



THE WORLD BANK

Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

Corporate Governance Country Assessment

Zambia

December 2006

Overview of the Corporate Governance ROSC Program

WHAT IS CORPORATE GOVERNANCE?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The *OECD Principles of Corporate Governance* provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.

WHY IS CORPORATE GOVERNANCE IMPORTANT?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research.

Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark.

- Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.
- Country participation in the assessment process, and the publication of the final report, are voluntary.
- The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the ROSCs can also include special policy focuses on specific sectors (for example, banks, other financial institutions, or state-owned enterprises).
- The assessments are standardized and systematic, and include policy recommendations. In response, many countries have initiated legal, regulatory and institutional corporate governance reforms.
- Assessments can be updated to measure progress over time.

By the end of June 2010, 71 assessments had been completed in 59 countries around the world.

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

Corporate governance country assessment

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Executive Summary

Good corporate governance ensures that companies use their resources more efficiently, protects minority shareholders, leads to better decision making, and improves relations with workers, creditors, and other stakeholders. It is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth. This report provides an assessment of Zambia's corporate governance policy framework. It highlights recent improvements in corporate governance regulation, makes policy recommendations, and provides investors with a benchmark against which to measure corporate governance in Zambia.

Achievements

Zambia's legal framework and traditions work to protect shareholder rights, and boards generally play the role assigned to them by international good practice. The Lusaka Stock Exchange Corporate Governance Code was an important step in awareness raising and reform. The Institute of Directors has worked to build understanding and provide training.

Key Obstacles

Existing laws and regulations require harmonization and updating. The regime governing the review and approval of related party transactions is relatively under-developed in the law. The Code is still new, and the process of formally adopting its provisions and recommendations is not yet complete. The SEC is in need of additional resources to carry out its mission. The challenge to policymakers is to implement reforms without raising the costs of remaining listed, or increasing the incentives of companies to leave the public market.

Next Steps

Tapping the potential of capital markets and professionalizing boards and management will require reform efforts to continue. The Companies Act should be revised and harmonized with the Securities Act. Revisions should be accompanied by an analysis of lessons learned from the recently revised Companies Act in the UK. Stakeholders should consider moving explicit protection against unfair related party transactions into the Code, and revising the non-financial disclosure framework for listed companies. The LuSE and its stakeholders should then consider revisions to the Code and further develop the LuSE website as a primary source of information about listed companies.

The SEC should continue to build its enforcement capacity, and to establish corporate governance enforcement priorities. More support and resources should be provided by the public and private sector to the Institute of Directors of Zambia.

Acknowledgements

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Country assessment: Zambia

This ROSC assessment of corporate governance in Zambia benchmarks law and practice against the OECD Principles of Corporate Governance and focuses on public limited companies.

The *Financial Sector Development Plan for Zambia* recognizes the importance of good corporate governance to the financial sector, and calls for “appropriate education, legislation and codes of best practice to facilitate the adoption of Good Corporate Governance principles”.¹

Zambia has taken important steps to improve corporate governance over the past few years. However, fully tapping the potential of capital markets and professionalizing boards and management will require reform efforts to continue. Good corporate governance ensures that companies use their resources more efficiently and leads to better relations with workers, creditors, and other stakeholders. It is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth. The challenge to policymakers is to implement reforms without raising the costs of remaining listed, or increasing the incentives of companies to leave the public market.²

Market profile

Zambia has an active equity market culture with a growing number of listed companies ...

The Lusaka Stock Exchange (LuSE) had 15 listed companies at the end of 2006, an increase of 7 companies since 2000. In addition, 11 public limited companies which have not met the full listing requirements are “quoted” on the exchange. Two companies (Cavmont Capital Holdings Zambia Plc and AEL Ltd.) were listed in 2006. One company (ZCCM-IH) is also listed on the London Stock Exchange. Two companies have issued corporate bonds.

...but the number of listed companies could decrease in the future.

Market participants report increasing pressures on many companies to leave the exchange in the future. There are three trends increasing the pressure to “go private”. First, the tax benefits for listing — once significant—were eliminated in 2003.³ Second, many listed companies are the subsidiaries of foreign (largely South African) listed companies, reducing the benefits of a public listing in Zambia. Finally, recent corporate governance regulation and enforcement appear to have raised the cost of staying listed for some companies.

Ownership and control are concentrated among foreign multinationals and the State.

Ownership of large companies is relatively concentrated; principal controlling shareholders⁴ are the state and foreign multinationals, along with a few family-owned companies.

Valuations have rapidly increased

Market capitalization on the Lusaka Stock Exchange (LuSE) at the end of 2006 was 13.1 billion Kwacha, or USD 3.2 billion, equal to 40.0 percent of GDP at the

¹ Section 1.3.2, *Financial Sector Development Plan for Zambia*, Ministry of Finance and National Planning, May 2004, available at <http://www.boz.zm/FSDP/ExecutiveSummary.pdf>

² This report should be read in conjunction with two related reports by the World Bank for Zambia: the *Accounting and Auditing ROSC* (forthcoming), and *Corporate Governance of State-Owned Enterprises in Zambia*, which reviews the special corporate governance issues of parastatals.

³ Prior to 2003, the corporate tax rate for listed companies was 30% instead of 35%.

⁴ For international comparability, this report uses the term “shareholders” to refer to the owners of the company. In Zambia, both the term shareholder and member appear to be used.

end of 2006. The LuSE share index has increased rapidly in recent years – up by more than 700 percent since 2001, although Zambia’s equity market remains smaller than the average of other countries in the region. There is significant and increasing interest from foreign investors.

Zambia is a common law country

Zambia is a common law country. Key legislation includes the 1994 Companies Act (CA 1994) and the Securities Act 1993, which established the Securities and Exchange Commission of Zambia Act as the principal regulator of securities markets.

The Lusaka Stock Exchange Corporate Governance Code is an important step in awareness raising and reform

The LuSE issued a Corporate Governance Code in 2005. The Code is designed to enhance the corporate governance of listed companies and sets core governance standards and good practices. The Code is not mandatory - companies are required to submit a report to the LuSE describing their compliance with the Code and explaining any non-compliance within 3 months of the end of the fiscal year.

The Code is still new, and many listed companies have begun to adopt the provisions and recommendations of the Code, but the process is not yet complete. Many companies continue to refer internally to corporate governance recommendations in the jurisdiction of their parent company (especially South Africa). The LuSE is now working to enhance its capability to monitor and ensure compliance with the Code.

Key findings

The following sections highlight of the principle-by-principle assessment of Zambia’s compliance with the OECD Principles of Corporate Governance.

Investor protection

Basic shareholder rights are protected

Basic shareholder rights are in place in Zambia. Shareholders can demand a variety of information directly from the company and have a clear right to participate in the annual general meeting of shareholders (AGM). Directors are elected and removed through shareholder resolutions. Shares of public limited companies are freely transferable. Changes to the company articles, increasing authorized capital, and sales of major corporate assets all require shareholder approval. Major corporate transactions require shareholder approval.

Shareholder rights appear to be relatively well protected during shareholder meetings, and there were no reports of problems

Annual meetings (AGMs) must be held within 3 months following the completion of the financial year. Shareholders are notified 21 days in advance for an AGM or a meeting where a special resolution is proposed (14 days for any other type of meeting). Quorum is at least 33 % of total voting rights. Most voting is by “show of hands” – although there were no reports of shareholder exclusion as a result, and shareholders with 5% of voting rights can demand a formal poll. In practice shareholder meetings are not well attended.

Takeover rules are extensive, although the market for corporate control is relatively inactive

The late 1990s was a period of intense merger activity, concentrated in companies where stakeholders are foreign companies. More recently, there have been relatively few takeovers and mergers.

The regulations governing takeovers and mergers are extensive and complete, and appear to be modeled on the UK Takeover Code. Anyone seeking to acquire more than 35 percent of ownership must submit a bid for all shares, and all takeover bids must be approved by the Commission. Because of the relatively small amount of recent activity, the regulations do not appear to be well known or understood in the community.

Concentrated control limits influence of minority shareholders

Concentrated control limits the influence that non-controlling shareholders can have on the company and effectively reduces their protection from abuse. When controlling owners dominate shareholder and board meetings, director accountability to other shareholders becomes critical.

Disclosure

The quality and timeliness of financial reporting is relatively high in most companies.

Publicly listed companies are required to send a copy of the annual accounts to each shareholder. Companies must continuously disclose all material information. Information appears to be generally available for all listed companies, often from a company website. The one exception is ZCCM-IH, which is both a parastatal and a listed company; little information (including annual reports) about the company was available. The LuSE publishes full financial information for many of its listed companies.

Companies are required to periodically disclose related party transactions

Because Zambia has adopted IFRS, listed companies are required to follow IAS 24 (Related Party Transactions). Anecdotal evidence suggests that compliance is uneven, with complete IAS 24 disclosures missing at some listed companies.

The Listing Rules contain elaborate and complete rules that require shareholder approval of significant related party transactions; the stock exchange plays a key role in adjudicating the fairness of the transactions. However, there is very limited awareness of these provisions, and they do not appear to be enforced or complied with.

Companies are required to disclose amounts paid to directors and loans given to officers. Board members are required to disclose interests in contracts with the company but only to the board (and not necessarily to shareholders or to the public).

Ownership and control appears to be relatively well understood

Ownership information must be included in the annual report as a note to the accounts. Companies must disclose ownership by any shareholder (other than a director) who directly or indirectly owns 5% or more of any class of shares (so far as it is known). In practice, however, disclosure appears to be made to the level of the registry of members and does not capture the disclosure of ultimate beneficial owners. Shareholders owning 20 percent or more of voting capital must disclose their ownership. The annual report includes the pattern of major shareholdings.

The small number of listed companies, the lack of complex group structures and the clear identity of the controlling shareholder means that in practice beneficial ownership appears to be relatively clear in most cases.

There are no special requirements for the disclosure of group structures or the disclosure of shareholder agreements.

Company Law and the LuSE Code of Corporate Governance require the disclosure of most non-financial items recommended by the OECD Principles.

Companies must prepare a directors' report and 9 of 13 companies complied with the requirement in 2005.⁵ Companies are also required to disclose their compliance with the LuSE Code, which also requires significant non-financial disclosures, including information about directors, board (but not executive) remuneration, details about the board charter, formal statements on risk management, and information about employees.

⁵ See annex 1 for a summary of the items that must be included in the director's report, and annex 2 for an analysis of compliance with the Director's Report requirement in 2005.

Listed companies have been instructed to follow international accounting and auditing standards, although there are some compliance concerns

Listed companies (like other companies) are required to follow the accounting requirements of the Companies Act, which does not include detailed accounting standards. The Zambian Institute of Chartered Accountants (ZICA) has issued accounting standards in the past, but no longer issues its own standards and requires its members to comply with IFRS. Some market participants report a relatively high degree of compliance with IFRS, but this confidence is not shared by all observers. All companies are required to be audited under the Companies Act. ZICA requires all auditors to follow International Standards of Auditing. Auditor independence is governed by the recently revised Auditor Code of Ethics promulgated by ZICA, which followed revisions to the IFAC Code of Ethics.

A more complete assessment will be provided by the Accounting and Auditing ROSC for Zambia.

The LuSE Code requires boards to appoint audit committees of the board and that the committees should have formally determined terms of reference, life span, role, and functions approved by the board.⁶ There is no requirement to include directors with financial and accounting expertise. External auditors must be appointed by the board on the recommendation of the audit committee. The external auditor must be approved by the AGM.

A few listed companies have additional board committees dedicated to overseeing company corporate governance standards.

Company oversight and the board

Listed company boards generally play the role assigned to them by international good practice

Zambia has a one-tier board system. The Companies Act (supplemented by the Code) specifies that the board should appoint the chief executive and that it should regularly review the strengths of senior managers as potential successors to the chief executive. The position of company secretary is well established in law and plays an important role in legal and governance compliance. By law, the maximum board term is three years, and the minimum board size is two; the typical board size is six.

Fiduciary duties of care and loyalty and based on English common law

Fiduciary duties of directors are not described in Zambian law and are instead laid out in case law, following the English common law tradition. Case law in Zambia is sparse and emphasizes loyalty to the company (not to shareholders). Because of awareness-raising by various bodies in Zambia (and moves taken by parent companies), directors are more aware of their fiduciary duties under the law.

The LuSE Code provides significant good-practice guidance to boards and directors

The Code states that the board must ensure compliance with all relevant law and regulation and that the board must adopt a code of conduct with respect to conflicts of interest. The Code also requires adequate board remuneration, formal and transparent board nomination procedures, and explicitly assigns the board with the task of risk management and the establishment of internal control processes and procedures. The Code requires the board to adopt a charter and benchmarks to gauge its own performance.

Concentrated ownership may weaken board authority

Specific concerns were raised about two important groups of companies. First, many listed companies are the Zambian subsidiaries of international firms, with managing directors appointed by the parent companies. The direct relationship between the owner and management can mean that some important corporate

⁶ The Banking and Financial Services Act requires that the bank boards establish an audit committee of at least three directors, a majority of whom are persons who are non-executive.

decisions are not made at the board (or AGM) level and, as a result, boards—as distinct from management—are sometimes not the driving force behind corporate strategy and strategic issues. For example, credit decisions in the internationally owned banks are taken outside of Zambia, effectively reducing the board’s influence.

Second, among the wider non-listed group of ‘public interest entities’ (particularly parastatals), board practice is less sophisticated and boards are weaker relative to other company bodies.⁷

In practice, there is limited director accountability

In practice, there are almost no suits against directors. It is not legal to indemnify directors against liability. There are few discovery powers under Zambian law, allowing insiders to hide documents. A derivative suit was successfully launched against Zambian Breweries (because of the violation of pre-emptive rights). Earlier, the directors of Meridian Bank, a now-defunct Zambian bank, were sued after they allegedly received deposits while knowing that the bank was insolvent. (This case is still under review).

Directors in Zambia have access to an active director training program.

The Institute of Directors of Zambia (IODZ) was established in 2000 and has had a major impact on the awareness of corporate governance and the duties and responsibilities of directors. Approximately 500 delegates (including directors) have attended “1-day programs” or longer programs offered in conjunction with international partners. Director professionalism was further supported by the Code, recommends that the board must have induction training for new directors on their duties, responsibilities, powers, and potential liabilities. The majority of board members of listed companies appear to have received training from the IOD. Unlike many similar organizations in emerging market countries, the IOD appears to be financially sustainable.

The regime governing the review and approval of related party transactions is relatively under-developed in the law

Neither the law nor Code provides any requirements related to the review and approval of related party transactions. The Listing Rules contain elaborate and complete rules that require shareholder approval of significant related party transactions; the stock exchange plays a key role in adjudicating the fairness of the transactions. However, there is very limited awareness of these provisions, and they do not appear to be enforced or complied with.

Provisions on board conflicts of interest do not appear to apply to executives or to directors who are appointed by conflicted controlling shareholders but have no interest themselves in the transaction. There is no explicit responsibility for the board to manage conflicts of interest or oversee related party transactions.

The LuSE Code has a relatively weak formulation of independence

The Code requires boards to be composed of a majority of non-executive directors, but there are no explicit requirements for ‘independence’. Non-executive directors must have the skills and experience necessary to make judgments on company strategy, performance, resources, and performance evaluation. However, many listed companies have adopted the practice of appointing executive directors from affiliates of the parent (foreign) company. This practice makes it difficult for the board to maintain its objectivity and to act against the interests of its parent shareholder.

The Code requires that the Chair and the CEO be performed by separate people. As shown in Annex 1, the positions are separate in every listed company where

⁷ The companion report *The Corporate Governance of State-Owned Enterprises in Zambia* reviews this situation in more detail.

data is available.

The Code is silent in a number of other areas that could allow or require minority shareholder participation on the board (e.g. cumulative voting or mandatory proportional representation, the ability to add director nominations to shareholder meeting agendas).

Enforcement

Enforcement actions of the SEC and the Registrar are constrained by limited resources

The SEC has the power to investigate problems and take enforcement action. Shareholders can complain to the SEC, which can investigate within its powers. The SEC has strong power in certain important areas because it must approve any amendment to company articles, issues of new shares, and takeover offers.

However, the resources available to the SEC are low. The SEC secretariat currently consists of three staff. Retaining qualified staff has proven to be difficult because of low salaries (Bank of Zambia employees are paid on average three times more than SEC employees). As a result of resource constraints, the SEC has struggled at times to maintain its effectiveness. There do not appear to have been any recent cases or investigations against listed companies.

The Patent and Company Registrar office (PACRO) also has resource constraints. The number of staff available for activities outside of the area of registration (such as legal or enforcement issues) is extremely limited. PACRO is also working to build capacity.

The Bank of Zambia has significant resources to carry out its oversight and enforcement functions. A high number of bank failures in the 1990s led to subsequent capacity building, competitive salaries, and adequate staffing.

No system of independent oversight over the audit profession

Oversight of the audit profession is provided by the Zambian Institute of Chartered Accountants (ZICA), the traditional self-regulator of the profession. However, due to a lack of capacity, their actual role in audit oversight is limited. ZICA has a disciplinary committee whose powers are set out in the Accountants Act, but there is currently no monitoring or disciplining of ZICA members.

There is an emerging international consensus that self-regulatory arrangements and authority to impose sanctions should be balanced with adequate and independent oversight systems. The accounting and auditing ROSC (forthcoming) will provide additional details and recommendations.

Shareholders have strong rights to redress under the law, although these rights are tempered by a lack of efficiency in the legal system

- Shareholders have pre-emptive rights to purchase new shares, to protect against share dilution and expropriation through capital increases.
- Shareholders (who have at least 5 percent of voting rights) can call a special shareholders meeting.
- Shareholders may sue if the “affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner that is oppressive”. Courts ruling in favor can then issue orders directing or prohibiting any act or canceling or varying any transaction or resolution.
- Directors can be sued for violations of their fiduciary duties. In practice, there are few suits against directors. It is not legal to indemnify directors against liability.

There are no rights for shareholders to order a special inspection of a transaction (before or after it is made), and no mandatory provisions in the Companies Act (or the LuSE Code) for special voting rules to encourage effective shareholder participation (i.e. cumulative voting or proportional representation).

Recommendations

The following section details policy recommendations that can address weaknesses in Zambia's corporate governance and investor protection framework.

Revise and harmonize the Companies Act and the Securities Act

The Companies Act and the Securities Act should be updated, clarified, and fully harmonized, based on the experience of the past 15 years. Specific recommendations for updating the legal framework are addressed below.

The review of the Companies Act should include an analysis of lessons learned from the recently revised Companies Act in the UK

The recent update of the Companies Act in the UK included a number of significant changes to the traditional company law framework, in which many provisions of "judge-made" law were incorporated and formalized into the new Act. In particular, the fiduciary duties of care and loyalty were written into law. Given that Zambia derives its legal framework from common law traditions, policymakers should consider implementing the lessons learned from the UK experience in the update of Zambia's Companies Act.

Consider moving the protections against unfair related party transactions from the Listing Rules to the Code and/or the Companies Act

Shareholder protection from unfair related party transactions are contained in the LSE Listing Rules, but awareness of the rules is low and they do not appear to be enforced. Policymakers should consider moving the rules from the Listing Regulations to the Code or to the Companies Act. Good practice suggests that the revised law and regulation should include:

- The board of directors should have the explicit responsibility for managing conflicts of interest and approving all related party transactions.
- Board members with conflicts of interest should be required to fully disclose all material facts about all conflicts of interest to the board.
- For large or important related party transactions, the framework should require shareholder approval (and any shareholders with conflicts of interest should not be allowed to vote).
- Large related party transactions should be immediately disclosed before shareholder or board approval (as a "material event" disclosure), to allow shareholders to register disapproval.
- Shareholders with a significant share of voting rights (e.g. 10 percent) should have the right to call a special audit of a transaction at company expense.

Revise and rationalize the non-financial disclosure framework for listed companies

Listed companies already face significant disclosure obligations under the law, listing rules, and recommendations of the LuSE Code. However, some of the non-financial disclosure recommendations of the OECD Principles are not implemented under the law. These include harmonization and updating of existing requirements for the directors' report, and better rules for ownership disclosure (including disclosure of shareholder agreements, disclosure of group structures, and enforcement of rules to the level of the ultimate beneficial owner).

Require immediate disclosure by board members and executives of any transactions in company shares

Zambia has adopted rules that address illegal insider trading. However, as in every market, insider trading laws is difficult and expensive to enforce. Many small markets have found an alternative strategy: requiring insiders to immediately disclose any transactions in company shares. This rule would have a number of useful purposes. First, it provides valuable information to the market regarding the insider attitudes towards their company. Second, the failure to file reports on insider trades provides a clear-cut violation that a prosecutor can use which does not require proving the intent of the insider the use confidential

information. It provides prosecutors with a form of a bright line test that would enable them to prosecute insiders violating the ban more easily.

Law, regulation, and the LuSE Code should require additional information about prospective board members and the nomination process.

This would include:

- More complete disclosure about board members before election, including a statement about the director's links to the company (and their independence).
- The directors' report should include mandatory disclosures about the board nomination process.

Complete reforms in other parts of the company and securities law framework.

A number of other areas could be reviewed during the legal reform process, including:

- Consider giving the Court the power to declare a shareholder meeting invalid if a shareholder is accidentally omitted from the invitation list or if the shareholder does not receive an invitation.
- Update the legal framework for transfer agents and clearing and settlement.
- Update creditor rights and the role of the board during insolvency (following a World Bank Insolvency and Creditor Rights ROSC).
- Harmonize takeover and merger rules.
- Update the rules that close the registry of members before corporate actions, and instead introducing the concept of a "record date"⁸.

Revise and harmonize the Code of Corporate Governance

At the conclusion of the legal reform process, the LuSE and its stakeholders should consider revisions to the Code of Corporate Governance.

Consider the introduction of the concept of board member independence to the LuSE Code

One notable observation about the LuSE Code is that there is no concept in the Code of independence – that is, requirements for board members that are independent of the company and its major shareholders. The Code currently requires a majority of "non-executive" directors, which does not exclude conflicts of interest noted on current boards -- like the appointment of executives from affiliates of the same parent. Future revisions of the Code could introduce an independence requirement for one or two members of the board. Independent board members could also supplement the rules described above for related party transactions – for example, an audit committee chaired by an independent member could be responsible for making recommendations to the full board on related party transactions.

Other changes to the Code should also be considered

- Require explicit shareholder approval for board remuneration and remuneration policy;
- Lengthen the shareholder meeting notice period for listed companies to 30 days, in line with requests from international investors;
- Require formal polls at shareholder meetings for key shareholder decisions, or lower the threshold for investors to request polls;
- Clearly state that the board has responsibility of monitoring company

⁸ In a system with a record date (sometimes called date of record), shareholders must own shares on a particular date (established by the company) in order to be eligible for corporate actions, including participation in the shareholder meeting.

compliance with the Code, and that the board has the general responsibility for overseeing disclosure and communications processes.

LuSE should improve disclosure of company compliance with the Code

The Listing Rules should explicitly require companies to “comply or explain” their compliance with the LSE Code (rather than foreign codes). The working group revising the Code should consider whether or not compliance with foreign codes is an acceptable replacement.

Compliance with some parts of the Listing Rules is weak or non-existent, particularly the sections on large and related party transactions. One alternative is to supplement the existing provisions and include comparable provisions in the revisions to the Code (as noted above).

Revisions to the disclosure regulations should also require the explicit submission of a “governance report” accompanying the directors’ report. The LuSE should develop a standard template to report Code compliance and a process to capture compliance reports and present them on the LuSE website.

Increase public sector enforcement activities

Increase the resources available to the SEC

Additional resources are essential for the SEC to become a serious capital markets regulator. SEC should be capable of taking the lead when working with the LuSE and BOZ to update law and regulation, enforce relevant requirements regarding major and related party transactions, disclosure of ownership, and financial reporting. It should be able to issue fines and reverse abusive or incorrect corporate actions. To take on these new responsibilities, an increased and secure source of funding will be needed, as will greater autonomy that does not sacrifice accountability.

Establish corporate governance enforcement priorities

For the SEC, the most important priority is to improve compliance with disclosure regulations. Key concerns should include reporting on compliance with the LuSE Code (see above), ownership disclosure rules, and reporting on related party transactions.

SEC should continue to work to build its enforcement capacity

To achieve these priorities the SEC should work to build its enforcement capability. Key steps include increasing the technical level of staff in key areas (particularly legal and accounting experts), continuing to define enforcement priorities, and refining enforcement procedures.

Develop a system of independent audit oversight

Zambia’s current system of self-regulation for accountants and auditors will not be adequate as responsibilities increase for external auditors and those preparing IFRS-compliant financial statements. Independent oversight for accounting and auditing should be introduced to enhance credibility.

A complete set of recommendations will be developed in the Accounting and Auditing ROSC for Zambia.

Private sector initiatives

More support and resources should be provided by the public and private sector to the Institute of Directors of Zambia.

More resources should be invested in the mission of the IODZ - training board members and raising awareness of the importance of good corporate governance. The IODZ is already an established and valuable contributor to corporate governance reform in Zambia. Moving forward will require more support from the corporate and investor communities, and continued work to develop relevant curricula. The government can support the Institute by requiring formal training of all board members in companies where the state has participation. The IOD can also develop guidelines on key board processes, including the oversight of internal controls and the implementation and monitoring of codes of ethics, and

training courses based on the guidelines.

The IOD should also develop additional lines of advisory business, including a board evaluation service to implement the Code's recommendations in this area.

Further develop LuSE website to become primary source of information about listed companies.

The LuSE should continue to improve the information about listed companies available on its website and should develop a comprehensive guide for disclosure for listed companies.

Focus on ZCCM

In conversations with market participants, ZCCM-IH stands out, both in the key role it plays in the oversight of Zambia's most important industry and as an apparent example of non-compliance with disclosure requirements.

The board of ZCCM should consider initiating a corporate governance improvement and training program. This should include a restructuring and empowering of the board, and a revamping of its internal control and disclosure practices. In addition, ZCCM staff should be trained in corporate governance good practice, to be better able to impose good governance and transparency on the copper mining companies in its portfolio.

Summary of Observance of OECD Corporate Governance Principles

Please note: FI=Fully Implemented; BI=Broadly Implemented; PI=Partially Implemented; NI=Not Implemented; NA=Not Applicable

	Principle*	FI	BI	PI	NI	NA
I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK						
IA	Overall corporate governance framework		X			
IB	Legal framework enforceable /transparent			X		
IC	Clear division of regulatory responsibilities			X		
ID	Regulatory authority, integrity, resources				X	
II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS						
IIA	Basic shareholder rights					
IIA 1	Secure methods of ownership registration	X				
IIA 2	Convey or transfer shares			X		
IIA 3	Obtain relevant and material company information			X		
IIA 4	Participate and vote in general shareholder meetings			X		
IIA 5	Elect and remove board members of the board	X				
IIA 6	Share in profits of the corporation		X			
IIB	Rights to part in fundamental decisions					
IIB 1	Amendments to statutes, or articles of incorporation	X				
IIB 2	Authorization of additional shares	X				
IIB 3	Extraordinary transactions, including sales of major corporate assets	X				
IIC	Shareholders AGM rights					
IIC 1	Sufficient and timely information at the general meeting		X			
IIC 2	Opportunity to ask the board questions at the general meeting			X		
IIC 3	Effective shareholder participation in key governance decisions			X		
IIC 4	Availability to vote both in person or in absentia		X			
IID	Disproportionate control disclosure				X	
IIE	Control arrangements allowed to function					
IIE 1	Transparent and fair rules governing acquisition of corporate control		X			
IIE 2	Anti-take-over devices		X			
IIF	Exercise of ownership rights facilitated					
IIF 1	Disclosure of corporate governance and voting policies by inst. investors				X	
IIF 2	Disclosure of management of material conflicts of interest by inst. investors				X	
IIG	Shareholders allowed to consult each other		X			
III. EQUITABLE TREATMENT OF SHAREHOLDERS						
IIIA	All shareholders should be treated equally					
IIIA 1	Equality, fairness and disclosure of rights within and between share classes	X				
IIIA 2	Minority protection from controlling shareholder abuse; minority redress		X			
IIIA 3	Custodian voting by instruction from beneficial owners	X				
IIIA 4	Obstacles to cross border voting should be eliminated			X		
IIIA 5	Equitable treatment of all shareholders at GMs		X			
IIIB	Prohibit insider trading			X		
IIIC	Board/Mgrs. disclose interests			X		
IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE						
IVA	Legal rights of stakeholders respected		X			
IVB	Redress for violation of rights		X			
IVC	Performance-enhancing mechanisms		X			
IVD	Access to information					X

	Principle*	FI	BI	PI	NI	NA
IVE	"Whistleblower" protection				X	
IVF	Creditor rights law and enforcement			X		
V. DISCLOSURE AND TRANSPARENCY						
VA	Disclosure standards					
VA 1	Financial and operating results of the company		X			
VA 2	Company objectives		X			
VA 3	Major share ownership and voting rights			X		
VA 4	Remuneration policy for board and key executives				X	
VA 5	Related party transactions				X	
VA 6	Foreseeable risk factors			X		
VA 7	Issues regarding employees and other stakeholders				X	
VA 8	Governance structures and policies			X		
VB	Standards of accounting & audit			X		
VC	Independent audit annually				X	
VD	External auditors should be accountable			X		
VE	Fair & timely dissemination			X		
VF	Research conflicts of interests				X	
VI. RESPONSIBILITIES OF THE BOARD						
VIA	Acts with due diligence, care			X		
VIB	Treat all shareholders fairly			X		
VIC	Apply high ethical standards			X		
VID	The board should fulfill certain key functions					
VID 1	Board oversight of general corporate strategy and major decisions		X			
VID 2	Monitoring effectiveness of company governance practices			X		
VID 3	Selecting/compensating/monitoring/replacing key executives	X				
VID 4	Aligning executive and board pay		X			
VID 5	Transparent board nomination/election process				X	
VID 6	Oversight of insider conflicts of interest				X	
VID 7	Oversight of accounting and financial reporting systems			X		
VID 8	Overseeing disclosure and communications processes				X	
VIE	Exercise objective judgment					
VIE 1	Independent judgment				X	
VIE 2	Clear and transparent rules on board committees		X			
VIE 3	Board commitment to responsibilities		X			
VIF	Access to information		X			

Corporate Governance Landscape

OWNERSHIP FRAMEWORK

Large companies in Zambia can be placed into four groups:

Listed Companies. There were 15 companies listed on the Lusaka Stock Exchange at the end of 2006, an increase of 7 companies since 2000. In addition, 11 companies are “quoted” – public limited companies which had not met the requirements for full listing. Two companies (Cavmont Capital Holdings Zambia Plc and AEL Ltd.) were listed in 2006. Two companies have issued corporate bonds (Farmers House Plc and Barclays Bank Zambia Plc). One company (ZCCM-IH) is also listed on the London Stock Exchange. Shoprite Holdings Ltd (a South African company) is listed on the Johannesburg Stock Exchange, JSE.

Zambia Stock Market: Key Indicators (2001- 2006)

	2006	2005	2004	2003	2002	2001
LuSE Share Index	1838	799	507	319	265	262
Market Cap/GDP (%)	40	29	38	21	8	11
Number of Listed Companies	15	13	13	12	11	NA
New Listings	2	0	1	1	1	2
Delistings	0	0	0	1	0	0
Turnover Ratio	0.7%	0.7%	0.4%	1.4%	1.0%	19.7%

Several listed companies are controlled by foreign parents. Foreign investors control a significant proportion of the listed company sector. Four listed companies are controlled by South African groups, and South African shareholders own shares in other companies as well. The shares of the parent companies of a number of listed companies also trade on foreign exchanges. Shoprite Holdings Ltd are listed on the Johannesburg Stock Exchange, JSE. The shares of the parent companies of a number of listed companies also trade on foreign exchanges.

Several incentives have been put in place to promote rapid development of the capital market in Zambia. These include (i) no exchange controls, (ii) no restrictions on shareholding levels, (iii) no restrictions on foreign ownership, (iv) no capital gains tax, and (v) no property transfer tax on listed securities. However, market participants report that delisting pressures may increase in the future. Tax benefits for listing—once significant—were eliminated in 2003.⁹ In addition, recent corporate governance regulation and enforcement appear to have raised the cost of staying listed for some companies, resulting in increased pressure to delist.

Market capitalization on the LuSE at the end of 2006 was 13.1 billion Kwacha, or USD 3.2 billion, equal to 40.0 percent of GDP at the end of 2006. Although Zambia’s equity market is smaller than the average of other countries in the region (see table below), the LuSE share index has increased rapidly in recent years, and there is significant and increasing interest from foreign investors. The LuSE share index has grown by more than 700 percent since 2001. The Stock Exchange is currently planning to reform the “quoted company” tier in order to create a true second tier to facilitate the quotation and trading of shares of smaller growth companies.

Zambia and other Emerging Markets: Selected Market Data (2005)¹⁰

Country Name	Listed Companies	Market Cap % GDP	Market Cap (Billions \$US)	Turnover Ratio (%)	Market Cap % of OECD Avg.	Market Cap (\$) % of OECD Avg.	Turnover ratio % of OECD Avg.
Uganda	5	1.2	.1	3.1	1.2	0.0	3.3
Tanzania	6	4.9	.6	2.3	4.9	0.0	2.4
Namibia	13	6.8	.4	1.5	6.8	0.0	1.6
Ghana	30	12.9	1.4	2.2	12.9	0.1	2.3
Zambia	12	13.6	1.0	2.0	13.7	0.1	2.1
Cote d'Ivoire	39	14.5	2.3	1.4	14.6	0.2	1.5
Nigeria	214	19.6	19.4	11.5	19.7	1.3	12.0
Botswana	18	26.1	2.4	1.8	26.2	0.2	1.9
Kenya	47	35.5	6.4	9.8	35.7	0.4	10.3
Mauritius	42	40.6	2.6	6.0	40.9	0.2	6.3
Zimbabwe	79	71.4	2.4	15.3	71.8	0.2	16.0
Regional average	43	21.2	3.3	4.7	21.3	0.2	5.0
South Africa	388	235.4	565.4	39.3	236.9	37.7	41.1
OECD Average	1046	99.4	1,501.4	95.7	100.0	100.0	100.0

The banking sector is now dominated by the private sector. Six of the 13 commercial banks are controlled by foreign

⁹ Prior to 2003, the corporate tax rate for listed companies was 30% instead of 35%.

¹⁰ Source: World Development Indicators 2006. Data for Zambia exclude Shoprite. Regional average includes 12 African equity markets listed above but excludes South Africa. OECD average includes 24 high-income OECD countries (as defined by WDI).

parents, and have largely adopted governance structures based on the requirements of their parents. Two banks are listed. One large bank remains state-owned (Zambia National Commercial Bank, or Zanaco), although press reports indicate that privatization discussions are underway.

Commercial Banks in Zambia (2004)

Bank	Total Assets (ZK Billion)
Barclays Bank Zambia Plc	1,018
Zambia National Commercial Bank Plc	931
Standard Chartered Bank Plc	787
Stanbic Bank Ltd	545
Citibank Ltd	488
Indo-Zambia Bank Ltd	272
Finance Bank Zambia Ltd	184
African Banking Corporation Ltd	101
First Alliance Bank Ltd	66
Bank of China	63
Investrust Bank Ltd	46
Cavmont Capital Bank Ltd	27
Intermarket Bank	27

Institutional investors in Zambia are relatively small shareholders. Insurance companies do place a share of their funds in financial markets and specifically in equity, and public pension funds also play an important role. The two pension funds are public, and are concerned, respectively, with retirement benefits, and social security. There are no investment funds operating in Zambia.

	Total Assets (ZK Billion)	Members
Occupational Pension Schemes		
African Life Financial Services	106	16991
Bank of Zambia	46	692
Madison Insurance Company Zambia	18	4001
Mukuba Pension	64	14798
Professional Insurance Corporation	29	3798
Zambia State Insurance Corporation	98	>3000
Statutory Pension Schemes		
Local Authority Superannuation Fund (LASF)	31	22907
National Pension Scheme Authority (NAPSA)	500	330000
Public Service Pension Fund	70	130012

LEGAL AND REGULATORY FRAMEWORK

Corporate legal framework. Zambia is essentially a common law country. The legal framework governing companies is Companies Act 1994 administered by the Patents and Companies Registration Office (PCRO), which regulates non-listed private companies.

Company types. Company forms are defined in the Companies Act 1994, and overseen by the Patents and Company Registration Office (PACRO). There are three main types of companies in Zambia: private companies, public limited companies, and foreign companies.¹¹ Private companies cannot have more than 50 members (shareholders), and their shares are not freely transferable. Private companies can be further divided into private companies limited by shares, private companies limited by guarantee, and unlimited companies. No shares are issued for private companies limited by guarantee. Instead each subscriber signs a declaration of guarantee specifying the amount he undertakes to contribute to the assets of the company in the event of winding-up. Private companies are required by law to submit annual returns to PACRO (the Registrar), including changes of particulars of directors, Registered office, name.

Public limited companies (Plc) are open-ended in nature, and there are no restrictions on the maximum number of members. Shares must be freely transferable, and must be quoted or listed on the stock exchange. Incorporation requires the issuance of a prospectus, an invitation to the general public to subscribe for shares.

Securities law framework. The Securities Act 1993 regulates the stock exchange, brokers and listed companies. Compliance is overseen by the Securities and Exchange Commission (SEC). A public limited company must be registered with the SEC -- companies issuing public securities need to file a registration statement, which must be approved by the SEC. The issuer then must prepare a prospectus for the purpose of any public offer to be made in relation to any securities that are to be registered under Section 32.

Listing rules. All public limited companies must register with the SEC, and their shares must be traded on the stock exchange. Public limited companies are either "quoted" on the stock exchange (i.e. available for trading, but with no

¹¹ Foreign companies are incorporated outside Zambia and are present in the country as branches foreign companies.

additional listing requirements) or are "listed" (i.e. must follow the LuSE's listing requirements and meet on-going obligations). The listing requirements are: (i) a subscribed capital of at least K 250 million¹², (ii) a minimum of 11 million issued shares, (iii) a satisfactory profit history for 3 years prior to listing, (iv) 25% free float for each share class (i.e. held by the public), unless otherwise agreed with the Board, (v) a minimum of 300 equity shares, 25 preferred shares and 10 debentures; (vi) the minimum initial issue price of securities has to be agreed with the board.

In addition the company must publish a prelisting statement, including a responsibility statement by the directors that the facts presented are not misleading or false. The prelisting statement has to be signed by every director which then has to be approved by the board before its publication.

The Listings Rules are an important part of the corporate governance framework. However, their complexity and the small resources of the exchange result in limited application / enforcement of certain sections (particularly those sections addressing related party transactions).

Banking Law. Banks and financial institutions are regulated by the Banking and Financial Services Act 1996 (BFSA) which is administered by the Bank of Zambia.

Corporate Governance Codes. The LuSE issued a Corporate Governance code in 2005 that provides basic guidelines for core governance standards and practices. The Code is designed to enhance the corporate governance of listed companies. Companies are required to submit a report to the LuSE stating their areas of compliance and non-compliance with code within 3 months of the end of the fiscal year.

Securities regulator. The securities market regulator is the Securities and Exchange Commission (SEC). The SEC is a corporate body that monitors the stock brokers, stock exchanges, publicly listed companies, investment advisors, fund managers, non-bank custodians and the central security depository. The mission statement of the SEC is to develop the securities market as a vehicle for public investment and promote economic development. The SEC oversees the workings of the Zambian capital market and protects investors' interests. It also tries to ensure that Zambians participate in the privatization process by educating them to purchase shares on the LuSE. Employees of the SEC receive corporate governance training.

The SEC's role and powers were enumerated in the Securities Act 1993. The SEC proposes changes to statutes, rules and regulations and has the power to conduct investigations. The SEC is a commission, operating under the auspices of the Ministry of Finance and National Planning. The members are nominated by the Minister. The SEC has 6 commissioners and 1 chairman.¹³ The chairman and vice chairman are appointed by the Minister of Finance. The chairman can serve for a term of 3 years renewable once. The Secretariat of the SEC consists of the Secretary and Chief Executive, Director of Licensing, Director of Enforcement, Director Securities Registration and the Finance Director; each Director also has a deputy. The SEC makes decisions through committees.¹⁴

Stock exchange. The Lusaka Stock Exchange (LuSE) is Zambia's only stock exchange. It was organized with the assistance of the World Bank's International Finance Corporation and opened in February 1994. The IFC structured the exchange to meet G-30 recommendations for clearing and settlement system design and operations. Since inception, the LuSE has offered trading in equity securities. In March 1998, the LuSE became the official market for trading in government bonds. All transactions in listed securities or government bonds must be carried out through the LuSE. LuSE is a self-regulatory organization, and is regulated by the SEC.

The Stock Exchange is managed by a board of directors appointed or elected in accordance with its articles of association.¹⁵ The board appoints a general manager, who has four key staff members: Legal Counsel and Company Secretary, Depository Manager, Finance Manager and PR Manager. The stock exchange may suspend securities in case of violation of listing or trading rules. The exchange does not have an electronic surveillance system.

Central depository. The Lusaka Stock Exchange Central Securities Depository (LuSE CSD), a subsidiary of the Lusaka Stock Exchange, acts as central registry, and carries out clearing and settlement. All shares of listed and quoted companies and listed debt securities are held in the LuSE CSD. The LuSE CSD is owned by the LuSE (50%) and by two sub-custodian banks (Barclays Bank (Z) and Stanbic bank (Z) Ltd, 50%). An account is opened for every holder of an instrument after a contract note has been issued.

Banking and other regulators. The Bank of Zambia regulates and supervises the banking sector, and is in general considered to be an effective regulatory body, The banking sector in Zambia has been characterized in the past by instability, low financial intermediation, and dependency on lending to big companies, foreign exchange trading, trading in government securities, complex liquidation processes, weak legal infrastructure and high cost of banking services. The

¹² Capital includes reserves but excludes minority interests, revaluations of assets that are not supported by a valuation of an independent professional expert acceptable to the Board prepared within the last 6 months and intangible assets.

¹³ Commission members include representatives of the Bank of Zambia, Law Association of Zambia, Zambia Institute of Chartered Accountants, Zambia Council of Commerce and Industry, Non Governmental Organization Coordinating Committee, Lusaka Stock Exchange and the Ministry of Justice.

¹⁴ The committees are the Capital Market Development and Education Committee, licensing committee, registration committee, takeovers and mergers committee, compensation committee and the finance and general purpose committee.

¹⁵ Securities Act S 13 (1)

FSDP has provided a number of recommendations to improve the banking sector and its performance.

Company Registrar. The Patents and Companies Registration Office (PACRO) is an executive agency of the Ministry of Commerce, Trade and Industry (MCTI). PACRO is responsible for the legal system for registration and protection of commercial property (including company registration), and for disseminating information. PACRO's company registration activities are governed by the Companies Act. PACRO is going through significant reforms, to improve service and responsiveness.

Shareholder rights groups. A number of organizations have been working to promote corporate governance reform. One of the most visible is the Institute of Directors (IODZ). IODZ was launched in 2000, following up on the first workshop on corporate governance jointly conducted in Lusaka by the Commonwealth Association for Corporate Governance and the Institute of Chartered Secretaries and Administrators (Zambia). The mission of the IODZ is "to promote high standards of corporate governance in both the private and public sectors in Zambia, through education, training and development thus, ensuring the highest professional and ethical standards amongst directors and the boards on which they serve." The objectives of the IOD are (i) promote excellence in corporate governance, to represent interests of directors and facilitate their development; (ii) enhance the effectiveness of directors and develop a high standard of ethics among them, (iii) provide an effective voice for company directors in public affairs. The IOD holds director training sessions and business luncheons to enable directors to interact and share ideas.

Accountancy bodies. A number of professional bodies are active in the area of accounting and auditing, particularly the Zambia Institute of Chartered Accountants (ZICA). ZICA was established under the Accountants Act of 1982, and is a self-regulatory organization managed by a council consisting of 12 members, of which 10 are elected by members at the AGM and two are nominated by the Minister of Finance and National Planning. ZICA is responsible for setting accounting and auditing standards in Zambia.

Principle - By - Principle Review of Corporate Governance

This section assesses compliance with each of the OECD Principles of Corporate Governance. Please see Methodology for Assessing the Implementation of the OECD Principles on Corporate Governance for full details.¹⁶

SECTION I: ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.

Assessment: Broadly Implemented

Overall capital market transparency. The operation of the capital market is reasonably transparent, although it is relatively small. Overall, information is generally available about listed companies; the major exception appears to be ZCCM, which is well known in the market for its relative lack of transparency. The listed firms with foreign parents and several other companies appear to practice relatively high levels of transparency and appear to be working towards international good practice in the area of corporate governance.

The FSDP report states that one of its objectives to improve the transparency in the capital markets in Zambia.

Regulatory consultation process. The authorities and legislatures develop policies, laws and regulation with consultation with other stakeholders. When the SEC proposes changes in statutes and new regulations, the respective stakeholders are consulted. Relatively few new regulations have been issued in recent years.

Principle IB: The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.

Assessment: Partially Implemented

Legal clarity. The legal and regulatory requirements affecting corporate governance practices are well relatively understood and not subject to sudden changes. However, some participants in the market noted that the Companies Act is in general confusing, inadequately organized, and not fully harmonized with other key pieces of legislation. For example, both the Companies Act and the Takeover Rules (SEC regulations) address takeover and merger issues, with different approaches and terminologies. "Squeeze-out" rules (which in most countries form part of securities or takeover law or regulation) are addressed in the Companies Act. The Companies Act does not take into account many recent developments in registry / custody activities, and needs to be updated in these areas.

The Securities Act and its implementing regulations appear to have been "frozen" since its introduction in 1993, and thus has not adjusted to lessons of experience (or, for example, the adoption of International Financial Reporting Standards in Zambia). Many of the more complex rules (particularly the Takeover Rules) are poorly understood by market participants.

The FSDP notes that the government intends to develop the regulatory system to facilitate the adoption of good governance principles.

Consistency of application. There are inconsistencies between the different acts however, efforts are being made to

¹⁶ Principles are **Fully Implemented** if the OECD Principle is fully implemented in all material respects with respect to all of the applicable Essential Criteria. Where the Essential Criteria refer to standards (i.e. practices that should be required, encouraged or, conversely, prohibited or discouraged), all material aspects of the standards are present. Where the Essential Criteria refer to corporate governance practices, the relevant practices are widespread. Where the Essential Criteria refer to enforcement mechanisms, there are adequate, effective enforcement mechanisms. Where the Essential Criteria refer to remedies, there are adequate, effective and accessible remedies. A **Broadly Implemented** assessment is likely appropriate where one or more of the applicable Essential Criteria are less than fully implemented in all material respects. A **Partly Implemented** assessment is appropriate when (1) one or more core elements of the standards described in a minority of the applicable Essential Criteria are missing, but the other applicable Essential Criteria are fully or broadly implemented in all material respects (including those aspects of the Essential Criteria relating to corporate governance practices, enforcement mechanisms and remedies); and (2) the core elements of the standards described in all of the applicable Essential Criteria are present, but incentives and/or disciplinary forces are not operating effectively to encourage at least a significant minority of market participants to adopt the recommended practices; or the core elements of the standards described in all of the applicable Essential Criteria are present, but implementation levels are low because some or all of the standards are new, it is too early to expect high levels of implementation and it appears that the reason for low implementation levels is the newness of the standards (rather than other factors, such as low incentives to adopt the standards). A **Not Implemented** assessment likely is appropriate where there are major shortcomings. A **Not Applicable** assessment is appropriate where an OECD Principle (or one of the Essential Criteria) does not apply due to structural, legal or institutional features (e.g. institutional investors acting in a fiduciary capacity may not exist).

change this.

Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

Assessment: Partially Implemented

Clear division of regulatory responsibility. Regulatory responsibility over listed companies has been clearly divided between the SEC and the Bank of Zambia – the only area of overlap is listed banks.

Regulatory cooperation. Interviews with regulators and market participants suggest a significant degree of cooperation between the various financial sector regulatory bodies. The SEC is allowed to conduct investigations even if the object of the investigation is licensed by the Bank of Zambia.

Legal harmonization. There are some inconsistencies between the various Acts. Phase II of the Financial Sector Development Program is expected to address existing inconsistencies regarding supervision and regulation of the financial market. A review of the Companies Act 1994 and the LuSE CG Code is also planned.

Effectiveness of self-regulatory bodies. There are two self-regulatory bodies that are relevant to the corporate governance framework. The LuSE has a relatively strong reputation, and has worked to build the market and to protect its integrity. However, the LuSE has struggled with inadequate resources and has had difficulty in retaining staff because of low salaries. The legal department is considered to be short-staffed, and there is only one person that is responsible for monitoring and listing requirements.

The Zambian Institute of Chartered Accountants (ZICA) is a traditional self-regulator of the auditing profession, and acts as the accounting and auditing standard setter. Self-regulatory organizations in other countries have been criticized for a lack of enforcement actions and power.

Principle ID. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Assessment: Not Implemented

Supervisory authority. The SEC has the power to investigate and take enforcement action. The inspector appointed by the SEC has the power to make copies, or take extracts from accounts, books and other documents (Securities Act, §53(8)). The Commission may inspect bank documents and transactions as well. The SEC also has the power to prosecute persons operating without a license (Securities Act, Part I, §18). For investigations carried out by the SEC the secretariat conducts the investigation and then prepares a report to be presented to the Commissioners. The findings can be appealed through the high court. The appeal process is not used frequently in practice. In extreme situations the SEC also has the power to close the exchange and suspend brokerage firms. The Sec can also prosecute individuals and companies working in the securities business without appropriate licenses.

The typical length of time that elapses between a violation and the end of an investigative procedure is 4 weeks. Over the last 3 years there has been one investigation in regards to capital adequacy requirements and 2 because of violations of market rules. There do not appear to have been any cases against listed companies.

The Director of Public Prosecutions is responsible for bringing criminal cases for the violation of the securities and corporate laws. Commercial arbitration exists in the form of Alternative Dispute Resolution if specified in the contract. The proceedings are arbitrated by the court and the aggrieved party appoints the arbitrator. This is a relatively new system in Zambia.

Supervisory resources. The Bank of Zambia has significant resources to carry out its oversight and enforcement functions. A high number of bank failures in the 1990s led to subsequent capacity building, competitive salaries, and adequate staffing.

However, the resources available of other financial sector regulatory bodies (especially the SEC and the (and the Pensions and Insurance Authority, (PIA)) appear to be relatively low. The SEC in particular are by comparison inadequately staffed, have difficulty retaining staff because of low salaries. Central Bank employees are paid on average three times than that of SEC employees. As a result the SEC has problems attracting and retaining staff. The SEC secretariat currently consists of three staff, the Secretary and Chief Executive (who also acts as the Finance director), and the director of licensing and enforcement. Another staff member manages the corporate services department. The position of Legal Counsel is vacant.

As a result of resource constraints, the SEC has struggled to maintain its effectiveness. It is currently working to build capacity through the Financial Sector Development Program (FSDP). The SEC is funded by the Ministry of Finance but it can also raise money through grants, registration fees licensing fees, authorization and scrutiny fees, other income and levy on LuSE fees. The budget for the SEC was K 4.6 billion in 2006.

The Patent and Company Registrar office (PACRO) also has resource constraints. The number of staff available for activities outside of the area of registration (such as legal or enforcement issues) is extremely limited. PACRO is also working to build capacity.

Reputation of supervisory bodies. The reputation of the regulatory bodies in the market appears to be related to the resource constraints identified above. SEC staff are considered to be capable and to be working in the public interest, but

their ability to become more active are limited.

Regulatory efficiency. The SEC Secretariat is inadequately staffed and frequently unable to retain high quality people because of its inability to pay market salaries. The secretariat has lost its legal council and is having trouble with replacement.

SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Principle IIA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to:

Principle IIA 1: Secure methods of ownership registration

Assessment: Implemented

Secure share registration. All companies are required to maintain a registry of shareholders (CA 1994 §48). Most public limited companies outsource the function to one of three external transfer agents (including the LuSE CSD, Enfin, and LCS Math). At the LuSE CSD, an account is opened for every holder of a given instrument after a contract note (proof of ownership) has been issued. Depository transfer fees are 0.375% of total value of securities being deposited. The LuSE estimates that there are approximate 20,000 shareholders in Zambia.

If a company fails to correct an error in its share or if an error in the register causes a loss, the person or any member of the company may apply to the court for an order that the register be rectified, and/or that the company pay compensation for the loss. Non-compliance with an order of the court can result in monetary fines (CA 1994 §50).

Secure custody system. Many shareholders appear to hold shares through custodians. Nominee ownership exists in the law. Shareholders can hold shares in the names of the main custodians, Barclays Bank (Zambia) and Standard Chartered Bank (Zambia). Custodians are regulated by Securities Act 1993. Under the Act custodians are obliged to maintain records, provide timely information, and avoid conflicts of interest with customers. In the event of a bankruptcy of the custodian, shareholders are compensated by the Compensation Fund established by the Ministry of Finance. The system appears to work well and there were no reports of any problems.

Regulatory oversight. The Securities and Exchange Commission is responsible for monitoring the activities of the LuSE CSD, and approves all CSD rules and amendments. The LuSE CSD bill due to be presented in Parliament for ratification provides the legal framework for the operation of the LuSE CSD. The bill covers clearing and settlement, transfers of share issues without certificates, using the Central bank as a clearing house, the creation and maintenance of a Guarantee Fund, and the conversion of the CSD into a self regulatory body.

Principle IIA 2: Convey or transfer shares

Assessment: Partially Implemented

Restrictions on share transfer. The shares of public limited companies are freely transferable (CA 1994 §14(5)). As a special exception, transferability is restricted when there is unpaid liability on shares, shares issued to directors, officers or employees exercising any rights or option grants under Section 73, and under compulsory acquisition.

The shares of a private company cannot be restricted from being transferred unless shareholders have agreed to it in writing.

Clearing and settlement framework. LuSE CSD, a subsidiary of the Lusaka Stock Exchange, acts as the clearing and settlement organization. The LuSE is co-owned by the Lusaka Stock Exchange (50%) by sub-custodian banks Barclays Bank (Z) and Stanbic bank (Z) Ltd (50%). An account is opened for every holder of a given instrument after a contract note (proof of ownership) has been issued. Depository transfer fees are 0.375% of total value of securities being deposited. Clearing and settlement of trades on the LuSE is carried out through the LuSE CSD. First time investors need to open an account with a stockbroker and fill out a 'Buy-Order' form. Clearing and settlement is trade-for-trade. Rolling settlement takes place on T+3.

While clearance and settlement processes are reported to be in compliance with the other ISSA G30 (2000) recommendations, the unfinalized legal framework results in the rating of partially implemented.

Principle IIA 3: Obtain relevant and material company information on a timely and regular basis

Assessment: Partially Implemented

Availability of information (charter, financial statements, minutes, capital structure). Shareholders have the right to obtain all relevant and material information from the company. Companies are required to maintain a registry of all minutes of all company meetings, including board meetings. The minutes must be kept at the company office of record and be open to inspection by any member, officer, auditor, receiver or liquidator of the company, and by the Registrar or his delegate. Shareholders inspect other company documents and special resolutions at PACRO.

<p>Shareholder access to information. The Securities Act requires that the company send to each of its shareholders a copy of the board report and annual accounts no less than 21 days before the date of the AGM. Financial statements are also filed with PACRO, after their approval by shareholders.</p>
<p>Principle IIA 4: Participate and vote in general shareholder meetings</p>
<p>Assessment: Partially Implemented</p>
<p>Voting rights. Ordinary shareholders have the right to attend, participate and vote at meetings. Preferred shareholders can attend meetings if specifically allowed in the articles, and can vote if they are allowed to attend.</p> <p>Redress. PACRO (the Registrar) and the Court can take action if an annual meeting is not called, or if no action is taken after 5% shareholder call a special meeting. Meetings cannot be declared invalid if a shareholder is accidentally omitted from the invitation list or if the shareholder does not receive an invitation.</p>
<p>Principle IIA 5: Elect and remove board members of the board</p>
<p>Assessment: Implemented</p>
<p>Election. Directors are elected by shareholders based on recommendations from the board at each AGM. Any shareholders can also nominate directors. Shareholders can also remove board members by ordinary resolution at the AGM (CA 1994, §211). A notice of intention to vote to remove a director has to be given to the company at least 28 days before the meeting. There are no provisions for cumulative voting or proportional representation in the Companies Act 1994, but it is not expressly prohibited.</p> <p>Redress. Shareholders can take legal action if meetings are not appropriately convened or other elements of the law followed. Shareholders also have action through the court via the “oppression remedy” (see Principle IIIA1 below).</p>
<p>Principle IIA 6: Share in profits of the corporation</p>
<p>Assessment: Broadly Implemented</p>
<p>Clear legal framework. Dividends are recommended by the board to the shareholders meeting (in the Directors’ Report). Shareholders can only approve the amount recommended by the board.</p> <p>There are no specific rules governing the process. There is no mandatory minimum dividend. Dividends are paid only out of net profits. Dividends can be paid as final dividends at the end of the year or during the course of the year as interim dividends.</p> <p>Equitable treatment. Dividends are declared and paid according to the amounts paid-in, except in the case of special rights (CA 1994, §84, and First Schedule, §20, Dividends and Reserves). Dividend rights cannot be varied within a share class (CA 1994 §62). There are no reports of problems with differential payments to different groups.</p> <p>Redress. Shareholders have action through the court via the “oppression remedy” (see Principle IIIA1 below).</p>
<p>Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:</p>
<p>Principle IIB 1: Amendments to statutes, or articles of incorporation or similar governing company documents</p>
<p>Assessment: Implemented</p>
<p>Changes to basic governing documents. Shareholders can amend the company bylaws and statutes by a special resolution with a ¾ majority of shares present and voting. (CA 1994, §8). Within 21 days the company needs to lodge a copy of the resolution with the Registrar together with the affected paragraphs. The amendment becomes effective from the day of lodgment with the Registrar.</p> <p>Shareholder Challenges. Shareholders can complain to the SEC; which SEC must approve any amendment to company articles (Securities Act, PART IV, Continuing Obligations Of Issuers Of Registered Securities, §24). Shareholders also have action through the court via the “oppression remedy” (see Principle IIIA1 below).</p>
<p>Principle IIB 2: Authorization of additional shares</p>
<p>Assessment: Implemented</p>
<p>Issuing share capital. The board cannot increase capital or issue new shares without the approval of a simple majority of shareholders (CA 1994, S 216 (1)). Increasing authorized capital requires a shareholder special resolution or ¾ majority (CA 1994).</p> <p>The Securities Act 1993 grants pre-emptive rights to existing shareholders. For small share offers (up to 10 percent of existing shares), pre-emptive rights maybe waived by a simple resolution (Securities Act, PART IV, Continuing Obligations</p>

Of Issuers Of Registered Securities, §23).

Several companies have issued shares through the share rights issues. In 2006, Farmers House Plc made a successful rights offer on a three for one basis. The purpose of this rights offer was to raise funds towards the construction of an office complex. Farmers House raised about \$10 million equivalent, as detailed in the following table. In the end, thirty percent of new shares were bought by existing shareholders, 61 percent by new shareholders (who purchased the share rights), and 9 percent remained with the underwriter.

Farmers House 2006 Rights Offer Results
(Millions of shares)

	Before rights offer	Rights offered	Rights used	After rights offer	% Taken Up
Existing Shareholders	10.7	32.1	9.6	20.3	30%
New shareholders (purchasers of rights)	0.0		19.4	19.4	61%
New shares taken up by the underwriter	0.0			3.0	9%
Total	10.7	32.1	32.1	42.7	100%

Shareholder Challenges. Shareholders can complain to the SEC; which SEC must approve any new share issues (Securities Act, PART IV, Continuing Obligations Of Issuers Of Registered Securities, §24).

Principle IIB 3: Extraordinary transactions, including sales of major corporate assets

Assessment: Implemented

Sales of major corporate assets. Major corporate transactions require shareholder approval. The board cannot sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company without the approval (by majority resolution) of shareholders (CA 1994, §216 (1)).

There are no requirements for shareholder approval of related party transactions.

Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:

Principle IIC 1: Sufficient and timely information on date, location, agenda and issues to be decided at the general meeting

Assessment: Broadly Implemented

Meeting deadline. The AGM must be held within 3 months following the completion of the financial year.

Meeting notice content. Shareholders are notified 21 days in advance for an AGM or a meeting where a special resolution is proposed. For any other meeting shareholders are notified 14 days in advance. General meetings can be held in Zambia unless all shareholders entitled to vote agree on another place. Meetings are generally held at the company's registered office or on a location close to it. Unless the articles provide otherwise, quorum of at least two shareholders of the company, holding not less than one-third of the total voting rights in relation to the meeting (CA 1994 §147(2)).

The meeting notice must include the agenda and location and business to be transacted including declaring dividends, consideration of accounts by auditors and reports by directors and remuneration of directors.

Shareholder activism at general meetings is relatively weak in Zambia. In practice shareholder meetings are not well attended. Institutional shareholders do not generally attend meetings, although small shareholders have recently started attending meetings in greater numbers.

Principle IIC 2: Opportunity to ask the board questions at the general meeting

Assessment: Partially Implemented

Shareholder questions. There appear to be no limits for shareholders to ask questions at meetings.

Forcing items onto the agenda. Shareholders who are entitled to attend and vote at meetings can submit resolutions before the first agenda is published and not after.

Shareholders with voting rights are allowed to require the company to circulate (at company expense) an addition to the agenda of the shareholders meeting (CA 1994 §153). The company must receive the request at least 7 days before the meeting notice must be issued. Companies are also required to circulate shareholder resolutions received after the initial publication of the agenda of meeting agenda, but at the expense of the shareholder.

Principle IIC 3: Effective shareholder participation in key governance decisions including board and key executive remuneration policy
Assessment: Partially Implemented
<p>Facilitation of shareholder participation. In general, the investor community appears to feel that shareholder participation is generally solicited and that the process works reasonably well. Among listed companies, highly concentrated ownership in some companies and banks means that the controlling shareholder plays a major role in key corporate decision-making. Shareholders appear to be informed about board nominations and there were no reports of inadequate meeting notice.</p> <p>Most voting is by “show of hands” – there were no reports of any sense of shareholder exclusion as a result. A formal poll may be demanded at a meeting of a company by at least three shareholders with more than 5 percent of total voting rights (if there are more than 8 shareholders present). (CA 1994 §149).</p> <p>Cumulative Voting / Proportional Representation. There is no provision in the Companies Act for special voting rules to encourage effective shareholder participation (i.e. cumulative voting or proportional representation). These procedures are not prohibited, and could be included in Articles of Association or shareholder agreements.</p> <p>Approval of board and key executive remuneration. This is not explicitly in the company law but shareholder approval is generally sought for board remuneration.</p>
Principle IIC 4: Availability to vote both in person or in absentia
Assessment: Broadly Implemented
<p>Proxy regulations. Shareholders may vote either in person or by proxy (CA 1994 S 151). Shareholders entitled to attend and vote at meetings can nominate another person as his proxy to attend and vote instead of him. There is no requirement for proxy forms to be notarized. Shareholders can appoint separate proxies for different packages of shares. Directors appointed as proxies are not allowed to vote on dividend declarations, auditor and director reports, election or remuneration of directors and appointment of auditors.</p> <p>Postal and electronic voting. Proxy forms can be submitted by post. Electronic voting or electronic submission of proxies is not mentioned in the law and is not available.</p>
Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
Assessment: Not Implemented
<p>Classes of shares. Ordinary shares of public limited companies are “one-share, one-vote”. The Articles of Association (CA, Section 7) provides for different classes of shares and defines the rights attached to them. Depending on the provisions in the Articles of Association preferred shares maybe convertible, redeemable, fixed, and cumulative or a mixture of these.</p> <p>Disclosure of disproportionate control. Companies are not required to disclose voting caps, multiple voting rights, cross share holdings and pyramid structures. Any shareholder must disclose to the Commission if he or she acquires more than 20% of shares (or less than 35%). Two or more persons acting in concert are treated as one person. Disclosure must be made by 9:00 am on the following day (Takeover Rules, §66). Because of their detailed nature, the Takeover Rules are designed to capture the disclosure by ultimate beneficial owners. The registry of members (shareholder registry) is available for inspection by shareholders (CA 1994 §49). In addition, according to the Listing Rules, companies must annually disclose when they pass each 5% threshold of voting rights. (Section 8.52).</p> <p>In practice, however, disclosure appears to be made to the level of the registry of members, and does not capture the disclosure of ultimate beneficial owners.</p> <p>Disclosure of shareholder agreements. Shareholder agreements are not required to be disclosed.</p>
Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.
Principle IIE 1: Transparent and fair rules and procedures governing acquisition of corporate control
Assessment: Broadly implemented
<p>Basic description of market for corporate control. The market for corporate control is currently relatively inactive in Zambia. The market was in large part driven in the past by the privatization process, and post-privatization changes in control. 1999 was a year of particularly intense merger activity, and the number of cases sent to the SEC increased by 420% over the previous year. The merger activity in the Zambian market was concentrated in companies where shareholders are foreign companies. In at least one case a tender offer was triggered because of a change in control of the foreign parent. Some important cases included the takeovers by Northern Breweries Limited by Zambian Breweries Plc, the takeover of National Breweries Limited by South African Breweries Plc (now SAB Miller), and takeover of Cadbury Schweppes by the Coca-Cola Company.</p>

The regulations governing takeovers and mergers (henceforth "Takeover Rules") in Zambia are extensive and complete, and appear to be modeled on the UK Takeover Code. All takeover bids must be approved by the Commission. However, because of the relatively small amount of activity, they do not appear to be well known or understood in the community.¹⁷

The Zambia Competition Commission, an autonomous corporate body under the Ministry of Commerce, Trade and Industry was established in 1995 to prevent anti-competitive behavior.

Disclosure of substantial acquisition of shares. Any shareholder must disclose to the Commission if he or she acquires more than 20% of shares (or less than 35%). Two or more persons acting in concert are treated as one person. Disclosure must be made by 9:00 am on the following day (Takeover Rules, §66). Because of their detailed nature, the Takeover Rules are designed to capture the disclosure by ultimate beneficial owners. In addition, according to the Listing Rules, companies must annually disclose when they pass each 5% threshold of voting rights. (Section 8.52).

In practice, however, disclosure appears to be made to the level of the registry of members, and does not capture the disclosure of ultimate beneficial owners.

Tender rules/mandatory bid rules. The Takeover Rules clearly state that all shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly. Any shareholder or group of shareholders acquiring more than 35% of voting rights must make an offer to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares.

In addition, the Companies Act contains several provisions relevant to takeovers and the market for corporate control, including a provision that provides for "compulsory acquisition of shares" (squeeze-out or freeze-out) when a single shareholder has acquired more than 90% of shares.

Delisting/going private procedures. The Companies Act provides that for company conversion rules. A public company may be converted into a private company limited by shares if a special resolution (3/4 of shares present and voting) is passed that (a) approves the conversion; and (b) amends its articles to set the maximum number of shareholders (members) at 50.

Principle IIE 2: Anti-take-over devices

Assessment: Broadly implemented

Description of anti-takeover devices in use in the market. Because ownership of listed companies is relatively highly concentrated, market participants are not generally aware of any specific applications of anti-takeover devices.

Duty of loyalty in the event of a takeover. The Takeover Rules provide specific guidance on board conduct during a takeover offer (Takeover Rules, §15). Once an offer has been communicated to the board of the target company (or the board believes that a bonafide offer may be imminent), "no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting."¹⁸

Accountability of boards and management to market pressure. Not applicable as there have been no examples of takeover struggles in the Zambian market.

Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.

Principle IIF 1: Disclosure of corporate governance and voting policies by institutional investors

Assessment: Not Implemented

Blocked shares/record date. Companies can "close the register" up to 14 days before the annual general meeting.

General obligations to vote. There is no obligation or recommendation that institutional investors vote or weigh the costs and benefits of voting. Institutional shareholders do not generally attend meetings.

Disclosure of voting policy. There appear to be no rules requiring special disclosures of conflicts of interest by institutional investors.

¹⁷ Section 39 - The Securities (Takeovers and Mergers) Rules by the Securities and Exchange Commission Statutory Instrument 170 of 1993.

¹⁸ In particular the board must not, without such approval- (a) issue any shares; (b) issue or grant options in respect of any unissued shares; (c) create or issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for, shares of the company; (d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of material amount; (e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or (f) cause the company or any subsidiary or associated company to purchase or redeem any shares in the company or provide financial assistance for any such purchase.

Principle IIF 2: Disclosure of management of material conflicts of interest by institutional investors
Assessment: Not Implemented
Institutional investor policies on conflicts of interests. There appear to be no rules requiring special disclosures of conflicts of interest by institutional investors.
Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.
Assessment: Broadly Implemented
Rules on shareholder consultation and acting in concert. There appear to be no rules that obstruct the ability of shareholders to consult with each other on the execution of their basic shareholder rights. The definition of 'acting in concert' in the takeover regulations does not address the question of shareholders meetings.
SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS
The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
Principle IIIA: All shareholders of the same series of a class should be treated equally.
Principle IIIA 1: Equality, fairness and disclosure of rights within and between share classes
Assessment: Implemented
Equality within share classes. The Companies Act states that "all shares shall rank equally apart from differences due to their being in different classes or series" (§14 (3)). The Securities Act (reinforced by comments in the Takeover Rules) also requires equality of treatment. ¹⁹
Availability of share class information. The Securities Act requires publicly limited companies to disclose shareholder voting rights (Registration of Securities Rules). If there is more than one class of shares then the rights of each share class regarding voting, dividend payments, and further issue of securities also needs to be disclosed. ²⁰ In addition, a summary of the requirements to change the rights also has to be disclosed. For existing shares such information can be obtained from the Articles of Association filed with the registrar, and from the Prospectus (which can be obtained from the SEC).
Approval by the negatively impacted classes of changes in the voting rights. Any change to the share rights of a particular share class can only be carried out if a written consent is obtained from all members of that class or with the sanction of court if the articles expressly forbid any variation of the rights. If the articles do not explicitly forbid the variation then the written consent of ¾ of shareholders is required (CA 1994 §62 (3-4)).
Principle III A 2: Minority protection from controlling shareholder abuse; minority redress
Assessment: Broadly Implemented
EX ANTE PROTECTIONS
Pre-emptive rights. Shareholders have pre-emptive rights to purchase new shares, to protect against share dilution and expropriation through capital increases (see Principle IIA2 above). Zambia provides the ultimate form of pre-emptive rights in the form of rights offers - existing shareholders are issued tradable rights to buy new shares. Buying more than your proportionate amount of shares requires the acquisition of rights offers from other shareholders. This benefits existing shareholders who do not participate in the new.
Ability to call meeting. Shareholders (who have at least 5 percent of voting rights) can call a special shareholders meeting.
Cumulative Voting / Proportional Representation. There is no provision in the Companies Act for special voting rules to encourage effective shareholder participation (i.e. cumulative voting or proportional representation). These procedures are not prohibited, and could be included in Articles of Association or shareholder agreements.
EX POST PROTECTION
Ability to sue to overturn meeting decisions. Under Section 239 of the Companies Act 1994, the court may, on the application of a member (shareholder) order that the affairs of the company are being conducted, or the powers of the

¹⁹ Securities Act 1990 Continuing Obligations Par 28.

²⁰ Part IV- Continuing Obligations of Issuers of Registered Securities Rule 9 S 7.

directors are being exercised, in a manner that is “oppressive”, or that an act or resolution would be oppressive. “Oppressive” is defined as activities which are “oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of a company; or 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.” The court can then issue orders directing, prohibiting any act or canceling or varying any transaction or resolution; an order regulating the conduct of the company's affairs in the future; 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; an order that the company be wound-up; an order appointing a receiver of property of the company. 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.

Redress from regulators. Shareholders can complain to the SEC, which can investigate within its powers. The SEC has strong power in certain important areas, because it must approve any amendment to company articles, issues of new shares, and takeover offers (Securities Act, PART IV, Continuing Obligations Of Issuers Of Registered Securities, §24).

Ability to sue directors. Directors can be sued for violations of their fiduciary duties. In practice, there are almost no suits against directors. It is not legal to indemnify directors against liability.

Withdrawal rights. Withdrawal / redemption rights are one of the possible outcomes under the “oppression remedy” above.

Inspection Rights. There are no rights for shareholders to order a special inspection of a transaction (before or after it is made).

Principle IIIA 3: Custodian voting by instruction from beneficial owners

Assessment: Implemented

Rights of beneficial owners. Custodians are allowed to vote based on the mandate in the custody agreement. The Companies Act of 1994 allows for proxy voting. The proxy forms need to be sent out at the same time as the notice for the meeting. Custodians are not required to cast all of their votes the same way (CA 1994 §150).

Depository receipts. No companies in Zambia have issued depository receipts. ZCCM has issued shares directly on the London Stock Exchange; those shares have the same rights as shares traded on the LuSE.

Principle IIIA 4: Obstacles to cross border voting should be eliminated

Assessment: Partially Implemented

Clarity of right to exercise voting rights. The custody system is well-implemented in practice, and there appears to be no problems with the clarity of foreign shareholders to exercise their voting rights, working through local custodians.

Meeting notice requirements. The meeting notice must be issued 21 days before an AGM, and 14 days before any other meeting. No complaints were made by investors about the meeting notice period. However, this period has been found to be too short by institutional investors – one set of corporate governance guidelines (by the Institute for International Finance, a global association of financial institutions) recommends a notice period of one month (30 days).

Procedures to facilitate voting by foreign investors. No specific obstacles other than potential problems identified above were noted for foreign investors.

Principle IIIA 5: Equitable treatment of all shareholders at GMs

Assessment: Broadly Implemented

Procedures to facilitate voting (electronic and postal voting systems). Proxy forms may be returned through the post. Electronic voting is not addressed in the law, and is not available in practice.

Equitable treatment of shareholders at meetings. Voting is generally by show-of-hands or general consensus, which has been considered to be a violation of “one-share, one-vote” and abused in other jurisdictions. A formal poll may be demanded by at least 3 shareholders representing at least 5% of total voting rights. Because of relatively high ownership concentration in Zambia, show-of-hands voting was not considered to be a significant abuse of minority shareholder rights.

Disclosure of voting results. The minutes of shareholder meetings must be kept at the company office and open to inspection by shareholders, directors, and auditors.

Principle IIIB: Insider trading and abusive self-dealing should be prohibited.

Assessment: Partially Implemented

Basic insider trading rules. The Securities Act 1993 provides the basic insider trading rules. The Securities and Exchange Commission regulates insider trading. Any Insiders who “counsel or procure another person to deal in securities based on knowledge that is not publicly available or would materially affect the price of the securities is guilty of an offense and shall

be liable on conviction to a fine of a maximum of 2000 penalty units or imprisonment of up to 5 years or both (Securities Act, §52). Insiders are defined very broadly, to include directors / officers / employees, any person associated in a professional capacity with that company, and any person who obtains such information from other insiders. There is no electronic surveillance system in place at the LuSE.

Insider trading disclosure. The Securities Law requires disclosure of, (i) interests of all directors and the CEO in equity or debt of the company or its subsidiary, (ii) details of the rights to subscribe or exercise any debt or equity instruments given to the directors or the CEO.²¹ The statement must disclose the details of the shares held, the class of shares and the number of securities held by the directors and distinguish between beneficial and non-beneficial interests.

Board members are not specifically required to disclose their transactions in company shares.

Disclosure of other types of self dealing. See Principle VA7.

Principle III C: Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Assessment: Partially Implemented

Conflict of interest rules and use of business opportunities. Board members are required to disclose any “interests” in contracts with the company. Directors have an interest in a contract if they will derive direct or indirect “material benefit” from the contract, or if he has a material interest (greater than 5 percent shareholding) in the other party to the contract. Benefits accruing to a spouse (or child under 21) of the director are included as benefits to the director. Interested directors are required to “declare the nature and extent of his interest at a meeting of the directors or shareholders of the company.” The director must state that he has an interest in another firm, and specify “the nature and extent of the interest.” On matters related to the conflict of interest, the director cannot vote. Directors who fail to comply can be fined up to five hundred monetary units (CA 1994 §218).

The Code goes further and states that the board must adopt a code of conduct that covers conflicts of interest for directors and management. It also states that the board must have unrestricted access to all organization information, records, and documents.

Publicly limited companies and their subsidiaries are not allowed to make loans, enter into any guarantee or provide security in connection with a loan to a director unless the company is in the business of making loans (CA 1994 §219).

The law also provides no additional requirements on the review and approval of related party transactions. A director directly involved in a related party transaction is not allowed to vote (CA 1994 §218 (8)). The law does not appear to apply to executives or to directors who are appointed by conflicted controlling shareholders but have no direct interest in the transaction.

Board responsibility for managing conflicts of interest. There is no explicit responsibility for the board to manage conflicts of interest.

SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.

Assessment: Broadly Implemented

Employees do not have a specific right to sit on boards. The company law does not list any rights for stakeholders to nominate directors or in general to participate in the governance process. The Code mandates that boards formulate and implement a code of ethics for the company.

Awareness of stakeholder issues and corporate social responsibility is relatively high. The Anti-Corruption Commission is looking at ways of encouraging good corporate governance practices in the private sector. The Code requires companies to formulate AIDS policies, and almost all listed companies comply. Other corporate social responsibilities that the Code recommends include:

- The board should be inclusive on issues of gender and people with disabilities, and should work to improve their workforce through corporate training initiatives and employee development, with appropriate levels of financial investment.

²¹ Securities Act 1990, Section 32: Securities (Registration of Securities) Rule, P IV Continuing Obligations of Issuers of Register Securities

- The board should adopt or formulate an appropriate strategy, plan and policy to address and manage the potential impact of HIV/AIDS.
- The board should actively promote plant safety and accident prevention where this is applicable.
- The organization must have an environmental policy in relation to itself and to its suppliers or customers.
- The organization should have a policy of supporting local as well as national charitable or educational appeals.
- The social and environmental effects of projects in which the organization is involved, or of those it is contemplating, should be monitored by the board.

Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment: Broadly Implemented

Stakeholders have access to the courts. However, cases can take significant time to be resolved.

Principle IVC: Performance-enhancing mechanisms for employee participation should be permitted to develop.

Assessment: Broadly implemented

The Companies Act regulates the grants of share options and incentive shares to directors, officers, and other employees of the company. Companies can issue shares and options on the authorization of a special shareholders resolution (or consistent with a previously established policy established by a shareholder resolution) (CA 1994 §73). The law also details the requirements and terms of the special resolution authorizing the grant.

Some Zambia-based subsidiaries of South African companies have implemented stock option schemes for their managers.

Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

Assessment: Not applicable

This principle is rated as “Not Applicable” because (per the OECD Methodology) stakeholders in Zambia do not directly participate in the corporate governance process. In some parastatals (and in particular at ZCCM, which is also a listed company), union representatives do sit on the board and attend board meetings.

In general, stakeholders of listed companies do have significant rights to information in Zambia. This includes annual information and other filings required for listed companies (see Principles VA-F below). In addition, the LuSE Corporate Governance Code contains significant “integrated sustainability reporting” requirements.

The Code recommends that pension plan actuarial assumptions and investment performance should be reviewed by the board of directors.

Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

Assessment: Not Implemented

Whistleblower rules. A few companies have started to adopt whistleblower policies, e.g. by allowing staff to make a free telephone call to an independent organization outside the country, with their complaints later conveyed to the Managing Director. There is no specific whistleblower protection under the law. However, the Anti-Corruption Commission reports that it is preparing a plan aimed at giving whistleblowers witness protection.

Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Assessment: Partially Implemented

Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes. Zambia’s company law offers certain creditor rights for bankruptcy and debt collection. A variety of standard measures developed by the World Bank for 175 countries indicates that while creditors have relatively strong legal rights, obtaining access to credit information remains a concern. See *Doing Business 2007* at www.doingbusiness.org.

Creditor Rights Indicator	Zambia	Regional Average	OECD Average
Legal Rights Index (out of a possible 10)	7	4.2	6.3
Credit Information Index	0	1.3	5.0
Public credit registry coverage (borrowers per 1000 adults)	0.0	1.5	8.4
Private bureau coverage (borrowers per 1000 adults)	0.0	3.8	60.8

One attempt to increase creditor protection, personalizing the liability of directors for company loans in default, may be discouraging companies from fully tapping credit markets.

SECTION V: DISCLOSURE AND TRANSPARENCY

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

Principle VA: Disclosure should include, but not be limited to, material information on:

Principle VA 1: Financial and operating results of the company

Assessment: Broadly Implemented

Overview of Financial Reporting. Publicly listed companies are required to send a copy of the annual accounts to each shareholder.²² Annual financial statements have to be made available to the Secretariat even if they are not published according to LUSE listing rules. The Companies Act requires the financial statements to include a balance sheet, income statement, and explanatory notes and must be accompanied by an auditor's report. In addition companies are not required to file a cash flow statement; however, the LUSE listing rules require firms to prepare their financial statements in accordance with the issuer's national law and GAAP (Listing Rules 8.51 (a)). Large listed firms generally include a cash flow and changes in equity statement in their annual reports.

Banks are required to publish their annual statements in a newspaper of general circulation in Zambia. Unlike publicly listed companies banks are required to a statement of changes in financial positions and changes in shareholders equity from the last fiscal year in their annual report.²³

Consolidation. Companies are required to file consolidated financial statements, except in the case that the company is a wholly-owned subsidiary of another company incorporated in Zambia (CA 1994 §165).

Management discussion and analysis. The Companies Act requires that directors include a board report in the annual report (CA 1994 §165). See annex 1 for a summary of the items that must be included in the director's report, and annex 2 for an analysis of compliance with the Director's Report requirement in 2005 – 9 of 13 companies complied with the rule and filed a directors' report. Companies filed a number of other management discussion letters, including chairman's a statement (7 companies), a managing director's report (3 companies), and a corporate governance report (5 companies).

Oversight, sanctions and remedies. The securities regulator monitors compliance through on-site inspections and following the public press against filings. Sanctions for non compliance may include warnings, fines, suspensions, public reprimands, restatements, civil penalties and criminal penalties (Securities Act Sections 48-52).

Principle VA 2: Company objectives

Assessment: Broadly Implemented

The Director's report (to be attached to the annual report) should include a discussion of a number of issues related to company objectives, including: the principal activities of the company and of its subsidiaries in the course of that year, any significant change in those activities, particulars of any important events affecting the company or any of its subsidiaries which have occurred during the year, and an indication of likely future developments in the business of the company and of its subsidiaries.

See annex 2 for an analysis of compliance with the Director's Report requirement in 2005 – 9 of 13 companies complied with the rule and filed a directors' report.

Principle VA 3: Major share ownership and voting rights

Assessment: Partially Implemented

²² Securities Act 1993 Continuing Obligations on Issues of Registered Securities S 14, Listing Rules: Appendix to Section 11

²³ The Bank and Financial Service Act 1996 Sections 61 (3), 56 (d), 56 (e)

Periodic disclosure of significant ownership. Ownership information is included in the annual report as a note to the accounts. It is the responsibility of directors to ensure periodic disclosure of the ownership information. If a shareholder other than a director, directly or indirectly owns 5% of more of any class of shares in a listed companies is required to disclose the numbers of shares they own. If the company is widely-held then this needs to be stated in the annual report as well (Listing Rules §8.52 (f)). Voting rights, special voting rights, caps on voting rights and significant cross shareholdings have to be disclosed in the annual report as well. If the ownership information is not disclosed in the annual report it is disclosed in the Articles of Association.

Timely disclosure of significant ownership. The Takeover Rules mandate disclosure of significant ownership by shareholders. Any shareholder must disclose to the Commission if he or she acquires more than 20% of shares (or less than 35%). Two or more persons acting in concert are treated as one person. Disclosure must be made by 9:00 am on the following day (Takeover Rules, §66). Because of their detailed nature, the Takeover Rules are designed to capture the disclosure by ultimate beneficial owners. In practice, however, disclosure appears to be made to the level of the registry of members, and does not capture the disclosure of ultimate beneficial owners.

Regulatory agency access to ownership information. There are no special rules for regulatory access to ownership information (outside of the banking sector). However, given the relatively small size of the corporate sector in Zambia, there were no few concerns raised about ownership transparency.

Disclosure of company group structures. There are no special requirements for the disclosure of group structures. Subsidiaries and holding companies are defined in the Companies Act. The Securities Act requires the disclosure in the directors' report of the name of every subsidiary, its principal country of operation, its country of incorporation and its main business activities.

Subsidiaries are not allowed to hold the shares of their holding company. In practice, complex company structures do not exist in Zambia.

Principle VA 4: Remuneration policy for board and key executives, and information about directors

Assessment: Not Implemented

Material information about directors (qualification, selection, independence). The Code requires that companies have formal and transparent procedures for appointments to the board (Code B11), and that the meeting notice include a brief biography of each director standing for election / re-election (Code B14).

Board member disclosure of holdings and transactions in the company's securities.

Full disclosure of remuneration and remuneration policy. The Companies Act of 1994 requires that the total amount of remuneration paid to the directors be disclosed in the annual report²⁴. The act and LuSE CG code are silent about the disclosure of remuneration of key executives. The Act states that the cover fees, salary, bonuses etc. have to be disclosed for a director of a company or its subsidiary and if the director is connected to the management of business of the company.

Principle VA 5: Related party transactions

Assessment: Not Implemented

Ex-ante disclosure of material related party transactions. The Listing Rules require disclosures to shareholders (via circular) of large related party transactions – see Principle VID6. The stock exchange can require companies to inform shareholders about the details of the transaction and obtain their approval (LR §10.1-10.5). The content of the circular to be sent to shareholders is laid out in detail, and must include the full particulars of the transaction, including the name of the related party concerned, a description of the relationship between the listed company and the related party and the nature and extent of the interest of such party in the transactions.

However, the review team found no evidence that these rules have been put in place in practice, and no real awareness of the rules at all. This may be because (a) the definition of related party contract is large enough that they are easily evaded (especially because of the exemption for “credit to the related party in normal commercial terms in the ordinary course of business” and “transactions of “a revenue nature in the ordinary course of business”), and (b) the market community is unaware of the rules and their high level of complexity.

Companies are required to disclose amounts paid to directors and loans given to officers (CA 1994 §167-168). Board members are required to disclose any “interests” in contracts with the company, but to the board (and not necessarily to shareholders or to the public, see Principle IIIC). Large related party transactions do not need to be approved by shareholders, so there is no disclosure via materials for the shareholders meeting.

Periodic disclosure of related party transactions. Because Zambia has adopted IFRS, listed companies are required to follow IAS 24 (Related Party Transactions). Anecdotal evidence suggests that compliance is uneven, with complete IAS 24

²⁴ Companies Act S 167 (1) Corporate Governance Code, ‘Director Compensation’

disclosures missing at some listed companies. The Accounting and Auditing ROSC (forthcoming) reviews accounting standard compliance in detail.

The Securities Act also requires the disclosure with the annual accounts of the “summary particulars” of any contract of significance between the issuer, or one of its subsidiary companies, and a controlling shareholder or any of its subsidiaries.

Principle VA 6: Foreseeable risk factors

Assessment: Partially Implemented

Disclosure of material risks. The Code requires that a formal risk assessment be undertaken at least annually (Code, Section G). The board should include a statement on risk management in the annual report.

Disclosure of internal risk control procedures. Listed companies are required by the Code to identify and disclose their policies on risk management. The board should identify key risk areas and key performance indicators, and monitor them as part of a regular review of processes and procedures to ensure the effectiveness of its internal systems of control (Code, Section G). The board should make use of generally recognized risk management and internal control models and frameworks in order to maintain a sound system of risk management and internal control.

These risk strategy policies “should be clearly communicated to all employees to ensure that the risk strategy is incorporated into the language and culture of the organization.

Principle VA 7: Issues regarding employees and other stakeholders

Assessment: Not Implemented

Disclosure of stakeholder issues. The Companies Act (S 179 (1)) requires companies to disclose the average number of employees per month and the total amount paid to employees in the year in the annual report. The Corporate Governance Code of LuSE also requires firms to have policies in place with respect to employees, suppliers, customers and the environment. However, disclosure of these policies is not explicitly required.

Principle VA 8: Governance structures and policies

Assessment: Partially Implemented

Disclosure of corporate governance report (including structure and operation of board). The LuSE Corporate Governance provides basic guidelines for core governance standards and practices. The Code is designed to enhance the corporate governance of listed companies. Companies are required to submit a report to the LuSE stating their areas of compliance and non-compliance with code within 3 months of the end of the fiscal year. Listed companies have to provide details of the board charter in the annual report (Corporate Governance Code B: Boards and Directors Par 2).

Comply-or-explain in force. Corporate Governance Code B: Boards and Directors Part 2.

Regulator enforcement practice. SEC and LuSE enforcement of the “comply or explain” provisions of the code appear to be limited so far.

Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.

Assessment: Partially Implemented

Compliance with IFRS. Listed companies (like other companies) are required to follow the Companies Act, which does not include detailed accounting standards. The Zambian Institute of Chartered Accountants (ZICA) has issued accounting standards in the past, but no longer issues its own standards and requires its members to comply with IFRS.

Review/enforcement of compliance. Some market participants report a relatively high degree of compliance with IFRS, but this confidence is not shared by all observers. A more complete assessment will be provided by the Accounting and Auditing ROSC for Zambia.

Principle VC: An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

Assessment: Not Implemented

Audit Requirements and Auditor Independence. All companies are required to be audited under the Companies Act. There are no local auditing standards – ZICA requires all auditors to follow International Standards of Auditing.

Auditor independence is governed by the recently revised Auditor Code of Ethics promulgated by ZICA, which followed revisions to the IFAC Code of Ethics. The Code of Ethics follows the most modern guidelines for the management of conflicts of interest between auditors and their assurance clients. There is no definition of auditor independence in the Companies Act of 1994 or the Securities Act 1993. The LUSE CG Code specifies that external auditors should maintain

their independence from the organization at all times. Listed companies are required to disclose sufficient details of non audit services (LuSE Code, E8).

The LuSE Code requires boards to appoint audit committees of the board, and that the committees should have formally determined terms of reference, life span, role, and functions approved by the board. The external auditors should be appointed by the board on the recommendation of the audit committee (LuSE Code, Sections C and F).

The Banking and Financial Services Act requires that the bank boards establish an audit committee of at least three directors, a majority of whom are persons who are non-executive (Banking and Financial Services Act § 67 (1)).

Auditor qualifications. All these foreign professional accountancy bodies have been mentioned in the regulation in the context of registration as a member of ZICA. For ZAICA membership, one needs to have professional qualification from one of those bodies. Obtaining practicing certificate is most important for practicing as an external auditor. ZAICA allows management accountants (members of UK Chartered Institute of Management Accountants--CIMA) to have practicing certificate and conduct audit of company financial statements. This should not happen. The members of CIMA are not allowed to perform financial statement audit in UK. The external auditors should be registered accountants and hold a practicing certificate as per the Accountants Act (§25 (1)), and also have to meet the qualifications in the Companies Act (§172 (2)). External auditors need to be an associate or have a fellowship grade of membership in the Chartered Association of Certified Accountants of the UK or the Chartered Institute of Management Accountants of the UK, The Chartered Institute of Public Finance and Accountants of the UK and The Institutes of Chartered Accountants in England, Ireland, Scotland, New Zealand, Australia, Canada and Zimbabwe and the Institute of Certified Public Accountants of the US²⁵.

The four audit firms in Zambia are Price Waterhouse Coopers, Deloitte and Touche, Ernst and Young and KPMG/Grant Thornton.

Audit quality assurance / enforcement. The audit profession is regulated by Zambia Institute of Chartered Accountants (ZICA), a self-regulatory organization. ZICA has a disciplinary committee whose powers are set out in the Accountants Act (§30 (1) & §33). Self-regulatory organizations in other countries have been criticized for a lack of enforcement actions and power.

Audit standards development. ZICA, the self-regulatory accountancy body, has adopted International Standards of Auditing.

Board reporting of the audit relationship. The LuSE Code requires that “sufficient details should be provided in the annual report in respect of non-audit services provided by the external auditors, including the nature of each service provided and the amount paid for each service. There are no other reports required for the audit committee or the board on the audit relationship.

Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

Assessment: Partially Observed

Auditor accountability to shareholders. The external auditor must be approved by the AGM. The directors can appoint an auditor within 3 months of incorporation of the company and they can hold office until the close of the first AGM (CA 1994 §171). In practice the shareholders always approve the board recommendations.

The corporate governance code recommends that the auditors report to the audit committee (Corporate Governance Code, Section F: Internal Audit, Par 3 and 4). The LuSE CG code recommends that the external auditors should be appointed on recommendation of the audit committee but is silent on the termination and remuneration of the auditors (LuSE Code F3-4). Auditors are required to have professional indemnity insurance as a part of the annual renewal of the practicing certificate.

Banks are required to establish an audit committee with at least 3 members with the majority of them that are not ‘affiliated’ with the company in anyway (Banking and Financial Services Act S 67 (1)). The law does not require members of the audit committee to be independent. The audit committee has to meet with the chief internal auditor or officer or employee of the bank acting in similar capacity to discuss the effectiveness of the internal control procedures practiced at the bank.

Penalties for auditors who fail to perform with due care. If board members or the external auditors or the senior management provide misleading or false information they shall be guilty of an offense and shall be liable on conviction to a maximum fine of 2000 monetary units or a maximum sentence of 2 years imprisonment or both (CA 1994 §129, §381 (1)). There do not appear to have been any legal actions against auditors under the law.

In practice, the quality of oversight of auditors depends largely on the quality of the committee and the board.

Principle VE: Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

²⁵ Accountants Act, Section 21 and 38 – The Accountants Qualifications for Registration) Regulations.

Assessment: Partially Implemented

Material facts. The Securities Act of 1993 and the LUSE Listing rules require listed companies to continuously disclose all material information. The definition of materiality is defined in the listing requirements as ‘information which if omitted or misstated could influence the economic decisions of users and includes a change in or constituent of a particular factor which may be regarded in the circumstances as being material and which as a rule of thumb would exceed 10% in value’.²⁶. All material information needs to be immediately disclosed to the public after the stock exchange approves (Listing Rules §3.3). The announcements are pre-vetted by the stock exchange, and depending on the discretion of the regulators trading can be suspended.

Specific continuing obligations for listed firms (beyond annual and interim financial reports discussed above) include:

- Publication of notices of general meetings in at least 2 newspapers circulating in Zambia, at least 14 days before the AGM;
- Informing the SEC 3 days in advance of the date fixed for a board meeting which will announce profit and decide on the declaration and payment of dividends;
- Informing the SEC of any dividend payment decisions, profit loss announcements, changes in capital structure and change in business;
- Immediate disclosure to the SEC of changes in company’s articles, rights associated with a share class and secretary or auditors;
- Informing the SEC of the basis of allotment of securities offered to the public for subscription or sale or an open offer and of the results of any rights issue;
- Companies need to inform the SEC immediately regarding a presentation of any winding up petition for the company or a subsidiary, or appointment of a provisional liquidator, entry into possession of or sale by any mortgagee of a portion of the issuers or subsidiaries assets which represents 15% of net tangible assets, making of any decisions or declarations or orders by a court which might affect the company adversely in an amount that exceeds 15% of the value of assets;
- Companies need to submit copies of announcements or advertisements, documents related to a merger and drafts of amendments to the articles to the SEC for their approval;
- Publicly listed companies are required to send notices to convene a meeting of holders of registered securities to all persons entitled to vote at the meeting proxy form, with the provision for two way voting for all resolutions intended to be proposed in the meeting;
- Companies also need to promptly respond to questions regarding irregular patterns in trading (volume and prices) asked by the SEC.

Easy accessibility of disclosed information. Summary information is disseminated through the official gazette, internet, stock exchange and newsletters. Material information disclosure is made through the stock exchange website.

Shareholders cannot request additional information from companies beyond what is publicly available. In practice relatively few companies have a website. The LUS published full financial information for some of its listed companies.

Prohibitions on selective disclosure of information. There do not appear to be any prohibitions in the law or regulation on selective disclosure of information.

Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.

Assessment: Not implemented

Disclosure of conflicts of interest by analysts, brokers, rating agencies. This information is currently not disclosed. In practice there are very few market players and they tend to concentrate on their own clients.

Regulation of credit rating agency conflict of interest.

Regulation of sell-side analyst conflicts of interest. The Securities Exchange Commission regulates in case of a conflict

²⁶ Securities Act 1993, Continuing Obligations of Issues of Registered Securities S 11, Listing Rules S 3.3 and Listing Rules, ‘Definitions’.

of interest.
SECTION VI: THE RESPONSIBILITIES OF THE BOARD
The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.
Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.
Assessment: Partially Implemented
<p>Zambia has a one tier board system. Board tenure is three years. The minimum number of directors for a listed company is two (according to the Company Law), and the maximum is eleven. The typical board size is six.</p> <p>“Duty of care” and “Duty of loyalty”. Fiduciary duties are relatively under-developed in Zambian law, but are instead laid out in case law, following the English common law tradition. Case law in Zambia is relatively sparse, and emphasizes loyalty to the company (not to shareholders). As in the UK, there is no explicit “business judgment rule”.</p> <p>The law does recognize “shadow directors” – “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” (CA, §204 (4)).</p> <p>Effective enforcement. In practice, there are almost no suits against directors. It is not legal to indemnify directors against liability. There are no discovery powers under Zambian law, so both sides can hide documents.</p> <p>In one notable case, a shareholder launched a derivative suit against Zambian Breweries. Earlier, the directors of Meridian Bank, a now-defunct Zambian bank, were sued after they allegedly received deposits while knowing that the bank was insolvent.²⁷</p> <p>Because of awareness-raising by various bodies in Zambia (and moves taken by parent companies), directors are beginning to understand their duties and obligations, and are specifically much more aware of their of fiduciary duties under the law.</p>
Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.
Assessment: Partially Implemented
Board “duty of loyalty” / duty to treat all shareholders fairly. The Code states that the board must ensure that the company complies with all relevant laws, regulations and codes of business practice, and that the board must adopt a code of conduct with respect to conflicts of interest for directors and management. However, the Code has no provision urging directors to exercise their powers objectively and independently and in the best interest of the company and all shareholders, not just in the sectional interest of controlling shareholders.
Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.
Assessment: Partially Implemented
<p>Development of company codes of ethics. Company Act 1994 is silent on ethical issues, including contributions to political parties or distributing gifts. The Code states that the board must formulate and implement a code of ethics for the company. Several companies have implemented codes of ethics.</p> <p>Board and interests of stakeholders. The Code also states that the board must identify the company's main stakeholders, that the company must have formal procedures for communicating with these stakeholders.</p>
Principle VID: The board should fulfill certain key functions, including:
Principle VID 1: Board oversight of general corporate strategy and major decisions
Assessment: Largely Implemented
Central and strategic role played by boards. Boards of directors do appear to play a central and strategic role in many companies. Most listed company boards appear to generally play the role assigned to them by the OECD Principles, and the Institute of Directors (among other bodies) has played an important and useful role in improving the awareness and implementation of corporate governance.

²⁷ Global Development Finance: The Development Potential of Surging Capital Flows. World Bank Group, 2006, p. 123.

There are two groups of companies where concerns were raised. First, because many companies are the Zambian subsidiaries of international firms, it can be unclear how much decision making is truly local. For example, at Standard Chartered Bank PLC, many credit decisions are taken outside of Zambia, effectively reducing the board's influence. (It should be noted that these group issues are common in many countries, and international good practice does not provide much guidance).

Second, among the wider non-listed group of 'public interest entities' (particularly parastatals), board practice is less sophisticated and boards are weaker relative to other company bodies.

Principle VID 2: Monitoring effectiveness of company governance practices

Assessment: Partially Implemented

Board oversight of legal compliance. The Code specifies that the board must ensure that the company complies with all relevant laws, regulations, and codes of business practice. The Code requires the board to adopt a charter or terms of reference as well as a code of conduct. The position of company secretary is well established in law (CA §205 (1)) and plays an important role in legal and governance compliance.

Board oversight of code compliance. A few listed companies have board committees dedicated to overseeing company corporate governance standards. The Code states that companies must at least have audit and remuneration committees with active participation by non-executive directors. However, the Code does not specifically give the board the responsibility of monitoring company compliance with the Code.

Board self-evaluation. The Code also states that the board should consider benchmarks by which to gauge board performance (Code, B-43). However, most evidence suggests that very few companies have begun a formal process of board self-evaluation.

Principle VID 3: Selecting/compensating/monitoring/replacing key executives

Assessment: Implemented

Board oversight of selecting and replacing key executives. The Companies Act gives clear power to the board to appoint all "attorneys" acting in the name of the company. The Code specifies that the board should appoint the chief executive, and that it should regularly review the strengths of senior managers as potential successors to the chief executive.

Principle VID 4: Aligning executive and board pay with long term company and shareholder interests

Assessment: Broadly implemented

Develop and disclose remuneration policy. The Companies Act states that directors recommend board remuneration and the recommendation is put before the AGM for approval by shareholders. The Code requires that the 'levels of remuneration should be sufficient to attract, retain and motivate executives of the quality required by the board'.

Oversight by non-executives. The board approves employee bonuses and has authority over loans and major contracts.

Principle VID 5: Transparent board nomination/election process

Assessment Not implemented

Clear and transparent board nomination process. Appointments of board members are made by ordinary resolution (simple majority) of the shareholders meeting, on recommendation by the board, according to the Companies Act. Some of the listed companies have dedicated nomination committees. The Code requires that companies have formal and transparent procedures for appointments to the board (Code B11), and that the meeting notice include a brief biography of each director standing for election / re-election (Code B14).

For banks and other financial institutions, final approval by Bank of Zambia is required.

Effective shareholder participation in board nomination process. There are no specific measures that allow or require minority shareholder participation in the board nomination process, including cumulative voting, mandatory proportional representation, the ability to add director nominations to shareholder meeting agendas, or nomination committees composed of independent members of the board.

Disclosure of nomination procedures. There appear to be no requirements for the disclosure of board nomination procedures in the Code.

Principle VID 6: Oversight of insider conflicts of interest, including misuse of company assets and abuse in RPTs

Assessment: Not Implemented

Board oversight of internal controls. According to the Companies Act (§164 (1-6)), directors are responsible for the year-end preparation of annual accounts. The Code goes further and explicitly assigns the board with the task of risk

management establishing internal control processes and procedures (Code, §G-3). The Code states that every company should have an audit committee, and an internal audit function “approved” by the Board.

Board oversight of related party transactions. Neither the Companies Act nor the Code specifies any requirements for board oversight of conflicts of interest, procedures for monitoring shareholder conflicts of interest, approval of related party transactions, or independent oversight of the process. The Code requires the board to adopt a code of conduct that covers conflicts of interest for directors and management. It also states that the board must have unrestricted access to all organization information, records, and documents.

However, the Listing Rules establish an extensive procedure related to the review and approval of related party transactions. Listed companies that propose to enter into related party transactions must consult with the MSE “Committee” (in practice, the stock exchange board). The stock exchange may then, “at its sole discretion”, require the company to inform shareholders about the details of the transaction and obtain their approval (LR §10.1-10.5). The related party cannot vote.

Related parties include ten percent shareholders, directors, “shadow directors,” advisors with beneficial ownership, executives, and their “associates”. A variety of transactions are excluded from these rules, including share subscriptions, employee benefit schemes, and “credit to the related party in normal commercial terms in the ordinary course of business. Transactions smaller than five percent of market capitalization are also excluded, as are “transactions of “a revenue nature in the ordinary course of business.”

If the MSE committee decides not to impose the shareholder approval requirement, the listed company must (prior to completing the transaction) (a) provide a “written confirmation from an independent professional expert acceptable to the Committee that the terms of the proposed transaction with the related party are fair and reasonable, and as far as the shareholders of the listed company are concerned; and (b) include details of the transaction in the listed company’s next published annual financial statements.

The stock exchange may require the company to provide it with a declaration that, to the best of the knowledge and belief of the directors, any nominee shareholders do not include any person who may be acting in consent with any other person in relation to the related party transaction.

As noted above, there is limited awareness of these rules, and they do not appear to be enforced.

A director directly involved in a related party transaction is not allowed to vote (CA 1994 §218 (8)). The law does not appear to apply to executives or to directors who are appointed by conflicted controlling shareholders but have no direct interest in the transaction.

Principle VID 7: Oversight of accounting and financial reporting systems, including independent audit and control systems

Assessment: Partially Implemented

Board oversight of internal controls. According to the Companies Act (§164 (1-6)), directors are responsible for the year-end preparation of annual accounts. The Code goes further and explicitly assigns the board with the task of risk management establishing internal control processes and procedures (Code, §G-3). The Code states that every company should have an audit committee, and an internal audit function “approved” by the Board.

In practice, not all companies have an internal audit function. Internal auditors report to CEO, CFO, the largest shareholder or the audit committee. In banks, one of the functions of the audit committee is to 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 practiced in the bank. (§67 (2) (f))

Board oversight of external auditors. The Code also includes extensive guidelines on both the internal audit and control functions and the role of external auditors.

Internal compliance programs. The Code also requires that companies establish a Code of Ethics and that they monitor compliance.

Principle VID 8: Overseeing disclosure and communications processes

Assessment: Not Implemented

Board oversight of disclosure process. In general, the board is responsible for a number of aspects of disclosure, and is jointly and severally liable for the contents of the annual report. The Code states that the company must have formal procedures in place for communicating with its main stakeholders.

Board responsibility for communications strategy. The corporate governance framework is somewhat ambiguous with regard to the relative roles of the board and management. The corporate governance framework does not require the board to oversee the disclosure of material information about the company, or take responsibility for the company’s communications strategy with the shareholders.

Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.

Principle VIE 1: Boards should consider assigning a sufficient number of non-executive board members capable of

exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration.

Assessment: Not Implemented

Director independence requirements. The LuSE Code has a relatively weak formulation of independence. It requires that the 'board must comprise of majority of non-executive directors to provide an appropriate balance in decision making' (Code B-10). This definition is relatively easy to implement – in Zambia, most of the listed companies have the practice of appointing executive directors from the parent (foreign) company. This practice makes it difficult for the board to maintain its independence and to act against the interests of its parent shareholder. Non-executive directors must have the skills and experience necessary to make judgments on company strategy, performance, resources, and performance evaluation.

Similar requirements exist for banks. The Banking and Financial Services Act requires that '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' (Banking and Financial Services Act, §32 (1)).

Separation of Chairman / CEO. The Code requires that the Chairperson and the CEO be performed by separate people (Code B-17).

Company disclosure of independence. The Code requires that the annual report contain a brief biography of each director standing for election or re-election, but does not specifically require the company to state which directors are non-executive or independent.

Independent oversight of key board tasks including:

Financial Reporting. The Code requires the establishment of an audit committee, with "active participation" by non-executive directors. The auditor is appointed on the recommendation of the audit committee. The audit committee is also responsible for periodic reviews of the accounting system. The entire board (not the audit committee) has oversight over the internal audit function and risk management, and must approve company's financial statements.

Related Party Transactions. There is no general oversight or approval of related party transactions by the Board. The Code requires the board to adopt or have a code of conduct covering conflict of interest for directors and management.

Board and executive nomination. The Code requires formal and transparent procedures governing appointments to the board, without recommending a separate nomination committee. Some companies also have nomination committees.

Principle VIE 2: Clear and transparent rules on board committees

Assessment: Broadly Implemented

Requirements and experience with committees of the board. The Code recommends boards of listed companies to appoint "appropriate" board committees, and requires that companies have audit and remuneration committees, with active participation from non-executive directors (Code, section C). The chairperson of the audit committee should be different from the chairperson of the board. The committees should have well defined terms of reference, roles and functions which should be reviewed annually. The committees should be able to make independent decisions. There should be regular evaluations of their performance and effectiveness. Items on the agenda should be disclosed to committee members before meetings, and there should be adequate communication between the board and committees. The Code does not specify how often the audit committee should meet, and there is no requirement to include directors with financial and accounting expertise.

Some companies also have nomination committees.

The Banking and Financial Service Act requires that the board of a bank have at least an audit committee. The audit committee shall have 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" (Banking and Financial Service Act, §67 (1)).

Disclosure of mandate, composition, and working procedures of important committees. The Code also requires that the annual reports for listed firms include brief descriptions relevant information about each board committee, including their composition and a description of their activities.

Principle VIE 3: Board commitment to responsibilities

Assessment: Broadly Implemented

Eligible directors must be individuals, and must not have been previously disqualified or be un-discharged bankrupts (CA, §207).

To qualify as a director of a bank or other financial institution, a director must also be over 21, not have been convicted of a felony or any offence involving dishonesty (or been fully pardoned), not be mentally incompetent, to manage affairs; and not be under suspension or removed from office by order of the Bank of Zambia (Banking and Financial Services Act, §31 (1)).

Company disclosure of board member activity. The Companies Act is silent on board meeting requirements. However,

although the Code requires at least quarterly board meetings, but does not restrict the number of boards a director may sit on (although one person cannot be the director of more than one bank or incorporated financial institution). The Code also requires companies to disclose the number of board and committee meetings held each year as well as the details of attendance of each director at each meeting (Code, §I-7). There were no reports of problems with compliance with these aspects of the Code.

Requirements for initial and on-going training. Directors in Zambia have access to an active director training program, which has had a major impact on the awareness of corporate governance and the duties and responsibilities of directors. The Code recommends that the board must have induction training for new directors on their duties, responsibilities, powers, and potential liabilities (Code, §B-13).

The Institute of Directors of Zambia was established in April 2000 under an act of Parliament to promote, enhance and deepen corporate governance in the country. Since the inception of the IOD Zambia in 2000, approximately 500 delegates (including directors) have either attended IOD "1-day programs" or longer programs offered by the IoD in conjunction with the several international partners. In the IOD's fiscal year ending March 2005, 174 directors were trained, from listed companies and parastatals. The majority of board members of listed companies appear to receive training from the IOD.

Unlike many similar organizations in emerging market countries, the IOD appears to be financially sustainable.

Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

Assessment: Broadly Implemented

Board access to information. The Code requires that the board have unrestricted access to all information, records, documents, and property (Code B-8), that directors receive sufficient information about board meeting agenda items, and that there must be efficient and timely methods for informing and briefing board members before meetings (Code §B-41-42). Given that the vast majority of directors are insiders (agents of the controlling shareholders) access to information is not a problem in practice. Access to information will become a more important issue once independent directors are more common.

Free access to qualified advisors. The Code requires that the board have an agreed procedure enabling board members to obtain independent professional advice at the company's expense; further, all directors have access to the advice and services of the company secretary. The Code also recommends that board committees should be free to take independent outside professional advice as and when necessary (Code §C-3). There were no reports of non-compliance with this recommendation. Given that most directors are insiders (agents of the controlling shareholders) this is not a problem in practice.

Annex 1: Listed Company Board Characteristics and Disclosure Compliance

	Board Characteristics				Reporting Compliance				
	Board Size	Auditor	CEO Chairman Dual Role	Foreign Directors	Directors Report	Chairman's Review	Managing Directors Report	Report on Corporate Gov.	Strategy Report
Shoprite Holdings	11		No	100%					
Zambia Sugar	9	D&T	No	Not available	•	•		•	
Zambian Breweries	6	PWC	No	66%	•	•	•	•	
Standard Chartered Bank	7	KPMG	No	Not available	•	•	•		
Chilanga Cement	6	D&T	No	50%	•	•		•	•
ZCCM IH	7	n/a	No	0%					
BP Zambia	7	Ernst and Young	No	Not available	•	•			
National Breweries	6	PWC	No	66%					
ZAMBEEF	11	Grant Thornton	No	45%	•	•		•	
ZAMEFA	7	PWC	No	Not available	•				
British American Tobacco	6	PWC	No	66%	•	•	•	•	
Pamodzi Hotel	3	KPMG	No	Not available	•				
Farmers House	8	Grant Thornton	No	Not available					
Average (Excluding Shoprite and ZCCM)	7		0 %		9/11	7/11	3/11	5/11	1/11

Annex 2: Required Content of the Director's Report

The board is required by law to a "directors' report" that details the state of the company's affairs. The report is to be included with the annual report, and attached to the balance sheet. The director's report should include:

Requirements of the Companies Act (Sections 175-181)

- Recommendations on dividends and contributions to company reserves;
- The names of any directors during the financial year;
- The principal activities of the company and of its subsidiaries in the course of that year;
- Any significant change in those activities in that year;
- Particulars of any important events affecting the company or any of its subsidiaries which have occurred during the year;
- An indication of likely future developments in the business of the company and of its subsidiaries; and
- An indication of the activities (if any) of the company or its subsidiaries in the field of research and development;
- Any significant changes in the fixed assets of the company or of any of its subsidiaries;
- Any significant differences between the book values and market value of assets on the balance sheet;
- If the company has issued any shares or debentures in that year, the directors' report shall state the reasons for making the issue, the classes of shares issued, the number issued, and the consideration received by the company for the issue; and
- Details of any equity (share) compensation schemes for directors;
- For certain companies, 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;
- Segment reporting (following the discretion of the directors);
- The average number of persons employed by it in each month in that year; and
- The total remuneration paid or payable in respect of that year to the persons employed by it;
- Value of gifts or donations (if over 50 monetary units);
- Value of exports.

Requirements of the Securities Act 1993 (Part IV, Continuing Obligations Of Issuers Of Registered Securities)

- A description of the principal activities of the issuer and its subsidiaries, if any, and, where two or more such activities are so described, a statement giving in respect of each such activity the turnover;
- A geographical analysis of consolidated turnover; and of its subsidiaries outside Zambia;
- The name of every subsidiary, its principal country of operation, its country of incorporation and its main business; and
- Particulars of the issued share capital and debt securities of every subsidiary:
- The interests of each director and chief executive of the issuer in the equity or debt securities of the issuer or any subsidiary;
- The details of any right to subscribe for equity or debt securities of the issuer granted to any director or chief executive of the issuer, and of the exercise of any such right;
- A statement by the directors as to the reasons for any significant departure from applicable standard accounting practices in Zambia;
- A statement as at the end of the financial year showing as regards, first bank loans and overdrafts and, secondly, other borrowings of the issuer and its subsidiaries, if any, the aggregate amounts repayable;
- In respect of the financial year, a statement of the amount of interest capitalised by the issuer and its subsidiaries, if

any, during the year;

- A statement as to the period unexpired of any service contract, which is not determinable by the employer within one year without payment of compensation, (other than any statutory compensation), of any director proposed for election at the forthcoming annual general meeting or, if there are no service contracts, a statement of that fact;
- Summary particulars of any contract of significance subsisting during or at the end of the financial year in which a director of the issuer is or was materially interested, either directly or indirectly, or, if there has been no such contract, a statement of that fact;
- Summary particulars of any contract of significance between the issuer, or one of its subsidiary companies, and a controlling shareholder or any of its subsidiaries;
- Summary particulars of any contract of significance for the provision of services to the issuer and its subsidiaries, if any, by a controlling shareholder or any of its subsidiaries;
- Summary particulars of any arrangement under which a director has waived or agreed to waive any emoluments;
- Summary particulars of any arrangement under which a shareholder has waived or agreed to waive any dividends;
- A summary, in the form of a comparative table, of the results and of the assets and liabilities of the issuer and its subsidiaries, if any, for the last five financial years, with
- Any necessary explanations or adjustments for changes in capital to make the figures fully comparable one year with another.

Zambia CG Terms/Acronyms

AGM: Annual General Meeting
BFSA: Banking and Financial Services Act 1996
CA: Companies Act
CEO: Chief Executive Officer
CFO: Chief Financial Officer
CSR: Corporate Social Responsibility
Cumulative voting: Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. Without a cumulative voting rule, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.
EGM: Exceptional General Meeting
FSDP: Financial Sector Development Program
GMS: General meeting of shareholders
GDP: Gross Domestic Product
IAS: International Accounting Standard
IFC: International Finance Corporation
IFRS: International Financial Reporting Standards
IOD: Institute of Directors
IODZ: Institute of Directors of Zambia
ISA: International Standards on Auditing
JSC: Joint Stock Company
LR: Listing Rules
LuSE: Lusaka Stock Exchange
LuSE CSD: Lusaka Stock Exchange Central Securities Depository
MCTI: Ministry of Commerce, Trade and Industry
PACRO: Patent and Company Registrar Office
PIA: Pensions and Insurance Authority
Pre-emptive rights: Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.
RPT: Related party transaction.
SEC: Securities and Exchange Commission
Shareholder agreement: An agreement between shareholders on the administration of the company, shareholder agreements typically covers rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.
SOE: State owned enterprise
Squeeze-out right: The squeeze-out right (sometimes called a "freeze-out") is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.
Withdrawal rights: Withdrawal rights (referred to in some jurisdictions as the "oppressed minority," "appraisal" or "buy-out" remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.
ZCCM: Zambia Consolidated Copper Mines
ZICA: Zambian Institute of Chartered Accountants

This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities, and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:

- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
- strengthen the ownership of reform in the assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers
- provide the basis for a policy dialogue which will result in the implementation of policy recommendations

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