date as the Registrar may appoint by notice published in the Gazette;

whichever is earlier.

(2) All persons who, immediately before the commencement of the Act, performed functions and held responsibilities under the former Act shall continue to perform those functions and hold those responsibilities under the same terms and conditions. Cap. 686 of the 1971 Edition

3. (1) The operation of Divisions 8.2 and 8.3 of the Act are suspended in relation to a private company until 1st January, 1997. Suspension of audit and director's report requirements for private companies

(2) On and from 1st January, 1997, those Divisions shall apply to a private company as if the Act had commenced on that day.

SECTION 400-THE COMPANIES (FEES) REGULATIONS. Statutory Instrument
16 of 1995.

Regulations by the Minister

1. These Regulations may be cited as the Companies (Fees) Regulations. Title

2. The several fees set out in the Schedule are the prescribed fees for the matters mentioned therein. Fees

SCHEDULE

TABLE 1

FEES PAYABLE BY A COMPANY (OTHER THAN A FOREIGN COMPANY) UNDER THE ACT

Part 1-Companies Limited by Shares

Fee units

1. Registration of the company; for every K200 of the nominal capital of the company (but in no case shall the nominal capital be less than five hundred thousand kwacha) 1
2. Registration of any increase of capital after the first registration of the company; for every K200 of the increase or part thereof 1
3. Certificate of incorporation 100
4. Registration of an altered memorandum of association and order of court to confirm the same 130
5. Registration of change of name and issue of certificate thereof 600
6. Registration of any prospectus pursuant to section one hundred and twenty-six of the Act 250
7. Registration of any document required to be registered on incorporation of a company-
 - (a) Consent to act as director- Companies Form 5 20
 - (b) Declaration of compliance- Companies Form 11 20
 - (c) Any document not specified above, including annual returns 40
 - (d) Alteration or change of registered particulars of directors, or of the registered office of the company 50
8. Registration of a mortgage, debenture or other charge 500
9. Copies of any deed or other document-
 - (a) when prepared by an official 50
 - (b) when prepared by the applicant 40
 - (c) for any certificate issued 50
10. Inspection of any document relating to any company filed with the Registrar 40
11. Inspection of entries in the registers kept by the Registrar relating to any one company 50
12. Name search or clearance 50
13. Collating documents for certification, for every folio 10
14. Name reservation 200

15. Late filing of any of the prescribed forms:

(a) For documents filed later than thirty days, but not later than three months, after the prescribed date 200

(b) For documents filed later than three months, but not later than six months, after the prescribed date 400

(c) For documents filed later than six months after the prescribed date 800

Part 2-Companies Limited by Guarantee

Fee units

1. Registration of the company:

(a) where the number of members is stated in the Articles of Association to be 5 or less than 5 125

(b) for each additional 5 members or fraction thereof 100

2. Conversion into a company limited by shares at K500,000 share capital Nil

3. Certificate of incorporation 100

4. Registration of altered memorandum of association and order of court confirming the same 300

5. Registration of change of name and issue of certificate thereof 600

6. Registration of any document or the recording of any authorised document required to be registered or recorded or required to be delivered, sent or forwarded to the Registrar and not previously specified 40

TABLE 2

TABLE OF FEES PAYABLE BY A FOREIGN COMPANY UNDER THE ACT

Fee units

1. Registration of the certified copy of the charter, statutes or memorandum and articles of association of the company or other instrument constituting or defining the constitution of the company (in English) 1,000

2. Registration of any alteration in any such instrument 400

3. Registration of any document or making a record of any fact authorised to be delivered, sent, or forwarded to the Registrar and not previously specified 150

4. Any certificate issued by the Registrar 150

5. Inspection of any document relating to any company filed

- with the Registrar 100
6. Inspection of entries in the register kept by the Registrar relating to any one company 60
 7. Copies of any instrument-
 - (a) when prepared by an official, for every folio 100
 - (b) when prepared by the applicant, for every folio 60
 8. Collating document for certificate, for every folio or part thereof 10

SECTION 400-THE COMPANIES (PRESCRIBED FORMS) REGULATIONS Statutory Instrument
17 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Companies (Prescribed Forms) Regulations. Title

2. The forms set out in the Schedule shall be the prescribed forms for the purposes of the sections of the Act mentioned in the several forms. Prescribed forms

SCHEDULE

(Regulation 2)

Companies Form 1

APPLICATION FOR INCORPORATION AS A PUBLIC COMPANY

(Section 6)

NOTE: A public company must have share capital (section 14). It has the capacity to enter any business, unless restricted by its articles (section 22). However, it is bound by its acts even if they are contrary to restrictions in its articles (sections 23 and 24). If it is wound up and its assets are insufficient to cover its liabilities, the liability of its shareholders is limited to the amount left unpaid on their shares (sections 265 and 266)

(1) Name of company: PLC

(2) General nature of business:

(a) Principal business:

(b) Other business:

(3) *The articles do not restrict the business that the company may conduct.

OR

*The articles restrict the business that the company may conduct as follows:

(4) Situation of registered office:

(5) Postal address of the company

(6) Nominal capital:

K.....

divided into.....shares of K

,

(7) *The articles place no limit on the number of shareholders of the company.

OR

*The articles limit on the number of shareholders to

(8) Date of beginning of second financial year (if not anniversary of date of incorporation):

*Delete whichever is not applicable.

(9) Particulars of first directors:

Present forenames and surnames

Former forenames or surnames Nationality
and NRC No.
or passport No.

Residential and postal addresses Occupation, and other bodies corporate in which
directorship is held

(10) Particulars of first secretary of company

(a) (if an individual):

Present

forenames and

surnames Former

forenames or

surnames

Nationality and

NRC No. or

passport No.

Residential

any postal

addressesOccupation, ant other

secretaryship held

(b) (if a body corporate):

Name of body corporate

Registered office of body corporate

Registered postal addressNames of any other body corporate in which a secretary
ship is held-Address of principal office, if different from registered office

Note: Where all the partners in a firm are joint secretaries, the name and
address of the principal officer of the firm (and, if that address is outside
Zambia, the address of the principal officer of the firm in Zambia) may be
given, instead of the particulars of each partner.

Where the Secretary is a body corporate name and its registered or principal
office (and, if that office is outside Zambia, the address of the body corporate
in Zambia) should be given.

WE, the several persons whose names and addresses are subscribed, wish to be formed into a PUBLIC COMPANY in pursuance of this application, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names:

Forenames and surname Nationality and NRC number or passport number Residential address

Postal address No. and class of shares to be taken

Signature of subscriber

Dated theday of.....19.....

Witness to the above signatures:

.....
.....
.....
.....

Name Address Occupation Signature

Name and address of individual lodging the application:

.....

Companies Form 2

APPLICATION FOR INCORPORATION AS A PRIVATE COMPANY LIMITED BY SHARES

(Section 6)

NOTE: This Application is for a private company with share capital (section 17). It may not have more than 50 shareholders (section 16). It has the capacity to enter any business, unless restricted by its articles (section 22). However, it is bound by its acts even if they are contrary to restrictions in its articles (sections 23 and 24). The articles may restrict the right to transfer shares. It is prohibited from making any invitation to the public to purchase its shares or debentures (section 122). If it is wound up and its assets are insufficient to cover its liabilities, the liability of its shareholders is limited to the amount left unpaid on their shares (sections 265 and 266).

(1) Name of Company: Limited.

(2) General nature of business:

(a) Principal business:

(b) Other business:

(3) *The articles do not restrict the business that the company may conduct

OR

*The articles restrict the business that the company may conduct as follows:

(4) Situation of registered office:

(5) Postal address of the company

(6) Nominal capital:

K.....

divided intoshares
of K

(7) The articles limit the number of shareholders to

(8) Date of beginning of second financial year (if not anniversary of date of incorporation):

*Delete whichever is not applicable

(9) Particulars of first directors:

Present forenames and surnames

Former forenames or surnames

Nationality and NRC No. or passport No.

Residential and postal addressOccupation and

other bodies

corporate in which directorship is held

(10) Particulars of first secretary of company

(a) (if an individual):

Present forenames and surnamesFormer forenames or surnamesNationality and NRC
No. or passport No.

Residential and postal addressOccupation,

any other

secretaryship held

(b) (if a body corporate):

Name of body corporate Registered office of body corporate Registered post
address Name of any other body corporate in which a secretaryship is held Address
of principal

office, if different from registered office

Note: Where all the partners in a firm are joint secretaries, the name and address of the principal officer of the firm (and, if that address is outside Zambia, the address of the principal officer of the firm in Zambia) may be given, instead of the particulars of each partner.

Where the Secretary is a body corporate name and its registered or principal office (and, if that office is outside Zambia, the address of the body corporate in Zambia) should be given.

WE, the several persons whose names and addresses are subscribed, wish to be formed into a PRIVATE COMPANY LIMITED BY SHARES in pursuance of this application, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Forenames and surname

Nationality and NRC number or passport number

Residential address

Postal address No. and class of shares to be taken

Signature of subscriber

Dated theday
of.....19.....

Witness to the above signatures:

.....
.....
.....

Name	Address	Occupation	Signature
------	---------	------------	-----------

Name and address of individual the application

Companies Form 3

APPLICATION FOR INCORPORATION AS A COMPANY LIMITED BY GUARANTEE

(Section 6)

Note: A company limited by guaranteed does not have share capital. It must not carry on business for the purpose of making profits for its members or for anyone concerned in its promotion or management (section 19). It may not have more than 50 members (section 16). It is prohibited from making any invitation to the public to purchase its debentures (section 122). It has the capacity to enter into any activity, unless restricted by its articles (section 22). However, it is bound by its acts even if they are contrary to restrictions in its articles (sections 23 and 24). Each member must sign a declaration of guarantee, specifying the amount that he undertakes to contribute if the company is wound up. If it is wound up and its assets are insufficient to cover its liabilities, the liability of its members is limited to the amount so guaranteed (sections 265 and 266).

(1) Name of company Limited

(2) General nature of activities:

(a) Principal activities

(b) Other activities:

(3) The articles do not restrict the activities that the company may conduct

OR

*The articles restrict the activities that the company may conduct as follows:

(4) Situation of registered office:

(5) Postal address of the company:

(6) Total amount guaranteed by subscribers:

K.....

(7) The articles limit the number of shareholders to

(8) Date of beginning of second financial year (if not anniversary of date of

incorporation):

*Delete whichever is not applicable

(9) Particulars of first directors:

Present forenames and surnames

Former forenames or surnames

Nationality and NRC No. or passport No.

Residential and postal addresses

Occupation, and other bodies corporate in which directorship is held

(10) Particulars of first secretary of company

(a) (if an individual):

Present forenames and surnames Former forenames or surnames Nationality and NRC
No. or passport No.

Residential and postal addresses Occupation, any other secretaryship held

(b) (if a body corporate):

Name of body corporate Registered office of body corporate Registered postal
address Name of any other body corporate in which a secretaryship is held Address
of principal office, if different from registered office

Note: Where all the partners in a firm are joint secretaries, the name and address of the principal officer of the firm (and, if that address is outside Zambia, the address of the principal officer of the firm in Zambia) may be given, instead of the particulars of each partner.

Where the Secretary is a body corporate name and its registered or principal office (and, if that office is outside Zambia, the address of the body corporate in Zambia) should be given.

WE, the several persons whose names and addresses are subscribed, wish to be formed into a COMPANY LIMITED BY GUARANTEE in pursuance of this application, and:

(1) we agree that if, upon the winding up of the company, there remains after the discharge of all its debts and liabilities any property of the company, that property will not be distributed among the members, but will be transferred to some other company having similar objects, or applied to some other charitable object, such other company or charity to be determined by ordinary resolution of the members in general meeting prior to the dissolution of the company;

(2) we respectively declare that if, upon the winding up of the company, the assets of the company prove insufficient to discharge all the debts and liabilities of the company, we guarantee to contribute to the discharge of those debts and liabilities an amount not exceeding the amount set against our respective names:

Forenames and

surnameNationality and NRC number or passport number

Residential adress

Postal addressAmount declared to be guaranteed by the abscriber

Signature of subscriber

Dated theday
of.....19.....

Witness to the above signatures:

.....

.....

Name Address Occupation Signature

Name and address of individual lodging the application:

Companies Form 4

APPLICATION FOR INCORPORATION AS AN UNLIMITED COMPANY

(Section 6)

NOTE: An unlimited company is a private company with share capital (sections 13 and 20). It may not have more than 50 shareholders (section 16). It has the capacity to enter any business, unless restricted by its articles (section 22). However, it is bound by its acts even if they are contrary to restrictions in its articles (sections 23 and 24). The articles may restrict the right to transfer shares. It is prohibited from making any invitation to the public to purchase its shares or debentures (section 122). If it is wound up and its assets are insufficient to cover its liabilities, the liability of its shareholders to contribute to the discharge of those liabilities is unlimited (sections 20 and 265).

(1) Name of company: Limited

(2) General nature of business:

(a) Principal business:

(b) Other business:

(3) *The articles do not restrict the business that the company may conduct

OR

*The articles restrict the business that the company may conduct as follows:

(4) Situation of registered office:

(5) Postal address of the company:

(6) Nominal capital:

K.....

divided into.....shares
of K ,

(7) The articles limit the number of shareholders to

(8) Date of beginning of second financial year (if not anniversary of date of

incorporation):

*Delete whichever is not applicable

(9) Particulars of first directors:

Present forenames and surnames Former forenames or surnames Nationality and NRC No. or passport No.

Residential and postal addresses Occupation, and other bodies corporate in which directorship is held

(10) Particulars of first secretary of company

(a) (if an individual):

Present forenames and surnames

Former forenames or surnames Nationality and NRC No. or passport No.

Residential and postal address

Occupation, any other secretaryship held

(b) (if a body corporate):

Name of body corporate

Registered office of body corporate

Registered postal address Name of any other body corporate in which a secretaryship is held Address of principal office, if different from registered office

Note: Where all the partners in a firm are joint secretaries, the name and address of the principal officer of the firm (and, if that address is outside Zambia, the address of the principal officer of the firm in Zambia) may be given, instead of the particulars of each partner.

Where the Secretary is a body corporate name and its registered or principal office (and, if that office is outside Zambia, the address of the body corporate in Zambia) should be given.

WE, the several persons whose names and addresses are subscribed, wish to be formed into an UNLIMITED COMPANY in pursuance of this application, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names:

Forenames and surname Nationality and NRC number or passport number

Residential address

Postal address

No. and class of shares to be taken

Signature of subscriber

Dated theday of.....19.....

Witness to the above signatures:

.....
.....

Name Address Occupation Signature

Name and address of individual lodging the application

Companies Form 5

DECLARATION OF CONSENT TO ACT AS DIRECTOR OR SECRETARY

(Section 6)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

*I/*We, the undersigned, hereby testify *my/*our consent to act as director or secretary to the proposed company

.....
.....

(company name)

pursuant to paragraph (1) (c) of the Companies Act 1994.

SignatureAddressDescription

Note: If a director or secretary signs by his agent authorised in writing, the authority must be produced and a copy filed.

Dated this.....day
of.....19.....

Companies Form 6

CERTIFICATE OF INCORPORATION OF A PUBLIC COMPANY

(Section 10)

Company Registration No.

This is to certify that

PLC (company name)

is on and from the day of.....19.....

incorporated as a public company.

Given under my hand and seal in Lusaka, Zambia, this day

of.....19.....

.....

Registrar of Companies

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 7

CERTIFICATE OF INCORPORATION OF A PRIVATE COMPANY LIMITED BY SHARES

(Section 10)

Company Registration No.

This is to certify that

limited (company name)

is on and from the day
of.....19.....incorporated

as a private company limited by shares.

Given under my hand and seal in Lusaka, Zambia, this

day of.....19.....

.....

Registrar of Companies

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 8

CERTIFICATE OF INCORPORATION OF A COMPANY LIMITED BY GUARANTEE

(Section 10)

Company Registration No.

This is to certify that

Limited (company name)

is on and from the day
of.....19.....incorporated

as a company limited by guarantee.

Given under my hand and seal in Lusaka, Zambia, this

day of.....19.....

.....

Registrar of Companies

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 9

CERTIFICATE OF INCORPORATION OF AN UNLIMITED COMPANY

(Section 10)

Company Registration No.

This is to certify that

(company name)

is on and from the day
of.....19.....incorporated as an
unlimited company.

Given under my hand and seal in Lusaka, Zambia, this

day of.....19.....

.....

Registrar of Companies

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 10

CERTIFICATE OF SHARE CAPITAL

(Section 10)

Company Registration No.

This is to certify that

(company name)

has the nominal capital of K

divided into.....share of K each

.....shares of K

each

.....shares of K

each

Given under my hand and seal in Lusaka, Zambia, this

day of.....19.....

.....

Registrar of Companies

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 11

DECLARATION OF COMPLIANCE

(Section 9)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

I,

of

do solemnly and sincerely declare that I am: *a legal practitioner engaged in the formation of the company a first director named in the application for incorporation of the first secretary named in the application for incorporation of

(name of company)

and that all the requirements of the Companies Act, 1994, in respect of matters precedent to the incorporation of the Company and incidental thereto have been complied with. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835, of the United Kingdom.

Declared at

the day of....., 19.....

Before me,

.....

(Commissioner for Oaths, or Notary Public)

*Delete whichever is not applicable

Companies Form 12

DECLARATION OF COMPLIANCE WITH MINIMUM CAPITAL REQUIREMENTS FOR A PUBLIC COMPANY

(Section 15)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

I,

of

being *the secretary/*a director of the company PLC

(name of company)

do solemnly and sincerely declare:

(1) That the company has not transacted any business, exercised any borrowing powers or incurred any indebtedness, except for a purpose incidental to its incorporation or the obtaining of subscriptions to or payment for its shares;

(2) That the amount fixed by the articles or named in the prospectus as the minimum subscription upon which the company may proceed to transact any business is

K.....

(being not less than the minimum provided under the Act);

(3) That the nominal value of share capital of the company allotted is

K.....

(being not less than the minimum provided under the Act);

(4) That the amount paid up on the allotted share capital of the company (whether paid in cash or otherwise) is

K.....

(being not less than the minimum provided under the Act);

(5) That the amount, or estimated amount, of the preliminary expenses that have been paid or are payable is

K.....

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835, of the United Kingdom.

Declared at

the day of..... 19.....

Before me

.....
.....

(Commissioner for Oaths, or Notary Public)

*Delete whatever is not applicable

Companies Form 13

CERTIFICATE OF MINIMUM CAPITAL

(Section 15)

Company Registration No.

This is to certify that the company

(full name of company)

satisfies the requirements of section 15 of the Companies Act and is entitled to commence business as a public company.

Given under my hand and seal in Lusaka, Zambia, this

.....day
of..... 19.....

.....

Registrar of Companies

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 14

APPLICATION FOR CONVERSION OF COMPANY

(Section 36)

Company Registration No.

Company Name:

The above-named company, having satisfied the requirements of section
*..... hereby applies to the Registrar
for conversion of the company in accordance with the resolution or agreement of
the company.

.....

Secretary of the Company

*Enter number of the appropriate conversion section of the Companies Act
(sections 30-35).

NOTE: This form must be accompanied by the documents referred to in subsection
36(4) of the Companies Act, 1994.

Companies Form 15

REPLACEMENT CERTIFICATE OF INCORPORATION FOR A COMPANY CONVERTED TO A PUBLIC COMPANY

(Section 36)

Company Registration No.

This is to certify that

(company name)

having been:

*a private company limited by shares

*a company limited by guarantee

*an unlimited company

incorporated on the day of.....19.....

is on and from the day of.....19.....

converted to a public company in accordance with a special resolution passed on the.....day

of.....19.....

Given under my hand and seal in Lusaka, Zambia, this day

of.....19.....

.....

Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 16

REPLACEMENT CERTIFICATE OF INCORPORATION FOR A COMPANY CONVERTED TO A PRIVATE COMPANY LIMITED BY SHARES

(Section 36)

Company Registration No.

This is to certify that

(company name)

having been:

- *a public company
- *a company limited by guarantee
- *an unlimited company

incorporated on the day of.....19....., is on and from

the day of....., 19.....converted to a private company limited by shares in accordance with a special resolution passed on the

.....day of....., 19.....

Given under my hand and seal in Lusaka, Zambia this day of.....

19.....

.....

Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 17

REPLACEMENT CERTIFICATE OF INCORPORATION FOR A COMPANY CONVERTED TO A COMPANY LIMITED BY GUARANTEE

(Section 36)

Company Registration No.

This is to certify tha

(company name)

having been:

*a public company

*a private company limited by shares

*an unlimited company

incorporated on the day of.....19.....,

is on and from the day of....., 19.....converted

to a company limited by guarantee in accordance with a special resolution passed on the

.....day of....., 19.....

Given under my hand and seal in Lusaka, Zambia, this day of.....

19.....

.....

Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 18

REPLACEMENT CERTIFICATE OF INCORPORATION FOR A COMPANY CONVERTED TO AN UNLIMITED COMPANY

(Section 36)

Company Registration No.

This is to certify that

(company name)

having been:

- *a public company
- *a company limited by shares
- *a company limited by guarantee

incorporated on the day
of.....19.....

is on and from the day
of.....19.....

converted to an unlimited company in accordance with a special resolution passed on the

.....day of.....19.....

Given under my hand and seal in Lusaka, Zambia, this day
of....., 19.....

.....

Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 19

APPLICATION FOR RESERVATION OF NAME

(Section 38)

Company Registration No.

The persons specified below, proposing to form a company, hereby request that the name:

be reserved by Registrar for that purpose.

Details of applicants:

Forenames and Surname

Address/
Registered Office

Postal address/ Registered postal address
Signature (of Secretary in case of a body corporate)

Companies Form 20

NOTICE OF RESERVATION OF NAME

(Section 38)

To (name of applicant)

The name

is available for registration of a company under the Companies Act, and is reserved for the applicant for a period of 3 months from the date of this notice.

Dated this.....day
of....., 19.....

.....

Registrar of Companies

Companies Form 21

APPLICATION FOR CHANGE OF NAME OF COMPANY

(Section 40)

Company Registration No.

Company Name

The above-named company hereby notifies the Registrar that it intends to change its name to:

for the following reasons:

and requests the Registrar to consider whether the proposed name is available for registration.

Date.....
.....

Address for notice

Companies Form 22

REPLACEMENT CERTIFICATE OF INCORPORATION FOR CHANGE OF NAME OF A PUBLIC COMPANY

(Section 40)

Company Registration No.....

This is to certify that is

a public company and was incorporated on the day

of.....19....., having been known before
the day

of.....19..... by the name:

Given under my hand and seal in Lusaka, Zambia, this day

of.....19.....

.....

Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the
Registrar of Companies has been affixed]

Companies Form 23

REPLACEMENT CERTIFICATE OF INCORPORATION FOR CHANGE OF NAME OF A
PRIVATE COMPANY LIMITED BY SHARES

(Section 40)

Company Registration No.

This is to certify that

is a private company limited by shares and was incorporated on the day

of.....19....., having been known before
the day

of.....19..... by the name:

Given under my hand and seal in Lusaka, Zambia, this day

of.....19.....

.....
Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the
Registrar of Companies has been affixed]

Companies Form 24

REPLACEMENT CERTIFICATE OF INCORPORATION FOR CHANGE OF NAME OF A
COMPANY LIMITED BY GUARANTEE

(Section 40)

Company Registration No.

This is to certify that is

a company limited by guarantee and was incorporated on the day

of.....19....., having been known before
the day

of.....19....., by the name:

Given under my hand and seal in Lusaka, Zambia, this day

of.....19.....

.....
Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the
Registrar of Companies has been affixed]

Companies Form 25

REPLACEMENT CERTIFICATE OF INCORPORATION FOR CHANGE OF NAME OF AN UNLIMITED COMPANY

(Section 40)

Company Registration No.

This is to certify that

Is an unlimited company and was incorporated on the day

of.....19....., having been known before the day

of.....19....., by the name:

Given under my hand and seal in Lusaka, Zambia, this day

of.....19.....

.....
Registrar of Companies

*Delete whichever is not applicable

[Note that this certificate is not valid unless the official seal of the Registrar of Companies has been affixed]

Companies Form 26

NOTICE OF CHANGE OF FINANCIAL YEAR

(Section 42)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Name of company

Notice is hereby given that the above-mentioned company intends to change its financial year by changing the accounting date that would have fallen

on of.....19.....

to of.....19.....

Notice of the change has been sent to each registered member and to the auditors of the company.

Date.....
.....

Secretary

Companies Form 27

FORM OF TRANSFER OF FULLY-PAID SHARES IN COMPANY LIMITED BY SHARES

(Section 57)

Company Registration No.

I,

(full name, address and occupation of transferor)

in consideration of

hereby transfer to

(full name, address and occupation of transferee)

.....fully paid.....

(number of shares)
(class of shares)

shares, numbered.....to
(inclusive)

(distinguishing numbers of shares if any)

in

(name of company)

Dated this day of.....19.....

.....

Signature of transferor

(If the transfer is not made by the registered holder of a share, the name(s) and capacity (eg. Executor) of the person making the transfer should also be stated)

ACKNOWLEDGEMENT BY THE TRANSFEREE

I, the said

hereby

acknowledge the transfer.

.....

Signature of transferee

Companies Form 28

RETURN OF ALLOTMENT OF SHARES

(Section 63)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Name of Company

The shares referred to in this return were allotted:

*on the day of.....19.....

*from the day of.....19.....

to the day of.....19.....

*delete whichever is not applicable-if the return covers only allotments made on one date, the first applies, if it covers allotments made on several dates, the second applies, and the dates of the first and last allotments covered should be entered.

Number of the shares allotted payable in cash:.....

Number of the shares allotted payable in cash:.....

Nominal amount of the shares to allotted:.....

Nominal amount of the shares to allotted:.....

Amount due and payable on each such share:

Nominal amount of shares so allotted:

Amount to be treated as paid on each such share:

The consideration for which the shares have been allotted is as follows:

Distinguish between ordinary, preference, etc.

NAMES, ADDRESSES AND DESCRIPTION OF THE ALLOTTEES

No. of shares allotted Surname (or company name in case of company) Forenames (or company registration No.)

Address

Description

Preference

Ordinary

Dated
this.....day
.....day
of.....19.....

Signature of *Director/*Secretary

.....
.....

*Delete whichever is inapplicable

Companies Form 29

NOTICE OF ALTERATION IN CAPITAL

(Section 74)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Notice is hereby given in respect of:

(name of company)

that by a Resolution of the Company

passed on the 19....., the nominal

capital of the company has been varied, as permitted by section 74 of the Companies Act, as follows:

and that the capital of the company now stands as follows:

a nominal share capital of K.....

divided into:.....shares of K.....each

divided into:.....shares of K.....each

divided into:.....shares of K.....each

Date.....

Secretary

Companies Form 30

REPLACEMENT CERTIFICATE OF SHARE CAPITAL

(Sections 74 and 79)

Company Registration No.

This is to certify that

(name of company)

has the nominal share capital of K

divided into:.....shares of K
each

divided into:.....shares of K
each

divided into:.....shares of K
each

having varied its nominal share capital from a nominal share capital of
K.....

divided into:.....shares of K
each

divided into:.....shares of K
each

divided into:.....shares of K
each

Given under my hand and seal in Lusaka, Zambia, this day

of.....19....
....

.....

Registrar of Companies

[Note that this certificate is not valid unless the official seal of the
Registrar of Companies has been affixed]

Companies Form 31

PARTICULARS OF CHARGE OR MORTGAGE

(Section 99)

Company Registration No.

Name of Company:

Registered office:

Presented by:

Address:

date and description of instrument creating or evidencing the mortgage:

Amount secured by the mortgage or charge

Short particulars of all the property mortgaged:

Name(s) address(es) and description(s) of the mortgagee(s) or charge(s) or the person(s) entitled to the mortgage or charge:

Particulars of any commission, allowance or discount:

Signature of person delivering particulars:

Position in relation to company, if any

Date.....

NOTE: A copy of the instrument, if any, creating the mortgage or charge, certified to be a true and complete copy of the original instrument, must be

delivered to the Registrar with these particulars, unless the mortgage or charge is registered under some other Act, in which case particulars of the instrument sufficient to identify it should be given.

Companies Form 32

PARTICULARS OF A MORTGAGE OR CHARGE SUBJECT TO WHICH PROPERTY HAS BEEN ACQUIRED

(Section 99)

Company Registration No.

Name of Company:

Registered office:

Presented by:

Address:

Date and description of instrument creating or evidencing the mortgage:

Amount secured by the mortgage or charge:

Date of acquisition of the property:

Short particulars of all the property mortgaged:

Name(s) address(es) an description(s) of the mortgagee(s) or chargee(s) or the person(s) entitled to the mortgage or charge:

Signature of person delivering particulars:

Position in relation to company, if any

Date.....

NOTE: A copy of the instrument, if any, creating the mortgage or charge, certified to be a true and complete copy of the original instrument, must be delivered to the registrar with these particulars, unless the mortgage or charge is registered under some other Act, in which case particulars of the instrument sufficient to identify it should be given.

Companies Form 33

PARTICULARS OF SERIES OF DEBENTURES WHERE PROPERTY IS CHARGED

(Section 99)

Company Registration No.

Name of Company:

Registered office:

Particulars of the series of debentures:

Total amount secured by the series of debentures:

Date(s) of resolution(s)

Authorising issue of series:

Date of document (if any) by which the charge is created or defined:

Short particulars of all the property charged:

Date and amount of present issue (if any) of debentures of the series

Names, addresses and descriptions of the trustees (if any) for the debenture-holders

Signature of person delivering particulars:

Position in relation to company, if any

Date.....

NOTE: 1. If the debentures contain or given a charge by reference to some other instrument, the date of that instrument should be given. If there is no such instrument, the date be given of the first execution of any debenture of the series.

2. This form should be used for registration of particulars of the entire series. When more than one issue of debentures in the series is made, particulars of the date and amount of each issue subsequent to the first should be given to the Registrar in Form 34.

3. A copy of the instrument, if any, creating or containing the charge, certified to be a true and complete copy of the original instrument, must be delivered to the Registrar with these particulars. If there is no such instrument, a certified copy of one of the debentures of the series must be delivered.

Companies Form 34

PARTICULARS OF AN ISSUE OF DEBENTURES IN A SERIES

(Section 97)

Company Registration No.

Name of company:

Registered office:

Particulars of the series of debentures:

Total amount secured by the series of debentures:

Date and amount of present issue of debentures of the series

Signature of person delivering particulars:

Position in relation to company, if any

Date.....

NOTE: For registration of particulars of the whole series, Form No. 35 should be used.

Companies Form 35

MEMORANDUM OF SATISFACTION AND RELEASE FROM MORTGAGE OR CHARGE

(Section 102)

Company Registration No.

Name of Company:

Registered office:

Presented by:

Address:

Notice is hereby given in relation to the above named company and the registered charge

(registration number)

That,

on....., 19.....:

*1. The debt for which the charge was created was wholly paid or satisfied;

*2. The debt for which the charge was created was partly paid or satisfied to the extent of

*3. Part of the property or undertaking charged was released from the charge so that the following property is no longer subject to the charge (give particulars):

*4. The following property or undertaking, formerly part of the property or undertaking subject to the charge, ceased to form part of the property or undertaking (give particulars of property):

*Delete whichever is inapplicable

Signed on behalf of company

Position in relation to company

Date:.....

Signed by person(s) entitled to the charge

Date:.....

Companies Form 36

NOTICE OF VARIATION IN A MORTGAGE OR CHARGE

(Section 103)

Company Registration No.

Name of company:

Registered office:

Presented by:

Address:

Notice is hereby given in relation to the above named company and the registered charge

(registration number)

That, on , 19.....the terms

of the charge were varied as follows:

(Identify each term varied, and state how it is varied)

Signed on behalf of company

Position in relation to company

Date:.....

Signed by person(s) entitled to the charge

Date:.....

NOTE: Notification of the satisfaction of a mortgage or charge (in whole or in part), or of the release of part of the property or undertaking from a mortgage or charge secured over it, or of part of that property or undertaking, should be given to the Registrar on Form No. 35 and not in this form.

Companies Form 37

NOTICE OF ENTRY INTO POSSESSION AS MORTGAGE

(Section 104)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Notice is hereby given in relation to (name of company whose property is mortgaged)

that (name and address of mortgagee)

being the mortgagee of the company under registered mortgage.....(registration number) in relation to the following property:

has entered into possession of the property on the..... 19..., under the following powers contained in the registered mortgage:

Signature:.....

Capacity in which this notice is given:.....

Date:.....

Companies Form 38

NOTICE THAT MORTGAGEE HAS GONE OUT OF POSSESSION

(Section 104)

Company Registration No.

To: THE REGISTRATION OF COMPANIES:

Notice is hereby given in relation to (name of company whose property is mortgaged)

that (name and address of mortgagee)

being the mortgagee in possession of the company under registered mortgage
(registration number) in relation to the following property:

has gone out of possession of the property on the
19.....

Signature:

Capacity in which this notice is given:

Date:.....

Companies Form 39

NOTICE OF APPOINTMENT OF RECEIVER OR RECEIVER AND MANAGER

(Section 109)

(Notice by the appointer)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Notice is hereby given in relation to (name of company)

that (full name and address)

has been appointed receiver*/receiver and manager* in relation to the following business and property of the company:

on the , 19..... under:

- *1. the following order of the court; or
- *2. powers contained in the following instrument:

**

Full name and address of person who obtained the court order or made the appointment under the instrument:

Signature:.....

Date:.....

*Delete as appropriate

**Where the appointment is under the order of a court, insert the name of the court and particulars of the order. Where the appointment is under an instrument, insert particulars identifying the instrument and setting out the power used.

Companies Form 40

NOTICE OF ADDRESS OF RECEIVER OR RECEIVER AND MANAGER

(Section 109)

(Notice by the receiver)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

I ,

having been appointed receiver*/receiver and manager* in relation to (name of company)

, on

the.....

.....day of ,

19....., hereby give notice that my postal address, for the purposes of my business as receiver, is:

,

and the physical address of my office is:

Signature:.....

Date:.....

*Delete as appropriate.

Companies Form 41

NOTICE OF CEASING TO ACT AS RECEIVER OR RECEIVER AND MANAGER

(Section 109)

(Notice by the receiver)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

I, ,

having been appointed receiver*/receiver and manager* in relation to (name of company).....

hereby give notice that I ceased so to act on

the.....day of , 19.....

Signature:.....

Date:.....

*Delete as appropriate.

Companies Form 42

ANNUAL RETURN OF A COMPANY

(Section 184)

Company Registration No.

Annual return of

made up to
the.....
....., 19.....

Note:Under section 184, the return should be made up to the date of the annual general meeting or, if there is no annual general meeting, any date within three months after the end of the financial year.

(2) Nature of the business or businesses of the company or, if the company is not carrying on a business, the nature of its objects:

(3) Situation of the company's registered office

Post Office Box No.

(4) Situation of the company's registered records office, if different from registered office:

(5) Situation of the company's principal place of business in Zambia:

(6) Situation(s) at which company's register of members and register of debenture holders are kept, if elsewhere than at registered records office:

(7) Summary of share capital and debentures:

(a) Nominal share capital:

(1) Nominal share capital K.....divided into:

Number	Value	Class
.....		
.....		shares of
.....		each
.....		
.....		shares of
.....		each
.....		
.....		shares of
.....		each
.....		
.....		shares of
.....		each

(b) Issued share capital and debentures:

Class	Number
(2) Number of shares of.....	
.....	shares
of each class issued	
up to the date of this.....	
.....	shares
return (which number	
must agree with the.....	
.....	shares
total shown in the	
list as held by	
existing members).....	
.....	shares
(3) Amount called up on number of shares of each class:	
(3)	per share
on.....	shares
(3)	per share
on.....	shares
(3)	per share
on.....	shares
(3)	per share
on.....	shares

(4) Total amount of calls received, (Note 3)
K.....

(4)

(5) Total amount of calls unpaid
K.....
.....

(6) Amount of unpaid liability on shares in each class, not yet due for payment:

(6)per share
on.....shares

(6)per share
on.....shares

(6)per share
on.....shares

(6)per share
on.....shares

(7) Total amount of unpaid liability K.....

(9) Total number of shares of each class forfeited:

Class	Number
.....
.....	.....shares
.....
.....	.....shares

(10) Total amount paid (if any) on shares forfeited:
K.....

(11) Total amount of shares for which share warrants to bearer are outstanding
K.....

(12) Total amount of share warrants to bearer surrendered since the date of the last return K.....

(13) Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind:

Kind	Number
.....
.....

.....
.....

.....
.....

(8) Particulars of indebtedness:

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies:

K.....

(9) Particulars of first directors:

Present forenames and surnames Former forenames or surnames Nationality and NRC No. or passport No.

Residential and postal addresses Occupation, and other bodies corporate in which directorship is held

(10) Particulars of secretary of company (a) (if an individual):

Present forenames and surnames Former forenames or surnames Nationality and NRC No. or passport No.

Residential and postal addresses

Occupation, any other secretaryship held

(b) (if a body corporate):

Name of body corporate Registered office of body corporate

Registered postal address Name of any other body corporate in which a secretaryship is held Address of principal office, if different from registered office

Note: Where all the partners in a firm are joint secretaries, the name and address of the principal officer of the firm (and, if that address is outside Zambia, the address of the principal officer of the firm in Zambia) may be given, instead of the particulars of each partner.

Where the secretary is a body corporate name and its registered or principal office (and, if that office is outside Zambia, the address of the body corporate in Zambia) should be given.

(11) Particulars of:

(a) persons holding shares in the company on

.....
.....
.....(date to which this return is made up): and

(b) persons who held shares in the company at any time during the period
since.....

....., 19.....(Date of previous annual
return)

Names, addresses and occupations Folio in register with
details Surname Forenames Address Occupation Shares held on return day Shares acquired
during year Shares divested during year Remarks Number Date Number Date

Companies Form 43

NOTICE OF CHANGE OF SITUATION OF REGISTERED OFFICE OR OF REGISTERED POSTAL ADDRESS

(Section 190)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Notice is hereby given in relation to (name of company)

that:

*1. the registered address of the company will change to:

on and from....., 19.....

*2. the registered postal address of the company will change to:

on and from....., 19.....

Date:.....

Secretary

*Delete if not applicable

Companies Form 44

NOTICE OF CHANGE OF SITUATION OF REGISTERED RECORDS OFFICE

(Section 190)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Notice is hereby given in relation to (name of company)

that the situation of the registered records office of the company will change to:.....

on and

from

....., 19.....

(Full physical address must be given; Post Office Box number is not sufficient, but may be provided in addition to full address)

Date:.....

Secretary

*Delete if not applicable

Companies Form 45

NOTICE OF CHANGES IN DIRECTORS OR SECRETARIES

(Section 226)

Company Registration No.....

To: THE REGISTRAR OF COMPANIES:

To: Notice is hereby given in relation to

(name of company)

that the following are the present directors and secretary of the company. The changes since the last notice was given are recorded in the sixth column.

Directors:

Present forenames and surnames

Former forenames or surnames Nationality and NRC number or passport number

Residential and postal addresses bodies corporate in which a directorship is held
(if none, say no)

Changes (see note)

NOTE: The List should contain the names of each person who has a director at the time of the last return, and each who is a director at the time of the present return. The "changes" column should mark the changes since the last return e.g., by placing against the name of a person no longer a director "dead" or "resigned",etc. and against the name of a new director "in place of (name)",etc.

Secretary:

(a) (if an individual):

Present
forenames and surnames
Former forenames or surnames
Nationality and NRC No. or passport No.

Residential and postal addresses

Occupation,
any other secretaryships held

(b) (if a body corporate):

Name of body corporate

Registered office of body corporate

Registered postal
addressName of any other body corporate in which a secretary shp is held

Address of
principal office,
if different from registered office

NOTE: Where all the partners in a firm are joint secretaries, the name and

address of the principal officer of the firm (and, if that address is outside Zambia, the address of the principal officer of the firm in Zambia) may be given, instead of the particulars of each partner.

Where the Secretary is a body corporate name and its registered or principal office (and, if that office is outside Zambia, the address of the body corporate in Zambia) should be given.

I confirm that each of the persons appointed to office as director or secretary has consented in writing to act in that capacity.

Signed on behalf of the company

Position in relation to the company

Date:.....

Companies Form 46

APPLICATION FOR REGISTRATION AS A FOREIGN COMPANY

STATEMENT OF PARTICULARS OF A FOREIGN COMPANY

(Section 245)

1. Name of company
2. Country of incorporation
3. Date of incorporation
4. Is the liability of its members limited or unlimited?

If limited, state nature of limitation on liability

5. Nature of business or businesses or other main objects of the company

6. Particulars of the persons who are to be the local directors of the company are as shown in Appendix A (1) to this Form; or

7. The share structure of the company is constituted as shown in Appendix B (...) to this Form.

(Appendix B consists of three forms, B (1) to B (3) inclusive. Use particular form appropriate to the share structure of the company)

8. The address of the registered or principal office of the company in the country of its incorporation is:

9. The address of the established place of business of the company in Zambia is:

10. (a) The full name and residential address of the documentary agent of the company in Zambia

is:

(b) The business address in Zambia of such documentary agent is:

(c) The Post Office Box number in Zambia of such documentary agent is:

(d) The said documentary agent is a bona fide resident of Zambia at the date of this statement, and I am informed by him, and believe, that he intends to continue to reside in Zambia for an indefinite period of time.

11. (a) Particulars of all charges on or affecting any property of the company in Zambia-

(i) created prior to the date the company established a place of business in Zambia; and

(ii) create prior to the 1st day of February, 1972, are as shown in Appendix "C" to this Form.

(b) There are no subsisting charges on, or affecting, any property of the company in Zambia at the date of this statement.

(Delete (a) or (b) where not applicable)

This statement is made by me

for and on behalf of the said.....

I have been duly authorised in that behalf by Letter of Authority executed by the said company on the day of.....19.....which said Letter of Authority is hereto attached, and I state that this statement is true of my knowledge, save where otherwise appears.

Made at.....,
this.....day of....., 19.....

Signed.....

Appendix "A (1)"

PARTICULARS OF LOCAL DIRECTORS OF FOREIGN COMPANY

Name of company

The names and particulars of local directors of the above-named company,
appointed pursuant to section 245 of the Act, are as follows-

Name (present forename of forenames and surname)

Any former forename or forenames and surname

Nationality

Usual residential address in Zambia

Other Business occupation or directorships, if any. If none, state so

Mr..... (No. above-named)
has been designated chairman of local directors by the company, All of the
above-named persons have consented in writing to act as local directors of the
company.

Dated this.....day
of.....19.....

.....

.....

Signature of persons authorised to make statement

Companies Form 47

NOTICE OF ALTERATION OF THE REGISTERED INSTRUMENT CONSTITUTING OR DEFINING THE
CONSTITUTION OF A FOREIGN COMPANY

(Section 247)

Company Registration No.

(NOTE: This Form to be signed by not less than TWO of the local directors.)

To: THE REGISTRAR OF COMPANIES:

Name of foreign company:

Notice is hereby given by the above named foreign company that the instrument
constituting or defining its constitution, registered in respect thereof
pursuant to section 245, has been altered in the following respects-

(Here state nature and date of alteration)

A certified copy of .effecting the alteration is hereto attached.

Dated this.....day
of.....19.....

Local Directors

Companies Form 48

NOTICE OF ALTERATION OF REGISTERED PARTICULARS OF A FOREIGN COMPANY

(Section 247)

Company Registration No.

(Note: This form to be signed by not less than TWO of the local directors.)

To: THE REGISTRAR OF COMPANIES:

Name of foreign company:

Notice is hereby given by the above named foreign company that particulars stated in the application for registration as a foreign company have been altered as follows:

(Here state nature and date of alterations)

Dated this.....day
of.....19.....

Local Directors

Companies Form 49

NOTICE OF WINDING-UP OR DISSOLUTION OF A FOREIGN COMPANY IN COUNTRY OF INCORPORATION

(Section 256)

Company Registration No.

(NOTE: This Form to be signed by not less than TWO of the local directors.)

To: THE REGISTRAR OF COMPANIES:

Name of foreign company:

Notice is hereby given that:

*(a) By an Order of the Court
of , the country of incorporation
(country of incorporation)

of the foreign company above-named, dated
the.....day

of....., 19....., it was
ordered and decreed that the said foreign company be wound up by the said Court.
The following person(s) was/were appointed
Liquidator/Liquidators/Receiver/Receivers by the Court for the purposes of the
winding-up

(b) On this.....day of....., 19.....

by in accordance with the law
(resolution or other instrument)

of it was determined that the above
(country of incorporation)

named foreign company be wound up voluntarily. The following person(s)
was/were appointed Liquidator/Liquidators for the purposes of the winding-up:

(c) On the day of..... 19.....

the above named foreign company was dissolved in accordance with the law of

(country of incorporation)

*Delete whichever is not applicable.

Dated this.....day
of.....19.....

Local Directors

Companies Form 50

NOTICE OF CESSATION OF BUSINESS OF A FOREIGN COMPANY IN ZAMBIA

(Section 258)

Company Registration No.

(NOTE: This Form to be signed by not less than TWO of the local directors.)

To: THE REGISTRAR OF COMPANIES:

Name of foreign company:

Notice is hereby given that the above named company is .has

as of and from the day
of.....19.....ceased

to have an established place of business in Zambia.

Dated this.....day
of.....19.....

Local Directors

Companies Form 51

RETURN OF FINAL WINDING-UP MEETING

(Section 324)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

*I/*We of.....being the
liquidator(s).....have

to inform you that a general meeting of the Company was duly held on the .

day of....., 19....., pursuant
to section 324 of the Companies Act for the purpose of having an account laid
before them showing the manner in which the Winding-up of the Company has been
conducted, and the property of the Company disposed of, and that the same was
done accordingly.

Dated this.....day
of.....19.....

(To be signed by each liquidator if more than one)

Companies Form 52

COMPANIES FORMS-LODGEMENT SCHEDULE

DateParticulars of document

lodgedFee payable

Lodged

by.....
.....
.....

Companies Form 53

CERTIFICATE OF COMPLIANCE OF A PRIVATE COMPANY

To: THE REGISTRAR OF COMPANIES:

I hereby certify

that.....
.....Limited has not, since the date of the last return (or,
where there has been no return since the date of incorporation of the company
as, or its conversion to, a private company, since the date of the incorporation
or conversion), issued any invitation to the public to subscribe for any shares
or debentures of the company.

And I certify that the excess of the number of members of the company above 50
consists wholly of persons who, having been formerly in the employment of the
company, where while in such employment, and have continued after the
determination of such employment to be, members of the company.

Dated this.....day
of.....19.....

Director

Companies Form 54

NOTICE OF PERSONS CEASING TO BE MEMBERS OF A COMPANY LIMITED BY GUARANTEE

(Section 19)

To: THE REGISTRAR OF COMPANIES:

Name of Company:

Limited

Notice is hereby given that the following persons have ceased to be members of the company on the dates indicated:

Name Date

.....
.....
.....

.....
.....
.....

.....
.....
.....

Companies Form 54

NOTICE OF PERSONS CEASING TO BE MEMBERS OF A COMPANY LIMITED BY GUARANTEE

(Section 19)

Company Registration No.

To: THE REGISTRAR OF COMPANIES:

Name of Company Limited

Notice is hereby given that the following persons have become members of the company and made the declarations of guarantee indicated, on the date indicated:

WE, the several persons whose names and addresses are subscribed, respectively declare that if, upon the winding up of the company, the assets of the company prove insufficient to discharge all the debts and liabilities of the company, we guarantee to contribute to the discharge of those debts and liabilities an amount not exceeding the amount set against our respective names:

Forenames and surname

Nationality and NRC No. or passport No.

Residential address

Postal address Amount declared to be guaranteed by the subscriber

Signature of subscriber

Dated the.....day
of....., 19.....

Witness to the above signatures:

.....
.....
.....

Name Address Occupation Signature

REPUBLIC OF ZAMBIA

THE REGISTRATION OF BUSINESS NAMES ACT

CHAPTER 389 OF THE LAWS OF ZAMBIA

CHAPTER 389 THE REGISTRATION OF BUSINESS NAMES ACT CHAPTER 389

THE REGISTRATION OF BUSINESS NAMES ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Firms and persons to be registered
4. Registration by nominee, etc.
5. Manner and particulars of registration
6. Statement to be signed by persons registering
7. Time for registration
8. Registration of changes in firm
9. Penalty for default in registration
10. Disability of persons in default
11. Penalty for false statements
12. Duty to furnish particulars to Minister
13. Registrar to file statement and issue certificate of registration
14. Index to be kept
15. Removal of names from register
16. Misleading business names
17. Inspection of statements registered
18. Regulations
19. Publication of true names, etc.
20. Offences by corporations

SCHEDULE-Additional particulars required for registration by nominee, trustee or

general agent

CHAPTER 389

REGISTRATION OF BUSINESS NAMES²⁹ of 1931

13 of 1932

2 of 1938

19 of 1950

19 of 1954

24 of 1955

3 of 1987

13 of 1994

Government Notices

279 of 1964

497 of 1964

Statutory Instrument

5 of 1965

An Act to provide for the registration of business names; and to provide for matters incidental thereto.

1. This Act may be cited as the Registration of Business Names Act. Short title

2. (1) In this Act, unless the context otherwise requires-

"business" includes profession;

"business name" means the name or style under which any business is carried on, whether in partnership or otherwise;

"Christian name" includes any forename;

"firm" means an unincorporate body of two or more individuals or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;

"foreign firm" means any firm, individual or corporation whose principal place of business is situate outside Zambia;

"individual" means a natural person and shall not include a corporation;

"initials" includes any recognised abbreviation of a Christian name;

"Registrar" means the person appointed as Registrar of Business Names and includes an Assistant Registrar, Deputy Registrar or Acting Registrar;

"showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof. Interpretation

(2) In the case of a peer or person usually known by a British title different from his surname, the title by which he is known shall be substituted for his surname.

(3) References in this Act to a former Christian name or surname shall not include a former Christian name or surname where that name or surname has been

changed or disused before the person bearing the name had attained the age of eighteen years, and, in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage.

(4) References in this Act to a change of name shall not include a change of name which has taken place before the person whose name has been changed has attained the age of eighteen years; or, in the case of a peer or a person usually known by a British title different from his surname, the adoption of or succession to the title.

(As amended by No. 13 of 19 of 1950 and S.I. No. 5 of 1965)

3. Subject to the provisions of this Act-

(a) every firm having a place of business in Zambia and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names;

(b) every individual having a place of business in Zambia and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof;

(c) every individual or firm having a place of business in Zambia, who, or a member of which, has either before or after the commencement of this Act changed his name, except in the case of a woman in consequence of marriage;

shall be registered in the manner directed by this Act:Firms and persons to be registered

Provided that-

(i) where two or more individual partners have the same surname, the addition of an "s" at the end of that surname shall not of itself render registration necessary; and

(ii) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary; and

(iii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business, whether or not the owners share any profits arising from the sale thereof.

(As amended by No. 13 of 1932)

4. Where a firm, individual, or corporation having a place of business within Zambia carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the Schedule:Registration by nominee, etc.

Provided that where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary.

5. Every firm or person required under this Act to be registered shall furnish, by sending by post or delivering to the Registrar, a statement in writing in the prescribed form containing the following particulars:

- (a) the business name;
- (b) the general nature of the business;
- (c) the principal place of the business;
- (d) where the registration to be effected is that of a firm, the present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner;
- (e) where the registration to be effected is that of an individual, the present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of such individual;
- (f) where the registration to be effected is that of a corporation, its corporate name and registered or principal office;
- (g) if the business is commenced after the commencement of this Act, the date of commencement of the business;
- (h) where the registration to be effected is that of a firm, the age of each partner thereof;
- (i) where the registration to be effected is that of an individual, the age of such individual: Manner and particulars of registration

Provided that where any such partner or individual is of or over the age of twenty-one years it shall be sufficient for him to state his age as "full age".

(As amended by No. 13 of 1932 and No. 19 of 1950)

6. The statement required for the purpose of registration must in the case of an individual be signed by him, and in the case of a corporation by a director or secretary thereof, and in the case of a firm either by all the individuals who are partners, and by a director or the secretary of all corporations which are partners or by some individual who is a partner, or a director or the secretary of some corporation which is a partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory: Statement to be signed by persons registering

Provided that-

- (i) no such statutory declaration stating that any person other than the

declarant is a partner, or omitting to state that any person other than as aforesaid is a partner, shall be evidence for or against any such other person in respect of his liability or non-liability as a partner; and

(ii) the High Court or a Judge thereof may, on application of any person alleged or claiming to be a partner, direct the rectification of the register and decide any question arising under this section.

7. (1) The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration is required, as the case may be:Time for registration

Provided that-

(i) if such firm or person has carried on such business before the commencement of this Act or commences such business within two months thereafter, the statement of particulars shall be furnished after the expiration of two months and before the expiration of three months from the commencement of this Act; and

(ii) if at the expiration of the said two months the conditions affecting the firm or person have ceased to be such as to require registration under this Act, the firm or person need not be registered so long as such conditions continue.

(2) This section shall apply, in the case where registration is required in consequence of a change of name, as if for references to the date of the commencement of the business there were substituted references to the date of such change.

8. Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person, such firm or person shall, within fourteen days after such change or such longer period as the Minister may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post or deliver to the Registrar a statement in writing in the prescribed form specifying the nature and date of the change signed, and where necessary verified in like manner as the statement required on registration.

(As amended by G.N. No. 279 of 1964)Registration of changes in firm

9. If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall, without reasonable excuse, make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable on conviction to a fine not exceeding two hundred and twenty five penalty units for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the Registrar within such time as may be specified in the order.

(As amended by Act No. 13 of 1994)Penalty for default in registration

10. (1) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be

furnished at any time while he is in default shall not be enforceable by action or other legal proceeding whether in the business name or otherwise: Disability of persons in default

Provided that-

(i) the defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contract, on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he would not have entered into the contract;

(ii) nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;

(iii) if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counter-claim, set-off or otherwise, such rights as he may have against that party in respect of such contract.

(2) In this section, "court" means the High Court or a Judge thereof:

Provided that, without prejudice to the power of the High Court or a Judge thereof to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a subordinate court, the subordinate court may, as respects that contract, grant such relief as aforesaid.

11. If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall, on conviction, be liable to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding one thousand five hundred penalty units, or to both.

(As amended by Act No. 13 of 1994) Penalty for false statements

12. (1) The Minister may require any person to furnish to him such particulars as appear necessary to the Minister for the purpose of ascertaining whether or not he or the firm of which he is partner should be registered under this Act, or an alteration made in the registered particulars, and may also, in the case of a corporation, require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars, and if any person when so required fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall, on conviction, be liable to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding one thousand five hundred penalty units, or to Duty to furnish particulars to Minister

(2) If from any information so furnished it appears to the Minister that any firm or person ought to be registered under this Act, or an alteration ought to

be made in the registered particulars, the Minister may require the firm or person to furnish to the Registrar the required particulars within such time as may be allowed by the Minister, but, where any default under this Act has been discovered from the information acquired under this section, no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Minister under this section to furnish particulars to the Registrar.

(As amended by G.N. No. 279 of 1964 and Act No. 13 of 1994)

13. On receiving any statement or statutory declaration made in pursuance of this Act, the Registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering, and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual, and if not kept so exhibited, every partner in the firm, or the person, as the case may be, shall be liable, on conviction, to a fine not exceeding one thousand five hundred penalty units.

(As amended by No. 13 of 1932 and Act No. 13 of 1994)Registrar to file statement and issue certificate of registration

14. The Registrar shall keep an index of all the firms and persons registered under this Act.

(No. 19 of 1950)Index to be kept

15. (1) If any firm or individual registered under this Act ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business or of the individual or if he is dead of his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar notice in the prescribed form that the firm or individual has ceased to carry on business, and if any person whose duty it is to give such notice fails to do so within such time as aforesaid, he shall be liable, on conviction, to a fine not exceeding one thousand five hundred penalty units:Removal of names from register

Provided that the Minister may, on reasonable cause therefor being shown, extend such time as aforesaid to such time as he may think fit.

(2) On receipt of such a notice as aforesaid, the Registrar may remove the firm or individual from the register.

(3) Where the Registrar has reasonable cause to believe that any firm or individual registered under this Act is not carrying on business, he may send to the firm or individual by registered post a notice that, unless an answer is received to such notice within one month from the date thereof, the firm or individual may be removed from the register.

(4) If the Registrar either receives an answer from the firm or individual to the effect that the firm or individual is not carrying on business or does not within one month after sending the notice receive an answer, he may remove the firm or individual from the register.

(As amended by G.N. No. 279 of 1964 and Act No. 13 of 1994)

16. (1) No firm or individual shall be registered by a business name which, in the opinion of the Registrar, is undesirable, and if any firm or individual, through inadvertence or otherwise, is registered by a business name which, in the opinion of the Registrar, is undesirable, the Registrar shall remove such business name from the register, but any person aggrieved by a decision of the Registrar under this provision may appeal to the Minister whose decision thereon shall be final. Misleading business names

(2) Where any business name under which the business of a firm or individual is carried on contains the word "Zambia" or any other word which, in the opinion of the Registrar, is calculated to lead to the belief that the business is under Zambian ownership or control, and the Registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading, the Registrar shall refuse to register such business name or, as the case may be, remove such business name from the register, but any person aggrieved by a decision of the Registrar under this provision may appeal to the Minister whose decision shall be final.

(3) The Registrar shall not, without the consent of the Minister, register any business name which includes any word which, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of the President, and if any business name is, through inadvertence or otherwise, registered in conflict with the provisions of this subsection, the Minister may require the firm or individual carrying on business under that name to change the name and, upon such change being made, the Registrar shall enter the new name on the register in place of the former name and shall issue a new certificate of registration and the provisions of section thirteen shall apply in relation to such new certificate.

(4) If the Registrar shall, in accordance with the provisions of this section, remove any business name from the register, he shall send to the firm or individual carrying on business under such name, by registered post, a notice that such name has been removed from the register.

(5) The registration of a business name under this Act shall not be construed as authorising the use of that name if, apart from such registration, the use thereof could be prohibited.

(As amended by No. 2 of 1938, No. 19 of 1954, No. 24 of 1955, G.N. No. 279 of 1964 and S.I. No. 5 of 1965)

17. (1) At any time after the expiration of six months from the commencement of this Act, any person may inspect the documents filed by the Registrar on payment of such fees as may be prescribed not exceeding two penalty units for each inspection; and any person may require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement to be certified by the Registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as may be prescribed not exceeding six penalty units for the certificate of registration, and not exceeding one penalty unit for each folio of seventy-two words, of the entry, copy, or extract. Inspection of statements registered

(2) A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy or extract under the hand of the Registrar (whom it shall not be necessary to prove to be the Registrar) shall, in all legal proceedings, civil or criminal, be received in

evidence.

(As amended by Act No. 13 of 1994)

18. The Minister may, by statutory instrument, make regulations concerning any of the following matters:

- (a) the fees to be paid to the Registrar under this Act;
- (b) the forms to be used under this Act;
- (c) the duties to be performed by any Registrar under this Act;
- (d) the place or places at which shall be situate the offices of Registrars;
- (e) generally the conduct and regulation of registration under this Act, and any matters incidental thereto.

(As amended by No. 19 of 1950, G.N. No. 279 of 1964 and No. 3 of 1987)Regulations

19. (1) After the expiration of six months from the commencement of this Act, every individual and firm required by this Act to be registered shall, in all trade catalogues, trade circulars, showcards and business letters, on or in which the business name appears and which are issued or sent by the individual or firm to any person, have mentioned in legible characters-Publication of true names, etc.

(a) in the case of an individual, his present Christian names or the initials thereof and present surname, any former Christian name or surname and his nationality; and

(b) in the case of a firm, the present Christian names or the initials thereof and present surnames, any former Christian names and surnames, and the nationality, of all the partners in the firm or, in the case of a corporation being a partner, the corporate name.

(2) If default is made in compliance with this section, the individual or, as the case may be, every member of the firm shall be liable on conviction for each offence to a fine not exceeding two hundred and twenty five penalty units.

(As amended by S.I. No. 5 of 1965 and Act No. 13 of 1994)

20. Where a corporation is guilty of an offence under this Act, every director, secretary, and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.Offences by corporations

SCHEDULE

(Section 4)

ADDITIONAL PARTICULARS REQUIRED FOR REGISTRATION BY
NOMINEE, TRUSTEE OR GENERAL AGENT

Description of firm, etc.

Where the firm, individual or corporation to be registered carries on business as nominee or trustee.

Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firms. The additional particulars

The present Christian name and surname, any former name, nationality, and, if that nationality is not the nationality of origin, the nationality of origin, and annual residence, or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried out.

Provided that if the business is carried on under any trust and of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.

Their business name and address of the firm or person as agent for whom the business is carried on:

Provided that if the business is carried on as agent for three or more foreign firms, it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

SUBSIDIARY LEGISLATION

REGISTRATION OF BUSINESS NAMES

REGULATIONS

Regulation

1. Title
2. Registration
3. Prescribed forms
4. Prescribed fees

5. Size of paper

FIRST SCHEDULE- Prescribed forms

SECOND SCHEDULE- Prescribed fees

REGISTRATION OF BUSINESS NAMES

SECTION 18- THE REGISTRATION OF BUSINESS NAMES REGULATIONS

Regulations by the Minister Government Notice

169 of 1931

Statutory Instrument

48 of 1987

25 of 1988

25 of 1992

17 of 1993

120 of 1994

Act No.

13 of 1994

1. These Regulations may be cited as the Registration of Business Names Regulations. Title

2. Any firm required to register under the provisions of the Act shall make application to the Registrar and shall be registered accordingly by the Registrar. Registration

3. The forms in the First Schedule shall be used as appropriate. Prescribed forms

4. The fees specified in the Second Schedule shall be payable in respect of the matters specified therein. Prescribed fees

5. Subject to any directions which may be given by the Registrar, all documents to be left with or sent to the Registrar shall be upon foolscap paper of a size approximately three hundred and twenty-five millimetres by two hundred millimetres, and shall have on the left-hand part thereof a margin of approximately fifty millimetres. Size of paper

FIRST SCHEDULE

(Regulation 3)

PRESCRIBED FORMS

FORM 1

(Section 5)

THE REGISTRATION OF BUSINESS NAMES ACT

STATEMENT OF PARTICULARS REQUIRED TO BE GIVEN IN THE
CASE OF A CORPORATION

1. Corporate name. 2. Registered or principal office.
. 3. Date of commencement of the business. This date need only be
stated where the business was commenced after the 1st January, 1932

Dated this day of
.....
..... 19.....

.....

Signature of person acting under
authority of corporate body

FORM 2

(Section 5)

THE REGISTRATION OF BUSINESS NAMES ACT

STATEMENT OF PARTICULARS REQUIRED TO BE GIVEN IN THE CASE OF A FIRM

1. Business name to be registered.
 Where a business is carried on under two or more business names, each of these business names must be stated.2. General nature of business
 .3. Principal place of the business4. Present Christian name (or names) and surname of each of the individuals who are partners.5. Former Christian name (or names) and surname (if any) of each of the individuals who are partners.6. Nationality of each of the individuals who are partners. If the nationality stated is not the nationality of origin, such nationality of origin must in every case be stated. 7. Age and sex of each of the individuals who are partners.
 If 21 years of age or over, it shall be sufficient to state " full age" .8. Usual place of residence of each of the individuals who are partners.9. Other business occupation (if any) of each of the individuals who are partners.10. Date of commencement of business..The date need only be stated where the business was commenced after the 1st January, 1932.11. Corporate name of each corporation which is a partner.12. Registered or principal office of each corporation which is a partner

Dated this day of

 19.....

.....
 Signature of person acting under
 authority of partnership

FORM 3

(Section 5)

THE REGISTRATION OF BUSINESS NAMES ACT

STATEMENT OF PARTICULARS REQUIRED TO BE GIVEN IN THE CASE OF AN APPLICATION BY AN INDIVIDUAL

- 1. Business name to be registered.
- Where a business is carried on under two or more business names, each of these business names must be stated.
- 2. General nature of business
- 3. Principal place of business
- 4. Present Christian name (or names) and surname.
- 5. Former Christian name (or names) and surname (if any).
- 6. Nationality

If present nationality is not the nationality of origin, the nationality of origin must be also stated.

- 7. Age and sex
- If 21 years of age or over, it shall be sufficient to state " full age" .
- 8. Usual place of residence
- 9. Other business occupation (if any)
- 10. Date of commencement of business

This date need only be stated where the business was commenced after the 1st January, 1932.

Dated this

 day of
 19.....

Signature of person trading under
 firm name

FORM 4

(Section 4)

THE REGISTRATION OF BUSINESS NAMES ACT

STATEMENT OF ADDITIONAL PARTICULARS

1. The present Christian name (or names) and surname of the individual or, in the case of a firm, of each of the individuals who are partners.

If the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient. 2. Former Christian name (or names) and surname (if any) of the individual or, in the case of a firm, of each of the individuals who are partners. 3. Nationality of the individual or, in the case of a firm, of each of the individuals who are partners.

.If the nationality stated is not the nationality of origin, such nationality of origin must in every case be stated. 4. Usual place of residence of the individual or, in the case of a firm, of each of the individuals who are partners. 5. Corporate name (or names) of the corporation (or corporations) for which the business is being carried on. 6. The business name (or names) and address (or addresses) of the foreign firm (or firms).

.When the firm, individual or corporation acts as agent for three or more foreign firms, it shall be sufficient to specify the countries in which such foreign firms carry on business.

Dated this day of 19.....

.....

Signature of nominee

Note.-The additional particulars required are those of the firm, individual or corporation, as the case may be, on whose behalf the business is carried on. (Vide section 4 of the Act.)

FORM 5

(Section 13)

THE REGISTRATION OF BUSINESS NAMES ACT

CERTIFICATE OF REGISTRATION

I HEREBY CERTIFY that this
..... day of 19....., have
(has) been duly registered pursuant to and in accordance with the provisions of
the Registration of Business Names Act, and the regulations made thereunder, and
have (has) been entered under the Number in the
Index of Registration.

Given under my hand at.....this.....day of.....19....

Registrar

FORM 6

(Section 8)

THE REGISTRATION OF BUSINESS NAMES ACT

NOTICE OF CHANGE IN PARTICULARS REGISTERED

PURSUANT to section 8 of the Registration of Business Names Act

To the Registrar, appointed for the purposes of the above-mentioned Act.

WHEREAS WE (I) the undersigned were (was) duly registered pursuant to the provisions of the Registration of Business Names Act, on the..... day of....., 19...., under the Numberin the Index of Registration;

AND WHEREAS a change (or changes) has (or have) occurred (or been made) in respect of the particulars registered as hereinafter mentioned:

NOW WE (I) the undersigned hereby give you notice that on the date (or dates) hereunder specified the following change (or changes) occurred (or was or were made) in the particulars registered: that is to say

Dated this day of 19.....

(Signed)

FORM 7

(Section 15)

THE REGISTRATION OF BUSINESS NAMES ACT

NOTICE OF CESSATION OF BUSINESS

PURSUANT to section 15 of the Registration of Business Names Act

To the Registrar, appointed for
the purposes of the above-mentioned Act.

WHEREAS WE (I) the undersigned registered under the Number
..... in the Index of Registration have ceased to carry on
business:

NOW WE (I) hereby give notice that we (I) have ceased to carry on business
as.....as from the day of
..... 19..... save for the
purpose of winding up the said business.

Dated this day of
..... 19.....

(Signed)

SECOND SCHEDULE

(Regulation 4)

PRESCRIBED FEES

Fee Units

1. For application to register a business name and issuance of certificate 70
2. For altering address on the register 50
3. For every entry in the register or ratification thereof or an alteration therein not otherwise charged for 50
4. For cancelling an entry or part of an entry in the register 50
5. For every certificate under the hand for the Registrar 20
6. For inspecting, each inspection 30
7. For certified copy of certificate of registration 20
8. For copies of any registered documents per folio of 72 words 20
9. Annual filing of statements of registered particulars 40
10. Search fee on the availability of each name 50
11. Filing of change of particulars of business names Form Six 150

(As amended by S.I. No. 16 of 1994 and Act No. 13 of 1994)

REPUBLIC OF ZAMBIA

THE ACCOUNTANTS ACT

CHAPTER 390 OF THE LAWS OF ZAMBIA

CHAPTER 390 THE ACCOUNTANTS ACTCHAPTER 390

THE ACCOUNTANTS ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 390

ACCOUNTANTS²⁸ of 1982

11 of 1989

13 of 1994

An Act to provide for the regulation of the education and training of accountants and generally for the advancement of accountancy and allied subjects; to provide for the regulation and control of the practice of accountancy; to provide for the establishment of the Zambia Institute of Certified Accountants; to define the functions and powers of the Institute; and to provide for matters connected with or incidental to the foregoing.

[24th June, 1983]

PART I

PRELIMINARY

1. This Act may be cited as the Accountants Act.Short title

2. In this Act, unless the context otherwise requires-Interpretation

"accountant" includes auditor, tax consultant and tax adviser and "accountancy" shall be construed accordingly;

"Chairman" means the person elected Chairman of the Council under section eleven;

"constitution" means the constitution of the Institute referred to in section six;

"Council" means the Council of the Institute;

"Council member" means a member of the Council;

"Disciplinary Committee" means the Disciplinary Committee of the Institute;

"honorary member" means a person upon whom honorary membership of the Institute has been conferred in accordance with subsection (2) of section nineteen;

"Institute" means the Zambia Institute of Certified Accountants established by

section three;

"member" means a registered accountant and an honorary member;

"practising certificate" means a practising certificate issued in accordance with section twenty-five;

"professional misconduct" shall be construed in accordance with section twenty-nine;

"register" means a register prepared and maintained in accordance with section twenty;

"registered accountant" means a person registered as an accountant in accordance with the provisions of Part IV;

"Secretary" means the person appointed Secretary to the Institute under section sixteen;

"Vice-Chairman" means the person elected Vice-Chairman under section eleven.

PART II

ZAMBIA INSTITUTE OF CERTIFIED ACCOUNTANTS

3. There is hereby established the Zambia Institute of Certified Accountants which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of Institute

4. (1) The seal of the Institute shall be such device as may be determined by the Council and shall be kept by the Secretary. Seal of Institute

(2) The Council may use a wafer or rubber stamp in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman of Vice-Chairman, and the Secretary or one other person authorised in that behalf by a resolution of the Council.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed without seal on behalf of the Institute by the Secretary or any other person generally or specifically authorised in that behalf by the Institute.

5. (1) The functions of the Institute shall be to do all such acts and things as are necessary to foster the advancement of the profession of accountancy. Functions of Institute

(2) Without prejudice to the generality of subsection (1), the Institute may-

(a) assist in the education and training of persons practising or intending to practise the profession of accountancy;

(b) conduct professional examinations in accountancy;

- (c) maintain and improve the professional standards of accountants;
- (d) represent, protect and assist accountants in regard to their conditions of practice, remuneration or otherwise;
- (e) protect and assist the public in all matters relating to the practice of the profession of accountancy;
- (f) promote the international recognition of qualifications conferred by the Institute.

6. (1) The Institute shall, by a vote of at least two-thirds of the members voting at a general meeting of the Institute, adopt a constitution of the Institute, and may in like manner amend it from time to time. Constitution of Institute

(2) The constitution shall, subject to the provisions of this Act or any regulations made under this Act, regulate the conduct of the affairs of the Institute.

(3) Subject to subsection (2), the constitution may provide for the following matters:

(a) meetings of the Institute, the Council and committees of the Council, including delivery and sufficiency of notices of such meetings, quorum, voting, adjournments and other matters of procedure or conduct of such meetings;

(b) financial matters, including the financial year of the Institute, accounts, statements of accounts and publication thereof, auditing of accounts, remuneration or allowances of Council members, members of committees of the Council, members of the Disciplinary Committee and staff of the Institute;

(c) composition, functions, powers and procedures of committees of the Council;

(d) establishment, powers and functions of branches of the Institute;

(e) classes of registered accountants and honorary members including their rights, privileges and obligations;

(f) maintaining of registers of members including details to be included in such registers, place where the registers are to be kept and inspection of such registers;

(g) grounds and conditions on which applicants for registration or for practising certificates may be disqualified or rejected;

(h) annual or other fees payable by members, fees for application for registration, registration certificates, practising certificates, or copies thereof;

(i) powers of the Council or restrictions on such powers or on delegation of such powers;

(j) qualifications, recognition of qualifications, examinations, fees and other matters relating to persons intending to become registered accountants.

(4) The constitution may permit some or any of the foregoing matters to be dealt with in the rules made by the Council.

7. (1) The Institute shall hold an annual general meeting within six months of each financial year upon giving not less than fourteen days' notice specifying the place, day and time of such meeting and the business to be transacted thereat: Meetings of Institute

Provided that the proceedings at any such at any such meeting shall not be invalidated by inadvertent omission to give notice to any member.

(2) The Institute may call a special general meeting upon giving such notice as may be prescribed in its constitution:

Provided that if twenty or more registered accountants by notice in writing signed by such accountants call for a special general meeting, such meeting shall be called by the Chairman within such period as may be specified by the constitution.

(3) There shall preside at any meeting of the Institute-

(a) the Chairman, or in the absence of the Chairman, the Vice-Chairman; or

(b) in the absence of the Chairman and the Vice-Chairman, such member as the members present may elect for the purpose of that meeting.

(4) Subject to the provisions of this Act, the Institute may regulate its own procedure.

(5) The validity of any proceedings, act or decision of the Institute shall not be affected by any absence from any meeting of the Institute or by reason that any person not entitled to do so took part in the proceedings.

8. (1) The funds of the Institute shall consist of such moneys as may-Funds of Institute

(a) be paid to the Institute pursuant to this Act;

(b) be paid to the Institute by way of grants or donations; and

(c) vest in or accrue to the Institute.

(2) The Institute may, subject to the provisions of its constitution-

(a) accept moneys by way of grants or donations from any source in Zambia; and

(b) raise by way of loans or otherwise such moneys as it may require for the discharge of its functions:

Provided that the Institute shall not accept any grants or donations or raise any loans or moneys from any source outside Zambia without the approval of the Minister.

(3) There shall be paid from the funds of the Institute-

(a) the salaries, allowances and loans of the staff of the Institute;

(b) such reasonable travelling, transport and subsistence allowances of Council members or members of any committee of the Council when engaged on the business of the Institute at such rates as the Institute may determine; and

(c) any other expenses incurred by the Institute in the discharge of its functions.

(4) The Institute may invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.

9. (1) The Institute shall cause to be kept proper books of accounts and other records relating to accounts.Accounts

(2) The Institute shall, not later than six months after the end of each financial year, cause annual accounts to be prepared and audited in accordance with its constitution.

PART III

ADMINISTRATION OF INSTITUTE

10. For the proper management of the affairs of the Institute, there shall be an executive committee to be called the Council of the Zambia Institute of Certified Accountants which shall consist of the following Council members-Council of Institute

(a) two registered accountants appointed by the Minister on such terms and conditions as the Minister may determine; and

(b) ten registered accountants elected by members at an annual general meeting of the Institute:

Provided that the Minister may, at the request of the Council, increase the membership of the Council by statutory instrument, and thereafter the additional Council members shall be elected at a general meeting of the Institute.

11. (1) The Council shall at its first meeting in each year elect a Chairman and a Vice-Chairman from amongst its members.Chairman and Vice-Chairman

(2) The Chairman and the Vice-Chairman shall hold office for a period of one year from the date of their respective election, and may be re-elected upon the expiration of their term of office.

(3) If the office of Chairman is vacant or if the Chairman is unable for any reason to perform the functions of his office, the Vice-chairman shall perform such functions.

12. (1) A Council member shall, unless he vacates his office earlier, hold office for a period of three years from the date of his election:Tenure of office of Council members

Provided that three of the ten members of the first Council elected in accordance with this Part shall retire by agreement or by lot, at the end of the first year, a further three shall retire in like manner at the end of the second year and the remainder shall retire at the end of the third year.

(2) Upon retirement at the expiration of his term of office, a Council member may be re-elected.

(3) Any vacancy on the Council may be filled by the Council appointing another member who shall serve as Council member till the date of the next annual general meeting of the Institute.

(4) A Council member shall cease to hold office-

(a) if he ceases to be a registered accountant;

(b) if he is lawfully detained or his freedom of movement is restricted under any law in force in Zambia;

(c) if he is absent from three consecutive meetings of the Council without reasonable cause;

(d) upon the expiry of not less than one month's notice in writing of his intention to resign given by him to the Chairman, and, in the case of a Council member appointed by the Minister, copied to the Minister.

(5) A Council member appointed by the Minister may be removed at any time by the Minister.

13. (1) Subject to the provisions of this Act, and the provisions of the constitution, the Council may regulate its own procedure. Proceedings of Council

(2) For the transaction of its business, the Council shall meet at such times, being not less than once every three months, and at such places as the Chairman may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Council may be called by the Chairman and shall be called if not less than five Council members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving shorter notice.

(4) At any meeting of the Council, one-half of the Council members holding office at that time shall form a quorum.

(5) A decision of the Council on any question shall be by a majority of the Council members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(6) The Council may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Council but such person shall have no vote.

(7) The validity of any proceedings, act or decision of the Council or any committee of the Council shall not be affected by any vacancy in the membership of the Council or committee of the Council, as the case may be, or by any defect in the election or appointment of any Council member or members of such committee or by reason that any person not entitled to do so took part in the proceedings.

(8) The Council shall cause minutes to be kept of the proceedings of every meeting of the Council and of every meeting of any committee of the Council.

14. (1) The Council may, subject to the provisions of the constitution, establish any number of committees to assist the Council in the performance of its functions. Committees of Council

(2) The Council may delegate to any committee established in accordance with this section, such of its functions as the Council may think fit.

(3) Subject to the provisions of the constitution and any specific or general directions of the Council, a committee established in accordance with this section may regulate its own procedure.

15. (1) A council member, or a member of any committee of the Council, other than a public officer or an employee of a parastatal body, shall be paid such remuneration or allowance as may be approved from time to time in accordance with the constitution. Remuneration and allowances of Council members, etc.

(2) For the purposes of this section, "parastatal body" means a statutory corporation or body, or a company in which the Government has a majority or controlling interest, and includes a local authority.

16. (1) There shall be a Secretary to the Institute who shall be appointed by the Council on such terms and conditions as the Council may determine. Secretary and other staff

(2) The Secretary shall act as registrar for the Institute and shall be responsible for the administration of the day-to-day affairs of the Institute under the general supervision of the Council.

(3) The Secretary shall act as secretary to the Council.

(4) The Council may, on such terms and conditions as it may determine, appoint such other staff as it considers necessary for the performance of the functions of the Institute.

17. (1) If a person is present at a meeting of the Council or any committee of the Council at which any matter is the subject of consideration, in which matter such person or his spouse is directly or indirectly interested in a private capacity, he shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Council or the committee, as the case may be, otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter. Disclosure of interest

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

18. No action or other proceedings shall lie or be instituted against any Council member or any member of a committee of the Council for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act. Immunity of Council members

PART IV

MEMBERSHIP OF INSTITUTE

19. (1) There shall be such classes of registered accountants and other members as may be provided for in the constitution. Classes of members

(2) Subject to the provisions of the constitution, the Council may confer an honorary membership of the Institute on any person who, in the opinion of the Council, has rendered exemplary service to the profession of accountancy:

Provided that an honorary member shall not be entitled to be registered as an accountant by virtue of such honorary membership.

(3) Each class of member shall have such rights, privileges and obligations as may be prescribed in the constitution.

20. (1) The Institute shall maintain a separate register for details of each member as may be prescribed by the constitution. Register of members

(2) The registers referred to in subsection (1) shall be kept at such place and shall be open to inspection on such conditions (including the payment of fees) as may be prescribed in the constitution.

21. (1) A person shall be eligible to apply to be registered as an accountant if- Qualification for registration

(a) he has passed the final examination of the Institute and has had relevant experience for a period of three years, at least one such year being after passing such final examination; or

(b) he is a member of any of the professional bodies approved by the Minister by regulations made under section thirty-eight; or

(c) he holds any of the qualifications prescribed by the Minister in regulations made under section thirty-eight and has had the relevant experience as prescribed therein;

and is able to satisfy the Institute that he is of good character.

(2) The Institute may require any applicant for registration to produce such evidence in support of his application as the Institute may consider necessary.

(3) The registration of any applicant shall be at the discretion of the Institute to be exercised in accordance with its constitution.

(4) Every applicant for registration shall pay such fees as may be prescribed by the constitution.

22. (1) No person shall qualify for registration if- Disqualification from registration

(a) he has been convicted of an offence involving dishonesty;

(b) he has been adjudged or otherwise declared to be of unsound mind under any law in force in Zambia;

(c) he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him;

(d) it is a company registered under the Companies Act. Cap. 388

(2) The Institute may prescribe in its constitution other grounds on which a person may, in the discretion of the Institute, be disqualified from registration.

23. (1) Every registered accountant shall be issued with a certificate of registration showing his class of membership. Certificate of registration and membership fees

(2) Every certificate of registration shall remain the property of the Institute.

(3) The Institute may charge such fees for a certificate of registration, or copies thereof, as may be prescribed by the constitution.

(4) The Institute may charge such fees for its membership as may be prescribed by the constitution, and different fees may be prescribed for different classes of membership.

24. (1) No person shall, unless he is a registered accountant—

(a) practice as, offer his services as, or hold himself out to be, a qualified accountant, auditor, tax consultant or tax adviser;

(b) adopt, use or exhibit the terms "public accountant", "public auditor", "public tax consultant", "public tax adviser" or any other term of like description; or

(c) do anything likely to lead persons to infer that he is a registered accountant:

Provided that nothing in this subsection shall operate to prevent a legal practitioner from carrying on the work of a tax consultant or tax advisor, or any other person from carrying on for his employer work connected with accounts, audit or taxation, if the employer does not through such employee offer services to the public which are normally carried out by a qualified accountant, auditor, tax consultant or tax advisor.

(2) Any person who acts in contravention of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) Where an offence under this section is committed by a body corporate, every director and manager of the body corporate shall be deemed to have committed the offence unless he proves that the offence was committed without his knowledge or consent.

(4) Where a firm does any act which if done by an individual would be an offence under this section, every partner in that firm shall be deemed to have committed the offence unless he proves that the offence was committed without his knowledge or consent.

(As amended by Act No. 11 of 1989 and Act No. 13 of 1994)

25. (1) No person shall set up in practice as an accountant, auditor, tax adviser, or tax consultant or be a partner in any such practice, unless he is a registered accountant and holds a practising certificate issued by the Institute in accordance with the provisions of its constitution: Practising certificate

Provided that nothing in this subsection shall operate to prevent a legal practitioner from setting up in practice as a tax adviser or tax consultant, or being a partner in such practice.

(2) No practising certificate shall be issued to any registered accountant who is not resident in Zambia or who is not a partner of a holder of a practising certificate practising in Zambia.

(3) A practising certificate shall be renewed annually upon the payment of such fees as may be prescribed by the constitution and shall be displayed prominently at the place of practice.

(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to the punishments set out in subsections (2), (3) and (4) of section twenty-four.

26. (1) The Institute may cancel a practising certificate if it has not been renewed within fourteen days of its expiry and has remained unrenewed thirty days after a written notice has been sent to the holder of the practising certificate notifying him of his failure to renew. Cancellation of practising certificate or registration

(2) The Institute may cancel the registration of any member if it is satisfied that-

(a) such registration was obtained through fraud, misrepresentation or concealment of any material fact; or

(b) since such registration, circumstances have arisen disqualifying the member from registration:

Provided that before cancelling any registration under this subsection, the Institute shall give such member an opportunity to present his case, if any, against such cancellation.

(3) The Institute may, in accordance with its constitution, issue a new practising certificate to a person whose practising certificate is cancelled, or re-register a person whose registration is cancelled.

(4) Where the registration of any person is cancelled in accordance with the provisions of this Act, any practising certificate held by such person shall become void.

27. Any person aggrieved by any decision made by or on behalf of the Institute may appeal to the Disciplinary Committee within ninety days of such decision. Appeals to Disciplinary Committee

28. Any person who-

(a) makes or causes to be made, an unauthorised entry, alteration or erasure in a register, certificate of registration, practising certificate, or in any copy thereof; or

(b) procures or attempts to procure for himself or any other person a practising certificate or registration of any matter by means of fraud, misrepresentation or concealment of any material fact;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(As amended by Act No. 13 of 1994) Offences relating to registration, etc.

PART V

DISCIPLINE

29. A member of the Institute shall be guilty of professional misconduct if he does any of the acts or things set out in the Schedule. Professional misconduct

30. (1) The Institute shall, at each annual general meeting, elect from amongst its members other than members of the Council, a Disciplinary Committee of the Institute composed of the following members: Disciplinary Committee

(a) a chairman of the Disciplinary Committee;

(b) a vice-chairman of the Disciplinary Committee; and

(c) not less than two and not more than four other members:

Provided that a retiring member of the Disciplinary Committee may be re-elected.

(2) The chairman of the Disciplinary Committee, or in his absence, the vice-chairman of the Disciplinary Committee, shall preside at every meeting and every sitting of the Disciplinary Committee.

31. The functions of the Disciplinary Committee shall be to hear and determine-

(a) any complaint or allegation against a registered accountant;

(b) any complaint or allegation against the Institute or any organ thereof;

(c) any appeal from any decision made by or on behalf of the Institute. Functions of Disciplinary Committee

32. (1) Three members of the Disciplinary Committee shall form a quorum: Proceedings of Disciplinary Committee

Provided that the Disciplinary Committee shall not sit unless it is made up of an uneven number.

(2) Any question before a sitting of the Disciplinary Committee shall be decided by a majority of votes of the members of the Disciplinary Committee sitting and every member so sitting shall record a vote.

(3) All proceedings of the Disciplinary Committee shall be in camera.

(4) The Disciplinary Committee shall cause to be kept a record of its proceedings.

(5) Any party to a hearing before the Disciplinary Committee shall be entitled to be represented by a legal practitioner.

(6) Every decision of the Disciplinary Committee shall be in the form of a reasoned judgment and a copy thereof shall be supplied to each party to the proceedings and to every person affected thereby.

(7) Subject to the provisions of this section, the Disciplinary Committee may make rules regulating its own procedure and the procedure for the hearing of any matter before it.

33. (1) The Disciplinary Committee may, for the purposes of any inquiry, hear and receive evidence and may administer oaths. Powers of Disciplinary Committee

(2) Any party to a hearing before the Disciplinary Committee may apply to a court of competent jurisdiction for the issue of summons to give evidence or to produce documents before the Disciplinary Committee:

Provided that no person shall be compelled under any such summons to produce any document which he could not be compelled to produce on the trial of an action.

(3) Any person summoned to attend before the Disciplinary Committee who, without sufficient cause-

(a) refuses or fails to attend at the time and place specified in the summons or, having attended, leaves without the permission of the Disciplinary Committee; or

(b) having attended, refuses to be sworn or to affirm; or

(c) refuses, without lawful excuse, to answer fully and satisfactorily to the best of his knowledge and belief, any question lawfully put to him; or

(d) refuses to produce any book, record, document or thing which he has been required by summons to produce;

shall be guilty of an offence and shall be liable, upon conviction, for every such refusal or failure, to a fine not exceeding two thousand five hundred penalty units.

(4) A hearing before the Disciplinary Committee shall, for all purposes, and in particular for the purposes of Chapter XI of the Penal Code, be deemed to be a judicial proceeding. Cap. 87

(5) Where the Disciplinary Committee, after due inquiry, finds a registered accountant guilty of professional misconduct, it may impose one or more of the following penalties, that is to say it may-

(a) order the cancellation of his practising certificate or registration;

(b) censure him;

(c) caution him;

(d) impose a fine, not exceeding two thousand five hundred penalty units to be paid to the Institute;

(e) order him to pay to the Institute or to any other party to the hearing any costs of or incidental to the proceedings;

(f) order him to pay to any party to the hearing or other person, as restitution, the amount of loss caused by his negligence;

(g) impose any reasonable conditions for the postponement or suspension, for a period not exceeding one year, of any of the foregoing punishments.

(6) In any hearing before the Disciplinary Committee, any finding of fact which is shown to have been made by any court in Zambia shall be conclusive evidence of the fact so found.

(As amended by Act No. 13 of 1994)

34. The Disciplinary Committee shall, as soon as practicable after the completion of each hearing, submit to the Institute a report of the proceedings together with a copy of the record kept in accordance with subsection (4) of section thirty-two. Reports by Disciplinary Committee to Institute

35. (1) Any person aggrieved by any decision of the Disciplinary Committee may appeal to the High Court within thirty days of such decision being communicated to him. Appeals to High Court

(2) On any appeal under this section, the Institute shall be the respondent.

(3) The cancellation of any registration ordered by the Disciplinary Committee under this Part shall not take effect until the expiration of the time for lodging an appeal against such order or, if an appeal is lodged, until such time as the appeal is disposed of, withdrawn or struck out for want of prosecution, as the case may be.

(4) The High Court may, on any appeal under this section-

(a) confirm, vary or set aside any finding made, penalty imposed or direction given by the Disciplinary Committee;

(b) remit the matter to the Disciplinary Committee for further consideration in accordance with such directions as the High Court may give;

(c) make such other order as to costs or otherwise as it thinks fit:

Provided that no proceedings of the Disciplinary Committee shall be set aside by reason only of some irregularity in those proceedings if such irregularity did not occasion a substantial miscarriage of justice.

36. The Chief Justice may, by statutory instrument, make rules regulating appeals to the High Court provided for under this Part. Rules by Chief Justice

PART VI

GENERAL

37. (1) No person shall, without the consent in writing given by or on behalf

of the Institute, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of, his duties under this Act. Prohibition of publication or disclosure of information to unauthorised persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding twelve thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding twelve thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

(As amended by Act No. 13 of 1994)

38. (1) The Minister may, in consultation with the Council, make regulations by statutory instrument for the better carrying out of the purpose of this Act. Regulations and rules

(2) The Council may, subject to the provisions of the constitution, make rules affecting the Institute, the Council, committees of the Council, Council members, members, staff of the Institute, and persons studying or intending to become registered accountants.

39. (1) The Public Accountants (Registration) Act is repealed. Repeal and saving of the old volumes.
Cap. 597

(2) Notwithstanding the repeal of the said Act and the provisions of this Act, any person practising as an accountant at the commencement of this Act may continue practising, whether or not he was registered under that Act, for a period of twelve months from the commencement of this Act.

PART VII

TRANSITIONAL PROVISIONS

40. (1) Upon the commencement of this Act the Minister shall, notwithstanding the provisions of sections ten and eleven, appoint a transitional Council consisting of not less than five and not more than ten persons, and shall designate one of their number as Chairman and another as Vice-Chairman. Transitional Council and committees

(2) Until it is dissolved in accordance with subsection (4), the transitional Council shall be deemed for all purposes to have been duly constituted in accordance with section ten, and any reference in this Act to the Council shall apply, mutatis mutandis, to the transitional Council.

(3) Until they have been replaced in accordance with subsection (1) of section eleven, the persons designated Chairman and Vice-Chairman under subsection (1) shall be deemed for all purposes to have been duly elected to their respective offices.

(4) The members of the transitional Council shall hold office for a period of eighteen months from the commencement of this Act, or until such time as the Institute has elected a Council in accordance with section ten, whichever is the earlier:

Provided that if the Minister is satisfied that the period of eighteen months should be extended for good cause, he may, by statutory instrument, extend such period by up to six months at a time.

(5) The transitional Council may, with the approval of the Minister, establish transitional committees of the Council.

(6) The provisions of subsection (2) and (4) shall apply, mutatis mutandis, to members of any transitional committee of the Council which may be established under this Part.

SCHEDULE

(Section 29)

PROFESSIONAL MISCONDUCT

1. A member of the Institute shall be guilty of professional misconduct if, in respect of his practice as an accountant, he-

(a) allows any person, other than a registered accountant, to practise in his name;

(b) enters into partnership or association with a person who is not entitled under this Act to set up practice as an accountant;

(c) procures or attempts to procure any business as an accountant either through the services of a person not qualified to be registered under this Act or by means unbecoming of a professional accountant;

(d) pays or allows, or agrees to pay or allow, directly or indirectly, any share, commission or brokerage out of his fees for or profits from his professional services as an accountant to any person other than to or for a registered accountant, or an existing or retired partner;

(e) accepts or agrees to accept, directly or indirectly, any share, commission or brokerage out of the professional fees of any person who is not a registered accountant or partner in a firm of accountants;

(f) advertises himself, his practice or his services, except to the extent that is necessary to indicate his offices or to give his address to persons having business or professional dealings with him;

(g) solicits directly or indirectly clients or business as an accountant by circulars, advertisement, personal communication, interview, or any other means;

(h) unlawfully discloses or uses to his own advantage any information which relates to his client or which was acquired in the course of his professional engagement;

(i) certifies or submits in his name or in the name of his firm a report of

an examination of financial statements if the statements and related records have not been made by him, his partner or a registered accountant employed by his firm;

(j) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead people to infer that he vouches for the accuracy of such earnings;

(k) expresses his opinion, in a professional capacity, on financial statements of any business or enterprise in which he, or to his knowledge, his immediate family, his firm or a partner in his firm has an interest, unless he discloses such interest in his report; and for the purposes of this paragraph "immediate family" includes a spouse and his own or such spouse's child, parent, brother, sister, uncle, aunt, first cousin, nephew, niece, foster or adopted child and half-brother or half-sister;

(l) charges for professional work, other than insolvency, bankruptcy or receivership, fees which are based on a percentage of profits or which are contingent on results;

(m) in a financial statement in which his client has interest, fails to disclose to, or knowingly conceals from, such client mis-statements or facts known to himself and the disclosure of which is necessary in order that the financial statement does not mislead;

(n) gives an opinion in a professional capacity without obtaining sufficient information therefor, unless that fact is revealed; or

(o) fails to account for, or bank, the money of a client separately from his or his firm's money or uses funds belonging to his client for unauthorised purposes.

2. A member of the Institute shall be guilty of professional misconduct if he does any act which is likely to bring the profession of accountancy or the Institute into disgrace, contempt or disrespect.

SUBSIDIARY LEGISLATION

SECTIONS 21 AND 38 - THE ACCOUNTANTS (QUALIFICATIONS FOR REGISTRATION) REGULATIONS

Regulations by the Minister Statutory Instrument
No. 40 of 1994

1. These Regulations may be cited as the Accountants (Qualifications for Registration) Regulations. Title

2. The qualifications and experience set out in the Schedule to these Regulations shall be recognised for the purpose of registration under the Act. Qualifications and experience for registration

3. The Accountants (Qualifications for Registration) Regulations, 1984, are hereby revoked. Revocation of S.I. No. 37 of 1984

SCHEDULE

(Regulation 2)

1. ASSOCIATE OR FELLOWSHIP GRADE OF MEMBERSHIP

- (1) The Chartered Association of Certified Accountants of the United Kingdom.
- (2) The Chartered Institute of Management Accountants of the United Kingdom.
- (3) The Chartered Institute of Public Finance and Accountants of the United Kingdom.
- (4) The Institutes of Chartered Accountants in-
 - (a) England and Wales;
 - (b) Ireland;
 - (c) Scotland;
 - (d) New Zealand;
 - (e) Australia;
 - (f) Canada; and
 - (g) Zimbabwe
- (5) The Institute of Certified Public Accountants of the United States of America.

2. LICENTIATE GRADE OF MEMBERSHIP

- (1) The Licentiate Examinations of the Zambia Institute of Certified Accountants or having successfully completed the penultimate examination of any of the Institutes listed in this Schedule for Associate or Fellowship grade of membership.
- (2) The Copperbelt University Bachelor of Accountancy Degree with at least three years' relevant post qualifying experience.
- (3) The Examinations Council of Zambia Diploma in Accountancy with at least five years' relevant post qualifying experience.
- (4) The Institute of Chartered Secretaries and Administrators (Financial Stream).
- (5) The Institutes of Chartered Accounts in-
 - (a) India;
 - (b) Pakistan;
 - (c) Bangladesh; and
 - (d) Sri-Lanka.
- (6) The Institute of Cost and Works Accountants of India.

- (7) The Institutes of Cost and Management Accounts in-
 - (a) Pakistan; and
 - (b) Bangladesh.
- (8) Members of the Institutes of Certified Public Accountants in-
 - (a) Kenya; and
 - (b) Tanzania.

3. TECHNICIAN GRADE OF MEMBERSHIP

- (1) The Zambia Institute of Certified Accountants Technician Examinations.
- (2) The Copperbelt University Degree in Accountancy.
- (3) The Examination Council of Zambia Diploma in Accountancy.
- (4) The National Institute of Public Administration Accounting Technicians Diploma.
- (5) The Zambia State Insurance Business College Diploma in Financial Administration.
- (6) The Association of Accounting Technicians of the United Kingdom.
- (7) The Foundation Examination of any of the Institutes listed in this Schedule for Associate or fellowship grade of membership.

REPUBLIC OF ZAMBIA

THE ZAMBIA CENTRE FOR ACCOUNTANCY STUDIES ACT

CHAPTER 391 OF THE LAWS OF ZAMBIA

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THE ZAMBIA CENTRE FOR ACCOUNTANCY STUDIES ACT.

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CHAPTER 391

ZAMBIA CENTRE FOR ACCOUNTANCY STUDIES ACT.Act No.
1 of 1989
13 of 1994

An Act to constitute the Zambia Centre for Accountancy Studies; to establish the Zambia Centre for Accountancy Studies Board; to define the functions and powers of the Centre and the Board; and to provide for matters connected with or incidental to the foregoing.

[19th May, 1989]

PART I

PRELIMINARY

1. This Act may be cited as the Zambia Centre for Accountancy Studies Act.Title

2. In this Act, unless the context otherwise requires-Interpretation

"Board" means the Zambia Centre for Accountancy Studies Board, established by section four;

"Centre" means the Zambia Centre for Accountancy Studies constituted under section three;

"Chairman" means the person appointed Chairman of the Board under section six;

"Deputy Director" means the person appointed Deputy Director of the Board under section fifteen;

"Director" means the person appointed Director of the Board under section fifteen;

"member" means a member of the Board;

"Patron" means the Minister or the person appointed patron of the Centre under section fourteen;

"registered accountant" means a person registered as an accountant in accordance with the Accountants Act, 1982;Cap. 390

"Secretary" means the person appointed Secretary of the Board under section sixteen;

"Vice-Chairman" means the person elected Vice-Chairman of the Board under section six.

PART II

ZAMBIA CENTRE FOR ACCOUNTANCY STUDIES

3. (1) There is hereby constituted the Zambia Centre for Accountancy Studies for the purpose of training accountants, promoting research and advancement of learning in accountancy, finance and related studies, providing advisory and consultancy services, and for related matters. Zambia Centre for Accountancy Studies

(2) The Board may establish such number of branches of the centre as it thinks necessary.

4. There is hereby established the Zambia Centre for Accountancy Studies Board which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of Board

5. (1) The seal of the Board shall be such devise as may be determined by the Board and shall be kept by the Secretary. Seal of Board

(2) The Board may use a wafer or rubber stamp in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman, and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(5) Any document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed so executed or issued, as the case may be, without further proof, unless the contrary is proved.

6. (1) The Board shall consist of the following members: Composition of Board

(a) a Chairman appointed by the Minister on the advice of the Board;

(b) the Permanent Secretary in the Ministry responsible for higher education;

(c) the Permanent Secretary in the Ministry responsible for finance;

(d) the Director of Manpower Development and Training in Cabinet Office;

(e) the Vice-Chancellor of the Copperbelt University;

(f) four members appointed by the Council of the Zambia Institute of Certified Accountants;

(g) obsolete;

(h) one registered accountant appointed by the Zambia Industrial and Commercial Association; and

(i) one registered accountant appointed by the Zambia Federation of Employers.

(2) There shall be a Vice-Chairman elected by the Board from amongst its members.

7. (1) A member appointed under paragraphs (a), (f), (h) and (i) of subsection (1) of section six shall hold office for three years from the date of his appointment and may be re-appointed upon the expiration of that term. Tenure of office and vacancy

(2) A member referred to in subsection (1) may resign upon giving one month's notice in writing to the relevant appointing authority under section six and may, at any time be removed by the appointing authority.

(3) A member referred to in paragraphs (f), (h) or (i) of section six shall cease to hold office if-

(a) he ceases to be a registered accountant;

(b) he is lawfully detained or his freedom of movement is restricted, for a period of not less than six months, under any law in force in Zambia; or

(c) he is absent from three consecutive meetings of the Board without reasonable cause.

(4) Whenever the office of a member referred to in subsection (1) becomes vacant the relevant appointing authority under section six shall appoint another person equally qualified to be a member and that person shall hold office for the remainder of the period during which the member whose place he fills would, but for his office becoming vacant, have continued in office.

8. (1) The function of the Board shall be to foster sound education and training in accountancy, finance and related studies and to do all such acts and things as are necessary for, or conducive to, the attainment of that purpose. Functions of Board

(2) Without prejudice to the generality of subsection (1) the Board shall-

(a) promote research in accountancy, finance and related fields;

(b) support the production and publication of teaching materials;

(c) collect and disseminate accountancy and financial information including the publication of reports journals and other documents and literature relating to the work of the Centre;

(d) provide advisory and consultancy services;

(e) conduct surveys and research relating to accountancy manpower and training as may be required to develop effective national policies; and

(f) co-ordinate accountancy development activities of various training institutions in Zambia or elsewhere; and participate in required accountancy development activities in collaboration with other institutions outside Zambia.

(3) The Board may, by directions in writing and subject to such terms and conditions as it thinks fit, delegate to the Director, Deputy Director, any member or the Secretary any of its functions under this Act

(4) The Minister may give to the Board such general or specific directions with respect to the discharge of its functions as he may consider necessary and the Board shall give effect to such directions.

9. A member other than a public officer or an employee of a parastatal body shall be paid such allowances as the Board may, with the approval of the Minister, determine. Remuneration and allowances

10. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure. Proceedings of Board

(2) The Board shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may decide.

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairman and shall be called if not less than five members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Seven members shall form a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board its Chairman or in his absence, its Vice-Chairman or in their absence, such member as the members present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) Where any member referred to in paragraphs (b) to (i) of subsection (1) of section six is for any reasonable cause unable to attend any meeting of the Board his Ministry or organisation, as the case may be, may, in writing, nominate another person to attend such meeting in his stead and such person shall be deemed to be a member for the purpose of that meeting.

(8) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any committee established by the Board.

11. (1) The Board may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it thinks fit. Committees of Board

(2) The Board may appoint as members of a committee established under

subsection (1), persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board any committee established under subsection (1) may regulate its own procedure.

12. (1) If any person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter that person or his spouse is directly or indirectly interested in a private capacity, he shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter. Disclosure of interest

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

13. No action or other proceedings shall lie or be instituted against any member or member of a committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act. Immunity of members

14 (1) There shall be a Patron of the Centre who shall be the titular head of the Centre. Patron

(2) The Patron may be the Minister or such other person as may be appointed by the Minister after consultation with the Board.

(3) The Patron shall preside at all ceremonial assemblies of the Centre.

(4) The Chairman shall keep the Patron informed about the general conduct of the affairs of the Centre and shall furnish the Patron with such information relating to the affairs of the Centre as the Patron may request.

(5) The Patron may, at any time he thinks necessary, direct that a visitation of the Centre be conducted by persons, and for purposes, specified in the direction.

(6) The Secretary shall submit a report of the visitation to the Patron who may decide on what action, if any, may be taken.

PART III

ADMINISTRATION

15. (1) The Board shall appoint on such terms and conditions as it may determine, a Director who shall be the chief executive officer of the Board and who, subject to the control of the Board, shall be responsible for the administration of the Centre. Director and Deputy Director

(2) The Board may appoint on such terms and conditions as it may determine, a Deputy Director to assist the Director.

(3) The Director, or in his absence the Deputy Director, shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting of the Board may, for good

cause, require the Director or Deputy Director, as the case may be, to withdraw from the meeting.

16. (1) There shall be a Secretary of the Board who shall be appointed by the Board on such terms and conditions as the Board may determine. Secretary and other staff

(2) The Secretary shall be responsible for the administration of the day-to-day affairs of the Board under the general supervision of the Director.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.

17. (1) No person shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of his duties under this Act. Prohibition of publication or disclosure of information to unauthorised persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one thousand two hundred and fifty penalty units or to imprisonment not exceeding three years, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one thousand two hundred and fifty penalty units or to imprisonment not exceeding three years, or to both.

(As amended by Act No. 13 of 1994)

PART IV

FINANCIAL AND OTHER PROVISIONS

18. (1) The funds of the Board shall consist of such moneys as may-Funds of Board

(a) be appropriated by Parliament for the purposes of the Board;

(b) be paid to the Board by way of grants or donations; and

(c) vest in or accrue to the Board.

(2) The Board may-

(a) accept money by way of grants or donations from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia;

(b) raise by way of loans or otherwise, from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia such moneys as it may require for the discharge of its functions; and

(c) charge and collect fees in respect of programmes, publications, seminars, consultancy services, and other services provided by the Board.

(3) There shall be paid from the funds of the Board-

(a) the salaries, allowances and loans of the staff of the Board;

(b) such reasonable travelling, transport and subsistence allowances for members or members of any committee of the Board when engaged on the business of the Board, at such rates as the Board may, with the approval of the Minister, determine; and

(c) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

19. The financial year of the Board shall be the period of twelve months ending on the 31st December, in each year. Financial year

20. (1) The Board shall cause to be kept proper books of account and other records relating to its accounts. Accounts

(2) The accounts of the Board shall be audited annually by independent auditors appointed by the Board with the approval of the Minister.

(3) The auditors' fees shall be paid by the Board.

21. (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Board shall submit to the Minister a report concerning its activities during that financial year. Annual report

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Board and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1), lay it before the National Assembly.

22. The Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act. Regulations

REPUBLIC OF ZAMBIA

THE INSURANCE ACT

CHAPTER 392 OF THE LAWS OF ZAMBIA

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THE INSURANCE ACT

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CHAPTER 392

INSURANCE

An Act to make provision relating to the carrying on of insurance business; and to provide for matters connected therewith and incidental thereto.

[1st January, 1968]Act No.

10 of 1968

26 of 1976

28 of 1989

2 of 1992

13 of 1994

PART I

PRELIMINARY

1. This Act may be cited as the Insurance Act.Short title

2. The provisions of this Act shall not extend or apply to-

(a) an association of individuals with no share capital established for the purpose of rendering aid to its members or their dependants, commonly called a friendly society, which does not at any time after the commencement of this Act employ a person whose principal remunerated occupation consists of inducing persons to become members of the association or of collecting from members of the association contributions or subscriptions towards the association's funds; Application

(b) a person or class of persons declared by the President by order to be exempt from the provisions of this Act; or

(c) a class of insurance business declared by the President by order to be exempt from the provisions of this Act.

3. (1) For the purpose of this Act, Lloyd's shall be deemed to be an insurer provided that- Application in relation to Lloyd's

(a) the provisions of subsection (2) of section seventy requiring certain policies issued by a registered insurer to be issued in Zambia shall not apply to policies issued by Lloyd's;

(b) the provisions of section eleven relating to the principal office and principal officer of a registered insurer shall not apply to Lloyd's and

(c) nothing in this Act or regulations made thereunder shall prevent the transaction of insurance business by any person if-

(i) he transacts that business as a member of Lloyd's;

(ii) Lloyd's is a registered insurer; and

(iii) the transaction of that business by a registered insurer is not prevented by or under this Act.

(2) Any contravention of or failure to comply with any provision of this Act or of regulations made thereunder by a member of Lloyd's shall be deemed to be a contravention or failure by Lloyd's.

4. In this Act, unless the context otherwise requires- Interpretation

"bankruptcy" shall be construed in accordance with the law relating to bankruptcy and as including an assignment to or arrangement or composition with creditors made under the law relating thereto, and "bankrupt" shall be construed accordingly;

"broker" means a person who is not an insurance agent and who acts on behalf of an insured or prospective insured, other than himself, in any type of insurance transaction with a registered insurer;

"broker's licence" means a licence granted to a registered broker;

"chairman", in relation to an association of persons, includes the individual presiding over the governing body of the association;

"child" includes an illegitimate child, stepchild or a child adopted in terms of any enactment whatsoever, whether within or outside Zambia, relating to the adoption of children;

"contingent obligation dependent on human life" means-

(a) an obligation to pay to a particular person certain sums of money at specified intervals or a certain sum of money or to provide for a particular person certain other benefits-

(i) on the occurrence of the death of a particular person or the birth of a child to a particular person at any time or within a specified period;

(ii) in the event of a particular person continuing to live throughout a specified period or specified periods; or

(b) an obligation assumed-

(i) until the occurrence of the death of a particular person; or

(ii) during a specified period or until the occurrence of the death of a particular person before the expiration of that period;

"dependant", in relation to any person, includes his surviving spouse and any parent, child and grandchild of his;

"deposit" means a deposit of money but includes a deposit of anything having a monetary value which by virtue of regulations made under this Act may be accepted as a deposit;

"director" includes an individual occupying the position of director or alternate director of an association of persons and a member or alternate member of a committee of management or of any other governing body of an association of persons, by whatever name he may be called;

"external insurer" means a registered insurer whose head office is not in Zambia;

"financial year", in relation to a person, means each period at the end of which the balance of his accounts is struck, whether that period is a year or not;

"funeral policy" means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide, on the death of any person, benefits, not exceeding in value a total of two hundred kwacha, which consist principally of provision for the funeral of that person or the grant to another person of some other non-monetary benefit, whether or not the policy provides for-

(a) the payment at the option of the insurer or any other person, of a sum of money instead of provision of a funeral or the grant of a non-monetary benefit; or

(b) the payment of a sum of money in addition to the provision of a funeral or the grant of some non-monetary benefit;

"industrial policy" means a policy whereby the insurer assumes, in return for a

premium or the promise of a premium payable from time to time, at intervals not exceeding two months, a contingent obligation dependent on human life, not exceeding in amount the sum of two hundred kwacha, if the insurer has expressly or tacitly undertaken to send a person from time to time to the owner of the policy or to his residence or place of work to collect the premiums;

"insurance agent" means a person who solicits applications for insurance, collects moneys by way of premiums or issues cover notes of insurance for and on behalf of a registered insurer but does not include an employee serving in the office of an insurer unless the emoluments of that employee are related to the volume of business handled by him;

"insurance agent's licence" means a licence granted to an insurance agent under Part IV;

"insurance business" means the business of assuming the obligations of an insurer in any class of insurance business whatsoever, whether defined in this Act or not, which is not declared to be exempt from the provisions of this Act by order made in terms of paragraph (c) of section two, and includes reinsurance business;

"insurer" means a person carrying on insurance business, otherwise than as a broker or insurance agent, who is not a person or a member of a class of persons declared to be exempt from the provisions of this Act by order made in terms of paragraph (b) of section two;

"insurer's licence" means a licence granted to a registered insurer under Part II;

"licensed insurance agent" means an insurance agent holding a valid insurance agent's licence;

"life insurance business" means the business of assuming the obligations of an insurer under life policies, funeral policies, industrial policies or sinking fund policies;

"life insurance fund" means the fund to which the receipts of an insurer in respect of his life insurance business are carried;

"life insurer" means a registered insurer carrying on life insurance business;

"life policy" means a policy whereby the insurer assumes, in return for the payment or the promise of the payment of a sum or sums of money or the promise of a periodical payment of a certain premium, a contingent obligation dependent on human life, and includes any contract of insurance customarily regarded as a life insurance contract, but does not include a funeral policy, an industrial policy, a personal accident policy, a sinking fund policy or an insurance policy whereby the insurer assumes a contingent obligation dependent on human life in which the contingent obligation forms a subordinate part of the insurance effected by the policy;

"Lloyd's" means the association of underwriters known as Lloyd's;

"local insurer" means a registered insurer whose head office is in Zambia;

"local policy" means a policy issued in Zambia upon a proposal made to a registered insurer and includes a life policy issued outside Zambia and

subsequently made payable in Zambia at the request of the owner which the owner has agreed in writing shall be treated as a local policy for the purposes of this Act, but does not include a life policy made payable, after the date of its issue, outside Zambia at the request of the owner which the owner has agreed in writing shall not be treated as a local policy for the purposes of this Act;

"minor" means a person who, by reason of his youth, is under a legal disability;

"owner", in relation to a policy, means the person who is entitled to enforce any provision in the policy providing for benefits;

"personal accident policy" means a policy whereby the insurer assumes, in return for the payment or the promise of payment of a sum or sums of money and otherwise than incidentally to an insurance effected by means of some other class of policy, an obligation to pay a certain sum or certain sums of money to, or provide any other benefit for, a particular person in the event of an accident or illness causing the death or injury or disability of a particular person;

"policy" means a valid insurance contract whatever the form in which the rights and obligations of the parties to the contract are expressed or created, and includes a sinking fund policy, but does not include an insurance contract in which-

(a) a person or member of a class of persons declared to be exempt from the provisions of this Act by order made under paragraph (b) of section two assumes the obligation of the insurer; or

(b) a person assumes the obligations of an insurer in a class of insurance business declared to be exempt from the provisions of this Act by order made under paragraph (c) of section two;

"principal office" means the principal office of an insurer or broker provided for in section eleven or twenty-four;

"principal officer" means the principal officer of an insurer or broker provided for in section eleven or twenty-four;

"registered broker" means a broker registered under Part III;

"registered insurer" means an insurer registered under Part II;

"Registrar" means the Registrar of Insurance provided for in section sixty;

"sinking fund policy" means a contract whereby one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for the payment or the promise of a payment from time to time of a certain sum of money by the other party to the contract;

"trustee", in relation to an estate in bankruptcy, includes an assignee or, as the case may be, a trustee in a deed of arrangement or the person having the conduct of an order of composition.

PROVISIONS RELATING TO INSURERS

5. A person shall be qualified to be a registered insurer if the Registrar is satisfied-

(a) that all insurance business carried on by him within or outside Zambia is carried on in accordance with sound insurance principles;

(b) that the class of insurance business to be carried on in Zambia is likely to be carried on by him in accordance with sound insurance principles;

(c) that his management and operations are likely adequately to protect the interests of the general public;

(d) that he has a margin of solvency sufficient in terms of regulations made under this Act for the purposes both of the class of insurance business in respect of which registration is sought or obtained and all other classes of insurance business carried on by him within and outside Zambia;

(e) that a person who is a corporate body with share capital is lawfully formed in accordance with the laws of the country in which his head office is situate and has a paid-up share capital of not less than one hundred thousand kwacha; and

(f) that the name of the person is not likely to be mistaken for the name of any other insurer who is or has been a registered insurer. Qualifications for registration

6. (1) The Registrar shall register as an insurer in the class of business to which the application relates any person who-Registration of insurers

(a) applies to him in the prescribed manner;

(b) is qualified to be a registered insurer under section five; and

(c) pays such fee as may be prescribed for registration as an insurer.

(2) Where an applicant for registration is not qualified to be a registered insurer under section five, the Registrar shall reject the application and notify the applicant of the rejection and of the appropriate provision or provisions of section five by virtue of which the applicant is not qualified for registration.

(3) In rejecting an application for registration, the Registrar may notify the applicant of the conditions which, if complied with by the applicant, would enable him to satisfy the provision or provisions of section five by virtue of which he is not qualified for registration.

(4) The Registrar shall cause notice of every registration of an insurer to be published in the Gazette.

7. (1) Subject to the provisions of this section, no person shall transact any class of insurance business in Zambia as an insurer unless he is a registered insurer holding a valid licence to transact that class of insurance business. Registered insurers to be licensed

(2) Where an insurer's licence to transact a class of insurance business has been suspended or cancelled, the provisions of subsection (1) shall not apply to business relating to policies in that class of insurance which were issued by him before that suspension or cancellation.

(3) Subject to the provisions of sections eight and nine, the Registrar shall, on payment of the appropriate prescribed annual fee, grant a licence to a registered insurer to transact insurance business of the class or classes to which his registration relates.

(4) Unless suspended or cancelled under this Part, a licence shall be valid until the expiration of the calendar year in respect of which it is issued.

8. (1) The Registrar may, as the case may be, refuse to renew or suspend any insurer's licence if-Refusal, suspension and cancellation of insurers' licences

(a) the insurer ceases to be qualified under section five to be a registered insurer;

(b) the Registrar considers that the insurer has contravened or failed to comply with any provision of this Act or regulations made thereunder or of any insurance law of another country applying to the insurer; or

(c) a judgment in any court against the insurer remains unsatisfied for twenty-one days from the date of the judgment or, in the event of any appeal, from the date of the judgment on appeal.

(2) The Registrar shall forthwith notify the insurer of the refusal or suspension under subsection (1) of any insurer's licence and shall state his grounds for such refusal or suspension.

(3) Any licence suspended under this section which remains suspended after sixty days from the date the insurer is notified of the suspension shall without further notice be cancelled.

9. (1) An insurer may on being notified of a suspension of his insurer's licence make written representations to the Registrar showing cause why the suspension should be revoked and, if before the expiration of sixty days from that notification the Registrar considers that the grounds for the suspension are not applicable or have ceased to be applicable to the insurer, the Registrar shall revoke his suspension of the licence. Representation against refusal, suspension or cancellation of an insurer's licence

(2) A registered insurer who is aggrieved by a refusal or cancellation under section eight of an insurer's licence of any class or classes may-

(a) in the case of a refusal to renew a licence, within ninety days of being notified of that refusal; and

(b) in the case of the cancellation of a licence, within thirty days thereof; lodge with the Registrar a request for review.

(3) A request for review lodged under subsection (2) shall be in writing, shall specify in detail the grounds upon which the request is based, and shall be forwarded by the Registrar with his comments to the Minister.

(4) The Minister shall, within thirty days of receipt of a request therefor, review the decision of the Registrar complained of and may-

(a) affirm that decision;

(b) indicate the conditions to be fulfilled by the insurer before an insurer's licence may be granted; or

(c) direct the Registrar to grant an insurer's licence of one or more classes;

and the Minister shall cause the insurer to be notified of his decision.

(5) Where a licence is granted by the Registrar pursuant to a direction of the Minister under subsection (4), the appropriate prescribed fee shall be payable by the insurer save where the licence is in respect of a part of a year to which a licence previously held by the insurer but cancelled under section eight related.

10. (1) The Registrar shall cancel the registration in any class of insurance business of an insurer who-

Cancellation of registration of insurers

(a) has held no insurer's licence in that class during the period of six months immediately preceding: provided that the registration of an insurer who has requested a review under section nine shall not be cancelled save with the approval of the Minister;

(b) the Registrar is satisfied has ceased to transact insurance business of that class in Zambia; or

(c) himself or by way of any person having control of his affairs so requests.

(2) The Registrar shall cause notice of every cancellation of the registration of an insurer to be published in the Gazette.

11. (1) A registered insurer shall, for the sole purpose of transacting insurance business, maintain a principal office in Zambia and shall notify the Registrar of the address thereof and, if it is proposed to change that address, shall notify the Registrar of the new address of the principal office not less than three weeks in advance of the change.

Principal office and principal officer of registered insurers

(2) The registered insurer shall be represented in Zambia by a principal officer who shall be appointed in writing by the head office of the registered insurer after the Registrar has signified that in his opinion the person in question possesses the prescribed minimum qualifications and is not disqualified by any regulations under this Act from such appointment.

(3) The principal officer shall have a power of attorney sufficient to satisfy the Registrar that that officer is authorised to act for the registered insurer in all matters to secure the compliance of the insurer with the provisions of this Act and regulations made thereunder and a copy of such power of attorney shall be lodged with the Registrar immediately after every appointment of a principal officer.

12. (1) A registered insurer shall each year submit to the Registrar in

accordance with regulations made under this Act such information as may be prescribed relating to the insurance business transacted by him during the twelve months immediately preceding the date prescribed for the submission of that information. Returns by and records of registered insurers

(2) If in the opinion of the Registrar any information submitted by a registered insurer does not comply with the requirements of subsection (1), the Registrar may notify the insurer accordingly and, until the expiration of thirty days from that notification, the insurer shall be deemed not to have failed to comply with those requirements.

(3) A registered insurer shall keep at his principal office in Zambia such original records and documents relating to his insurance business in Zambia as may be necessary to enable his principal officer to prepare the information to be submitted under subsection (1), and such records and documents shall be kept in such manner as to facilitate verification by the Registrar and shall be so kept for not less than five years from the date on which the transactions to which they relate occurred.

(4) A local insurer shall keep at his head office in the manner and for the period prescribed such additional records and documents as may be prescribed.

13. (1) An external insurer shall each year furnish evidence showing to the satisfaction of the Registrar that his accounts have been subject to an annual audit by an independent auditor. Audit of accounts of insurers

(2) The accounts of a local insurer shall be audited annually by an independent auditor approved by the Registrar and the auditor shall either-

(a) certify that-

(i) the accounts have been properly prepared in accordance with the records of the insurer;

(ii) the records of the insurer contain information adequate for the purpose of his audit; and

(iii) the balance sheet and profit and loss account of the insurer give a true and fair view of the insurer's financial position and his profit or loss respectively; or

(b) notify the Registrar that he is unable to complete the certificate provided for in paragraph (a) giving his reasons.

14. No registered insurer shall publish a statement or issue a document on which there appears a statement-

(a) of his authorised capital, unless the statement also sets forth the amount of his subscribed capital and of his paid-up capital; or

(b) of his subscribed capital, unless the statement also sets forth the amount of his paid-up capital. Publication of authorised capital, etc., of registered insurers

15. (1) No registered insurer shall-Amalgamations and transfers of insurance business

- (a) amalgamate with one or more insurers; or
- (b) transfer any insurance business to or take transfer of any insurance business from another insurer;

unless the amalgamation or, as the case may be, the transfer is sanctioned by the Minister in accordance with the provisions of this section.

(2) If it is intended to amalgamate two or more insurers or to transfer any insurance business of one insurer to another insurer, the insurers concerned may apply to the Minister to sanction the proposed amalgamation or, as the case may be, transfer.

(3) Before an application to the Minister is made in terms of subsection (2)-

(a) notice of the intention to make the application shall be published in the Gazette; and

(b) a statement of the nature of the amalgamation or, as the case may be, transfer, together with-

(i) an abstract containing the material facts embodied in the agreement under which the amalgamation or transfer is proposed to be effected; and

(ii) where applicable, copies of the actuarial reports upon which the agreement referred to in sub-paragraph (i) is founded, including a report by an actuary approved by the Registrar;

shall be posted to the registered or last known address of every policy owner in Zambia of each insurer and to the Registrar; and

(c) the agreement under which the amalgamation or, as the case may be, transfer is proposed to be effected shall be open for inspection by owners of policies and shareholders at the offices of the insurers in Zambia for a period of twenty-one days after the publication of the notice in the Gazette.

(4) The Minister, after considering the application and such representations as may be made by owners of policies and shareholders of the insurers concerned and by other persons whom he considers are entitled to be heard, may sanction the proposed amalgamation or transfer if he is satisfied that no sufficient objection thereto has been established.

(5) The Minister shall not sanction an amalgamation or, as the case may be, transfer if it appears to him that the owners of policies aggregating one-fifth or more of the total amount insured by any of the insurers concerned, dissent from the amalgamation or transfer.

(6) If an amalgamation or transfer has taken place in accordance with the provisions of this section, no owner of a policy shall be regarded as having abandoned any claim which he would have had against the original insurer or to have accepted in place thereof the liability of another insurer, unless he or his agent has signed a written document abandoning that claim and accepting in place thereof the liability of that other insurer.

(7) Nothing in this section provided shall be deemed to apply to an arrangement under which a registered insurer places business with another insurer by way of reinsurance.

16. Within three months of the date of the completion of an amalgamation or transfer sanctioned under section fifteen, the combined insurer or, as the case may be, the purchasing insurer shall deposit with the Registrar-

(a) certified copies of statements of the assets and liabilities of the insurers concerned in the amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer; and

(b) a certified copy of the agreement or deed under which the amalgamation or transfer was effected; and

(c) certified copies of the actuarial or other reports upon which the agreement or deed was founded; and

(d) a declaration under the hand of the chairman and the principal officer of each insurer that-Statement in case of amalgamation or transfer of business

(i) to the best of their knowledge and belief, all payments made or to be made to any person whatsoever on account of the amalgamation or transfer are therein fully set forth and no other payments, except those set forth, have been made or are to be made, either in money, policies, bonds, valuable securities or other property, by or with the knowledge of the parties to the amalgamation or transfer; and

(ii) due notice of the proposed amalgamation or transfer was given to the shareholders, if any, and the owners of policies with each insurer concerned in compliance with the provisions of section fifteen.

17. (1) A life insurer who carries on, in addition to his life insurance business, any other business, whether insurance business or otherwise, shall keep a separate account of all receipts in respect of his life insurance business. Life insurers carrying on business other than life insurance business

(2) The receipts in respect of the business of a life insurer referred to in subsection (1) which are receipts in respect of his life insurance business shall be carried to and form part of the life insurance fund.

(3) The life insurance fund of a life insurer referred to in subsection (1) shall be as absolutely the security of the owners of the life, funeral, industrial and sinking fund policies issued by the life insurer as though it belonged to a life insurer carrying on no other business than life insurance business. Payments from the life insurance fund of a life insurer referred to in subsection (1) shall not be made in pursuance of the contracts of the life insurer which would not be made if the business of the life insurer were only that of life insurance, and the life insurance fund shall not be applied directly or indirectly to any purposes other than those of life insurance.

(4) Nothing in this section contained shall preclude a life insurer referred to in subsection (1) from investing the life insurance fund in the same investments as any other fund.

18. (1) A life insurer shall, once in every three years, cause an investigation to be made into his financial position by an actuary approved by the Registrar. Periodical investigations to be made into financial position of life insurers

(2) An investigation into the financial position of a life insurer made in terms of subsection (1) shall include-

(a) a valuation of the liabilities in respect of the whole of his life insurance business; and

(b) a valuation of the liabilities in respect of his life insurance business in Zambia.

(3) A life insurer whose financial position is investigated in terms of this section, shall prepare and furnish to the Registrar in the appropriate forms prescribed, within six months of the date to which his accounts are made up for the purposes of the investigation, an abstract of the report of the actuary approved by the Registrar by whom the investigation was made, and a statement of his insurance business at that date.

(4) An external insurer who carries on life insurance business, whether or not he carries on life insurance business in Zambia, shall, whenever he furnishes to the appropriate authority in the country in which his head office is situate, an abstract, statement, return or other document reflecting the results of an actuarial investigation of the liabilities of the whole of his life insurance business, furnish a copy of the abstract, statement, return or other document to the Registrar.

(5) Notwithstanding the provisions of subsections (1) to (3), the Registrar may, subject to the provisions of subsection (6), require a life insurer who he suspects is not conducting his life insurance business in accordance with sound insurance principles to prepare and furnish, within six months commencing on the date the Registrar calls upon him in writing to do so, valuations of the liabilities referred to in paragraphs (a) and (b) of subsection (2) and an abstract and statement referred to in subsection (3).

(6) The Registrar shall not require a life insurer to prepare and furnish the documents referred to in subsection (5) more than once in any year.

19. No life insurer shall enter into a contract of reinsurance against any liability in respect of his life insurance business in Zambia otherwise than with a life insurer or reinsurer. Reinsurance contracts of life insurers

PART III

PROVISIONS RELATING TO BROKERS

20. (1) Subject to the provisions of this Act and regulations made thereunder, the Registrar shall register as a broker any person who-Registration of brokers

(a) applies to him in the prescribed manner

(b) is qualified under regulations made under this Act to be a registered broker; and

(c) pays such a fee as may be prescribed for registration as a broker.

(2) Where an applicant for registration is not qualified under regulations made under this Act to be a registered broker, the Registrar shall reject the application and notify the applicant of the rejection and of the appropriate provision or provisions of such regulations by virtue of which the applicant is

not qualified for registration.

(3) In rejecting an application for registration, the Registrar may notify the applicant of the conditions which, if complied with by the broker, would enable him to satisfy the provision or provisions of the regulations by virtue of which he is not qualified for registration.

(4) The Registrar shall cause notice of every registration of a broker to be published in the Gazette.

21. (1) No person shall act in Zambia as a broker unless he is a registered broker holding a valid broker's licence. Registered brokers to be licensed

(2) Subject to the provisions of section twenty-two, the Registrar shall on payment of the prescribed annual fee grant a broker's licence to a registered broker.

(3) Unless suspended or cancelled under this Part, a broker's licence shall be valid until the expiration of the calendar year in respect of which it is granted.

22. (1) The Registrar may, as the case may be, refuse to renew or suspend any broker's licence if—Refusal, suspension and cancellation of brokers' licences

(a) the broker ceases to be qualified under regulations made under this Act to be a registered broker; or

(b) the Registrar considers that the broker has contravened or failed to comply with any provisions of this Act or regulations made thereunder or of any insurance law of another country applying to the broker.

(2) The Registrar shall forthwith notify the broker of a refusal or suspension under subsection (1) of any broker's licence and shall state his grounds for such refusal or suspension.

(3) The broker may on receiving notification under subsection (2) make written representations to the Registrar showing cause why the suspension should be revoked or, as the case may be, the licence should be renewed and, if before the expiration of thirty days from that notification the Registrar considers that the grounds for his action are not applicable or have ceased to be applicable to the broker, the Registrar shall revoke his suspension of or renew the licence as the case may be.

(4) Any licence suspended under this section which remains suspended after sixty days from the date the broker is notified of the suspension shall without further notice be cancelled.

23. (1) The Registrar shall cancel the registration of a broker—Cancellation of broker's registration

(a) whose broker's licence has been cancelled under this Part;

(b) who has held no broker's licence during the period of sixty days immediately preceding;

(c) who the Registrar is satisfied has ceased to act as a broker in Zambia;
or

(d) who himself or by way of any person having control of his affairs so requests.

(2) The Registrar shall cause notice of every cancellation of the registration of a broker to be published in the Gazette.

24. (1) A registered broker shall for the sole purpose of transacting business as a broker maintain a principal office in Zambia and shall notify the Registrar of the address thereof and, if it is proposed to change that address, shall notify the Registrar of the new address not less than three weeks in advance of the change. Principal office and principal officer of a registered broker

(2) A registered broker shall be represented in Zambia by a principal officer who shall be appointed in writing by the head office of the registered broker after the Registrar has signified that in his opinion the person in question has the prescribed minimum qualifications and is not disqualified by any regulations made under this Act from such appointment.

25. (1) A registered broker shall each year submit to the Registrar in accordance with regulations made under this Act such information as may be prescribed relating to his business during the twelve months immediately preceding the date prescribed for the submission of that information. Returns by and records of registered brokers

(2) If in the opinion of the Registrar any information submitted by a registered broker does not comply with the requirements of subsection (1), the Registrar may notify the broker accordingly and, until the expiration of thirty days from that notification, the broker shall be deemed not to have failed to comply with those requirements.

(3) A registered broker shall keep at his principal office in Zambia such original records and documents relating to his business in Zambia as may be necessary to enable his principal officer to prepare the information to be submitted under subsection (1), and such records and documents shall be kept in such manner as to facilitate verification by the Registrar and shall be so kept for not less than three years from the date on which the transactions to which they relate occurred.

26. (1) A registered broker whose head office is outside Zambia shall each year furnish evidence showing to the satisfaction of the Registrar that his accounts have been subject to an annual audit by an independent auditor. Audit of the accounts of a registered broker

(2) The accounts of a registered broker whose head office is within Zambia shall be audited annually by an independent auditor approved by the Registrar and the auditor shall either-

(a) certify that-

(i) the accounts have been properly prepared in accordance with the records of the broker;

(ii) the records of the broker contain information adequate for the purpose of his audit;

(iii) the balance sheet and profit and loss account of the broker give a true

and fair view of the broker's financial position and his profit or loss respectively; or

(b) notify the Registrar that he is unable to complete the certificate provided for in paragraph (a) giving his reasons.

(As amended by Acts No. 26 of 1976 and No. 21 of 1992)

PART IV

PROVISIONS RELATING TO INSURANCE AGENTS

27. (1) No person shall act in Zambia as an insurance agent save under a valid licence granted under this Part. Insurance agents to be licensed

(2) Subject to the provisions of this Act and regulations made thereunder, the Registrar shall grant an insurance agent's licence to any person who-

(a) applies to him in the prescribed manner;

(b) is qualified under regulations made under this Act to be a licensed insurance agent; and

(c) pays such fee as may be prescribed for an insurance agent's licence.

(3) Unless suspended or cancelled under this Part, an insurance agent's licence shall be valid until the expiration of the calendar year in respect of which it is granted.

(4) An insurance agent's licence shall allow the holder to act as an insurance agent for the registered insurer named in the licence:

Provided that nothing in this subsection shall prevent an insurance agent from being granted more than one insurance agent's licence in order to act for more than one registered insurer.

28. (1) The Registrar may, as the case may be, refuse to renew or suspend any insurance agent's licence if-Refusal, suspension and cancellation of insurance agents' licences

(a) the insurance agent ceases to be qualified under regulations made under this Act to be a licensed insurance agent;

(b) the Registrar considers that the insurance agent has contravened or failed to comply with any provision of this Act or regulations made thereunder; or

(c) the Registrar considers that the insurance agent has in his dealings with any member of the public acted otherwise than in accordance with sound insurance practice.

(2) The Registrar shall forthwith notify an insurance agent of the refusal to renew or suspension of his insurance agent's licence and shall state his grounds for such refusal or suspension.

(3) An insurance agent may on receiving notification under subsection (2) make written representations to the Registrar showing cause why the suspension should

be revoked or, as the case may be, the licence should be renewed and, if before the expiration of thirty days from that notification the Registrar considers that the grounds for his action are not applicable or have ceased to be applicable to the insurance agent, the Registrar shall revoke his suspension of or renew the licence, as the case may be.

(4) Any licence suspended under this section which remains suspended after sixty days from the date the insurance agent is notified of the suspension shall without further notice be cancelled.

PART V

SPECIAL PROVISIONS GOVERNING LIFE AND OTHER INSURANCE

29. If the proceeds on realisation of an asset, which was acquired with moneys paid by the insurer under a life policy and with other moneys, exceed in amount the moneys paid under the policy which were used for the purpose of acquiring the asset, a reference in this Part to the proceeds on realisation of the asset shall be construed as a reference to the amount of the moneys paid under the policy which were used for the purpose of acquiring the asset, and a reference to the value of any such asset shall be construed accordingly. Value of certain assets

30. (1) A minor who has attained the age of eighteen years may, without the consent of his guardian, effect a life policy upon his own life and pay any premium due under the policy with any money at his disposal. Minor may insure his life

(2) Subject to the provisions of subsection (3), a minor who has effected a life policy upon his own life as in subsection (1) is provided shall be as competent in all respects to be the owner of such policy and to have and to exercise all the powers and privileges of such owner in relation to the policy as if he were of full age.

(3) A minor who has effected a life policy upon his own life shall not, without the consent of his guardian, pledge, cede or surrender the policy while he remains a minor.

(4) If any money becomes payable to a minor who has attained the age of eighteen years under a life policy effected by him on his own life, the insurer liable under the policy shall pay that money to the minor, who may, without the consent of his guardian, deal therewith as he thinks fit.

31. (1) Notwithstanding anything to the contrary contained in any law or in the common law, but subject to the provisions of this Part-Life policies effected by married persons

(a) a married woman may, in all respects as if she were a single woman of full age and capacity-

(i) effect and own a life policy;

(ii) hold and, by way of gift or otherwise, acquire from or dispose of to any person, including her husband, any interest in a life policy;

(iii) hold any moneys paid by the insurer in respect of any interest held by her in a life policy or any assets acquired by her with those moneys;

(iv) hold any moneys or assets acquired by her in respect of the disposal of any interest held by her in a life policy or any assets acquired by her with those moneys; and

(v) dispose of to any person, including her husband, by way of gift or otherwise, any moneys or assets referred to in sub-paragraphs (iii) and (iv); and

(b) a married man may, in all respects as if he were a single man of full age and capacity, by way of gift acquire from or dispose of to his wife-

(i) any interest in a life policy;

(ii) any moneys paid by the insurer in respect of any interest in a life policy or any assets acquired with those moneys; and

(iii) any moneys or assets acquired in respect of the disposal of any interest in a life policy or any assets acquired with those moneys.

(2) The provisions of paragraph (a) of subsection (1) shall apply in relation to-

(a) a life policy effected by a married woman before her marriage;

(b) any interest in a life policy acquired by a married woman before her marriage;

(c) any moneys due or paid to a married woman before her marriage in respect of a life policy referred to in paragraph (a) or any interest in a life policy referred to in paragraph (b) or acquired by her before her marriage in respect of the disposal of any interest in a life policy; or

(d) any assets acquired by a married woman before her marriage with moneys referred to in paragraph (c);

as if the policy, interest, moneys or assets was or were effected or paid to or acquired by her or became due during her marriage.

32. (1) If a life policy effected by a person, whether married or not, on his or her own life which has inured for three years from the date of the payment of the first premium or longer-Life policy on own life: protection afforded during life

(a) is attached in execution of a judgment or order of any court at the instance of a creditor of that person; or

(b) becomes part of that person's estate in bankruptcy;

during the lifetime of that person, the proceeds on realisation of the policy shall, to the extent specified in subsection (2), be protected against that person's creditors and against any claim in connection with the attachment or bankruptcy.

(2) The protection afforded by the provisions of subsection (1) in respect of a life policy referred to in that subsection-

(a) shall extend to so much of the proceeds on realisation of the policy as does not exceed an amount of four thousand kwacha; and

(b) shall, subject to the provisions of paragraph (a), extend, if the policy is pledged, to so much of the proceeds on realisation of the policy as exceeds the amount of the liability, the payment of which the pledge secures, but no further.

(3) If moneys due or paid by the insurer under a life policy referred to in subsection (1) or assets acquired with those moneys or with those moneys and other moneys-

(a) are attached in execution of a judgment or order of any court at the instance of a creditor of a person by whom the policy was effected; or

(b) become part of the estate in bankruptcy of the person by whom the policy was effected;

during the period of five years from the date the moneys due or paid under the policy first became due, the moneys due or paid under the policy or the proceeds on realisation of the assets shall, to the extent specified in subsection (4), be protected against that person's creditors and against any claim in connection with the attachment or bankruptcy.

(4) The protection afforded by the provisions of subsection (3) in respect of moneys or assets of a person referred to in that subsection-

(a) shall extend to those moneys or the proceeds on realisation of those assets in so far as those moneys and proceeds, together with-

(i) all other moneys due or paid to that person under life policies referred to in subsection (1);

(ii) the value of all other existing assets of that person acquired with moneys paid under life policies referred to in subsection (1) or with such moneys and other moneys; and

(iii) the realisable value of all life policies referred to in subsection (1) of which that person is the owner;

do not exceed four thousand kwacha;

(b) shall, subject to the provisions of paragraph (a), extend, in the case of an asset which is pledged or mortgaged, to so much of the proceeds on realisation of the asset as exceeds the amount of the liability, the payment of which the pledge or mortgage secures, but no further; and

(c) shall not extend to any moneys due or paid under a life policy referred to in subsection (1) on surrender of the policy or to any assets acquired with those moneys or with those moneys and other moneys.

(5) For the purposes of this section-

(a) a life policy which an insurer issues in exchange for or in consideration of the surrender of another life policy under which the insurer was previously liable shall be regarded as having been effected on the date on which the surrendered policy was issued if the insurer received no payment other than the

value of the surrendered policy as a consideration for the new policy;

(b) a life policy which an insurer issues in terms of subsection (3) of section thirty-eight shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued.

33. If, on the death of the owner of a life policy, money or assets in respect of which protection is afforded by the provisions of section thirty-two, a dependant has a claim under such policy or to such money or assets, and the policy, money or assets-

(a) are attached in execution of a judgment or order of any court at the instance of a creditor of the deceased owner; or

(b) become part of the deceased owner's estate in bankruptcy;

the dependant shall, in respect of his claim, enjoy the protection afforded by section thirty-two. Protection for life beneficiaries on death of policy owner

34. (1) If-Protection afforded in respect of life policy inuring to spouse or children

(a) before or during marriage a man effects or cedes for the benefit of his wife or his wife and children, including children to be born to him and his wife, or any of them:

(b) before or during marriage a woman effects or cedes for the benefit of her husband or her husband and children, including children to be born to her and her husband, or any of them; or

(c) a person effects or cedes for the benefit of his or her children, including children to be born to him or her;

a life policy on his or her life or on the life of his or her spouse, the policy or moneys due to be paid thereunder by the insurer or any asset acquired with those moneys shall not, subject to the provisions of this section and, in the case of a policy which is ceded, to the terms of the cession-

(i) be liable to be attached in execution of a judgment or order of any court at the instance of a creditor of the person by whom the policy was effected or ceded; or

(ii) form part of the estate in bankruptcy of the person by whom the policy was effected or ceded.

(2) A benefit conferred or purported to be conferred upon a spouse or child under a life policy referred to in subsection (1) by virtue of the cession of a life policy referred to in that subsection shall, notwithstanding any agreement to the contrary between the insurer and the person by whom the policy was effected, but subject, in the case of a policy which is ceded, to the terms of the cession, be enforceable against the insurer liable under the policy at the suit of the spouse or child or the legal representative of the spouse or child, notwithstanding that the spouse or child has not accepted the benefit and is not a party to the contract of insurance.

(3) A life policy shall not be treated for the purpose of this section as having been effected for the benefit of the spouse and, additionally or

alternatively, the children, including unborn children, or any of them, of the person by whom the policy was effected unless, at the time of its issue, the policy expressly so provides.

35. (1) If, before or during marriage, a man effects or cedes for the benefit of his wife a life policy on his or her life and the policy-Protection afforded in respect of life policy inuring to wife

(a) is attached in execution of a judgment or order of any court at the instance of her creditors; or

(b) becomes part of her estate in bankruptcy;

the proceeds on realisation of the policy shall, to the extent specified in subsection (2) of section thirty-two, be protected against her creditors and against any claim in connection with the attachment or bankruptcy.

(2) The provisions of subsections (3) to (5) of section thirty-two and of subsections (2) and (3) of section thirty-four shall, mutatis mutandis, apply to a life policy referred to in subsection (1) or moneys due or paid thereunder by the insurer or any assets acquired with those moneys or with those moneys and other moneys.

36. (1) A provision in a life policy issued on or after the 27th November, 1959-Certain provisions in life insurance policies to be of no force or effect

(a) in which a person is named as a beneficiary; or

(b) which confers on a person, other than the person effecting the policy or his estate, a benefit provided for in the policy;

shall not, subject to the provisions of subsection (2), be of force or effect.

(2) The provisions of subsection (1) shall not apply to-

(a) a life policy effected for the benefit of a spouse and, additionally or alternatively, children, including unborn children, to which the provisions of section thirty-four relate;

(b) a life policy effected for the benefit of a wife to which the provisions of section thirty-five relate which was issued before the 27th November, 1959; or

(c) the cession of a benefit provided for in a life policy.

37. If-

(a) two or more life policies or assets in respect of which protection is afforded by the provisions of section thirty-two, thirty-three or thirty-five, being the property of one person, are attached in execution of a judgment or order of any court at the instance of a creditor; or

(b) the owner of two or more life policies or assets in respect of which protection is afforded by the provisions of section thirty-two, thirty-three or thirty-five is adjudged or otherwise declared bankrupt;

and a part only of the aggregate realisable value of the policies or assets is

protected, the judgment creditor or, as the case may be, the trustees of the estate in bankruptcy shall determine which policy or policies or other asset or other assets shall be realised, wholly or partly, in order to make available to him so much of the aggregate realisable value as is not protected. Selection for realisation of life policies in respect of which protection is afforded

38. (1) A judgment creditor of the owner of a life policy or the trustee of his estate in bankruptcy who is entitled to a part of the realisable value of the policy may, if he is in possession of the policy, deliver it to the insurer who is liable under the policy for the purposes of the payment to him of the sum to which he is entitled. Partial realisation and partial conversion of life policies

(2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of the life policy to which the provisions of that subsection relate, the owner or any other person in possession of the policy shall, at the request of the judgment creditor or trustee, deliver it to the insurer who is liable under the policy for the purposes of the payment to the judgment creditor or trustee of the sum to which he is entitled.

(3) On receipt of a life policy delivered to him in terms of subsection (1) or (2), the insurer shall-

(a) at the request of the judgment creditor or trustee referred to in subsection (1), pay to him a sum equal to the part of the realisable value of the policy to which he is entitled; and

(b) at the request of the owner of the policy, issue to him a new policy of the same class, but for a sum insured equal to the difference between-

(i) the full sum insured under the old policy, including any bonus which may have accrued in connection therewith; and

(ii) an amount which bears the same ratio to the full sum insured under the old policy, including any bonus, as the amount paid by the insurer to the judgment creditor or trustee referred to in subsection (1) bears to the full realisable value of the old policy.

(4) If an insurer has made the payment and issued a new life policy as in subsection (3) provided, the old life policy shall lapse.

39. If a person who-

(a) has effected or ceded a life policy for the benefit of his spouse, and, additionally or alternatively, children, including unborn children, or any of them; or

(b) holds a life policy in trust for any other person and is obliged to pay the premiums on the policy;

is or has been unable to pay the premiums, that person may, with the consent of each person who has an interest in the policy or, if any such person is a minor, with the consent of his guardian or the Registrar of the High Court, agree with the insurer liable under the policy-

(i) to exchange the policy for a paid-up life policy of a value equal to that of the original policy according to the insurer's current tariff, payable at the

time and in the manner stipulated in the original policy to the person or persons entitled to the sum insured by the original policy; or

(ii) to borrow from the insurer upon security of the policy such sums as may be necessary to keep the policy in force or to revive it; or

(iii) to apply any bonus which may have accrued in connection with the policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due. Provisions in case where life policy ceded or trust policy cannot be kept up

40. (1) Nothing in this Part contained shall be construed as derogating from the power of a competent court to set aside, under the law relating to bankruptcy, any cession of a life policy made with intent to benefit someone at the expense of a creditor. Life policies ceded or premiums paid with intent to benefit someone at the expense of a creditor

(2) If a premium upon a life policy was paid with intent to benefit a person at the expense of a creditor of the person making the payment, a competent court may order the owner of the policy to pay a sum equal to the aggregate of all premiums so paid, with interest at the rate of six per centum per annum, on the amount of each premium so paid from the date of its payment to the person to whose detriment the premium was or the premiums were paid or, if the person has been adjudged or otherwise declared bankrupt, to the trustee of his estate in bankruptcy.

(3) An order for the payment of a sum of money made in terms of subsection (2) shall have the effect of pledging the life policy referred to in that subsection to the person entitled to the payment as security for the payment and, until the payment is made, that person shall be entitled to possess the policy.

41. If-

(a) a claim is made for a benefit under a life policy which has insured for a period of three years from the date of the payment of the first premium; and

(b) the age or date of birth of the insured has not been admitted by the insurer liable under the policy; and

(c) the person claiming the benefit shows that, owing to circumstances beyond the control and through no default either of himself or of the person by whom the policy was effected, there was, at no time after the date of the payment of the first premium under the policy, either in existence or available any documentary evidence affording reasonable proof of the age or date of birth of the insured; Proof of age

any written statement made in the proposal or application for the policy as to the age or date of birth of the insured shall be accepted for the purposes of the claim as the correct age or date of birth of the insured, unless the contrary is proved by records of a medical examination of the insured, made at the instance of the insurer, within the period of three years referred to in paragraph (a) or in any other manner.

42. (1) If after the issue of a life policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the sum insured and other benefits under the policy shall, subject to the provisions of subsection (2), be the same as those which the premiums

payable under the policy would have secured had the policy been based upon a correct statement of the person's age. Age incorrectly stated

(2) If the Registrar is satisfied that the actuarial nature of life policies of any particular kind is such as to render the application of the provisions of subsection (1) inequitable, he may direct an insurer to apply, in relation to policies of that kind such other method of making adjustments in respect of incorrect statements of age as may appear to the Registrar to be equitable.

43. (1) No life policy in which it is provided that the policy shall be void in the event of the insured, whether sane or insane, dying by his own act within a stipulated period shall be void for that reason if the insured dies by his own act after the expiration of that period. Death of insured by his own act

(2) A life policy in which no provision such as is referred to in subsection (1) is contained shall not be void by reason of the insured, whether sane or insane, dying by his own act at any time after the issue of the policy.

44. (1) If a local life policy is lost or destroyed and the loss or destruction is proved and advertised in the manner prescribed, the insurer liable under the policy shall, at the request of the owner of the policy and on payment by that owner to the insurer of the prescribed fee, issue to the owner-Lost or destroyed life policies

(a) a correct and certified copy of the policy upon which shall be inscribed any endorsement made by the insurer on the original policy after its issue; and

(b) a correct and certified copy of any record in the possession of the insurer of any dealings with the policy after its issue.

(2) A certified copy of a life policy issued in terms of subsection (1) shall for all purposes-

(a) take the place of the policy lost or destroyed; and

(b) be the sole evidence of the contract made by the policy.

45. (1) If a registered insurer by notice in writing-Life policy may include disability benefits

(a) informs the Registrar that he has issued on or before the commencement of this Act, or that he intends to issue, local life policies which provide benefits-

(i) on the total or partial permanent disablement of the person whose life such a policy insures; or

(ii) on the death of the person whose life such a policy insures as a result of an accident or a particular disease; and

(b) requests the Registrar that the policies referred to in paragraph (a) shall be treated for the purposes of this Act as life policies only;

any such policy issued by the insurer on or before the commencement of this Act or after notification to the Registrar as in paragraph (a) is provided shall, subject to the provisions of subsection (2), be treated, for the purposes of this Act, as a life policy only.

(2) A policy referred to in paragraph (a) of subsection (1) shall not be treated for the purposes of this Act as a life policy only if the value of the benefits referred to in sub-paragraphs (i) and (ii) of that paragraph which it provides exceeds an amount equal to a waiver of claims to a premium under the policy in respect of the period of disability, together with-

(a) a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date of termination of the risk of the life insurance proper effected by the policy, amounting to one and one-quarter per centum of the sum payable under the policy on the death of the person;

(b) a lump sum equal to the sum payable under the policy on the death of the person whose life the policy insures; or

(c) in the case of a deferred annuity policy, a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date as from which the annuity will become payable, amounting to one-twelfth of the annuity.

(3) A local life policy providing benefits such as are described in paragraph (a) of subsection (1) which cannot, by reason of the provisions of subsection (2), be treated for the purposes of this Act as a life policy only shall, for the purposes of this Act, be treated as both a life policy and a personal accident policy.

46. (1) No insurer shall make or permit to be made any discrimination in respect of the rate of premiums charged or the rate of bonuses granted between life policies which are of the same kind and under which the persons whose lives are insured have an equal expectation of life. Discrimination between life policies, etc., prohibited

(2) Nothing in subsection (1) shall apply to life policies which-

(a) are reinsurance contracts;

(b) are for large sums at preferential rates in accordance with the current tariff of the insurer concerned;

(c) insure at preferential rates the lives of employees of one employer or a combination of employers or members of the families of such employees or the lives of a group of persons carrying on the same occupation; or

(d) are of a class prescribed.

(3) No insurer and no director, servant or agent of an insurer shall pay, allow or give or offer to pay, allow or give, directly or indirectly-

(a) a rebate of the premium payable on a life policy;

(b) an advantage in the nature of a rebate of the premium payable on a life policy; or

(c) preferential treatment in connection with a bonus or other benefit under a life policy;

as an inducement to insure.

(4) No person shall knowingly receive as such any rebate or premium, advantage or preferential treatment referred to in subsection (3) as an inducement to insure.

(5) No director, servant or agent of an insurer shall accept any proposal or application for a life policy in respect of which-

(a) a promissory note, bill of exchange or other negotiable instrument, not being a cheque payable on the date of issue; or

(b) an acknowledgment of debt, not being a stop order;

in favour of the insurer or any person whatsoever has been given for the first year's premium or any part thereof.

47. The provisions of sections thirty to forty-three inclusive and section forty-five shall, mutatis mutandis, apply to industrial policies. Application of certain provisions of Part V to industrial policies

48. The provisions of sections forty-four and forty-six shall, mutatis mutandis, apply to sinking fund policies. Application of certain provisions of Part V to sinking fund policies

49. (1) The provisions of sections thirty to forty-one inclusive, forty-three and forty-five shall, mutatis mutandis, apply to funeral policies. Application of certain provisions of Part V to funeral policies and other policies and other provisions in regard thereto

(2) If after the issue of a funeral policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the benefits under the policy shall not be affected thereby, but the premiums payable under the policy from the date on which the person became insured shall be deemed to be those which would have been required had the age been correctly stated, and the insurer liable under the policy shall-

(a) be entitled to recover from the owner any resultant shortfall in the premiums actually paid; or, as the case may be;

(b) refund to the owner any resultant overpayment of premiums.

(3) A funeral policy issued on or after the commencement of this Act-

(a) shall provide that the owner shall, at his option, be entitled to a sum of money instead of each funeral or other non-monetary benefit for which provision is made in the policy; and

(b) may provide that the insurer liable under the policy shall likewise have the option to pay the sum of money referred to in paragraph (a) instead of providing for each funeral or other non-monetary benefit for which provision is made in the policy.

(4) An option referred to in subsection (3) and the sum of money to which it relates shall be stated expressly and clearly in the funeral policy and, in every premium receipt book issued in connection therewith, in printed or typed letters no smaller than, and as legible as, the letters of the provisions of the

policy.

(5) A registered insurer who issued a funeral policy before the commencement of this Act shall, if the policy is still in force, within three months of that date declare to the Registrar the value in money of each funeral or other non-monetary benefit for which provision is made in the policy, and that value shall be stated in clear type and in distinct terms in every premium receipt book issued thereafter in connection with the policy.

(6) If the Registrar is of the opinion that a sum of money stated in a funeral policy in terms of subsection (4), or that the value declared by a registered insurer in terms of subsection (5) with reference to a particular funeral policy, does not approximate to the value of the funeral or other non-monetary benefit for which provision is made in the policy, he shall declare the amount of money which is, in his opinion, equal to the value of the funeral or other benefit provided for in the policy.

(7) In a funeral policy the amount declared by the Registrar in terms of subsection (6), or if no amount is so declared, the sum of money stated in the policy in terms of subsection (4), or the value declared in terms of subsection (5), shall be deemed to be the sum insured.

50. (1) If a premium under a local life, industrial or sinking fund policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full sum insured without payment of a further premium for a period of one month as from the due date of the first unpaid premium and if the premium is paid within the month the insurer shall renew the policy. Days of grace, paid-up policies and non-forfeiture provisions: life, industrial and sinking fund policies

(2) If the premiums under a local life or sinking fund policy are payable at monthly intervals, or at intervals of less than one month, the provisions of subsection (1) shall have effect as if the references in that subsection to the words "one month" and "month" were references to the words "fifteen days".

(3) If a claim under a local life, industrial or sinking fund policy arises during the period of grace provided for in this section, the insurer liable under the policy shall be entitled to deduct the amount of the unpaid premium from the claim.

(4) If a premium under a local policy which is-

(a) a life policy under which at least three years' premiums have been paid; or

(b) an industrial policy under which at least five years' premiums have been paid; or

(c) a sinking fund policy under which at least three years' premiums have been paid;

has not been paid within the period specified in subsection (1) or, as the case may be, subsection (2), the insurer liable under the policy shall, in accordance with rules made by him and approved by the Registrar issue, in return for and instead of the policy, a paid-up policy which shall be free from the obligation to pay any premiums thereunder.

(5) The rules referred to in subsection (4) shall specify the basis on which and the methods by which the amount of the paid-up policy is to be calculated and whether a paid-up policy such as is referred to in that subsection shall entitle the owner to any future bonuses thereon.

(6) The provisions of subsection (4) shall not apply in connection with any particular kind of life or industrial policy which an insurer has issued or proposes to issue if the Registrar is satisfied that the actuarial nature of that kind of policy prevents the insurer from accumulating, in respect of policies of that kind, sufficient funds to enable him to grant any substantial benefit of a kind described in that subsection.

(7) If on or after the commencement of this Act a local life policy under which at least three years' premiums have been paid is dealt with as in subsection (4) is provided and the owner informs the Registrar within thirty days of the date on which he is notified by the insurer liable under the policy that the policy has been so dealt with or, if he is not so notified, within six months of the date on which the policy has been so dealt with that he received no written notice from the insurer a reasonable time beforehand to the effect that the policy was due to be so dealt with, the Registrar may, unless the insurer satisfies him that the notice was duly despatched to the owner at his last known residence or place of work a reasonable time before the policy was due to be so dealt with, require the insurer to revive the policy on payment of the premium required within a period to be fixed by the Registrar. A policy shall be revived in terms of this subsection without any alterations in its conditions with effect from the date of the payment of the premium required.

51. Any life policy issued after the commencement of this Act may be cancelled by the proposer or the owner within a period of three months from the date on which the proposal form has been signed or within thirty days of the receipt of the policy by the owner, whichever is the later. In the event of such cancellation, all premium payments made by the proposer or owner shall be refunded to him but the insurer is entitled to deduct an amount of four kwacha in respect of expenses and the amount of any medical fees incurred. Owner may cancel life policy within limited period without penalty

52. (1) If a premium under a local funeral policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full value of the benefits-Days of grace, paid-up policies and non-forfeiture provisions: funeral policies

(a) if the insurer is bound by an express or tacit undertaking to send a person from time to time to the owner or to his residence or place of work to collect the premiums, for a period of one month as from the due date of the first unpaid premium; and

(b) if the provisions of paragraph (a) do not apply, for a period expiring on a date specified for that purpose in a written notice which the insurer has served on the owner at least fourteen days before that date.

(2) If a premium referred to in subsection (1) is paid within the relevant period specified in paragraph (a) or (b) of that subsection, the insurer liable under the policy shall renew the policy, and if a claim under the policy arises during the period, the insurer shall be entitled to require the owner to pay the amount of the premium.

(3) If a premium under a local funeral policy which is issued on or after the commencement of this Act is not paid within the period specified in subsection (1), the policy shall, subject to the provisions of this section, nevertheless remain in force for the appropriate period fixed in terms of subsection (6) for the full sum insured without payment of further premiums.

(4) If an insurer's liability under a funeral policy is contingent upon the death of two or more persons and the policy provides for a benefit on the death of a person who is under the age of twenty-one years and who is not the owner or his wife or her husband, no benefit shall be claimable under that policy on that person's death if it occurs after he or she attained the age of twenty-one years.

(5) If an insurer's liability under a funeral policy is contingent upon the death of one person only, who was under nine years of age when the policy was issued, the period specified in subsection (6) shall be computed as if the policy had been issued on the anniversary of the date of its issue when that person was between nine and ten years of age.

(6) A funeral policy referred to in subsection (3) shall remain in force for the appropriate period listed in the first column of the following table in accordance with the number of years for which premiums were paid under the policy specified opposite thereto in the second column of the table:

6 months . .	5 years or over and less than 7 years.
9 months . .	7 years or over and less than 9 years.
12 months . .	9 years or over and less than 11 years.
18 months . .	11 years or over and less than 14 years.
24 months . .	14 years or over and less than 17 years.
36 months . .	17 years or over and less than 21 years.
48 months . .	21 years or over and less than 25 years.
60 months . .	25 years or over.

53. Nothing in section fifty or fifty-two contained shall preclude an insurer from granting to an owner of a policy of a kind referred to in section fifty or fifty-two more favourable terms than those specified for that kind of policy in section fifty or, as the case may be, fifty-two. Grant of more favourable terms than those specified in section 50 or 52 not precluded

PART VI

OFFENCES AND PENALTIES

54. Any person who transacts insurance business of any class in Zambia and who is not the holder of a valid insurer's licence for that class shall be guilty of an offence and liable to a fine not exceeding one thousand two hundred and fifty penalty units: Unlawfully acting as an insurer

Provided that-

(i) if that person is not a registered insurer in the class of business transacted, he shall be liable to a fine not exceeding two thousand five hundred penalty units;

(ii) this section shall not apply in the case of business transacted in accordance with the provisions of subsection (2) of section seven.

(As amended by Act No. 28 of 1989 and Act No. 13 of 1994)

55. Any person who acts in Zambia as a broker and who is not the holder of a valid broker's licence shall be guilty of an offence and liable to a fine not exceeding one thousand two hundred and fifty penalty units:Unlawfully acting as a broker

Provided that if that person is not a registered broker he shall be liable to a fine not exceeding two thousand five hundred penalty units.

(As amended by Act No. 28 of 1989 and Act No. 13 of 1994)

56. Any person who acts in Zambia as an insurance agent and who is not the holder of a valid insurance agent's licence naming the insurer for whom he acts or purports to act shall be guilty of an offence and liable to a fine not exceeding one hundred and twenty five penalty units.

(As amended by Act No. 28 of 1989 and Act No. 13 of 1994)Unlawfully acting as an insurance agent

57. An insurer who accepts any insurance business in Zambia from an insurance agent who is not the holder of a valid insurance agent's licence naming such insurer therein shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty penalty units.

(As amended by 28 of 1989 and Act No. 13 of 1994)Insurers not to accept business from unlicensed agents

58. Any person who solicits insurance business in Zambia on behalf of an insurer or broker who is not registered under this Act shall, whether or not his action is authorised by that insurer or broker, be guilty of an offence and liable to a fine not exceeding one thousand two hundred and fifty penalty units.

(As amended by 28 of 1989 and Act No. 13 of 1994)Soliciting insurance business on behalf of an unregistered insurer or broker

59. Any person who contravenes any provision of section forty-six shall be guilty of an offence and liable to a fine not exceeding double the amount of the annual premium normally payable on a life policy similar to the one in respect of which the offence is committed.Malpractice in life insurance

PART VII

MISCELLANEOUS PROVISIONS

60. There shall be-

(a) a Registrar of Insurance who shall be a public officer; and

(b) such other public officers as may be necessary to assist the Registrar in the performance of his duties and functions under this Act. Registrar of Insurance

61. The Registrar shall, within nine months of the 31st December each year, submit to the Minister a report relating to insurance business in Zambia during the twelve months immediately preceding that date and the Minister shall, as soon as may be, lay that report before the National Assembly. Annual reports by Registrar

62. (1) A registered insurer or registered broker or an applicant for registration as an insurer or broker shall supply the Registrar with any documents or information relating to any matter connected with his business or transactions, whether insurance business or transactions or otherwise, which the Registrar requests him to supply. Business information to be supplied by insurers and brokers

(2) A registered insurer shall, on the request of the Registrar, supply him with such particulars of reinsurance contracts or other arrangements entered into with another insurer or reinsurer as the Registrar may specify.

63. (1) Every document furnished to the Registrar by an insurer or broker in pursuance of any provision of this Act or regulations made thereunder relating to the supply of information to the Registrar shall- Documents to be signed and copies supplied

(a) in the case of documents which are not in a prescribed form, be signed-

(i) by the chairman and one other director of the insurer or broker or, if the insurer or broker has no chairman or director, by such other person or persons having control over the business of the insurer or broker as the Registrar may specify;

(ii) by the principal officer of the insurer or broker; and

(iii) by such other persons as are required under this Act to sign or certify the document;

(b) in the case of a document in a prescribed form, be signed by the persons specified in the form; and

(c) in the case of a copy of a document, be certified by the insurer or broker to be a true copy of such document.

(2) An insurer or broker who has furnished the Registrar with any document by virtue of this Act or regulations made thereunder shall, on the request of the Registrar, furnish such copies or further copies of that document as the Registrar may specify.

64. The Registrar may require any person who furnishes him in terms of this Act with any statement, certificate, document or other information whatsoever in a language other than the English language to provide a translation thereof in the English language at that person's expense. Translation of documents into English

65. (1) Any person may, on payment to the Registrar of the appropriate prescribed fee, inspect and copy any document furnished to the Registrar in

compliance with section twelve, eighteen or twenty-five. Inspection of documents, etc.

(2) The Registrar shall, on payment of the prescribed fee, furnish any person with a certified copy of or abstract from any document furnished to the Registrar in compliance with section twelve, eighteen or twenty-five.

(3) On the request of any person, the Registrar shall without charge furnish that person with the address of the principal office in Zambia of any registered insurer or registered broker and the name of his principal officer.

(4) Notwithstanding the provisions of subsections (1) and (2), the Registrar shall not permit any person by virtue of those subsections to have access to any information the divulgence of which, in the opinion of the Registrar-

(a) would be harmful to the interests of the insurer or broker who supplied it;

(b) is not necessary in the interests of the general public.

66. (1) Any document purporting to be certified by the Registrar to be a document furnished to him under this Act shall in any proceedings in a court be receivable in evidence without proof of the signature of the Registrar: Certified documents as evidence

Provided that the court may direct that oral evidence be brought relating to that signature.

(2) Any document purporting to be certified by the Registrar to be a true copy of a document furnished to him under this Act shall in any proceedings in a court be receivable in evidence without proof of the signature of the Registrar or production of the original as though it were the original:

Provided that the court may direct that other evidence be brought relating to that signature or copy.

67. (1) For the purposes of checking and verifying any information supplied to the Registrar under this Act or regulations made thereunder, the Registrar or any public officer authorised by him in writing may examine the books, vouchers, receipts and such other documents as he may consider necessary of an insurer or broker. Save as provided in subsection (2), such examination may not be carried out more than once in any financial year. Investigation of the affairs of an insurer or broker

(2) As a result of an examination carried out under subsection (1), the Minister may cause such investigation as he considers necessary to be carried out into the affairs of the insurer or broker and such investigation may include a special audit by an auditor named by the Registrar.

(3) The officers or agents of the insurer or broker shall cause the books of the insurer or broker to be available for examination or investigation under this section and shall otherwise facilitate such examination or investigation so far as it is in their power.

(4) The Minister shall cause a summary of the conclusions arrived at as a result of an investigation carried out under this section to be sent to the insurer or broker concerned.

(5) The Minister may recover from the insurer or broker concerned all expenses necessarily incurred in connection with an investigation carried out under subsection (2).

(6) The Registrar may, in the light of information acquired as a result of any examination or investigation carried out under this section, alter or amend any information submitted to him under this Act.

68. (1) The Minister may before or during an investigation into the affairs of an insurer or broker made under section sixty-seven require him to make such special deposit as the Minister deems sufficient to meet the liabilities of his insurance business in Zambia and he shall forthwith make such deposit. Special deposit to cover liabilities of an insurer or broker

(2) The Registrar may require an insurer whose licence is suspended or cancelled under this Act to make such special deposit as the Registrar deems sufficient to meet the liabilities of his insurance business in Zambia and he shall forthwith make such deposit.

69. (1) The Registrar shall on request furnish an insurer or broker once each year with a certificate specifying the deposit or deposits made by him under this Act or regulations made thereunder. Provisions concerning deposits made by insurers and brokers

(2) An insurer or broker who has made a deposit under this Act or regulations made thereunder shall be entitled to the income derived from that deposit.

(3) If the registration of an insurer or broker is cancelled under this Act, the Minister may cause any deposit made by that insurer or broker under regulations made under this Act to be used to meet his insurance liabilities and, when the Minister is satisfied that those liabilities have been discharged, any balance of such deposit remaining shall be returned to the insurer or broker, as the case may be.

(4) If at any time the Minister is satisfied as to the financial affairs of an insurer or broker who has made a deposit by virtue of section sixty-eight, he shall cause that deposit to be returned to the insurer or broker concerned.

70. (1) In every local policy the sum insured, the premium and every other sum of money mentioned in the policy shall be stated in Zambian currency except in the case of marine, aviation or transit insurance. Insurance to relate to Zambia

(2) Every policy issued in respect of a proposal for insurance made to a registered insurer shall be issued in Zambia by a registered insurer and, in the case of a local policy, all premiums and payments arising under or out of such policy shall be payable in Zambia.

71. (1) The owner of a local policy shall, notwithstanding any contrary provision in the policy or in any agreement relating to the policy, be entitled to enforce his rights under the policy against the insurer named in the policy in any competent court. Jurisdiction in relation to local policies

(2) Any question of law arising in any action under a local policy which is instituted by the owner against the insurer named in the policy shall, subject to the provisions of this Act, be determined in accordance with the law of Zambia.

(3) Notwithstanding the provisions of subsection (1), a local policy may validly provide that the amount of any liability under the policy shall be determined by arbitration and any such arbitration shall be held in Zambia in accordance with the Arbitration Act. Cap. 40

72. A policy issued to any person before, on or after the commencement of this Act shall not be invalid merely because that person contravened or failed to comply with the provisions of any enactment in force applying to that policy. Policies not invalidated by failure to comply with the law

73. (1) Every registered insurer and registered broker shall lodge with the Registrar copies of all standard policy forms and proposal forms used by him. Insurance forms subject to approval

(2) The Registrar may, on grounds which appear to him sufficient, prohibit the use of any form lodged with him under subsection (1) unless such form is amended in accordance with his directions.

(3) No registered insurer, registered broker or insurance agent shall use any form prohibited by the Registrar under subsection (2).

74. No person shall issue a local policy containing printed provisions of any nature which are not in clear type face with letters of a size not less than eight point. Policies to be printed in clearly legible form

75. (1) No registered insurer or registered broker shall change his name without the consent of the Registrar who shall withhold such consent if he considers that such a change would be contrary to the public interest. Change of name of insurers and brokers

(2) The Registrar shall cause notice of a change in the name of any registered insurer or registered broker to be published in the Gazette.

76. (1) At the request of an insurer the Registrar may, subject to the provisions of subsection (2) and to such conditions and limitations as the Registrar may fix, determine that any insurance business of any particular class which the insurer carries on or intends to carry on shall be treated for the purposes of this Act as insurance business of another class. Registrar may re-classify insurance business

(2) The Registrar shall not accede to a request made under subsection (1) unless he is satisfied that his determination will not be detrimental to the interest of any person and will not defeat the objects and purposes of this Act.

77. In the event of the liquidation or bankruptcy of a registered insurer-

(a) the owners of life policies issued by the insurer shall have preference against all other creditors of the insurer in respect of the life insurance fund maintained by him; and

(b) the owners of all other policies issued by the insurer shall rank before any other creditors of the insurer in the distribution of such assets of the insurer as remain after the claims by owners of life policies against the estate have been discharged. Preferred creditors of an insurer

78. The Registrar may alter any prescribed form for the purpose of adapting

the form to meet the circumstances of a registered insurer or broker or an applicant for registration as an insurer or broker. Adaptation of prescribed forms

79. No registered insurer shall, without the consent of the Minister, increase or decrease the rates of premium charged by him on motor insurance business. Control of motor insurance premiums

80. (1) Every association of five or more registered insurers and, additionally or alternatively, registered brokers shall within thirty days-Associations of insurers and/or brokers

(a) of its formation, register with the Registrar;

(b) of its formation, furnish the Registrar with such information and documents relating to its constitution, objects, membership and office bearers as the Registrar may request; and

(c) of each change in the particulars contained in the information and documents furnished in pursuance of paragraph (b), notify the Registrar of such change.

(2) No association registered under subsection (1) shall-

(a) include among its objects any object; or

(b) carry out any object in a manner;

which is contrary to the public interest.

(3) If in his opinion an association has contravened the provisions of subsection (2), the Minister shall notify the association accordingly giving his reasons, and the association may within ninety days of receiving such notification make written representations to the Minister who shall consider any such representations and shall either-

(a) if he is satisfied that the association has contravened the provisions of subsection (2), cause the Registrar to cancel the registration of the association; or

(b) notify the association that he does not propose to cause its registration to be cancelled.

(4) No registered insurer or registered broker shall become or remain a member of an association-

(a) which has failed to comply with the requirements of subsection (1); or

(b) the registration of which is cancelled under subsection (3).

(5) The question whether or not an association has contravened the provisions of subsection (2) shall not be the subject of inquiry in any court.

81. (1) The Minister may, by statutory instrument, make regulations for the proper carrying out of this Act and, without prejudice to the generality of the foregoing, may in particular by regulation-Regulations

- (a) prescribe anything which under this Act is to be or may be prescribed;
 - (b) prescribe the fees to be paid on the doing by the Registrar of anything in respect of which provision is made in this Act for the payment of a fee, including different fees to be paid in different circumstances;
 - (c) prescribe the forms to be used and the procedure to be followed in the doing of anything which may be done or is required to be done under this Act;
 - (d) prescribe minimum qualifications for registered brokers, licensed insurance agents and the principal officers of registered insurers and registered brokers, and specify the person to whose satisfaction such qualifications shall be established;
 - (e) limit the number of insurers who may be registered in any class of insurance business and the number of brokers who may be registered;
 - (f) limit the number of insurance agent's licences which may be held by any insurance agent including different limits in respect of insurance agents operating in different areas;
 - (g) prescribe the margin of solvency to be held by registered insurers in different classes of insurance business and the method by which that margin of solvency is to be calculated;
 - (h) divide insurance business into different classes for the purposes of this Act including different divisions for different purposes;
 - (i) make provision for the protection of owners of and beneficiaries under insurance policies in the event of the liquidation or bankruptcy of an insurer;
 - (j) specify-
 - (i) the minimum percentage of insurance funds accruing to a registered insurer in respect of his insurance business in Zambia which shall be invested in Zambia, including different percentages of funds accruing from different classes of insurance business; and
 - (ii) the forms of investment in which such moneys as are required under sub-paragraph (i) to be invested in Zambia may be invested;
 - (k) prescribe in relation to information to be submitted to the Registrar under this Act by registered insurers and by registered brokers-
 - (i) the period within which such information shall be submitted and the date from which the period shall run; and
 - (ii) the nature of the information and the form in which it shall be submitted;
- including different provisions in relation to different persons or circumstances;
- (1) provide for the manner in which Lloyd's shall be represented in Zambia if registered as an insurer under this Act.
 - (2) The Minister may, by statutory instrument-

(a) make regulations requiring every registered insurer and registered broker to make a deposit and such regulations may specify the value of such deposit and when it shall be made, and may include different provisions in relation to different classes of insurance or other different circumstances; and

(b) subject to the provisions of sections sixty-eight and sixty-nine, make regulations in relation to deposits made pursuant to this Act or to regulations made under this subsection-

(i) specifying the method by which the value of the deposit shall be assessed; and

(ii) providing for the making, maintaining, custody, disposition and disposal of the deposits;

and such regulations may include different provisions to have effect in different circumstances.

82. (1) This Act shall, save as otherwise expressly provided, apply in relation to insurance policies effected before the commencement of this Act as if those policies had been effected after that commencement. Transitional

(2) Notwithstanding the provisions of the Interpretation and General Provisions Act, any licence or registration issued or effected under the Insurance Act, Chapter A.L. 4 of the 1965 Edition of the Applied Laws, or the Insurance Act, Chapter 201 of the 1951 Edition of the Laws, shall cease to have effect upon the commencement of this Act. Cap. 2

SUBSIDIARY LEGISLATION

INSURANCE

THE INSURANCE REGULATIONS CAP. 392

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Margin of solvency
3. Application for registration as an insurer
4. Application by Lloyd's for registration; and appointment of representative in Zambia
5. Qualifications for principal officer of insurer or broker
6. Qualifications for registered broker
7. Application for registration as a broker
8. Qualifications for insurance agent
9. Prescribed forms

10. Returns by Lloyd's
11. Returns by registered insurers
12. Additional information from registered insurer
13. Signatures on returns by local insurers
14. Returns by insurers following actuarial investigation into their financial position
15. Returns by brokers in respect of business placed with Lloyd's
16. Returns by brokers in respect of business not placed with Lloyd's
17. Other returns by brokers
18. Conversion rate to be given where returns show foreign currency
19. Time for submission of reports
20. Prescribed fees
21. Loss or destruction of a policy

SCHEDULE-Prescribed forms

SECTION 81-THE INSURANCE REGULATIONS

Regulations by the Minister

Statutory Instruments

118 of 1968

190 of 1971

145 of 1989

157 of 1990

7 of 1992

4 of 1993

190 of 1993

Act No.

13 of 1994

1. These Regulations may be cited as the Insurance Regulations. Title
2. (1) For the purposes of section five of the Act, an insurer other than Lloyd's shall have a sufficient margin of solvency-Margin of solvency
 - (a) in respect of his life insurance business, if his liabilities, including contingent and prospective liabilities, under life policies do not exceed the sum in the life insurance fund or funds maintained by him; and
 - (b) in respect of his insurance business other than life insurance business, if the total value of his assets exceeds that of his liabilities by one hundred thousand kwacha or by one-tenth of his premium income during his last preceding

financial year, whichever is the greater, such assets, liabilities and premium income being calculated in accordance with sub-regulation (2).

(2) For the purposes of paragraph (b) of sub-regulation (1)-

(a) in computing the value of liabilities all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital nor liabilities under life policies;

(b) in computing the value of assets no account shall be taken of any sum held in a life insurance fund maintained by the insurer; and

(c) premium income shall be calculated as a net sum after deduction of premiums paid out during the period in question by way of reinsurance.

3. An application by any person other than Lloyd's for registration as an insurer under section six of the Act shall be accompanied-

(a) by the written law, the memorandum and articles of association or any other document by virtue of which the applicant is constituted and which regulates the conduct of his business;

(b) by the balance sheet, profit and loss account and revenue accounts in respect of his last preceding financial year as submitted to the appropriate authority in accordance with the law relating to insurance in the country in which his head office is situate;

(c) if the applicant is not a local insurer, by a certificate of the authority responsible for the enforcement of the law relating to insurance in the country in which his head office is situate, to the effect that the applicant has consistently complied and is complying with that law;

(d) by a copy of each form of proposal and policy which the applicant proposes to use in Zambia;

(e) by certificates of solvency in the appropriate form prescribed by regulation 9;

(f) if the applicant is already transacting life insurance business anywhere, by-Application for registration as an insurer

(i) a copy of the report of an actuary, on the last investigation into his financial position in which a valuation of his liabilities was made, as submitted to the appropriate authority in accordance with the law in the country in which his head office is situate; and

(ii) if he has transacted such business in Zambia, a statement signed by an actuary showing the latest sum of his total net liabilities, including contingent and prospective liabilities, under policies in respect of such life insurance business transacted by him in Zambia, as calculated by the actuary, and the date as at which the calculation was made;

(g) if the application is for registration in any class of life insurance business other than funeral insurance business, by any draft rules which the applicant proposes to make under subsections (4) and (5) of section fifty of the Act, together with a statement showing whether similar rules have been submitted to any authority in another country and if so submitted the date on which such

similar rules were approved or disapproved; and

(h) if the application is for registration in any class of life insurance business and the applicant is not at the time of the application transacting such business anywhere, by a certificate of an actuary approved by the Registrar to the effect that the conditions under which the proposed life insurance business is to be transacted are actuarially sound.

4. (1) Any application by Lloyd's for registration as an insurer shall be made in writing and shall set out-Application by Lloyd's for registration; and appointment of representative in Zambia

(a) the dates in relation to which the applicant's financial year runs;

(b) the names of the members of the Committee of Lloyd's; and

(c) the classes of insurance business with respect to which application for registration is made.

(2) If registered as an insurer, Lloyd's shall appoint in writing an agent who shall be authorised to accept service of notices and any legal process and to act on behalf of Lloyd's in all matters to secure a compliance of Lloyd's with the provisions of the Act and regulations made thereunder.

(3) Lloyd's shall notify the Registrar of the name and address of each agent appointed in accordance with these Regulations and of any change in such particulars.

5. A person shall possess the minimum qualifications required by sections eleven and twenty-four of the Act for the principal officer of an insurer or broker if, in the opinion of the Registrar, he-

(a) is and will remain a full-time remunerated director or servant of the insurer or broker concerned; and

(b) has served for not less than five years in the employment of an insurer or broker, as the case may be. Qualifications for principal officer of insurer or broker

6. For the purposes of the Insurance Brokers (Cessation and Transfer of Business) Act, a person shall be qualified to be a registered broker if the Registrar is satisfied that-

(a) all insurance business carried on by him within or outside Zambia is carried on in accordance with sound insurance principles;

(b) his management and operations are likely adequately to protect the interests of the general public;

(c) his name is not likely to be mistaken for the name of any other broker or insurer or other organisation who is or has been operating in Zambia;

(d) he has not been adjudged or otherwise declared insolvent or bankrupt;

(e) he has not made an assignment to, or an arrangement or composition with, his creditors which has not been rescinded or set aside; and

(f) he has not been convicted by any court of any offence involving dishonesty, fraud or misrepresentation, an appeal against the conviction not having been brought or, if brought, having been abandoned or dismissed. Qualifications for registered broker

7. An application for registration as a broker under section twenty of the Act shall be accompanied-

(a) by the written law, memorandum and articles of association or any other document by virtue of which the applicant is constituted and which regulates the conduct of his business;

(b) by the balance sheet, profit and loss account and revenue accounts in respect of his last preceding financial year; and

(c) if the applicant's head office is not in Zambia, by a certificate of the authority responsible for the enforcement of the law relating to insurance in the country in which his head office is situate, to the effect that the applicant has consistently complied and is complying with that law. Application for registration as a broker

8. For the purposes of Part IV of the Act, a person shall be qualified to be a licensed insurance agent if the Registrar is satisfied that he-

(a) is ordinarily resident in Zambia;

(b) has attained the age of twenty-one years;

(c) has received not less than three months' training in insurance business of the class or classes which he is likely to transact;

(d) has not been adjudged or otherwise declared bankrupt;

(e) has not made an assignment to, or an arrangement or composition with, his creditors which has not been rescinded or set aside; and

(f) has not been convicted by any court of any offence involving dishonesty, fraud or misrepresentation, an appeal against the conviction not having been brought or, if brought, having been abandoned or dismissed. Qualifications for insurance agent

9. (1) The forms set out in the Schedule for which no special provision is made in these Regulations shall be used for the respective purposes of the applications, certificates, requests and licences to which such forms relate. Prescribed forms

(2) Every form prescribed in these Regulations for submission to the Registrar shall when so submitted be furnished in duplicate.

10. Lloyd's shall furnish the Registrar annually with certified copies of all returns and information relating to the insurance business carried on by Lloyd's members which are furnished by Lloyd's in accordance with the law of the United Kingdom to the Board of Trade in that country. Returns by Lloyd's

11. Every registered insurer other than Lloyd's shall each year complete in respect of insurance business transacted by him during his previous financial year and shall submit to the Registrar the following forms set out in the

Schedule:

- (a) Forms RI/15 and RI/16;
- (b) if he transacted any insurance business other than life insurance business>Returns by registered insurers
- (i) Form RI/11 in respect of each of the following non-life classes of business transacted by him:
 - A. fire;
 - B. motor;
 - C. personal accident;
 - D. burglary, housebreaking, theft and robbery;
 - E. marine, aviation and transit; and
 - F. miscellaneous;
- (ii) Form RI/12;
- (iii) if he transacted any motor insurance business Form RI/13; and
- (iv) if he transacted any burglary, housebreaking, theft and robbery insurance business, Form RI/14;
and
- (c) if he transacted any life insurance business, Forms RI/17 and RI/18.

12. (1) Every local insurer shall submit to the Registrar together with the completed forms described in regulation 11, a copy of any report on the affairs of the insurer submitted to the policy owners or shareholders in respect of the financial year to which the completed forms relate. Additional information from registered insurer

(2) Every external insurer shall furnish the Registrar with-

(a) a copy of all returns submitted to the appropriate authority in accordance with the law relating to insurance in the country in which his head office is situate; and

(b) a copy of any report on the affairs of the insurer submitted to the policy owners or shareholders in respect of the financial year to which such returns relate.

(3) This regulation shall not apply to Lloyd's.

13. Every form submitted to the Registrar in accordance with regulation 9, 11 or 14 by a local insurer shall, in addition to any signatures for which the form may provide, be signed by the chairman and one director of the insurer. Signatures on returns by local insurers

14. (1) Form RI/21 set out in the Schedule is prescribed for completion and submission to the Registrar for the purposes of section eighteen of the

Act>Returns by insurers following actuarial investigation into their financial position

(2) Form RI/21 shall be submitted to the Registrar together with and in support of-

(a) an abstract of an actuarial report on the financial position of the insurer concerned which shall be prepared in compliance with the instructions set out at Form RI/19 of the Schedule; and

(b) a statement relating to the life insurance business of the insurer concerned which shall be prepared in compliance with the instructions set out at Form RI/20 of the Schedule;

and both the abstract and the statement shall be signed by the actuary approved by the Registrar under section eighteen of the Act.

15. Every registered broker who placed any business with Lloyd's during his previous financial year shall complete in relation to that business and shall submit to the Registrar the following forms set out in the Schedule:

(a) Form RI/22; and

(b) Forms RI/13 and RI/14 in relation to any motor insurance business or burglary, housebreaking, theft and robbery insurance business respectively placed with Lloyd's>Returns by brokers in respect of business placed with Lloyd's

16. Every registered broker who during his previous financial year acted as a broker other than by placing insurance business with Lloyd's shall complete and submit to the Registrar Form RI/23 set out in the Schedule in relation to all his business which was not placed with Lloyd's>Returns by brokers in respect of business not placed with Lloyd's

17. Every registered broker shall each year complete and submit to the Registrar Forms RI/24, RI/25 and RI/26 set out in the Schedule in respect of his business transacted during his previous financial year.Other returns by brokers

18. Where in any information submitted to the Registrar under the Act or these Regulations any sum of money is shown-

(a) in a foreign currency; or

(b) in Zambian currency having been converted from a foreign currency;

there shall be included in that information the rate of conversion between the foreign currency and Zambian currency at the date of the submission of the information or, in the case of a conversion, at the date of the conversion.Conversion rate to be given where returns show foreign currency

19. (1) Subject to sub-regulation (3), information to be submitted to the Registrar pursuant to regulations 11, 12 (1), 15, 16 and 17 shall be submitted within three months of the end of the financial year, to which such information relates, of the insurer or broker concerned.Time for submission of reports

(2) Subject to sub-regulation (3), information to be submitted to the Registrar pursuant to regulations 10 and 12 (2) shall be submitted within six months of

the end of the financial year, to which such information relates, of the insurer concerned.

(3) Notwithstanding the provisions of sub-regulations (1) and (2), in any case in respect of which the Registrar gives his consent in writing, the period for the submission of information-

(a) to which sub-regulation (1) relates shall be four months; and

(b) to which sub-regulation (2) relates shall be nine months;

from the end of the financial year of the insurer or broker in question.

20. The following fees are hereby prescribed for the purpose of the Act with effect from 1st Jan. 1994

Fee units

Insurer's licence 10,000

Broker's licence 5,000

Insurance agent's licence 2,000

Inspection and permission

to copy any document

furnished to the Registrar

in compliance with sections

twelve, eighteen or twenty-five

of the Act 200

(As amended by S.I. No. 190 of 1993, and Act No. 13 of 1994) Prescribed fees

21. (1) The loss or destruction of a policy referred to in subsection (1) of section forty-four of the Act shall be-Loss or destruction of a policy

(a) proved on the production to the insurer of a declaration giving the circumstances of the loss or destruction, sworn by the policy-owner before a Commissioner for Oaths or like authority and on the production to the insurer of such additional proof of loss or destruction as he may reasonably call for;

(b) advertised once in the Gazette and twice, at an interval of not less than three weeks, in a newspaper, or, if the insurer desires, in each of two newspapers nominated by the insurer and circulating in Zambia.

(2) The insurer shall not issue a correct and certified copy of the policy until a period of three weeks, commencing on the date on which the last advertisement referred to in paragraph (b) of sub-regulation (1) appeared, has expired.

(3) The fee payable by the owner to the insurer for the issue of a correct and certified copy of the policy shall be such sum, not exceeding 50 ngwee, as the

insurer may fix, together with the costs incurred by the insurer-Title
Definition Remittance of premiums Ceaser of stop order arrangement Offences and
penalties

- (a) in proving the loss or destruction of the policy; and
- (b) in advertising the loss or destruction of the policy; and
- (c) in respect of any stamp duty payable on the copy of the policy.

(No. 190 of 1971)

SCHEDULE

(Regulations 9, 11, 14, 15, 16 and 17)

PRESCRIBED FORMS

Form

Application by any person other than Lloyd's for registration as an insurer	RI/1
Certificates of solvency	RI/2
Application for an insurer's licence	RI/3
Insurer's licence (annual)	4
Application for registration as a broker	RI/5
Application for a broker's licence	RI/6
Broker's licence (annual)	7
Application for approval of prospective principal officer	RI/8
Application for an insurance agent's licence	RI/9
Insurance agent's licence (annual)	10
Insurer's revenue account (specified non-life insurance)	RI/11
Summary of insurer's revenue accounts (non-life insurance)	RI/12
Supplementary statement of motor insurance business	RI/13
Supplementary statement of burglary, housebreaking, theft and robbery robbery insurance business	RI/14
Insurer's profit and loss account	RI/15

Insurer's balance sheet	RI/16
Insurer's revenue account (life insurance)	RI/17
Insurer's supplementary statement of life insurance business	RI/18
Instructions for preparation of abstract of actuarial report on financial position of life insurer	RI/19
Instructions for preparation of statement of life insurance business of an insurer	RI/20
Summary and valuation of the liabilities of a life insurer	RI/21
Broker's revenue account: business placed at Lloyd's	RI/22
Broker's revenue account: business not placed at Lloyd's	RI/23
Summary of broker's revenue accounts (non-life insurance)	RI/24
Broker's profit and loss account	RI/25
Broker's balance sheet	RI/26

FORM RI/1

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

APPLICATION BY ANY PERSON OTHER THAN LLOYD'S FOR
REGISTRATION AS AN INSURER

1. Name of Insurer
2. Address of head office
3. Directors-give name, nationality, country of residence and other directorships held in respect of each director.

4. Name of General Manager

5. (a) Name, address and qualifications of actuary (if any)

(b) If applicant has an actuary whether or not his services are continuously retained by the applicant

6. (a) Name, address and qualifications of external auditor

(b) Name, address and qualifications of local auditor

7. Countries in which applicant carries on insurance business

8. (a) Situation of principal office in Zambia

(b) Postal address

(c) Telephone number

9. Period of applicant's financial year

10. Class(es) of insurance business with respect to which application for registration is made

11. List of all Branch Offices in Zambia, addresses, telephone numbers and names of officers in charge

We,

.....
....., hereby apply for registration under the Insurance Act and declare the above particulars to be true and correct.

Date

Chairman

Director

Principal Officer

(If appointed)

FORM RI/2

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

CERTIFICATES OF SOLVENCY

(Not applicable to Lloyd's)

PART I* Delete Part II if only life insurance business is transacted by the insurer, or Part I if no life insurance business is transacted by the insurer.*

* Delete Part II if only life insurance business is transacted by the insurer, or Part I if no life insurance business is transacted by the insurer.

I hereby certify that the liabilities including contingent and prospective liabilities under all life policies issued by

as at

....., 19..... (being the end of the insurer's last financial year)

do not exceed the amount of the life insurance fund or funds as shown in the Balance Sheet.

Date

Actuary

PART II* Delete Part II if only life insurance business is transacted by the insurer, or Part I if no life insurance business is transacted by the insurer.*

* Delete Part II if only life insurance business is transacted by the insurer, or Part I if no life insurance business is transacted by the insurer.

We hereby certify that the total value of the assets of

exceeds that of the company's liabilities by K100,000 or one-tenth of the company's premium income during its last financial year, whichever is the greater, such assets, liabilities and premium income having been calculated in accordance with regulation 2(2).

Chairman

Director

Principal Officer (If appointed)

Date

Auditor

* Delete Part II if only life insurance business is transacted by the insurer,
or Part I if no life insurance business is transacted by the insurer.

FORM RI/3

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

APPLICATION FOR AN INSURER'S LICENCE

Name of Registered Insurer

I hereby make application for an Insurer's Licence permitting the above-named registered insurer during the year ending 31st December, 19....., to transact insurance business of the following classes in which the insurer is registered:

The licence fee of one thousand five hundred fee units is enclosed herewith.

Date

Principal Officer

(As amended by Act No. 13 of 1994)

FORM 4

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

No.

INSURER'S LICENCE (ANNUAL)

having
paid the fee of one hundred kwacha is hereby licensed during the year ending
31st December, 19....., to transact insurance business of the following
classes:

Date

Registrar of Insurance

FORM RI/5

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

APPLICATION FOR REGISTRATION AS A BROKER

1. Name of Broker
2. Address of Head Office
3. Directors-give name, nationality, country of residence and details of other directorships held in respect of each director.

4. Name of General Manager

5. Name, address and qualifications of auditor in Zambia

6. Countries in which applicant carries on business as a broker

.....

7. (a) Situation of principal office in Zambia

(b) Postal address

(c) Telephone number

8. List of all Branch Offices in Zambia, addresses and telephone numbers and names of officers in charge

9. Name and address of brokers at Lloyd's through whom the applicant transacts insurance business

10. Period of financial year

We

.....
..... hereby apply for registration under
the Insurance Act and declare the above particulars to be true and correct.

Chairman

Director

Date

Principal Officer
(If appointed)

FORM RI/6

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

APPLICATION FOR A BROKER'S LICENCE

Name of Registered Broker

I hereby make application for a Broker's Licence permitting the above-named Registered Broker to act as a broker during the year ending 31st December, 19..... . The licence fee of one thousand five hundred fee units is enclosed herewith.

Date

Principal Officer

(As amended by Act No. 13 of 1994)

FORM 7

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

BROKER'S LICENCE (ANNUAL) No.

having paid the sum of one thousand five hundred fee units is hereby licensed to act as a broker during the year ending 31st December, 19..... .

Date

Registrar of Insurance

(As amended by Act No. 13 of 1994)

FORM RI/8

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

APPLICATION FOR APPROVAL OF PROSPECTIVE PRINCIPAL OFFICER

(To be used by an insurer or broker for submission of details in respect of appointment or

change in appointment of his principal officer.)

1. Name of prospective principal officer
2. Date of birth
3. Academic or professional qualifications
4. Current appointment held and approximate date of assuming duties
5. Appointment to be held on assuming duties of principal officer in Zambia
6. Particulars of previous insurance and/or broking experience giving employers, dates and positions held

Approval is requested by
..... (name of insurer or broker) for the appointment of the above-named person as our Principal Officer in Zambia. A power of attorney as specified in section 11 (3) of the Act is enclosed.

Chairman

Director

Date

General Manager or Secretary

FORM RI/9

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

APPLICATION FOR AN INSURANCE AGENT'S LICENCE

(To be submitted in duplicate to the Registrar of Insurance, Ministry of Finance, P.O. Box

RW.62, Lusaka. This form must be typewritten or completed in block capitals in ink)

1. Name of Insurer
2. Name of applicant
3. Residential address
4. Postal address
5. State if full-time or part-time agent

6. If a part-time agent state principal occupation
7. Names of other Insurers you represent (if any)

8. Have you ever been refused an Insurance Agent's Licence?
9. Has any Insurance Agent's Licence issued to you ever been suspended or cancelled? If so, when?
10. State:
 - (a) Date of birth
 - (b) Insurance experience and qualifications
 - (c) General educational standard

DECLARATION BY APPLICANT

I

 hereby apply for an Insurance Agent's Licence and
 declare that the above particulars are true and correct and that I have not-

- (a) been adjudged or otherwise declared bankrupt;
- (b) made an assignment to, or an arrangement or composition with, creditors which has not been rescinded;
- (c) been convicted by any court of any offence involving dishonesty, fraud or misrepresentation, an appeal against the conviction not having been brought or, if brought, having been abandoned or dismissed.

I undertake to notify the Registrar of Insurance of any material change in the particulars set out above or in the facts to which my declaration relates.

Date Signed

11. A licence fee of fee units is enclosed.

DECLARATION BY PRINCIPAL OFFICER OF REGISTERED INSURER TO BE REPRESENTED

I,, hereby certify that to the best of my knowledge and belief the above particulars and declaration are true and correct and that the applicant has undergone a period of training in the class or classes of insurance business he will be required to transact and that he is competent to explain the conditions of the policies issued by this Company.

Date

Principal Officer

Name of Insurer

FORM 10

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 9)

No.

INSURANCE AGENT'S LICENCE (ANNUAL)

Name

Address (Residential)

having paid the sum of K2 is hereby licensed to canvass for and secure proposals for insurance for

during the year ending 31st December, 19..... .

Dated at this
..... day of
..... 19.....

Registrar of Insurance

NOTE.-A separate licence is required for each insurer represented.

FORM RI/11

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 11)

INSURER'S REVENUE ACCOUNT (SPECIFIED NON-LIFE INSURANCE)

Revenue Account in respect of ... Insurance Business carried on by an insurer in Zambia in the financial year ended 19..

Name of Insurer

In
ZambiaOutside Zambia

TotalIn
ZambiaOutside Zambia

Total

Amount of the .. Insurance Fund at the end of
preceding year

Provision for unexpired risks. .

Additional reserves (if any)

Premiums:

Direct business (a) received K
(b) due K

Deduct:

Reinsurance ceded (a) paid K
(b) due K

Net Total Direct Business

Reinsurance accepted (a) received K
(b) due K

Total Reinsurance Accepted

Commission:

Reinsurance ceded (a) received K

 (b) due K

Deduct:

Reinsurance accepted (a) paid K

 (b) due K

Net totalK

-

-

-

-

-

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K

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-K

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A. Claims paid in respect of current yearK
Add Claims outstanding in respect of current yearK
Less Salvages, etc., realised and dueK
Less Reinsurance, received and dueK

Net total

B. Claims paid in current year in respect of last
yearK

Add Claims outstanding in current year in
respect of last yearK

Less Salvages, etc., realised and dueK
Less Reinsurance, received and dueK

Net total

C. Claims paid in current year, not included in A

or B above K -

Add Claims outstanding in current year not

included in A or B above K

Less Salvages, etc., realised and due K

Less Reinsurance, received and due K

Net total

Payments under reinsurance accepted K

Add Amount due but not paid under reinsurance

accepted K

TotalK

-

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INSURER'S REVENUE ACCOUNT (SPECIFIED NON-LIFE INSURANCE)

In
ZambiaOutside Zambia

TotalIn
ZambiaOutside Zambia

Total

Other Income

Rent

Dividends

Interest
Other revenue (Accounts to be specified) . .

Transferred from Profit and Loss Account

TotalK

κ

K

Commission:

Paid to Brokers K
Due to Brokers K
Paid to Agents (a) full-time K
 (b) part-time K
Paid to Staff K

Total

Expenses of management

Other expenses (Specify account if any item is in excess of K200 or if in total the amount exceeds K2,000

Transferred to Profit and Loss Account

Amount of the Insurance Fund at the end of the year, as per balance sheet

Provision for unexpired risks, being%
of premium income for the year

Additional Reserves (if any)

TotalK

-

-

-
-
-
-

K

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K

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NOTE.-Specify countries in respect of each entry made in the "Outside Zambia" column.

Date

Principal Officer Auditor

FORM RI/12

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 11)

SUMMARY OF INSURER'S REVENUE ACCOUNTS (NON-LIFE INSURANCE)

Supplementary summary of Revenue Accounts in respect of all Classes of Non-Life Business in the financial year ended ..., 19.

Name of Insurer

.....
.....

In

ZambiaOutside Zambia

TotalIn

ZambiaOutside Zambia

Total

Net total premiums received

Total reinsurance accepted

Net total commission received

TOTAL OTHER INCOME

Rents

Dividends

Interest

Other revenue (Accounts to be specified)

Total

K

K

K

Net total of claims
Total claims paid and outstanding under. .
 reinsurance accepted
Total commission paid and outstanding . .

TOTAL EXPENSES OF MANAGEMENT

Salaries:

 Zambian staff-

 (No. employed at date of return.....)

 Expatriate staff-

 (No. employed at date of return))

Registered Head Office Expenses

Repairs to and Maintenance of Buildings . .

Rents

Rates

Income tax

Directors' fees

Other Expenses (specify account if any item is in excess of K200 or if in total
the amount exceeds K2,000

Total

K

K

K

In each instance the figure of "total" or "net total" should be the aggregate of the corresponding figures shown on the individual revenue accounts.

Date

Principal Officer Auditor

FORM RI/13

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulations 11 and 15)

SUPPLEMENTARY STATEMENT OF MOTOR INSURANCE BUSINESS

Name of Insurer

.....

PREMIUMS

Act Third Party

(a) Private use

(b) Business and commercial

Full Third Party

(a) Private use

(b) Business and commercial

Comprehensive

(a) Private use

(b) Business and commercial

CLAIMS

Act Third Party

(a) Private

- (1) Damage to vehicles
- (2) Damage to property
- (3) Personal injury
- (4) Other payments (specify)

(b) Business and commercial

- (1) Damage to vehicles
- (2) Damage to property

- (3) Personal injury
- (4) Other payments (specify)

Full Third Party

(a) Private

- (1) Damage to vehicles
- (2) Damage to property
- (3) Personal injury
- (4) Other payments (specify)

(b) Business and commercial

- (1) Damage to vehicles
- (2) Damage to property
- (3) Personal injury
- (4) Other payments (specify)

Comprehensive

(a) Private

- (1) Damage to vehicles
- (2) Damage to property
- (3) Personal injury
- (4) Other payments (specify)

(b) Business and commercial

- (1) Damage to vehicles
- (2) Damage to property
- (3) Personal injury
- (4) Other payments (specify)

KTOTALTOTAL

NOTE 1.-Use net figures after deduction of salvages, reinsurances, etc., to correspond with Motor Revenue Account.

NOTE 2.-Full Third Party Fire and Theft insurance shall be included under the heading "Comprehensive".

Date

Principal Officer Auditor

FORM RI/14

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulations 11 and 15)

SUPPLEMENTARY STATEMENT OF BURGLARY, HOUSEBREAKING, THEFT AND ROBBERY INSURANCE BUSINESS

PREMIUMS

PRIVATE DWELLINGS

OTHER PREMISES

K

CLAIMS

PRIVATE DWELLINGS

(a) Burglary and Housebreaking

(b) Theft and Robbery	.	.	.	.	.	.	.	.
OTHER PREMISES	.	.	.	.	.	.	.	.
(a) Burglary and Housebreaking	.	.	.	.	.	.	.	.
(b) Theft and Robbery	.	.	.	.	.	.	.	.KTotal Total

Date

Principal Officer Auditor

FORM RI/15

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 11)

INSURER'S PROFIT AND LOSS ACCOUNT

Profit and Loss Account in respect of Insurance Business carried on by an
Insurer in Zambia in the financial
year ended ,
19.....

Name of Insurer

In
ZambiaOutside Zambia

TotalIn
ZambiaOutside Zambia

Total

Balance of last year's account.

Interest and dividends not carried to other accounts

Rents not carried to other accounts

Profit transferred (accounts to be specified)

Other revenue (accounts to be specified)

K

K

K

Dividends and bonuses to shareholders . .

Expenses not charged to other accounts (expenses to be specified)

Loss transferred (accounts to be specified)

Other expenditure (accounts to be specified)

Balance as per balance sheet. .K

K

K

TotalTotal

NOTE.-Specify countries in respect of each entry made in the "Outside Zambia" column.

Date

Principal Officer Auditor

FORM RI/16

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 11)

INSURER'S BALANCE SHEET

Balance Sheet showing the financial position in Zambia of an Insurer at the close of the financial

year ended ,
19.....

Name of Insurer

In
Zambia Outside Zambia

Total In
Zambia Outside Zambia

Total

LIABILITIES

Shareholders' capital paid up (if any)

Life Insurance Fund (if any)

Other funds (if any) to be specified

Balance of Profit and Loss Account

Claims admitted or intimated but not paid:

Life Insurance (if any) . .

Other classes of insurance (to be specified) . .

Other sums owing by the insurer (to be specified) . .K

K

K

ASSETS

Mortgages on property

Loans on insurance policies

Loans on stocks and shares

Loans on personal security

Zambian Government Treasury Bills . .

Zambian Government Develop-
ment Bonds

Zambian Government stocks, etc. . .

Other Government Treasury Bills . .

Other Government stocks, etc. . .

Municipal and other Local Government
Securities

Other Debentures and debenture stock . . .

Preference stocks and shares . . .

Ordinary stocks and shares

Other investments (to be specified) . . .

House and landed property

Motor vehicles

Office furniture and equipment.

Agents' Balances

*Outstanding premiums and deferred instalments

*Outstanding interest, dividends and rents

*Interest accrued but not payable . . .

Money on Deposit (at less than twelve month's notice of withdrawal at the time of deposit)

Money at call or at short notice . . .

Cash on hand, in transit or on current account

Other assets (to be specified)K

K

K

TotalTotal

*These items are included in the corresponding items in the Revenue Accounts.

NOTE- 1. Specify countries in respect of each entry made in the "Outside Zambia" column.

2. A balance sheet in this form shall be rendered in respect of each separate fund for which separate investments are made, and every such balance sheet shall, if it relates to business of a kind which the insurer transacts in Zambia, be in the above form.

3. This balance sheet shall state how the values of the stock exchange

securities listed are arrived at, and a certificate shall be attached signed by the persons who sign this balance sheet to the effect that, in their belief, the assets set forth in the balance sheet are, in the aggregate, fully of the value stated therein, less any investment reserve fund taken into account. In the case of a balance sheet which is in respect of life insurance business and no other business, this certificate is to be given on the occasion only when an investigation into the financial position of the insurer is made in terms of section 18 of the Act.

Date
.....
.....

Principal Officer Auditor

FORM RI/17

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 11)

INSURER'S REVENUE ACCOUNT (LIFE INSURANCE)

Revenue Account in respect of Life Insurance Business carried on by an Insurer
in the financial year ended

.....
..... 19.....

Name of Insurer

.....
.....

In

ZambiaOutside Zambia

TotalIn

ZambiaOutside Zambia

Total

Amount of the Insurance Fund at the end of the preceding year
. . .

Premiums

Direct business (a) received K

(b) due K

Deduct

Reinsurance ceded (a) paid K

(b) due K

Net total

Consideration for annuities granted-

(a) received K

(b) due K

Deduct

Reinsurance ceded (a) paid		K
(b) due	K	
Net total		
Reinsurance accepted (a) received		K
(b) due	K	
Total Reinsurance Accepted		
Commission		
Reinsurance ceded (a) received		K
(b) due	K	
Deduct		
Reinsurance accepted (a) paid		K
(b) due	K	
Net total		
OTHER INCOME		
Rent		
Dividends		
Interest		
Stamp duty on insurance policies		
Other revenue (accounts to be specified)		K

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Claims under policies paid and outstanding:

By death	K
By maturity.	K
By disability	K
Gross	K

Deduct Reinsurance recoveries K

Net Claims

Surrenders, including surrenders of bonus

Annuities	K
---------------------	---

Deduct Reinsurance recoveries K

Net

Bonuses in cash or in reduction of premiums

COMMISSION: PAIND AND OUTSTANDING

A. Broker	K
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-Total Total

NOTE 1. Specify countries in respect of each entry made in the "Outside Zambia" column.

NOTE 2. A revenue account shall be rendered in respect of each part of the life insurance business for which a separate fund is maintained.

Date

Principal Officer

Auditor

FORM RI/18

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 11)

INSURER'S SUPPLEMENTARY STATEMENT OF LIFE INSURANCE BUSINESS

Other than business in connection with funeral, industrial and sinking fund policies, carried on in Zambia by an insurer in the financial year ended , 19.....

Name of Insurer

.....
.....
.....

A.-STATEMENT OF REVENUE AND EXPENDITURE DURING THE YEAR ENDED

..... , 19.....

IndividualGroupREVENUE

Premiums

Considerations for annuities granted

EXPENDITURE

Claims under policies paid and outstanding:

By death

By maturity

By disability

Surrenders, including surrenders of bonus, bonuses

in cash and bonuses in reduction of premiums

Annuities

B.-STATEMENT OF NEW LIFE INSURANCE AND NEW ANNUITIES EFFECTED DURING THE YEAR ENDED

, 19.....

IndividualGroupINSURANCES

Number of policies

Sums insured

Annual premiums

Single premiums

Number of individual policies lapsed or cancelled during the year, including policies issued in preceding year, within-

3 months of issue
.....

6 months of issue
.....

12 months of issue
.....

Individual Group Immediate Deferred Immediate Deferred ANNUITIES

Number of policies

Amount per annum

Number of individual policies lapsed or cancelled during the year, including policies issued in preceding year, within-

3 months of issue

6 months of issue

12 months of issue

NOTE 1.-All the above figures shall be net figures after deduction of reinsurances.

NOTE 2.-Figures for group endowment assurance schemes must be included under "Individual".

Date

Principal Officer

FORM RI/19

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 14)

INSTRUCTIONS FOR PREPARATION OF ABSTRACT OF ACTUARIAL REPORT
ON FINANCIAL POSITION OF LIFE INSURER

NOTE.-Separate returns signed by the actuary of the insurer shall be furnished for life policies, funeral policies, industrial policies and sinking fund policies, provided, however, that life policies and sinking fund policies may be included in one return.

The abstract shall be prepared in numbered paragraphs containing the information required in the following form:

1. The date to which the insurer's accounts are made up for the purpose of the investigation.

2. The general principles adopted in the valuation and the method followed in the valuation of the particular classes of insurance, including a statement of the method by which the net premiums have been arrived at, and whether these principles were determined by the insurer's articles of association or by his regulations, or how otherwise, together with a statement of the manner in which policies on under-average lives are dealt with.

3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values shall be given at the rate of interest employed in the valuation in respect of whole-life insurance policies effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for five years, ten years and upwards at intervals of five years respectively; with similar specimen policy values in respect of endowment insurance policies, according to age at entry, original term of policy and duration.

4. The rate or rates of interest employed in the calculations.

5. The actual proportion of the annual premium income, if any, reserved as a provision for future expenses and profits, separately specified in respect of insurances with immediate profits, with deferred profits, with discounted bonuses and without profits. If no proportion of the annual premium income is reserved as a provision for future expenses and profit, how this provision is made shall be stated.

6. The liabilities of the insurer under life policies and annuities at the date referred to in paragraph 1, showing the number of policies, the amount insured, and the amount of premiums payable annually under each class of policy, both with and without participation in profits. These returns shall be furnished in Form RI/21. Separate returns shall be furnished for liabilities in Zambia and for total liabilities.

7. A statement of the principles upon which the distribution of profits,

if any, among the shareholders and policy owners is made, giving the number of years' premiums required to be paid before a bonus-

- (a) is allotted; and
- (b) vests.

The statement shall specify whether the principles upon which the distribution of profits is made were determined by the insurer's articles of association or by his regulations, or how otherwise.

8. A statement of the results of the valuation, giving the total amount of profit made by the insurer since the last valuation (including any amount carried forward from that valuation) allocated as follows:

- (a) as interim bonuses;
- (b) among the policy owners with immediate participation;
- (c) among the policy owners with deferred participation;
- (d) among the policy owners with discounted bonuses;
- (e) among the shareholders, if any;
- (f) to reserve funds or other accounts;
- (g) carried forward unappropriated.

FORM RI/20

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 14)

INSTRUCTIONS FOR PREPARATION OF STATEMENT OF LIFE INSURANCE BUSINESS OF AN INSURER

NOTE.-Separate returns signed by the actuary of the insurer shall be furnished for life policies, funeral policies, industrial policies and sinking fund policies provided, however, that life policies and sinking fund policies may be included in one return. The expression "office yearly premium" is to be regarded as excluding any extra premium as defined in Note 1 to Form RI/21.

The statement shall be prepared in paragraphs numbered to correspond with those appearing below. Statements of reinsurances corresponding to statements in respect of insurances shall be given throughout:

1. The published tables or table of premiums for insurances for the whole term of life and for endowment insurances which are in use in Zambia at the date to which the insurer's accounts are made up for the purpose of the investigation.

2. Particulars of a kind which would enable an independent actuary to estimate the liability shall be furnished in respect of policies under which the aggregate liability of the insurer is not less than 90 per centum of the total liabilities as shown in Form RI/21, in calculating this percentage, any liabilities shown against the item "Adjustments, if any (to be separately specified)" in Form RI/21 shall be ignored. If, in accordance with the foregoing provision, an insurer elects to furnish particulars of any of the kinds of policies described in paragraphs 3 to 6 below, then such particulars must be as stipulated in those paragraphs. Separate returns shall be furnished for business in Zambia and for total business. Separate information shall be furnished for "individual" and "group deferred annuity" business in respect of liabilities in Zambia.

3. The total amount insured on lives for the whole term of life which are in existence at the date referred to in paragraph 1 of Form RI/19, distinguishing the portions insured with immediate profits, with deferred profits, with discounted bonuses and without profits, stating separately the total reversionary bonuses and specifying the particulars for each age or for each group of five ages, the basis of division as to immediate and deferred profits being stated.

4. The amount of office and net yearly premiums for each age or each group of five ages, after deducting the abatements made by the application of bonuses in respect of the respective insurances referred to in paragraph 3. A separate statement shall be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made or according to attained age, and in either case five-year grouping may be

used if desired. If premiums payable for a limited number of years are classified according to attained age, the valuation constants are to be given for each age or group of ages together with an explanation of the method by which they have been calculated.

5. The following particulars are to be given in respect of endowment insurances, and are to be separately stated for policies with immediate profits, with deferred profits, with discounted bonuses and without profits; the sums insured, the reversionary bonuses (to be separately specified), the office yearly premiums, and the net yearly premiums, in respect of each year or group of five years in which the policies will mature for payment, or in respect of each year or group of five years of attained age. If any of these particulars are classified according to attained age, the corresponding valuation constants are to be given for each age or group of ages, together with an explanation of the method by which they have been calculated.

6. The total amount of immediate annuities on lives, distinguishing the amount for each age or group of five ages, and distinguishing male and female lives.

7. The average net rate of interest yielded by the assets, whether invested or uninvested, constituting the life insurance fund of the insurer calculated upon the mean fund of each year during the period since the last investigation. It shall be stated whether or not the mean fund upon which the average net rate of interest is calculated includes reversionary investments.

8. A table of minimum values used in Zambia, if any, allowed for the surrender of policies for the whole term of life and for endowment insurances, or a statement of the method pursued in Zambia in calculating such surrender values, with instances of the application of such method to policies of different durations and taken out at various interval ages.

FORM RI/21

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 14)

SUMMARY AND VALUATION OF THE LIABILITIES OF A LIFE INSURER AT....., 19....

(See paragraph 6 of the instructions set out on Form RI/19)

Name of Insurer

.....

PARTICULARS OF THE POLICIES FOR VALUATION

VALUATION

Number

of policiesSums insured and bonuses

Office yearly premiums Net yearly premiumsSums insured and bonuses Net yearly premiums

Net liabilityINSURANCES:

1. With immediate participation in profits-

For the whole term of life

Other classes (to be specified)

Extra premiums payable

2. With deferred participation in profits-

For the whole term of life

Other classes (to be specified)

Extra premiums payable

3. With discounted bonuses-

For the whole term of life

Other classes (to be specified)

Extra premiums payable

Total Insurances with Profits⁴. Without participation in profits-

For the whole term of life	.	.	.	.	.	.	.
Other classes (to be specified)	.	.	.	.	.	.	.
Extra premiums payable	.	.	.	.	.	.	.

Total Insurances without ProfitsTOTAL INSURANCES
.

Deduct: Reinsurances (to be specified according to class in a separate
statement)

Net Amount of Insurances

Adjustments, if any (to be separately specified)

ANNUITIES ON LIVES:

Immediate-

(i) individual

(ii) group

Other classes (to be specified)-

(i) individual

(ii) group

TOTAL ANNUITIES:

Deduct: Reinsurances (to be specified according to class in a separate statement)

Net Amount of Annuities

Adjustments, if any (to be separately specified)

Total of the Results

NOTE.- 1. The term "extra premium" means the charge for any risk not provided for in the minimum contract premium.

2. If separate valuations of any portion of the business re required under insurance laws of countries outside Zambia, a summary statement shall be furnished showing the total net liability in respect of the business so valued in each country.

3. The information for "individual" and "group" under the heading "Annuities on Lives" is required only in respect of liabilities in Zambia.

4. Separate particulars in the above form must be given of liabilities in Zambia which have been reinsured (except on the risk premium plan) with an insurer who is not a registered insurer.

Date

Actuary of the Insurer

FORM RI/22

Stock by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 15)

BROKER'S REVENUE ACCOUNT: BUSINESS PLACED AT LLOYD'S

In

ZambiaOutside Zambia

TotalIn

ZambiaOutside Zambia

Total

PREMIUMS

(a) received K

(b) due K

Deduct

Reinsurance ceded

K

(a) paid

(b) due K

Net total

Reinsurance accepted

.....

(a) received K

(b) due K

COMMISSION

Direct business

K

(a) received

(b) due K

Reinsurance ceded

.....

(a) received K

(b) due K

Deduct

Reinsurance ceded

(a) paid

K

(b) due K

Net total

Stamp duty on insurance policies

Other income (Accounts to be specified)

Money remitted by Lloyd's in respect of claims
settlement:

(a) received K

(b) due K

Transferred from Profit and Loss Account K

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-K

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A. Claims paid in respect of current year . . . K

Add claims outstanding in respect of current year K

Less Salvages, etc., relised and due K

Reinsurance received and due K

Net Total

B. Claims paid in current year in respect of last year

. K

Add Claims outstanding in curent year in respect of last year
. K

Less Salvages, etc., relised and due K

Reinsurance received and due K

Net Total

C. Claims paid in current year not included in A or B above

. K

Add Claims outstanding in current year not included in A or B above

. K

Less Salvages, etc., relised and due K

Reinsurance received and due K

Net Total

Amount paid and outstanding under reinsurance accepted

.

Expenses of Management

Other expenses (Accounts to be specified) . .

PREMIUMS

remitted to Lloyd's K

due to Lloyd's K

Total

Transferred to Profit and Loss AccountK

-

-

-

-

-

-

-

-

-

-

K

-

-

-

-

-

-

-

-

-

-

K

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-

-

-

-

-

-

-

-

-

Total Total

NOTE 1.-Specify countries in respect of each entry made in the "Outside Zambia" column.

NOTE 2.-Separate Revenue Accounts on this Form shall be rendered in respect of Fire; Motor; Personal Accident; Burglary, Housebreaking, Theft and Robbery; Marine, Aviation and Transit; and Miscellaneous insurance business.

Date
.....
.....

Principal Officer Auditor

FORM RI/23

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 16)

BROKER'S REVENUE ACCOUNT: BUSINESS NOT PLACED AT LLOYD'S

In
ZambiaOutside Zambia

TotalIn
ZambiaOutside Zambia

Total

PREMIUMS

Insurance

(a) received K

(b) due K

Total A K

Less Commission (a) paid K

(b) due K

Total B K

Net Total A less B K

Reinsurance

(a) received K

.....

(b) due K

Total C K

Less Commision

(a) received K

(b) due K

Total D K

Net Total C less D K

Other income (account to be specified)

Transferred from Profit and Loss AccountK

-

-

-

-

-

-

-

-

-

-

K

-

-

-

-

-

-

-

-

-

-

K

-

-

-

-

-

-

-

-

-

-

PREMIUMS

Insurance

(a) remitted to insurers K

(b) due to insurers K

Total

Reinsurance

(a) remitted to reinsurers K

(b) due to reinsurers K

Total

Commissions, discounts, etc., paid on -

(a) insurance

(b) reinsurance

Expenses of Management

Other expenses (spenses (specify account if any item is in excess of K 200 or if in total the amount exceeds K 2,000)

Transferred to Profit and Loss Account

K

-

-

-

-

K

-

-

-

-

K

-

-

-

-

Total Total

NOTE 1.-Specify countries in respect of each entry made in the "Outside Zambia" column.

NOTE 2.-Separate Revenue Accounts on this Form shall be rendered in respect of Fire; Motor; Personal Accident; Burglary, Housebreaking, Theft and Robbery; Marine, Aviation and Transit; Miscellaneous insurance business.

Date
.....
.....

Principal Officer

Auditor

FORM RI/24

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 17)

SUMMARY OF BROKER'S REVENUE ACCOUNTS (NON-LIFE INSURANCE)

Summary of Revenue Accounts in respect of all classes of non-life business carried on by a broker in Zambia in the financial year

ended ,
19.....

Name of Broker

.....
.

In

ZambiaOutside Zambia

TotalIn

ZambiaOutside Zambia

Total

PREMIUMS

Insurance: Total received and due K

Less: Total Commission received and due K

Net total

Reinsurance: Total received/due K

Less-Total Commission received/due K

Net total

Total other income (accounts to be specified)

K

K

K

PREMIUMS

Total remitted and due to insurers
Total remitted and due to reinsurers

TOTAL EXPENSES OF MANAGEMENT

Salaries: Zambian staff

(No. employed at date of return)

Expatriate staff

(No. employed at date of return)

Rents

Rates

Income tax

Director's fees

Repairs to and maintenance of buildings

Other expenses (Specify account if any item is in excess of K200 or if in total the amount exceeds K2,000)

K

K

K

TotalTotal

NOTE.-In each instance the figure of "total" should be the aggregate of the corresponding figures shown on the individual revenue accounts.

Date
.....
.....

Principal Officer Auditor

FORM RI/25

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 17)

BROKER'S PROFIT AND LOSS ACCOUNT

Profit and Loss Account in respect of insurance business carried on by a broker in Zambia in the financial year

ended ,
19.....

Name of Broker
.....
..

In
ZambiaOutside Zambia

TotalIn
ZambiaOutside Zambia

Total

Balance of last year's account

Rent

Dividends

Interest

Other income (Accounts to be specified)

Profit transfer

K

K

K

Dividends and bonuses to shareholders

Expenses not charged to other accounts (Expenses to be specified)
. . . .

Other expenditure (Accounts to be specified) . .

Loss transferred

Balance as per balance sheet.K

K

K

TotalTotal

NOTE.-Specify countries in respect of each entry made in the "Outside Zambia" column.

Date

Principal Officer Auditor

FORM RI/26

Stocked by Registrar of Insurance, Ministry of Finance

REPUBLIC OF ZAMBIA

THE INSURANCE REGULATIONS

(Regulation 17)

BROKER'S BALANCE SHEET

Balance Sheet showing the financial position of a broker in Zambia at the close of the financial year

ended ,
19.....

Name of Broker

.....
..

In
ZambiaOutside Zambia

TotalIn
ZambiaOutside Zambia

Total

Shareholder' s capital paid up

Balance of Profit and Loss Account

Other sums owing (to be specified)K

K

K

Zambia Government Development Bonds.	
Zambia Government Treasury Bills	
Zambia Government Stocks, etc.	
Other Government Treasury Bills	
Other Government Stocks, etc.	
Other investments (to be specified)	
House and landed property	
Motor vehicles	
Office furniture and equipment	
Repairs to and maintenance of buildings	
Money on deposit (at less than 12 months' notice of withdrawal at time of deposit)	
Money at call or at short notice	
Cash on hand, in transit or in Current Account	
Other assets (to be specified) . . . . .	.K

K

K

TotalTotal

NOTE.-Specify countries in respect of each entry made in the "Outside Zambia" column.

Date

Principal Officer Auditor

THE INSURANCE (REMITTANCE OF PREMIUMS) REGULATIONS

Regulations by the Minister Statutory Instrument

119 of 1989

175 of 1989

Act No.

13 of 1994

1. These Regulations may be cited as the Insurance (Remittance of Premiums) Regulations. Title

2. In these Regulations "stop order arrangement" means the payment of premiums to the insurer by an employer on behalf of employees. Definition

3. (1) Where an employer has ten employees or more who have effected life policies, the employer shall enter into a stop order arrangement with the insurer. Remittance of premiums

(2) An employer who enters into a stop order arrangement with the insurer shall remit the premiums on behalf of its employees to the insurer together with the form set out in the Schedule to these Regulations.

4. (1) An employer who has entered into a stop order arrangement shall cease to remit premiums on the death or dismissal of an employee and shall inform the insurer accordingly. Ceaser of stop order arrangement

(2) An employer who has entered into a stop order arrangement shall inform the insurer whenever any of the employees with life policies are transferred.

5. Any employer who does not comply with any of the provisions of these Regulations shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand five hundred penalty units.

(As amended by Act No. 13 of 1994) Offences and penalties

SCHEDULE
(Regulation 3)

STOP ORDER ARRANGEMENT FORM

Company/Ministry Name Company Code

Division Code Payment Schedule from Salary for the Month
of.....

Page No.

Remittance to Zambia State Insurance Corporation Ltd for Life Premiums (Stop
Order)

Serial No.

Man No.

Dept No.

Pay-point No.Name of Policy Holder

Policy Number

Loan Repay- ment

Amount of Premium

Total

Total Number of Entries: *Totals*****

(As amended by S.I. No. 175 of 1989)

