

# Insight<sup>®</sup>

## Schemes of Arrangements & Business Rescue Proceedings in Zambia

The unprecedented economic  
impact of the Covid-19 pandemic

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Corpus' Managing Partner  
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@ the  
**firm:** New members to our team  
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**"The Firm is one of the leading corporate law firms in the Zambian market. The quality of their work, their customer service, technology uptake and billing are all very good."**

**– Capital Markets, Competition, and Project Finance  
IFLR1000 2019.**



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**"They're professional, provide good service, are knowledgeable and know the local market and dynamic well."**

- Chambers Global Guide, 2019.





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# A warm welcome to the fourth edition of our newsletter!

Welcome to the fourth edition of our quarterly newsletter which keeps you current with legal developments and provides updates on any developments at our firm.

In this issue, Jackie Jhala, Head of our Corporate Advisory Department, looks at measures' companies can take to counter the adverse effects of the COVID-19 pandemic on their businesses. We also profile our new Managing Partner Sydney Chisenga and other members who have since joined the Corpus family.

We hope you will find our newsletter insightful and informative. In our quest to better serve you, we would be glad to receive any feedback you may have on our newsletter or other topics you may wish to see in future publications.

Pleasant reading.

**Charles Mkokweza**



# New at the firm

We're delighted to welcome new members to the team at Corpus Legal Practitioners. They bring a diverse set of skills and experience to shore up our multi-sectoral support.

## About our new hires



**Ken Phiri** joins as an Associate in the Dispute Resolution and Public Policy Department where he practices commercial litigation. As a member of the Dispute Resolution and Public policy team, Ken's focus includes employment disputes, Class action, regulatory issues, Mergers and Acquisitions and Arbitration action suits.



**Nkondelina Chileshe** is an Associate in the Energy Resources and Infrastructure Department. As a member of the Energy Resources and Infrastructure Department, Nkondelina's focus includes energy resources and land matters, corporate compliance of legal entities, intellectual property, Infrastructure & Real Estate and Transport and Logistics.



**Mwila Balungu** is an Associate in the Corporate Advisory Department. As a member of the Corporate Advisory Department, Mwila's focus includes employment, data protection and privacy laws and Agribusiness.



**Clarence Chama** comes on board as a legal assistant in the Energy Resource and Infrastructure Department. His focus in his work includes transfer of properties for clients, documenting actions, establishing and organising files.



# Talk: In conversation with Corpus' Managing Partner

## 1. Who is Sydney Chisenga?

He is a passionate and versatile corporate - commercial lawyer who is solution oriented.

## 2. What does your role as Managing Partner entail?

The role of Managing Partner involves the day to day running of the firm through a deliberate support structure that aims at achieving the firm's strategic goals and objectives. It also involves mentorship of our lawyers. Most importantly, it entails ensuring the smooth running of the firm whilst maintaining delivery of a seamless and professional service to all of our clients.

## 3. How has it been going so far in the new role?

It is a challenging role which has taught me to be patient and to have empathy. It is most challenging during these difficult times as one must balance the needs of the business whilst equally being alive to the economic challenges brought about by the Covid-19 pandemic.

## 4. What have been some of the highlights of your years at Corpus?

Having the opportunity of being involved in novel high profile corporate-commercial litigation work. Further, being part of a team of trend setters in unique non-contentious corporate- commercial work such as complex schemes of arrangements, project finance, solar projects, setting up and supporting mining companies, transfer pricing work, competition work such as excessive pricing, competition audits, abuse of dominance and merger work.

## 5. And what are some leadership lessons you have learnt?

Some of the lessons that I have learnt include the fact that building a business also involves building people around you professionally and the need to act in the best interest of the clients and the firm. It is service above self.

## 6. You are heading the Dispute Resolution and Public Policy department alongside being a Managing Partner. How do you juggle the two?

My daily schedule is deliberately structured to ensure that I execute the two roles with

efficiency and effectiveness. It also helps having a strong dedicated management team around me.

## 7. What are some of the highs and lows of dispute resolution as a practice in law?

The highs have always been when a seamless service is delivered to the client which leads to a favorable and well- reasoned judgment. In short, to achieve the objectives of our clients. The lows are when the client's objectives cannot be met due to some extraneous reasons which I cannot venture into. I am a strong believer in the rule of law and a functioning legal system to ensure equitable justice for all.

## 8. The public perception in Zambia is that once you have been called to the Bar as a lawyer, it is plain sailing from there. What has Corpus put in place to ensure your team is challenged to perform at the highest level consistently?

Firstly, being admitted to the Bar does not guarantee you success. What guarantees you success in law practice is an appropriate work culture attitude, your hunger to continuously develop yourself professionally and integrity.

## 9. Everyone is talking about resilience and adaptation to the "new normal". How have you adapted to this new environment as a law firm?

We have adopted internationally accepted health protocols and have additionally engaged the services of a health consultant to support our efforts in ensuring the safety of all our staff members and clients.

## 10. Covid-19 has restricted our travel and underlined the importance of strong Pan-Africanism and global networks for organizations to remain relevant. Tell us about the partnerships that Corpus has in place to remain in touch with best practices, global trends and business opportunities.



We are a member of an African alliance of independent law firms and we also have strong relationships with some of the best firms internationally. Our philosophy as a firm has always been to match the best in the world. We have highly trained and experienced lawyers which has helped us achieve this philosophy. We have equally adapted to new trends in technology. Internationally, we keep in touch with our colleagues spread across the globe as we participate in global events, seminars, webinars, article contributions among many other such initiatives.

## 11. How do you see the challenges brought on by the pandemic affecting not only how you operate as a law firm but also the legal services industry in Zambia?

It is definitely not business as usual. The legal services industry in Zambia needs to adapt and embrace technology. The judiciary has embraced technology and we commend the Chief Justice. As a firm, we have ensured to explore new technology options to deliver a seamless service to our clients and also minimize the risk to our staff and clients.

## 12. Any word to your clients that have supported you and your firm over the years.

As a firm, we are grateful to our clients for reposing their trust in us. Our reassurance to our client is continuous delivery of high quality work and provide commercial solution oriented legal work. To our clients, we value your support and we shall continuously strive to ensure that your businesses become even more successful.



# Schemes of Arrangements and Business Rescue Proceedings in Zambia

**Jackie Jhala is a partner at Corpus Legal Practitioners and heads the Corporate Advisory Department.**

## Introduction

The unprecedented impact of the Covid-19 pandemic has been far reaching. From governments to small and medium scale enterprises, the effect of the global pandemic has left the world wondering what an economic recovery looks like. World and business leaders are navigating a complex range of issues that include keeping their employees and customers safe, hedging cash and liquidity, reviewing operations and navigating an entirely new economic landscape.

To help our clients navigate the economic impact of Covid-19 on their businesses, this article considers in brief, some options companies can consider to stay afloat under the Corporate Insolvency Act, No. 9 of 2017.



## Schemes of Arrangements

### What is a scheme of arrangement under Zambian law?

This is a procedure which can be used by a financially distressed company to reach a binding agreement with its creditors with respect to payment of all, or part of, its debts over an agreed period.

### What is the procedure for effecting a scheme of arrangement?

A scheme of arrangement can be initiated either by the:

- (i) company;
- (ii) creditors; or
- (iii) members.

Any one of the above can apply to the High Court for Zambia (the "Court") asking:

- (i) for one or more scheme creditors' meetings to be summoned; and;
- (ii) for the scheme to be sanctioned.

Following such application, the Court makes an initial Order allowing one or more meetings of creditors to be summoned and setting out the guidelines for convening and holding the meeting or meetings. At a meeting of creditors, the voting power is assigned to the creditors in proportion to the amount of the debt outstanding from the company to each creditor.

The threshold for approval of the scheme is 75% of the votes of the creditors entitled to vote in person or by proxy. Once the voting threshold is attained at the meeting of creditors, the scheme then becomes binding on all the creditors.

The company or any creditor thereafter petitions the Court to approve the scheme. After the scheme has been sanctioned by the Court, the Order sanctioning the scheme must be filed with the Registrar (the "Registrar") of the Patents and Companies Registration Agency ("PACRA") following which the scheme becomes effective and also binding on the company.

A scheme of arrangement terminates after it has been implemented and its implementation has been reported to the Court.





## Business Rescue Proceedings

### What are business rescue proceedings under Zambian law?

Business rescue proceedings are proceedings aimed to facilitate the rehabilitation of a company that is financially distressed by providing for:

- (i) the temporary supervision of the company, and the management of its affairs, business and property, by a business rescue practitioner;
- (ii) a temporary moratorium (stay) on the rights of claimants against the company or in respect of property in its possession; and
- (iii) the development and implementation, if approved, of a business rescue plan to rescue the company by restructuring its business, property, debt, affairs, other liabilities and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result if the company was to be liquidated.

### What is the purpose of business rescue proceedings?

The aim of business rescue proceedings is to restructure the affairs of a company to maximise the likelihood of the company to continue as a going concern or results in a better return for the creditors of the company than would result from a liquidation of the company.

### When can business rescue proceedings be initiated?

When a company is financially distressed and there appears to be a reasonable prospect of rescuing the company. To be financially distressed means that a company is likely to be insolvent within the immediately ensuing six months.

### What is the procedure for effecting business rescue proceedings?

Business rescue proceedings can be commenced either by the members or by an affected person. If initiated by the members, they are required to pass a special resolution to begin the process. The resolution becomes effective after it has been filed with the Registrar.

If commenced by an affected person, such person is required to apply to the Court for an Order to place the company under supervision and begin business rescue proceedings. An affected person is defined to include:

- (i) a regulator;
- (ii) a shareholder;
- (iii) a member;
- (iv) a director;
- (v) a creditor;
- (vi) an employee;
- (vii) a former employee;
- (viii) a registered trade union representing employees of the company; and
- (ix) the Registrar.

The Court may thereafter make an Order placing the company under supervision and begin business rescue proceedings. Once business rescue proceedings have commenced, this generally acts as a stay on legal proceedings against the company.

Following filing of the special resolution at PACRA or granting of a Court Order to place the company under supervision and begin business rescue proceeding, a business rescue administrator is appointed by the members or an affected person as the case may be.

One of the main duties of a business rescue administrator is to create a business rescue plan in consultation with the creditors, the management of the company, and where applicable, shareholders. A proposed business rescue plan shall be approved, at a meeting convened on a preliminary basis, if:

- (i) it is supported by the holders of more than 75% of the affected persons' voting interests; and
- (ii) the votes in support of the proposed plan include at least 50% of the independent creditors' voting interests, if any.

A business rescue plan that has been adopted binds the company, every creditor, affected person and holder of the company's securities, whether or not that person was present at the meeting; or voted in favour of adoption of the plan; or had proven their claims against the company.

Business rescue proceedings can terminate when:

- (i) the court sets aside the resolution or order that began the proceedings;
- (ii) the court converts the proceedings to liquidation proceedings;
- (iii) a business rescue administrator files with the Registrar and the official receives a notice of the termination of the business rescue proceedings; or
- (iv) a business rescue plan is proposed and rejected, and no affected person applies to revise the plan.



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# Short Shots

This section provides updates on laws and policies that have recently been enacted partly due to the advent of the Corona Virus disease. A number of laws and policies have been introduced as a way of protecting the public and cushioning the impact of the pandemic on businesses.

The following are some of the laws and policies that have been introduced:

## 1. Circular 13/2020 Bank of Zambia Prudential Relief Measures in view of Covid 19

The above circular was issued as a way of supporting the financial sector during the period of the Corona Virus Pandemic. Specific areas that have been addressed include Regulatory Capital, Liquidity support, Collateral Transition arrangements, Restructuring of existing Credit facilities and Partial use of Capital instruments. More information can be obtained in the link below.

<https://www.boz.zm/CBCIRCULARNO13OF2020BANKOFZAMBIAPRUDENTIALRELIEFMEASURESINVIEWOFCOVID19.pdf>

## 2. Circular 14/2020 Bank of Zambia Targeted Medium Term Refinancing Facility

Circular 14/2020's main aim is to strengthen and enhance financial sector resilience in the wake of Covid-19 and its potential devastating impact on the domestic economy. Under this facility the Bank of Zambia has been providing liquidity to eligible financial service providers for onward lending to viable and priority sectors of the economy. More information can be obtained in the link below.

<https://www.boz.zm/CBCIRCULARNO14OF2020BANKOFZAMBIATARGETEDMEDIUMTERMREFINANCINGFACILITY14April2020.pdf>

## 3. Statutory Instrument No. 22 of 2020 on Public Health (Infected Areas) (Corona Virus Disease 2019) Regulations, 2020.

These regulations were issued in response to the Covid-19 pandemic and a measure to provide guidelines to businesses on areas that include conversion of building as hospitals, observation camp or station, exit from hospital, observation camp or station, entry or exit from infected area, restriction on gatherings and sanitation & hygiene in public gatherings. More details can be obtained in the link below.

<https://zambialii.org/zm/blog/Statutory%20Instrument%20No.22%20of%202020%20%282%29.pdf>

## 4. Latest Travel Policy

The President of the Republic of Zambia H.E. Dr. Edgar Chagwa Lungu announced the re-opening of Zambia's international airports in July 2020. As restrictions are eased on international travel, measures have been put in place to safeguard travelers in the new normal. Some of the provisions in the policy include requirement for business travelers, students and tourists to produce a negative SARS COV2 PCR to gain entry into the country, returning citizens or residents without results will be quarantined for 14 days, new arrival procedure at the airport, standard operation procedures and airport preventative measures. More details can be obtained in the link below.

<https://www.zambiaimmigration.gov.zm/wp-content/uploads/2020/08/Guidelines-and-Measures-at-Airports.pdf>

## 5. Statutory Instrument No. 57 of 2020. Electricity (Common Carrier) (Declaration) Regulations, 2020

This Statutory Instrument was issued to the effect that the transmission and distribution lines set out in the Schedule of the Statutory Instrument are declared as a common carrier for the

purposes of the Act and shall be used on the terms and conditions determined by the Energy Regulation Board. It came into effect on 29 May 2020. More details can be obtained in the link below:

<https://zambialii.org/zm/legislation/statutory-instrument/2020/no-57-2020>

## 6. Statutory Instrument No. 76 of 2020. Customs and Excise (Suspension) (Fuel) Regulations, 2020.

This Statutory Instrument was issued to the effect that customs duty on petrol of heading 2710.12.10 and diesel of heading 2710.19.10 is suspended to zero percent where the oil marketing companies specified in the Schedule to the Statutory Instrument imports the quantities of petrol or diesel for filling stations as specified in the Schedule to the Statutory Instrument. It came into effect on 14 April 2020 and shall stand revoked on 18 September 2020. More details can be obtained in the link below

<https://www.corpus.co.zm/resources/legal-guides/file/20-statutory-instrument-no-76-of-2020-customs-and-excise-suspension-fuel-regulations-2020>

## 7. Statutory Instrument No. 77 of 2020. Customs and Excise (Suspension) (Mukula) Regulations, 2020

This Statutory Instrument was issued to the effect that the export duty on Mukula of heading 4403.12.00 shall be suspended to free where the organization specified in the Schedule to the Statutory Instrument export the quantities of Mukula as specified in the Schedule to the Statutory Instrument. It came into effect on 24 July 2020 and shall stand revoked on 30 November 2020. More details can be obtained from the link below.

<https://www.corpus.co.zm/resources/legal-guides/file/19-statutory-instrument-no-77-of-2020-customs-and-excise-suspension-mukula-regulations-2020>

## 8. Statutory Instrument No. 75 of 2020 Customs and Excise (Suspension) (Copper Ores and Concentrates (No. 40) Regulations, 2020.

This Statutory Instrument was issued to the effect that export duty on copper ores and concentrates of heading 2603.00.00 shall be suspended to free where the mining company specified in the Schedule to the Statutory Instrument export the quantities of copper ores and concentrates specified in the Schedule to the Statutory Instrument. The Statutory Instrument came into operation on 17 August 2020 and shall stand revoked on 31 December 2020. More details can be obtained from the link below.

<https://www.corpus.co.zm/resources/legal-guides/file/21-statutory-instrument-no-75-of-2020-customs-and-excise-suspension-copper-ores-and-concentrates-no-40-regulations-2020>

## 9. Statutory Instrument No. 48 of 2020. Employment Code (Exemption) Regulations, 2020.

This Statutory Instrument was issued to exempt any person or persons or any trade, industry or undertaking listed in the Schedule to the Statutory Instrument from specific provisions specified in the Schedule thereto. More details on the exemptions can be found in the link below.

<https://www.corpus.co.zm/resources/legal-alerts/file/17-employment-code-exemption-regulations>



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Corpus Legal Practitioners ("CLP") is a partnership registered under the Business Names Act in Zambia with registration no. 71892.

It is regulated by the Law Association of Zambia.

A list of CLPs' practicing lawyers is available for inspection at its registered office:  
**Piziya Office Park, Stand No. 2374, Thabo Mbeki Road, Lusaka.**

The term "**partner**" is used to refer to any of the partners of CLP.

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