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## DEFINITIONS

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Throughout these listings requirements, unless otherwise stated or the context requires otherwise, the following terms will have the meanings set out below:

<b>Term</b>	<b>Meaning</b>
the Act	the Companies Act (Cap 46.03) as amended, or any law which may replace it in part or wholly
acquisition issue	an issue of securities in consideration for an acquisition of assets (which shall not include the extinction of liability, obligation or commitment) or an issue of securities for an acquisition of, or merger with, another company in consideration for the securities of that other company
acting in concert	co-operating for a common purpose by two or more persons pursuant to an agreement, arrangement or understanding (whether formal or informal) between them; and associates shall be deemed to be so co-operating
admission or admission to listing	admission of securities to listing on the MSE and "admitted shall be construed accordingly
applicant	an issuer which is proposing to apply, or is applying, for admission of any of its securities
associate	<p>"associate" means in relation to an individual:</p> <ol style="list-style-type: none"><li>1. that individual's family and/or</li><li>2. the trustees (acting as such) of any trust of which the individual's family is a beneficiary or discretionary subject (other than a trust which is either an occupational pension scheme, or an employees' share scheme which does not, in either case, have the effect of conferring benefits on the individual or the individual's family); and/or</li><li>3. any company in whose equity shares the individual or any person or trust contemplated in 1. or 2. above (taken together) and directly or indirectly beneficially interested (or have a conditional, contingent or future entitlement to become beneficially interested) and that the individual or any person or trust contemplated in 1. or 2. above are (or would on the fulfillment of the condition or the occurrence of the contingency be) able:<ol style="list-style-type: none"><li>a. to exercise or control the exercise of 35% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or</li><li>b. to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters; and/or</li></ol></li></ol>

4. other corporate body formed under the Act in which the individual and/or member(s) (taken together) of the individual's family are beneficially interested in 35% or more of the members' interest and/or are able to exercise or control the exercise of 35% or more of the votes able to be cast at members' meetings on all, or substantially all, matters.

"associate" means in relation to a company:

1. any other company which is its subsidiary, holding company or subsidiary of its holding company;
2. any company whose directors are accustomed to act in accordance with the company's directions and instructions; and
3. any company in the capital of which the company and any other company under 1. or 2. taken together, is (or would on the fulfillment of a condition or the occurrence of a contingency be) interested in the manner described in 3. above.

For the purpose of 3.a. above, where more than one director of the same listed company is directly or indirectly beneficially interested in the equity securities of another company, then the interests of those directors and their associates will be aggregated when determining whether such company is an associate of any one director of such listed company

Beneficial "beneficial" in relation to:

Beneficial	<ol style="list-style-type: none"> <li>1. any interest in a security, means the de facto right or entitlement and to receive the income payable in respect of that security and/or to exercise or cause to be exercised any or all of the voting, conversion, redemption or other rights attaching to that security; and</li> <li>2. any other interest, means the obtaining of any benefit or advantage, whether in money, in kind or otherwise, as a result of the holding of that interest capitalisation issue an issue of fully paid shares capitalised from a company's share (or bonus issue) premium, capital redemption reserve or fund reserves (or combination thereof) to existing shareholders of the company in proportion to their shareholdings at a specific date cash company or a listed company (other than an investment entity as envisaged in cash shell Section 14) whose assets, to the satisfaction of the Committee, consist wholly or mostly of cash because it has disposed of all or a substantial part of its business or otherwise ceased to have a business of sufficient substance to support its market capitalisation</li> </ol>
Category 1,2,3 or 4 Transaction	an acquisition or disposal by a listed company as described in Section 9
children	in relation to an individual includes any step child, adopted child or illegitimate child, who has not yet attained the age of 18 years, and any person under the guardianship of the individual
circular	any document or advertisement issued to holders of listed securities by an issuer of securities, but excluding listing particulars, annual reports and accounts, interim reports, proxy forms and dividend vouchers
claw-back offer	an issue of securities for cash by an applicant to persons where the securities are then offered by such persons to the applicant's shareholders in proportion to their holdings

clearing house	an association whose main business is the clearing, netting and settlement of transaction on a stock exchange
CMDA	the Capital Market Development Act Cap 46.06 as amended, or any law which may replace it in part or wholly
the Committee	the Committee of the MSE
company	a body corporate (wherever incorporated or established) and includes any other legal person, any undertaking and any association of persons or of entities and any trust or similar device (wherever established) which issues securities which are capable of being listed by the MSE
the Constitution	the Constitution of the Republic of Malawi
controlling shareholder	any shareholder, who together with: <ol style="list-style-type: none"> <li>1. his, or its, associates; and</li> <li>2. any other party with whom such shareholder has an agreement or understanding (whether formal or informal) relating to any voting rights attaching to securities of the relevant company; can exercise, or cause to be exercised, 50% or more of the voting rights at meetings of the relevant company, or can appoint or remove, or cause to be appointed or removed, directors exercising more than 50% of the voting rights at directors' meetings of the relevant company;</li> </ol>
convertible securities	securities which are convertible into or exchangeable for other securities accompanied by options to subscribe for or purchase other securities and "conversion" and "convertible" shall be construed accordingly
the daily official	list the afternoon session price list issued by the MSE
de facto control	a holding or aggregate holding of shares or other securities in a company entitling the holder thereof to exercise, or cause to be exercised, the specified percentage or more of the voting rights at meetings of that company
deferred shares	equity shares which, as regards entitlement to payment of dividends or a return of capital rank behind the ordinary shares of the issuer
director	any person occupying the position of director or alternate director of a company, by whatever name he or she may be designated and, in relation to an issuer which is not a company, a person with corresponding powers and duties
equity instruments	securities with restricted or no voting rights but which participate in the distribution of profits in a manner linked directly to the profitability of the company
equity shares	shares comprised in the company's equity share capital and which carry votes
equity share capital	in regard to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carried any right to participate beyond the specified amount in a distribution
equity securities	equity shares, securities convertible into equity shares and equity instruments

external company	a company incorporated outside the republic of Malawi
external property	property situated outside the republic of Malawi
GAAP	Generally Accepted Accounting Practice within Malawi or, in the case of an external company, national Generally Accepted Accounting Practices acceptable to the Committee or International Accounting Standards
group	a holding company, not itself being a wholly owned subsidiary, together with all the companies being its subsidiaries
holding company	a company that has one or more subsidiaries
individual's family	an individual's spouse and children
International Accounting Standards	the International Accounting Standards formulated by the International Auditing Practices by the Accounting Standards Committee
International Standards of Auditing	the International Standards on Auditing formulated by the International Auditing Practices Committee of the International Federation of Accountants
an introduction	a method of bringing securities to listing not involving an issue of new securities or any marketing of existing securities because the spread of shareholders already complies with the conditions for listing
IAS	International Accounting Standards
investment entities	investment companies, investment trusts and unit trusts whose principal activity is the investment in securities
issue for cash	an issue of securities for cash (for the extinction of a liability, obligation or commitment) in compliance with Paragraphs 4.197 to 4.205: <ol style="list-style-type: none"> <li>1. to persons who are specifically approved by the shareholders in general meeting in respect of that particular issue; or</li> <li>2. generally approved by shareholders by the giving of a renewable mandate (which should be valid until the company's next annual general meeting provided it shall not extend beyond 15 months) to the directors of the issuer to issue shares for cash subject to these listings requirements and to any other restrictions set out in the mandate</li> </ol>
issuer	any company, any class of whose securities has been admitted or is, or is proposed to be, the subject of an application for admission
intangible assets	non-monetary assets without physical substance including but not limited to goodwill, patents, trademarks, brand names, copyrights, franchises, licences, knowhow and publication titles
listed company	a company, any class of whose securities is listed
the List	the list maintained by the MSE of companies whose securities it has admitted to listing

listing	the admission of a security to the List and “listed” shall be construed accordingly
listing particulars	a statement by a company seeking a listing and issued for the purpose of giving information to the public with regard to the company and containing particulars specified in the listings requirements, by the law, or both
listings requirements	the listings requirements as from time to time amended by the MSE (whether by way of practice note or otherwise) contained herein (including the “introduction”), save that the section headings, paragraph headings and the introductory text to each section headed “Scope of Section” do not form part of the listings requirements and are for the guidance and ease of reference only and are not construed as affecting the substance or interpretation of the listings requirements.
market value	in relation to a listed security, the ruling price for that security
material	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 probably exceed 10% in value.
memorandum and articles of association	memorandum of association and articles of association or equivalent instrument constituting or defining the constitution of a company
merger issue	see “acquisition issue”
new applicant	an applicant, no class of whose securities is listed already
offer for sale	an invitation to the public by, or on behalf of, a third party to purchase securities of the issuer already in issue or to be issued and may be in the form of an invitation tender at or above a stated price.
offer for subscription	an invitation to the public by, or on behalf of, an issuer to subscribe for securities of the issuer not yet in issue or allotted, and may be in the form of an invitation to tender at or above a stated price.
placing	a marketing of securities already in issue but not listed, or not yet in issue, to specified persons or to clients of the sponsoring broker or any securities house assisting the placing, which does not involve an offer to the public in accordance with the Act or to existing holders of the applicant’s securities generally and which takes place immediately before the applicant is listed
practice notes	practice notes issued from time to time by the Committee to clarify or expand upon these listings requirements
pre-listing statement Section 3	the statement required to be issued by companies in terms of and which includes a prospectus
prospectus	the prospectus to be issued in accordance with the Act
publish in the press	make available to the public as a paid press announcement in accordance with Paragraph 7.46
pyramid companies	companies classified by the Committee and pyramid companies in accordance with the criteria set out in Paragraphs 14.4 and 14.5

renounceable offer	an invitation by a listed company to its shareholders to subscribe by way of rights for securities in the applicant where the listed company has received the right to subscribe for those securities in the applicant but renounces all or part of that right to its shareholders
The Republic of Malawi	The Republic of Malawi constituted under the Constitution
Rights Offer	Rights offer an offer to existing holders of securities to subscribe for or purchase further securities in proportion to their holdings made by means of the issue of a renounceable letter or other negotiable documents which may be traded (as either “fully paid” or “nil paid” rights) for a period before payment for the securities is due.
the Rules of the MSE	the rules made by the Committee from time to time
the ruling price	the price at which the last sale of a security took place, or, if higher the closing bid price, or, if lower, the closing offer price as published in the daily official list on the relevant day.
scrip dividend	for the purposes of these listings requirements: bonus (or capitalisation) shares which a shareholder elects to receive in lieu of a cash dividend where the shareholder is given a right to make such an election.
Secretary	includes any official of a company, by whatever name he may be designated, including a company, who, or which, is performing the duties normally performed by a secretary of a company
securities	includes stocks, shares, debentures (issued by a company having share capital), units of stocks issued in place of shares, and options on stocks or shares or on such debentures or units, and rights thereto, but does not include: <ol style="list-style-type: none"> <li>1. shares in a private company; or</li> <li>2. stocks or shares in a public company which cannot be acquired or transferred without the consent or approval of the directors or any representatives of the company, other than such consent or approval required by, under or by virtue of any law, or any options on or rights to such stocks and shares</li> </ol>
significant	any matter or element which is significant for the purpose of making an informed assessment of any transaction or listed security
sponsoring broker	a member of the MSE appointed by a listed company in accordance with Section 1
the State	the government of the Republic of Malawi
subscribed capital	the portion of the capital of a company which has been subscribed for by shareholders
subsidiary	a subsidiary company as defined under the Act
substantial	a change in or constituent of a particular factor which may be regarded in the circumstances as being substantial and which, as a rule of thumb, would normally exceed 30% in value
temporary documents of title	allotment letters, split receipts, letters of acceptance, letters of rights,
vendor consideration	scrip certificates and any other temporary documents of title

issue	see “acquisition issue”
vendor consideration issue	a marketing on behalf of vendors of securities which are to be issued to them in consideration for an acquisition.
weighted average traded price	the total value of the securities traded divided by the total number of securities trade.

# INTRODUCTION

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## Objectives

The MSE provides facilities for the listing of the securities of companies (domestic or foreign) and provides its users with an orderly market place for trading in such securities and regulates accordingly.

The listings requirements set out in this manual apply to both applicants for listing and presently listed companies. The listing requirements reflect, inter alia, the rules and procedures governing new applications, proposed marketing of securities and the continuing obligations of issuers, and are aimed at ensuring that the business of the MSE is carried on with due regard to the public interest.

## General principles

It is both impracticable and undesirable to devise requirements and procedures in such details so as to govern all circumstances which may arise in commercial practice. Accordingly, the following listings requirements fall into two categories:

- a. certain general principles (the "General Principles") which are set out below and are expected to be observed in all transactions and submissions pertaining to securities listed and to be listed; and
- b. the main body of the listings requirements (the "main body") which are set out in the following sections and in the practice notes and which are derived from the application of the General Principles and how the Committee seeks to interpret them.

Moreover, the spirit of the General Principles may, by necessary implication, apply to areas or circumstances not expressly covered in the main body.

The Committee has discretion to modify the application of a requirement contained in the main body in exceptional circumstances - for example when it considers that its strict application would conflict with the General Principles.

Accordingly, persons engaged in commercial practice should be aware that the spirit as well as the precise wording of the General Principles and main body is to be observed at all times. If there is any doubt as to interpretation or application of the listings requirements, the MSE must be consulted.

The General Principles are as follows:

- a. to provide a market for the raising of primary capital, an efficient mechanism for the trading of securities in the secondary market, and to protect investors;
- b. securities will be admitted to the List only if the Committee is satisfied that the applicant is suitable and that it is appropriate for those securities to be listed;
- c. full, equal and timeous public disclosure shall be made to all holders of securities and the general public at large regarding the activities of an issuer that are significant;
- d. holders of relevant securities shall be given full information and afforded adequate opportunity to consider in advance and vote upon substantial changes in the issuer's business operations and matters affecting the company's constitution or shareholders' rights;
- e. all parties involved in the dissemination of information into the market place, whether directly to holders of relevant securities or to the public, shall observe the highest standards in doing so;
- f. all holders of the same class of securities of an issuer shall enjoy fair and equal treatment in respect of their securities; and
- g. the listings requirements and in particular the continuing obligations, should promote investor confidence in standards of disclosure, in the conduct of issuers' affairs and in the market place as a whole.

## Competent authority

Under the provisions of CMDA a company which desires to have its securities dealt with on a stock exchange must apply for a listing and before it will be granted such listing it must comply with the listings requirements of the stock exchange. The Committee is the competent authority responsible for the list of the securities that may be dealt in on the MSE, applications by the issuers of securities for the inclusion of securities thereto and the annual revision of the list.

When a listings matter is considered at a meeting of the Committee, the relevant sponsoring broker may be accompanied by representatives of the issuer and other advisors, any of whom, subject to the Committee's consent, may address the meeting. The Committee reserves the right to limit the number of persons attending such meetings.

## Companies with listings on other stock exchanges

Attention is drawn to the fact that other stock exchanges may have different requirements relating to the issue of securities. Companies with a primary listing on the MSE which are quoted also on such other exchanges should therefore ensure that the requirements of both the MSE and other such exchanges are complied with when submitting draft documents to the Committee for approval.

Where a company's primary listing is on another exchange, the Committee will normally accept the listings requirements of that exchange but reserves the right to request such company to comply with such aspects of the MSE listings requirements as it may, in its sole discretion, determine.

## Good practice

The procedures and requirements included in these listing requirements should be read in conjunction with the following good practice notes:

### Annual financial results

- a. there may be some delay between the financial year end of a company and the completion of the audit thereof. The MSE requires the publication of the financial results as soon as possible after the completion of the audit and well within the time frame permitted by the Companies Act;

### Board representation

- b. the board of directors should contain at least one executive director and at least one independently elected, non-interested, director to represent the general public. Good corporate governance is encouraged along the lines of the **Code of Best Practice for Corporate Governance in Malawi**

### Power of censure

- c. the MSE has the power of censure and may propose remedies for the non-compliance with MSE procedures for listing and general requirements for listed companies;

### Expenses of the issue

- d. the usual categories of expenditure (and requiring disclosure) are as follows:
  - auditors report for the prospectus;
  - commission on share placement;
  - sponsoring broker fees;
  - corporate finance fees;
  - prospectus distribution and advertising.Asset and pension fund valuation costs will frequently also be a feature.

### Use of certified deeds

- e. the use of certified deeds are prohibited in the MSE;

### Custodial facilities

- f. there are currently no internationally accepted custodial facilities in Malawi.

# **AUTHORITY OF THE COMMITTEE**

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## **Powers of the Committee**

- A.1 Subject to the provisions of CMDA the Committee shall have the sole power:
- a. subject to the listings requirements, to grant, review and suspend or terminate a listing of securities;
  - b. to prescribe from time to time the minimum listings requirements with which an applicant shall comply before each security issued by such applicant is granted a listing;
  - c. to prescribe from time to time the minimum listings requirements with which a listed company shall comply while a security issued by it remains listed;
  - d. to suspend, alter or rescind a listings requirement prescribed before or after a listing has been granted and to prescribe additional listings requirements from time to time either by way of amendment to these listings requirements or by way of the issue of practice notes; and
  - e. to prescribe circumstances under which a listing of a security shall or may be suspended or terminated.
- A.2 Listings are granted subject to the listings requirements and an application must comply with the listings requirements. In addition, the Committee may grant a listing subject to any additional condition(s) which it considers appropriate, in which event the applicant will be informed and shall have the right to make representation to the Committee but thereafter will be required to comply with such condition(s).
- A.3 Nothing contained in this section shall be deemed to limit the powers of the Committee to those contained herein, and the Committee may at any time exercise any further powers granted to it in terms of CMDA. Where the Committee exercises discretion in terms of these listings requirements, it shall be its sole discretion.

## **Suspension**

### **Unilateral suspension**

- A.4 The Committee may, subject to the provisions of CMDA, if it is of the opinion that it is desirable to do so and/or if the listed company has failed to comply with the listings requirements, suspend the listing of securities in a listed company and may impose such conditions as it may in the circumstances deem appropriate for the lifting of such suspension.

For example, a temporary suspension pending an announcement may be lifted when the announcement is made or in the case of a reverse take-over the lifting of the suspension may be made conditional upon the publication of the Category 1 circular and listing particulars.

- A.5 When the listing of securities in a listed company is under threat of suspension, the affected company shall be afforded the opportunity of making representations to the Committee in support of the continued listing of such securities prior to the Committee making any decision to suspend such listing.
- A.6 When the listing is suspended and the affected company fails to take adequate action to obtain the restoration thereof within a reasonable period of time, the Committee is likely to terminate the listing as set out below.

### **Suspension on request**

- A.7 The Committee may grant a request for suspension of any listed securities in the following circumstances:
- a. where a listed company is placed under provisional liquidation or in judicial management or subject to an application for a scheme of arrangement or reconstruction under the Act; or
  - b. where the request is made by the directors of a listed company and it is apparent that there are two levels of information in the market and the Committee considers that this situation cannot be remedied by the immediate publication of an announcement to clarify the situation.

## **Termination**

### **Unilateral termination**

- A.8 The Committee may, if it is of the opinion that it is desirable to do so and/or if the listed company has failed to comply with the listing requirements, remove from the list any securities previously included therein; provided that the listing of such securities shall first have been suspended in accordance with the above provisions.
- A.9 When the listing of securities in a listed company is under threat of termination, the affected company shall be afforded the opportunity of making representation to the Committee in support of the continued listing of such securities prior to the Committee making any decision to terminate such listing.

### **Termination on request**

- A.10 A listed company may, at any time, make written application to the Committee for a deletion of its securities from the list from which time and date it wishes deletion to be effective and the reasons for the request. The Committee may grant the request for termination if it deems this to be desirable; and it may deem such securities shall be removed only from the list where the listed company's shareholders have approved such removal.

### **Redemption either wholly or in part; removal from the list of redeemable preference shares or debentures**

- A.11 Written application for the removal of redeemable preference shares or debentures of the corresponding portion thereof from the list as and from the date of the closing of the registers or from the date on which the redemption or repayment, as the case may be, took place (if preference shares or debentures are redeemed by drawings) must be made to the Committee at least 30 days before the date of redemption.
- A.12 The application must be accompanied by a copy of the proposed announcement and/or circular to be issued to the redeemable preference shareholders or debenture holders thereby notifying them of the redemption.

### **Annual revision of the list**

- A.13 In terms of CMDA a company's listing shall be reviewed annually.

### **Power of censure**

- A.14 If the Committee considers that a listed company has contravened the listing requirements in any way, it may (without derogating from the powers of suspension and/or termination of the Committee), censure that company by way of a written warning.
- A.15 Unless the Committee considers that maintenance of the smooth operation of the market or the protection of investors otherwise requires, the Committee will give advance notice to the parties involved in any action which it proposes to make and will give them opportunity to make representations to the Committee.

## **Power to require information**

- A.16 The Committee may require a listed company to disclose to it within a period specified by it such information at the company's disposal as the Committee may determine, and if the Committee is satisfied, after such company has had an opportunity of making representations to it, that the disclosure of that information to the registered holders of the securities in question will be in the public interest, the Committee may by notice in writing require such company so to disclose that information within the period specified in the notice.
- A.17 The Committee may require a listed company to provide for the publication or dissemination of any further information not specified in the listings requirements in such form and within such time limits as it considers appropriate. The listed company must comply with such requirement and, if it fails to do so, the Committee may publish the information after having heard the representations of the listed company or after having granted the listed company the opportunity to make such representations.

## **Publication**

- A.18 The Committee may, in its sole discretion and in such manner as it may deem fit, notify or cause to be notified to the public that it has:
- a. investigated dealings in the listed security;
  - b. censured the listed company;
  - c. suspended the listing of any security; and/or
  - d. terminated the listing of any security.
- A.19 In the notice referred to in Paragraph A.18, the Committee shall notify, or cause to be notified to the public the reasons for such investigation, censure, suspension or termination (as the case may be), and in the case of an investigation, so much of its conclusions or findings as it may, in its absolute discretion, deem necessary.
- A.20 No listed company or its directors or officers shall have any cause of action against the Committee or any member thereof, or against any person employed by the MSE or the Committee for damages arising out of the publication of any statement made in terms of Paragraph A.18, unless such publication was made either grossly, negligently or with the willful intention of injuring the listed company, its directors or officers.
- A.21 The Committee may at any time in its absolute discretion publish, or cause, permit or authorise the proprietor or publisher of any newspaper or other periodical publication to publish any statement made in terms of Paragraphs A.18 and A.19.

## **Special case: cash companies (cash shells)**

- A.22 Should the cash company fail, within six months after the Committee has written to a cash company, to acquire viable assets which meet the conditions for listing, as set out in Section 2, its listing may be suspended after being granted a hearing by the Committee.
- A.23 The cash company will be granted a hearing by the Committee, prior to the time when the company's listing is to be suspended, and failing the completion of the acquisition of viable assets by the listed company which conform to the conditions for listing, as set out in Section 2, within a three month period from the date of suspension, the company's listing will be terminated automatically.

# SECTION 1

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## Sponsoring Brokers

### 1. SPONSOR

#### Scope of section

This section sets out the requirements relating to sponsoring brokers. A sponsoring broker is required to be appointed in certain circumstances by issuers. Such sponsoring broker must undertake to the Committee to accept certain responsibilities. If the sponsoring broker fails to carry out these responsibilities, the Committee may take one or more of the steps referred to in paragraph 1.15. The Committee encourages the appointment of a sponsoring broker who is a member of the Exchange and fully experienced in market practice to give advice on the application of the listings requirements.

#### Appointment

- 1.1 An issuer must appoint a sponsoring broker when:
- the issuer makes an application for listing which requires the production of listing particulars;
  - it wishes to submit documentation to the Committee pertaining to any of the matters detailed in Paragraph 6.2;
  - after a breach of the listings requirements, the Committee notifies the issuer that the appointment of a sponsoring broker is required to give advice on the application of the listings requirements;
  - a sponsoring broker is required by the listings requirements to report to the Committee in relation to any transaction or matter; and
  - so requested by the Committee.
- 1.2 The Committee may, where it deems that the proposed transaction so requires, require an issuer to appoint a joint sponsoring broker.

#### Qualifications

- 1.3 A sponsoring broker must undertake to the MSE in the form set out in Section 6 Appendix 8 to accept the responsibilities of a sponsoring broker and discharge those responsibilities at all times to the satisfaction of the Committee.
- 1.4 A sponsoring or joint sponsoring broker shall be members of the MSE.

#### Responsibility of a sponsoring broker

##### Nature of responsibilities

- 1.5 The responsibilities of the sponsoring broker to the MSE referred to in the undertaking in Section 6 Appendix 8 are set out in Paragraphs 1.5 to 1.13 below. Failure to carry out these responsibilities may result in the Committee taking one or more steps referred to in Paragraph 1.15.
- 1.6 A sponsoring broker who places reliance on the advice of advisors to the issuer should be satisfied as to the credentials and abilities of such advisors.
- 1.7 The sponsoring broker must:
- in the case of a new applicant, satisfy itself to the best of its knowledge and belief, having made due and careful enquiry of the issuer and its advisors, that the issuer has satisfied all relevant conditions for listing and other requirements of the listings requirements; and
  - ensure that the issuer is guided and advised as to the application of the listings requirements.

### **Applications for listings**

- 1.8 In the case of any application for listing which requires the production of listing particulars, the sponsoring broker must complete a declaration in the form issued by the Committee confirming that it has satisfied itself to the best of its knowledge and belief, having made due and careful enquiry of the issuer and its advisors that:
- a. all the documents required by the listings requirements to be included in the application for listing have been supplied to the Committee;
  - b. all other relevant requirements of the listings requirements have been complied with; and
  - c. there are no matters, other than those disclosed in the listing particulars or otherwise in writing to the Committee, which should be taken into account by the Committee in considering the suitability for listing of the securities for which application is being made.

### **Directors**

- 1.9 The sponsoring broker must be satisfied, before any application for listing is made which requires the production of listing particulars, that the directors of the issuer:
- a. have had explained to them by the sponsoring broker or other appropriate professional adviser what the nature of their responsibilities and obligations as directors of a listed company are under the listings requirements and the Act; and
  - b. in particular understand what is required of them to enable holders of the issuer's listed securities and the public to appraise the position of the issuer and to avoid the creation of a false market in its securities once they are listed.

### **Financial reporting procedures**

- 1.10 In the case of a new applicant, the sponsoring broker must, before the application for listing is made, report to the Committee in writing that it has obtained written confirmation from the issuer and/or its advisors that the directors have established procedures which provide a reasonable basis for them to make proper judgments as to the financial position and prospects of the issuer and its group. The sponsoring broker must be satisfied that this confirmation has been given after due and careful consideration by the issuer.

### **Profit forecast**

- 1.11 Where a profit forecast (see Paragraph 8.8) appears in listing particulars, a Category 1 circular or any circular containing proposals to be put to shareholders in general meeting concerning a refinancing or reconstruction of the issuer or its group, the sponsoring broker must report in writing to the Committee that it has made due and careful enquiry of the issuer and/or its advisors that the forecast or estimate has been properly made.

### **Other responsibilities**

- 1.12 The sponsoring stockbroker is responsible for the following in relation to any application for listing which requires the production of listing particulars:
- a. communications with the Committee;
  - b. lodging with the Committee all documents supporting the application; and
  - c. seeking the Committee's approval of listing particulars.

### **More than one sponsoring broker**

- 1.13 Where more than one sponsoring broker has been appointed, the issuer must establish which sponsoring broker has primary responsibility or how responsibility is to be allocated for any specific application for listing which requires the production of listing particulars.

### **Direct Access**

- 1.14 A sponsoring broker must be present at all formal discussions with the Committee regarding an issuer.

### **Action against a sponsoring broker**

- 1.15 If the Committee considers a sponsoring broker to be in breach of its responsibilities, it may:
- a. censure the sponsoring broker;
  - b. take such other disciplinary action that may be appropriate under the MSE Members Rules;
  - c. publish, or cause to be published, by whatever means the Committee may decide, what action it has taken and the reasons for that action.
- 1.16 The MSE Listing Committee, in the first instance, will normally deal with any breach by a sponsoring broker of its responsibilities. Where there has been a breach by a sponsoring broker of its responsibilities, the Listing Committee will refer the matter to the MSE Committee.
- 1.17 Where the Committee proposes to take any of the steps described in Paragraph 1.15, the sponsoring broker will be:
- a. given advance notice of the Committee's proposed action;
  - b. entitled to appeal to the Committee either in writing or in person, or both;
  - c. advised of the Committee's decision as soon as practicable after it is made; and
  - d. advised in writing of the reasons for any decision that is unfavorable to the sponsoring broker.
- 1.18 In case of an appeal to the Committee:
- a. representatives of the sponsoring broker and its advisers may attend and any of them may address the Committee, subject to b. below; and
  - b. the Committee is (without prejudice to the Powers of the Committee - Paragraph A.1) the final decision-making body of the MSE for the purposes of Paragraphs 1.15 to 1.18.

# SECTION 2

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## CONDITIONS FOR LISTING

### Scope of section

This section sets out the conditions for listing

### Introduction

- 2.1 Listings or additional listings are granted subject to the listings requirements now or hereafter in force.
- 2.2 All applications for listing are to be submitted to the Committee through a sponsoring broker.

### Discretion of the Committee

- 2.3 It must be emphasised that, notwithstanding these requirements, the Committee may, in its overriding discretion, grant a listing to an applicant which does not fulfill the requirements set out below or refuse a listing to an applicant which does comply with these listings requirements on the grounds that, in the Committee's opinion, the grant or refusal of the listing is in the interests of the investing public. Applicants who wish to apply for a listing, but which do not meet all of the objective criteria prescribed by these listings requirements for the grant of a listing are therefore invited to discuss their intended applications with the Committee.
- 2.4 The items below are not exhaustive and where unusual features are present in the applicant an approach to the Committee by the sponsoring broker is advised.
- 2.5 Applicants are required to submit to the Committee, at an early date, any matter or unusual feature appertaining to the listing not specifically provided for in the listings requirements. This procedure will obviate any difficulties that may arise after applicants have finalised transactions without the Committee's approval and which may be in conflict with the listings requirements.

## CONDITIONS APPLICABLE TO ALL MARKETS

### RELATING TO THE APPLICANT

#### Applicant to be duly constituted

- 2.6 The applicant must be duly incorporated or otherwise validly established under the law of the country of incorporation or establishment, and must be operating in conformity with its memorandum and articles of association and all laws of its country of incorporation or establishment. The applicant must be a public company in accordance with the Act.
- 2.7 An applicant seeking a listing on the MSE must contractually undertake to the MSE, by completing Schedule 9, that from date of admission to listing of any of its securities it will comply fully with the MSE Listings Requirements, irrespective of the jurisdiction in which the applicant is incorporated.

#### Directors

- 2.8 (a) The directors and senior management of an applicant must collectively have appropriate expertise and experience for the management of the applicant and the group's business. Details of such expertise and experience must be disclosed in any listing particulars prepared by the applicant.
- (b) An applicant must submit to the MSE and its sponsoring broker at the date of application for listing, the directors' declaration form as contained in **Schedule 22 A** in respect of each of the directors is free of any conflict of interest between the director's duties to the company and his/her private interests.
- (c) The Chief Executive Officer must not also hold the position of the Chairperson.

### **Memorandum and articles of association and/or Trust deeds**

- 2.9 a. No application will be considered until the memorandum and articles of association of the parent and any subsidiary companies have been approved by the Committee. These documents must comply with the requirements of the MSE for memoranda and articles of association, whether required by law or supplemental thereto.
- b. No application for the listing of Debentures will be considered until the Trust deed governing their issue has been approved by the Committee. If possible, this should be submitted initially in draft form.
- 2.10 The MSE requires disclosure of the restrictions, if any, upon the business of the applicant and/or its subsidiaries contained in the memoranda of association, or in the case of the pre-Companies Act 1984 "objects clause", disclosure of legal opinion on what the applicant has power to do and what it does not have the power to do.

### **Share certificates etc**

- 2.11 It is necessary to submit for approval a specimen, which must be cancelled by mutilation, of the share certificate, letter of allotment etc., or other document in which it is designed to deal prior to the issue of shares or other security before making application for listing.
- 2.12 The eventual listing will only be granted when the Committee is satisfied that the share certificates or letters of allotment or other documents or securities are or will shortly be available to shareholders.
- 2.13 All provisional documents of title must be renounceable, though the Committee may in exceptional circumstances waive these requirements.
- 2.14 Share certificates should not exceed 30 cm in breadth and 26 cm in depth.

### **Listing of subsidiary companies**

- 2.15 Whenever a company intends making an offer of securities of a subsidiary or procures that the subsidiary issues securities in order to obtain a listing in respect of such subsidiary, those securities to be issued which are not retained by the holding company must be renounced in favour of its shareholders by way of renounceable offer (see Paragraph 4.146) except in circumstances which the Committee considers exceptional.

### **Financial Information**

- 2.16 The following are the requirements relating to financial information:
- a. the financial statements must have been drawn up in accordance with the applicant's national law and must be prepared and independently audited in accordance with standards regarded by the Committee as appropriate for listed companies. Indications of compliance with this requirement would be financial statements prepared, in all significant respects, in accordance with GAAP or International Accounting Standards;
- b. the auditors must have reported on the financial statements without any qualification which in the opinion of the Committee is significant for the purposes of listing; and
- c. any profit forecast must be accompanied by a report complying with Paragraph 5.11 by the applicant's auditors or reporting accountants.
- 2.17 The provisions of Malawi Accounting Standard 14 apply to those companies whose shares are publicly traded and to other economically significant entities, including subsidiaries whose levels of revenues, profits, assets or employment in countries in which their major operations are conducted.
- 2.18 The provisions of Malawi Accounting Standard 29 (Inflation Adjusted Accounts) must be applied in all cases and Standard 32 (Financial Instruments) wherever its provisions apply.

- 2.19 The provision of MSE requirements relating to a group shall apply where, at the end of the company's financial year, a company has subsidiary(ies) and/or associated companies. The accounts and statements dealing with the profit or loss, the state of affairs of the company and the requirements of the MSE must comply where applicable with Malawi Accounting Standard 14 dealing with reporting financial information by segments of an enterprise - more specifically, the different industries and the different geographical areas in which the group operates.

## **RELATING TO THE SECURITIES**

### **Status of the securities**

2.20 The securities for which a listing is sought must be issued in conformity with the law of the applicant's country of incorporation or establishment and in conformity with the applicant's memorandum and articles of association and all authorisations needed for their creation and issue under such law or documents must have been duly given.

- 2.21 Where a new applicant already has securities listed on another stock exchange, it must be in compliance with the requirements of that exchange and the relevant laws of that country.

### **Transferability of securities**

2.22 The securities for which listing is sought must be fully paid up and freely transferable.

### **Securities excluded from listing**

2.23 The Committee, and in accordance with the Act, will not grant a listing in respect of:

- a. Issues of non-voting equity shares;
  - b. preference capital without the equity capital of the company already being listed.
- In exceptional circumstances the Committee may waive this requirement. If such permission is granted, the company concerned will be required to publish the same information as for a public offer of equity capital.

### **Low and high voting instruments**

2.24 The Committee, and in accordance with the Act, will not grant a listing of shares or securities which constitute equity instruments with high or low votes.

- a. A low voting security is considered as one which confers on its holder, both at the proposed time of listing of the instrument and subsequently, reduced voting rights in comparison with the voting rights conferred on the holders of equity securities of the issuer already listed. The voting rights may be reduced either with respect to the number of votes per security or with respect to matters on which the holders of the securities may vote or otherwise.
- b. A high voting security is considered as one which confers on its holder, both at the proposed time of listing of the instrument and subsequently, enhanced voting rights in comparison with the voting rights conferred on the holders of equity securities of the issuer already listed. The voting rights may be enhanced either with respect to the number of votes per security or with respect to the matters on which the holders of the securities may vote, or otherwise.

### **Letters of allotment and similar**

2.25 Where listing is required in respect of letters of allotment or other similar documents, the proposed timetable (schedule of dates) should be submitted to the Secretary of the Stock Exchange Committee for approval prior to the closing of the transfer registers of the company from which the rights accrue. The procedure to be adopted should be agreed with the secretary by the Sponsor.

### **Convertible securities**

2.26 In addition to any other listing requirements affecting convertible securities, the Committee will not grant a listing to convertible securities unless there are sufficient unissued securities in the applicant's authorised capital into which the convertible securities could convert at the time such convertible securities are issued. The applicant must further undertake to the MSE that it will at all times maintain sufficient unissued securities to cater for the eventual conversion

### **Deferred shares**

- 2.27 The following are the requirements relating to the issue and listing of deferred shares;
- a. the period of deferment must not exceed three years. The Committee under special circumstances may grant extensions for up to five years;
  - b. the Committee will not in normal circumstances permit the total number of deferred shares in issue to exceed 20% of an applicant's total issued share capital. This ruling shall not apply where the shares are offered on a pro rata basis as rights to ordinary shareholders;
  - c. approval for the issue of deferred shares, which are not the subject of a rights offer to all shareholders, must be given in general meeting of the applicant; and
  - d. an application for listing of all deferred shares must be made to the Committee.

### **Unlisted securities**

- 2.28 In the event of an applicant not being granted a listing for additional securities issued or if for any reason certain securities were delisted:
- a. the certificates must be stamped "Unlisted securities" and the stamp must be perpetuated for all future registrations;
  - b. the share register must signify that the securities are unlisted; a statement regarding the unlisted securities must appear in the applicant's annual financial statements; and
  - c. any additional securities issued will be subject to the same requirements.

### **Undertakings**

- 2.29 An applicant must give a general undertaking, complying with Section 6 Appendices: Schedule 9, to the MSE Listings Requirements in the form of a resolution of directors certified by its chairman that it will comply with the listings requirements as amended from time to time.
- 2.30 The directors of an applicant shall individually undertake to the MSE that they have exercised their fiduciary duties with due regard to the provisions of the memorandum and articles of association of the applicant and that they will honour their responsibility for the applicant's compliance with the listings requirements, as amended from time to time.

## **RELATING TO THE SHAREHOLDERS**

### **Public shareholders**

- 2.31 For the purposes of Paragraphs 2.34 c. and e., securities will not be regarded as being held by the public if they are beneficially held, whether directly or indirectly, by:
- a. the directors of the applicant or any of its subsidiaries;
  - b. an associate of a director of the applicant or any subsidiaries;
  - c. the trustees of any employee's share scheme or pension fund established for the benefit of any director or employees of the applicant and its subsidiaries;
  - d. any person who, by virtue of any agreement, has right to nominate a person to the board of the directors of the applicant; or
  - e. any person who is interested in 10% or more of the securities of the relevant class unless the Committee determines that, in all the circumstances, such person can be included in the public for purposes of Paragraphs 2.34 d. and e.
- 2.32 Notwithstanding 2.31 a. to e. above, securities will be regarded as being held by the public if any person who is interested in 10% or more of securities of the relevant class:
- a. is a fund manager or portfolio manager managing more than one fund or portfolio, where each fund or portfolio is interested in less than 10% of the relevant securities, provided that this exemption shall not apply where the fund or portfolio manager is, in relation to any such fund or portfolio, acting in concert with any person who holds relevant securities which, together with those held by the fund or portfolio in question, represent 10% or more of the relevant securities;
  - b. is the registered holder of securities which are subject of a depositary receipt programme and no depositary receipt holder, together with any person with whom they may be acting in concert, holds depositary receipts representing 10% or more of the securities concerned, save where the holder is a fund or portfolio manager as contemplated in sub-paragraph a. above; or

- c. is a nominee shareholder and none of the beneficial shareholders which that nominee represents, together with any person with whom they may be acting in concert, is interested in 10% or more of the securities concerned, unless the beneficial shareholder is a fund or portfolio manager as contemplated in sub-paragraph a. above.
- 2.33 The Committee may, in its sole discretion, require the listed company to provide it with a declaration that, to the best of the knowledge and belief of the directors, any beneficial shareholders of the company whose shares are registered in the names of one or more nominees, do not include any person who may be acting in concert with any other person insofar as it may affect their classification as public shareholders.

## Criteria for each market

### Main board listing

- 2.34 An applicant seeking a listing on the MSE Board must satisfy the following criteria:
- a. a subscribed capital (including reserves but excluding minority interests, revaluations of assets that are not supported by an independent professional expert acceptable to the Committee prepared within the last six months and intangible assets) of at least K250 million;
  - b. not less than 30,000,000 equity shares in issue;
  - c. a satisfactory audited profit history for the preceding three financial years;
  - d. 25% of each class of equity shares shall be held by the public, unless otherwise agreed with the Committee;
  - e. the number of public shareholders of listed securities shall be at least:
    - i. 300 for equity shares;
    - ii. 25 for preference shares; and
    - iii. 10 for debentures; and
  - f. the minimum initial issue price of securities shall not be less than 100 tambala per security, unless otherwise agreed with the Committee.
- 2.35 The Committee shall hold in its discretionary power the ability to vary and or amend these criteria under Paragraphs 2.34 and 2.35 (a) – (b) below.
- a. **Public offer:**
    - i. Any offer of securities to the public by an applicant will comprise a minimum of 5,000,000 such securities of an offer value of not less than K50 million; or
    - ii. If at least 25 % of each class of the shares of the company inclusive of any past offers and/or placements is offered to the public, subject to whichever is higher between the quantum (a.i) and proportion (a.ii) requirement.
- 2.36 Of the securities so offered under sub-paragraph a.i. and ii. above, the applicant may reserve a preferential allotment for staff members (including any shares which are subject to an allotment scheme) and others whose business association with the company is of direct benefit to it, so long as such offer complies with the MSE's requirements outlined in this document.
- Prospectuses shall not be accompanied by a personal appeal to subscribe from any party connected with the issue or with the applicant concerned, nor shall they be circulated to members of the general public sooner than they are in the hands of the brokers.
- b. **Introductions**
    - i. Shareholders other than those controlling the business, or their nominees, or as outlined under Paragraphs 2.34 and 2.35 above hold collectively not less than 5,000,000 such securities, which total is at least 25% of the issued capital; or

- ii. Shareholders other than those controlling the business, or their nominees, or as outlined under Paragraphs 2.33 and 2.34 above hold collectively not less than 5,000,000 such securities, the market value of which exceeds K50 million.

The documentation required for submission to the Committee will be the same for an Introduction as for a Public Offer with the exception of the offer document itself.

- 2.37 The MSE in no way restricts the method employed by the Applicant concerned in obtaining the required spread of shares, which can be by private placing.

## **PROCEDURES FOR APPLICATION FOR LISTING**

### **Preliminary scrutiny**

- 2.38 Applications for listing must first be submitted to the Secretary of the MSE for preliminary scrutiny and comment and thereafter will be considered by the Listings Committee.

### **Copies for submission**

- 2.39 Three copies of all documents for consideration should be submitted. One copy is to be notarially certified whilst two copies are required to be certified by a Commissioner for Oaths. THIS DOES NOT INCLUDE THE FORM OF APPLICATION OR THE DOCUMENTS DETAILED THEREIN.

### **Company officials to be available**

- 2.40 When documents are being considered, senior officials of the company must be available for consultations.

### **Listing to start on a Monday**

- 2.41 A listing will normally start on a Monday or other first working day of the week, but in the case of a new issue the agreed listing date will be such as to allow shareholders to be certain of the number of shares allotted to them. All formalities (including printing) must be completed before the listing date.

### **Final submission of documentation**

- 2.42 Applicants should allow at least two weeks for the MSE to consider the final submission of documentation (other than the final offer price) in compliance with these regulations. Under no circumstances will a reduction of this period be granted.

### **Cross-referencing**

- 2.43 The prospectus and memorandum and articles of association documents' contents should be cross referenced to the requirements of the Companies Act, the Capital Markets Development Act and the requirements herein prior to submission to the Committee.

# SECTION

## 3

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### PRE-LISTING STATEMENTS

#### Scope of section

This section sets out the requirements relating to the pre-listing statements. If the pre-listing statement is a prospectus as defined by the Act issuers should also comply with the provisions of the Act.

#### Advertisement in daily newspapers

- 3.1 An advertised statement stating the matters specified hereunder must be inserted in the leading daily newspapers in Malawi. Publication of a summary prospectus will be acceptable in lieu of a pre-listing statement. This list is not exhaustive as regards the requirements of the Companies Act.
- 3.2 It is permitted to publish a newspaper advertisement summarising the contents of the prospectus so long as such summary:
- i. does not contain or accompany any form for application for shares, debentures or any other security;
  - ii. states with reasonable prominence where copies of the full prospectus may be obtained and the fact that it has been registered with the Registrar of Companies and the Reserve Bank of Malawi;
  - iii. restricts application forms for the subscription of shares to the original documents attached to the prospectus.

#### Each item to be dealt with

- 3.3 Each item in Section 4 Paragraphs 4.1 to 4.117 MUST be specifically dealt with. Where these requirements are inapplicable, a negative or not applicable statement should be made.

#### Companies whose securities are listed already on the MSE

- 3.4 In the case of companies part of whose capital is listed already on the MSE, making an application for listing in respect of a different class of share, the Committee's requirements should be ascertained from the Secretary to the MSE.

#### Material particulars

- 3.5 The statement must contain information giving all material particulars relating to an application by industrial and commercial companies, including all of the items in Paragraphs 4.71 to 4.83.
- 3.6 Financial and other companies must also furnish the following information required in Paragraphs 4.71. to 4.83, together with such additional or alternative information as may be required upon enquiry.

#### Responsibility

- 3.7 The pre-listing statement must include a statement, in the form set out in Paragraph 4.23 (responsibility statement), modified as required pursuant to Paragraph 3.8 or 3.9 or in such other form as may be permitted by the Committee.
- 3.8 If the pre-listing statement relates to securities issued in connection with a recommended take-over of the listed company and the directors of the other company accept responsibility for the information given on that company in the pre-listing statement, then the directors of the applicant may accept responsibility only for the rest of the information in the pre-listing statement (see Paragraph 4.23) and the responsibility statement must be adapted accordingly.
- 3.9 The Committee may require responsibility to be extended to additional persons who have made specific statements in, or who have made contributions to, the pre-listing statement, in which case the statement must be adapted accordingly.

- 3.10 The pre-listing statement must be signed by every director of the applicant (or by his agent or attorney, with a copy of the authority of any such agent or attorney); provided that where responsibility for any information contained in different parts of the pre-listing statement has been extended to or accepted by any other person in accordance with Paragraph 3.8 or 3.9 above, such other person (or his agent or attorney) shall also sign the pre-listing statement and it shall be stated clearly for which part or parts of the pre-listing statement each signatory bears responsibility.

### Form and content

- 3.11 Pre-listing statements must contain:
- a. the information described in Section 4 below according to the nature and circumstances of the applicant and the type of security as specified in Section 4 below; and
  - b. such additional information as the Committee may reasonably consider investors and their professional advisers to reasonably require for the purposes of making an informed assessment of the prospects and status of the applicant. If the Committee requires additional disclosure, it will inform the applicant of such additional information required.

- 3.12 Pre-listing statements must provide factual information in words and figures, in an as easily analysable and comprehensible form as possible.

- 3.13 There is no prescribed format for pre-listing statements except that:
- a. the Committee may require that prominence be given in the pre-listing statement to important information in such manner as it consider appropriate;
  - b. in the case of pre-listing statements to be published by a new applicant the following information must appear on the first page:

Paragraph	Nature of statement
4.24 or 25	Share capital
4.23	Responsibility
4.55 or 56	Particulars of issue
3.2	Registration by the Registrar of Companies and the Reserve Bank of Malawi.

- c. pre-listing statements must not contain pictures, charts, graphs or other illustrations unless the Committee is satisfied that this is the only way in which the information can be presented clearly or is necessary in the interests of succinctness or comprehensibility and does not present the information unfairly.

### Shareholder approval

- 3.14 If the issue of securities in respect of which the pre-listing statement is to be issued is made conditional upon shareholder approval, the following statement must appear on the first page of the pre-listing statement:  
 "This pre-listing statement has been prepared on the assumption that the ordinary and special resolutions proposed in the Notice of General Meeting forming part of the circular to which the pre-listing statement is attached will be passed at the General Meeting of shareholders to be held on.... and registered (if applicable)."

### Formal approval

- 3.15 Pre-listing statements must be approved formally by the Committee before publication. Such approval will be given only if the Committee considers that the information in the pre-listing statement is complete.
- 3.16 Pre-listing statements submitted to the Committee for formal approval must be in the form of a typed document, but the Committee may permit manuscript information relating to the number of securities and the price, and any figures derived from them, when these items are not settled until a later stage.

### **Supplementary pre-listing statements**

- 3.17 The Committee must be advised immediately and supplementary pre-listing statements published if, at any time after pre-listing statements have been published and before dealings in the relevant securities commence, the applicant becomes aware that:
- a. there has been a significant change affecting any matter contained in the pre-listing statement; or
  - b. a significant new matter has arisen, the inclusion of information in respect of which would have required to be mentioned in the pre-listing statements if it had arisen at the time of their preparation.
- 3.18 Supplementary pre-listing statements must:
- a. give details of the change or new matter;
  - b. contain the statement required by Paragraph 3.7; and
  - c. contain a statement that, save as disclosed, there has been no significant change and no significant new matter has arisen since publication of the previous pre-listing statement.

### **Omission of information**

- 3.19 If any information required by Paragraph 3.11.a is not applicable and no equivalent information is available, it need not be included in the pre-listing statement provided the Committee is informed in writing of this and approves of such omission.
- 3.20 The Committee may authorise the omission of information which is applicable if it considers that:
- a. the information is of minor importance and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the applicant;
  - b. disclosure would be contrary to the public interest and omission is not likely to mislead investors with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question; or
  - c. disclosure would be seriously detrimental to the applicant or would constitute an invasion of the applicant's rights to privacy, and omission is not likely to mislead investors with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.
- 3.21 Requests to the Committee to authorise any omission of information must:
- a. be in writing from the applicant, sponsoring broker or, where appropriate, the adviser;
  - b. identify the information concerned and the reasons for the omission; and
  - c. state why, in the opinion of the applicant, one or more of the grounds in Paragraph 3.20 applies.

### **Omission of significant contract from disclosure**

- 3.22 The Committee may allow all or part of a significant contract to be withheld from public inspection (Paragraph 4.97). The request must:
- a. be in writing from the applicant, sponsoring broker or, where appropriate, other adviser;
  - b. state why in the opinion of the applicant one or more of the grounds in Paragraph 3.20 apply;
  - c. enclose a copy of the contract in question or, if the contract is not reduced to writing, a memorandum giving full particulars of its terms; and
  - d. include confirmation by the applicant that the contract is a significant contract not in the ordinary course of business.

### **Issues not requiring pre-listing statements**

- 3.23 Pre-listing statements are not required for issues of securities by an applicant whose securities are already listed which fall into the following categories:
- a. securities resulting from the conversion of convertible securities;
  - b. securities resulting from the exercise of rights under options;
  - c. securities issued in place of securities already listed (provided there is no increase in the nominal value of the share capital as a result);
  - d. securities allotted to employees if securities of the same class are already listed;

- e. where the issue relates to the extension of a business contemplated by and previously described in a pre-listing statement, the requirement to issue a pre-listing statement may be waived or the requirements reduced in the sole discretion of the Committee;
  - f. securities resulting from capitalization/bonus issues;
- 3.24 In cases where pre-listing statements are not required under Paragraph 3.23.a to f., the following information must be published by way of a press announcement:
- a. where the issue would increase the securities of the relevant class by 30% or more, that required by Paragraphs 4.12, 4.23, 4.55, 4.56, 4.59 and 4.60; or
  - b. where the issue would increase the securities of the relevant class by less than 30% but more than 10%, the number and type of securities to be admitted and the circumstances of their issue.

**Acquisition and merger issues**

- 3.25 In relation to an acquisition or merger where the consideration being offered consists of securities for which listing will be sought, pre-listing statements may be required. Pre-listing statements may be necessary either as a result of the original terms of the offer or as a result of a revision of the terms during the course of an offer. Where pre-listing statements have been published already and the offer is revised, supplementary pre-listing statements may be required (see paragraphs 3.17 and 3.18).

# SECTION

## 4

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### Listing Particulars

#### Scope of section

This section sets out items of information that may be required to be included in the Prospectus, pre-listing statements and circulars relating to public offers, rights offers, capitalisation issues and Category 1 or 2 transactions.

The requirements vary according to the nature and circumstances of the applicant as set out

#### REQUIREMENT FOR A PROSPECTUS UNDER THE ACT

It should be noted that, under the terms of the Act, any invitation to the public to acquire shares or debentures in a company is not allowed unless the company is a public company as defined by the Act and a prospectus, registered with the Registrar of Companies and complying with the terms of the Act, is issued. Under the Act, an invitation to the public means an offer or invitation made to or circulated among any section of the public comprising more than fifteen persons. The only exception to these requirements is that where the invitation is made by or on behalf of a company exclusively to its existing shareholders and debenture holders and its existing employees and where such persons do NOT have the option to renounce or assign the benefits thereof. The effect of the Act therefore is to require all applications for the listing of securities on the MSE to be accompanied by a prospectus issued in terms of the Act.

The requirements for a prospectus under the Act are included under this Section, along with such further requirements as specified by the MSE. However, each applicant is required also to ensure themselves that the prospectus submitted to the MSE for approval is also fully compliant with the terms of the Act. With respect to the requirements for the prospectus set out in this Section, an applicant must deal specifically with each item. Where requirements are inapplicable a negative or not applicable statement should be made.

#### 4. LISTING PARTICULARS

##### A. THE APPLICANT

- 4.1 The full name of the applicant, its date and place of incorporation and its postal address.
- 4.2 The full names, street and postal address of the applicant's registered office and of its transfer office.
- 4.3 The applicant's trading names, and, if applicable, translated names in which it conducts business.
- 4.4 If the applicant is a subsidiary, the name and address of the registered office of its holding company, or of anybody corporate, which, had it been registered under the Act, would have been its holding company.
- 4.5 If the applicant has changed its name within the last three years, the old name must be printed in bold type under the existing name on the first page.
- 4.6 The date of the applicant's conversion into a public company, if applicable.

##### B. DIRECTORS, MANAGERS AND ADVISORS

#### Directors

- 4.7 The following details with regard to directors, alternate and proposed directors whether such directors are executive or not, and of the secretary or proposed secretary of the applicant and each of its material subsidiaries:
  - a. full names, including any former or other names (specifying the chairman and managing director, if any);
  - b. occupations (other than that of director);
  - c. addresses, both residential and postal;
  - d. their nationalities; and

- e. any relevant business experience over the past three years.
  - f. particulars of all other directorships held in Malawi by each director, including alternate and proposed directors and of the secretary or proposed secretary if an individual.
- 4.8 In the case of a foreign applicant, information similar to that described in Paragraph 4.7 relative to the local management committee, board or agent, if any. Where the Committee considers the parent company is not adequately represented on the directorate of its subsidiaries or associated companies, an explanation is required.
- 4.9 The term of office for which any director has been or is to be appointed, the manner in and terms on which any proposed director will be appointed and particulars of any right held by any person relating to the appointment of any director
- 4.10 The provisions, or a sufficient summary of the provisions, of the articles of association or other corresponding document of the applicant and each of its subsidiaries with regard to:
- a. qualification of directors;
  - b. remuneration of directors;
  - c. any power enabling the director to vote remuneration to themselves or any members of their body;
  - f. the borrowing powers exercisable by the directors and how much they can be varied.
- 4.11 Particulars, in aggregate, of any remuneration paid during the last financial period and any proposed remuneration of directors or proposed directors in their capacity as director, or in any other capacity, whether determined by the articles or not, by the applicant and any subsidiary distinguishing between executive and non-executive directors earnings and providing separate figures for salary, fees, benefits, pensions for past and present directors, share options and bonuses and the aggregate amount of any compensation paid to directors or past directors in respect of loss of office.
- 4.12 If the remuneration receivable by any of the directors of the applicant will be varied in consequence of the transaction, full particulars of the aggregate variation in the remuneration of the directors shall be stated; if there will be no variation, a statement to that effect. If the business of the applicant or any of its subsidiaries or any part thereof is managed or is proposed to be managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.
- 4.13 In the case of a company incorporated during the three years prior to the date of the advertisement, a statement of all sums paid or agreed to be paid to any director or any person who acted in the capacity as a director or to any firm of which he is a member, in cash, shares or otherwise, by any person, either to induce him to become a director or a person acting in the capacity of director, or otherwise, for services rendered by him or by the firm in connection with the promotion or formation of the company.

**Auditors, legal practitioners, bankers, stockbrokers, trustees, underwriters and experts**

- 4.14 The names, street and postal addresses of the auditors, legal practitioners, bankers and stockbrokers to the applicant, and, if applicable, the trustees, underwriters and any expert referred to in the pre-listing statement and any holding of securities in or agreed to be acquired in the company by such persons. In the case of auditors to the applicant, a statement attesting to the fact the auditors are registered as practitioner public accountants with the Society of Accountants of Malawi and Malawi Accountants Board.

**Amounts paid or payable to promoter**

- 4.15 a. A brief resume of any promoter's agreement during the preceding three years, including a statement of the issued share capital of any entity acting as promoter the amount paid thereon, the date of its incorporation, street and postal addresses, the names of its directors, bankers and auditors and any other such particulars as the Committee may deem necessary in connection therewith.

- b. The amount paid within the preceding three years or proposed to be paid to any promoter and the consideration for such payment, and any other benefit given to such promoter, partnership, syndicate or other association within the said period or proposed to be given, and the consideration for giving such benefit.

#### **Commissions paid or payable in respect of underwriting**

- 4.16 a. A brief resume of any underwriters agreement during the preceding three years, including a statement of the issued share capital of any entity acting as an underwriter, the amount paid thereon, the date of incorporation, street and postal addresses, the names of its directors, bankers and auditors, the nature and extent of any beneficial interest, direct or indirect, in such company of any promoter, director or officer of the applicant, and any other such particulars as the Committee may deem necessary in connection therewith.
  - b. The amount, if any, or the nature and extent of any consideration, paid within the preceding three years, or payable as commission to any person (including commission so paid or payable to any sub-underwriter who is the holding company or a promoter or director or officer of the applicant) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any securities of the applicant.
  - c. Particulars of the amounts underwritten or sub-underwritten by each and the rate of commission payable for such underwriting or sub-underwriting contract with each such person.
- 4.17 Particulars of any commissions, discounts, brokerages or other special terms granted during the three years preceding that date and the pre-listing statement in connection with the issue or sale of any securities, stock or debentures in the capital of the applicant, where this has not been disclosed in any annual accounts. Commission payable on the issue of shares must not exceed 5% of the price at which the shares were issued and must be authorised in the articles.

#### **Preliminary expenses and issue expenses**

- 4.18 Where the information has not been disclosed in any annual accounts approved by the shareholders the following disclosure is required with respect to preliminary expenses and issue expenses.
- a. Particulars of any preliminary expenses if incurred within three years of the date of the pre-listing statement or proposed to be incurred, under main headings;
  - b. The persons by, or to, whom any of those expenses were paid or are payable;
  - c. The amount or estimated amount of the expenses of the issue, and separate disclosure of who the individual persons paid or payable are, including separate disclosure of each sponsor, reporting accountant, corporate adviser, attorney, legal adviser, commercial banker, investment banker, accountant, auditor, underwriter, sub-underwriter and any other adviser involved. Where there are two or more of each such advisers per category, and the individual amounts paid or payable to each such individual person/adviser by the applicant should be disclosed. So far as the same are not included in the statement of preliminary expenses, under main headings, including the MSE listing and inspection fee, and the persons by, or to, whom any of those expenses were paid or are payable.

#### **Interest of directors and promoter**

- 4.19 Full particulars of the nature and extent of any material beneficial interest, direct or indirect, of every director or promoter in the promotion of the applicant and in any property as referred to in Paragraph 4.79 acquired or proposed to be acquired by the applicant out of the proceeds of the issue or during the three years preceding the date of the listing statement, and where the interest of such director or promoter consists in being member of a partnership, company, syndicate or other association, and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association.

- 4.20 A statement of all sums paid or agreed to be paid within the three years preceding the date of the pre-listing statement to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is a director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the applicant.

**Directors' interest in securities**

- 4.21 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 1% of the share capital of the applicant distinguishing between beneficial and non-beneficial interests. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of the pre-listing statement, or, if there has been no such change, disclosure of that fact.

**Directors' interests in transactions**

- 4.22 All relevant particulars regarding the nature and extent of any beneficial interests, whether direct or indirect, of directors of the applicant in transactions which are or were unusual in their nature or conditions or material to the business of the group, and which were effected by the applicant:
- a. during the current or immediately preceding financial year; or
  - b. during an earlier financial year and remain in any respect outstanding or underperformed;
  - c. an appropriate negative statement.

**Directors' responsibility pre-listing statement**

- 4.23 A statement as follows"
- a. "This Pre-Listing Statement is not an invitation to the public to subscribe for shares, but is issued in compliance with the rules and requirements of the Malawi Stock Exchange for the purpose of giving information to the public with regard to the company. The directors, whose names are given in paragraph.... on page..., of this document collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of their knowledge and belief there are no other facts the omission of which would make any statement false or misleading, that they have made all reasonable enquiries to ascertain such facts and (if applicable) that the prospectus contains all information required by law."
  - b. The directors confirm that the listing particulars include all such information within their knowledge (or which it would be reasonable for them to obtain by making enquiries) as investors and their professional advisers would reasonably require and reasonably expect to find for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and of the rights attaching to the securities to which the listing particulars relate."
  - c. The prospectus/pre-listing statement/circular must be signed by every director of the applicant (or by his agent or attorney, with a copy of authority of any such agent or attorney); provided that where responsibility for any information contained in different parts of the prospectus/pre-listing statement/circular has been extended to or accepted by any other person(s), such other person(s) (or by his agent or attorney) shall also sign the prospectus/pre-listing statement/circular and shall be stated clearly for which part or parts of the prospectus/pre-listing statement/circular each signatory bears responsibility.

## C. THE CAPITAL

### Share capital of the company

- 4.24 If the applicant's share capital consists of shares of par value the following information must be disclosed:
- a. the authorised and issued or agreed to be issued share capital detailing:
    - i. the classes of shares;
    - ii. the number of shares in each class;
    - iii. the nominal value of each class;
    - iv. the amount paid up for each class; and
  - b. share premium.
- 4.25 If the applicant's share capital consists of shares of no par value the following must be disclosed:
- c. the stated capital;
  - d. the number of shares issued and held in reserve; and
  - c. the classes of shares.
- 4.26 A description of the respective:
- a. preferential conversion and exchange rights;
  - b. voting rights; and
  - c. rights to dividends, profits or capital or any other rights of each class, including redemption rights and rights on liquidation or distribution of capital assets.
- 4.27 Information regarding the consents necessary for the variation of rights attaching to securities.
- 4.28 Partly paid shares will not normally be listed.
- 4.29 A summary of any issues or offers of securities of the applicant and its subsidiaries during the preceding five years, including:
- a. the prices and terms at which such securities were issued or offered;
  - b. by whom such offers were made;
  - c. the number of securities allotted in pursuance thereof;
  - d. whether the securities were issued to all shareholders in proportion to their shareholdings or, if not, to whom they were issued, the reasons why the securities were not so issued and the basis of allotment;
  - e. the dates of the issues or offers;
  - f. the reasons for any premium or discount on the issue or offer, how any premium was dealt with and where some securities were issued or offered at a premium and others at par or a lower premium also the reasons for the differential; and
  - g. the value of asset, if any, acquired or to be acquired out of the proceeds of the issue or offer, together with such further detail as required by the Companies Act.
- 4.30 A summary of any consolidations or sub-divisions of the shares during the preceding three years or such lesser period as the company has been trading, together with details of commissions and underwriting costs as required by the Companies Act.
- 4.31 A statement advising who controls the issue or disposal of the authorised but unissued securities i.e. the directors or shareholders in general meeting.
- 4.32 A statement as to what other classes of securities are listed and on which stock exchanges.

### Issue price

- 4.33 a. State the issue price of the shares offered to the public. Where the price of the shares offered to the public differs from that at which shares of the same class were allotted within the previous two years, or are proposed to be allotted, state:
- i. the number of such shares allotted, the date of allotment and the issue price per share;
  - ii. the reasons;
  - iii. to whom such allotments were made, or are proposed to be made
- b. Where shares are offered at a price above nominal value, which will not accrue to the company, state:
- i. the reason for the issue above nominal value;
  - ii. to whom such premium amount accrued, or will accrue;
  - iii. the total amount of any such premium.

### **Capital under option**

- 4.34 Particulars of any capital which is under option or agreed conditionally to be put under option with the price and duration of the option and consideration for which the option was or may be granted, and the name and address of the grantee. Provided that, where an option has been granted, or agreed to be granted, to all the members or employees or debenture holders or to any class thereof, it shall be sufficient so far as names are concerned to record that fact, without giving the names and addresses of the grantees.

### **Issues other than for cash**

- 4.35 Particulars of the capital which has, during the two years preceding the publication of the advertisement, been issued fully or partly paid up, otherwise than in cash, and the consideration for which the same was issued, and the valuation of any assets acquired.

### **Prior rights issues**

- 4.36 In the case of any offers of shares to the public during the preceding five years, include a summary stating the price and terms upon which the same were issued, together with the following information:
- a. whether issued to all shareholders pro rata their shareholdings, or to whom listed;
  - b. the basis of allotment;
  - c. if the shares were not issued to all existing shareholders, the reasons for the issue to the allotted.

## **D. LOAN CAPITAL AND BORROWINGS**

### **Borrowings**

- 4.37
- a. The borrowing powers of the applicant and its subsidiaries exercisable by the directors and the manner in which such borrowings may be varied.
  - b. Description of the circumstances, if applicable, if the borrowing powers have been exceeded during the past three years.
  - c. Any exchange control or other restrictions on the borrowing powers of the applicant or any of its subsidiaries.
- 4.38 Details of loan capital (such as debentures, registered notes etc), the amount issued and outstanding or agreed to be issued. If no loan capital is outstanding, this fact to be stated.
- 4.39 Details of material loans, including debentures, to the applicant and to any of its subsidiaries at the date of application stating:
- a. whether such loans are secured or unsecured;
  - b. whether such loans are short, medium or long term;
  - c. the amount, terms and conditions of repayment or renewal;
  - d. the rates of interest on each loan;
  - e. details of the security, if any;
  - f. the names of the lenders if not debenture holders;
  - g. details of conversion rights; and
  - h. where the applicant or any of its subsidiaries has debts which are repayable within 12 months state how the payments are to be financed.
- Notes:
- i. Information regarding overdraft facilities to be incorporated under this heading.
  - ii. For this purpose any creditors beyond due settlement date shall be classified as loans.

- 4.40 Particulars relating to debentures or debenture stock issued by way of conversion or replacement of debentures or debenture stock previously issued stating all material differences between the security for the old stock and the security for the new stock (if such be the case) state that the security for the new stock is identical with the security for the old stock.

- 4.41 Details of all material commitments, lease payments and contingent liabilities.

- 4.42 Disclose details of all off-balance sheet financing by the applicant and any of its subsidiaries.

- 4.43 Disclose how the borrowings required to be disclosed by Paragraphs 4.37 to 4.42 arose stating whether they arose from the purchase of assets by the applicant or any of its subsidiaries.
- 4.44 Full information of all intercompany finance and/or shareholdings in companies not listed on the MSE. Details of the extent to which intercompany finance has been at arm's length. Where intercompany finance has not been at arm's length, details should be disclosed and adjustments made to the financial information, even where only the issuing company, rather than the group of which it is a part, is affected thereby. If no loan capital is outstanding, this fact must be stated.

#### **Loans receivable**

- 4.45 Details of material loans by the applicant or by any of its subsidiaries, stating:
- a. the date of the loan;
  - b. to whom made;
  - c. the rate of interest and repayment terms of each loan;
  - d. if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
  - e. the period of the loan;
  - f. the security held;
  - g. the value of such security and the method of valuation;
  - h. if the loan is unsecured, the reasons therefore; and
  - i. if the loan was made to another company, the names and addresses of the directors of such company.
- 4.46 Details (as described in Paragraph 4.45) of loans made or security furnished by the applicant or by any of its subsidiaries made for the benefit of any director or manager or any associate of any director or manager.
- 4.47 Disclose how the loans receivable arose stating whether they arose from the sale of assets by the applicant or any of its subsidiaries.

#### **Working capital and cash flow**

- 4.48
- a. A statement by the directors that in their opinion the working capital available is sufficient and cash flow requirements adequately satisfied, or if not, how it is proposed to provide the additional working capital thought to be necessary by the directors.
  - b. The foreseeable future should normally be construed as the 18 months subsequent to the issue of the pre-listing statement.
  - c. The working capital statement should be prepared on the group, as enlarged by the acquisition of any assets.

#### **Options or preferential rights in respect of securities**

- 4.49 The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any securities of the applicant or any of its subsidiaries, giving the number and description of any such securities, including, in regard to the option or right, particulars of:
- a. the period for which it is exercisable;
  - b. the price to be paid for securities subscribed for under it;
  - c. the consideration given or to be given for it;
  - d. the names and addresses of the persons to whom it was given, other than existing shareholders as such or to employees under a bona fide staff option scheme;
  - e. if given to existing shareholders as such, material particulars thereof;
  - f. any other significant fact or circumstances concerning the granting of such option or right.
- 4.50 Subscribing for securities shall, for the purposes of Paragraph 4.49, include acquiring them from a person to whom they were allotted or were agreed to be allotted with a view to his offering them for sale.

#### **Controlling shareholder**

- 4.51 The names of the controlling shareholder(s) so far as they are known to the directors of the applicant, or appropriate negative statement.

4.52 Details of any change in controlling shareholder(s) as a result of the issue.

### **Major shareholders**

4.53 In so far as is known to the applicant, the name of any shareholder, other than a director who, directly or indirectly, is beneficially interested in 5% or more of any class of the applicant's capital, together with the amount of each shareholder's interest or, if there are no such shareholders, an appropriate negative statement.

## **E. SECURITIES FOR WHICH APPLICATION IS BEING MADE**

### **Purpose of the issue/offer**

4.54 A statement of the purpose of the issue giving reasons why it is considered necessary for the applicant to raise the capital offered or, if it is a sale, the reasons therefor, and if the capital offered is more than the amount of the minimum subscription referred to in Paragraph 4.61, the reasons for the difference between the capital offered and the said minimum subscription.

### **Particulars of the issue/offer**

4.55 Particulars in respect of the securities issued/offered must be disclosed including:

- a. the class of securities;
- b. the nominal value of the securities of applicable;
- c. the number of securities issued/offered;
- d. the issue/offer price;
- e. how the new securities rank for dividend;
- f. whether the new securities rank pari passu with any existing listed securities;
- g. any convertibility or redemption provisions;
- h. the nature of the document of title;
- i. the treatment of any fractions; and
- j. other terms and conditions of the issue/offer.

4.56 Particulars of the debentures issued/offered, including:

- a. the class of debentures;
- b. the terms and conditions of the debentures;
- c. if the debentures are secured, particulars of the security, specifying the assets or property comprising the security and nature of the title to the asset; and
- d. other terms and conditions of the issue/offer.

### **Timing**

4.57 If applicable, the times and dates of the opening and of the closing of the subscription lists or of the issue/offer.

4.58 If known, the dates on which the securities will be admitted to listing and on which dealings will commence.

### **Issue price**

4.59 The amount payable by way of premium, if any, on each security which is to be issued and, where some securities are to be issued at a premium and others at par or a lower premium, the reasons for the differentiation, and how any such premium is to be dealt with.

4.60 Where no par value shares are to be issued, the price at which they are to be issued and the reasons for any differentiation.

### **Minimum subscription**

4.61 The minimum amount which, in the opinion of the directors, must be raised by the issue/offer of the securities in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters:

- a. the purchase price of any property, as referred to in Paragraph 4.79, purchased or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue, including goodwill, if any;

- b. any preliminary expenses payable by the applicant, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting, any securities of the applicant and the amount or estimated amount of the expenses of the issue;
- c. the repayment of any moneys borrowed in respect of any of the foregoing matters;
- d. working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
- e. any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
- f. the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

### **Authorisations**

- 4.62 A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.

### **Dividends**

- 4.63 The time limit (if any) after which entitlement to dividends lapses and an indication of the person in whose favour the lapse operates.
- 4.64 The fixed date(s) (if any) on which entitlement to dividends arise.
- 4.65 Particulars of any arrangements under which future dividends are waived or agreed to be waived.

### **Market value of securities**

- 4.66 Where the securities for which application is being made are of a class which is already listed, a table of the aggregate volumes traded and the highest and lowest prices traded in those securities for each month over the twelve months prior to the date of issue of the pre-listing statement or circular; for each quarter over the previous two years; and for each day over the 30 days preceding the last practicable date prior to the date of issue of the pre-listing statement or circular.

### **Rights offers, Capitalisation issues and Scrip dividends**

- 4.67 Where the securities for which application is being made are allotted by way of capitalisation of reserves or undistributed profits or the application of share premium to the holders of an existing listed security, the following information must be given:
- a. the reason for the capitalisation issue or scrip dividend;
  - b. the share class and the par value (if any);
  - c. if applicable, that the shareholder may receive cash in substitution for the whole or part of their capitalisation issue or scrip dividend and vice versa;
  - d. if applicable, the last day on which shareholders must make their election;
  - e. a statement pointing out possible tax implications;
  - e. in the case of a scrip dividend a statement should appear, in bold and upper case, on the front page drawing shareholders' attention to the type of election to be made (i.e. that shareholders will receive cash if they fail to make the election);
  - g. the amount to be capitalised from the share premium or reserves of the applicant to pay up in full for the capitalisation securities;
  - h. the ratio in which the capitalisation securities will be allotted to shareholders of the applicant;
  - i. the last day on which a shareholder must be registered in order to receive the capitalisation securities or scrip dividend; and
  - j. whether or not the documents of title (if any) are renounceable.
- 4.68 In the case of a rights offer, the following information should be disclosed:
- a. the purpose of the rights offer;
  - b. the minimum sum to be raised through the rights offer to satisfy its purpose;
  - c. the amount to be raised by means of the rights offer, and the number of securities that are proposed to be issued;
  - d. the terms of the offer. Where the ratio gives rise to fractions, a table of entitlements must be included in the circular;

- e. a statement regarding fractions of securities. Normally fractions are sold for the benefit of the company. However, should the value of a fraction be in excess of 500 tambala then such amount must be paid to the shareholders concerned;
- f. details of the underwriter. The underwriting commission must be stated clearly;
- g. where the underwriter is a company the following information must be furnished:
  - i. the place and date of incorporation and registered number of the company;
  - ii. the names of the directors of the company;
  - iii. the name of the secretary of the company;
  - iv. the bankers to the company; and
  - v. the authorised and issued share capital of the company.
- h. details regarding the proposed listing of the letters of allocation (LA), the subsequent listing of the new securities and the amount payable in respect of listing fees;
- i. details regarding the letters of allocation such as:
  - i. acceptance;
  - ii. renunciation;
  - iii. splitting; and
  - iv. payment (payment must be made in Malawian currency);
- j. a statement detailing any Exchange Control requirements of the Reserve Bank of Malawi.

#### **Simultaneous issues**

- 4.69 If simultaneously or almost simultaneously with the issue of securities for which application is being made, securities of the same class are issued, or to be issued, details must be given of the nature of such issues and of the number and characteristics of the securities concerned.

#### **Over subscriptions**

- 4.70 State the relative facts where it is the intention in the event of over subscription to extend a preference on allotment to any particular company or group such as employees and pension funds.

### **F. GROUP'S HISTORY, ACTIVITY AND PROSPECTS**

The following paragraphs detail the disclosure requirements relating to the group's activities.

#### **General**

- 4.71 The general history and activities of the applicant and its subsidiaries stating, inter alia:
- a. the length of time during which the business of the applicant and any subsidiary has been carried on;
  - b. the name, date, place of incorporation and registration number and the issued or stated capital of its subsidiaries, together with details of the securities held by the holding company together with its percentage both of the total shares issued and of the voting powers and the cost of the investment, indicating those not listed on the MSE and the main business of its subsidiaries and the date on which they became a subsidiary;
  - c. brief details of any reconstruction or reduction in capital during the last ten years;
  - d. The date of conversion of the applicant into a public company.
- 4.72 A general description of the business carried on or to be carried on by the applicant and its subsidiaries and, where the applicant or its subsidiaries carries on or proposes to carry two or more businesses which are material having regard to the profits or losses, assets employed or to be employed or any other factor, information as to the relative importance of each such business.
- 4.73 For the business(es) described in Paragraph 4.72 detail the degree of any government protection and of any investment encouragement law affecting the business(es).
- 4.74 Details of any material changes in the businesses of the applicant since inception or during the past ten years.

- 4.75 a. The situation, area and tenure (including in the case of leasehold property the rental and unexpired term of the lease) of the principal immovable property held or occupied by the applicant and any of its subsidiaries.
- b. Where the business of the company or group is primarily conducted from leased premises, whether the continuity of that business is assured. State what accommodation provisions would be made for proposed expansion.
- 4.76 A statement of the new trading objects and the manner in which the new objects will be implemented. If the applicant, or as the case may be, the group, carries on widely differing operations, a statement showing the contributions of such differing operations to its trading results.
- 4.77 The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar of Companies.
- 4.78 The opinion of the directors, stating the reasons therefor, as to the prospects of the business of the applicant and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information that may be relevant thereto.

### **Capital commitments**

- 4.79 A statement as to the estimated capital or lease commitments, within the last three years or proposed by the applicant or any of its subsidiaries, for the erection or occupation of buildings, plant and machinery, any securities in or the business undertaking of any other company or business enterprise or other property in the nature of a fixed asset (collectively "the property") or any option to acquire such property:
- a. the date of any such acquisition or proposed acquisition;
- b. the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;
- c. details of the valuation of the property;
- d. any goodwill paid and how such goodwill was or is to be accounted for;
- e. any loans incurred, or to be incurred, to finance the acquisition or proposed acquisition;
- f. the nature of title or interest acquired or to be acquired; and
- g. the details of the vendors as described in Paragraph 4.104 to 4.111.

### **Disposal of property**

- 4.80 The following details regarding any property (as described in Paragraph 4.79) disposed of during the past three years, or to be disposed of, by the applicant or any of its subsidiaries:
- a. the dates of any such disposal or proposed disposal;
- b. the consideration received, detailing that settled by the receipt of securities, or cash or other means and detailing how any outstanding consideration is to be settled;
- c. details of the valuation of the property;
- d. the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial shareholders of the company. If any promoter or director of the applicant or any of its subsidiaries had any interest, directly or indirectly, in such transaction or where any promoter or director of the applicant or any of its subsidiaries was a member of a partnership, syndicate or other association of persons which had such interest, the names of any such promoter or director and the nature and extent of his interest.

### **Litigation**

- 4.81 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous twelve months) a material effect on the group's financial position or an appropriate negative statement.

### **Earnings record**

- 4.82 In respect of the applicant or the group for the preceding five years, or such lesser period if the company has traded for less than five years, (where the applicant is a holding company, appropriate information should be provided in consolidation form) details of:
- a. the profits or losses before and after tax;
  - b. the average earnings per share before and after tax and before and after any extraordinary items;
  - c. the dividends paid per share adjusted for bonus issues;
  - d. the dividend cover.

### **Senior management**

- 4.83
- a. Details of senior management of the applicant and its subsidiaries. Senior management is defined as those persons, by whatever name called, who are appointed to direct and administer the business and affairs of the company;
  - b. a brief resume (e.g. term of contract, date of contract expiry, Temporary Employment Permit expiry (if applicable) of employment and other contracts existing or about to be entered into, either written or verbal, relating to executive directors and/or senior managerial terms of employment, by the applicant and its subsidiaries.

## **G. FINANCIAL INFORMATION**

### **Auditor's reports**

- 4.84 An auditor's report as set out in Section 8 on the applicant.
- 4.85 If applicable, an auditor's report, as set out in Section 8 on the asset the subject of the transaction.

### **General information**

- 4.86 The following information from the applicant's latest annual financial statements on a consolidation basis:
- a. the income statement;
  - b. the balance sheet;
  - c. the cash flow statement;
  - d. any significant accounting policies or notes to the accounts;
  - e. retirement benefit information as required by the Companies Act; and
  - f. a statement that the auditor's report was without qualification or details of such qualification.
- 4.87 If the applicant's own annual or consolidated annual accounts do not present fairly the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given.
- 4.88 Particulars of:
- a. the dividend policy to be adopted;
  - b. the pro-forma balance sheet prior to and immediately after the proposed issue of securities; and
  - d. the effect of the proposed issue of securities on the net asset value per share.

The above particulars must be prepared and presented in accordance with IFRS. If the applicant is a holding company, the information must be prepared in consolidate form.

- 4.89 Particulars of all investments exceeding 10% of the total assets of the applicant.

### **Acquisitions made from proceeds**

- 4.90 If the application for listing coincides directly or indirectly with the acquisition by the applicant or any of its subsidiaries of securities in or the business undertaking of another company in consequence of which that company will become a subsidiary of, or otherwise part of, the applicant, in respect of each of the preceding five years, the same particulars relating to such company or the business undertaking being acquired as are required mutatis mutandis by Paragraph 4.82 and a general history of such company or the business undertaking as required by Paragraphs 4.71 to 4.73.

- 4.91 If the application for listing coincides, directly or indirectly, with the acquisition by the other applicant or any of its subsidiaries of securities in or the business undertaking of any other company then cognisance of such proposed acquisition must be taken in arriving at the particulars described in Paragraph 4.82 above.
- 4.92 If the application for listing coincides, directly or indirectly, with the acquisition by the applicant or any of its subsidiaries of securities in or the business undertaking of any other company then cognisance of such proposed acquisition must be taken in arriving at the particulars described in Paragraph 4.82 above.

#### **Statement as to adequacy of capital**

- 4.93 A statement that in the opinion of the directors the issued share capital of the applicant (including the amount to be raised in pursuance of this issue) is adequate for the purposes of the applicant and of its subsidiaries for the foreseeable future, and if they are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the applicant and its subsidiaries are or are to be financed. The statement should be supported by a report from the applicants auditor, reporting accountant, merchant banker, sponsoring broker or other advisor acceptable to the Committee.

#### **Material changes**

- 4.94 A description of any material change in the financial or trading position of the applicant and its subsidiaries which has occurred since the end of the last financial period for which either annual financial statements or interim reports have been published, or an appropriate negative statement.

#### **Profit forecasts**

- 4.95 Profit forecasts should comply with Paragraphs 8.8 to 8.14.

#### **Pro-forma statements**

- 4.96 Pro-forma statements should comply with Paragraphs 8.15 to 8.23.

## **H. GENERAL INFORMATION**

#### **Significant contracts**

- 4.97 Subject to Paragraph 3.22, the dates and the nature of, and the parties to, every significant contract entered into either verbally or in writing by the applicant or any of its subsidiaries, being a contract entered into otherwise than in the ordinary course of the business carried on or proposed to be carried on by the applicant or any of its subsidiaries and which do not or did not have features (e.g. fixed prices over an extended period) that make the applicant's results dependent thereon, and entered into within the two years prior to the date of the pre-listing statement.
- 4.98 If any contract referred to in Paragraph 4.97 relates to the acquisition of securities in an unlisted subsidiary, or associated company, where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling Shareholder(s) of the applicant, or associated companies, or its subsidiaries is interested and to what extent.
- 4.99 A brief summary of existing contracts or proposed contracts, either written or oral relating to the directors' and managerial remuneration, secretarial and technical fees payable by the applicant and any of its subsidiaries and restraint payments, provided that details of the directors and managerial remuneration need only be disclosed in accordance with Paragraph 4.11.
- 4.100 Particulars of royalties payable or items of a similar nature in respect of the applicant and any of its subsidiaries.
- 4.101 Brief details of material real and moveable property leases.

### **Experts' consents**

4.102 Where a pre-listing statement includes a report purporting to be made by an expert, a statement that the expert has given and has not withdrawn his written consent to the issue of the pre-listing statement, with the report in the form and the consent in which it is included.

### **Code of Best Practice**

4.103 Applicant issuers must include the following in its prospectus/pre-listing listing statement and comply with the following specific requirements concerning corporate governance and must disclose their compliance therewith:

- a. A narrative statement of how it has applied the principles set out in the Code of Best Practice for Corporate Governance in Malawi, providing explanation that enables its shareholders and potential investors to evaluate how the principles have been applied.
- b. A statement addressing the extent of the company's compliance with the Code of Best Practice and the reasons for each and every instance of non-compliance.
- c. In compliance with the code of best practice, applicant issuers must disclose the following
  - i) there must be a policy detailing the procedures for appointments to the board. Such appointments must be formal and transparent and a matter for the board as a whole.
  - ii) there must be a policy evidencing a clear division of responsibilities at board level to ensure a balance of power and authority, such that no one individual has unaffected powers of decision making.
  - iii) the Chief Executive Officer must not also hold the position of chairperson
  - iv) the Audit committee must set the principles for recommending the use of the external auditors for non-audit services.
  - v) a brief CV of each director must be provided.
  - vi) the capacity of each director must be categorized as executive, non-executive or independent.
- d. All applicant issuers should appoint an audit committee and remuneration committee and if required, given the nature of their business and composition of their board, a risk committee. The composition of such committees, a brief description of their mandates, the number of meetings to be held annually and other relevant information must be disclosed.
- e. The audit committee must consider, on an annual basis, and satisfy itself of the appropriateness of the expertise and experience of the Financial Director and the applicant issuer must confirm by reporting to shareholders in its annual report that the audit committee has executed this responsibility.

## **I. DOCUMENTS AND CONSENTS TO BE AVAILABLE FOR INSPECTION**

### **Documents required for inspection**

4.104 The following documents (or copies thereof) where applicable, relating to the applicant and its subsidiary companies, if any, must be available during normal business hours for inspection at a place acceptable to the MSE for a reasonable time (being not less than 14 days):

- a. the memorandum and articles of association;
- b. any trust deed or agreement affecting the governance of the applicant or the interests of the shareholders;
- c. copies of any special or notarial contract bearing on the trust deed or memorandum and articles of association within the last five years or intended to be executed;
- d. all material contracts (including patent rights, franchises, the latest competent person's report or consulting engineers' reports in the event of a mining company, being incorporated or registered within two years before the date of application, the latest sworn appraisements or valuations relative to movable and immovable property and items of similar nature;
- e. in the case of a material contract not reduced to writing, a memorandum giving full particulars thereof;

- f. copies of service agreements with directors (or a summary of such agreements, excluding the individual director's remuneration (but stating the aggregate remuneration of the directors), manager or secretary(ies), underwriting agreements, vendor's agreement, promoter's agreements, and all financial accounts and reports and letters relating thereto, entered into during the last five years;
- g. all reports, letters and annual financial statements, income statements, valuations and statements by an expert any part of which is extracted or referred to in the pre-listing statement;
- h. a written statement signed by the auditors setting out the adjustments made in the report on the profits and giving the reasons therefore; and
- i. the audited financial statements since the incorporation of the applicant or for the preceding five years, whichever is the lesser, together with all notes, certificates, or information required by the Companies Act.

## **J. VENDORS**

### **Vendors**

- 4.105 The names and addresses of the vendors of any assets (in excess of 15% of shareholders funds at the time of the transaction) purchased or acquired by the applicant or any subsidiary company during the three years preceding the publication of the pre-listing statement or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid, or payable to each vendor and the amount (if any) payable for goodwill or items of a similar nature. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of that company if required by the Committee. Where the vendor was or is a related party as defined in the Malawi Accounting Standards, full details are required. Where any of the information required in this Paragraph is not available, the reasons are to be stated.
- 4.106 State whether or not the vendors have guaranteed the book debts or other assets and whether or not "normal warranties" have been given.
- 4.107 State whether the vendor's agreements preclude the vendors from carrying on business in competition with the applicant or any of its subsidiaries; or impose any other restriction on the vendor, also details of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.
- 4.108 State how the liability for accrued taxation, or any apportionment thereof to the date of acquisition, will be settled in terms of the vendors' agreements.
- 4.109 Where securities are purchased in a subsidiary company, a reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in other than subsidiary companies, a statement as to how the value of the securities was arrived at.
- 4.110 Where any promoter or director had any beneficial interest, direct or indirect, in such transactions which have taken place within three years of the date of the advertisement, or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.
- 4.111 The amount of any cash or securities paid or benefit given within the three preceding years or proposed to be paid or given to any promoter, not being a director, and the consideration for such payment or benefit.
- 4.112 State whether the assets acquired have been transferred into the name of the applicant or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

## **K. STATEMENTS**

### **Pre-listing statement**

4.113 A statement as detailed in Paragraph 4.23. Note: This item does not apply where a prospectus or offer for sale is submitted in lieu of an advertised statement.

### **Prospectus**

4.114 A statement as follows: A copy of this prospectus has been delivered to the Registrar of Companies and Reserve Bank of Malawi for registration. The Registrar and the Bank accept no responsibility for the accuracy of any statements made or for the financial soundness of the company or the value of the securities concerned.

### **Application to the Committee of the MSE**

4.115 A statement that an application for listing will be/has been made to the Committee of the Malawi Stock Exchange, specifying the number and class of shares or securities for which listing is desired.

### **Restrictions**

4.116 A statement of the restrictions, if any, upon the business of the company contained in the memorandum of association, or where there is an objects clause in the style prevalent before the enactment of the 1984 Companies Act, an opinion by a legal practitioner of the powers that the company has or does not have.

### **Experts**

4.117 Where required, a statement as detailed in Paragraph 4.102.

## **L. MINING COMPANIES**

### **The following additional information is to be included**

- 4.118
- a. Where the company has been incorporated or registered within the last two years a certified copy of all Consulting Engineers' reports;
  - b. Progress of work on the property;
  - c. Details of drilling and borehole results;
  - d. Details of any agreement to purchase machinery to develop the property and a statement as to the date it is estimated the machinery will be installed. In the case of a company incorporated or commencing business within two years prior to the date of the application, if there are no agreements an estimate of the amount required to purchase such machinery as may be necessary and a statement of the applicant's policy;
  - e. Tonnes milled, yield, working costs and working profits;
  - f. Annual ore reserves for the past three years, including grams per tonne where applicable, value and stopping width where applicable;
  - g. Applicant's commitments for miners' phthisis';
  - h. A statement as to the directors' plans for reaching the producing stage or for increasing output;
  - i. A statement whether the mining property is owned by the applicant or is under option;
  - j. The name(s) of the traditional authority(ies) or deed number(s) in which situated;
  - k. The area of the properties;
  - l. The price paid. If the property is under option to the applicant, the following information to be included:
    - i. The period of the option;
    - ii. The option consideration or option rental;
    - iii. The price payable if the option is exercised;
    - iv. Date option renewed to.
  - m. Any other relevant information such as exclusive prospecting rights, royalty rates and details of licences.

- Notes:**
1. In the case of foreign companies or foreign branches or subsidiaries of Malawi companies, the documents to be open for inspection will be the documents corresponding to those above mentioned in the case of Malawi companies and where such documents are not in English, notarially certified translations thereof must be available for inspection.
  2. In the event of any material alteration to the assets and prospects of the applicant within the period between the approval of the Advertised Statement and the grant of listing, an additional advertisement giving relevant information may be required.

# SECTION 5

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## Methods and Procedures of Bringing Securities to Listing

### Scope of section

This section describes the different methods and procedures by which securities may be brought to listing. The section outlines the different methods of bringing securities to listing and includes specific requirements to be followed in relation to each method. The methods so described are not exhaustive and where there is doubt as to procedure or requirements, the applicant is advised to seek advice from the Committee. In general, under the requirements of the Act, these methods of listing require the publication of a full prospectus. Any pre-listing statements therefore for these methods should comply with the requirements for a full prospectus as detailed within Section 4.

### METHODS OPEN TO APPLICANTS

#### Without equity securities already listed

- 5.1 New applicants may bring equity securities to listing by way of:
- a. an introduction
  - b. a placing; or
  - c. by the methods referred to in Paragraph 5.2 below.

#### With or without equity securities already listed

- 5.2 New applicants or those with equity securities already listed may bring securities (whether or not of a class already listed) to listing by any of the following methods:
- a. an offer for sale;
  - b. an offer for subscription;
  - c. an issue with participation or conversion rights; or
  - d. a renounceable offer.

#### With equity securities already listed

- 5.3 Only applicants with equity securities already listed may bring securities (whether or not of a class already listed) to listing by any of the following methods:
- a. a rights offer;
  - b. an open offer;
  - c. a claw-back offer;
  - d. a capitalisation issue;
  - e. an issue for cash;
  - f. an acquisition or merger issue (or vendor consideration issue);
  - g. a vendor consideration placing;
  - h. an exercise of options to subscribe for securities (including options in terms of executive and staff share schemes); and
  - i. such other method as may be approved by the Committee either generally or in any particular case.
- 5.4 A listing may also be sought for other issues of securities approved by the company in general meeting or otherwise conforming with MSE Listing Requirements. The precise form of document to be produced should be agreed with the Committee.
- 5.5 These procedures repeat certain Companies Act and CMDA requirements but should not in any way be considered as definitive.

## INTRODUCTIONS

### Description

5.6 An introduction is a method of bringing securities to listing not involving an issue of new securities or any marketing of existing securities because the spread of shareholders complies already with the conditions for listing (see Section 2). Under the terms of the Act, an introduction does not comprise an invitation to the public and a listing provides therefore a mechanism for a market to be established for transactions between existing shareholders instead of by private treaty.

### Specific requirements

- 5.7 For an introduction:
- a. the Committee will require a certified copy of the share register; and
  - b. the applicant must comply with the conditions for listing as set out in Section 2.
- 5.8 An applicant may not bring securities to listing by way of an introduction if:
- a. there is a pre-existing intention by holders (other than public shareholders) to dispose of a material number of their securities; or
  - b. within six months prior to listing there has been a marketing to public shareholders of those securities, and which therefore constitutes an invitation to the public under the terms of the Act, save where the applicant is an external company seeking a listing on the MSE.
- 5.9 In the case of an applicant whose listing has been suspended or terminated:
- a. because it was a cash company (see Paragraphs A.22 and A.23); or
  - b. in connection with a reverse takeover (see Paragraph 9.28); and which is seeking a return to listing, the Committee may not require an introduction but may require some marketing of the applicant's securities thereby constituting an invitation to the public.

### Documents to be submitted to the Committee

- 5.10 The Part 1 and all available Part 11 documents described in Paragraphs 6.9 and 6.10 must be submitted and approved by the Committee prior to listing being granted. The remainder of Part 11 documents must be submitted as soon as possible thereafter and in any event not later than 28 days from the date of listing.
- 5.11 The Part 111 documents described in Paragraph 6.11 must be submitted as soon as possible and in any event not later than 28 days from the date of listing.

### Documents to be published

- 5.12 The documents to be published on the day listing commences regarding an introduction are set out in Paragraphs 11.3 to 11.5.

## PRIVATE PLACING

### Description

5.13 A placing is a marketing of securities already held in issue but not listed or not yet in issue, to specified persons or to clients of the sponsoring broker or any other party assisting in the placing, which does not involve an invitation to the public in terms of the Act or to existing holders of the applicant's securities generally and which takes place immediately before the applicant is listed.

### Specific requirements

- 5.14 The applicant must comply with the conditions for listing as set out in Section 2.
- 5.15 At least 25% of the securities to be placed must be offered to the sponsoring broker who must, in turn, offer a reasonable proportion of his allocation to other broking members. The method of distribution must be at the sponsoring broker's discretion.

#### **Documents to be submitted to the Committee**

- 5.16 The Part 1 and all available Part 11 documents described in Paragraphs 6.9 and 6.10 must be submitted and approved by the Committee prior to listing being granted. The remainder of Part 11 documents must be submitted as soon as possible thereafter and in any event not less than 28 days from the date of listing.
- 5.17 The Part 111 documents described in Paragraph 6.11 must be submitted as soon as possible and in any event not later than 28 days from the date of listing.

#### **Documents to be published**

- 5.18 The documents to be published on the day listing is granted are set out in Paragraph 11.6.

## **OFFERS FOR SALE OR SUBSCRIPTION**

### **Description**

- 5.19. An offer for sale is an invitation to the public by, or on behalf of, a third party to purchase securities of an issuer already in issue or to be issued and may be in the form of an invitation to tender at or above a stated price. A full prospectus is required to be published.
- 5.20 An offer for subscription is an invitation to the public by, or on behalf of, an issuer to subscribe for securities of the issuer not yet in issue or allotted and may be in the form of an invitation to tender at or above a stated price. A full prospectus is required to be published.

#### **Specific requirements**

- 5.21 An offer for subscription by a listed company is regarded as being an issue for cash and must comply with the requirements of Paragraphs 5.84 to 5.92.
- 5.22 An offer for sale by a listed company of securities in the issuer must be made by way of a renounceable offer to the shareholders of the listed company and the listed company must give the Committee an undertaking that it will not dispose of those securities whilst the renounceable offer is open.

#### **Underwriting**

- 5.23 An offer for sale or subscription must be underwritten.
- 5.24 The underwriter must satisfy the Committee that it can meet its commitments.
- 5.25 Any underwriting commission paid to a shareholder of the company should not be above the current market rate payable to independent underwriters.

#### **Commission payable**

- 5.26 The minimum rate of commission payable by applicants on applications submitted by members of the MSE on issues by means of an offer for sale or subscription shall be 0.85%.

#### **Oversubscription**

- 5.27 In the event of an oversubscription the formula for the basis of allotment must be calculated in such a way that a person will not, in respect of his application, receive an allocation of a lesser number of securities than any subscriber who applied for a lesser amount.

#### **Documents to be submitted to the Committee**

##### **Listed companies**

- 5.28 The documents detailed in Paragraph 6.13 should be submitted to the Committee at the relevant times as specified within Paragraph 5.32 below.

##### **New applicants**

- 5.29 The Part I and all available Part II documents described in Paragraphs 6.9 and 6.10 must be submitted and approved by the Committee prior to listing being granted. The remainder of Part II documents must be submitted as soon as possible thereafter and in any event not later than 28 days from the date of listing.

5.30 The **Part III** documents described in Paragraph 6.11 must be submitted as soon as possible and in any event not later than 28 days from the date of listing.

#### **Documents to be published**

5.31 The documents to be published regarding an offer for sale or subscription are outlined in Paragraphs 11.7 to 11.9 and must be published at the relevant times as specified in Paragraph 4.145 below.

#### **Timetable**

5.32 The following sets out the timetable for offers for sale or subscription. It should be noted that the dates after the closing of the offer are indicative and may be advanced as long as the sequence of events is not disturbed:

Day	Event
D+0	Publication of press announcement and/or pre-listing statement. Pre-listing statement available. Offer opens. (All Part 1 documents must have been submitted to and approved by the Committee. Listing will have been granted subject to approval of Part 11 documentation and the results of the offer meeting the requirements for shareholder spread.)
D+14	Offer closes (earliest date). (All Part 11 documentation must have been submitted to and approved by the Committee.)
D+24	Results of the offer submitted to the Committee.
D+27	Results announcement published by applicant giving date of commencement of dealing in securities if listing has been granted or appropriate negative statement.
D+28	Latest date for refund cheques to be returned and documents of title posted.
D+33	Securities listed (if listing granted).
D+61	Part 111 documents to have been submitted to the Committee.

## **RENOUNCEABLE OFFERS**

### **Description**

5.33 A renounceable offer is an invitation, by a listed company, to its shareholders. To subscribe, by way of rights, for securities in the applicant where the listed company has received the right to subscribe for those securities in the applicant but renounces all or part of that right to its shareholders

### **Specific requirements**

5.34 The applicant must comply with the conditions for listing set out in Section 2.

### **Ability to trade**

5.35 The right by shareholders of the listed company to subscribe for securities in the applicant must be made by means of the issue of a renounceable offer or other negotiable document which may be traded (as "nil paid" rights) for a period of at least 3 weeks before payment is due.

### **Shareholder spread**

5.36 The issued share capital of the applicant and the letters of allotment issued to implement the renounceable offer will be listed at the same time.

5.37 Accordingly, the listed company making the renounceable offer and the applicant will be required to prove to the Committee that the applicant will comply with the minimum spread requirements (see Paragraphs 2.34.d and e. following the close of the renounceable offer.

### **General**

5.38 The requirements of a rights offer (see Paragraphs 5.44 to 5.59) will apply to a renounceable offer so far as they are applicable.

### **Documents to be submitted to the Committee**

5.39 The documents detailed in Paragraph 6.14 should be submitted to the Committee according to the timetable set out below.

### Documents to be published

- 5.40 The applicant is required to publish two press announcements and a pre-listing statement according to the timetable set out below.
- 5.41 The listed company is required to:
- publish two press announcements giving details of the renounceable offer;
  - publish press announcements or issue circulars in accordance with Section 9 or Paragraph 7.46; and
  - dispatch letters of allotment to its shareholders.
- 5.42 The press announcements and the pre-listing statement should comply with the requirements of Paragraphs 11.10 to 11.12.

### Timetable

- 5.43 This timetable is for guidance only and may need to be altered, for instance, if the listed company is required to obtain the approval of its shareholders to the renounceable offer or where the offer is made by the applicant directly to the listed company's shareholders. The MSE should be consulted in all cases to approve a proposed timetable.

Day	Event	
	Applicant	Listed Company
Friday (D+0)	First press announcement of intention to list. (All Part I documentation must have been submitted to the Committee)	First announcement giving last date for registration of the offer subject to MSE approval.
Monday (D+10)	(All Part II documentation is submitted to the Committee having been approved by the Listings Committee) (Formal approval by the Committee to the listing of the issued securities).	Second announcement giving the terms of the renounceable offer.
Tuesday (D+11)	Second announcement giving salient dates for listing, when and from where pre-listing statements can be obtained.	(Formal approval by the Committee to the listing of the letters of allotment).
Wednesday (D+12)	Pre-listing statements available.	Third announcement giving salient dates of the renounceable offer, when and from where pre-listing statements can be obtained.
Friday (D+14)	Issued securities listed on MSE (9h00).	Last day to register for renounceable offer. Pre-listing statements available.
Monday (D+17)		Letters of allotment listed on MSE (9h00) Last day for receipt of postal registrations. Renounceable offer opens (9h00).
Wednesday (D+19)		Pre-listing statements and letters of allotment posted to shareholders.
Friday (D+21)		Last day for dealing letters in letters of allotment (14h30)
Wednesday (D+40)		Last day for splitting of letters of allotment (9h00).
Thursday (D+41)		The securities that are the subject of the renounceable offer are listed.
Friday (D+42)		Renounceable offer closes (14h30) (earliest date). Last date for postal acceptances (14h30).
Wednesday (D+47)		Proceeds of renounceable offer paid to applicant.
Thursday (D+48)		Final press announcement giving results of renounceable offer.
Friday (D+49)	Proceeds of issue received by applicant. New share certificates posted.	The securities that are subject of the renounceable offer are listed. Refund cheques (if any) posted.
Friday (D+77)	Part III documents to have been submitted to the Listings Committee	

## RIGHTS OFFERS

## **Description**

5.44 A rights offer to existing shareholders of securities to subscribe for or purchase further securities in proportion to their holdings made by means of the issue of a renounceable letter or other negotiable document which may be traded (as "nil paid" rights) for a period before payment for the securities is due. Under the terms of the Act, this form of rights issue constitutes an invitation to the public.

### **Specific requirements**

5.45 Letters of application, allocation or acceptance are to be issued for the rights offer and must be renounceable. The Committee may in exceptional circumstances waive this requirement.

### **Underwriting**

5.46 A rights offer must be underwritten.

5.47 The underwriter must satisfy the Committee that it can meet its commitments.

5.48 Any underwriting commission paid to a shareholder of the company should not be above the current market rate payable to independent underwriters.

### **Excess security applications**

5.49 In a rights offer which includes the right to apply for excess securities, the right to apply for excess securities must be transferable upon renunciation of a letter of allocation.

5.50 In respect of applications for excess securities, the pool of excess securities should be allocated equitably, taking cognisance of the number of securities held by the shareholder (including those taken up as a result of the rights offer) and the excess securities applied for by such shareholder and may be used to round up holdings to multiples of 100 securities.

### **Ratio for rights offers**

5.51 The ratio should not give rise to fractions of securities that have more than two decimal places.

### **General**

5.52 Rights offers priced at above the ruling price require the approval of the Committee if it could increase the number of shares held by a shareholder and its associates in that class to more than 50%.

5.53 Unless circumstances are such as to warrant a concession being granted by the Committee, the Committee requires the letters of allocation to be listed.

5.54 In respect of the letter of allocation, only Form A (Form of Renunciation) requires the signature of the renounee. Form B (Registration application form) and Form C (Application for split forms) must not be required to be signed.

### **Documents to be submitted to the Committee**

5.55 The documents contained in Paragraph 6.14 should be submitted to the Committee at the relevant times as specified within the timetable set out in Paragraph 5.59 below.

### **Documents to be published**

5.56 Press announcements should be published giving the following information, respectively:

- a. the last date for shareholders to register to participate in the rights offer;
- b. the terms of the rights offer;
- c. the salient dates relating to the rights offer;
- d. the results of the rights offer.

5.57 In addition a prospectus should be sent to shareholders.

5.58 The press announcements and prospectus should comply with the requirements of Paragraphs 8.13 to 8.18 and should be issued according to the timetable set out below.

### Timetable

5.59 The following timetable is a guide and applicable to a listed company making a rights offer.

Day	Event
Friday (D+0)	Latest date for the first announcement giving the last day for registration for the rights.
Monday (D+10)	Second announcement giving the terms of the rights offer including the statement referred to in paragraph 5.44.
Wednesday (D+12)	Third announcement giving the salient dates for the rights offer. (All documentation described in paragraph 16.15 must have been submitted to and approved by the Committee).
Friday (D+14)	Last day to register for the rights offer.
Monday (D+17)	Letters of allocation listed. Securities listed ex rights.
Wednesday (D+19)	Last day for receipt of postal registrations.
Friday (D+21)	Circular and/or pre-listing statement and letters of allocation posted to shareholders registered for the rights offer.
Wednesday (D+40)	Last day for dealing in letters of allocation.
Thursday (D+41)	Last day for splitting letters of allocation (14h30). Securities that are the subject of the rights offer listed (if granted). Offer closes (14h30) (earliest date).
Friday (D+42)	Last day for postal acceptances of the rights offer.
Wednesday (D+47)	Fourth announcement giving the results of the rights offer. The securities that are the subject of the rights offer listed (if granted).
Friday (D+49)	

### CLAW-BACK OFFERS

#### Description

5.60 A claw-back offer is an issue of securities for cash by an applicant to persons where the securities are then offered by such persons to the applicant's shareholders in proportion to their holdings.

#### Specific requirements

5.61 The securities must be offered to the applicant's shareholders, by way of a renounceable letter or other negotiable document, which must be listed (as "fully paid" or "nil paid" rights), for a period of at least three weeks before payment for the securities is due.

5.62 The requirements of Paragraphs 5.44 to 5.59 in respect of rights offers apply also to claw-back offers.

### CAPITALISATION ISSUES

#### Description

5.63 A capitalisation issue is an issue of fully paid shares capitalised from the company's share premium, capital redemption reserve fund or reserves (or combinations thereof) to existing shareholders in proportion to their shareholdings at a specific date.

5.64 The Committee will not approve any announcement, advertisement or circular in which a capitalisation issue is in any way described or presented as a dividend when shareholders are not entitled to elect to receive a cash dividend.

#### Specific requirements

5.65 Shareholders' approval must be obtained by the applicant to give effect to the capitalisation of the share premium or reserves where the articles of association do not permit the directors to do so without approval of the shareholders.

#### Ratio for capitalisation issues

5.66 The ratio should not give rise to fractions of securities that have more than two decimal places.

5.67 Where the ratio is proposed to be other than that of whole securities per 100, the Committee will require the transfer secretaries to treat applications from nominee companies as stated in Paragraphs 5.108 and 5.109.

**Documents to be submitted to the Committee**

5.68 The documents detailed in Paragraph 6.15 should be submitted to the Committee at the relevant times as specified in Paragraph 5.71.

**Documents to be published**

5.69 A press announcement must be published and a circular must be sent to shareholders.

5.70 The press announcement and circular must comply with Paragraphs 8.19 to 8.22 and be issued according to the timetable specified in Paragraph 5.71.

**Timetable**

5.71 The timetable for a capitalisation issue as a guide is set out below:

Day	Event
Friday (D+0)	Publication of press announcement.
Friday (D+14)	Record date for participation in capitalisation issue. Lodge application for listing the maximum number of securities that could be issued.
Monday (D+17)	Securities listed ex-entitlement. Circular made available. Maximum number of securities that could be issued listed (if granted). Last day for postal registrations.
Wednesday (D+19)	Post circular to shareholders.
Friday (D+21)	Securities allotted and listed. Lodge signed application for listing detailing actual number of securities issued. Securities allotted and listed. Share certificates posted to shareholders.

Note: Should a cash underpin for the capitalisation shares be offered by a third party, the requirements of Paragraphs 5.76 to 5.83 must be adapted accordingly.

**SCRIP DIVIDEND AND CASH DIVIDEND ELECTIONS**

**Description**

5.72 A scrip dividend comprises capitalisation shares in which shareholders are afforded the right to elect to receive in lieu of cash dividends. Dividend and dividend yield statistics issued by the MSE will reflect the full amount of the dividend before shareholder election.

5.73 A cash dividend election arises where a capitalisation issue is declared and shareholders are afforded the right to elect to receive a cash dividend in lieu of the capitalisation (or bonus) shares.

5.74 In either case the grant of the right of election must not be prohibited by the articles of association.

5.75 The Committee will not approve an announcement or circular in which a capitalisation issue is in any way described or presented as a dividend when shareholders are not entitled to elect to receive a cash dividend.

**Specific requirements**

5.76 A form of election must be dispatched with a circular containing the following:

- a. a statement that the election may be made in respect of all or part of the securities held or deemed to be held at the close of business on the record date. (Fractions will be paid out in cash.);
- b. the ratio of entitlement;
- c. a statement if no late postal elections will be accepted.

5.77 Shareholders' approval must be obtained by the applicant to give effect to the capitalisation of the share premium or reserves where the articles of association do not permit directors to do so without the approval of shareholders.

### Ratio for fractional scrip dividends

- 5.78 The ratio should not give rise to fractions of securities that have more than two decimal places.
- 5.79 Where the ratio is proposed to be other than that of whole securities per 100, the Committee will require the following:
- the date of payment of the scrip dividend must be at least three weeks, and at most six weeks, from the last day to register; and
  - the transfer secretaries must treat applications from nominee companies as stated in Paragraphs 5.108 and 5.109.

### Documents to be submitted to the Committee

- 5.80 The documents detailed in Paragraph 6.15 should be submitted to the Committee at the relevant times as specified within that paragraph.

### Documents to be published

- 5.81 For a scrip dividend or a cash dividend election two press announcements must be published and a circular sent to shareholders.
- 5.82 The press announcements and circular must comply with Paragraphs 8.19 to 8.22 and be issued according to the timetable set out in Paragraph 5.83.

### Timetable

- 5.83 The timetable as a guide for a scrip dividend is set out below:

Day	Event
Friday (D+0)	Publication of first press announcement.
Monday (D+10)	Publication of second press announcement.
Friday (D+14)	Record date for participation in scrip dividend (All documentation described in paragraph 16.15 must have been submitted to and approved by the Committee)
Monday (D+17)	Securities listed ex-entitlement. Circular made available. Maximum number of securities that could be issued listed (if granted).
Wednesday (D+19)	Last day for postal registrations.
Friday (D+21)	
Friday (D+42)	Post circular to shareholders.
Monday (D+45)	Last day for election. Announcement of results of issue.
Wednesday (D+47)	Lodge signed application for listing detailing actual number of securities issued. Securities allotted and listed. Share certificates and dividend warrants posted to shareholders.

## ISSUES FOR CASH

### Description

- 5.84 An issue for cash is an issue of securities for cash (or the extinction of a liability, obligation or commitment) in compliance with Paragraphs 5.85 to 5.92:
- to persons who are specifically approved by shareholders in general meeting in respect of that particular issue; or
  - generally approved by shareholders by the giving of a renewable mandate (which should be valid until the company's next annual general meeting provided it shall not extend beyond 15 months) to the directors of the issuer to issue shares for cash subject to the requirements of the MSE and the Companies Act and to any other restrictions set out in the mandate.

### Specific requirements

- 5.85 An applicant may only issue for cash securities with voting rights where those securities are of a class already issued and subject to the following:
- the issue must be made to public shareholders as defined in Paragraph 2.32;

- b. issues in the aggregate in any one financial year may not exceed 10% of the applicant's issued share capital (number of securities) of that class, provided that such issues shall not in aggregate in any thirty six month period (each of which commences on the first day of the financial year of the company) exceed 15% of the applicant's issued share capital of that class (in this calculation, the securities of a particular class will be aggregated with the securities which are compulsorily convertible into securities of that class; and in the case of the issue of compulsorily convertible securities, aggregated with the securities of that class into which they are compulsorily convertible); and
- c. the maximum discount permitted:
  - i. where shareholders' approval is sought in terms of Paragraph 5.84.a will be subject to shareholders' approval;
  - ii. where shareholders' approval is sought in terms of Paragraph 5.84.b will be 10% of the weighted average traded price of those securities over the 30 days prior to the date that the price of the issue is determined or agreed by the directors of the applicant. The Committee should be consulted for a ruling if the applicant's securities have not traded in such 30 day period.

5.86 The number of securities of a class which may be issued in terms of Paragraph 5.84 shall be based on the number of securities of that class in issue at the date of such application less any securities of that class issued in terms of Paragraph 5.84 during the preceding financial year or three years (as applicable) provided that any securities of that class to be issued pursuant to a rights issue (announced and irrevocable and underwritten) or acquisition (concluded up to the date of application) may be included as though they were securities in issue at the date of application. The Appendix to this section gives an example of the operation of this rule; and

5.87 The Committee may, if it is satisfied that the applicant is in severe financial difficulty or that there are other exceptional circumstances, waive some or all of the requirements contained in Paragraphs 5.85, 5.86, 5.88 and 5.89, in relation to an issue of shares for cash.

#### **Voting**

5.88 **An 85%** majority of votes cast is required by shareholders present or represented by proxy at the general meeting to approve the resolution regarding the waiver of pre-emption rights where **35%** or more of the applicant's issued securities are held by the public (as defined in Paragraph 2.32).

5.89 If the applicant has less than **35%** of its securities held by the public, a **90%** majority of votes cast will be required by shareholders present or represented by proxy to approve the resolution regarding the waiver of pre-emptive rights at the general meeting.

5.90 The consequence of any issue for cash should not, in respect of the applicant, constitute an "affected transaction".

#### **Documents to be submitted to the Committee**

5.91 The documents detailed in Paragraph 6.16 should be submitted to the Committee at the relevant times as specified within that paragraph.

#### **Documents to be published**

5.92 Where approval has been obtained:
 

- a. in terms of Paragraph 5.84.a, a circular should be sent to shareholders giving details of the issue for cash. The circular should contain the information set out in Paragraph 8.24;

- b. in terms of Paragraph 5.84.b and the company, in accordance with this approval, subsequently issues shares representing, on a cumulative basis within a financial year, 5% or more of the number of shares in issue prior to the issue, a press announcement giving full details, including the impact on net asset value and earnings per share, must be made at the time the said percentage is exceeded.

## **ACQUISITION OR MERGER ISSUES**

### **Description**

- 5.93 An acquisition or merger issue (or vendor consideration issue) is an issue of securities in consideration for an acquisition of assets (which shall not include the extinction of a liability, obligation or commitment) or an issue of securities for an acquisition of, or merger with, another company as consideration for the securities of that other company.

### **Specific requirements**

- 5.94 Listing will be granted only to securities issued as consideration for an acquisition or merger should the Committee determine that their issue be for bona fide purchase of assets and not a circumvention of shareholders' rights of pre-emption.
- 5.95 Accordingly, the Committee must be consulted when a listed company proposes to issue securities as consideration for the acquisition of assets.

### **Documents to be submitted to the Committee**

- 5.96 The documents detailed in Paragraph 6.17 should be submitted to the Committee at the relevant times as specified within that paragraph.

### **Documents to be published**

- 5.97 The documents to be published with regard to an acquisition or merger issue are set out under the various categories in Sections 9 and 10.

## **VENDOR CONSIDERATION PLACINGS**

### **Description**

- 5.98 A vendor consideration placing is a marketing on behalf of vendors of securities which are to be issued to them as consideration for an acquisition.

### **Specific requirements**

- 5.99 In a vendor consideration placing:
- a. all vendors must have an equal opportunity of participating in the placing;
  - b. where the securities to be placed are equity securities of a class already listed the placing price must not be at a discount of more than 10% to the weighted average traded price of those securities over the 30 days prior to the date that the price of the placing is determined or agreed by the directors of the company, or a 10% discount to the 30 day weighted average trading price, prior to the date of the placing;
  - c. the Committee should be consulted for a ruling if the company's securities have not traded in the 30 day period referred to under b.; and
  - d. if the securities being placed are a class of equity securities not already listed, the requirements of Section 2 apply (unless the issuer has another class of equity security already listed, however, the requirement as to the spread of shareholders will apply. The requirements of the Act covering an invitation to the public and the need for the issue of a prospectus will need to be examined carefully for compliance.

## **EXERCISE OF OPTIONS TO SUBSCRIBE FOR SECURITIES (INCLUDING OPTIONS IN TERMS OF EXECUTIVE AND STAFF SHARE SCHEMES)**

- 5.100 Applications for listing of securities issued in terms of options must be made in terms of Section 6.

5.101 Application for listing of shares in terms of executive and staff share schemes may be either for block listings or for specific allotments.

5.102 The MSE will grant a block listing only in multiples of K5 million for securities issued in terms of approved schemes. Subsequent issues of securities in terms of the scheme will be subtracted from the initial block until such time as that block is exhausted, at which time an application for a further block will become necessary.

#### **ISSUES WITH PARTICIPATING OR CONVERSION RIGHTS**

5.103 Classes of securities which have participating rights to profits or have equity conversion rights must be offered to ordinary shareholders of a company by means of a rights offer, unless issued:

- a. by way of a claw-back offer;
- b. by way of an issue for cash;
- c. for the acquisition of assets or merger; or
- d. in circumstances which the Committee considers to be exceptional.

#### **GENERAL**

##### **Share certificates**

5.104 The normal requirement of the Committee is that all share certificates must be issued on the date of commencement of the listing of new securities or within seven days from the date of lodgement of the certificates for transfer or splitting.

5.105 Applicants which have not yet adopted Certified Deed Transfer Procedures must effect registration within 24 hours of receipt.

5.106 The Committee will not normally grant a listing to an issue of securities until the relevant share certificates, or other documents of title, have been made available except where the relevant securities arise out of an entitlement derived from a holding in a listed security. Deals entered into between the date of commencement of the listing and the date the document of title is made available shall be for settlement during the week following the date the document of title is made available.

5.107 Where it is proposed to issue share certificates which of necessity require to be distinguishable from existing listed securities, it is necessary to submit to the Committee a copy of the proposed certificate and a copy of the existing certificate. The procedures to be adopted thereafter are to be agreed at this stage.

##### **Securities to be registered in the name of nominee companies**

5.108 Where a listed company intends entering into a transaction or scheme which may, in its effect, discriminate between shareholders holding securities beneficially through nominee companies (the nominee company" and shareholders holding securities directly in such listed company, the listed company shall procure that, in the former case, the nominee companies timeously provide it with lists, certified as correct by a director of the nominee companies, of the individual shareholdings of such beneficial shareholders, as at the relevant date, by number and not by name, in order to ensure that all shareholders in the listed company receive equal treatment.

5.109 The requirement of Paragraph 5.108 should be applied in respect of all listed company transactions, e.g. distributions in specie of, or subscription for, securities in subsidiary companies or capitalisation issues, which give rise to fractional entitlements.

##### **Over-allotment options ("greenshoes")**

5.110 Price stabilisation mechanisms known as greenshoes or, more appropriately, "over-allotment options", will only be permitted by Malawi registered companies whose primary listing is on the MSE under the following conditions:

- a. the securities involved are the subject of an international offering under which securities are to be listed on a foreign exchange that properly regulates over-allotment options;
- b. any price stabilisation is effected on the foreign exchange referred to in a. above; and
- c. the total number of securities to be issued in any transaction, including the securities to be issued in terms of the over-allotment option, complies with the requirements of Paragraphs 5.84 to 5.92 relating to issues for cash.

5.111 Over-allotment options will not be permitted on the MSE as:

- a. it is in conflict with the Committee's general regard to the shareholders' pre-emptive rights; and
- b. it may be used as a mechanism for price manipulation in the securities of a listed company.

#### **Application for a listing**

5.112 In respect of an application for a listing, notice shall be given to the MSE and from the time of giving such notice until the listing commences or the application is refused no member of the MSE shall deal in the securities in respect of which the application is made.

5.113 In the event of the application being refused, a notice to that effect shall be given.

5.114 Unless the Committee otherwise directs, notice of an application for a listing shall not be given during MSE trading hours.

5.115 The provisions of Paragraphs 5.112 to 5.114 shall not apply to an application in respect of additional securities of a class already listed.

#### **Acceptance of late postal deliveries**

5.116 Applicants must accept for registration deliveries bearing a postmark up to and including the date of the last day to register, provided these are received within three working days of that date.

5.117 The last day to register should be a Friday, but if the Friday is not a business day then the previous business day must be taken as the last day to register.

5.118 However, in exceptional circumstances that are well motivated, the Committee will consider allowing the last day to register to fall on another day.

#### **Odd-lot offers**

5.119 An "odd-lot" offer is one where the listed company intends reducing administrative costs resulting from a large number of "odd-lot" holders. The Committee interprets an odd-lot as a total holding of less than 100 securities.

5.120 When a listed company proposes to make such an offer, the following criteria will apply:

- a. in all instances a three-way election must be provided for. Holders may:
  - i. elect to retain their odd-lot holding;
  - ii. elect to top up their holding to 100 securities;
  - iii. elect to sell their odd-lot holding;
- b. if the top up and sale prices are not the same, the prices must in all circumstances be to the advantage of the holders concerned;
- c. listed companies may not undertake such an offer where it could lead to a contravention of the minimum spread requirements; and
- d. in any distribution, award or reconstruction contemplated by a listed company where shareholders may receive odd-lot entitlements, shareholders so affected must, where the listed company wishes instead to compensate such shareholders in monetary terms, be given the opportunity to elect to receive such odd-lot entitlement.

#### **New applicants issuing securities within six months prior to seeking a listing**

5.121 If a new applicant has issued securities by way of a placing or offer for sale or subscription within six months prior to its application for listing ("the previous issue"), it will be required to

offer securities at the same price and on the same terms and conditions to the sponsoring broker as follows:

- a. if it is seeking a listing by way of an introduction then securities must be offered to the sponsoring broker that would equate to 3/7 this of the previous issue, unless agreed otherwise with the Committee;
- b. if it is seeking a listing by way of a place then securities must be offered to the sponsoring broker that would equate to 3/7 ths of the previous issue, unless agreed otherwise with the Committee. This is in addition to the requirements of Paragraph 5.15; and
- c. if it is seeking a listing by way of an offer for sale or subscription or renounceable offer, such that the offer is less than 30% of the previous issues, then securities must be offered to the sponsoring broker that would equate to 3/7 ths of the previous issue, unless agreed otherwise with the Committee.

5.122 The sponsoring broker must, in turn, offer a reasonable proportion of his allocation to other broking members, the method of allocation to be at the sponsoring broker's discretion.

#### **Preferential offers**

5.123 A preferential offer is an offer by an applicant to directors, employees, pensioners and direct business associates (including customers with whom there is a direct and enduring contractual relationship) of the applicant by means of a non-transferable application form bearing the name of a specific party and stating a maximum number of securities which may be subscribed for in that application.

5.124 If a preferential offer is made, by a new applicant, in conjunction with any other method(s) of issue such that the preferential offer amounts to more than 70% of the total number of securities which were to be issued, then securities must be offered to the sponsoring broker to reduce the number of securities that are the subject of the preferential offer to 70% of the total number of securities to be issued.

5.125 The sponsoring broker must, in turn, offer a reasonable proportion of his allocation to other broking members, the method of distribution to be at the sponsoring broker's discretion.

## **SECTION**

# 6

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## DOCUMENTS TO BE SUBMITTED TO THE COMMITTEE

### Scope of section

This section outlines the documents to be submitted to the Committee. In addition, the schedules to the listings requirements, set out the prescribed contents of documents that are referred to in this section.

### General

- 6.1 For the guidance and information of companies it should be noted that:
- a. documents submitted by companies must be copies which will become the property of the MSE and therefore are not returnable;
  - b. any proposed amendments should be submitted for approval by the Committee before they are published;
  - c. if an application for listing is not made within nine months of the examination of the articles of association then the articles of association will have to be resubmitted for examination for which a further fee may be payable; and
  - d. drafts of documents to be sent to shareholders which have been approved by the Committee will not be regarded as final documents until the document dispatched to shareholders is agreed to the draft approved by the Committee.

### Documents to be submitted through a sponsoring broker

- 6.2 Any documentation pertaining to the following matters, which is subject to prior approval of the Committee, or requiring action to be taken by the Committee, must be submitted through the medium of a sponsoring broker:
- a. New listings and acquisitions;
  - b. press announcements;
  - c. applications for additional securities/amendments to listings/termination of listings;
  - d. "backdoor" listings;
  - e. capitalisation issues;
  - f. changes of name;
  - g. conversion of securities;
  - h. debenture issues;
  - i. disposals;
  - j. explanatory statements;
  - k. memorandum and articles of association/amendments;
  - l. new classes of securities;
  - m. delistings;
  - n. notices of general meeting;
  - o. pyramid companies/changes of control;
  - p "rescue" operations;
  - q. rights and claw-back offers;
  - r. schemes of arrangements/reorganisations/restructuring;
  - s. share incentive/option schemes/amendments;
  - t "cash companies" operations and reverse takeovers;
  - u. standby offers;
  - ♦ v. sub-divisions/consolidations of securities;
  - ♦ w. takeovers and mergers;
  - ♦ x. termination of listings at the company's request;
  - ❖ y. transfer of listings;
  - ♦ z. trustee deeds/amendments; and/or
  - aa. any other document bearing the logo of a sponsoring broker.

### Procedure for approval

- 6.3 Procedure for approval of documents is as follows:

### **Informal documents**

- a. A copy of the documentation required to be approved in terms of the listing requirements (“documents”) should be submitted to the MSE as early as possible for informal comments, together with payment of the appropriate fee if applicable;
- b. If the documents are received by the MSE on or before **10.00 hours** on such business day they will be deemed to have been lodged at **10.00 hours** on such business day; and if they are received by the MSE after **10.00 hours** on a business day, they will be deemed to have been lodged at **10.00hours** on the following business day (“the deemed lodgement time”);
- c. Within **48 hours** of the deemed lodgement time, the MSE will provide the relevant sponsoring broker with its informal comments.

### **Informal approval**

- d. Once the informal comments of the MSE have been incorporated, the draft documents may be submitted to the Committee for informal approval.
- e. **Within 48 hours** of the deemed lodgement time for informal approval, the MSE may:
  - i. grant informal approval, if the documents are found to be in accordance with the listings requirements; or
  - ii. refuse informal approval and return the documents to the relevant sponsoring broker with comments (if they are not found to be in accordance with the listings requirements) or without comments (if an incomplete set of documents was submitted or the inspection fee was not paid) (“omission”).
- f. In the event of i.e. above, the sponsoring broker may resubmit the documents after incorporating the MSE comments or rectifying the omission, whereupon d. and e. will apply again.
- g. The procedures under d. to f. will reapply until the MSE grants informal approval, provided that if the documents are returned to the sponsoring broker after the third submission, the MSE may charge an additional inspection fee if any amounting to 50% of the original inspection fee for every subsequent submission.

### **Formal approval (of the Committee)**

- h. Once the informal approval of the MSE has been obtained, four copies, unless otherwise stated, of the final documents must be submitted to the MSE for formal approval.
- i. Upon submission for formal approval, the Committee may:
  - i. within 24 hours of the deemed lodgement time for formal approval, grant formal approval (if necessary, subject to conditions); or
  - ii. within 24 hours of the deemed lodgement time for the formal approval, refuse formal approval (with comments, if the documents are capable of repair).

It is the responsibility of practitioners and companies to ensure that the above procedure regarding the approval of documents can be accommodated within the timetables set out in the listings requirements. In addition, practitioners are advised to structure their timetables relating to extremely complex submissions, so as to allow the Committee, upon request, to have an additional 24 hours to consider the relevant documents.

### **Annotation of drafts**

- 6.4 All submissions up to, and including, submission for informal approval must be annotated in the margin to indicate which specific paragraph numbers of the listings requirements have

been complied with. All submissions subsequent to the first submission must be marked up to reflect changes from the previous submission. A draft submitted by facsimile transmission or other electronic means is acceptable.

### **Documents requiring approval**

- 6.5 The following documents must be approved by the Committee:
- a. all press announcements other than dividend announcements (except those relating to scrip dividends), interim and preliminary reports and annual financial statements;
  - b. Paragraph 6.9 for new applicants;
  - c. pre-listing statements;
  - d. circulars relating to:
    - a. rights issues;
    - ii. capitalisation issues;
    - iii. Category 1 or 2 transactions;
    - iv. reverse takeovers;
    - v. related party transactions;
    - vi. changes of name; and
    - vii. subdivisions and consolidations of securities.
- 6.6 The documents referred to in Paragraph 6.5 will be scrutinised by the MSE in order to ensure, as far as may be possible in the circumstances, that all relevant facts are adequately disclosed in the clearest manner possible, and informal approval of the documents will be granted on this basis.
- 6.7 Unless otherwise specified, four copies of the documents referred to in Paragraph 6.5 must be submitted for formal approval by the Committee.
- 6.8 Approval of documents by the Committee will not in any way reflect the Committee's views as to whether the underlying transactions which are the subject of such documents are fair or reasonable. Neither does such approval constitute a guarantee by the Committee or its officials of the accuracy of the contents of such documents.

### **Documents to be submitted by new applicants**

- 6.9 New applicants are required to submit the documents described below.

#### **Part 1 documents**

- a. Formal application form showing details of capital etc as per the **Schedule (Appendix ) 1** to this Section;
- b. An explanation of how the required spread of shareholders (see Paragraphs 2.36 c. and e.) is to be achieved;
- c. the proposed pre-listing statement dated and signed by the directors of the applicant including their respective alternates, or under power of attorney, together with a statement of the proposed date and details relating to its publication in the press;
- d. if the pre-listing statement is a prospectus a certificate from the applicant's attorneys stating that the requirements of the Act have been complied with;
- e. if the pre-listing statement contains an accountants' report, a statement from the accountant that the contents of the pre-listing statement are not contradictory with the information contained in the accountant's report;
- f.
  - i. a list of shareholders; and
  - ii. an analysis of shareholders certified by the auditors or transfer secretaries;
- g. a notarially certified copy of the underwriting agreement, if any, and a statement containing the following:
  - i. a statement that the underwriting agreement will become irrevocable no later than 1630 hours on the day prior to: the pre-listing statement being made available, or the last day to register where a rights offer circular is being made available;
  - ii. evidence that the underwriter is in a position, at the date of signing the underwriting agreement, to meet the commitments in terms of the underwriting agreement in conjunction with any other underwriting or similar agreements running concurrently with the present commitment;

- iii. the number of securities offered to the public and the number of securities offered other than to the public;
  - iv. the number of securities offered as a preferential right to any other persons. A brief summary of such offer to be given;
  - v. the minimum subscription, if any, in terms of the pre-listing statement; and
  - vi. confirmation that the underwriting agreement provides that the underwriting consideration will not be paid until the underwriting commitments have been met;
- h. a notarially certified copy of memorandum and articles of association complying with Schedule 12;
  - i. a notarially certified copy of the debenture trust deed, if debentures are to be listed;
  - j. a specimen, which must be cancelled by mutilation, of the share certificate, allotment letter, or other document in which it is desired to deal prior to the issue of shares or other security;
  - k. a statement whether the applicant's securities are listed on any other exchange outside Malawi and particulars of that listing. In the event of any application for listing on any stock exchange having been refused or deferred details are to be stated;
  - l. full particulars of the nature and extent of the interest (if any) of every director in the promotion proposed to be acquired by the applicant, if applicable, and where the interest of such a director consists of being a partner in a firm, the nature and extent of the interest of the firm;
  - m. list of other companies of which directors are also directors and nature of business conducted by such companies; and
  - n. the draft placing document, where an issue of securities is being made by means of a placing;
  - o. notarially certified copies of:
    - i. vendors' contract, if any;
    - ii. promoters' agreement, if any;
    - iii. share pool agreement, if any;
  - p. if there has been a vendors' contract, auditors' report on the status of transfer of assets into name of applicant (property, securities, etc.);
  - q. copy of the financial statements with auditors' report. (Where an applicant has not issued a balance sheet, a copy of statements of revenue and expenditure and of assets and liabilities to a date not more than 7 days prior to date of lodgement);
  - r. a statement that in the opinion of the directors the applicant has sufficient working capital for the purposes of its business or, if not, showing how the necessary working capital is to be provided. This statement shall be signed by all of the directors or their authorised agents.
  - s. resolution of board of directors (Appendix 3 to this Section).

## Part II documents

6.10 The following documents are classified as **Part II** documents:

- a. a certificate by the applicant's attorneys, auditors, merchant bankers or sponsoring brokers certifying that the pre-listing statement published was in accordance with the signed pre-listing statement approved by the Committee or, if not, then in what respects it did not so agree;
- b. a notarially certified copy of any prospectus to be published in connection with the issue, dated and signed by the directors of the applicant, or in their absence, by their respective alternates, or person(s) making the offer;
- c. one copy of the newspaper(s) in which the pre-listing statement or announcement was published;
- d. three copies of the pre-listing statement or circular published are required;
- e. a notarially certified copy of the memorandum and articles of association by the applicant embodying any amendments required by the Committee. (These documents may be submitted within such extended period as may be agreed to by the Committee, on the applicant's written application setting out the circumstances);
- f. a notarially certified copy of certificate of registration (or copies where the applicant has converted into a public company within a period of five years preceding the date of application). (A company registered outside Malawi must furnish a notarial copy of the certificate of registration as an external company);

- g. the general undertaking by the applicant in the form of a resolution of the board of directors, certified by the chairman, complying with **Appendix 9** to this Section;
- h. the statutory declaration complying with **Appendix 2** to this Section;
- i. a copy of every prospectus or statement in lieu of a prospectus issued during the past three years;
- j. where the issue of securities was achieved by way of a placing, the sponsoring broker must submit a letter stating that the provisions of *Paragraph 8.13* have been complied with;
- k. copies of experts' consents (Paragraph 4.102) appearing in the pre-listing statement;
- l. three copies of a statement by the applicant's chairman and secretary stating:
  - i. the registered street address and post office box number;
  - ii. the street address and post office box number of the transfer office;
  - iii. the name of the official authorised to deal with all matters relating to the applicant's listing;
  - iv. the date on which the financial year ends;
  - v. the approximate date on which the annual financial statements will be issued;
  - vi. the approximate date on which the annual general meeting will be held;
  - vii. the approximate date on which notices of the annual general meeting will be issued; and
  - viii. regarding dividends, the approximate date of declarations, date of closing of transfer registers and date of payment;
  - ix. that a copy of the financial statements will be sent to registered shareholders at least 21 days prior to the Annual General Meeting.
- m. cheque in payment of listing fee as set out in Paragraph 16.1;
- n. details of any dividend recommended or declared, but not yet paid at the date of application;
- o. mechanical signatures on certificates of title (**Appendix 11** to this Section); and
- p. requirements for certified deeds and other temporary documents of title (**Appendix 15** to this Section).

**NOTE:** Where any of the documents listed in **Part II** are available at the date of submission of Part 1 of the application, they should be submitted together with Part I documents.

### **Part III documents**

- 6.11 The following documents are classified as **Part III** documents:
- a. a certificate signed by the auditors, certifying that the capital and premium thereon, if any, issued since the date of the last annual financial statements presented to shareholders, or if no annual general meeting has yet been held, since the date of incorporation of the applicant, have been subscribed and deposited for the applicant's account, with the applicant's bankers;
  - b. an audited list of share and/or debenture holders as at the date listing was granted;
  - c. a statement detailing:
    - i. the number of securities applied for by the public;
    - ii. the number of securities allotted and the basis of allotment;
    - iii. the number of securities taken up by any underwriter, sub-underwriter or place;
  - d. an analysis of securities held by shareholders including:
    - i. the number of shareholders in Malawi and total number of securities held exclusive of those referred to in iii. and iv. below;
    - ii. the number of shareholders other than in Malawi and total number of securities held exclusive of those referred to in iii. and iv. below;
    - iii. the number of shareholders who are employees and are beneficiaries of any trust or scheme for their benefit, and the total number of securities held by them;
  - iv. details of securities held by directors and any controlling shareholder and any associate of such director or controlling shareholder, and any associates of the company. Also the securities held by the vendor(s), promoter(s) and underwriter(s); and

- v. the combined total.

6.12 In addition to the above requirements for **Part I, Part II and Part III**, applicants shall supply such other information and documents as may be required by the Committee from time to time.

#### **Documents to be submitted by listed companies**

##### **Offers for sale and subscription**

- 6.13 The following information is required to be submitted to and approved by the Committee before listing can be granted:
- a. the circular or pre-listing statement;
  - b. the information with respect to underwriting described in Paragraph 6.9.g;
  - c. the application for listing complying with Appendix 1 to this Section;
  - d. copies of any experts consents (Paragraph 4.102) appearing in the circular or pre-listing statement;
  - e. the appropriate documentation and listing fee as per Paragraph 16.1.

##### **Rights and claw-back offers**

- 6.14 The following information is required to be submitted to and approved by the Committee before listing can be granted:
- a. the circular or pre-listing statement;
  - b. the information with respect to underwriting described in Paragraph 6.9.g;
  - c. the application for listing complying with Schedule 4;
  - d. the provisional allotment letter;
  - e. copies of any experts consents (Paragraph 4.102) appearing in the circular or pre-listing statement;
  - f. the appropriate documentation and listing fee as per Paragraph 16.1.

##### **Capitalisation issues and scrip dividends**

- 6.15 The following information is required to be submitted to and approved by the Committee before listing can be granted:
- a. the circular;
  - b. the application for listing complying with **Appendix 5** of this Section;
  - c. the form of election which must contain at least:
    - i. a statement that the election may be made in respect of all or part of the shares held or deemed to be held at the close of business in the record date (fractions will be paid out in cash);
    - ii. the ration of application;
    - iii. a statement if no postal elections will be accepted;
  - d. copies of any experts consents (Paragraph 4.102) appearing in the circular;
  - e. the appropriate documentation and listing fee as per Paragraph 16.1.

##### **Issues for cash**

- 6.16 The following information is required to be submitted to and approved by the Committee before listing can be granted:
- a. the circular;
  - b. the application for listing complying with **Appendix 8** to this Section;
  - c. a statement detailing all issues of securities in the previous three years;
  - d. copies of any experts consents (Paragraph 4.102) appearing in the circular; and
  - e. the appropriate documentation and listing fee as per Paragraph 16.2.

##### **Acquisitions and disposals**

- 6.17 The following information is required to be submitted to and approved by the Committee before listing can be granted:
- a. the circular or pre-listing statement;
  - b. the acquisition or disposal agreement;
  - c. any vendor placing agreement;
  - d. articles of association of the listed company and the company being acquired;
  - e. the application for listing, if applicable, complying with **Appendix 6** to this Section;
  - f. an audited analysis of shareholders subsequent to the transaction;

- g. copies of any experts consents (Paragraph 4.102) appearing in the circular or pre-listing agreement; and
- h. the appropriate documentation and listing fee as per Paragraph 16.1.

### **Periodical returns**

6.18 Company secretaries are requested to diarise all periodical information and documents required by the Committee as set out in Paragraphs 6.19 to 6.21. It is essential, in the interests of registered, unregistered and future shareholders that the information and documents be sent to the MSE in order that accurate information concerning the company may be disseminated promptly.

6.19 The MSE must be advised in writing of:

- a. any increase or reduction of authorised share or loan capital. Such notification must be accompanied by a notarially certified copy of the certificate from the Registrar of Companies, showing registration of the change of capital;
- b. any increase of issued share capital and issue of new securities. Where the new securities are of the same class as that already listed the procedure described in this section is to be followed:
- c. any declaration of dividends or rights and dates of closing of transfer registers, and the rate of non-resident shareholders tax if applicable or non-declaration of preference or ordinary dividends;
- d. changes in directorate;
- e. change of company secretary;
- f. "stops" placed against transfer of securities;
- g. liquidation or reconstruction of the company and the dates of the closing of the transfer registers.

6.20 The MSE must be furnished promptly with the following:

- a. three copies of:
  - i. notices of annual general meetings. The notices must include the dates of the closing of the transfer registers if relevant;
  - ii. the annual financial statements;
  - iii. notices of general meetings;
  - iv. all notices, pre-listing statements and circulars issued to shareholders or debenture holders;
  - v. interim and preliminary reports; and
  - vi. quarterly statement of profits, etc. when published in the press.

NOTE: In order to obviate any delay that might be caused in making the immediate disclosure of information by the printing of three copies, it is suggested that three copies of the announcement are sent immediately to the MSE.

- b. a copy of the minutes of annual general meetings or general meetings should be furnished within 30 days of the holding of said meeting. Should copies of these documents be sent to shareholders, a further three copies should be furnished to the MSE;
- c. evidence that special resolutions have been registered by the Registrar of Companies, where special resolutions have been passed by shareholders;
- d. notifications of any preliminary or other announcements required by any other stock exchange on which the listed company, or any of its subsidiaries, are listed; and
- e. three copies of all notices issued to the press which may be regarded as being of importance to investors.

6.21 Companies must submit for the Committee's prior approval:

- a. draft circulars, timetables etc., as enumerated in the various sections;
- b. proposed alterations to articles of association;
- c. proposed alterations to share certificates or proposed new share certificates. All specimen certificates submitted must be cancelled by mutilation

### **Sundry**

#### **Letters of application and letters of allotment**

- 6.22 Where listing is desired in respect of letters of application and/or letters of allotment, or other similar documents, the proposed timetable (schedule of dates) should be submitted to the MSE for approval prior to the closing of the transfer registers of the company from which the issue accrues. The procedure to be adopted should be discussed with the MSE by the sponsoring broker.

### **Extensions of listed options**

- 6.23 The company must submit for approval:
- a. a draft of the press announcements announcing the extension and the results of the shareholders' meeting. The press announcements announcing the extension should be published at least six weeks prior to the expiry date;
  - b. a draft of a circular to registered option holders and to shareholders. The circular should be in the form of a notice to shareholders to obtain their sanction or, if the power of extension has been delegated to the directors, notification of the extension of the options and the authority under which the extension was made. The circular must also state the procedure for recording the extension on the option certificates;
  - c. a copy of the proposed alteration and/or endorsement, to be used on the option certificate;
  - d. a written application for the extension of the listing, stating:
    - i. number of options to which extension applies;
    - ii. the period of extension
    - iii. the amounts of the nominal and issued capital and the number of securities issued;
    - iv. that all options issued have been granted a listing; and
  - e. the application must be accompanied by:
    - i. a certified copy of the resolution extending the options;
    - ii. a certified copy of the relevant resolution of shareholders, or if extended by the directors, a copy of the resolution empowering the directors to extend the option;
    - iii. a copy of the circular, approved by the Committee and issued to registered option holders and shareholders;
    - iv. three copies of the circular are to be sent to the MSE for distributing to broking members.

### **Expiry of listed options on securities or on other conversion rights**

- 6.24 Notice must be given to the MSE at least 30 days before the expiry date of the option or conversion rights stating:
- a. the date on which the options or conversion rights expire, and requesting the removal of the options from the list as and from the close of business on the date of expiry;
  - b. that all registered option holders or registered holders of the securities with conversion rights have been notified of the date on which the option or conversion rights expire and that after that date, the option or conversion right will have no value. This notification should be published at least six weeks prior to expiry date.
- 6.25 Application must be made for the listing of securities issued on the exercise of options.

### **Change of name of a listed company**

- 6.26 Preliminary approval must be obtained from the MSE for the proposed new name and the proposed new abbreviated name to be used on the board.
- 6.27 An application must then be submitted to the Committee together with the drafts of both circulars (see Paragraph 11.32) for approval of:
- a. acceptance of the new name;
  - b. consequent amendment of the listing.
- 6.28 The application is to embody an undertaking that, for a period of not less than one year, the former name of the company will be shown on the document of title in brackets under the new name of the company.
- 6.29 The application must be accompanied by:
- a. a copy of the certificate from the registrar of Companies giving approval of the new name. If this is not available at the time the application is made, the application

- should state that the name has been reserved or approved by the registrar of Companies; and
- b. a specimen of the proposed new share certificates.

**Executive and staff share schemes**

- 6.30 The following documents pertaining to executive and staff share schemes should be submitted to the MSE for prior approval;
- a. a draft copy of the incentive or option scheme which must comply with Schedule 14;
  - b. a trust deed, if applicable; and
  - c. a draft of the circular or notice relating to the adoption of or amendment to a scheme.

## **SCHEDULES- (APPENDICES)**

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<b>Schedule 1</b>	The application for listing for new applicants
<b>Schedule 2</b>	Directors' declaration and resolution
<b>Schedule 3</b>	Director's resolution
<b>Schedule 4</b>	Application for the listing of securities resulting from rights and claw-back issues
<b>Schedule 5</b>	The application for listing of securities resulting from capitalisation issues or scrip dividends
<b>Schedule 6</b>	The application for listing of securities resulting from acquisitions, takeovers and mergers, share incentive schemes and convertible securities
<b>Schedule 7</b>	Fair and reasonable statements
<b>Schedule 8</b>	The application for listing of securities resulting from an issue for cash
<b>Schedule 9</b>	General undertaking
<b>Schedule 10</b>	Statutory declaration
<b>Schedule 11</b>	Mechanical signatures on certificates of title
<b>Schedule 12</b>	Requirements for articles of association
<b>Schedule 13</b>	Requirements for certificates of title
<b>Schedule 14</b>	Requirements for option certificates
<b>Schedule 15</b>	Requirements for temporary documents of title
<b>Schedule 16</b>	Requirements for executive and staff share schemes
<b>Schedule 17</b>	Requirements for trust deeds in respect of debentures
<b>Schedule 18</b>	Sponsoring broker's undertaking
<b>Schedule 19</b>	Declaration by sponsoring broker
<b>Schedule 20</b>	Annual compliance certificate
<b>Schedule 21</b>	Requirements for Corporate advisors
<b>Schedule 22</b>	Declaration of Director's interest to the applicant issuer

## **SCHEDULE 1 – Application For Listing For New Applicants**

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**Statement** "It is understood that the granting of a listing pursuant to this application shall constitute a contract between this company and the Malawi Stock Exchange and that in giving the General Undertaking referred to in Paragraph 2.30 of the listings requirements of the MSE ("the listings requirements"), the company undertakes to comply with the listings requirements as they may exist from time to time."

**COMPANY DETAILS**

NAME OF COMPANY .....

REGISTERED IN ..... ON THE .....

SECRETARY ..... ADDRESS .....

Application for a quotation for ..... Fully Paid Shares of ..... Kwacha each.

**SHARE CAPITAL**

AUTHORISED CAPITAL MK ..... IN ..... ordinary shares of par value ..... each

ISSUED CAPITAL MK ..... IN ..... ordinary shares of par value ..... each \*\*

\*\* When different classes of shares have been issued full particulars to be given.

**SHARES ISSUED FOR CASH:**

To subscribers (other than vendors, underwriters or promoters)	MK	in	Fully Paid Ordinary Shares
Vendors	MK	in	Fully Paid Ordinary Shares
Underwriters	MK	in	Fully Paid Ordinary Shares
Promoters	MK	in	Fully Paid Ordinary Shares

**SHARES ISSUED FOR A CONSIDERATION OTHER THAN CASH**

To Vendors	MK	in	Fully Paid Ordinary Shares
Underwriters	MK	in	Fully Paid Ordinary Shares
Promoters	MK	in	Fully Paid Ordinary Shares

**FLOTATION EXPENSES:** Amount payable in cash each advisor per category.

Corporate Advisory fees	-----
Sponsoring Broker fees	-----
Reporting Accountant fees	-----
Legal Advisory fees	-----
Application & Listing Fees to MSE	-----
Printing, Publication and distribution costs	-----
Public relations, marketing and advertising	-----
Underwriting fees and commissions	-----
Others	-----

	Total	MK	=====
NAME(S) OF VENDOR	.....		
NAME(S) OF UNDERWRITER	.....		

NAME(S) OF PROMOTER .....

Amount paid as Commission (other than to Underwriters):

In Cash .....  
In Shares .....

Amount paid for real and movable properties (other than consideration paid to Vendors):

In Cash .....  
In Shares .....

Number of Shares offered to Public for Subscription .....

Number subscribed for: .....

Statement that: "monies in respect of excess applications will be refunded within 7 days of the closing of the offer".

Statement as to: "whether or not it is desired to deal in any other documents prior to the issue of securities".

Statement as to: "section of List in which listing is applied for, and the abbreviated name of the applicant".

Undertaking by the applicant in the form of a directors' resolution that the documents referred to in Paragraphs 16.19 to 16.21 will be submitted within the period specified therein

.....  
DIRECTORS ..... ALTERNATES .....

- i. ....Chairman .....
- ii. ....
- iii. ....

AUDITORS ..... BANKERS .....

Details of any right to nominate a Director or Directors:

^^ Details of Real Property owned:      Area              Cost              Revaluation

^^ The description to include the following:

- a.      Whether property is owned by the Company or is under option;
- b.      The price paid.

If held under option, the following additional information to be included:

- c.      The period of the option;
- d.      The option consideration;
- e.      The price payable if option exercised;
- f.      The name of the owner;
- g.      Whether freehold or leasehold and, if leasehold, the unexpired period of the lease(s).

Details of Share Holdings in other Companies:

Percentage      Name of Company              Number of Shares held of Issued Capital

.....  
.....

Transfer Secretaries - Name, Postal and Street Address



**A sworn declaration and a certified copy of a resolution of the board of directors, signed by the Chairman and Secretary is required, to cover the particulars set out below:**

#### **DECLARATION**

The requirements below are split between pre- and post- provisional listing requirements. Relevant documentation as detailed below is submitted to the Malawi Stock Exchange prior to the submission thereof to the Registrar of Companies and the Reserve Bank of Malawi. Thereafter the Malawi Stock Exchange grants a provisional listing subject to the adequate compliance of the remainder of the requirements.

#### **Provisional listing requirements**

1. A declaration by the directors, supported by a statement of legal compliance from the applicant's attorneys, that all documents required by the Companies Act CAP. 46.03 (Act No. 19 of 1984) and the Capital Markets Development Act (Act No. 17 of 1990) have been filed duly with the registrar of Companies and the Reserve Bank of Malawi, and all legal requirements of the Companies Act CAP. 46.03 and the Capital Markets Development Act have been fulfilled;
2. Confirmation of the Registrar of Companies and the Reserve Bank of Malawi's approval to issue the prospectus;
3. That the certificates, debentures or other documents in which it is desired to deal have been, or are ready to be, delivered, and that they are identical to the specimen approved;
4. That where applicable, a Trust Deed has been executed and completed, the effect of such Trust Deed, and the nature of the charge created thereby in favour of the debenture holders or debenture stockholders;
5. That a Share Transfer Office has been set up and that a system of certification of transfers within 24 hours has been introduced;
6. That all documents specified in the Pre-listing statement have been or are lying open for inspection in the manner prescribed.

#### **Post provisional listing requirements**

7. That the minimum subscription, if applicable, has been received;
8. The number of shares or debentures applied for by the public;
9. The number of shares or debentures issued for cash to the public;
10. The number of shares or debentures allotted for a consideration other than cash;
11. That where applicable the purchase of properties has been completed, and transfer registered in the name of the company, and the purchase money paid. Where this procedure has not been adopted, an undertaking to be given by the directors to comply with the requirements in this respect;
12. That all monies refundable in respect of any application where no allotment has been made have been refunded to the applicants;
13. That there are no circumstances arising from the application or other events which should have been disclosed to the Committee, and have not been so disclosed.

### **SCHEDULE 3 - DIRECTORS' RESOLUTION**

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It is hereby certified that at a meeting of the Board of Directors of..... Limited, held at..... on..... the following resolution was passed:

“Subject to the provisions of the Companies Act CAP. 46:03 (Act No. 19 of 1984) and the Capital Markets Development Act (Act No. 17 of 1990) and in particular to the right of appeal contained therein, it is resolved that the company will:

- a. Keep the Malawi Stock Exchange timeously informed of the information necessary enable the shareholders and the public to appraise the position of the company and to avoid the establishment of a false market in its shares; and
- b. Comply with the requirements of the Malawi Stock exchange for listed companies as amended from time to time which are now or hereafter may be in force.”

## **SCHEDULE 4      APPLICATION FOR THE LISTING OF SECURITIES RESULTING FROM RIGHTS OR CLAWBACK OFFERS**

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- 4.1 The application for the listing of securities resulting from a rights or clawback offer should include:
- a. description and number of renounceable letters for which a listing is applied for, and the relevant dates;
  - b. description and number of securities for which a listing is applied and the relevant dates;
  - c. brief description of the offer;
  - d. date on which renounceable letters and the circular or pre-listing statement will be posted;
  - e. date on which certificates will be issued;
  - f. last day for splitting and that the renounceable letters will be split as often as required;
  - g. date on which the offer closes;
  - h. the authorised and issued share capital of the applicant prior to the issue of the rights or clawback issues;
  - i. the issued share capital after the rights or clawback issues;
  - j. in addition to the above information the following undertakings must be given:
    - i. all renounceable letters despatched by the applicant to registered shareholders will be sent by mail; and
    - ii. all acceptances of the offer will be accepted by the applicant provided the envelope bears the postmark of a day on or before the closing of the offer and provided such acceptances are received within three business days of the closing of the offer.
- 4.2 The application must be signed by the secretary and a director of the applicant and the sponsoring broker.
- 4.3 The application must be accompanied by a resolution of the directors of the applicant authorising the application for listing together with the relevant listing fee.

## **SCHEDULE 5 THE APPLICATION FOR THE LISTING OF SECURITIES RESULTING FROM CAPITALISATION ISSUES OR SCRIP DIVIDENDS**

---

5.1 The application must state:

- a. the number of capitalisation securities/scrip for which a listing is applied;
- b. the date from which the listing is to commence;
- c. that the capitalisation securities/scrip rank pari passu with the other issued securities of the applicant;
- d. the date on which the capitalisation securities/scrip are to be allotted;
- e. the date on which the certificates of title are to be issued;
- f. the authorised and issued share capital of the applicant prior to the issue of the capitalisation securities/scrip;
- g. the issued capital after the issue of the capitalisation securities/scrip.

5.2 The application must be signed by the secretary and a director of the applicant and the sponsoring broker.

5.3 The application must be accompanied by a resolution of the directors of the applicant authorising the application for listing together with the relevant listing fee,

**SCHEDULE 6      THE APPLICATION FOR THE LISTING OF SECURITIES  
RESULTING FROM ACQUISITIONS, TAKEOVERS AND  
MERGERS, SHARE INCENTIVE SCHEMES AND  
CONVERTIBLE SECURITIES**

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- 6.1 The following basic information should be given in the application for the listing of securities;
- a. description and number of securities for which a listing is applied and the relevant date;
  - b. reason for allotment and issue;
  - c. date of allotment;
  - d. date of issue of certificates;
  - e. a statement that the securities subject to the application rank pari passu in all respects;
  - f. the present authorised and issued share capital;
  - g. the issued share capital after the issue of the securities which are subject to the application.
- 6.2 The application must be signed by the secretary and a director of the applicant and by the sponsoring broker.
- 6.3 The application must be accompanied by a resolution of the board of directors of the applicant authorising the application for a listing together with the relevant listing fee.

## **SCHEDULE 7      FAIR AND REASONABLE STATEMENTS**

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- 7.1 Fair and reasonable statements should:
- a. be prepared by an independent professional expert, acceptable to the Committee, who has no material interest in the transaction or in the success or failure of the transaction;
  - b. make appropriate disclosure where the independent professional expert enjoys any relationship with the applicant; and
  - c. set out material factors and assumptions taken into account in the preparation of the statement.

## **SCHEDULE 8      THE APPLICATION FOR THE LISTING OF SECURITIES RESULTING FROM AN ISSUE FOR CASH**

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8.1 The application must state:

- a. the number of securities for which a listing is applied;
- b. the date from which the listing is to commence;
- c. the securities rank pari passu with the other issued securities of the applicant;
- d. the date on which the securities are to be allotted;
- e. the date on which certificates of title are to be issued;
- f. the authorised and issued share capital of the applicant prior to the issue of the securities;
- g. the issued capital after the issue of the securities;
- h. the number of public shareholders in the applicant
- i. the level of voting required at the general meeting required by the listings requirements to approve the issue of securities for cash;
- j. when the shareholders approved or will approve the issue;
- k. details of all issues of securities over the past three years;
- l. that the issue will be to public shareholders; and
- m. what discount or premium, if any, the securities are to be issued at.

8.2 The application must be accompanied by the opinion on the issue from an independent professional expert acceptable to the Committee (only for specific approval).

8.3 The application must be signed by the secretary and a director of the applicant and by the sponsoring broker.

8.4 The application must be accompanied by a resolution of the directors of the applicant authorising the application for listing together with the relevant listing fee.

## **SCHEDULE 9      GENERAL UNDERTAKING**

The following provisions should be contained in the general undertaking by the issuer which should be in the form of a resolution of directors certified by the chairman:

- 9.1 That the issuer will not apply for the loan, or return, of any document submitted in support of the application for listing, and that all such documents will become the property of the Committee.
- 9.2 That the issuer agrees that in the event of the application for listing being granted such listing shall be subject to the listings requirements which now are or hereafter may be in force.
- 9.3 That no restrictions are placed on the transfer of fully paid securities other than when the relevant statutory requirements prevail.
- 9.4 A statement if companies do or do not propose to introduce "Temporary Documents of Title" procedure that no charge will be made in Malawi for transfer of securities or the splitting of certificates of title.
- 9.5 That no charge will be made in Malawi for the registration of any powers of attorney or letters of administration.
- 9.6 That the articles of association of the issuer and its subsidiary companies comply with the listings requirements which now are or hereafter may be in force.
- 9.7 That the securities in each class for which listing is applied rank pari passu in respect of dividends, rights and in all other respects. It should be noted that a statement that securities in each class rank pari passu is understood to mean:
  - a. they are in all respects identical;
  - b. they are of the same nominal value, and that the same amount per share has been paid up;
  - c. they carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects; and
  - d. they are entitled to a dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same.
- 9.8 That in the event of a further issue being underwritten, the issuer will disclose with the issue the information which is required under Paragraph 4.16.
- 9.9 That in the event of any further offer of securities to shareholders, powers of renunciation will be granted in respect of any rights accruing to shareholders and an application for listing of the provisional documents will be made within sufficient time before the closing of the share registers. (Should it be desired to depart from this procedure, the consent of the Committee must be obtained).
- 9.10 That the minutes of all shareholders' meetings, either general or special, will be read at the next succeeding meeting of shareholders at the request of any shareholders at the meeting, if the proceedings of such meeting have not been made available.
- 9.11 That should the directors of the issuer declare a final dividend prior to the publication of the annual accounts, the dividend notice given to shareholders will contain a statement of the ascertained or estimated combined net trading profits of the issuer and its subsidiaries for the year, and also particulars of any amounts appropriated from reserves, capital profits, accumulated profits of past years, or other special source, to provide wholly or partly for the dividend.
- 9.12 That where the issuer is already listed or is subsequently granted a listing on another stock exchange and notification of any preliminary or other announcement is made by the issuer from time to time to that stock exchange copies of all such notifications will be made simultaneously to the MSE.
- 9.13 That the issuer will, in future, furnish the MSE with three copies of the issuer's annual financial statements when they are issued for distribution to broking members.
- 9.14 That all communications from the issuer to the MSE will be by letter, and will emanate from the secretary of the issuer or any other duly authorised persons to whom all correspondence from the MSE should be addressed.
- 9.15 That in the event of the company being placed in judicial management or liquidation, whether voluntary or compulsory, provisional or final, the issuer will notify the Committee immediately of this fact.
- 9.16 Should the issued share capital of the issuer for which listing is applied consist of securities without distinctive numbers, the following additional undertakings are required:

- a. that all the said securities (or in the case of these being more than one class of share, all the securities of each respective class) are, and will remain, identical in all respects, viz:
  - i. they are of the same nominal value and are fully paid;
  - ii. they carry the same rights as to unrestricted transfer, attendance and voting at meetings and in all other respects; and
  - iii. they are entitled to dividend at the same rate and for the same period, so that on the next ensuing distribution the dividend payable on each share will amount to exactly the same;
- b. that before taking any action which, for statutory or other reasons would require the reinstatement of distinguishing numbers of the said securities or would or might cause difficulty or doubts in distinguishing between securities for which listing is granted and other securities in the capital of the issuer, formal notice will be given to the MSE of the intentions with full particulars of all relevant facts;
- c. that where the directors have resolved to convene a shareholders' meeting to consider a special resolution for the consolidation or subdivision of securities or for the increase of the authorised share capital of the issuer, notice thereof will, with 48 hours of the passing of the directors' resolution, be given in writing to the MSE. Notice in writing must also be given to the MSE within 48 hours of the issue by the issuer of additional securities of any class. In either case, full particulars of all relevant facts and copies of all relevant documents, resolutions and circulars must be incorporated in or, in the case of copies, accompany the notice;
- d. regarding such issued share capital, compliance will be made with any requirements of the Committee necessary for the maintenance or grant of listing, as the case may be, for such capital, especially that an application for listing for new securities ranking *pari passu* will be made within 30 days from date of issue;
- e. that the issuer will accept for registration transfer deeds containing no distinctive numbers where the relative certificates of title, issued prior to the cessation of distinctive numbers, bears distinctive numbers, and vice versa; and
- f. where the securities, which are the subject of this application are also listed on any other stock exchange evidence must be submitted that such listing is in respect of securities without distinctive numbers.

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## **SCHEDULE 10      STATUTORY DECLARATION**

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This schedule is presented as Schedule 2 of this Appendix.

## **SCHEDULE 11      MECHANICAL SIGNATURES ON CERTIFICATES OF TITLE**

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An application for mechanical signatures on certificates of title must be made in the following form:

Malawi Stock Exchange  
Blantyre

Dear Sir,

### **MECHANICAL SIGNATURES**

The Board undertakes that no mechanical signatures will be affixed to certificates issued in respect of the securities/stock of the issuer unless the following conditions are complied with:

The means of affixing such signatures shall be by *(here insert the method to be employed)*.

Suitable blocks or dies bearing the facsimile signatures of the several directors and of the secretary or transfer secretary shall be procured at the cost of the issuer and kept respectively in the custody or under the control of the persons whose signatures they bear, or their duly authorised representatives, and in whose presence and by whose authority alone they shall be used. Each of such persons shall on each occasion on which such authority is given by him record in a register to be maintained for this purpose by the secretary the granting of such authority, its purpose and extent.

A certified copy of the resolution of the Board, adopting this procedure for mechanical signatures, is enclosed.

Yours faithfully

CHAIRMAN

## **SCHEDULE 12      REQUIREMENTS FOR MEMORANDUM AND ARTICLES OF ASSOCIATION**

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**For the guidance and information of companies it should be noted that:**

1. Documents submitted by companies should be copies which will become the property of the Malawi Stock Exchange and therefore not returnable.
  2. Any proposed amendments should be submitted for approval by the Malawi Stock Exchange BEFORE they are submitted to a meeting of shareholders.
  3. Any listed company acquiring an interest of 50% or more in any associate, subsidiary and/or sub-subsidiary company or companies must have the memorandum and articles of association of such associate, subsidiary and/or sub-subsidiary company submitted for approval. The MSE requires all articles of association of subsidiary companies or sub-subsidiary companies of listed companies which are submitted for approval to be full articles of association.
  4. If an application for listing is not made within 9 months of the examination of the memorandum and articles then these documents will have to be resubmitted for examination.
  5. The articles must be indexed, cross referenced to the mandatory sections of the Companies Act CAP. 46.03 (Act No. 19 of 1984) and cross referenced to these requirements.
  6. It should be noted that in certain instances specific articles may not be required due to mandatory application of sections of the Companies Act CAP. 46.03 (Act No. 19 of 1984).
- 12.1 The articles of association or other corresponding document must conform with the following provisions and, where necessary, a certified copy of a resolution of the board of directors undertaking to comply with the appropriate provisions must be lodged with the Secretary of the Stock Exchange Committee:

**MEMORANDUM OF ASSOCIATION - PARENT COMPANY**

- 12.2 The company must not have the power, either expressly or by implication, to appoint a company as one of its directors.

**ARTICLES OF ASSOCIATION - PARENT COMPANY**

**Capital structure**

- 12.3 That the structure of the share capital of the company be stated and where the capital consists of more than one class of security it must also be stated how the various classes shall rank for any distribution by way of dividend or otherwise.

**Preference shares**

- 12.4 If there are cumulative and/or preference shares in the capital of the company, the following rights must attach to such shares:
- a. i. The cumulative and/or non-cumulative preference shares shall entitle the holders thereof to receive notice of and attend and vote at any general meeting of the company if either:
    - ii) at the date of the notice convening the meeting the fixed cumulative preferential dividend or any part thereof is .....months in arrears, or in the case of non-cumulative preference shares, no dividend or any part thereof, has been paid within ..... months prior to such notice. (The maximum period allowed in both cases being 24 months.)
    - iii) the business of the meeting includes the considering of a resolution:
      - (a) reducing the capital of the company;
      - (b) for winding up the company, or whilst the company is being wound up (subject to limitations imposed by the Companies Act); or
      - (c) directly or adversely affecting any of the special rights or privileges attached to the preference shares;
  - iv). no further capital ranking in priority to or pari passu with the preference shares shall be created without the consent in writing of the holders of 75% of the preference shares or with the sanction of a resolution

passed at a meeting of the holders of such preference shares convened and passed in the manner provided for the passing of a special resolution;

- b. the voting rights of the preference shares, when the holders of preference shares are entitled to vote, shall be the proportion which the nominal value of such shares bears to the nominal value of the ordinary shares in the capital of the company. That is, if the nominal value of the ordinary shares is MK1.00 and the nominal value of the preference shares is MK2.00, the articles must provide that when the holders of the preference shares are entitled to vote they shall be entitled in respect of their holding of preference shares to two votes for each share held.

### **Voting rights**

- 12.5
- a. That, where the equity capital includes shares with different voting rights, the Designation of each class of shares, other than those with the most favorable voting rights, must include the words "restricted voting" or "limited voting".
  - b. All equity shares shall have unrestricted right to vote at general meetings of the company.

### **Signing of share certificates**

12.6 The articles must provide for the following:

- a. that all certificates for capital shall be under common seal, which shall be authenticated by a person or persons authorised by resolution of the directors and the signatures of the directors may be affixed by such mechanical means to such certificates as the external auditors, transfer auditors and bankers of the company shall have approved in writing;
- b. that the charge for a new certificate issued to replace one that has been worn out, lost or destroyed shall not exceed a reasonable amount at the discretion of the directors, notified to and not objected to by the MSE, and that where the holder has sold part of his holding, he shall be entitled to a certificate for the balance without charge.

**NOTE:** It is recommended that the articles of association provide that share certificates be signed by a director and the secretary or transfer secretary.

### **Commission on shares**

- 12.7
- a. The commission payable on the issue of shares must not exceed 5% of the price at which the shares are issued and must be authorised in the articles;
  - b. if it is desired to provide in the articles that the commission may be paid in shares of the company, the articles must further provide that the payment of the commission in shares must be authorised or sanctioned by the company in general meeting.

### **Lien upon shares**

- 12.8 The articles must not give a company power to claim a lien on fully paid shares and lien upon partly paid shares must be limited to the amounts owing upon partly paid shares.

### **Transfer of shares**

- 12.9
- a. Provision must be contained in the articles for the use of a common form of transfer;
  - c. the following provision must be made in the articles:  
"Even after the giving and lodging of notice of revocation of Power of Attorney, the company shall be entitled to give effect to any instrument signed under Power of Attorney and certified by any officer of the company as being in order before the giving and lodging of such notice."

### **Joint shareholders**

- 12.10 That where power is taken to limit the number of shareholders in a joint account, such limit shall not prevent the registration of a maximum of four persons.

### **Register**

- 12.11 That the closing of the registers shall be discretionary.

### **Transmission clause**

12.12A provision to the effect that shares registered in the name of deceased or insolvent shareholders shall be forfeited if the executor fails to register them in his own name or in the name of the heir etc., when called upon by the directors to do so, will not be permitted.

### **Capital**

- 12.13 a. New shares created are not to be in the control of the directors. Provision should be made that new shares created shall be offered to the existing shareholders pro rata to their shareholding or that new shares are only to be disposed of or dealt with as directed by a general meeting of shareholders. The articles may, however, in addition to the above, provide that the shareholders in general meeting may specifically authorise the directors to dispose of the new shares as the directors in their discretion may think fit as long as such disposal occurs within a period of twelve months from the date of such authorisation ;
- b. the clause in the articles dealing with the reduction of capital should not provide that capital shall be repaid upon the footing that it may be called up again.

### **Borrowing powers - parent company**

- 12.14 a. The articles should provide that the borrowing powers of the directors are limited (with respect to the type of business) so that the aggregate amount at any time owing in respect of monies borrowed by the company and its subsidiary companies (exclusive of intercompany borrowing) shall not exceed a reasonable fixed amount or percentage of paid up share capital and reserves of the company except with the consent of the company in general meeting by ordinary resolution, and that the directors will procure that the aggregate amount at any one time owing in respect to monies borrowed by the company (including overdue creditors) will not without consent exceed the same limit;
- b. a provision that debentures may be issued with special privileges as to allotment of shares or stock, attending and voting at general meetings, appointment of directors or otherwise, will be permitted if the clause contains a provision that such special privileges etc., shall not be afforded save with the sanction of the company in general meeting.

### **Notice of meeting**

- 12.15 a. In the articles of a company, provision should be made that at least 21 days notice in writing of a meeting shall be given to all shareholders entitled to notice;
- a. in the articles of all companies provision should be made for sending three copies of the directors' annual report and accounts and of all notices to shareholders to the secretary of the MSE at the same time as they are sent to shareholders;
- b. that where power is taken to give notice by advertisement such advertisement shall be inserted in at least one leading Malawi daily newspaper and sent by post;
- c. that a company incorporated outside Malawi shall give notice sufficient to enable members whose registered addresses are within Malawi to exercise their rights or comply with the terms of notice;
- d. that the quorum for a separate class meeting (other than an adjourned meeting) to consider a variation of the rights of any class of shares shall be the holders of at least one third of the issued shares of the class;
- e. notice of adjournments to be given by advertisement if less than 21 days.

### **General meetings**

- 12.16 a. The business of a general meeting must include power to sanction or declare dividends;
- b. The quorum at a general meeting must be at least two members personally present and entitled to attend and vote.

### **Voting at general meetings**

- 12.17 a. The articles should provide that subject to any special rights or restrictions as to voting attached to any special class of shares, on a show of hands every individual

present and entitled to vote shall have one vote and on a poll every member present or represented by proxy shall have one vote for each share of which he is the holder. (See also Paragraph 12.4.b above.)

**Note: No restrictions are permitted on the right of registered holders of ordinary shares to vote at a general meeting.**

- b. the articles should provide that proxies to vote at general meetings must be accepted up to not more than 48 hours before the meeting or adjournment meeting (and at shorter notice following an adjournment of less than seven days).
- c. that where provision is made in the articles as to form of proxy this must be so worded as not to preclude the use of the two way form;
- d. that a corporation may execute a form of proxy under the hand of a duly authorised officer.

## **Directors**

- 12.18
- a. The articles should provide that the appointment of a director to fill a casual vacancy or as an addition to the board must be confirmed at the next annual general meeting;
  - b. the articles shall provide that the fees of a director shall be such sum as shall be decided by the company in general meeting;

**Note: A clause in the articles that a director shall be entitled to a percentage of profits will not be permitted.**

- c. the articles should provide that the minimum number of directors shall be three and that if the number of directors falls below the minimum provided in the articles, the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of shareholders;
- d. the articles should provide that if a director is interested in any contract with the company he must disclose such interest;
- e. if the articles contain a provision that a director may be employed in any other capacity in the company or as a director or employee of a company subsidiary to the company, a further provision should be made to the effect that appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors;
- f. in a new company all the directors are to retire at the first annual general meeting and at each annual general meeting held thereafter at least one third of the directors shall retire by rotation. In the case of an existing company at least one third of the directors shall retire at each annual general meeting.
- g. the period to be allowed before the date of an annual general meeting for the nomination of a new director must be such as to give sufficient time after receipt of notice of the holding of the meeting for nominations to reach the company's office from any part of southern Africa (nominations received by fax are acceptable);
- h. if the quorum of directors is two, the chairman shall not be permitted to have a casting vote if only two directors are present at a meeting of directors;
- i. the directors shall be entitled to elect a chairman and deputy chairman and determine the period for which they shall hold office, which period shall, however, not exceed one year;
- j. provision may be made that a directors' resolution signed by directors or their alternates, being sufficient to constitute a quorum, shall be as valid and effectual as a resolution passed at a meeting of directors duly called and constituted;
- k. directors may have power to enter into a provisional agreement for the sale assets and/or alienation of all or a major portion of the assets, but such provisional agreement must be ratified by the shareholders;
- l. that, where not otherwise provided by law, the company in general meeting shall have power by ordinary resolution to remove any director (including a managing director, but without prejudice to any claim for damages under any contract) before the expiration of his period of office;
- m. notice to the company of the intention to propose a person for election as a director, and notice to the company by such person of his willingness to be elected, may be given during a period of at least seven days ending not more than seven days before the date of the meeting appointed for such election.

### **Executive directors**

- 12.19 a. Executive directors may be appointed by contract for a maximum period of five years at any one time and shall be subject to retirement by rotation in the same manner as other directors, except during the period of such contract;
- b. an executive directors' remuneration including pension contributions shall be confirmed by the company in general meeting;
- c. if more than one executive director is to be appointed, the articles must provide accordingly in respect of all aspects of such appointment.

### **Dividends**

- 12.20 The articles should provide that final dividends must be declared by the company in general meeting. Directors are not permitted to declare final dividends but are permitted to declare interim dividends:
- a. The Malawi Stock Exchange requires that should the directors of the company declare an interim dividend prior to the publication of the annual accounts, the dividend notice given to shareholders shall contain a statement of the ascertained or estimated combined net trading profits of the company or group for the year, and any abnormal receipts or payments, detail appropriation of those profits, and also particulars of any amounts appropriated from reserves, capital profits, accumulated profits of the past years or other special source, to provide wholly or partly for the dividend. (Mining companies publishing monthly or quarterly statements of profits are exempted from this paragraph.)
- b. the Malawi Stock Exchange requires that should the directors of the company not recommend the payment of a dividend in any year, on any class of quoted shares in the capital of the company, notification of the decision must be given to the Secretary of the Malawi Stock Exchange;
- c. The Malawi Stock Exchange requires that dividends are to be payable to shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend whichever is the later. A period of 14 days at least should be allowed between the date of declaration or confirmation of the dividend, whichever is the later, and the date of the closing of the transfer registers in respect of such dividend;
- d. the articles of the company may contain a provision to the effect that dividends which remain unclaimed for 12 years shall remain the property of the company;
- e. the articles may provide that the directors may retain any dividend or bonus upon which the company has a lien and may deduct from dividends or bonus all claims or sums of money which may be due on account of calls; the articles should provide that any amount paid up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof in a dividend subsequently declared or in a vote, where he would not otherwise be so entitled.

### **Balance sheets and accounts**

- 12.21 That a printed copy of the report, accompanied by the balance sheet (including every document required by law to be annexed thereto) and the profit and loss account or income and expenditure account, shall, at least every twenty one days previous to the general meeting, be delivered or sent by post to the registered address of every member. The Malawi Stock Exchange requires that three copies of each of these documents shall at the same time be forwarded to the Secretary of the Stock Exchange Committee.

### **Notices**

- 12.22 Provision should be made in the articles that notices are to be sent to all registered members personally or by post. The Malawi Stock Exchange requires that notices should be sent also to the Secretary of the Malawi Stock Exchange.

### **Members' or Member's registered address**

- 12.23 A clause in the articles to the effect that a member's address is in some other country will be permitted.

### **Advertisement of notices**

12.24 The Malawi Stock Exchange requires that in addition to the notice to be sent to all registered shareholders, notice by advertisement shall be published in at least one leading Malawi daily newspaper.

### **Companies quoted on the Stock Exchange, London or on the Johannesburg Stock Exchange**

12.25 Where a company is quoted already or is subsequently granted by the Stock Exchange in London or Johannesburg, and notification of any preliminary or other announcement is made by such company from time to time to the Stock Exchanges in London or Johannesburg, copies of all such notifications are to be forwarded simultaneously to the Secretary of the Malawi Stock Exchange.

### **Resolutions of subsidiary companies**

12.26 The following clause must appear in the articles of a company: "If the company is a holding company as defined in the statutes, the directors' report attached to each annual balance sheet issued by the company pursuant to the statutes shall disclose full details of all resolutions passed at extraordinary general meetings of the company's subsidiary companies since the date of the directors' report attached to the previous annual balance sheet of the company."

## **MEMORANDUM AND ARTICLES OF ASSOCIATION - SUBSIDIARY COMPANY OF A LISTED PARENT**

### **Company not to be a director**

12.27 A company must not have power, either expressly or by implication, to appoint a company as one of its directors.

### **Unissued shares in the initial capital and calls on unissued shares**

12.28 Unissued shares in the initial capital and the right to calls on unissued shares in the initial capital are not to be in the control of the directors.

### **Capital structure**

12.29 The structure of the share capital of the company is required to be stated and where the capital consists of more than one class of security it must also be stated how the various classes shall rank for any distribution by way of dividend or otherwise.

### **Preference shares**

12.30 If there are cumulative and/or noncumulative preference shares in the capital of the company, the following rights must attach to such shares:

- a. I. The cumulative and/or noncumulative preference shares shall entitle the holders thereof to receive notice of and attend and vote at any General Meeting of the company if either:
  - i) at the date of the notice convening the meeting the fixed cumulative preferential dividend or any part thereof is ..... months in arrears, or in the case of noncumulative preference shares, no dividend or any part thereof has been paid within months prior to such notice. (The maximum period allowed in both cases being 24 months).
  - ii) the business of the meeting includes the considering of a resolution:
    - a) for reducing the capital of the company;
    - b) for winding up the company, or whilst the company is being wound up (subject only to the limitations imposed by the Companies Act); or
    - c) directly or adversely affecting any of the special rights or privileges attached to the preference shares;
- II. No further capital ranking in priority to or pari passu with the preference shares shall be created without the consent in writing of the holders of 75% of the preference shares or with the sanction of a resolution passed at a meeting of the holders of such preference shares convened and passed in the manner provided for the passing of a special resolution;

- b. the voting rights of the preference shares, when the holders of preference shares are entitled to vote, shall be the proportion which the nominal value of such shares bears to the nominal value of the ordinary shares in the capital of the company. That is, if the nominal value of the ordinary shares is K1.00 and the nominal value of the preference shares is K2.00 the articles must provide that when the holders of the preference shares are entitled to vote they shall be entitled in respect of their holding of preference shares to two votes for each share held.

#### **Signing of share certificates**

12.31 Articles must provide the following:

- a. that all certificates for capital shall be under common seal, which shall be authenticated by a person or persons authorised by resolution by the directors and the signatures of the directors may be affixed by such mechanical means to such certificates as the external auditors, transfer auditors and bankers of the company shall have approved in writing;
- b. that the charge for a new certificate issued to replace one that has been worn out, lost or destroyed shall not exceed a reasonable fixed amount to be determined at the directors' discretion and within the parameter accepted by the Committee and that where the holder has sold part of his shareholding he shall be entitled to a certificate for the balance without charge.

**NOTE: It is recommended that the articles of association provide that share certificates be signed by a director and the secretary or transfer secretary.**

#### **Calls on shares**

12.32 Neither the directors nor the company are to be given power on the issue of shares to make any difference between the holders of the same class of share in the amount of calls to be paid and the time of payment of such calls.

#### **Commission on shares**

- 12.33
- a. The commission payable on the issue of shares must not exceed 5% of the price at which shares are issued and must be authorised by the articles;
  - c. if it is desired to provide in the articles that commission be paid in shares of the company, the articles must further provide that the payment of commission in shares must be authorised or sanctioned by the company in extraordinary general meeting.

#### **Lien upon shares**

12.33 The articles must not give a company power to claim a lien on fully paid shares and the lien upon partly paid shares must be limited to amounts owing upon partly paid shares.

#### **Transfer of shares**

- 12.35
- a. Provision must be contained in the articles for the use of a common form of transfer;
  - b. the following provision must be made in the articles:

“Even after the giving and lodging of notice of revocation of power of attorney, the company shall be entitled to give effect to any instrument signed under power of attorney and certified by any officer of the company as being in order before the giving and lodging of such notice.”

#### **Joint shareholders**

12.36 That where power is taken to limit the number of shareholders in a joint account, such limit shall not prevent the registration of a maximum of four persons.

#### **Transmission clause**

- 12.37 A provision to the effect that shares registered in the name of a deceased or insolvent shareholder shall be forfeited if the executor fails to register them in his own name or in the name of the heir etc., when called upon to do so, will not be permitted.

### Capital

- 12.38 Shares created are not to be in the control of the directors. Provision should be made that the new shares created shall be offered to existing shareholders pro rata to their shareholdings or that new shares are only to be disposed of or dealt with as directed by general meeting of the shareholders. The articles may, however, in addition to the above, provide that the shareholders in general meeting may authorise the directors to dispose of the new shares as the directors in their discretion may think fit.

### Borrowing powers: subsidiary companies

- 12.39 a. The articles should provide that the directors may, from time to time at their discretion, raise or borrow or secure the payment of any sum or sums of money for the purposes of the company, provided that the total amount owing by the company in respect of monies raised, borrowed or secured shall not exceed the amount authorised by its listed holding company;
- b. a provision that debentures may be issued with special privileges to allotment of shares or stock, attending and voting at general meetings, appointment of directors or otherwise, will be permitted if the clause contains a provision that such special privileges etc. shall not be afforded save with the sanction of the company in general meeting

### Quorum at general meeting

- 12.40 The articles must provide that a quorum at a general meeting and at an adjourned or postponed meeting shall be at least two members present, personally or by proxy, of whom one member shall be representative of the company to which the company is a subsidiary.

### Directors

- 12.41 a. The articles should provide that the appointment of a director to fill a casual vacancy or as an addition to the board must be confirmed at the next annual general meeting;
- b. the articles shall provide that the fees of a director shall be such sum as shall be decided by the company in general meeting;
- NOTE: A clause in the articles that a director shall be entitled to a percentage of profits will not be permitted.**
- c. the articles should provide that if the number of directors falls below the minimum provided in the articles, the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of shareholders;
- d. the articles should provide that, if a director is interested in any contract with the company he must disclose such interest;
- e. if the articles contain a provision that a director may be employed in any other capacity in the company or as a director or employee of a company subsidiary to this company, a further provision should be made to the effect that his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors;
- f. the period to be allowed before the date of an annual general meeting for the nomination of a new director must be such as to give sufficient time after the receipt of the notice of the holding of the meeting for nominations to reach the company's office from any part of Southern Africa;
- g. if the quorum of directors is two, the chairman shall not be permitted to have a casting vote if only two directors are present at a meeting of directors;
- h. provision may be made that a directors' resolution signed by all the directors or their alternates, being sufficient to constitute a quorum, shall be as valid and effectual as a resolution passed at a meeting of directors duly called and constituted;
- i. directors may have power to enter into a provisional agreement for the sale and/or alienation of all or a major portion of the assets, but such provisional agreement must be ratified by the shareholders in extraordinary general meeting.

### **Executive directors**

- 12.42 a. Executive directors may be appointed by contract for a maximum period of five years at any one time and shall be subject to retirement by rotation in the same manner as the other directors, except during the period of such contract;
- b. an executive director's remuneration (including pension benefits) shall be confirmed by the company in general meeting;
- c. if more than one executive director is appointed the articles must provide accordingly in respect of all aspects of such appointment.

**NOTE: A clause in the articles that the executive director shall be entitled to a percentage of the profits will not be permitted.**

### **Dividends**

- 12.43 a. The articles should provide that final dividends will be declared by the company in general meeting. Directors are not permitted to declare final dividends but are permitted to declare interim dividends.
- b. a provision to the effect that dividends which remain unclaimed for twelve shall remain the property of the company will be permitted;
- c. the articles may provide that the directors may retain any dividend or bonus upon which the company has a lien and may only deduct from dividends or bonus claims or sums of money which may be due on account of calls.

### **Notices**

- 12.44 Notices are to be sent to all registered members either personally or by post.

### **Members registered address**

- 12.45 A clause in the articles to the effect that a member's address is in some other country will be permitted.

### **Compliance**

- 12.46 It should be noted that compliance with these provisions may prove impossible where there is a minority shareholding of 25% or more and such instances should be brought to the attention of the Committee.

## **SCHEDULE 13                      REQUIREMENTS FOR CERTIFICATES OF TITLE**

The following are the requirements for certificates of title:

### **Size**

- 13.1 Minimum and maximum sizes of certificates of title:
- a. breadth minimum 25 cm maximum 30 cm;
  - b. depth minimum 20 cm maximum 26 cm, or as agreed with the MSE.

### **Name**

- 13.2 The name of the company must be printed clearly in bold type. The name must agree in every particular with that under which the company is registered. Abbreviations of words should not be used unless the name of the company is so registered, e.g. the word "AND" should be printed and not the abbreviation "&" and the word "LIMITED" should be printed and not the abbreviation "LTD". Should the company be registered with either of these words abbreviated a note should be printed at the foot of the certificate of title to the effect that certificates of title accompanied by transfer deeds having the name of the company abbreviated "&" or the word "and" written in full will be accepted for transfer. A similar procedure should be adopted for any other abbreviations.

### **Change of name**

- 13.3 The former name of the company must be shown in brackets under the new name of the company for a period of at least one year after such change of name.

### **Country of registration**

- 13.4 The country of registration must be printed under the name of the company.

### **Translation of name**

- 13.5 Should it be desired to show the translation of the name in another official language this may be shown under the name provided a statement is made on the certificate that the company will accept either name on transfer deeds.

### **Certificate number**

- 13.6 The certificate of title number must be shown on the top left hand corner.

### **Number of securities**

- 13.7 The number of securities represented in the certificate must be shown on the top right hand corner. In the case of units of stock the number of units and the nominal value must be shown.

### **MSE code**

- 13.8 All certificates of title should bear the MSE code where applicable.

### **Preference share certificates**

- 13.9 Certificates in respect of first issue of preference shares must be printed in red, including the border, if any. Certificates in respect of shares, other than a first issue of preference shares, may be printed in any other approved colour. Where preference shares of a new class are issued, second and subsequent issues of preference shares should be described as "Second Preference Shares:", "Third Preference Shares:" etc.

### **Description of securities**

- 13.10 A full description of the class of securities must be printed in the body of the certificate, the description to be in accordance with that prescribed in the memorandum and articles of association. Where special rights and obligations pertain to the securities (as in the case of preference shares and debentures), salient details of these rights and conditions should be printed on the back of the certificate.

### **Class of securities**

- 13.11 A description of the class of securities must be printed in bold type above the name of the company.

**Low and high voting equity shares**

13.12 Certificates in respect of low or high voting equity shares which have been issued should indicate clearly that the shares are low or high voting equity shares such as “A” or “N” ordinary shares.

**Certificates of title to indicate reconstruction**

13.13 Where securities have been split, reduced and/or consolidated a summary of this information must be shown clearly at the top of the certificate. This information must be perpetuated on such certificates of title for a period of one year. These securities must be distinguishable clearly from other securities of the company in circulation. As an additional safeguard companies should use a different colour and series of numbers.

**Address of registered and transfer offices**

13.14 The physical and postal address in Malawi of the registered and transfer offices of the company must be stated.

**Signatures on certificates of title**

13.15 The provisions of the Companies Act shall constitute the MSE requirements for the signatures on certificates of title.

## **SCHEDULE 14**

## **REQUIREMENTS FOR OPTION CERTIFICATES**

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The conditions of issue of the options to be printed on option certificates must make provision for the following:

- 14.1 The term of option:
  - a. the minimum period during which an option may be exercised shall be not less than one calendar month. The company must advise option holders at least six weeks prior to the date upon which options may be exercised; and
  - b. in cases where the option may be exercised at any time the company shall undertake to send a reminder to registered option holders not less than six weeks or more than two months prior to the final date for the exercise of the option.
- 14.2 Upon exercise of the option, the securities to be allotted by the company in satisfaction of the option shall rank *pari passu* and in all respects be identical with existing issued securities of the same class in the capital of the company and certificates of title in satisfaction of such rights will be issued within twenty one (21) days of the option having been exercised.
- 14.3 New option certificates shall be issued upon transfer to a transferee.
- 14.4 In cases where the exercise of the option is restricted to a specific period the company shall undertake not to fix a recorded date for a dividend, a rights offer, capitalisation issue, capital reconstruction or offer to purchase (take over bid) on ordinary shares which will fall within that period. In other cases holders of the options shall preclude exercising their options between the date of declaration of dividend and the record date for such purposes.
- 14.5 The number, description and nominal value of securities over which the option is granted.
- 14.6 The price at which the option may be exercised.
- 14.7 That the option over a specified number of securities will be exercisable whether in whole or in part.
- 14.8 Additional issues of options or of the issue of securities with conversion rights or of the amendment of the conditions of the options will require the sanction of the holders of the options and the holders of such of the following securities as may be issued as at the date it is proposed to amend the conditions of issue:
  - a. ordinary shares or ordinary stock, other than non-voting;
  - b. convertible securities;
  - c. securities with inherent option rights; and
  - d. participating securities.
- 14.9 The holders of the options shall be advised simultaneously with the notification of the holders of ordinary shares or stock of a contemplated rights issue or bonus issue and of a specified date by which they must exercise their options in order to participate in the rights issue or bonus issue. The ratio for the rights issue or bonus issue shall not be determined until after the date referred to above and a subsequent date shall be determined as being record date for the rights issue or bonus issue.
- 14.10 In a capital reconstruction, the ratio of:
  - a. the total number of securities which may be issued on the exercise of the option to the total number of securities issued; and
  - b. the issue price per ordinary share or stock to the nominal value per share or stock; shall be adjusted to correspond proportionately to the total number of securities or stock issued and the nominal value per share or stock in the reconstructed capital.
- 14.11 Ordinary share capital shall not be repaid during the period of the option

## SCHEDULE 15

## REQUIREMENTS FOR CERTIFIED DEEDS AND OTHER TEMPORARY DOCUMENTS OF TITLE

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The application to be submitted by companies for approval to issue certified deeds and other temporary documents of title must take the following form:

The Malawi Stock Exchange  
Blantyre

Dear Sir,

### CERTIFIED TRANSFER DEEDS AND OTHER TEMPORARY DOCUMENTS OF TITLE

On behalf of my company I hereby apply for the approval of your Committee to the introduction by my company of certified transfer procedure as covered by your rules in respect of all listed securities of this company which at present consist of:

..... ordinary shares  
(number)

..... preference shares  
(number)

..... (description)

and number of any other class of security to which the system can be applied, and any additional securities of the same class(es) which may be granted a listing in the future.

The Board has passed a resolution authorising the adoption of the system of certification in Malawi and if and when applicable on an interchange basis with office elsewhere and it has made the necessary arrangements regarding the signing of certifications. The company agrees that the Committee's approval shall be subject to the Listings Requirements of your exchange which now are or which may hereafter be in force.

Without in any way limiting the application of the Listing requirements referred to above, the company undertakes:

- a. that Paragraphs 7.56 to 7.59 of your Listing Requirements shall be deemed to form part of this undertaking; and
- b. that certificates for any of the above securities will be issued in such denominations as may be expedient (not necessarily in 100's) and that the transfer deeds in the required denominations will be certified against such of the following documents as may be issued from time to time by the company:
  - i. certificates of title;
  - ii. transfer receipts;
  - iii. postal acknowledgements;
  - iv. removal (or transmission) receipt (where branch registers are maintained);
  - v. balance receipts (or tickets);
  - vi. split balance receipts (or tickets);
  - vii. bearer share reconversion receipt;
  - viii. interchange receipts; and
  - ix. letters of allocation or allotment and similar new issue documents after allowing a period for renunciation;

provided any document referred to above shall have been surrendered prior to delivery of the relative scrip;

- c. that in the company's discretion certified transfer deeds may be updated. That no other temporary documents of title will be updated. (Delete where applicable); and
- d. that provided the documents of title are in order the relative certified deeds and/or other temporary documents of title will be issued within 24 hours of lodgement. That, upon request,

temporary receipts which shall be surrendered upon delivery of the certified deeds and/or other temporary documents of title, will be issued to persons who lodge documents of title. The certified transfer deed procedures will apply to Malawi registrations and to interchange between Malawi and name(s) of foreign country(ies) in which additional transfer offices are situated.

I enclose for approval a specimen of the certifications to be applied by or on behalf of the company.

Once these have been approved they will not be altered without notifying your exchange.

Kindly advise me of the Committee's decision in due course.

Yours faithfully

**CHAIRMAN**

Note: Companies should satisfy themselves that they are adequately covered under their forged transfer policies in respect of certified deeds and other temporary documents of title.

## SCHEDULE 16

## REQUIREMENTS FOR EXECUTIVE AND STAFF SHARE SCHEMES

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The following provisions apply, with appropriate modifications, to all schemes involving the purchase of securities and/or the issue of shares or other securities (including options) by listed companies (or trusts formed for this purpose in terms of the Act) to, or for the benefit of, employees. They apply also to schemes of all subsidiaries of listed companies.

The MSE must be consulted on the application of these provisions to schemes intended to apply to employees of associates.

- 16.1 The scheme, which must be approved by shareholders of the listed company or company applying for listing in general meeting prior to its implementation, must contain provisions relating to:
- a. the category of persons to whom or for the benefit of whom securities may be purchased or issued under the scheme ("participants"). Notwithstanding the above requirement, the Committee restricts the definition of participants to persons involved in the business of the group including non-executive directors;
  - b. the aggregate number of securities which may be utilised for purposes of the scheme which must be stated together with the percentage of the issued share capital that it represents at that time;
  - c. a fixed maximum percentage for any one participant;
  - d. the amount, if any, payable on application or acceptance; the basis for determining the purchase, subscription or option price which must be a fixed mechanism for all participants; the period in which payments, or loans to provide the same, must be paid; the terms of any loan; the procedure to be adopted on termination of employment or retirement of a participant; and
  - e. the voting, dividend, transfer and other rights, including those arising on a liquidation of the company, attaching to the securities and to any options (if appropriate).
- 16.2 A scheme may provide, in the event of a capitalisation issue, a rights issue, subdivision, consolidation of securities or reduction of capital, for adjustment of the purchase, subscription or option price of the number or amount of securities subject to options already granted to participants and to the scheme. Such adjustments should give a participant entitlement to the same proportion of the equity capital as that to which he was previously entitled:
- a. the issue of securities as consideration for an acquisition or a waiver of pre-emptive rights will not be regarded as a circumstance requiring adjustment;
  - b. adjustments, where necessary must be confirmed to the directors in writing by the company's auditors that these are calculated on a reasonable basis.
- 16.3 The scheme must provide, or the circular must state, that the provisions relating to the matters contained in 16.1 above cannot be altered without prior approval of shareholders in general meeting.
- 16.4 The trustees must not be participants under the scheme.
- 16.5 Shares shall upon release to participants rank *pari passu* in all respects with the existing issued shares of the company.
- 16.6 Application must be made for a listing of those securities of a class already listed at the time of the issue.
- 16.7 The scheme document, if not circulated to the shareholders, must be available for inspection for at least 14 days at the company's registered office or such other places as the MSE may agree.
- 16.8 The terms of the resolution must approve a specific scheme and refer either to the scheme itself (if circulated to the shareholders) or to a summary of its principal terms included in the circular which must contain the provisions set out in Paragraph 16.1 above.
- 16.9 The listed company must, in respect of its or its subsidiary companies schemes, summarise in its annual financial statements the number of securities which may be utilised for purposes of the scheme at the beginning of the accounting period, changes in such number during the accounting period and the balance of securities available for utilisation for purposes of the scheme at the end of the accounting period.

The following are the requirements for trust deeds in respect of debentures:

- 17.1 Trust deeds and debentures not secured by a trust deed must contain provisions to the following effect that:
- a. where provision is made that the debenture shall be repayable at a premium either at a fixed rate or at any time upon notice having been given, the debenture shall not in any event of the company going into voluntary liquidation be repayable at less than the premium then current;
  - b. a provision that debentures may be issued with special privileges as to allotment of securities, attending and voting at general meetings, appointment of directors or otherwise, will be permitted if the clause contains a proviso that such special privileges etc. shall not be afforded save with the sanction of the company in general meeting;
  - c. where debentures are subject to periodic redemption such redemption shall be in units and not in the reduction of nominal value;
  - d. there be a fixed initial period of not less than one year during which redemptions may not take place;
  - e. where there is a sinking fund and the company has the right to buy for sinking fund purposes, it shall not anticipate its sinking fund requirements by more than one year;
  - f. redemption conditions shall remain unaltered unless sanctioned by general meetings of ordinary shareholders and debenture holders;
  - g. where power is reserved to purchase redeemable debenture, purchases shall not be made by the company or the trustee at a price which is higher than the market price. Debentures so purchased shall be cancelled. The company's obligation to redeem and pay off the debentures shall be reduced by the par value of the debentures so cancelled;
  - h. the last day of registration for interest payments, conversion and redemption rights must be a Friday. However, if the Friday is a holiday, then the previous business day will be the date for registration.

**Conversion**

- 17.2 The right of conversion must be authorised by ordinary shareholders in general meeting.
- 17.3 The earliest redemption date must not be earlier than the final conversion date or alternatively the holder shall be issued with an option certificate where redemption takes place at an earlier date than the final conversion date.
- 17.4 Conversion rights may not be exercised between the date of declaration of dividends or rights on the underlying security and the record date for such purposes.
- 17.5 The date of final closing of the registers for conversion and/or redemption shall not be earlier than the final conversion date/redemption date.
- 17.6 In cases where only part of the debentures may be converted, ensure if possible:
- a. that the unit/s of debentures required to exercise the subsequent conversion rights shall be divisible exactly into K100; and
  - b. that the converted and unconverted portion of debenture unit/s of K100 are capable of being consolidated into a dealing unit of 100 debentures.
- 17.7 Convertibility conditions shall remain unaltered unless sanctioned by ordinary shareholders in general meeting.
- 17.8 The company may not issue capitalisation ordinary shares or options on securities prior to the final conversion dates unless sanctioned in general meeting by the holders of the convertible debentures.

**Conversion period**

- 17.9 Conversion period must be for at least one month.

- 17.10 Variation of rights must also be subject to the consent of ordinary shareholders to the usual, viz, either:
- a. consent in writing in respect of 75% of debenture holders; or
  - b. necessary resolutions passed by debenture holders.
- 17.11 Debentures purchased must be cancelled and not reissued.

### **Trustees**

- 17.12 The trustee or trustees shall be a corporation or persons of standing and repute and must have no interest in or relationship with the company which might conflict with their position as trustee.
- 17.13 The new trustee appointed under any statutory or other power must prior to appointment be approved by an extraordinary resolution of the debenture (or debenture stock) holder.

### **Meetings and voting rights**

- 17.14 A meeting of debenture (or debenture stock) holders must be called on a requisition in writing signed by holders of at least one tenth of the nominal amount of the debentures (or debenture stock) for the time being outstanding.
- 17.15 The quorum for passing a special resolution shall be the holders of a clear majority in the value of the whole of the outstanding debentures (or debenture stock). If such quorum should not be obtained, provision may be made for the adjournment of the meeting for not less than 14 days: in that event notice of the adjourned meeting shall be sent to every debenture (or debenture stock) holder and shall state that if a quorum as above defined shall not be present at the adjournment meeting, the debenture (or debenture stock) holders then present will form a quorum.
- 17.16 The necessary majority for passing a special resolution shall be not less than three fourths of the persons voting thereat on a show of hands and if a poll is demanded then not less than three fourths of the votes given on such a poll.
- 17.17 On a poll, each holder of debentures or debenture stock shall be entitled to at least one vote in respect of every K20 of debentures or debenture stock held by him, except that where the lowest denomination in which such securities can be transferred is more than K20 such denomination may be substituted for the K20 referred to above.
- 17.18 In the case of an external company provision should be made that notice be given to all debenture holders at least 21 days prior to the meeting. The notice is to be sent from a branch office in Malawi or by airmail from the registered office of the company.
- 17.19 Provision should be made for sending of notices of meetings to the MSE at the same time as notices are sent to debenture holders.

### **Notices**

- 17.20 Notices shall be sent to debenture holders at least six weeks before each:
- a. conversion date; and
  - b. redemption date.

### **Interest on partly paid debentures**

- 17.21 State how payment of interest will be calculated until the next interest date or the next succeeding date upon which debentures will become fully paid.

### **Transfer**

- 17.22 In the case of a listed debenture the common form of transfer will be used.
- 17.23 Every instrument shall be left at the transfer office of the company at which it is presented for registration, accompanied by the certificate of the debentures to be transferred and/or such other evidence as the company may require, to prove the title of the transferor or his rights to transfer the debentures.
- 17.24 All authorities to sign transfer deeds granted by members for the purpose of transferring debentures, which may be lodged, produced or exhibited with or to the company at any of its proper offices shall, as between the company and grantor of such authorities be taken as deemed to continue and remain in full force and effect, and the company may allow the same to be acted upon until such time as expressed notice in writing of the revocation of the same shall have been given and lodged at each of the company's transfer offices at which the authority was lodged, produced or exhibited.
- 17.25 Even after the giving and lodging of such notice, the company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the company as being in order before the giving and lodging of such notice.

17.26 There shall be no restrictions on the transfer of fully paid debentures.

#### **Definitive certificates**

17.27 In any payment of part of the amount due on the security, unless a new certificate is issued, a note of such payment shall be enfaced on the certificate.

#### **Special privileges**

17.28 The sanction of a separate general meeting of ordinary shareholders shall be obtained for the grant of special privileges.

#### **General conditions**

17.29 "Secured debentures" shall be secured to a substantial extent by a direct specific mortgage of freehold or long leasehold property or other immovable property or such other fixed assets as the Committee in its discretion may deem acceptable. Debentures which do not enjoy such security must be called "unsecured debentures".

17.30 Until the debentures have been redeemed in full, the company shall not have the right to borrow in excess of any specified sum without the consent of the debenture holders in general meeting.

17.31 Redemption of debentures may be by drawings or fixed annual repayments.

17.32 First interest payment on debentures must be calculated from date of payment.

17.33 Any stock redeemed shall be cancelled and must not be reissued.

17.34 Certificates must be issued within 21 days.

17.35 Certificates must be for K100 unless otherwise requested. Block certificates are permissible if the company has adopted certified transfer procedure.

17.36 There must be no restrictions on splitting denominations under K100.

17.37 A company must give at least 14 days notice of the last day to register for interest

17.38 Where the debentures of a company are listed, prior approval of amendments to the original conditions of issue must be obtained from the Committee. The last day for debenture holders to be registered must be a Friday or if the Friday is not a business day, then the last day to register should be the preceding business day.

- 18.1 The following must be included in a letter from the sponsoring broker to the Committee when appointed by an issuer for a specific matter or transaction (“appointment”:
- a. that they will discharge their responsibility as a sponsoring broker under the listings requirements as amended from time to time for the purposes of the appointment;
  - b. that they will advise the Committee, in writing, without delay, of their resignation or dismissal from an appointment, giving details of any relevant facts or circumstances;
  - c. a description of the interest held by the sponsoring broker, his firm and any partner or director of that firm in the issuer or any of its subsidiaries; and that they acknowledge that the Committee may censure them if the Committee considers that they are in breach of their responsibilities and that the Committee may publicise the fact that they have done so and the reasons for their action.

**SCHEDULE 19      DECLARATION BY SPONSORING BROKER**

To: Malawi Stock Exchange (MSE)

.....19.....

Full name of sponsoring broker .....

The undersigned request that you will allow..... (number) shares of ..... (denomination)  
Each of ..... (issuer) to be admitted to the List.

I, ..... A partner/director of the above sponsoring broker, hereby confirm that I have satisfied myself to the best of my knowledge and belief, having made due and careful enquiry of the issuer and its advisor, that all documents required by the Listings Requirements to be included in the application for listing have been supplied to the MSE, that all other relevant requirements of the Listings have been complied with; and that there are no matters other than those disclosed in the prelisting statement or otherwise in writing to the MSE which should be taken into account by the MSE in considering the suitability for listing of the securities for which application is being made. Should any further information come to my notice before the grant of listing, I will inform the Committee.

The Securities in respect of which the application is being made will be included in the List.

This declaration is furnished to you in accordance with the Listings requirements of the MSE,. It may not be relied upon for any other purpose or by any other person.

SIGNED BY.....  
Partner/director of  
.....

or SIGNED BY .....  
duly authorised officer, for and on behalf of  
.....

To be completed in all cases:

Application to be heard on ..... 19 ....

Dealings expected to commence on ..... 19 ....

Name(s) of contact(s) at the sponsoring broker regarding the application: .....

Telephone: .....

**SCHEDULE 20      ANNUAL COMPLIANCE CERTIFICATE**

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I, the undersigned ..... (full names), being duly authorised hereto, certify to the Malawi Stock Exchange (the MSE) that ..... (the company) has, during the twelve months ended 31 December .... Complied with every disclosure requirement for continued listing on the MSE imposed by the Committee of the MSE during that period.

Signed by .....  
(duly authorised hereto, for and on behalf of the directors of the company)

\*Note: adjust as necessary.

# SECTION 7

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## Continuing Obligations

### Scope of section

This section sets out certain of the continuing obligations which a listed company is required to observe once any of its securities have been admitted to listing. Additional continuing obligations are set out in the following sections:

Section 6	Documents to be submitted to the Committee
Section 8	Financial information
Section 9	Transactions
Section 10	Transactions with related parties
Section 11	Circulars and press announcements

Additional and alternative requirements relating to continuing obligations are set out in Sections 12, 13, 14 and 15 respectively dealing with mineral companies, property companies, pyramid companies and investment entities.

Observance of the continuing obligations is essential to the maintenance of an orderly market in securities and to ensure that all users of the market have simultaneous access to the same information. Failure by a listed company to comply with any applicable continuing obligation may result in the Committee taking any or all of the steps described in Section A.

The main headings are:

7.1	Compliance with the listings requirements
7.3	General obligation of disclosure
7.11	Disclosure of periodic financial information
7.27	Notification relating to capital
7.28	Rights as between holders of securities
7.39	Shareholder spread
7.45	Communication with shareholders
7.60	Miscellaneous obligations

### **Compliance with the listings requirements**

- 7.1 Every company whose securities are listed shall comply with the listings requirements.
- 7.2 Where there is an overlap between any requirements or dispensations that may be required by or granted in terms of any law, or by any statutory body or organ such as the Registrar of Companies, a listed company must, notwithstanding such other requirements or dispensations, nonetheless comply with these listings requirements.

### **General obligation of disclosure**

- 7.3 An issuer must, without delay, subject to approval by the Listings Committee, publish a press announcement giving details of:
- (a) circumstances or events that have or are likely to have a material effect on the financial results, the financial position or cash flow of the issuer and/or information necessary within 30 days prior to the reporting period to enable holders of the issuer's listed securities and the public to avoid the creation of a false market in its listed securities; and
  - (b) any new developments in its sphere of activity which are not public knowledge and which may by virtue of the effect of those developments on its assets and liabilities or financial position or on the general course of its business, lead to material movements in the ruling price of its listed securities. Save where otherwise expressly provided, the requirements of this paragraph are in addition to any specific requirements regarding notification contained in the listings requirements.
  - (c) Trading Statements: All issuers must publish a Trading Statement as soon as they are satisfied (within 30 days prior to the reporting period) that a reasonable degree of certainty exist that the financial results for the period to be reported upon next will differ by at least 20 percent from the most recent of the following:
    - i) The financial results for the previous corresponding period or
    - ii) A profit forecast (in terms of paragraphs 8.8 to 8.14) previously provided to the market in the prospectus/circular in relation to such period.

### **Confidentiality**

- 7.4 Information that is required to be announced in terms of paragraph 7.3 or any other listings requirement, and information which is not required to be announced in terms of the listings requirements but which is price sensitive and which the company wishes to release, may not, subject to paragraphs 7.5 to 7.8 be released (even subject to a time embargo) to any third party (which for the purposes of clarity, includes, inter alia, an analyst, the media (including the Internet) or a printer):
- (a) during MSE operating hours (07.30hrs to 17.00hrs Monday to Friday excluding Malawi public holidays), until such time as information has been released through and approved by the MSE
  - (b) outside MSE operating hours, until such time as information has been authenticated and, if necessary, approved and arrangements have been made for such information to be released through the MSE prior to the next opening of MSE operating hours
- 7.5 An issuer may give information in strict confidence to its advisers and to persons with whom it is negotiating with a view to effecting a transaction or raising finance; these persons may include prospective underwriters of an issue of securities, providers of funds or loans or the placees of the balance of a rights issue not taken up by shareholders. In such cases, the issuer must advise, preferably in writing, the recipients of such information that it is confidential and that they must not deal in the company's securities before the relevant information has been made available to the public.
- 7.6 Information required by and provided in confidence to, and for the purposes of, a government department, the Reserve Bank of Malawi, or any other statutory or regulatory body or authority need not be published.
- 7.7 Where the information relates to a proposal by the issuer, which is subject to negotiations with employees or trade union representatives the issuer may defer publication of the information until such time as an agreement has been reached as to the implementation of the proposal.
- 7.8 When a company intends to release price sensitive information at any meeting of holders of listed securities, arrangements must be made for the notification of such information to the MSE so that the release of such information at the meeting is made at the same time that such information is released by the MSE. In addition, if the nature of the information would require an announcement to be made by the company in terms of the listings requirements, the company should as soon as possible thereafter publish the same announcement in the press in

accordance with paragraphs 7.46 and 7.47. If any price sensitive information is disclosed during the course of a meeting of holders of listed securities, immediate steps should be taken for an appropriate announcement to be released through the MSE and, if necessary, in the press.

### **Cautionary announcements**

7.9 An issuer must publish, by way of a cautionary announcement, complying with paragraph 11.36 as soon as possible after it is in possession of any material price sensitive information if at any time the necessary degree of confidentiality of such information cannot be maintained, or if the company suspects that confidentiality has or may have been breached. An issuer that has published a cautionary announcement must publish updates as per 11.37.

### **Exception**

7.10 If the directors of the listed company consider that disclosure to the public of information required to be published in paragraph 7.3 might prejudice the listed company's legitimate interests, the Listings Committee may grant a dispensation from the requirement to make the information public.

### **Disclosure of periodic financial information**

#### **Dividends and interest**

7.11 The declaration of dividends and/or interest payments in respect of listed securities should immediately be released through and approved by the MSE and a copy of such announcement should be sent to shareholders after the approval. Three copies of the press announcements must be delivered to the MSE at least 14 days prior to the last day to register and must contain the following minimum information:

- (a) the last day to register;
- (b) the date on which the dividend/interest will be paid; and
- (c) the cash amount that will be paid for the dividend/interest

7.12 If a listed company decides not to declare dividends or interest, this must be released through the MSE immediately after such decision is taken if such decision is likely to be price sensitive.

7.13 A listed company declaring a final dividend prior to the publication of the annual financial statements or preliminary report must ensure that the dividend notice given to shareholders contains a statement of the ascertained or estimated consolidated profits before taxation of the listed company and its subsidiaries for the year, and also particulars of any amounts appropriated from reserves, capital profits, accumulated profits of past years, or other special sources, to provide wholly or partly for the dividend.

7.14 At least fourteen days notice must be given to shareholders and the Committee prior to the last day to register for the dividend or interest.

7.15 The last day to register should be a Friday, or if that day is a public holiday, the immediately preceding such business day. The Listings Committee may, in its sole discretion, agree to a different day in exceptional circumstances.

7.16 Payment of dividends and interest must be effected within 6 weeks after the last day to register.

7.17 Where a dividend/interest declaration is expressed as a percentage, the tambala equivalent must be shown in parenthesis.

7.18 The Committee must be notified of any late declarations of dividend and the matter resolved with it

### **Interim and preliminary reports**

#### **Interim reports**

7.19 Interim reports shall be published in the press and be distributed to all shareholders as early as possible after the expiration of the first six month period of a financial year, but not later than three months after that date. Where the financial period covers 15 months or longer, interim reports shall be published in the press in respect of the first and second six months of this period. Section 8.25 to 8.27 deal with the requirements in greater detail.

#### **Preliminary reports**

7.20 If a listed company has not distributed annual financial statements to all shareholders within three months of its financial year-end, it must publish in the press and distribute to all shareholders a preliminary report even if the information is unaudited at that time.

### **Procedure for non-compliance**

7.21 Where a listed company fails to comply with paragraphs 7.19 and/or 7.20:

- (a) on the day following the due date of issue of the listed company's interim/preliminary report, a letter reminder will be sent by registered post or facsimile or physically delivered or electronically communicated to the listed company requesting that it rectify the situation and advising that it has been granted a period of one month, from the date of such reminder, in which to issue its interim/preliminary report, failing which the company's listing will be suspended and a special meeting of the Committee will be convened to consider the continued suspension or termination of the company's listing;
- (b) failing compliance within fourteen days of dispatch of the reminder to the listed company, the Committee will publish a press announcement informing shareholders that the listed company has not issued its interim/preliminary report and cautioning shareholders that the listing of the listed company's securities are under the threat of suspension and possible termination;
- (c) on the date of publication of the announcement, the company's listing will be annotated on the main board with an "RE" to indicate that it has failed to submit its interim/preliminary report timeously;
- (d) the listed company will be invoiced the cost of publication of the press announcement which invoice will be payable on presentation; and
- (e) where the listing is suspended, the lifting of the suspension will only be effected upon receipt by the Committee of the listed company's interim/preliminary report.

### **Requirement for review by auditors**

7.22 The following provisions apply in respect of unaudited interim reports, unaudited quarterly reports (applicable to mineral companies) and unaudited preliminary reports:

- (a) subject to (b), unaudited interim reports are not required to be reviewed by a listed company's auditors;
- (b) unaudited interim reports shall be reviewed by a listed company's auditors if the company's auditors have disclaimed their opinion, or produced an adverse opinion, on the company's latest financial statements, unless the Committee otherwise decides;
- (c) unaudited preliminary reports shall be reviewed by a listed company's auditors;
- (d) in the case of a listed mineral company, its unaudited financial reports are not required to be reviewed by its auditors, unless otherwise requested by the Committee;
- (e) when conducting a review of an unaudited interim or preliminary report, the auditor shall follow any guidelines issued by the Institute of Chartered Accountants;
- (f) if an interim or preliminary report has been reviewed by an auditor, this and the name of the auditor shall be stated in the published interim or preliminary report. Although the report of the auditor need not be included in the published interim or preliminary report, if such report is qualified or there is disagreement as to the matters disclosed in the interim or preliminary report, details of the nature of such qualification or disagreement shall also be stated therein. If the report of the auditor is not included in the published interim or preliminary report, it shall state that the report of the auditor is available for inspection at the company's registered office; and
- (g) if during the course of a review of a preliminary report, the auditor becomes aware of any unresolved matter, which could result in the qualification of the auditor's report on the annual financial statements for the period under review, that fact shall be stated.

### **Annual financial statements**

7.23 Every listed company shall, within six months after the end of each financial year at least twenty-one clear days before the date of the annual general meeting, distribute to all shareholders and submit to the Listings Committee in accordance with paragraph 6.20:

- (a) a notice of annual general meeting; and
- (b) the annual financial statements for the relevant financial year which financial statements will have been reported upon by the company's auditors.

### **Procedure for non-compliance**

7.24 The following procedure shall prevail for a listed company, which fails to comply with paragraph 7.23 above:

- (a) five months after the listed company's financial year end, the Committee may issue to the listed company a letter of reminder by registered post or facsimile or hand delivered or electronically communicated, advising that it still has one month within which to submit its annual financial statements, failing which its listing may be suspended until such time as the annual financial statements have been submitted;
- (b) six months after the listed company's financial year end the company's listing will be annotated on the main board with an "RE" to indicate that it has failed to submit its annual financial statements timeously;
- (c) the Committee will publish a press announcement informing shareholders that the listed company has not submitted its annual financial statements and cautioning shareholders that the listing of the listed company's shares is under threat of suspension and possible termination;
- (d) if the listed company has not complied with paragraph 7.23 by the end of the seventh month after its financial year end the company's listing will be suspended by the Committee and the Committee will be convened to consider the continued suspension or termination of the company's listing;
- (e) the listed company will be invoiced the cost of publication of the paid announcement; and
- (f) the listed company's suspension will be lifted upon receipt by the Committee of the listed company's annual financial statements.

7.25 Discretionary authority shall vest with the Committee to waive the requirement for automatic suspension of a company's listing where it has not submitted its annual financial statements timeously.

### **Qualified or disclaimed auditor's opinion**

7.26 The following procedure shall prevail for a listed company whose financial statements have been the subject of an audit qualification or disclaimer:

- (a) When the opinion of the company's auditors on the annual financial statements of a listed company is qualified:
  - (i) the company's listing on the MSE will be annotated with a "Q" to indicate that the auditor's opinion is qualified. (This annotation will be removed once the company produces an unqualified auditor's opinion); and
  - (ii) a press announcement will be published in the press by the MSE informing shareholders that the auditor's opinion has been qualified (which announcement will be paid for by the company).
- (b) When the company's auditors disclaim an opinion on the annual financial statements of a listed company:
  - (i) the company's listing on the MSE will be annotated with a "D" to indicate that the company's listing is under threat of suspension and a press announcement will be published by the MSE (which announcement will be paid for by the company); and
  - (ii) a special meeting of the Committee will be convened within twenty one days of receipt of such financial statements to consider the continued listing, or suspension and possible subsequent termination of the company's listing.

### **Notification relating to capital**

7.27 A listed company must, without delay (unless otherwise indicated), publish a press announcement containing details of the following information relating to its capital:

#### **Alteration to capital structure**

- (a) any proposed change in its capital structure (for example any increase in the level of authorised or issued securities) other than allotments of new shares in terms of paragraph 4.216 and save that an announcement of a new issue may be delayed while marketing or underwriting is in progress (see also paragraph 7.5);

#### **Changes of rights attaching to securities**

- (b) any proposed change in the rights attaching to any class of listed securities or to any securities into which any listed securities are convertible;

**Basis of allotment**

- (c) the basis of allotment of listed securities offered generally to the public for cash and of claw-back offers to shareholders; in the case of public offers an additional press announcement must appear before dealings commence;

**Temporary documents of title**

- (d) any extension of time granted for the currency of temporary documents of title;

**Issues affecting conversion rights**

- (e) the effect, if any, of any issue of further securities on the terms of the exercise of rights under options and convertible securities; and

**Results of new issues**

- (f) the results of any new issue of listed securities or of a public offering of existing securities must be made as soon as they are known. The issuer may, at its discretion, delay such publication until the obligation by the underwriter to take or procure others to take securities is finally determined or lapses.

**Rights as between holders of securities****Equality of treatment**

- 7.28 A listed company must ensure that all holders of any class of its securities receive fair and equal treatment.

**Voting Rights**

- 7.29 A listed company shall not issue any securities with a voting right differing from other securities of the same class.

**Pre-emptive rights**

- 7.30 Subject to paragraph 7.32 and 7.33, a listed company proposing to issue equity securities for cash must first offer those securities by rights offer to existing equity shareholders in proportion to their existing holdings. Only to the extent that the securities are not taken up by such persons under the offer may they then be issued for cash to others or otherwise than in the proportion mentioned above.

- 7.31 To the extent permitted by the Registrar of Companies and subject to the prior approval of the Committee, a listed company need not comply with paragraph 3.30 with respect to securities which the directors of the listed company consider necessary or expedient to exclude from the offer on account of either legal problems under the laws, or the requirements of a regulatory body.

**Waiver of pre-emptive rights**

- 7.32 To the extent that shareholders of a listed company give their authorisation by ordinary resolution, issues by a listed company of equity securities for cash made otherwise than to existing shareholders in proportion to their existing holdings will, subject to the requirements of paragraphs 5.83 to 5.92, be permitted in respect of a specific issue of shares for cash, for that share issue, and in respect of a general issue of shares for cash, for a fixed period of time thereafter in accordance with that authority.

- 7.33 However, in exceptional circumstances (such as rescue operations), the Committee, in its sole discretion, may grant a company a waiver of shareholder's pre-emptive rights that does not comply with the requirements of paragraphs 5.83 to 5.92, the Committee, in its sole discretion, may require the publication of such information relating to the waiver as it deems appropriate.

**Issues by major subsidiary**

- 7.34 A listed company must obtain the specific approval (determined in accordance with paragraph 5.91 or 5.92) of its shareholders before any major unlisted subsidiary of the listed company undertakes an issue of shares for cash, which would materially dilute the listed company's percentage interest in the equity securities of that subsidiary. For the purposes of this paragraph and paragraphs 7.35 and 7.36, a subsidiary which represents 30% or more of the aggregate of the share capital and reserves (excluding any minority interests, unrealised reserves not supported by a valuation, prepared in the last 6 months by an independent professional expert acceptable to the Committee and intangible assets) or profits (after deducting all charges except

taxation and excluding extraordinary items) of the listed company's group will be regarded as a major subsidiary.

- 7.35 The obligation to obtain the consent of shareholders set out in paragraph 7.34 does not apply if the major subsidiary is itself listed in which event the major subsidiary must obtain the consent (determined in the manner referred to in paragraph 7.34) of its own shareholders.
- 7.36 When a listed or unlisted major subsidiary of a listed holding company has a rights offer and the listed holding company does not intend to follow its rights which would materially dilute its percentage interest in the equity securities of that subsidiary, the listed holding company must first obtain the specific approval (determined in accordance with paragraph 5.91) of its shareholders.

#### **Options for cash**

- 7.37 Where options over securities (excluding executive and staff share schemes) are granted for cash, it is required that such options shall be issued to all shareholders on the share register as at the business day immediately prior to the date of the grant of the listing in proportion to their shareholding in the listed company. Where this procedure is not to be adopted, the Committee's consent should be obtained.
- 7.38 The total number of options granted or issued may not, except in the case of a mineral company (as defined in Section 12), exceed 20% of the listed company's issued capital unless offered to all shareholders in proportion to their existing shareholdings.

#### **Shareholder spread**

- 7.39 All listed companies are required to ensure that a minimum percentage of each class of securities is held by the public as described in paragraphs 2.34(d) and (e).
- 7.40 If the percentage of a class of securities held by the public does not comply with the minimum spread requirements the Committee may suspend or terminate the listing of a company in accordance with Section A- Authority of Committee. The Committee may allow a reasonable time to restore the percentage, unless this is precluded by the need to maintain the smooth operation of the market or in order to protect investors.
- 7.41 A listing will not be granted to any issue of securities that would reduce the percentage level of securities held by the public.
- 7.42 If any listed company does not comply with the minimum spread requirements, any application to list new securities will be granted only if, as a result of the issue, the minimum spread requirements will be achieved as far as possible given the size of the issue.
- 7.43 Notwithstanding the above, the Committee may allow a reduction in the minimum spread requirements if it considers such a reduction is in the best interests of the listed company and does not unduly prejudice investors, for example in a rescue situation.

#### **Notification**

- 7.44 A listed company must inform the Committee, in writing, without delay, when it becomes aware that the proportion of any class of listed securities in the hands of the public has fallen below the said minimum spread requirements.

#### **Communication with shareholders**

##### **Prescribed information to shareholders**

- 7.45 A listed company must ensure that all the necessary facilities and information are available to enable holders of securities to exercise their rights. In particular it must:
- (a) inform holders of securities of the holding of meetings which they are entitled to attend;
  - (b) enable them to exercise their rights to vote, where applicable; and
  - (c) publish notices in the press or distribute circulars in terms of the listings requirements.

#### **Publication**

##### **Press announcements**

- 7.46 All press announcements must be published in English in a national English language newspaper.
- 7.47 Where the registered office of the listed company is situated outside the Malawi, the requirements of the Committee should be ascertained from the Listings Committee.

### **Circulars and listing particulars**

7.48 Circulars and pre-listing statements must be printed in English and be distributed to all shareholders.

### **Blantyre/Lilongwe transfer office or a receiving and certification office**

7.49 All listed companies are required to maintain a transfer office or a receiving office in either Blantyre or Lilongwe. Certification must be completed within 24 hours.

### **Transfer offices for other stock exchanges**

7.50 If a listed company has applied for and been granted permission for its securities to be listed on another stock exchange, it is required to ensure that the securities will be accepted for transfer, without delay, if presented in any of the centres in which the securities are listed.

### **Proxy forms**

7.51 A proxy form must be sent, together with the notice convening a meeting of holders of listed securities, to each person entitled to vote at such meeting.

### **Other classes of security**

7.52 If a circular, listing particulars or press announcement is dispatched to the holders of any particular class of security, the listed company must dispatch a copy or summary of such document to the holders of all other listed securities in such company unless the contents of such document are irrelevant to them.

### **Communications with holders of bearer securities**

7.53 If there is a need to communicate with holders of listed bearer securities the listed company must publish a press announcement referring to the communication and giving an address or addresses from which copies can be obtained.

### **Documents of title**

7.54 Share certificates and all other documents of title emanating from listed companies must be sent by registered post.

### **Temporary documents of title**

7.55 Listed companies shall not introduce "temporary documents of title" in Malawi as normal routine until and unless they shall have received the Committee's approval and shall have furnished such information and documents as may be required by the Committee.

7.56 Listed companies which have received such approval shall not place a time limit on the acceptance by them of any "temporary documents of title" for the purpose of issuing definitive certificates.

7.57 Listed companies, which have received such approval, shall:

- a. cancel the share certificates lodged with or being issued by them and against which a "temporary document of title" has been issued immediately they are in a position to do so; and
- b. issue definitive share certificates within 21 days after presentation to them of the "temporary document of title" duly signed and completed by the transferee.

7.58 No listed company may make a charge for the registration and/or transfer of its securities in Malawi.

### **Receipts**

7.59 On request, receipts will be issued for all securities lodged with the listed company, whether for registration or otherwise.

### **Miscellaneous obligations**

#### **Redemption of listed redeemable preference shares in terms of the Act**

7.60 A redemption of listed redeemable preference shares in terms of the Act must be authorised and conducted in accordance with the listed company's memorandum and articles of association and the provisions of the Act.

7.61 A circular must be sent to holders of the securities containing the information set out in paragraph 11.30 unless waived in terms of paragraph 11.31.

7.62 Written application must be submitted to the Committee for removal from the List of the securities to be redeemed as from a specified time and date.

#### **Transfer from one section of the List to another section**

7.63 Written application must be submitted to the Committee, stating the reasons for the request of the company to be transferred from one section of the List to another section. Details must be given regarding the assets employed in and income derived from the various activities of the applicant and its subsidiaries. These details must be expressed in value and on a percentage basis.

7.64 In addition, the following requirements will apply:

- a. the transfer of the applicant from one section of the List to another section must always take place on the first business day of the week; and
- b. the written application in respect of the transfer must be accompanied by a directors' resolution authorising such transfer.

#### **Listing and other fees**

7.65 A listed company must pay the listing and other fees including its annual charge for listing, as set out in Section 15, as soon as such payment becomes due.

#### **Appointment and retirement of Directors**

7.66 All directors, other than managing directors, must retire by rotation at least once in every three years. No more than half of the directors may be appointed as managing directors.

7.67 The Committee expects the Board of Directors of a listed company to be so constituted that the interest of the general body of shareholders in the company is represented.

7.68 The MSE must be notified within 21 days from the decision taking date of the changes in directorate, and where the changes include the chairman or chief executive, shareholders should be advised also through an advertisement in the press.

#### **Dealing in Securities by Directors and Senior Staff of Listed Companies**

7.69.1 Directors must not deal in shares during the period 30 days prior to the end of the reporting period and the preliminary announcement of the company's interim and year-end results. Likewise, directors may not deal during the 30 days prior to the half year reporting period. Directors may not deal in their listed securities when in possession of unpublished price sensitive information. Directors must advise the chairman and receive his clearance before trading in the securities. The chairman must receive the board's approval for any trading in its listed company securities. Where a Director is a trustee he should obtain board approval for trading in the securities. In cases including trading by senior employees, board approval is encouraged during the periods prior to publication of results and price sensitive periods. All purchases and sale of shares by Directors, directly or indirectly, as beneficial owners to be notified to the MSE within 72 hours of the completion of the transactions.

7.69.2 An issuer must provide MSE with the following information:

- a) a list of all transactions in securities of the issuer by or on behalf of a director of the issuer and
- b) such notice shall contain the following information:
  - i) the name of the director
  - ii) the name of the company of which the person is a director
  - iii) the date on which the transaction was effected
  - iv) the price, amount and class of securities concerned
  - v) the nature of the transaction
  - vi) the nature and extent of the director's interest in the transaction

7.69.3 The company shall require each of its Directors to disclose to it all information, which the company needs in order to comply with the above (insofar as that information is known to the director or could with reasonable diligence be ascertained by the Director). Such information should be disclosed as soon as possible and in any event no later than 48 hrs following the day on which the existence of the interest to which the information relates comes to the company's attention.

#### **Companies also quoted on another stock exchange**

7.70 A listed company whose securities are listed on any other stock exchange must ensure that equivalent information is made available at the same time to the market of each exchange on which the company's securities are listed unless prohibited by or in terms of the rules or requirements of any other stock exchange.

**Information to be processed by the MSE**

7.71 Listed companies shall ensure that information, which is provided to the MSE for processing, is the same as that provided to other parties such as transfer secretaries.

# SECTION

## 8

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### Financial Information

#### Scope of section

This section sets out financial information which may be required to be included in listing particulars, pre-listing statements, circulars, interim and preliminary reports and the annual financial statements.

#### AUDITOR'S REPORT

- 8.1 A report (which shall contain negative statements where applicable) by the auditors of the applicant, who shall be qualified in terms of the Malawi Companies Act CAP 46:03 (Act No. 19 of 1984), with respect to:
- a. the profits or losses of the company in respect of each of the five completed financial years immediately preceding the publication of the advertisement or in respect of each of the years since the incorporation of the applicant, if this occurred less than five years prior to the publication of such advertisement, and, if in respect of a period ending on a date earlier than six months before the publication of the advertisement, no financial statements have been made up, a statement of that fact. In making such report, the auditors shall make such adjustments (if any) as are in their opinion necessary for purposes of the advertisement. Where the effect of such adjustment is to convert a loss in any one year to a profit, details of this fact shall be disclosed. Earnings per share should also be stated and the basis of calculation.
  - b. in the case of an issue by a holding company, in lieu of the report in a. above, a similar report with respect to the profits or losses of the applicant and each of its subsidiary and associate companies indicating the extent to which such profits or losses are attributable to the interests of the holding company. For the purposes of this report, the financial years of each company shall mean as regards that company the financial years immediately preceding the publication of the advertisement. In making such report, the auditors shall make such adjustments, if any, as are in their opinion necessary for purposes of the advertisement. Where the effect of such adjustment is to convert a loss in any one year to a profit, details of this fact to be disclosed. With prior approval of the Committee based on details provided to it, individually insignificant subsidiaries and/or associates may be aggregated for the purpose of this report;
  - c. the rates of dividend, if any, paid by the applicant in respect of each class of share for each of the said five years or shorter periods as the case may be;
  - d. any writing up of the book value of assets of the parent, subsidiary and/or associate companies during the past three years;
  - e. the assets and liabilities of the applicant. In the case of an issue by a holding company a similar report with respect to the assets and liabilities of the company and, separately, of its subsidiary and associate companies so far as is attributable to the interests of the applicant. In making such reports, the auditors shall make such adjustments as are in their opinion necessary for the purpose of the advertisement and shall state reasons for such adjustments. The report therein referred to must incorporate an audited balance sheet. Where the applicant is a holding company, a consolidated balance sheet signed in the same manner as the applicant's balance sheet, drawn up to a date not more than six months prior to the date of application for listing is required. In addition,

- f a statement signed in a similar manner is required, giving the following information where applicable:
  - i. statement of all material changes in the assets, liabilities and capital structure of the applicant and its subsidiary companies between the date of the balance sheet and the date of application;
  - ii. a statement that the debtors and creditors do not include any accounts other than trade accounts, any additional items other than those shown to be shown separately;
  - iii. a statement that in their opinion the provision for doubtful debts is adequate;
  - iv. a statement that the directors have certified that adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices;
  - v. a statement of the basis of valuation of supplies, raw materials, work in progress and finished goods, fixed property, shares and securities in other companies;
  - vi. a statement as to the extent of inter-company profits that have and have not been eliminated;
  - vii. a cash flow projection (prepared and certified by the directors) covering the ensuing two years.

### **Circumstances when an accountants' report is required**

8.1.1 An accountants' report is required:

- (a) on a new applicant;
- (b) on an applicant who is issuing a prospectus;
- (c) on any company being acquired by a new applicant or applicant issuing a prospectus if:
  - (i) such acquisition is being financed out of all or part of the proceeds of the issue; and
  - (ii) if it is a company being acquired and will become a subsidiary of the applicant;
- (d) on a company that is not listed and is the subject of a Category 1 or 2 transaction where the transaction is either:
  - (i) the acquisition of an interest in the company which will result in consolidation of the assets of that company; or
  - (ii) the disposal of an interest in the company which will result in the net assets of that company no longer being consolidated; and
- (e) where a company intends to apply any part of the proceeds of an issue of securities by a new applicant, directly or indirectly, to the acquisition by the company or any of its subsidiaries of the securities in or the business undertaking of any other company and this acquisition is material to the acquirer.

### **Contents of an accountants' report**

8.1.2 An accountant's report should be addressed to the directors of the applicant (in the case of an application for listing of new securities) or the listed company (in the case of acquisition or disposal) and must:

- (a) state the name of the company, its date and place of incorporation and its registration number, where applicable;
- (b) give details of any changes to the name of the company during the period covered by the report and the date of conversion from a private company to a public company, if applicable;
- (c) state the names of the companies in which the company has an effective equity interest of 20% or more, as well as the percentage equity interest therein and which are regarded as material to the company;
- (d) state the purpose for which the report has been prepared;
- (e) give a statement to the effect that the directors of the company are responsible for the preparation of the pre-listing statement or circular to which the report relates and the information contained therein;
- (f) state the scope of the accountants' examination of the financial information contained in the report;

- (g) include a statement that the directors of the applicant or entity which is the subject of the transaction, as applicable, are responsible for the financial statements from which the accountants' report has been prepared and to the extent that any such financial statements have received a qualified audit report or have not been audited, give a statement of such qualifications or identify the periods that have not been audited.
- (h) if the accountant was not the auditor for any part of the period under review, then the accountants' report should state the extent to which the financial statements relating to such period(s) have been reviewed to assess their relevance and reliability;
- (i) where the accountant has not been the auditor for the whole of the period under review, the accountants' report should state the name(s) of the auditor(s) and the period(s) audited by them;
- (j) include the following financial information:
  - (i) detailed income statements in respect of each of the latest financial year and the previous financial year and summarised in respect of the preceding three financial years;
  - (ii) summarised balance sheets for the latest financial year and the previous financial year;
  - (iii) cash flow statements for the latest financial year and the previous financial year; and
  - (iv) notes to the income statements, balance sheets and cash flow statements;
- (k) state the accounting policies used in compiling the financial information contained in the report;
- (l) details of any material assets not owned by the company;
- (m) particulars of material contingent liabilities and commitments; and
- (n) give details of events which have occurred subsequent to the most recent financial year dealt with in (j) above which have, or could reasonably be expected to have, a material impact on the financial information contained in the report.

#### **Basis of preparation of financial information**

8.1.3 The basis of preparation of financial information is to include the following historical financial information, prepared in accordance with IFRS as follows:

- (a) the income statements;
- (b) the balance sheet;
- (c) the cash flow statement;
- (d) statement of changes in equity
- (e) accounting policies
- (f) the notes to the financial information should be prepared according to the basis of the respective income statement, balance sheet or cash flow statement to which they relate.
- (g) segmental information

8.1.4 The historical financial information required under 8.1.2, is to be presented in consolidated form in respect of period of at least three years up to and including the financial year immediately preceding the issue of the prospectus/pre-listing statement/circular. Where the historical financial information is not available for the prior three year period, the MSE must be consulted for ruling regarding disclosure and approval of the transaction.

8.2 If any of the shares, debentures or monies of the applicant are to be applied directly or indirectly in the purchase of:

- a. a business or portion of a business or securities in a company which is, or will, by reason of such purchase, become a subsidiary or associate of the applicant, a report made by auditors who shall be named in the advertisement:
  - i. as to the profits or losses of the business or to the profits or losses attributable to the interest acquired or being acquired by the applicant, in the subsidiary or associate in respect of each of the five completed financial years preceding the publication of the advertisement or in respect of each of the years since commencement of the business or the incorporation of such subsidiary or associate if this occurred less than five years prior to such advertisement, and, if in respect of a period ending on a date earlier than six months before the publication of the advertisement, no accounts have been

made up, a statement of that fact. In making such report, the auditors shall make such adjustments (if any) as are in their opinion necessary for the purposes of the advertisement. Where the effect of such adjustment is to convert a loss in any one year to a profit, details of this fact to be disclosed. Provided that where any such subsidiary or associate is itself a holding company, the report shall be extended to the profits or losses of that company which shall be ascertained in the manner laid down in sub-paragraph b. of Paragraph 8.1;

- ii. as to the assets and liabilities of the business or company or of the subsidiary or associate covering the matters referred to in all the sub-paragraphs of Paragraphs 8.1, and where such subsidiary or associate itself is a holding company, the report shall be extended to the assets and liabilities of that company and of its subsidiary or associate companies in the manner laid down in sub-paragraph e. of Paragraph 8.

- b. Other assets, excluding those enumerated in Paragraph 8.2.a, a brief description of valuation and purchase price.

#### **Date of reports**

- 8.3 The auditors' reports should be dated on the same day that the directors authorise the issue of the pre-listing statement or circular or the date that the pre-listing statement or circular is lodged with the Registrar of Companies and the Reserve Bank of Malawi, whichever is the earlier.

#### **Review of pre-listing statement or circular**

- 8.4 The auditor should review the pre-listing statement or circular so as to ensure that the contents thereof are not contradictory with the information contained in the auditors' report. The auditor must inform the Committee, in writing, of any such contradictions.

#### **Consent letters**

- 8.5 Auditors' should submit a letter to the directors giving their consent to the inclusion of:
  - a. their auditors' report(s) in the prospectus/pre-listing statement or circular; and
  - b. references to or extracts from the auditors' report(s) included in the prospectus/pre-listing statement or circular.
- 8.6
  - a. The consent letter should be dated on the same day that the directors authorise the Issue of the pre-listing statement or circular, or the date that the pre-listing statement or circular is lodged with the Registrar of Companies and the Reserve Bank of Malawi, whichever is the earlier, if applicable.
  - b. a statement is to be included in the prospectus/pre-listing statement/circular that the reporting accountant has given and has not withdrawn its written consent to the issue of the prospectus/pre-listing statement/circular, containing the reporting accountant's report in the form and context in which it appears.

#### **Further contents if a prospectus is to be issued**

- 8.7 If the auditors' report is being prepared for inclusion in a prospectus then the following additional disclosures are required:
  - a. if no dividends were paid out on any class of shares during the periods referred to in Paragraph 8.1 particulars of such cases;
  - b. if no financial statements were prepared in respect of any part of the period of five years ending on a date three months before the issue of the prospectus a statement of that fact.

## **B. FINANCIAL INFORMATION**

### **Profit forecast and estimates**

- 8.8 A form of words which expressly or by implication states a minimum or maximum for the likely level of profits or losses for a period subsequent to that for which the audited accounts have been published, or contains data from which a calculation of an approximate figure for future profits or losses may be made, is a profit forecast or estimate, even if no particular figure is mentioned and the word "profit" is not used.
- 8.9 A dividend forecast must be treated as a profit forecast where the company has a known policy or relating dividends to earnings, or has an insufficient level of retained earnings or the forecast otherwise implies a forecast of profit. In the event of uncertainty the MSE must be consulted.
- 8.10 If a listed company has made a profit forecast or estimate for any period for which the results have not yet been published, and subsequently is required to produce:
- a. a pre-listing statement;
  - b. any circular containing proposals to be put to shareholders in a general meeting concerning a refinancing or reconstruction of the listed company or its group: a forecast or estimate complying with Paragraphs 8.11 to 8.14 must be included in the per-listing statement or the relevant circular and must be reported on by the auditors or reporting accountants.
- 8.11 The report by the accountants must comply with guidelines issued by the Society of Accounts in Malawi, and include confirmation that the forecast or estimate has been properly compiled on the basis stated and that it is presented on a basis consistent with the accounting policies of the company or group in question, and that report must be included in the document.
- 8.12 A profit forecast included in any of the documents referred to in Paragraph 8.10 must include a statement of the principal assumptions upon which it is based. These assumptions must relate only to matters which are outside the control of the directors and which have a material effect on the achievement of the forecast and must:
- a. be readily understandable by investors;
  - b. be specific about the particular aspect of the forecast to which they refer and about the uncertainty attaching to that aspect;
  - c. relate only to material uncertainties; and
  - d. not include the business estimates (e.g. sales forecast etc) underlying the forecasts.
- 8.13 If a profit estimate, for a financial period which has expired but for which the results have not yet been published, is included in any of the documents referred to in Paragraph 8.10, the estimate may only be subject to assumptions in exceptional circumstances and such exceptional circumstances should be explained.
- 8.14 Any statement or information in any of the documents referred to in Paragraph 8.10 relating to the future prospects of a listed company must be clear and unambiguous. The listed company must determine in advance whether such a statement will constitute a profit forecast or estimate. Any profit forecast or estimate must be presented in an explicit manner.

### **Proforma statement**

#### **Net asset statement**

- 8.15 Where a proforma net asset statement is prepared in accordance with the Appendix to Section 9 or where it is included in pre-listing statements or any other document published by a listed company, it must be derived, save as provided for in Paragraph 8.17, from information taken from the most recent:
- a. audited financial statements;
  - b. accountant's report; or
  - c. previously published proforma statement.

8.16A net asset statement should detail the items that comprise the net assets and the adjustments to those items.

8.17 Where a balance sheet has been published in interim results, the net assets included in that balance sheet may be used in a proforma net asset statement, if it is confirmed in the statement that the balance sheet has been prepared in accordance with the listed company's accounting policies and practices. A listed company may, subject to the consent of the Committee, use the net assets in its preliminary statement of annual results if the relevant figures will be included in the published accounts.

8.18 Any adjustments which are made to the figures derived from published sources, in order to make the statement consistent with the events or circumstances which it is designed to illustrate must be shown and explained.

8.19The statement must state clearly that it is prepared for illustrative purposes only and that, because of its nature, it cannot give a complete picture of the financial position.

8.20The statement must identify:

- a. the basis upon which it is prepared;
- b. the source of each item of information; and
- c. any significant differences between the accounting policies of the listed company and those of any company acquired or being acquired; any such differences should be quantified if possible and adjustments made to the figures of the company acquired or being acquired.

8.21The statement need not be reported on by the auditors or reporting accountants.

#### **Profit statement**

8.22 A historical proforma profit statement will, save in exceptional circumstances, such as newly formed property companies, newly emerged groups of companies, acquisition of business which formed part of a group and investment type companies, not be allowed. The only adjustments which may be made in such a statement should relate to the historic costs of funding charged against profit during the year and to any accounting entries arising as a direct consequence of adjusting the historic costs of funding, for example in respect of tax on profit on ordinary activities. These adjustments, which must be explained clearly, must be made on the basis that the reorganisation of the applicant's funding consequent on admission is assumed to have occurred prior to the commencement of the financial year to which the proforma profit statement relates.

8.23 A proforma profit statement must be reported on by the accountants, either in a separate section of the accountant's report or in a separate report in the pre-listing statement, in the terms described in Paragraph 8.1 and the report must, in addition, include confirmation that the adjustments are appropriate in the circumstances.

#### **Minimum contents of interim reports and provisional annual financial statements**

8.24Every listed company other than companies engaged primarily and directly in the mining of metals or minerals, and which report to shareholders on a quarterly basis should, in addition to statutory requirements concerning half-yearly interim reports and provisional annual financial statements ("preliminary reports") include in such reports the information as detailed hereunder.

#### **Income statement**

8.25 The income statement should include at least, where applicable, the following information:

- a. income before crediting items in b. and charging items in c., d. and e.;
- b. dividends received (including dividends from associated companies and non-consolidate subsidiaries);
- c. depreciation;
- d. interest paid;
- e. net income before taxation and extraordinary items;
- f. net income;
- g. net income of the group;
- h. extraordinary items; and

- i. outside shareholders' interest.
- j. Dividends payable

### **Balance sheet**

8.26 The balance sheet should include at least, where applicable, the following information:

- a. fixed assets;
- b. investments:
  - i. listed;
  - ii. unlisted;
  - iii. market value of listed investments; and
  - iv. directors' valuation of unlisted investments;
- c. other non-current assets;
- d. current assets;
- e. ordinary shareholders' funds;
- f. preference shareholders;
- g. outside shareholders;
- h. deferred taxation;
- i. current liabilities; and
- j. intangibles.

### **Supplementary information**

8.27 The following supplementary information should, where applicable and material, be included:

- a. capital expenditure for the period;
- b. capital expenditure committed or authorised;
- b. finance and operating lease commitments;
- c. contingent liabilities;
- d. interest capitalised;
- e. full disclosure of all borrowings and off balance sheet borrowings;
- f. any exceptional increase in borrowings during the period under review, and where possible the effect of such increased borrowings on the earnings per share. Should it not be possible to disclose this effect on the earnings per share the reasons must be stated; and
- g. details of any Category 4 transactions as required by Paragraph 9.18 which have not been disclosed previously to shareholders.

### **Change of financial year**

8.28 If a change in the financial year is proposed, the Committee must be notified in writing and consulted as to the periods to be covered by the interim report.

### **Audited interim reports**

8.29 Where the figures in the interim report have been audited, the report of the auditors including any qualifications must be reproduced in full.

### **Basis of presentation**

8.30 Interim and preliminary reports should be presented on a consolidated basis.

### **Minimum contents of Annual Financial Statements**

8.31 The annual financial statements must:

- a. have been prepared in accordance with the issuer's national law and, in all significant respects, with IFRS and IAS;
- b. have been independently audited, and reported on, in accordance with Malawi Accounting Standards; or in the case of external companies, in accordance with the national auditing standards acceptable to the Committee or International Standards on Auditing;
- c. be in consolidated form if the listed company has subsidiaries, unless the Committee agrees otherwise (but the listed company's own financial statements must also be published if they contain significant additional information); and
- d. if they do not fairly present the state of affairs, profit or loss and cash flows of the group, provide more detailed and additional information.

8.32 In addition to complying with the Companies Act, listed companies are required to disclose the following information in their annual financial statements:

- a. Code of Corporate Practices and Conduct:  
commenting on the extent of their compliance or non-compliance with the Code of Corporate Practices and Conduct contained in the Code of Best Practice for Corporate Governance in Malawi. This statement may be contained in a separate section of the annual report and need not be audited;
- b. borrowings:
  - i. full disclosure of all borrowings, and off balance sheet borrowings. Where, during the period under review, a listed company or any of its subsidiaries incurs an exceptional increase in its borrowings it must disclose the nature of and purpose for such borrowings; and
  - ii. as a note, disclosure must be made of the level of borrowings in relation to those authorised by the articles of association of the listed company and its subsidiaries;
- c. disclosure of unconsolidated investments in an unlisted company or group of companies:
  - i. should a listed company derive in excess of 50% of its pre-tax earnings in any financial period from unconsolidated investments in an unlisted company or group of companies, and/or have 50% or more of its total assets at balance sheet or market value invested in such company or group of companies, the Committee will require that the listed company publish, in addition to its statutory financial statements for such financial period, audited financial statements of the unlisted company or group of companies; and
  - ii. this information may be disclosed by presenting annual financial statements in a consolidated form as if the unlisted investments were subsidiaries;
- d. disclosure of directors' interests:
  - i. the aggregate of the direct and indirect interests of the directors in and the direct and indirect interest of each director in the share capital of the listed company distinguishing between beneficial and non-beneficial interests. The statement should include by way of a note any change in those interests occurring between the end of the financial year and a date not more than one month prior to the date of the notice of meeting or, if there has been no such change, disclosure of that fact;
  - ii. comparative figures for the previous year must be shown also.
- e. shareholder spread:
  - i. the percentages of each class of listed security that are held by the public and non-public shareholders; and
  - ii. the disclosure for non-public shareholders must be analysed according to the categories set out in Paragraph 2.32;
- f. major shareholders:  
the interest of any shareholder other than a director who, in so far as is known, is directly or indirectly beneficially interested in 5% or more of any class of the listed company's capital, together with the amount of each such shareholders interest, or if there are no such shareholders, an appropriate negative statement;
- g. share in incentive schemes:  
the listed company must, in respect of its or its subsidiary companies schemes, summarise in its annual financial statements the number of securities which may be unlisted for purposes of the scheme at the beginning of the accounting period, changes in such number during the accounting period and the balance of securities available for utilisation for purposes of the scheme at the end of the accounting period;
- h. profit forecasts:  
commentary on the performance of the company against any profit forecast made by the company for the period under review;
- i. unlisted securities:  
if applicable, a statement in accordance with Paragraph 2.29.b;

- j. special resolutions:  
full details of all special resolutions passed by the company's subsidiaries since the date of the previous directors' report relating to the capital structure, borrowing powers, the object clause contained in the memorandum of association if applicable or any other material matter which affects the understanding of the company and its subsidiaries.
- (k) issues for cash:  
details of all issues of securities for cash during the period under review, distinguishing between general and specific issues, and including, at least, the number of securities issued, the price at which and (in the event of a specific issue to non-public shareholders as defined in paragraph 4.18) to whom they were issued.
- (l) intergroup contracts:  
particulars of any significant contracts between the company, or one of its subsidiary undertakings, and a controlling shareholder subsisting during the period under review.
- n. Disclosure of director's emoluments  
An analysis in aggregate of emoluments paid in respect of each current financial year and the immediately preceding financial year by the company, or receivable by the directors in their capacity as director, or any other capacity whether determined by the articles or not.

# SECTION 9

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## Transactions

### Scope of section

This section deals with transactions, principally acquisitions and disposals, by a listed company. It describes how they are categorised, what the requirements are for announcements and circulars and whether shareholder approval is required. It then considers additional requirements for take-overs and mergers. **Section 10** deals with transactions with related parties.

### General

- 9.1 References in this section to a transaction by a listed company:
- a. include a transaction by any subsidiary of the listed company;
  - b. exclude a transaction in the ordinary course of the company's trading activities; and
  - c. exclude an issue of securities or a transaction to raise finance which, in either case, does not involve the acquisition or disposal of any asset of the listed company or its subsidiaries.
- 9.2 A listed company which is in any doubt as to the application of the Listings Requirements contained in this section must consult the Committee at an early stage.

### Categorisation and explanation of terms

- 9.3 Any listed company considering a transaction must, at an early stage, consider the categorisation of the transaction.
- 9.4 A transaction is categorised by assessing its size relative to that of the listed company proposing to make it and the listed holding company of such listed company, if applicable.
- 9.5 The comparison of size is made by use of the percentage ratios set out in Paragraph 9.6. The different categories of transactions are:
- a. Category 4 - a transaction where either of the percentage ratios are less than 10% but more than 5%;
  - b. Category 3 - a transaction where any percentage ratio is 10% or more but each is less than 20%;
  - c. Category 2 - a transaction where any percentage ratio is 20% or more but each is less than 30%;
  - d. Category 1 - a transaction where any percentage ratio is 30% or more; and
  - e. Reverse takeover - any transaction, or series of transactions, involving an acquisition by a listed company of a business, an unlisted company or assets which would result in a fundamental change in the business or in a de jure change in board or voting control of the listed company except in the circumstances outlined in Paragraph 9.11.

### Percentage ratios

- 9.6 The percentage ratios are the figures, expressed as a percentage, resulting from each of the following calculations :
- a. consideration to market capitalisation - the consideration divided by the aggregate market value of all the equity securities of the listed company; or
  - b. Dilution - the number of securities issued by a listed company as consideration for an acquisition compared to those in issue prior to the transaction.

- 9.7 In circumstances where either of the above calculations produces an anomalous result or where the calculations are inappropriate to the sphere of activity of the listed company, the Committee may disregard the calculation and substitute other relevant indicators of size.

### **Consideration**

- 9.8 When calculating the consideration:
- a. where all or part of the consideration is in the form of securities to be listed, the consideration attributable to those securities means the aggregate market value of those securities based on the ruling price of such securities at the time the terms of the transaction are agreed;
  - b. the consideration is the amount paid to the vendors but the Committee may require the inclusion of further amounts (for instance where the purchaser agrees to discharge any liabilities, whether actual or contingent, of the vendors as part of the terms of the transaction); and
  - c. if deferred consideration is or may be payable in the future, the consideration is the maximum possible total consideration payable under the agreement. If the total consideration is not subject to any maximum the transaction will normally be regarded as category 1, notwithstanding the category into which it otherwise falls.

### **Figures used for categorisation**

- 9.9 Figures used for categorisation purposes must be the aggregate market value of all those securities before the announcement or in the case of consideration in the form of a new class of securities for which an application for listing will be made, the issue price of such securities or, if no price is attributable thereto, the expected aggregate market value of all those securities.

### **Change in percentage ratios**

- 9.10 If either of the percentage ratios changes to the extent that the categorisation of the transaction is altered between the time the transaction is first discussed with the Committee and the announcement, the Committee must be consulted.

### **Exceptions to categorisation rules**

- 9.11 In the case of a reverse takeover, if all the following conditions are satisfied, the acquisition will be treated as category 1:
- a. the subject of the acquisition is of a similar size to that of the acquiring company;
  - b. the subject of the acquisition is in a similar line of business to that of the acquiring company;
  - c. the enlarged group is suitable for listing; and
  - d. there will be no change of board or voting control.
- 9.12 Special requirements apply in the case of mineral companies (see Section 11) and property companies (see Section 12).

### **Indemnities and similar arrangements**

- 9.13 Any agreement or arrangement with a party, not being a member of the listed company's group:
- a. under which a listed company agrees to discharge any liabilities for costs, expenses, commissions or losses incurred by that party, whether or not on a contingent basis;
  - b. which would be exceptional; and
  - c. under which the maximum liability is unlimited:

will be treated as a Category 1 transaction. For the purpose of this paragraph indemnities such as those customarily given in connection with sale and purchase agreements and indemnities given to advisors against liabilities to third parties arising out of providing advisory services are not “exceptional”. In cases of doubt the Committee must be consulted at an early stage.

#### **Aggregation of transactions**

- 9.14 The Committee will require transactions completed during either the 12 months prior to the date of the latest transaction or the period since the date on which the most recent published audited balance sheet was prepared, or the period since the publication of the latest pre-listing statement or circular, whichever is the shorter, to be aggregated with the latest transaction for the purpose of determining the categorisation to apply to the latest transaction. In cases of doubt the Committee must be consulted at an early stage.
- 9.15 Where acquisitions are entered into during a period of 12 months which cumulatively exceed 100% in either of the percentage ratios, the provisions relating to a reverse takeover will apply.
- 9.16 Without prejudice to the generality of Paragraphs 9.14 and 9.15, transactions will normally only be aggregated in accordance with those paragraphs if they:
- a. are entered into by the company with the same party or with parties connected with one another;
  - b. involve the acquisition or disposal of securities or an interest in one particular company; or
  - c. together lead to substantial involvement in a business activity which did not previously form a part of the company’s principal activities.
- 9.17 If under Paragraph 9.14 the aggregation results in a Category 1 requirement for shareholder approval, then that approval is required only for the latest transaction.

#### **Category 4 requirements**

- 9.18 In the case of a Category 4 transaction the company must include details of the transaction in its next interim report, annual financial statements, announcement, circular or other document issued to shareholders. Such details must include:
- a. particulars of the transaction, including the names of:
    - i. any company or business, the subject of the transaction; and
    - ii. if an acquisition, the vendors;
  - b. a description of the business carried on by, or using, the net assets the subject of the transaction;
  - c. the consideration, and how it was satisfied (including the terms of any arrangements for deferred consideration);
  - d. the value of the net assets which are the subject of the transaction and the effect on the net assets (per share) of the company, if material. For the purposes of this paragraph, the Committee will regard 3% as being material;
  - e. the profits attributable to the net assets the subject of the transaction and the effect on the net profit (per share) of the company, if material. For the purpose of this paragraph, the Committee will regard 3% as being material;
  - f. any benefits which are expected to accrue to the company as a result of the transaction;
  - g. in the case of an acquisition where not all the securities have been acquired, state the reason why all the securities were not acquired and whether, and to what extent, anyone associated with the controller of the applicant, its subsidiaries or associates has an interest in the company being acquired;
  - h. in the case of a disposal, if share or other securities formed part of the consideration received, a statement whether such securities are to be sold or retained.
  - i.

- 9.19 In addition, if securities have been acquired in a company which, as a result becomes a subsidiary company as defined in the Act, the listed company must confirm, in writing to the Committee, that the articles of association of such subsidiary company will be amended to conform with Schedule 10 where necessary.

### **Category 3 requirements**

- 9.20 In the case of a category 3 transaction the company must, without delay after the terms of the transaction are agreed, publish, in compliance with Paragraphs 7.46 and 7.47, a press announcement giving such details of the transaction as set out in Paragraphs 9.18 and 9.19.
- 9.21 The press announcement must include those details required in a Category 4 transaction as stated above and include such details on all Category 4 transactions made since the last document or circular sent to shareholders.

### **Supplementary notification**

- 9.22 The Committee must be advised and a supplementary press announcement made without delay is, at any time after the notification referred to in Paragraph 9.20 has been made, the listed company becomes aware that:
- a. there has been a significant change affecting any matter contained in that earlier notification; or
  - b. a significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.
- 9.23 In Paragraph 9.22, "significant" means significant for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses, cash flow and prospects of the listed company and the rights attaching to any securities forming part of the consideration. It will include a change in the terms of the transaction such that the percentage ratios are affected and the transaction requires recategorisation into a higher category.
- 9.24 The supplementary notification must give details of the change or new matter and also contain a statement that, save as disclosed, there has been no significant change affecting any matter contained in the earlier notification and no other significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.

### **Category 2 requirements**

- 9.25 Upon the terms of a Category 2 transaction being agreed the company must:
- a. immediately comply with the requirements of a Category 3 transaction and state within the announcement that a circular to shareholders will be issued in compliance with b. below; and
  - b. within 28 days dispatch such a circular to shareholders.
- 9.26 The Category 2 circular must comply with the general requirements relating to circulars as set out in Section 8 and must include:
- a. the information required under Category 4 transaction (see Paragraph 9.18);
  - b. details of any service contracts of proposed directors of the listed company;
  - c. where goodwill is involved, a statement regarding the company's accounting policy towards goodwill as well as the reasons for such goodwill payment;
  - d. a statement giving the directors' opinions on the transaction;
  - e. the information required by the Appendix to this section in relation to Category 2 circulars (see Paragraph 9.29);
  - f. in the case of an acquisition of an interest in an undertaking which will result in the consolidation of the net assets of that undertaking or a disposal of an interest in an undertaking which will result in the net assets no longer being consolidated, an accountant's report as set out in Section 7;

- g. in the case of a transaction not falling within f. above, a summary of any relevant financial information (or a statement that none exists) together with confirmation that the directors consider that the value to the company justifies the price paid or received by it; and
- h. as an appendix, details of all Category 4 transactions (as specified in Paragraph 9.18) and copies of all Category 3 announcements made since the publication of the company's last annual financial statements or interim report, or pre-listing statement, category 2 or 1 circulars, whichever is the most recent.

### **Category 1 requirements**

9.27 In the case of a Category 1 transaction the company must comply with Paragraphs 9.25 and 9.26 (the Category 2 requirements). In addition, the company must obtain the approval of its shareholders in general meeting, and any agreement affecting the transaction must be conditional upon such approval being obtained and the circular should include a statement giving the directors' opinions on the transaction, a recommendation as to how shareholders should vote at the general meeting to approve the transaction and an indication as to how the directors intend to vote their shares, if applicable, at the general meeting.

In addition, if the Category 1 transaction results in an issue of securities which, together with any other securities of the same class issued during the previous three months, would increase the securities issued by more than 30%, then the company must include in the Category 1 circular the information required to be disclosed for a pre-listing statement.

### **Reverse takeover requirements**

9.28 The listed company, as enlarged by the acquisition, must be suitable for listing as if it was a new applicant and satisfies the conditions for listing as set out in Section 2. The announcement of a reverse takeover must contain adequate warning as to the uncertainty of whether the Committee will allow the listing to continue following the acquisition. The company must prepare a category 1 circular and listing particulars as though the company were a new applicant. If such Category 1 circular and listing requirements are not provided to the shareholders within 30 days of the announcement, the Committee will suspend the listing of the company's securities. The category 1 circular must clearly advise shareholders whether or not the Committee will continue to grant a listing to the listed company if shareholders approve the acquisition. Also refer to Paragraph 9.34

### **Contents of circulars**

- 9.29 In addition to the requirements of Paragraphs 9.26 to 9.28, a category 1 or 2 circular must include the information required by the table set out in the Appendix to this Section. Where the circular is accompanied by or forms part of a pre-listing statement which itself contains the information required, such information need not be repeated.
- 9.30 The working capital statement and, where relevant, information on group prospects and any profit forecast must be on the basis of the enlarged group in the case of an acquisition and on the basis that the disposal has taken place in the case of a disposal.
- 9.31 Where the listed company is issuing securities for which listing is sought, the information regarding major interests in securities and directors' interests in securities must be given in relation to the share capital both as existing and the share capital as enlarged by the securities for which listing is sought.
- 9.32 Where a circular is required by this section and pre-listing statements are required by Section 3, a single document may be issued which comprises pre-listing statements provided that:
- a. it contains all the information required by this section and Section 3; and
  - b. the document is submitted to the Committee for formal approval prior to its publication (see Paragraph 3.15).

- 9.33 If securities are being issued as consideration for an acquisition and a Category 2 circular is required, then listing will not be granted for those securities until the circular has been despatched. In the case of a Category 1 transaction, listing will not be granted until shareholders approval has been obtained.

## **Detailed requirements for takeovers and mergers**

### **General requirements**

- 9.34 All parties involved in negotiations should aim for the ideal situation, that is, that negotiations should be carried out in such secrecy that no suspension would be necessary and the company would be able at the conclusion of negotiations to make an announcement giving full details of the transaction.
- 9.35 If the situation described in above is not attainable the parties must submit to the MSE a draft press announcement for approval. Such announcement, which must be published as soon as possible, should contain all available details regarding the negotiations and a warning to shareholders that they should consult their professional advisors before dealing in their shares until such time as the result of the negotiations is known. In these circumstances no suspension will normally be necessary, but where a brief suspension occurs because of factors such as prices fluctuations, the listing will usually be restored on publication of the announcement.
- 9.36 Any other suspension of a listing, at the request of a company, will only occur in very exceptional circumstances, and then for the briefest possible period.
- 9.37 In all instances where a preliminary announcement has been published the parties concerned must publish a progress report every 28 days until negotiations have been finalised whereupon an announcement giving full details must be published.
- 9.38 Companies should ensure that when negotiations commence, the attention of all directors and members of staff involved should be drawn to prohibiting insider trading.
- 9.39 The Committee of the MSE now will normally require that Merchant Bankers or Auditors be requested to make a statement to the effect that a transaction is considered to be fair and reasonable in circumstances where:
- i. the parties concerned in the transaction are not at arm's length;
  - ii. any special circumstances exist where the MSE feels that the auditor's opinion is required.

### **Preliminary announcement**

- 9.40 A Preliminary Announcement must be issued in the press at the earliest possible moment, in the event of a take over bid by a listed company, listed or unlisted, or a take over bid being received by a listed company.
- 9.41 In this statement the following information should be included:
- i. name of company or party making the bid;
  - ii. name of offeree company;
  - iii. price and/or method of payment;
  - iv. percentage of shares for which the offer is being made; and
  - v. date of expiry of offer.
- 9.42 It is emphasised that the essential consideration is the earliest possible indication to shareholders of negotiations and accordingly a statement should not be withheld if fullest particulars are not available for immediate publication.

### **Change of control**

- 9.43 Any person, (including directors, together with those of their families and trusts) who controls a company and who contemplates transferring control must not (other than in special circumstances, the existence of which is in the sole discretion of the Committee) do so unless the buyer of control undertakes to extend, within a reasonable time period, a similar offer to the holders of the remaining equity share capital

- 9.44 Where no control situation can be identified, it shall be the duty of the board of directors of the listed company in question to bring to the attention of any person who acquires shares and seeks to exercise control of the company, that he is required to extend, within a reasonable period of time, an offer to holders of the remaining equity share capital on the basis set out in Paragraph 9.47.
- 9.45 The Committee may require that an offer be made, within a reasonable period of time, to the holders of the remaining equity share capital on the basis set out in Paragraph 9.47 where any person acquires through the medium of the market shares in a listed company which enables control to be exercised, and the Committee is of the opinion that shareholders have not been afforded a reasonable opportunity (the duration of which shall be determined by the Committee but which shall not be shorter than ten trading days) to dispose of their shareholdings in the market. The provisions of this sub-rule shall not apply where control is acquired partially through transactions outside the market and partially through transactions through the medium of the market, in the event of which an offer, on the basis set out above, will be required to be made.
- 9.46 When acquiring shares pursuant to Paragraph 9.45 above a special bargain transaction cannot be undertaken if that special bargain forms part of recent sales that contribute to the passing of control, unless the buyer simultaneously undertakes to extend an offer, on the basis set out in Paragraph 9.47 to the holders of the remaining equity share capital in that company.
- 9.47 Where control is acquired by buying shares outside the market or partially outside the market and partially through transactions in the market, the offer to the holders of the remaining equity share capital in the listed company in question shall be:
- j. in cash at not less than the highest price (excluding all charges) paid by the person(s) liable to make the offer and by persons acting in concert with him/them; or
  - ii. in the same listed security as constituted settlement of the shares acquired by the listed company in question; or
  - iii. in the same combination as that in i. And ii. Above as constituted settlement of the shares acquired in the listed company in question; or
  - iv. accompanied by a cash alternative where settlement of the shares acquired in the listed company in question was not in cash or in securities listed or being listed on the MSE.
- 9.48 The following circumstances will not be construed as change of control:
- i. where control of a listed company is exercised by a consortium or group of shareholders, shuffles within this control including the emergence of a new dominant member or the exclusion of an existing member; or
  - ii. where control is vested in readily identifiable family or similar interests, shuffles within this control.
- 9.49 In situations where control is exercised by any technique whatever, changes in this control whether outright or by the addition of other elements, which involve purchase of shares, will not be permitted unless a similar offer is extended to all shareholders.
- 9.50 In all instances which are not covered specifically by the above rules it is essential that a person who intends acquiring control of a listed company should consult the MSE before concluding any transactions.

- 9.51 When an announcement regarding a proposed cash offer to minority shareholders of a listed company is first submitted to the MSE for its approval, such announcement must be accompanied by an undertaking from the offeror given to the MSE that the offer will be made within a reasonable time to minority shareholders in accordance with MSE requirements. As security for the undertaking referred to above, the offeror must deposit cash with a registered banking institution or some other party acceptable to the MSE, or must give a guarantee or an underwriting commitment from a registered banking institution or some other party acceptable to the MSE. When this deposit is made, the party with whom the deposit is made is to give a letter to the MSE indicating that it is aware of the purpose of the deposit and that it will not permit a withdrawal from that deposit until such time as the offer is implemented or until such time as the MSE authorises a refund of the deposit, whichever is the earlier.

#### **Guidelines**

- 9.52 Detailed guidelines can be obtained from the MSE concerning mergers and takeovers involving listed companies and unlisted companies with changes of control between the listed and unlisted companies. Where such other guidance is not detailed below, further guidance on the procedure and announcements involved in a merger or takeover can be obtained from "The City Code on Takeovers and Mergers" of London which the Committee regards as an authoritative document so far as not in conflict with the laws of Malawi.

#### **Reverse takeover**

- 9.53 In the case of a "reverse takeover" between two listed companies, control and direction of the new company will in all probability change. In this case the MSE will have no objection but a pre-listing statement or such documentation as the MSE may require must be submitted and approved.

NOTE: In cases of doubt the MSE should be consulted.

#### **Requirements for takeover bids or offers to purchase**

- 9.54 This subsection is applicable to all "Takeovers and Mergers" which in any way affect the rights, privileges or security of, or which would be of material interest to any class of shareholder/debenture holder of any listed company.
- 9.55 At least 21 days before the opening of the offer submit for approval under cover of a letter all the relevant documentation.

NOTE: i. The appointment of a sponsoring broker is required;  
ii. the information for inclusion in documents will vary with each case submitted but the minimum requirements must, so far as is possible, be adhered to;  
iii. the company shall send a copy of the offer document to any new shareholder whose name has been included on the register between the date of the issue of the documents and the record date.

- 9.56 With a view to placing the shares beneficially owned by the offeror company and to those of persons/companies who have by agreement indicated their prior acceptance of the offer, on the same basis as those shareholders of the offeree company who accept the offer, the directors of the offeror company shall ensure and submit a written undertaking that during the period the offer remains open, neither it, nor its nominees nor those associated with the offer or with the control of the offeror company, will sell directly or indirectly, or dispose of or alienate any of the shares in the offeree company which are beneficially owned by it or them.
- 9.57 A statement must be included in the document that late postal acceptances will be accepted provided the envelope is postmarked with a date on or before the closing date of the offer and provided they are received within a specified, reasonable, period.

- 9.58 Simultaneously with the issue to shareholders, a specified number of copies of the circulars issued by the offeror company and the offeree company are to be lodged with the MSE for transmission to broking members.
- 9.59 A summary of the offer shall be advertised in the press not later than the day following that on which the circular was posted to shareholders.
- 9.60 Immediately after the confirmatory meeting of shareholders of the offeror company (if such a meeting be necessary) deliver written advice to the MSE of the decision of the meeting.

**Takeover in terms of Section 198 of the Act**

- 9.61 A takeover implemented by way of a scheme of arrangement requires a majority representing three fourths of the nominal value of the votes exercisable by the members present or voting by proxy.
- 9.62 In the case of a listed company, the MSE requests that the votes exercisable shall be those of members of the company other than the controlling shareholders.
- 9.63 The following draft documents regarding the scheme of arrangement must be submitted to the MSE for informal comment at least 21 days prior to the MSE Committee meetings:
- i. explanatory statement;
  - ii. scheme of arrangement document;
  - iii. application for listing/delisting;
  - iv. surrender circular - regarding surrender of scrip in exchange for consideration offered;
  - v. press announcements advising shareholders of the relevant meetings and the results of such meetings.
- 9.64 The following minimum information in addition to that required under Section 199 of the Act must be included in the explanatory statement sent to the offeree company's shareholders in respect of a cash offer:
- i. comparison between the offer price, the market value and net asset value of the offeree company's shares;
  - ii. the effect on income as related to earnings and dividends per share;
  - iii. future prospects of the offeree company;
  - iv. history and nature of the business of the offeree company;
  - v. latest financial information of the offeree company and any material changes since the date of the last annual financial statements;
  - vi. if the last balance sheet had been issued more than nine months previously then a statement should be included that there have been no material changes since the date of the last annual financial statement and the offeree company's interim report for the past six months must be included in the document;
  - vii. relevant monthly market prices and volume traded of offeree company's shares for the past year and also daily for the week prior to the announcement;
  - viii. a "fair and reasonable" statement from a competent independent advisor, such as an auditor or merchant bank, if the transaction is not at arm's length or if any special circumstances exist;
  - ix. names of directors and their interests in both companies and the interests of the companies in each other;
  - x. procedure regarding surrender of scrip;
  - xi. a statement that unclaimed monies will be held in trust until claimed;
  - xii. a statement that no receipts will be issued for scrip surrendered unless specifically requested. Lodging agents to prepare special transaction receipt if required;
  - xiii. a statement that directors common to both boards will not vote at the scheme meeting in respect of their beneficial shareholdings;
  - xiv. the salient dates applicable to the scheme;
  - xv. notice of meeting;

- xvi. the following statement by the directors of the offeror company:  
 “The directors collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of their knowledge and belief there are no other facts the omission of which would make any statement false or misleading and that they have made all reasonable enquiries to ascertain such facts.”;
  - xvii. a statement of the documents available for inspection;
  - xviii. a statement whether the directors of the offeree company recommend the acceptance of the offer and whether they intend to accept the offer in respect of their own shareholdings.
- 9.65 The following minimum information must be included in the explanatory statement sent to the offeree company’s shareholders in respect of a share exchange:
- i. comparison between market value and net asset value of the offeror and offeree companies shares in respect of the consideration offered;
  - ii. the effect on income;
  - iii. future prospects of the offeree and offeror company;
  - iv. financial information of the offeree and offeror company;  
 Note: if the last balance sheet had been issued more than nine months previously then a statement should be included that there have been no material changes since the date of the last balance sheet and the offeror and offeree companies interim report for the past six months must be included in the document;
  - v. history and nature of business of offeror and offeree companies;
  - vi. relevant monthly market prices and volumes traded of offeror and offeree companies shares for the past year and also daily for the week prior to the announcement of the offer;
  - vii. a “Fair and reasonable” statement from a competent independent advisor such as an auditor or merchant bank if the transaction is not at arm’s length or if any special circumstances exist;
  - viii. names of directors and their interests in both companies and the interests of the companies in each other;
  - ix. the following statement by the directors of the offeror company:  
 “The directors collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of their knowledge and belief there are no other facts the omission of which would make any statement false and misleading and that they have made all reasonable enquiries to ascertain such facts” .;
  - x. particulars of dividends - (included or excluded from the offer) a statement whether consideration ranks pari passu with the offeror company’s other shares from date of listing. The MSE under normal circumstances will not grant a separate temporary listing;
  - xi. procedure regarding surrender of scrip;
  - xii. a statement of the documents available for inspection;
  - xiii. a statement that all unclaimed scrip will be held in trust until claimed;
  - xiv. a statement that no receipts will be issued for scrip surrendered unless specifically requested. Lodging agents to prepare special transaction receipts where required;
  - xv. a statement whether the directors of the offeree company recommend the acceptance of the offer and whether they intend to accept the offer in respect of their own shareholding;
  - xvi. notice of meeting;
  - xvii. a statement that directors common to both boards will not vote at the scheme meeting in respect of their beneficial holdings;
  - xviii. the salient dates applicable to the scheme.

- 9.66 The circular to the offeror company's shareholders, if consideration is more than 30% of the offeror company's share capital and realised reserves, must include the following information:
- i. the effect of the takeover on the company's earnings per share and the net asset value;
  - ii. future prospects of the offeree company;
  - iii. history and nature of business of the offeree company;
  - iv. latest financial information of offeree company and any material changes since date of last balance sheet and a five year profit history of the offeree company;
  - v. a "fair and reasonable" statement from a competent independent advisor, such as an auditor or merchant bank;
  - vi. notice of meeting (if applicable);
  - vii. names of directors and directors' interests in the offeror and offeree companies and the interest of the companies in each other;
  - viii. particulars of dividends - including a statement whether consideration shares rank pari passu from date of listing.

#### **General procedures to be followed**

- 9.67
- a. Simultaneously with the issue to shareholders, specified number of copies of the circulars and scheme documents issued by the offeror company and offeree company are to be lodged with the MSE for transmission to broking members;
  - b. a summary of the offer shall be advertised in the press not later than the day following that on which the circular and scheme documents were posted to shareholders;
  - c. immediately after the confirmatory meeting of shareholders of the offeror company (if such meeting is necessary) and the scheme meetings of the offeree company, the MSE must be advised of the decision of the meetings.

#### **Takeover in terms of Section 201 of the Companies Act**

- 9.68 The following minimum information must be included in the offer document sent to the offeree company's shareholders in respect of a cash offer:
- a. comparison between the offer price, the market value and net asset value of the offeree company's shares;
  - b. the effect on income as related to earnings and dividends per share;
  - c. future prospects of the offeree company;
  - d. history and nature of business of the offeree company;
  - e. latest financial information of the offeree company and any material change since the date of the last annual financial statement;
  - f. relevant monthly market prices and volume traded of offeree company's shares for the past year and also daily for the week prior to the announcement of the offer;
  - g. a "fair and reasonable" statement from a competent independent advisor, such as an auditor or merchant bank, if the transaction is not at arm's length or if any special circumstances exist;
  - h. names of directors and their interests in both companies and the interests of the companies in each other;
  - i. procedure regarding surrender of scrip;
  - j. a statement that unclaimed monies will be held in trust until claimed;
  - k. a statement that no receipts will be issued for scrip unless specifically requested. Lodging agents are to prepare special transaction receipts if required;
  - l. a copy of the relevant section of the Act;

- m. a statement by the directors of the offeror company:  
"The directors collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of their knowledge and belief there are no other facts the omission of which would make any statement false and misleading and that they have made all reasonable enquiries to ascertain such facts";
  - n. a statement whether the directors of the offeree company recommend acceptance of the offer and whether they intend to accept the offer in respect of their own shareholdings;
  - o. A statement:
    - i. that the offer is irrevocable from the date on which the offer is made;
    - ii. that depending upon the result of the offer, the offeror company will invoke the provisions of Section 201 of the Act in order to compulsorily acquire the remainder of the shares of the offeree company;
    - iii. of the policy of the offeror company regarding acceptances from shareholders who become registered shareholders after the record date;
  - p. a statement of the documents available for inspection.
- 9.69 The following information must be included in the offer document sent to the offeree company's shareholders in respect of a share exchange:
- a. comparison between market value and net asset value of the offeror and offeree companies shares in respect of the consideration offered;
  - b. the effect on income as related to earnings and dividends per share;
  - c. future prospects of the offeror company and offeree company;
  - d. financial information of the offeror company and offeree company. If the last financial statements had been issued more than nine months previously then a statement should be included that there have been no material changes since the date of the last annual financial statements and the offeror and offeree companies' interim reports for the past six months must be included in the document;
  - e. history and nature of the business of the offeror and offeree companies;
  - f. relevant monthly market prices and volume traded of offeror and offeree companies' shares for the past year and also daily for the week prior to the announcement of the offer;
  - g. a "fair and reasonable" statement from a competent independent advisor, whose appointment has been agreed with the MSE, such as an auditor or merchant bank if the transaction is not at arm's length or if any special circumstances exist;
  - h. names of directors and directors interests in the offeror and offeree companies and the interest of the companies in each other;
  - i. the following statement by the directors of the offeror company:  
 "The directors collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of their knowledge and belief there are no other facts the omission of which would make any statement false and misleading and that they have made all reasonable enquiries to ascertain such facts.";
  - j. a statement whether the directors of the offeree company recommend acceptance of the offer and whether they intend to accept the offer in respect of their own shareholdings;
  - k. particulars of the dividends - (included in or excluded from the offer). A statement whether consideration shares rank pari passu with the offeror shares from the date of listing. The MSE under normal circumstances will not grant a separate temporary listing;
  - l. procedure regarding surrender of scrip;
  - m. documents available for inspection;
  - n. a statement that all unclaimed scrip will be held in trust until claimed;

- o. a statement that no receipt will be issued for scrip surrendered unless specifically requested. Lodging agents are to prepare special transaction receipts if required;
- p. a copy of the relevant section of the Act.

**Circular to offeror's shareholders**

9.70 The circular to the offeror company's shareholders (if consideration is more than 30% of the offeror company's share capital and realised reserves) should contain the following information:

- a. the effect of the takeover on the company's earnings per share and net asset value;
- b. future prospects of the company;
- c. history and nature of business of the offeree company;
- d. latest financial information of offeree company and any material changes since date of last annual financial statements and a five year profit history of the offeree company;
- e. a "fair and reasonable" statement from a competent independent advisor, whose appointment has been agreed with the MSE, such as an auditor or merchant bank, if the transaction is not at arm's length or if any special circumstances exist;
- f. notice of meeting (if applicable);
- g. names of directors and directors' interest in the offeror and offeree companies and the interest of the companies in each other;
- ⌘ particulars of dividends - a statement whether consideration shares rank pari passu from date of listing. The MSE under normal circumstances will not grant a temporary listing. Simultaneously with the issue to shareholders, a specified number of copies of the circulars issued by the offeror company and by the offeree company are to be lodged with the MSE for distribution to broking members. A summary of the offer shall be advertised in the press not later than the day following that on which the circular was posted to shareholders.
- h. immediately after the confirmatory meeting of shareholders of the offeror company (if such meeting is necessary) the offeror company must advise the MSE of the decision of the meeting;
- i. upon the takeover bid becoming unconditional the MSE shall be notified immediately. The takeover bid is termed unconditional from the date it is binding on the offeror company;
- j. upon the close of the offer:
  - i. a letter shall be sent to the MSE stating whether or not the conditions of the offer have been fulfilled and furnishing particulars of the percentage of acceptance and of the number of shares acquired;
  - ii. the circular giving notice of the invoking of *Section 194* together with the application for the suspension and subsequent termination of the listing must be submitted for approval to the MSE.

**Information in offer documents**

9.71 The following additional information must be included in offer documents relating to all forms of mergers and takeovers:

- a. the opening and closing date of the offer. The minimum period during which the offer must remain open is three weeks;
- b. however, the offer should not remain open for unduly lengthy periods. It will be realised that shareholders who have accepted the offer are handicapped until such time as the offer becomes binding;
- c. if the offer is for cash or for an alternative payment in cash, state date of payment;
- d. the procedure for payments to non-resident shareholders must be stated;

- e. a statement that, in the event of the offer becoming a binding contract between the offeror company and the shareholders of the offeree company, application will be made to the Committee of the MSE for the listing of any shares which are to be issued in exchange;
- f. a statement in the case of a cash offer whether the offeror company intends to pay the purchase consideration from its own resources;
- g. the record date. Fourteen days notice of the record date must be given;
- h. a statement regarding the transfer of shares in the offeree company during the period the offer remains open;
- i. the offer documents shall include such further information as may be required by the MSE.

#### **Requirements upon close of offer**

- 9.72 The following is applicable to all takeover bids upon the close of the offer:
- a. the listed offeror company is required to make an application forthwith for a listing in respect of any shares which are to be issued in exchange for the assented shares;
  - b. all certificates for such shares shall be issued within 21 days of the close of the offer;
  - c. payment of cash consideration or first installment if payable in more than one payment, shall be paid within seven days from the date of the close of the offer;
  - d. it is essential, once the offer has been finalised, to make the result of the offer known to shareholders of both companies and to the public as promptly as possible. In the event of the conditions of the offer not being fulfilled the share certificates and transfer forms shall be returned forthwith to the beneficial owners.

#### **Standby offer**

- 9.73 a. A "standby offer" to the minority shareholders of a company will be permitted only if on the last business day prior to the printing of the document the market price of the company's shares exceeds the offer price by approximately 10% or by an amount that is satisfactory to the MSE;
- c. the circular to shareholders in respect of the offer must be submitted to the MSE for informal approval prior to submission to the Committee for formal approval, and must contain at least the following information:
- i. the reasons for making the offer;
  - ii. the high and low market prices at which the shares have traded since the announcement was made regarding an offer to the minority shareholders;
  - iii. the market price on the last business date prior to the printing of the offer circular;
  - iv. the opening and closing dates of the offer (the period during which the offer must remain open must be at least 21 days);

- NOTE: 1. The MSE in its discretion may request additional information and will refer to Precedents as detailed in the City Code of the London Stock Exchange and/or the Securities regulation Code of the Johannesburg Stock Exchange.
2. The company must advise the MSE of the number of acceptances within 14 days after the closing date of the offer, together with an updated analysis of shareholders.

## APPENDIX TO SECTION 9

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The following table identifies the information required to be included in a Category 2 or Category 1 circular (in addition to that required by Paragraphs 9.26 or 9.27) in respect of the listed company and the undertaking the subject of the transaction by reference to certain paragraphs of Section 4. Information denoted by an \* is required.

Paragraph	Description	Category 2		Category 1	
		Listed Company	Undertaking the subject of the transaction	Listed the subject of the transaction	Undertaking
4.1&2	name & address	*	*	*	*
4.39	statement of indebtedness				
4.53	major inter- ests in shares	*		*	
4.21	directors inter- ests in shares	*		*	
4.22	directors inter- ests in transactions	*		*	
4.23	directors resp- onsibility	*		*	
4.78	statement groups	*		*	*
4.76&77	prospects change of direction			*	
4.81	litigation		*	*	*
4.85	accountant's report		*		*
4.48	working capital	*	*	*	*
4.94	material changes	*	*	*	*
4.95	report on any & profit forecast			*	*
4.96	proforma net asset statement	*		*	
4.97	significant contracts			*	*
4.99	directors service contracts	*		*	
4.102	experts consents	*		*	
4.103	documents to be available for inspection			*	
4.104 to 4.111	vendors		*		*

# SECTION 10

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## Transactions with Related Parties

### Scope of section

This section provides certain safeguards against those shareholders, directors and/or other persons related to a listed company taking advantage of their position. Transactions with parties related to a listed company are known as related party transactions. Reference should also be made to the listings requirements regarding transactions set out in Section 9.

Where any transaction is proposed between a listed company (or any of its subsidiaries) and a related party, a circular to shareholders and the approval of the shareholders of the listed company in general meeting will normally be required.

Any circular sent to shareholders in connection with a related party transaction must provide sufficient information to enable any recipient of the circular to evaluate the effects of the transaction on the listed company.

- 10.1 For the purposes of this section, the following definitions apply:
- a. a “related party” transaction means a transaction, or any variation or novation of an existing agreement, between a listed company (or any of its subsidiaries) and a related party;
  - b. “related party” means:
    - i. a material shareholder;
    - ii. any person who is, or within the 12 months preceding the date of the transaction, was a director of the listed company or any of its subsidiaries or its holding company or any subsidiary of its holding company. For the purpose of this definition, a director includes a person who is, or within the 12 months preceding the date of transaction was, not a director but in accordance with whose directions or instruction the directors are or were accustomed to act;
    - iii. any advisor to the listed company which has, or within the 12 months preceding the date of the transaction, had a beneficial interest, whether direct or indirect, in the listed company or any of its associates;
    - iv. any person who is, or within the 12 months preceding the date of the transaction, was a principal executive officer of the company, by whatever position he may be, or may have been, designated and whether or not he is, or was, a director;
    - v. an associate of the persons in i. to iv above;
  - c. “material shareholder” means any person who is, or within the 12 months preceding the date of the transaction, was entitled to exercise or control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the listed company (or any other company which is its subsidiary or holding company or which is a fellow subsidiary of its holding company).

### Consultation with the Committee

- 10.2 If a listed company (or any of its subsidiaries) proposes to enter into a related party transaction, the listed company must consult the Committee at an early stage. If the Committee considers the related party to have a significant interest in, or influence over the related party transaction, it may, at its sole discretion, impose the requirements set out in Paragraphs 10.4 and 10.5. The relevant draft contract must be supplied to the Committee if requested.

- 10.3 The Committee may, in its sole discretion, require the listed 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 concert with any other person in relation to the related party transaction.

**Usual requirements for a related party transaction**

- 10.4 If the Committee so decides, the listed company must in respect of a related party transaction:
- a. make a press announcement containing:
    - i. the information specified in Paragraph 9.18;
    - ii. the name of the related party concerned; and
    - iii. details of the nature and extent of the interest of the related party in the transaction;
  - b. send a circular to its shareholders containing the information required in Paragraph 10.9;
  - c. obtain the approval, by resolution, of its shareholders either prior to the transaction being entered into or, if it is expressed to be conditional on such approval, prior to completion of the transaction; and
  - d. include in the special or ordinary resolution to approve or give effect to the transaction a condition that the validity (for the purposes of the listings requirements) of the resolution will be subject to a simple majority of the votes of shareholders other than the related party and its associates being cast in favour of the resolution.
- 10.5 Where a meeting of the listed company has been called to approve a transaction and, after the date of the notice of the meeting but prior to the meeting itself, the transaction becomes a related party transaction, the Committee may require that the listed company either:
- a. take immediate steps to amend the relevant resolution by including the condition referred to in Paragraph 10.4.d and give notice of the amendment to shareholders by way of a circular containing also any information required by Paragraph 10.9 which was not contained in the original circular accompanying the notice of the meeting; or withdraw the notice of the meeting and convene a fresh meeting complying with Paragraph 10.4.d.
- 10.6 If the Committee decides not to impose the requirements set out in Paragraphs 10.4 or 10.5 in respect of a related party transaction, the listed company must prior to completing the transaction:
- a. provide the Committee with 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 as far as the shareholders of the listed company are concerned; and
  - b. undertake in writing to the Committee to include details of the transaction in the listed company's next published annual financial statements, circular or pre-listing statement, including the identity of the related party, the value of the consideration for the transaction and all other relevant circumstances.

**Transactions not regarded as related party transactions**

- 10.7 A transaction will not be regarded as a related party transaction if any of the following situations apply:

**Equity securities not listed**

- a. the listed company does not have any equity securities listed;

**External company**

- b. the listed company is an external company with a secondary listing on the MSE;

**Issue of new securities**

- c. the transaction is an issue of new securities either:
  - i. for cash by the listed company (or any of its subsidiaries) pursuant to an opportunity which (so far as is practicable) is made available to all holders of the listed company's securities (or to all holders of a relevant class of securities) on the same terms other than those excluded in terms of the Act; or
  - ii. made pursuant to the exercise of conversion or subscription rights attaching to a listed class of securities or previously approved by the listed company's shareholders in general meeting.

**Employees' share scheme**

- d. the transaction:
  - i. involves the receipt of securities by a director of the listed company, its holding company or any of its subsidiaries; or
  - ii. is a grant of an option to a director of a listed company, its holding company or any of its subsidiaries to acquire (whether or not for consideration) new or existing securities of the listed company; in accordance with the terms of an employees' share scheme which does not have the effect of conferring benefits only on directors of the listed company, its holding company or any of its subsidiaries;

**Credit**

- e. the transaction is a grant of credit (including the lending of money or the guaranteeing of a loan) to the related party:
  - i. in normal commercial terms in the ordinary course of business; or
  - ii. in amount and on terms no more favorable than those offered to employees of the group generally;

**Directors indemnities**

- f. the transaction is the grant of an indemnity to a director of the listed company (or any of its subsidiaries) to the extent permitted by the Act, or the maintenance of a contract of insurance to the extent contemplated by that section (whether for a director of the listed company or for a director of any of its subsidiaries);

**Underwriting**

- g. the transaction is an underwriting by the related party of all or part of an issue of securities by the listed company (or any of its subsidiaries) and the consideration to be paid by the listed company (or any of its subsidiaries) in respect of such underwriting is no more than the usual commercial underwriting consideration and is the same as that to be paid to the other underwriters (if any); or

**Small transactions**

- h. the transaction is one where both of the percentage ratios referred to in Paragraph 9.6 are equal to or less than 5%;

**Revenue transaction**

- i. the transaction is one of a revenue nature in the ordinary course of business.

## Aggregation

10.8 The Committee will require all transactions to be aggregated which are entered into by the listed company (or any of its subsidiaries) with the same related party (and any of its associates) in any 12 month period and which have neither been approved by shareholders nor described in a circular complying with the requirements of Paragraph 10.9. If the transactions in aggregate would be classified as a Category 3 or larger transaction (see paragraph 9.5), the Committee may require the company to comply with the requirements of Paragraph 10.9 in respect of the latest transaction and to disclose in the circular all relevant details of each of the transactions being aggregated.

## Contents of circular

10.9 A circular relating to a related party transaction must comply with the general requirements relating to circulars as set out in Section 8 and must include also:

- a. a responsibility statement in accordance with Paragraph 4.23;
- b. in all cases the information required by the following Paragraphs of Section 4 in relation to the listed company:

<input type="checkbox"/> <input type="checkbox"/> Paragraph	Detail
<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> 4.1&4.2	name and address
1.53	major shareholders
<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> 4.86&4.87	financial information
4.94	material changes
4.97	significant contracts
4.102	experts' consents
4.103C	Documents to be available for inspection in the case of a transaction where the related party is a director, or an associate of a director, of the company (or its holding company or any of its subsidiaries or fellow subsidiaries) the information specified by the following paragraphs: Paragraph Detail
4.21	directors' interest in securities
4.22	directors' interests in transactions
4.99	directors' service contracts
- c. 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;
- d. in the case of an acquisition, or disposal of fixed property, or, in the case of a mineral company, an acquisition or disposal of minerals, mineral resources or mineral reserves (as defined in *Section 12*), an independent valuation including the value, the basis of valuation and the method of arriving at such value;
- e. a statement complying with Schedule 5 by an independent professional expert acceptable to the Committee as to whether the transaction is fair and reasonable insofar as the shareholders of the listed company are concerned, provided that such statement shall not be required if an independent valuation has been conducted and disclosed in accordance with paragraph e. above;
- f. where applicable, a statement that the related party and its associates will not be taken into account in determining a quorum at the shareholders' meeting and their votes will not be taken into account in determining the results of the voting at such meeting in relation to any resolution in connection with the related party transaction;
- g. if the transaction also falls within Category 1 or 2, the information required to be included in Category 1 or 2 (see Section 9) circulars respectively; and
- h. details of any other transactions entered into by the listed company (or any of its subsidiaries) with the same related party (or any of its associates) which have not been approved by the shareholders.

# SECTION 11

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## Circulars and Press Announcements

### Scope of section

This section sets out:

- (a) the general requirements which apply to all circulars and press announcements published by listed companies; and
- (b) the specific requirements relating to the method of issue of securities to be listed; Where the circular or press announcement, or the transaction or matter to which it relates, has unusual features or where it is not possible to comply with the relevant requirements set out in this section, the Committee must be consulted at an early stage. Sections 9 and 10 detail the information to be included in press announcements and circulars relating to transactions and related party transactions.

### Contents of all circulars

11.1 Circulars and pre-listing statements sent by a listed company to holders of its listed securities must:

- a. provide a clear and adequate explanation of its subject matter;
- b. if voting or other action is required:
  - i. contain all the information necessary to allow the holders of the securities to make a properly informed decision; and
  - ii. contain a heading drawing attention to the importance of the document and advising holders of securities who are in any doubt as to what action to take to consult appropriate independent advisors;
- c. state that where all the securities have been sold or transferred by the addressee, the circular and any other relevant documents should be passed to the person through whom the sale or transfer was effected, for transmission to the purchaser or transferee;
- c. include all the information published, or to be published, simultaneously with the circular or pre-listing statement, in any press announcement issued in connection with the transaction to which the circular or pre-listing statement relates; and
- e. where new securities are being issued in substitution for existing securities, explain what will happen to existing documents of title.

### Formal approval

11.2 Press announcements (other than dividend announcements (except those relating to scrip dividends), interim and preliminary reports and financial statements) may not be published until they have received the approval of the Committee; and circulars may not be published until they have been approved by the Committee.

### Contents of press announcements and circulars

#### INTRODUCTIONS

11.3 Applicants seeking a listing by way of an introduction are required to publish the following on the day of the commencement of listing:

#### Press announcements

11.4A press announcement which should include the following:

- a. the number and description of the securities concerned;
- b. the name, date of registration and registration number of the applicant;

- c. the general nature of the main business or proposed main business actually carried on or to be carried on by the applicant and its subsidiaries;
- d. the names and addresses of the directors of the applicant;
- e. the places at and times during which copies of the pre-listing statement may be obtained, and if the press announcement is not a full pre-listing statement a statement of such; and

**Circular**

11.5A pre-listing statement which should:

- a. in addition to the requirements of Paragraph 3.13.b, include the statements contained in Paragraphs 4.23 and 4.112;
- b. if a pre-listing statement is required as a result of a rights issue, then the additional wording on the front page should state the following:

“This rights issue circular incorporates listing particulars and is issued in compliance with the Listing Requirements of the MSE, for the purpose of giving information to the public with regard to the company”; and

**PLACINGS**

11.6 Companies seeking a listing by way of placing should publish, on the day of the commencement of listing, the documents together with the respective contents as set out for an introduction in Paragraphs 11.4 and 11.5.

**OFFERS FOR SALE OR SUBSCRIPTION**

11.7 Applicants seeking a listing by way of an offer for sale or subscription are required to publish the following:

**Press announcements**

11.8A press announcement which should either contain the contents of the prospectus (as set out in Paragraph 11.9) or should contain only the following information:

- a. the number and description of the securities concerned;
- b. the name and date of registration of the applicant;
- c. the general nature of the main business or proposed main business actually carried on or to be carried on by the applicant and its subsidiaries;
- d. the names and directors of the applicant;
- e. the places at and times during which copies of the prospectus may be obtained;
- f. where all the securities which are the subject of an offer are intended to be offered only to members of a company or debenture holders as the case may be, with or without the right to renounce in favour of other persons:
  - i. the issue price of such securities;
  - ii. the ratio in which such securities will be offered to the members or debenture holders entitled to accept the offer; and
  - iii. the last day on which members or debenture holders must register as such in order to be entitled to receive the offer; and
- g. the last day for subscribing.

**Circular**

11.9 The circular for an offer for sale or subscription should take the form of a prospectus and comply with Section 4.

## **RENOUCEABLE OFFERS**

11.10 The applicant in a renounceable offer is required to publish two press announcements and pre-listing statement as set out below:

- a. the first press announcement must contain at least the information required in Paragraph 11.8;
- b. the second press announcement must give the following information:
  - i. the date from which the pre-listing statement will be available and from whom it can be obtained: and
  - ii. the date the applicant's issued securities and the letters of allotment will be issued;

11.11 The listed company renouncing the securities to its shareholders must publish four press announcements, according to the timetable set out in Paragraph 5.43, containing the information referred to in Paragraph 11.15.

11.12 The press announcements issued by the applicant and the listed company must be published together provided that the applicant's pre-listing statement contains all the information contained in press announcements issued by the listed company and the responsibility statement from the directors of the applicant covers such information.

## **RIGHTS OFFERS AND CLAW-BACK OFFERS**

11.13 Listed companies seeking a listing for securities issued by way of a rights offer or claw-back offer are required to publish the following:

### **Press announcements**

11.14 Four press announcements in accordance with the timetable set out in Paragraph 5.59.

11.15 The press announcements should contain the following:

- a. the press announcement must give the last date to register for shareholders to participate in the offer;
- b. the second press announcement must give the terms of the offer and a statement that application has been made to the Committee for a listing of the renounceable letters and subsequent securities (the advertisements in a. and b. could be combined);
- c. the third press announcement must:
  - i. advise that the Committee has granted a listing for the renounceable letters of allocation and subsequent securities;
  - ii. state that copies of the circular or pre-listing statement will be available for inspection at the company's sponsoring brokers, transfer office, registered office and such other locations as may be appropriate, by the Friday prior to the Monday on which the listing of the letters of allocation commences; and
- d. the fourth press announcement must give the number of securities taken up by the shareholders of the applicant and the number of securities taken up by the underwriter.

### **Circular**

11.16 If a pre-listing statement is to be published in accordance with Section 3 it should contain the information set out in that section.

11.17 If a pre-listing statement is not required by Section 3 a circular should be published containing the information required by the following Paragraphs of Section 4:

The applicant and its capital	4.1, 24 or 25
Directors, manager and advisers	4.7 (with respect to the listed company only), 12, 21, 22 and 23;
Securities for which application is being made	4.66 and 68;
Group's activities	4.72, 78 and 81;
Financial information	4.86, 87 and 94;
General information	4.102; and
Documents to be available for inspection	4.103

11.18 In addition, the circular should contain details of all Category 3 or 4 transactions (as described in 9.18 to 9.21) not previously notified to shareholders by way of a circular.

### **CAPITALISATION ISSUES AND SCRIP DIVIDENDS**

11.19 Companies seeking a listing for securities issued by way of a capitalisation of reserves and/or an application of share premium or capital redemption reserve fund are required to publish the following:

#### **Press announcements**

11.20 For a scrip dividend or cash underpin by a third party for a capitalisation issue, three press announcements are required:

- a. the first press announcement must give the last date on which shareholders must be registered in order to participate in the scrip dividend (or capitalisation issue where applicable) and the exact cash value of the dividend or the exact ratio of the capitalisation issue;
- b. the second press announcement must give the ratio of new securities offered to existing securities or the exact cash value of the underpin; and
- c. the third press announcement must give details of the results of the scrip dividend and the fact that the dividend has now been declared or the level of acceptances of the cash underpin.

11.21 For other capitalisation issues a press announcement is required giving details of:

- a. the proposed capitalisation issue;
- b. the last date on which shareholders must be registered in order to participate in the capitalisation issue;
- c. the date on which the scrip arising out of the capitalisation issue will be issued;
- d. the number of shares that will be issued in relation to the number of shares already in issue; and
- e. the date on which the new number of shares generated by the capitalisation issue will be listed.

#### **Circular**

11.22 A circular should be published containing the information set out in Paragraph 4.67 and complying with the requirements of Paragraphs 5.72 to 5.83 in the case of scrip dividends and with Paragraphs 5.63 to 5.71 in the case of capitalisation issues.

#### **Acquisitions and disposal of assets**

11.23 The requirements for the contents of press announcements and circulars relating to Category 1, 2, 3 and 4 transactions can be found in Section 9.

#### **Issues for cash**

11.24 Companies seeking a listing for securities issued for cash should publish a circular containing the following:

- a. the notice of general meeting;

- b. full disclosure of the detailed effects of the proposed issue including the effect on net asset value per share;
- c. a statement by the directors of the company as well as an independent professional expert (complying with Schedule 5) acceptable to the Committee certifying that in their opinion after due and careful enquiry, such issue is fair and reasonable and in the interests of the shareholders;
- d. any discount to prevailing and recent market prices must be motivated;
- e. a statement that to the knowledge of the directors and controlling shareholders (if any), the company is not the subject of an announced or expected takeover bid;
- f. the name(s) and address(es) of the subscribers to the issue for cash; and
- g. the paragraphs of Section 4 described in Paragraph 11.17 except for the information required by Paragraph 4.68.

### **Sundry matters**

#### **Letters of allocation**

- 11.25 The salient details of the rights or clawback offer or capitalisation issue must be printed on the front page of the letter.
- 11.26 The instructions in respect of acceptance, renunciation, splitting and payment and the sections to be completed by the renouncer and renounee must be printed on the subsequent pages.
- 11.27 Where excess securities are made available the application form must be printed in different colour to the letter of allocation.

#### **Voluntary liquidation**

- 11.28 Where a listed company proposes to enter into voluntary liquidation a circular should be despatched with the notice of general meeting incorporating the following:
  - a. a summary of the mechanics of the liquidation distribution and the payment procedure to be adopted;
  - b. any exchange control rulings/procedural guidelines;
  - c. the taxation implications of the distribution;
  - d. a proforma net asset statement (see Paragraphs 8.15 to 8.23) if the listed company has entered into any Category 1 to 4 transactions or, if not, the information required by Paragraphs 4.86 and 4.87;
  - e. the effect on capital and earnings to the shareholder; and
  - f. the information required by Paragraph 4.66.
- 11.29 Should shareholders approve the voluntary liquidation a written application must be submitted for the termination of the listing on a stated date. The listing will be terminated at the close of business on that date.

#### **Redemption of securities**

- 11.30 Where a listed company proposes to redeem securities a circular should be dispatched with the notice of general meeting incorporating the following:
  - a. a summary of the salient features, dates, rationale and action required;
  - b. any exchange control rulings;
  - c. the taxation implications of the redemption;
  - d. the effect on capital and earnings to the shareholder; and
  - e. the information required by Paragraph 4.66.
- 11.31 The requirements of 11.30 may be waived by the Committee where such redemption does not contain any options and must be redeemed on specific terms and at specific times.

### **Change of name of a listed company**

11.32 Two circulars should be sent to shareholders where a company proposes to change the name:

- a. the first circular should call for the necessary meeting and give details of the resolutions shareholders will be asked to pass an order to effect the proposed change of name; and
- b. the second circular must give the results of the resolutions and, if the resolutions have been passed, state:
  - i. whether the change of name has been registered with the Registrar of Companies;
  - ii. the date from which the MSE will give effect to the change of name;
  - iii. the abbreviated name of the company; and
  - iv. instructions as to the procedure to be adopted regarding existing share certificates.

NOTE: 1. Where share certificates are being recalled the second circular must be sent to shareholders at least two weeks prior to the date on which the company's securities are listed under its new name;

2. The day from which the listing is amended must always be a Monday, or if this is not a business day from the next business day.

### **Subdivision/consolidation of securities**

11.33 Two circulars should be sent to shareholders where a company proposes to consolidate or subdivide its securities:

- a. the first circular should call for the necessary meeting and include the following:
  - i. details of the resolutions shareholders will be asked to pass in order to effect the consolidation or subdivision;
  - ii. the reasons for the subdivision/consolidation;
  - iii. the ratio of the subdivision/consolidation;
  - iv. a statement that application has been made to the Committee for the amendment of the company's listing; and
  - v. the procedure to be adopted regarding existing share certificates if the special resolution is passed by shareholders and the Committee has agreed to the amendment of the listing;
- b. a second circular must be sent to shareholders immediately after the general meeting and should contain:
  - i. the outcome of the meeting;
  - ii. whether the application for the listing of the subdivided/consolidated securities has been granted by the Committee;
  - iii. the date from which the listing is to be amended;
  - iv. the procedure to be adopted in respect of the recall of the existing share certificates; and
- c. a press announcement embodying details contained in b. above must be published.

NOTES: 1. The Committee will consider only applications in respect of share splits from companies whose securities have a high market price and/or are poorly traded so as to improve the marketability of the securities.

2. No company in the "Cash Companies" section of the List will be permitted to split its securities, if, as a result of such split the net asset value or indicated market price after the split is reduced to below 20 tambala per share.

3. The date from which the listing is amended must always be a Monday or if this is not a business day from the next business day.

### **Issue of authorised but unissued shares which are under the control of the directors**

11.34 Where a company is contemplating an increase of capital and the authorised but unissued shares are being placed under the direct control of the directors with no indication as to whom they will be issued; the notice to the shareholders must contain the following:

“No issue of these shares is however contemplated at the present time and no issue will be made which could effectively transfer the control of the company without prior approval of shareholders in General Meeting.”

### **Change of transfer secretaries**

11.35 The following procedures are required when there is a change in the transfer secretary/secretaries of a listed company:

- a. a notice advising members of the listed company's change of transfer secretary/secretaries, together with the relevant details, must be sent to all registered members;
- b. a press announcement detailing the changes must be published at least two weeks before the due date of change; and
- c. the listed company must advise the Committee, in writing, of the change and must include details in respect of the listed company's new transfer secretary/secretaries.

### **Cautionary announcements**

11.36 Such announcements, which should be published as soon as possible, should contain all available details regarding the negotiations and a warning to shareholders that they should consult their professional advisors before dealing in their shares until such time as the result of the negotiations is known.

11.37 In all instances where a cautionary announcement has been published, the company must publish a progress report at least every 21 days until negotiations have either been finalised and shareholders informed of their outcome in the manner required in the Listings Requirements or have been terminated and shareholders informed accordingly.

### **General**

#### **Embargo on company announcements**

11.38 To obviate leakage of information companies are not permitted to release for publication company announcements (including press announcements, circulars and pre-listing statements) under a time embargo. Release dates should be in agreement with the MSE.

#### **Name or logo of a broking firm**

11.39 The names of the members of the MSE may appear in any advertisement or document issued by or on behalf of any company. Where the names of members appear the following words must be added after their names: “Member of the MSE”.

11.40 Where the name or logo of a broking firm appears on an advertisement or document, irrespective of whether the advertisement or document is in respect of a listed or unlisted company, the following should be noted:

- a. the document/advertisement must be cleared with the Committee;
- b. the document/advertisement must conform to the listings requirements; and
- c. the document will be subject to normal documentation fees (if applicable).

#### **Availability of pre-listing statements or circulars**

11.41 Members of the MSE may obtain copies of the pre-listing statements or circulars by submitting a request to the sponsoring broker for the number of copies required. It will be the duty of the sponsoring broker to pass on such applications to the company who will be responsible for posting these promptly to the applicants.

# APPENDIX TO SECTION 11

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## Guidelines on the publication of information

The following table provides a summary of the requirements for the publication of information relating to listed companies.

Reference (Paragraph unless stated otherwise)	Information	No of copies for MSE	Distribute to each shareholder	Publish in press
7.23 6.20	Annual Financial Statements (Audited)	3	Yes	Note 1
8.24	Provisional Annual Financial	3	Yes	Yes
7.20, 7.22	Preliminary Reports	3	Yes	Yes
6.20	Notices of AGM	3	Yes	Yes
7.19, 7.22	Interim Reports	3	Yes	Yes
8.24	Quarterly reports	3	Yes	Yes
7.13	Other Preliminary Reports	3	No	Yes
7.11, 7.18	Dividend Announcements	3	Note 3	Note 3
7.23	Notices of Annual General	3	Yes	Yes
6.20	Meetings and the Minutes			
3.50	Circulars	3	Yes	Note 4
	Pre-listing statements and Prospectuses	3	Yes	Yes
7.46, 7.47	Press announcements	3	Yes	Yes
7.9	Cautionary announcement	3	Yes	Yes

### NOTES:

1. Annual financial statements need not be published in the press. However, if they are published in the press, they must be published in English (see Paragraph 7.48)
2. Unaudited provisional annual financial statements (preliminary reports) and under certain circumstances, unaudited interim reports, must be reviewed by the company's auditors in terms of Paragraph 7.22 and published in the press.
3. Dividend announcements must be published in the press and/or be distributed to all shareholders. If published in the press, it must be published in English (see Paragraph 7.48).
4. Circulars need not be published in the press. Refer to Section 11 to determine whether a press announcement is required. If an announcement needs to be published in relation to a circular, it must be published in English (see paragraph 7.48).

# SECTION 12

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## Mineral Companies

### Scope of section

This section sets out the criteria for the listing of, and the additional disclosure requirements for, mineral companies, which are defined as exploration companies and/or mining companies.

♦♦

### ♦♦ Definitions

12.1 For the purposes of this section, unless otherwise stated or the contents or contexts otherwise requires, terms signifying the singular shall include the plural and vice versa and the following terms shall have the meanings set out below:

♦♦ Term	Meaning
competent person	in relation to the preparation of a competent person's report, must be an individual, firm, company or other legal entity which has a director, partner or any other employee who: a. is professionally qualified and is a member in good standing of an appropriate professional association, institution or body acceptable to the Committee; and b. has, in the opinion of the Committee, the necessary professional experience insofar as it relates to the contents of the report.
competent person's report	the report prepared by one or more competent persons and which complies with paragraphs 12.8 and 12.9 in the case of exploration companies and with Paragraph 12.16 in the case of mining companies.
❖❖ exploration	the international searching or prospecting for any mineral, but not including mining.
♦♦ exploration company	a company whose principal activity is that of exploration.
☒☒ exploration information mineral	information resulting from exploration. any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, in or under water or in tailings and having been formed by or subjected to a geological process, excluding water, but including sand, rock, gravel and clay, as well as soil other than topsoil.
☒☒ mineral company mineral reserves	an exploration company and/or a mining company that part of a mineral resource which has been analytically demonstrated to justify mining, taking account, at the time of determination, mining, metallurgical, marketing, legal, environmental, social, economic and other applicable conditions (see note below)
mineral resources	any mineral deposit in such form and quantity that mining of a mineral may be feasible. Location, grade, quality and quantity are estimated from specific geological evidence (see note below)
mining	any excavation of the earth, including the portion under water or in any tailings, as well as any borehole, made for the purpose of winning a mineral or the exploration of any mineral deposit in any other manner

⌘⌘mining company                      a company whose principal activity is that of mining

⌘⌘NOTE: mineral resources and reserves

Whilst the distinction between a mineral resource and reserve is sufficiently settled to permit these terms to be defined, generally acceptable definitions of sub-classification or mineral resources and reserves and, in particular, their interpretation have yet to be established in Malawi. It is therefore premature to impose mandatory sub-classifications for mineral resources and reserves on mineral companies, who are encouraged to adopt sub-classifications that are appropriate to each mineral deposit and that are consistent with good practice within the region. Where the situation arises and doubt exists, the MSE will refer for guidance on the rules established and in force at the time from the Malawi Stock Exchange.

12.2The listings requirements apply to mineral companies except as modified by this section. The provisions of Paragraphs 12.4 to 12.11 apply exclusively to exploration companies. The provisions of Paragraphs 12.12 to 12.17 apply exclusively to mining companies. To the extent that a mineral company is both an exploration company and a mining company all of these provisions will apply.

12.3If information required to be disclosed under this section is confidential for legal and/or other reasons and the directors of a mineral company can prove to the satisfaction of the Committee that the mineral company's legitimate interests might be prejudiced if the information were to be disclosed, then the Committee may grant a dispensation from the requirement to make the information public.

### **Exploration companies**

#### **Criteria for listing**

12.4The Committee may admit to listing on the Mining sector of the Board the securities of an applicant notwithstanding that the requirements of Paragraph 2.34.c are not satisfied, provided that:

- a. the provisions of Paragraph 2.34.a., b., e. and f. are satisfied;
- b. the applicant undertakes or proposes to undertake exploration;
- c. the applicant demonstrates to the satisfaction of the Committee that the applicant's managers have satisfactory experience in exploration; and
- d. the applicant demonstrates to the satisfaction of the Committee that the applicant is entitled to explore for the relevant minerals.

12.5The Committee will require all applicants to have issues underwritten

12.6Underwriters will provide full details as requested by the Act.

#### **Contents of pre-listing statements**

12.7In addition to the requirements of Section 3, the following information/documentation shall be included:

- a. a competent person's report, complying with Paragraphs 11.8 and 11.9, and, if the competent person is not, in the opinion of the Committee, independent of the issuer, the pre-listing statement must disclose clearly the nature of the relationship or interest;
- b. details of all management and service agreements;
- c. the names of the issuers' directors and technical advisors;
- d. details of any direct or indirect interest, beneficial or non-beneficial, which each director, competent person and related party (as defined in Paragraph 10.1.b) has, or within two years of the date of the pre-listing statement, had:
  - i. in any asset (including any right to explore for minerals) which has been acquired or disposed of by, or leased to or by the issuer, including any interest in the consideration passing to or from the issuer;

- ii. in the share capital of the issuer; and
- iii. in the promotion of the issuer;
- e. a statement of any legal proceedings that may have an influence on the rights to explore for minerals, or an appropriate negative statement;
- f. a glossary of the terms used in the pre-listing statement; and
- g. a detailed estimate/statement of:
  - i. the exploration funding requirements for at least two years following publication of the pre-listing statement;
  - ii. the exploration expenditure incurred to date and/or budgeted for; and
  - iii. the projected adequacy of capital raised for exploration purposes.

### Competent persons reports

12.8 A competent person's report must:

- a. if the competent person is an individual, state the full name, address, professional qualifications and relevant experience of the competent person and the name and address of the professional association, institute or body of which he or she is a member;
  - b. if the competent person is a firm, company or other legal entity, state the full name and address of the firm or company and the full name, professional qualifications and relevant experience of the key director, partner or employee who has prepared the report, the name and address of the professional association, institution or body of which he or she is a member;
  - c. be dated less than six months prior to the date of publication of the pre-listing statement or circular and, in the case of a., be signed by the competent person; or in the case of b., be signed by the person or persons authorised to sign the report on behalf of the firm, company or other legal entity, together with the key director, partner or employee who has prepared the report;
  - d. be updated prior to publication of the pre-listing statement or circular if further data becomes available, unless the pre-listing statement or circular sets out and explains the effect of such further data; and
- if the competent person is not independent of the issuer, clearly disclose the nature of the relationship or interest. An issuer may appoint more than one competent person. Each competent person's report shall comply with paragraphs 12.8 and 12.9.

12.9 The competent person's report must include:

- a.
  - i. the nature of the issuer's rights of exploration and the right to use the surface of the properties to which these rights relate; and
  - ii. agreements, concessions, consents, permissions, permits or authorisations required and where those have been obtained, and details of their principal terms and conditions; where applicable, a statement to the effect that:
- b.
  - i. an environmental management programme as required by law has been approved by the Department of Mining and Surveys concerned and the cost of such programme; or
  - ii. pending the approval of an environmental management programme, temporary authorisation to commence operations has been obtained; or
  - iii. an extension of time within which to obtain approval of an environmental management programme has been granted;
- c. in respect of the issuers' exploration activities to date, a statement:
  - i. of the nature of any relevant geophysical and geological evidence;
  - ii. where applicable, of the results of drilling and sampling, stating the number of holes drilled, sample pits or trenches and their location, with a description of their current status, and a statement whether or not those results support the existence of the relevant minerals; and

- iii. where applicable, of the names or the organisations that carried out the investigations and analysis;
- d. in respect of the issuer's future exploration activities, a description of the general methods to be employed for exploration; and
- e. in respect of each major property, maps and plans demonstrating its location, the nature and extent of workings thereon and all principal geological features.

### **Press announcements and circulars**

- 12.10 In addition to other requirements under the listings requirements, press announcements by exploration companies:
- a. insofar as they relate to any mineral deposit, must include any information available to the issuer concerning the characteristics of the deposit;
  - b. insofar as they relate to mineral resources and/or reserves, must include a description of the nature of mineralisation; and
  - c. insofar as they relate or refer to a competent person's report, must:
    - i. be approved in writing in advance of publication by the relevant competent person; and
    - ii. if the competent person is not, in the opinion of the Committee, independent of the issuer, disclose clearly the nature of the relationship or interest;

- 12.11 In addition to the other requirements under the listing requirements, circulars in respect of Category 1 and 2 transactions by exploration companies must:
- a. include a competent person's report complying with paragraphs 12.8 and 12.9 if the information in such a report is relevant to the subject matter of the circular;
  - b. if a competent person's report is included and the competent person is not, in the opinion of the Committee, independent of the issuer, disclose clearly the nature of the relationship or interest; and
  - c. include a glossary of the terms used in the circular.

## **Mining companies**

### **Criteria for listing**

- 11.10 The Committee may admit to listing on the Board the securities of an applicant notwithstanding that requirements of Paragraph 2.34.c are not satisfied, provided that:
- a. the provisions of Paragraph 2.34.1, b., d., e. and f. are satisfied;
  - b. the applicant undertakes or proposes to undertake mining;
  - c. the applicant demonstrates to the satisfaction of the Committee that the applicant's managers have satisfactory experience in mining; and
  - d. the applicant demonstrates to the satisfaction of the Committee that the applicant is entitled to mine the relevant minerals.

### **Contents of pre-listing statements**

- 11.11 In addition to the requirements of Section 3 and the requirements of Paragraphs 12.7.a to f., the following information shall be provided:
- a. an estimate of the mining and other related funding requirements for at least two years following publication of the pre-listing statement; and
- 11.12 Particulars of the estimated cash flow for either the two years following publication of the re-listing statement or, if greater and where applicable, the period until the end of the first full financial year in which mining is expected to be conducted on an economic scale. Such particulars must include relevant revenue, cost, capital expenditure, tax and other material financial details required to enable the arithmetic calculation of such cash flow.

### **Competent persons' reports**

11.13 The provisions of Paragraphs 12.8 and 12.9 shall, mutatis mutandis, apply in respect of the content of the competent person's report for mining companies, save that the term "exploration" shall be substituted with that of "mining". In addition, the competent person's report must include:

- a. in respect of the issuer's mineral resources and reserves, a statement providing:
  - i. the geological feature of the occurrence, the type of deposit and its dimensions;
  - ii. an estimate of the volumes, tonnages and grades, as appropriate;
  - iii. a general description of the methods by which the details under ii. Were estimated;
  - iv. the anticipated mining tonnages or volumes; and
  - v. the processing volumes or tonnages, together with the other principal assumptions relating to forecast revenues and operating costs;
- b. a statement in relation to the issuer, providing:
  - i. the production policy, including production rates of sites, mines and wells where production has been commenced already;
  - ii. the estimated production rates relating to new mines, or reworkings, or new drilling, or work-overs;
  - iii. an estimate of the working lives of each major property;
  - iv. an indication of the bases on which these estimates have been arrived at; and
  - v. the qualifications and experience of the key technical staff being, or to be, employed;
- c. the date on which mining commenced, or is expected to commence, on the issuer's major properties;
- d. an indication of the progress of actual working, including analysis (both in narrative and numerical form) of previous exploration, development and mining carried out on the issuer's major properties;
- e. commentary on the reasonableness of the directors' forecasts (if any) of the rates of mining of the issuer's major properties;
- f. commentary on the ownership, type, extent and condition of plant and equipment which is significant to the issuer's operations and which is in use currently on the issuer's major properties;
- g. information on significant additional plant and equipment which will be required to achieve the forecast rates of mining;
- h. an assessment of the value of the plant and equipment owned by the issuer currently in use for mining, save that such assessment will not be required if a statement is made confirming that the directors do not consider the plant and equipment to be of significance to an investor's assessment of the issuer's operations;
- i. basic criteria and/or valuation bases relating to all key criteria which may be used in arriving at a valuation based on a discounted cash flow mining model, also known as a net present value mining model.

11.14 A statement setting out any additional information required for an appraisal of any special factors, affecting the mining businesses of the issuer, including difficulties of access to, or in recovery of, mineral resources and reserves and special circumstances, such as difficulties in transporting or marketing the ore which may affect the economic viability of the project, or an appropriate negative statement.

### **Press announcements and circulars**

11.15 The provisions of Paragraphs 12.10 and 12.11 shall, mutatis mutandis, apply to mining companies, save that the term "exploration" shall be substituted with that of "mining".

# SECTION 13

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## Property Companies

### Scope of section

Property companies and listed companies which carry out certain property related transactions are subject to additional disclosure requirements, principally relating to valuations. Property dealing companies may be subject to different treatment depending on the circumstances of each case.

### Definitions

- 12.1 For the purposes of Section 13, the following definitions apply:
- a. "gross assets" is the net book value of the company's assets before deducting outstanding mortgages;
  - b. "property" refers to freehold or leasehold property;
  - c. "property companies" are companies engaged primarily in property activities including:
    - i. the holding of properties and development of properties for letting and retention of investments; or
    - ii. the purchase or development of properties; or both;
  - d. "net annual rent" is the income generated by any property attributable to the company as estimated by an external valuer:
    - i. ignoring any special receipts or deductions arising from the property;
    - ii. before taxation (including tax on profits and any allowances for interest on capital or loans);
    - iii. after making deductions for any disbursements including expenses of managing the property and appropriate allowances to maintain it in a condition to command its rent;
  - e. "net book value" is the value of assets after adjusting the cost to reflect any depreciation or other adjustment so as to reflect the figure at which those properties are shown in the books of account;
  - f. "published valuation" is the valuation referred to in the listed company's annual financial statements or pre-listing statement or circular whether produced independently or by the directors and stated as such; and
  - g. "external valuer" is an independent property valuer, who is in practice and is a member of the Institute of valuers.

### Additional information for listing

- 13.2A property company's pre-listing statement must include the information required by Section 4 as far as is relevant and must include:
- a. summary details of the property portfolio including location, tenancies, material lessees, rent, lease expiry, review date, option to review, escalation, average property yields and current replacement costs;  
Pie charts and bar charts may be used to illustrate the respective sectoral and geographical spread of properties in the property portfolio and leases falling due for renewal or review;
  - b. financial details, which must include inter alia:
    - i. a profit history which may need to be on a proforma basis;
    - ii. a proforma balance sheet;
    - iii. salient details of net distributable income and distributions; and
    - iv. a valuation report in accordance with Paragraphs 13.3 to 13.13;

- c. the following details in respect of each of the promoters, managers, trustees and directors of the applicant (or any subsidiary or holding company):
  - i. any beneficial interest, whether direct or indirect, of those persons in relation to any to any property held by the applicant or to be acquired out of the proceeds of the issue, where any of those persons is or has contracted to become a tenant of any part of the property; and
  - ii. any relationship between any of those persons and another person where a duty in relation to that other person conflicts, or may conflict, with a duty to the applicant; and
- d. in the case of a property managed by agents, details of their name, legal form, business address, terms of contract and remuneration, experience and qualifications.

## **Valuation reports**

### **Requirement for a valuation**

13.3A valuation report prepared by an external valuer must be obtained by:

- a. a new applicant if it is a property company;
- b. a listed property company, if it makes an acquisition or disposal of property which is either a Category 1 transaction or is a related party transaction within the meanings of Sections 9 and 10 respectively;
- c. a listed property company which owns property constituting security for debt securities that are to be listed;
- d. a listed property company which refers to the valuation of property in the pre-listing statements or particulars.

13.4 Where a valuation report is included in the pre-listing statement or circular, there must also be a statement reconciling that valuation with the equivalent figure included in the listed company's latest published balance sheet.

### **Previously prepared valuation reports**

13.5 If a valuation report has been prepared then any related pre-listing statement or circular must contain a summary of the valuation report.

### **Valuation report**

13.6 The valuation report must be prepared by an external valuer.

13.7 The valuation report to be included in the pre-listing statement or circular must:

- a. state the following details in respect of each property:
  - i. the valuation;
  - ii. the addresses;
  - iii. nature and date of valuer's inspection;
  - iv. a brief description (e.g. land or buildings, approximate site and floor areas);
  - v. existing use (e.g. shops, offices, factories, residential);
  - vi. relevant planning permissions;
  - vii. any material contravention of statutory requirements;
  - viii. tenure (i.e. freehold or leasehold, giving unexpired term);
  - ix. main terms of tenants' leases or subleases (including repairing obligations);
  - x. approximate age of the buildings;
  - xi. present capital value in existing state;
  - xii. terms of any inter-group lease on property occupied by the group (identifying the properties);
  - xiii. any other matters which affect materially the value (including any assumptions and any information on contamination, if any); and
  - xiv. source of information and verification;
- b. state the name, address and professional qualifications of the valuer;

- c. be dated and state the effective date on which each property was valued;
- d. state whether the valuation is based on either open market value or, if necessary, depreciated replacement cost subject to adequate profitability;
- e. state any assumptions underlying the valuation and, where open market value is the basis of valuation, identify any qualifying words to be applied to the definition of open market value and state reasons for the adoption of any such qualification;
- f. where the directors have required a valuation of the benefit or detriment of contractual arrangements in respect of property or where there is thought to be a benefit in any options held, show such valuations separately and include a reconciliation of the costs and values; and
- g. in cases where directors have been interested beneficially, whether directly or indirectly, in any acquisition or disposal of any of the properties during the two years preceding the valuation, contain details of the nature and extent of such interests and the date of the transactions and the prices paid or received or other terms on which the transactions were effected. Alternatively, the information on beneficial interests of directors, whether direct or indirect, may be given elsewhere in the pre-listing statement or circular.

### **Valuations of property in the course of development**

13.8 Where the valuation is in respect of land being developed currently or in respect of which definite development plans have been formulated for execution in the near future, the following additional information should be given in the valuation report:

- a. whether planning consent has been obtained, and, if so, the date of such consent and whether there are any material or onerous conditions attached to such consent;
- b. the date when the development is expected to be completed and any estimate of letting or occupation dates;
- c. the estimated total cost of carrying out the development including, without limitation, the cost of financial carrying charges, letting commissions, or (where part of the development has been carried out already) the estimated cost of completing the development similarly;
- d. the open market value of the land and buildings in their existing state at the date of valuation; and
- e. the estimated capital values at current prices and on the basis of current market conditions:
  - i. after development has been completed; and
  - ii. after completion and letting of the property.

### **Valuation of property occupied for purposes of business**

13.9A property which is occupied for the purposes of a business should be valued normally at open market value for its existing use. Where open market value for an alternative use materially exceeds this basis, the alternative use valuation should be stated but the costs of cessation and removal should be estimated by the directors and shown in the valuation report.

### **External property**

13.10 If the company owns an external property, that property must be stated separately, its basis of valuation identified clearly and a valuer's report given.

### **Rentals used in valuations**

13.11 In respect of each property which is rented out by the company, the current net annual rent and the estimated future net annual rent at a named date (where this differs materially) must be included in the valuation report, based on its current open market rental value.

np np np

**Other general matters**

13.12 Where a valuation is referred to in the pre-listing statement, a Category 1 circular or a circular relating to a transaction with a related party, a copy of the valuation report must be made available for inspection.

**Summary of valuations**

13.13 The valuation report must include a summary of properties and the aggregate of their valuations must be split to show the separate totals for the freehold and leasehold properties. Negative values must be shown separately and not aggregated with the other valuations. Separate totals should be given for properties valued on an open market basis and on a depreciated replacement cost basis, and for external properties.

**Unit trust schemes in property shares**

13.14 A property unit trust is restricted to investment in the shares of property owning companies (fixed property companies) and in approved securities, pending investment of cash resources into property. After the initial issue of units, a property trust may only issue further units by way of rights issue to existing unit holders or in consideration for the acquisition of a property investment, subject to the requirements of the MSE.

# SECTION 14

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## SPECIAL TYPES OF ISSUER

### General

14.1 The requirements contained within the listings requirements apply to the special types of issuer contained within this section except where overruled specifically by the requirements of this section.

### Pyramid companies

14.2 The Committee considers that any situation involving a proliferation into more than one listed company of the same basic assets requires its careful control. Accordingly, the following guidelines and requirements should be considered in pyramid situations.

### Classification as pyramid companies

14.3 Any new applicant must make full disclosure to the Committee of any factors which could render it a pyramid company, and any existing listed company shall consult the Committee before entering into any a commitment, arrangement or agreement which could render it a pyramid company in relation to another listed company.

14.4 The Committee will classify a company as a pyramid company where it:

- a. may exercise, or cause the exercise of, 50% or more of the total voting rights of the equity securities of a listed company ("listed controlled company"); and
- b. derives 75% or more of its total attributable income before tax from such listed controlled company, or the shareholding of which in the listed controlled company represents 50% or more of its total assets.

14.5 In addition, the Committee may, in exceptional circumstances, classify a company as a pyramid company where it, in the Committee's opinion, holds, or proposes to acquire, a shareholding in a listed controlled company which represents or will represent 50% or more of the pyramid company's total assets, or produces, or is expected to produce, 50% or more of its total attributable income before tax.

14.6 The Committee may declassify a company as a pyramid company when it no longer meets the thresholds upon which its classification as a pyramid company was based.

14.7 In the event of a company being classified as a pyramid company in terms of Paragraph 14.4 or 14.5, the Committee will take cognisance of, inter alia, the following provisions when considering whether or not to grant a listing to, or maintain a listing of, a company which is to become a pyramid company.

### Listing of pyramid companies

14.8 Applications may be made to the Committee for the listing of pyramid companies. However, the Committee will not grant a listing to a pyramid company, nor maintain the listing of a company which is to become a pyramid company:

- a. which is or will become a second stage pyramid company (the pyramid company of another listed pyramid company), unless the Committee is convinced that, after being provided with full details of the circumstances, the second stage pyramid company will emerge (or has emerged) fortuitously as a result of a merger or takeover, the prime purpose of which, in the opinion of the Committee, is not the creation of a second stage pyramid company; and

- b. unless, either:
  - i. the minority shareholders of equity securities in the listed controlled company are offered equity securities on the same terms as applicable to the controlling shareholders of such listed controlled company in proportion to their holdings in the listed controlled company; or
  - ii. the controlling shareholders of the pyramid company can give irrevocable written undertakings to the Committee that they will not enter into any affected transaction in relation to the pyramid company, unless the other party to such affected transaction undertakes to the Committee to make a comparable offer to the holders (excluding the pyramid company) of the equity securities in the listed controlled company; and
- c. unless the listed controlled company has been listed either for more than two years or it satisfies each of the following criteria:
  - i. 50% or more of the listed controlled company's total assets or 50% or more of its total attributable income before tax is derived from operations which have been listed for at least twelve months; and
  - ii. the listed controlled company is not classified by the Committee to be a pyramid company; and
  - iii. the management who control the listed controlled company must have held such control for a continuous period of at least twelve months prior to the listing of the pyramid company; and
  - iv. the management of both the listed controlled company and the proposed pyramid company must have been predominantly the same for the period referred to in Paragraph 14.12.c.iii; and
  - v. the listed controlled company has issued audited financial statements covering the period referred to in Paragraph 14.12.c.iii that have not been qualified by the listed controlled company's auditors; and
- d. unless the cover of the circular relating to the creation of the pyramid company contains a warning that it will reduce the effective voting influence of shareholders in the listed controlled company.

14.9 The Committee may delist a listed pyramid company which ceases to meet the percentages referred to under Paragraph 14.4 or 14.5 (as the case may be).

14.10 The Committee will not permit a listed controlled company to acquire securities in its listed pyramid company.

## **Redevelopment entities**

### **General**

14.11 In evaluating the listing of a redevelopment entity, the Committee will have regard, inter alia, to the fundamental principle that the principal objective of the redevelopment entity must be the provision of assistance, whether through investment, loan or any other means acceptable to the Committee, to persons, communities or undertakings which, in the opinion of the Committee, would make a positive contribution to the socio-economic development of the country.

### **Criteria for listing**

14.12 The Committee has the sole and unfettered discretion to admit to listing, subject to whatever conditions (which may include requirements that are additional to those contained in the listings requirements) it deems necessary, notwithstanding that:

- a. the normal requirements regarding details of assets and liabilities and profit history are not given; and/or
- b. the applicant's assets may consist wholly or substantially of cash or short dated securities.

## **Industrial - “Development stage” sector**

### **General**

14.13 The Committee may, in its sole discretion, list substantial industrial companies that are in the development stage if they comply with the criteria for listing set out in Paragraph 2.34, except that they do not have a satisfactory profit record in terms of Paragraph 2.34.c. In exercising its discretion the Committee will have regard to the following guidelines and requirements:

### **Procedure for listing**

14.14 Prior to the submission of an application for listing the following procedure will apply:

- a. a memorandum giving a summary of the nature of the applicant, its modus operandi, its business plan and prospects (based on market segment growth, competitive analysis and market share) and details on the experience of its management, must be submitted to the Committee via a sponsoring broker; and
- b. after consideration of the memorandum, the Committee will decide, in principle, whether it will consider, without commitment, a full application for listing.

### **Criteria**

14.15 Applicants seeking a listing must satisfy the following criteria:

- a. the applicant should have a subscribed permanent capital (including reserves but excluding minority interest, revaluations of assets that are not supported by a valuation by an independent professional expert acceptable to the Committee prepared within the last six months and intangible assets) prior to offering any securities to the public of at least K30 million;
- b. a profit history is not necessary, but the applicant should provide a forecast of future profits/losses during and at least one year after completion of the development stage, together with such supporting reports or opinions as may be required by the Committee;
- c. the criteria set out in Paragraphs 2.34.b, d., e. and f.; and
- d. at the beginning of the prospectus or pre-listing statement there must be a warning, in bold letters, that the applicant is still in the development stage and that it does not have a profit history which meets the criteria for listing.

### **Miscellaneous**

14.16 The following miscellaneous requirements will apply:

- a. except as modified by Paragraphs 14.13 to 14.16 and by the Committee, the listings requirements will apply in respect of Development listed companies;
- b. in the event of a listed company seeking to raise capital after its initial listing, the relevant circular or pre-listing statement shall carry a warning complying with paragraph 14.15.d;

### **Bonds disclosure requirements**

14.17 Listing particulars and supplementary listing particulars must not be published before being approved formally by the MSE.

14.18 Where a prospectus relating to the securities is required the prospectus must comply with the requirements of the Companies Act and generally include:

- a. details of the financial instrument including name, issue price, coupon rate, date interest payable, date of issue, total amount;
- b. resolutions of issuing authority;
- c. details of approval from government in issues involving local authorities, parastatals, quasi government bodies etc;
- d. details of the underwriter and guarantors;
- e. the document must give full details of the intended use of the proceeds;

- f. directors and officers - full disclosure including positions held, legal advisors, auditors, bankers;
- g. details of reduction and reducing amounts;
- h. details of revenue and capital against which the security is charged and the revenue cover for interest with suitable audited certification and financial accounts;
- i. transfer secretaries, their address and telephone and fax numbers;
- j. period for which offer is open;
- k. address where copies are available;
- l. name of sponsoring broker;
- m. directors responsibility statement;
- n. details of any convertibility of loans; and
- o. non-resident participation and exchange control requirements.

14.19 Advertisements may be in the abridged form, the listing particulars must be published in at least two national newspapers prior to the listing.

# SECTION 15

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## Investment Entities

### Scope of section

An investment entity is defined as including investment companies, investment trusts and unit trusts whose principal activity is the investment in securities which for the purpose of this section includes private companies. These entities, by their nature, do not seek to control or be involved in the day to day management of their investees and are therefore passive investors.

### General

15.1 The listings requirements apply to investment entities except as modified by Paragraphs 15.2 to 15.8.

15.2 In evaluating a listing of an investment entity the Committee will have regard to the following fundamental principles:

- a. those responsible for managing the investments must have adequate experience;
- b. there must be an adequate spread of risk;
- c. the investment entity must be a passive investor and neither it nor its management company nor any director or manager of the investment entity or its management company should control, or seek to control, be actively involved in the management of the companies, or other entities, in which it invests; and
- d. the applicant must not, to a significant extent, speculate in securities.

### Criteria for listing

15.3 The Committee may admit to listing the securities or debt securities of an applicant as an investment trust or investment company notwithstanding that:

- a. the normal requirements regarding details of assets and liabilities and profit records are not given; and/or
- c. the applicant's assets consist wholly or substantially of cash or short dated securities.

15.4 If Paragraph 15.3.a or b. applies the applicant must satisfy the following criteria:

- a. the applicant must comply with the criteria set out in Paragraph 2.34 except that if it is not able to satisfy the criteria set out in subparagraph c. (three years audited accounts), it must satisfy the Committee that its managers have sufficient and satisfactory experience in the management of the types of investment in which the investment entity proposes to invest;
- b. the applicant must express an intention that its income will be derived wholly or mainly from shares or other securities and neither the investment entity nor any of its subsidiaries may conduct any trading activity which is material to the group as a whole;
- c. subject to d. below, neither the investment entity nor its management company, nor any subsidiary, director or manager of the investment entity or its management company should control or seek to control, or be actively involved in the management of the companies or other entities in which it invests, provided that an investment entity may acquire voting control of its investments if this is permitted under its investment policy;

- d. if the investment entity invests in other companies or funds which in turn invests in a portfolio of investments it must ensure that the policies and objectives of the investee conform with the principal objectives of the investment entity;
- e. the board of directors (or any equivalent body) of the investment entity must be able to demonstrate that it will act independently of any investment managers of the investment entity and a majority must not be employees of or professional advisors to the investment managers, or any other company in the same group as the investment managers;
- f. the management company must of its own resources have at all times an investment in the capital of the applicant equal to at least 10% of the capital, unless the Committee in its sole discretion, after taking account of the relevant experience of the management company, otherwise decides; and
- g. the applicant must disclose its portfolio to shareholders on a quarterly basis until such time as a reasonable proportion of the portfolio has been established in investments other than cash or short dated securities. This proportion will be determined by the Committee at the time of listing.

### **Contents of pre-listing statements**

- 15.5 The requirements of Section 3 apply with appropriate modification as agreed with the Committee. In addition, the following information should be provided, if applicable:
- a. a description of the investment policy to be followed;
  - b. if it is intended to invest in less than ten investments a statement of the fact;
  - c. an analysis of the investment portfolio, or proposed investment portfolio, by:
    - i. broad industrial or commercial sector; and
    - ii. listed and unlisted investments;
  - d. an analysis of funds not invested in shares or securities;
  - e. an analysis of income between dividends, interest and other forms of income;
  - f. a list of all investments with a value greater than 5% of the fund, and at least the ten largest investments, stating:
    - i. a brief description of the business;
    - ii. whether the securities held by the investment entity are listed, and if so, the name of the stock exchange;
    - iii. the proportion of share capital owned;
    - iv. the cost of the investment;
    - v. the market value of the investments, or if the investment is not listed, a valuation by the directors of the investment entity stating the date of such valuation;
    - vi. the income received during the year (including any abnormal income);
    - vii. any extraordinary items; and
    - viii. the net assets attributable to the investment;
  - g. an analysis of any provision for diminution in value of investments, naming the investments against which provision has been made and stating for each investments:
    - i. its cost;
    - ii. its book value;
    - iii. the provision made; and
    - iv. the reason for the provision;
  - h. an analysis of any unrealised profits stating separately those between listed and unlisted investments;
  - i. details must be given to the name of the group or company which manages the investments, together with an indication of the terms and duration of their appointment, the basis for their remuneration and details of their investment experience.

### **Annual financial statements**

- 15.6 In addition to the information specified in Section 8 an investment entity must report the information required in paragraph 15.5 in its annual financial statements.

**Investment policy**

15.7 The investment policy must be stated in the pre-listing statement and must be adhered to for at least three years following listing. Subsequently, all material changes to the investment policy must be approved by the Committee and by shareholders in general meeting. Unless otherwise stated in the investment policy:

- a. not more than 10% of the applicant group's assets (before borrowings) may be lent or invested in the securities of any one company; and
- b. not more than 25% of the applicant group's assets (before borrowings) may be invested in the aggregate of:
  - i. securities which are not listed on a stock exchange; and
  - ii. holdings in which the applicant group's interests amounts to 20% or more of the aggregate of the equity capital of any one listed company.

**Memorandum and articles of association**

15.8 The memorandum and articles of association or equivalent documents of the investment entity must, except where the Committee otherwise agrees, prohibit the distribution as dividend of:

- a. profits from associate companies unless and until distributed to the investment entity;
- b. surpluses arising from the realisation of investments except to the extent that the Committee agrees.

# SECTION 16

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## Listing and Other Fees

This section sets out the listing and other fees that are to be charged to Applicant Issuers, listed companies, Brokers, Non Member Institutions and Corporate Sponsors.

### 16.1. APPLICATION AND LISTING FEES

#### 16.1.1 Application fees

On lodgment of listing application by the applicant issuer the following fees shall be paid at the time of application

- a) Initial Application Fees - Shares - K1,000,000.00
- b) Initial Application Fees – Bonds - K 500,000.00

#### 16.1.1 Listing Fees

Where the committee has granted an approval on the listing application made by an applicant issuer, the issuer shall, within a period fixed by the committee, but not later than the date of listing, pay to the Exchange the listing fees as outlined below:

Market Capitalisation - MK			Marginal		
From	To	BAND	Rate	FEE	CUMULATIVE
1	500,000,000	500,000,000	1,000,000.00	1,000,000.00	1,000,000.00
500,000,001	1,000,000,000	500,000,000	0.1000	500,000.00	1,500,000.00
1,000,000,001	2,000,000,000	1,000,000,000	0.1000	1,000,000.00	2,500,000.00
2,000,000,001	3,000,000,000	1,000,000,000	0.1000	1,000,000.00	3,500,000.00
3,000,000,001	4,000,000,000	1,000,000,000	0.1000	1,000,000.00	4,500,000.00
4,000,000,001	5,000,000,000	1,000,000,000	0.0500	500,000.00	5,000,000.00
5,000,000,001	ABOVE		5,000,000.00		5,000,000.00

16.1.3 The monetary value of the securities for which application for listing is made will be determined as:

- (i) The number of securities for which application for listing is made multiplied by the issue price per security.
- (ii) In respect of rights issues, the value shall be calculated by multiplying the number of shares on offer by the issue price per security.

- (iii) In respect of Bonds, the Value is determined by the value of the bond issued.

## 16.2 ANNUAL SUSTAINING FEES

- a) An issuer of listed securities shall, not later than the 15<sup>th</sup> of January of each year pay an Annual Sustaining Fee to the Exchange as calculated below:

Market Capitalisation - MK			Marginal		
From	To	BAND	Rate	FEE	CUMULATIVE
1	500,000,00 0	500,000 ,000	1,000,000.00	1,000,000.00	1,000,000.00
500,000,001	1,000,000,00 0	500,000 ,000	0.1000	500,00 0.00	1,500,0 00.00
1,000,000,001	2,000,000,00 0	1,000,000 ,000	0.1000	1,000,00 0.00	2,500,0 00.00
2,000,000,001	3,000,000,00 0	1,000,000 ,000	0.1000	1,000,00 0.00	3,500,0 00.00
3,000,000,001	4,000,000,00 0	1,000,000 ,000	0.1000	1,000,00 0.00	4,500,0 00.00
4,000,000,001	5,000,000,00 0	1,000,000 ,000	0.0500	500,000.00	5,000,000.00
5,000,000,001	ABOVE		5,000,000.00		5,000,0 00.00

- b) A listing of securities may be suspended and ultimately terminated unless fees that are due, but unpaid, are paid within one month after written notice of demand has been given to an applicant issuer by the MSE.

## 16.3 MEMBERS FEES

16.3.1 Until otherwise determined by the MSE, all stockbrokers (members of the Exchange) will pay an initial, non-refundable, application fee of K500,000.00 in order for them to act as stockbrokers (members of the Exchange) as contained in Section 1 of the MSE Listings Requirements. This fee is to be submitted with the application to become a member.

16.3.2 All members will pay an annual membership fee of K625,000.00 per annum payable quarterly in advance.

## 16.4 BROKERAGE COMMISSION

16.4.1 All members will pay a five (5) percent Brokerage commission to the Exchange on the commission charged to clients.

16.4.2 The commission charged by members to clients shall be as follows:

Consideration (MK)	Rate (%)
MK0 – 50,000.00	2.0
MK50,001 – 100,000.00	1.5
MK100,001.00 -	1.0

16.4.3 The Broker shall levy VAT on total brokerage commission charged.

16.4.4 All trades for listed companies shall go through brokers (members of the exchange) including favour registration whose fee shall be K2,500.00 per transaction.

#### **16.5 NON-MEMBER INSTITUTION FEES**

16.5.1 Until otherwise determined by the MSE, all NMI will pay an initial, non-refundable, application fee of K150,000.00 in order for them to act as Non-Member Institutions (NMI) of the MSE. This fee is payable upon submission of an application form to the Exchange.

16.5.2 All NMI will pay an annual membership fee of K312,500.00 per annum payable at once in advance.

#### **16.6 CORPORATE ADVISORS**

The following fees are payable to the MSE by Corporate Advisor applicants:

- a) An application fee of MK1,000,000.00 payable at the time of application. The application fee is non-refundable; and
- b) Annual membership fee of K100,000.00
- c) A transaction fee of 2.5 percent of the total advisory fee charged to the applicant issuer per transaction subject to a minimum of K250,000.00 and a maximum of K1,500,000.00 payable within 30 days from the date of listing.
- d) The obligation to ensure that transaction fees has been paid rests upon the sponsoring broker and shall remain as debt due from the sponsoring broker If not paid as prescribed in paragraph 16.6 (c) above.

# SCHEDULE 21

## CORPORATE ADVISORS

### Introduction

This schedule contains certain Listings Requirements applicable to Corporate Advisors and should be read with Section 1.

Corporate Advisors will normally be brokers, banks and other professional advisors, including reporting accountants and attorneys. Such Corporate Advisors must undertake to the MSE that they accept certain responsibilities.

- 21.1 This schedule sets out the Listings Requirements of the MSE pertaining to the eligibility criteria of Corporate Advisors.
- 21.2 A Corporate Advisor may be a company, partnership or sole proprietor with sufficient executive staff to execute all sponsor requirements and responsibilities in accordance with the Listings Requirements.
- 21.3 The responsibilities of Corporate Advisors are set out in Section 1.

### Qualifications for approval

- 21.4 A Corporate Advisor must satisfy the MSE:
  - (a) that it is competent to discharge the responsibilities of a Corporate Advisor; and
  - (b) that it accepts the responsibilities of a Corporate Advisor and agrees to discharge those responsibilities at all times to the satisfaction of the MSE.
  - (c) that it is duly registered as an investment advisor under the Capital Market Development Act, if not it shall partner and operate with a registered investment advisor.

### Eligibility criteria

- 21.5 The following criteria must be met by a Corporate Advisor in order to satisfy the MSE that it is competent to fulfil the role of Corporate Advisor:
  - (a) Employment of staff with relevant experience**
    - (i) A Corporate Advisor will be expected to have staff who have considerable relevant corporate finance experience;

- (ii) A Corporate Advisor must be able to demonstrate to the MSE's satisfaction, that at least one of its executive staff have provided advice on corporate finance transaction in Malawi or outside Malawi. In respect of each executive, detailed evidence of the advisory work done in the last three years must be provided to the Exchange. Such executive staff will be classified as approved executives and recorded as such by the MSE ("approved executive classification or approved executives").
- (iii) A Corporate Advisor must provide details of each of its executive staff member's roles in corporate finance transactions and the nature of the advice given in order for the MSE to be able to determine which executive staff members qualify for approved executive classification. The MSE reserves the right to conduct whatever enquiry it deems necessary to ascertain the accuracy of the details provide in the application;
- (iv) the Corporate Advisor's approved executives must not have been:
  - (1) convicted of an offence resulting from dishonesty, fraud or embezzlement;
  - (2) censured or fined by a self regulatory organization, or recognized professional body;
  - (3) barred from entry into any profession or occupation; or
  - (4) convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act, or been a director or alternate director of officer of a company at the time such company was convicted of any similar offence;
- (v) if the relevant criteria detailed in 21.5(a)(i) to (iv) above are not satisfied, the MSE may still accept the applicant as a Corporate Advisor, provided that such Corporate Advisor has demonstrated to the MSE's satisfaction that it has the necessary expertise and adequacy of staff to properly discharge the responsibilities of a Corporate Advisors . In such instances such Corporate Advisors must have at least one executive approved as an approved executive by the MSE. In this instance the MSE will record whichever executive staff members have qualified for approved executive classification as well as the details of the other Corporate Advisor's staff employed ("employment status"). The MSE reserves the right to review such Corporate Advisor's status if and when there is any change to such Corporate Advisor's employment status, which must be notified to the MSE within 48 hours of such change.

**(b) Adequate supervision of staff**

- (i) a Corporate Advisor must ensure that all staff who do not qualify for classification are supervised and managed by approved executives whenever they are involved in corporate advisory activities; and
- (ii) a Corporate Advisor must have appropriate controls and procedures to ensure that staff involved in advisory activities do not act beyond their authority.

**(c) Sufficiency of staff**

- (i) Arrangements must be in place to ensure that a sufficient number of approved executives are always available to ensure that the advisor's responsibilities are properly discharged at all times.

**(d) Independence**

- (i) a Corporate Advisor must provide an undertaking that it will not act as a Corporate Advisor to any organization of which it is not independent (except with the specific approval of the MSE);
- (ii) a Corporate Advisor must provide confirmation of its independence for each corporate action in which it acts as advisor by completing Schedule 22A and submitting same to the MSE. A Corporate Advisor must also ensure it is independent of any clients to whom it provides advisory services/advice but which will not necessarily become the subject of a corporate action and will not require the completion of Schedule 21A;
- (iii) the question of a Corporate Advisor's independence must be determined in respect of each corporate action or other instance according to the following requirements;
  - (1) a Corporate Advisor may not control, be controlled by, or be under the same control as an applicant issuer unless the Corporate Advisor is acting as joint and non lead advisor. For this purpose, control is defined in the definitions section of the Listings Requirements;
  - (2) the above will not apply to investment entities where the Corporate Advisor's interest arises by virtue of the holdings of its non managed discretionary clients;
  - (3) a normal business relationship between an applicant issuer and any company which is part of the Corporate Advisor's group will not usually prohibit a potential advisor from acting. However, relationships that would give the Corporate Advisor's group a material interest in the success of a listing, or other corporate action may result in the advisor not being independent, and, in such instances, the MSE must be consulted;
  - (4) a Corporate Advisor may be the auditor and/or tax adviser and/or the reporting accountant to the applicant issuer, provided the MSE is satisfied that there is an adequate segregation of roles within the Corporate Advisor's group;
  - (5) any director or employee of the Corporate Advisor that has a significant interest in an issuer, being 5% or more for purposes of this requirement, or is material to the director or employee, must not be involved in advisory activities of the Corporate Advisor in relation to such applicant issuer.
  - (6) an investment in an issuer that is material to the Corporate Advisor will result in such Corporate Advisor not being regarded as independent of such issuer unless the MSE decides otherwise; and
  - (7) in any case of doubt, the MSE must be consulted;

Notwithstanding the above requirements the MSE recognizes that it is impossible to anticipate all circumstances under which a Corporate Advisor would be deemed not to be independent and accordingly reserves the right to determine the independence of a Corporate Advisor after having reviewed the declaration made by the Corporate Advisor in Schedule 21A.

## **THE APPLICATION PROCESS**

- 21.6 Applications to become an advisor must be made to the MSE by submitting the Advisor's application form (as set out in 21.21 below)
- 21.7 An applicant will be required to nominate a person to act as the primary contact with the MSE concerning the application.
- 21.8 The MSE will advise the applicant of the result of the application in writing.

### **Fees**

- 21.9 The following fees are payable to the MSE by the Corporate Advisor applicant:
- (a) an application fee of MK1,000,000.00 (MK1 million) payable at the time of application. The application is non-refundable;
  - (b) annual membership fee of K100,000.00
  - (b) a transaction fee of 2.5 percent of the total advisory fee charged to applicant issuer per transaction subject to a minimum of K250,000.00 and a maximum of K1,500,000.00 payable within 30 days from the date of the listing or transaction.

The obligation to ensure that transaction fees have been paid is rests upon the sponsoring broker or else shall remain as debt due from the sponsoring broker.

- 21.10 If the fees payable by Corporate Advisor are not paid in full as prescribed in paragraph 21.9 (a) and (b) above, no document from such an advisor /sponsoring broker will be accepted for submission to the MSE until the fees have been paid in full.

### **Register**

- 21.11 A register of Corporate Advisors will be published by the MSE

### **Designations**

- 21.12 A Corporate Advisor will be able, but not required, to state on its business documentation that it is a Corporate Advisor registered with the MSE, and may similarly disclose its approved executives.

### **Annual confirmation**

- 21.13 At the beginning of each year, Corporate Advisor is required to advise the MSE whether or not or it still meets the eligibility criteria, and specifically, whether or not it continues to have a minimum of one approved executives in its employ.
- 21.14 Individuals who wish to remain as registered Approved Executives must submit a sworn affidavit to the MSE by no later than 31 January of each year confirming that they were actively involved in providing advice on the application of the Listings Requirements during the previous 3 years and that they will continue doing so in the year to come. Failure to make this submission will result in the removal of the individual from the register.

### **Issues affecting approved executive status**

- 21.15 Whenever an approved executive of a Corporate Advisor resigns and moves employment to another Corporate Advisor, such person must notify MSE in accordance with this section in order for the MSE to determine whether they will approve such a person to act as an appointed executive at such new corporate advisor.

### **Issues affecting Corporate Advisor's status**

- 21.16 A Corporate Advisors must inform the MSE within 48 hours, in writing, if any of its approved executives leave its employment (including the situation where an approved executive is no longer physically present in the Corporate Advisors' offices and providing advice to issuers), and, if such departure causes the Corporate Advisor to have no approved executives in its employ it will have a period of three months in which to re-satisfy the eligibility criteria detailed in 21.5 above, failing which (unless the MSE provides dispensation in terms of schedule 21.5(a)(vi)) the advisor's status will be suspended until such criteria are satisfied. The MSE will publish such details of the suspension of Corporate Advisor.
- 21.17 A Corporate Advisor may resign as a Corporate Advisor by giving written notice to the MSE and the relevant applicant issuer.
- 21.18 If at any time the MSE considers that a Corporate Advisor or approved executive is no longer competent, the MSE may suspend the Corporate Advisor or approved executive on reasonable notice to the Corporate Advisor. If the Corporate Advisor or approved executive is dissatisfied with the MSE's decision in this regard they should notify the MSE in accordance with paragraph 1.17 of Section 1.
- 21.19 Notwithstanding acceptance by the MSE of a advisor's resignation, or withdrawal by the MSE of a advisor's status, the Corporate Advisor shall continue to be subject to the

jurisdiction of the MSE for a period of one year following the resignation or withdrawal of status.

21.20 A Corporate Advisor must immediately notify the MSE by email, facsimile and letter if any of the events below occur (failure to make full and timely disclosure to the MSE may result in disciplinary action against the Corporate Advisor:

- (a) any of the advisor's approved executives are:
  - (i) convicted of an offence resulting from dishonesty, fraud or embezzlement;
  - (ii) censured or fined by a self regulatory organization, or recognized professional body;
  - (iii) barred from entry into any profession or occupation; or
  - (iv) convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act, or was a director or alternate director or officer of a company at the time such company was convicted of any similar offence; or
  
- (b) an approved executive ceases to meet the criteria for approved executive classification.

**Corporate Advisor's application form**

21.21 Details of the advisor's application form to be submitted by the applying corporate advisor to the MSE are as set out below.

**CORPORATE ADVISOR APPLICATION FORM**

- 1. Name \_\_\_\_\_ of \_\_\_\_\_ applicant:  
.....
  
- 2. Trading name (if different from above)  
.....
  
- 3. Nature of entity (private company, public company, unlimited company, partnership, sole trader)  
.....
  
- 4. Name of contact person and contact details:  
.....  
.....  
.....  
.....  
.....

5. Is the applicant duly registered as an Investment Advisor under the Capital Market Development Act, 1990.

If Yes, provide proof of registration.....

If not, shall partner and operate with a registered Investment Advisor.

6. Which corporate financial/investment advisory services does the applicant intend offering?

.....  
.....  
.....

7. Describe public offers, mergers and acquisitions, or other corporate financial or capital markets experience of the applicant and its executive staff in the last three years. (Provide a suitable detailed table).

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.....

8. Names and other details of executive staff that will be involved in Corporate Advisory activities.

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9. What procedures and controls are in place to ensure that personnel do not act outside their authority?

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.....  
.....

10. Please state any other information that you may think is relevant to your application.

.....  
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.....  
.....  
.....

11. Have any of your approved executives been:
- (a) Convicted of any offence resulting from dishonesty, fraud or embezzlement? If yes, provide details.  
.....  
.....  
.....
  - (b) Censured or fined by a self regulatory organisation, or recognized professional body?  
.....  
.....
  - (c) Barred from entry into any profession or occupation?  
.....  
.....
  - (d) Convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act, 1984 or officer of a company at the time such company was convicted of any similar offence?. All such convictions must be disclosed even though they may now be spent convictions.  
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12. Applicant's undertaking to the MSE

We hereby apply for approval as a Corporate Advisor as defined in the Listings Requirements of the MSE. Should such application be successful, we undertake to:

- (a) Be bound by and discharge our responsibilities as Corporate Advisor under the Listings Requirements as amended from time to time.
- (b) Advise the MSE in writing without delay of our resignation or dismissal from a Corporate Advisor appointment giving details of any relevant facts or circumstances.
- (c) Provide description of any interest held by the Corporate Advisor, the Corporate advisor's group and any partner or director of that firm in the issuer or its subsidiaries or by the issuer in the Corporate Advisor.
- (d) Acknowledge that the MSE may censure us if the MSE considers that we are in breach of our responsibilities and that the MSE may publicize the fact that it has done so.
- (e) Apply the spirit of the Listings Requirements and uphold the identity of the MSE.

We declare that the information supplied is complete and correct and we agree to comply with the additional notification requirements. We have read the eligibility criteria for a Corporate Advisor and believe that this application confirms to the criteria.

Signature.....  
.....

Name ..... of  
Signatory.....

Position.....  
.....

Date.....  
.....

Signature.....  
.....

Name ..... of  
Signatory.....

Position.....  
.....

Date.....  
.....

**SCHEDULE 22**

**DECLARATION FORM BY CORPORATE ADVISOR**

The following declaration format must be used by Corporate Advisor when submitting the declaration on their letterhead to the MSE, The Chief Executive

.....20.....

Dear Sir,

**(Full name of Corporate Advisor)**

The attached application by (full name of applicant issuer) in respect of (brief description of the corporate action) is the subject of this Corporate Advisor declaration.

I, **(full name of approved executive)**, an approved executive of the above Corporate Advisor

- (a) Hereby confirm that I have satisfied myself to the best of my knowledge and belief, having made due and careful enquiry of the applicant issuer (and its advisers)\*, that all the documents required by the Listings Requirements to be included in the application have been supplied to the MSE; that all other relevant requirements of the Listings Requirements have been complied with; and that there are no material matters other than those disclosed in writing to the MSE that should be taken into account by the MSE in considering the suitability of the application. Should any further information come to my notice before the approval of the application, I will immediately inform the MSE.
- (b) here confirm that I will review each submission for full compliance with the Listings Requirements before submitting it to the MSE; and
- (c) confirm that with regard to our independence
  - (i) The following director(s), partner(s) or employee(s) ("employment capacity") of the Corporate Advisor has an interest in a class of share, debt or loan capital of (including the holding company, subsidiaries or associates) ("the issuer")

Name and employment capacity	Nature of holding or interest	%	Name of beneficial owner

