



REPUBLIC OF ZAMBIA

# GOVERNMENT GAZETTE

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GAZETTE NOTICE No. 815 OF 2010

[3024650

**The Banking and Financial Services Act**  
(Cap 387)

**Enforcement Decision and Order**

IT IS HEREBY NOTIFIED for public information that the Bank of Zambia, in exercise of the powers contained in section 81 (1) (c) (i) and (ii) of the Banking and Financial Services Act, CAP 387 (the "BFSA"), did on the 10<sup>th</sup> day of December, 2010 take possession of Finance Bank Zambia Limited with effect from 16:00 hours.

IT IS FURTHER NOTIFIED that in exercise of the powers conferred upon the Bank of Zambia by Section 84A (g) of the BFSA, and pursuant to the Resolution and Order of the Bank of Zambia Board passed on 10<sup>th</sup> December 2010, the Bank did on the 22<sup>nd</sup> day of December 2010 terminate, with immediate effect, the shareholder interest in Finance Bank Zambia Limited (FBZL) of all and each of the listed shareholders for the reasons stated below:

- (i) *Credit Suisse Investments (Nederland) B.V*  
Chris Corson  
Managing Director – Credit Suisse Securities (Europe) Ltd  
Honthorststraat 19, 1071 DC Amsterdam  
The Netherlands.
- (ii) *Finsbury Investments Limited*  
Plot 226, Finsbury House, Buteko Avenue  
P.O. Box 70238  
Ndola  
Zambia.
- (iii) *Clarkwell Limited*  
90 Main Street  
P.O. Box 3099  
Tortilla, British Virgin Islands.
- (iv) *Job Albert T Samuel*  
Lakeland Drive  
Etobicoke, Ontario  
Canada
- (v) *Estate of the Late Pat Bwalya Puta*  
Plot 7, Kansenshi Smallholdings  
Ndola  
Zambia.  
(Deceased)  
Mrs Anne Puta – The Administrator to the Estate of the late P B Puta
- (vi) *Patrick Chamunda*  
Managing Director – Chemoplast Limited  
50 Independence Avenue  
Kitwe  
Zambia.

## 1. RATIONALE FOR POSSESSION OF FBZL

## SUMMARY

- 1.1 The Bank concluded, on the basis of the facts and matters described below, that in its opinion FBZL was failing and would probably have continued to fail to conduct its business in accordance with the law. In the Bank's opinion, FBZL was conducting its business in a manner that was unsafe and unsound. Further, in the Bank's opinion FBZL would have been unable or was likely to have become unable to continue its operations in the ordinary course of business.
- 1.2 FBZL had weak corporate governance and risk management systems which facilitated the perpetration of wanton violations of the provisions of the BFSA, subsidiary legislation and other regulations.
- 1.3 In particular, FBZL through its shareholders, directors or senior management, either collectively or individually, violated various provisions of the BFSA and its Statutory Instruments (SIs) including:-
  - 1.3.1 *Section 23(2) (Limitation on voting control)*: Dr. R. L. Mahtani, through Finsbury Investments Limited, with shares held by nominees or otherwise, effectively controlled 56.5% of FBZL's shareholding in contravention of the 25% limit;
  - 1.3.2 *Section 33 of the BFSA (Conduct of Directors, Chief Executive Officers, Chief Financial Officers and Managers)*: Failure to act in the best interest of FBZL and failure to exercise due care, diligence and skill by allowing indiscriminate approvals and granting of loans to insiders contrary to sound lending practices;
  - 1.3.3 *Section 35 of the BFSA (Disclosure of Interest)*: Failure to declare interests relating to contracts, facilities, proposed contracts or facilities with FBZL;
  - 1.3.4 *Section 73 of the BFSA and SI 96 (limitations on granting loans)*: Exposing FBZL to a single risk exposure of 62% being an exposure in excess of the statutory limit of 25% of regulatory capital as evidenced by the aggregate exposure of three (3) borrowers Zambezi Portland Cement, Cladava Mining Limited and Ital Terrazzo Limited as a common enterprise;
  - 1.3.5 *Section 77 of the BFSA - Unsafe and Unsound Banking Practices*: The bank's lending relationship with insider companies departed from sound lending principles and breaches of banking regulations. In addition, management repeatedly failed to comply with the provisions of the law and recommendations from previous inspection reports;
  - 1.3.6 *Section 52 of the BFSA on credit administration*: Failure to keep required credit information on credit files;
  - 1.3.7 *Section 36 (a) of the BFSA and CB Circular 01/2009 on Submission of Prudential Returns*: Issuance of false or misleading statements through Returns especially on insider loans and classification and provisioning;
  - 1.3.8 *Regulation 9 of SI 97 of 1996 (Insider Lending)*: Failure to maintain, adduce or procure board resolutions and supporting credit appraisal documentation to evidence participation by other board members in the approval of the loans to all insiders as prescribed;
  - 1.3.9 *Regulation 17 (1) and 18 (1) of SI 142 (Classification and Provisioning of Loans)*: Failure to classify non-performing loans and advances as required by *Regulation 17 (1)*, and as a result the bank's provisions fell short of the minimum provisioning requirements of *Regulation 18 (1)*;
  - 1.3.10 *Regulation 5 (1) of SI 142 (Classification and Provisioning of Loans)*: Failure to maintain, adduce or procure an effective loan review system

## 2. RATIONALE FOR THE TERMINATION OF SHAREHOLDER INTERESTS

## SUMMARY

- 2.1 Section 84A of the BFSA vests full and exclusive power of management and control of FBZL under its possession in the Bank of Zambia. Furthermore, when in possession, the Bank of Zambia has statutory and legal authority to terminate the interests of shareholders in FBZL, with compensation to be determined by a court of law.

- 2.2 The purported holding of shares by Finsbury, Clarkwell Limited and Mr J A T Samuel in FBZL, was characterised by complex trust and transfer arrangements whose final consequence was that the beneficial shareholding in FBZL was not that of the declared entities but converged on the CEO and Executive Chairman of Finsbury, Dr R.L. Mahtani.
- 2.3 The Bank had reason to believe that the indirect acquisition of shares into FBZL by Dr R.L. Mahtani via complex arrangements violates the provisions of the BFSA [S.23(6)] as neither the declared shareholders nor Dr R.L. Mahtani disclosed these obscure share arrangements to the Bank.
- 2.4 The Bank had reason to believe that the acquisition by Credit Suisse of 40% shareholding stake in FBZL appears to be a lending transaction because of the underlying agreements that were not disclosed to the Bank. Amongst other things, these agreements guaranteed a return to Credit Suisse on their investment.
- 2.5 As a result of these matters FBZL and certain of its shareholders had violated several pertinent provisions of the BFSA and other Regulations in a manner that constituted unsafe and unsound banking practices.
- 2.6 The Bank considers that the approvals given to certain of the shareholders to hold shares in FBZL were obtained by fraudulent misrepresentation. This necessitated the Bank to withdraw its approvals on June 4, 2010 in respect of certain shareholders. As a supervisory authority, it is imperative for the Bank to assess the fitness and propriety of shareholders of all banks in order to among other things, safeguard the integrity of the financial system.
- 2.7 The Bank considers it necessary on the basis of these facts and matters outlined above that, in order to protect the interests of depositors and other stakeholders, for the action specified above to take immediate effect.

#### RELEVANT STATUTORY PROVISIONS

- 2.8 The Bank of Zambia's mandate to regulate, supervise, and facilitate the enforcement of prudential and safe banking practices is contained in the Bank of Zambia Act, No.43 of 1996 and the BFSA.
- 2.9 In terms of the Bank of Zambia Act, the Bank's mandate is to licence, supervise and regulate the activities of banks and financial institutions so as to promote the safe, sound and efficient operations and development of the financial system.
- 2.10 In terms of the BFSA, the Bank is mandated to supervise all financial service providers licensed by it and has the statutory authority to take enforcement actions against them, for violations of laws, rules, or regulations, unsafe and unsound banking practices, breaches of fiduciary duties, and violations of final orders, conditions imposed in writing or written agreements. In addition, the Bank has the statutory authority to take supervisory action against any service provider, its directors, officers or shareholders for violation of a law, rule, regulation, condition imposed in writing, or written agreement, or for engaging in unsafe or unsound banking practices.
- 2.11 The Bank of Zambia is authorised by Section 81 to take possession of an erring financial services provider. Once in possession the Bank is vested with full and exclusive powers of management and control of the financial service provider including the power to terminate the interests of the shareholders at a value to be determined by the court; and

#### FACTS AND MATTERS RELIED ON

- 2.12 The Bank Inspections conducted on FBZL by Bank of Zambia.
- 2.13 The Bank's due diligence inquiry conducted in May 2010 whereby all the declared shareholders including the natural persons behind the corporate entities holding shares in FBZL were invited to attend in person and they informed the Bank that they were nominees for Dr R.L. Mahtani.
- 2.14 Relevant documents in possession of the Bank in connection with the shareholding by Mr J A T Samuel, who did not attend the meetings, which confirm that he too is a nominee of Dr R.L. Mahtani.
- 2.15 Declarations of Trust documents in the possession of the Bank made by John Stoltzfus, on behalf of Clarkwell Limited.
- 2.16 Statements made by Mary Schultz and Gabriel Schultz to Drug Enforcement Commission confirm that they were nominees of Dr.R.L. Mahtani.

## 3.0 CONCLUSION

3.1 The facts and matters described above led the Bank, having regard to its regulatory objectives, to the following conclusions:-

- That the shareholders, directors and senior management, whether acting individually or collectively, perpetuated breaches of various provisions of the BFSA, other applicable legislation and statutory instruments; and
- That the shareholders, directors and senior management, whether acting individually or collectively, were therefore not fit and proper persons to discharge their responsibilities in the best interest of FBZL.

3.2 That for reasons herein stated the Bank exercised the power conferred by Section 84A (g) of the BFSA by terminating, with immediate effect, all shareholder interest in the equity of Finance Bank Zambia Limited (FBZL) and ordered that such shareholders as are affected by this enforcement decision be compensated for their shares at a value to be determined by the Court pursuant to Section 84A(g).

P.O. Box 30080  
LUSAKA

M. K. CHISUNKA,  
Bank Secretary,  
Bank of Zambia

Gazette Notice No. 816 of 2010

[3024650

**The Value Added Tax Act**  
(Laws, Volume 19, Cap. 331)

**The Value Added Tax General (Amendment) Rules 2010**

IN EXERCISE of the powers contained in section *twelve, thirteen, Sixteen, eighteen, twenty-seven, twenty-eight, fifty-two* of the Value Added Tax Act, the following rules are hereby made:

*Title and commencement (Gazette Notice No. 86 of 1997)*

1. These rules may be cited as the Value Added Tax General (Amendment) Rules, 2010 and shall be read as one with the Value Added Tax General Rules, 1997, in these Rules referred to as the Principal Rules.
2. These Rules shall come into operation on 1<sup>st</sup> January, 2011.

3. AMENDMENT OF RULE 4.

The Principal Rules are amended by the deletion of Rule 4 and substitution therefor of the following:

4. (1) A registered supplier, shall issue a tax invoice to a customer in respect of any taxable supply of goods or services to the customer,

(a) All registered suppliers are required to issue tax invoices for all goods and services supplied, and the tax invoices shall be taken from a serially numbered pre-printed invoice book or where approval of the Commissioner General has been granted, a computer package with the following features:

- (i) printed invoices, credit notes and debit notes bearing all mandatory features of a tax invoice;
- (ii) automatic and consecutive document numbering with inbuilt safeguard against reallocation or resetting of the numbers in any circumstance;
- (iii) transactions once posted and a tax invoice printed, become read only to all users or where possible editing is possible, a read-only audit trail showing original details is in-built;
- (iv) Period transaction reports showing invoice number, invoice date, customer name, description of goods or services supplied value before VAT and VAT amount.

Provided that for Banks and other financial institutions, registered under the Banking and Financial Services Act, a bank statement shall qualify as a tax invoice.

(b) Registered suppliers issuing tax invoices and banking institutions issuing bank statements in foreign currency shall indicate the rate of conversion to Kwacha at the transaction date.

LUSAKA  
31st December 2010

W. NHEKAIRO,  
Commissioner General,  
Zambia Revenue Authority