

Legal Aspects of Securities Exchange Listing—The Case of African Securities Exchanges, and the Alternative Investment Market

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ABSTRACT

Most of Africa's securities exchanges were established in the late 1980s, and 1990s. Since their establishment, the major source of listings for most of these exchanges has been the privatization of state-owned enterprises (SOEs). The second, albeit unreliable, source of listings for African securities exchanges are the domestic enterprises. However, over the years, the privatized entities have performed so poorly that they could not proceed to list on the domestic securities exchanges. To compound the failure of privatization, domestic enterprises, most of which are family businesses, are reluctant to list on domestic securities exchanges because they think they might lose control of the enterprise if they were subjected to public ownership and disclosure. These two factors have stalled the growth of listings on most African securities exchanges. The central argument of this article is that a competitive and vibrant Alternative Investment Market (AIM) could serve as a steady source of listings for the Main List (the main Securities Market). The corollary argument is that the participation of domestic Micro, Small, and Medium scale Enterprises (MSMEs), which together hold the preponderant portion of domestic capital, in the AIM could be promoted by the development of less stringent listing rules which facilitate the listing of MSMEs, and the enactment of effective regulatory rules which facilitate the active participation of domestic and foreign Venture Capital Funds (VCFs) on domestic securities exchanges. Taking the doctrine approach to examining the effectiveness of regulatory rules and institutions, this article examines the Zambian regulatory and institutional framework which governs the listing of entities on domestic securities exchanges so as to establish whether or not the said framework provides adequate incentives for the participation of MSMEs in the AIM. The main findings of the study were that (a) the law and policy does not allow other entities than companies to list on domestic securities exchanges (b) the Lusaka Securities Exchange rules allow other entities than companies to list on the exchange (c) although the law and policy permits the participation of domestic and venture capital on domestic securities exchanges, foreign VCFs are not so permitted.

Key Words: Securities, Exchange, Listing, Africa, Alternative, Investment, Market

INTRODUCTION

Most of the securities exchanges in the Common Market for Eastern and Southern Africa (COMESA), and in other regional markets on the African continent are relatively new.^[1] They have been operating since the late 1980s and 1990s.^[2] The proliferation of securities exchanges on the African continent coincided with a new neo-liberal policy which emphasized the privatization of large stakes in state-owned enterprises (SOEs).^[3]

Over the years, the rapid increase in the number of securities markets across Africa has been driven by two policy objectives, namely:

1. to increase efficiency through privatization; and
2. to achieve economic growth through financial development.^[4]

These two policy objectives are the core of the International Monetary Fund (the IMF), and the World Bank

Structural Adjustment Programs (SAPs). The SAPs emphasize economic liberalization and the reduction of state control in the economy.^[5] The free market economy, and the establishment of the Lusaka Securities Exchange in Zambia are a realization of the IMF/WB economic liberalization objective. In part, this explain why the preponderant part of the capitalization of most African securities exchanges comes from privatizations.^[6] As N’gambi observes with respect to Zambia:

The Zambian economy has historically been linked to copper production. Prior to liberalization of the economy, the mines were in State hands, under the auspices of Zambia Consolidated Copper Mines (ZCCM). After 1991, however, the government embarked on a privatization programme. This eventually culminated in the mines being split into seven and being sold to foreign mining companies.^[7]

It is worth noting that out of the twenty-four (24) entities which are currently listed on the LuSE, six (6) come from the mining sector. These entities are:

1. Mopani Copper Mines PLC;
2. Konkola Copper Mines PLC;
3. Kansanshi Copper Mines PLC;
4. Zambia Consolidated Copper Mines—Investment Holding (ZCCM-IH);
5. Chibuluma Mine PLC (CHIBM); and
6. Chambeshi Metals PLC (CMET).^[8]

With the incorporation of Industrial Development Corporation (Zambia) Limited,^[9] many more SoEs are yet to be listed on the Lusaka Securities Exchange.^[10]

BACKGROUND TO THE PROBLEM

Although previously considered as an insignificant segment of the domestic and regional financial markets, securities markets on the African continent have over the past two decades been recognized as viable venues in which private capital could be mobilized and channeled to productive investments in the domestic economy. One of the key ingredients for the success of securities markets is the sufficient supply of a wide-range of financial assets (securities) from which investors could meaningfully hedge against financial market risk.^[11] And, of course, the other ingredient is sufficient demand for securities that are supplied to securities markets.^[12] However, one of the notable reasons why most companies do not venture to raise capital in Africa’s securities markets is the illiquidity of these markets. Now, liquidity is a function of supply and demand for the listed securities. As observed by the author elsewhere, the supply of securities to a securities market is a function of the number of entities which are recognized as listable entities, and the number of financial assets which are recognized as issuable, listable and tradable securities. In the case of Zambia, and many other African countries, the argument is that the recognition of companies as the only entities which could issue and list their securities on domestic securities exchanges serves only to reduce the supply of securities to the domestic securities markets. This sort of conception excludes other entities such as foreign companies, and domestic and foreign cooperative societies, other bodies corporate, associations and trusts which are competent to issue securities and list on domestic and foreign securities exchanges. Real demand for the securities on the other hand is a function of the following, namely:

- a) Listing of securities—primary listing, and cross-border cross-listing;
- b) Securities advertisement;
- c) Accessibility of the listed securities—market access;
- d) Efficient legal and regulatory rules, and regulatory institutions—these should be able to facilitate speedy

transfer of securities at minimum cost;

e) Liquidity of the market;

f) Profit potential of the listed securities;

g) Savings of the investor;

h) The risk inclination of the potential investor—are they risk-seeking or risk-averse;

i) The financial education of the potential investor;

j) The nature of the investor—are they institutional or retail or individual? and

k) The experience of the potential investor during their previous participation in a particular market.

Due to poor securities advertisement, especially cross-border securities advertisement,^[13] limited market access, inefficient legal and regulatory rules, and regulatory institutions, the illiquidity of domestic securities markets, and generally low incomes of citizens in most African countries, and poor institutional-investor participation, the demand for listed securities in most African securities markets is relatively low.

As observed earlier, when most African securities exchanges were constituted, the expected source of listings were the privatized SOEs. However, extremely few of the privatized entities proceeded to list on domestic securities exchange. As the privatization wave subsided, the rate at which new entrants were admitted to the Official List of most African securities markets decreased. For example, since its inception in 1994, Zambia's Lusaka Securities Exchange has only managed to attract 24 listings, one of which is in fact a cross-listing.^[14] Undoubtedly, in part, this stark reality rationalizes the low capitalization and liquidity of the LuSE, and most African securities markets. As Professor Cohn observes:

The hope in most countries was that the privatization process would provide a constant flow of new listings to the exchange. When the Uganda Stock Exchange was created in 1997, eight SOEs were on the list for near-term privatizations.^[15] That list, and those hopes, failed to materialize. Today, seven years later, only one of the eight companies on that list has had a public offering. The Ugandan experience is typical. Through a combination of political and economic factors, privatization programs have seen only a trickle of public offerings instead of the anticipated stream. In many instances, governments found it more convenient to off-load SOEs through private means, sometimes through measures that bordered upon self-dealing and corruption. Whatever the reasons, privatizations have not been a major fuel for stock market growth.^[16]

A typical example of heavy reliance by African securities exchanges on privatizations as a source of listings is exhibited in Zambia where the process—privatization—has enduring statutory support. In Zambia, although privatization of SOEs started under the repealed Privatization Act 1992, the repealing and successor Act—the Zambia Development Agency Act 2006—has sustained the life of this mechanism and assured its future. As the author observes elsewhere:

The Zambian privatization program was anchored on the Privatization Act No. 21 of 1992 (ZP Act 1992). The Zambia Privatization Act 1992 was subsequently repealed by the Zambia Development Agency Act No. 11 of 2006 (ZDA Act 2006).^[17] Notwithstanding the repeal and replacement of the ZP Act 1992 with the ZDA Act 2006, the privatization of state-owned enterprises in Zambia continues under Part VI of the ZDA Act. Section 26 of the ZDA Act 2006 provides for the continued privatization of state-owned enterprises in accordance with the divestiture sequence plan^[18].^[19]

With respect to the failure by other potential sources of listings for African securities exchanges, such as

family businesses, to contribute to the growth of capitalization of these African securities exchanges, Professor Cohn observes:

A second source of potential company listings was, and still is, the numerous family-owned enterprises existing in every country. Family-owned businesses flourish in areas such as hotels, media, beverages, and construction. To date, very few of these companies have chosen to become publicly held. The reasons vary. Some businesses are so eminently successful that there is no need to seek external funding. Some businesses have little need for additional capital because they have no plans for major expansion. Two additional factors also clearly impact in this area. One is a concern that a public offering will cause or eventually lead to a loss of control by the family.^[20] A second principal concern is the problem of transparency, that is, a desire by company owners to remain private and beyond the demands of public disclosure.^[21]

As far as the demand for the listed securities was concerned, the expected source of demand were the citizens, the and domestic companies and financial institutions. Due to low income and savings among the citizens in Zambia, and most African countries, the poor financial state of most domestic companies, and poor institutional investor participation, the demand for the listed securities in domestic securities markets has been significantly low. Therefore, the expected sources of supply and demand for the securities which were listed, or were to be listed on the newly-established African securities exchanges have not yielded the desired results. That is why this article argues that a competitive and vibrant Alternative Investment Market (AIM) could serve as a steady source of listings for the Main List (the main Securities Market). The corollary argument is that the participation of domestic Micro, Small, and Medium scale Enterprises (MSMEs), which together hold the preponderant portion of domestic capital, in the AIM could be promoted by the development of less stringent listing rules which facilitate the listing of MSMEs, and the enactment of effective regulatory rules which facilitate the active participation of domestic and foreign Venture Capital Funds (VCFs) on domestic securities exchanges. The hope is that the securities which might be supplied by MSMEs would be consumed in large quantities by the participating domestic and foreign VCFs. The further argument is that the participation of MSMEs and the VCFs in the AIM is likely to increase the capitalization of the underlying securities exchange,^[22] and enhance its liquidity. Against the background to problem which has been given above, the statement of the problem which is under investigation may be phrased as follows:

To what extent has the Zambian regulatory and institutional framework for the admission of entities to domestic securities exchanges provided adequate incentives for the participation of micro, small and medium scale enterprises, and venture capital funds?

LITERATURE REVIEW

A number of studies have been conducted on the factors which hinder the growth and development of African securities markets. A study by Adelegan,^[23] analyzes the impact of regional cross-listing of stocks on the depth of the securities markets in sub-Saharan Africa. It analyzes data from 1990 up to 2007 for a panel of 13 securities markets in Sub-Saharan countries. Using event study methodology, the paper finds significant positive effects in the measures of stock market depth around regional cross-listing events. Generally, the results of the study suggest that growth in the regional cross-listing of stocks facilitates stock market deepening. The results also show that the securities markets of countries which had regional cross-listings perform better than those which had no cross-listing. The study thus, suggests that Sub-Saharan countries can benefit by putting in place necessary conditions for promoting regional cross-listings. The study proposes sound legal and regulatory frameworks, macroeconomic and political stability, harmonization of listing rules, accounting laws and disclosure requirements across the region, and strong money markets as possible measures of ensuring securities market deepening in Sub-Saharan Africa. It worth noting that Adelegan's study focuses on the supply-side of the interventions which stimulate growth

in securities market liquidity. This study does not focus on the demand-side of the said interventions. The present study pays particular attention to both sides—the supply side and the demand side as it explores the possibility of stimulating the growth of the liquidity of African securities markets through the alternative investment markets. Put in proper perspective, the results of Adelegan’s study indicate that the true beneficiary of cross-listings is the exchange of primary listing as opposed to the exchange of secondary listing. Thus, it is noted in the present study that shallow securities markets in Africa have two policy options namely:

1. Encourage the cross-listing of their primary listings into deeper markets in the region;
2. Develop competitive and vibrant alternative investment markets.

It is also worth noting that Adelegan’s study focuses on depth which only one of the elements of one of the four dimension of securities market liquidity—the volume dimension.[24] The present study pays particular attention to the other dimensions as well namely, the time dimension (which is characterized by immediacy), the cost dimension (which is characterized by transaction costs), and the price-effect dimension (which is characterized by resiliency).[25]

An IMF study which was conducted by Marone,[26] examines the impact of the Lusaka Stock Exchange on the Zambian Economy. The results of this study show that the Lusaka Securities Exchange has no effect on the larger Zambian economy.[27] This examines both the constraints on the supply side, and the constraints on the demand side. In particular, the results of the study by Marone show that very few domestic and foreign investors participate on the Lusaka Securities exchange, and that only a limited number financial assets are listed as securities. The other factors are poor institutional investor presence, poor state of domestic company, and low saving rate. The present study adopts Marone’s approach by tackling the constraints which affect the supply of different types of securities to African stock exchanges, as well those which affect demand for the listed securities. In proposing the development of alternative investment markets, the present study also recommends the remedying of constraints such as poor institutional investor presence, low saving rate, and inadequate investor education.

A study by Soumare, et al,[28] examines some of the constraints on the development of capital markets in Sub-Saharan Africa. The results of the study indicate that capital markets in the region are under developed because of limited number of listed entities, and the limited number of financial assets which are listed as securities and the poor state of bond markets—especially the corporate bond segment. Soumare et al, recommend the privatization of state-owned enterprises, promotion of the issue of different types of securities, broadening the institutional investor base, and promoting the participation of small and medium-sized enterprises in securities markets. It is worth noting that all the measures which have been proposed by Soumare et al, are supply-side interventions. This, in the author’s view is likely to compromise the pricing of the listed securities if there is no corresponding increase in demand (as supply exceeds demand). Also, the long periods of disposing of a securities position (on account of low demand) is likely to compromise the return on the investment. Thus, the present study, also, recommends the enhanced participation of small and medium-sized with particular emphasis on the need to implement the demand-side interventions as it proposes the development of competitive and vibrant alternative investment markets as a possible mechanism for stimulating issuer and investor activity in African securities markets.

Finally, a study by Cohn,[29] examines the constraints on the development of African securities exchanges. The results of the study indicate that heavy reliance on privatizations (as a source of listing) and the heavy presence of family businesses in the domestic economy are the major causes of the poor capitalization of African securities exchanges. However, capitalization is an unreliable indicator of securities market growth or development.[30] The reliable indicator of securities market growth and development is liquidity.[31] That is why, the present study focuses on constraints which compromise the supply and demand for securities. The approach of the present study is rationalized by the position that steady supply of securities

to securities exchanges, and real demand for those securities are critical to the growth of liquidity without which no securities exchange can develop.[\[32\]](#)

METHODOLOGY OF THE STUDY

This study falls into the qualitative research category. It focuses on answering specific questions which relate to the problem which is under investigation by using both primary and secondary data. The research is underpinned by the doctrinal, the non-doctrinal and the comparative approach to examining the effectiveness of the regulatory and institutional framework which governs the participation of MSMEs, and VCFs in Zambian securities markets. By the doctrinal approach the author gives a descriptive exposition of the applicable legal rules, and offers a complete statement of the law were applicable.[\[33\]](#) By the non-doctrinal approach, the author identifies the legal problem, analyses it and proposes remedial changes to the regulatory and the institutional framework which governs the listing of entities on securities exchanges in Zambia.[\[34\]](#) By the comparative approach, the author examines how different legal systems and cultures have achieved the development of the alternative investment markets.[\[35\]](#) These three methods were used in analysing both primary and secondary data. Primary sources of data such as relevant legislation and case law which relate to the subject/problem which is under investigation were used. Questionnaires were administered to small and medium-sized enterprises as way of gathering primary data. Secondary sources of information such as journals and other written commentaries on the primary sources were also used. A checklist of documentary sources was used, as well. And, as a possible way of avoiding subjectivity in the selection of documentary sources, the study employed non-probability sampling method—purposive sampling. Both primary and secondary sources of data were used as aids to drawing inferences, making deductions and comparisons.

The main objective of the study is to answer the question whether or not the regulatory and institutional framework which governs the listing and participation of entities in domestic securities exchanges, and markets provides adequate incentives for the participation of MSMEs, and VCFs in the said arena. The study fleshes out some shortcomings in the said framework, and makes necessary proposals for remedial reform.

The research questions which were used are:

1. What is the law and policy on the participation of micro, small and medium scale enterprises in domestic securities markets?
2. What is the law and policy on the participation of other entities than companies on domestic securities exchanges?
3. To what extent do the listing rules permit the participation of other entities than companies on the domestic exchanges?
4. What is the law and policy on the participation of domestic venture capital funds in domestic securities markets?
5. What is the law and policy permit the participation of foreign venture capital funds in domestic securities markets?

RESULTS OF THE STUDY

Question	Findings	
	Domestic Law	International Best Practice
1.Does the law and policy permit the participation of micro,small and medium scale enterprises in domestic securities markets?	NO	YES
2.Does the law and policy permit the participation of other entities than companies on domestic securities exchanges?	NO	YES
3.Do the listing rules permit the participation of other entities than companies on the domestic exchanges?	YES	YES
4.Does the law and policy permit the participation of domestic venture capital funds in domestic securities markets?	YES	YES
5.Does the law and policy permit the participation of foreign venture capital funds in domestic securities markets?	NO	YES

EMPERICAL EVIDENCE ON LISTING ACTIVITY ON SELECTED AFRICAN SECURITIES EXCHANGES

As a possible way of putting legal the arguments, which have been made in this article, in proper socio-economic light, this section gives empirical evidence on Initial Public Offer activity on most African securities exchanges.

Table 1: Initial Public Offer(IPO) activity on selected African Securities Exchanges 2017-2018

Stock Exchange	Country	IPOs
Botswana Stock Exchange	Botswana	1
Dar Es Salam Stock Exchange	Tanzania	1
Egypt Stock Exchange	Egypt	1
Johannesburg Stock Exchange	South Africa	3
Lusaka Stock Exchange	Zambia	0
Nairobi Stock Exchange	Kenya	1
Namibia Stock Exchange	Namibia	2
Malawi Stock Exchange	Malawi	1
Mauritius Stock Exchange	Mauritius	0
Zimbabwe Stock Exchange	Zimbabwe	0

The results in Table 1 above translate into an average of one listing per country for the period 2017-2018. If we leave the Johannesburg Stock Exchange out of the mix—which is the largest securities exchange in Africa—we get an average of zero listing per country. This state of affairs does not enhance the attractiveness of the African securities markets.^[36] In line with this pattern, Table 2 below shows a marginal growth in the number of listings on selected African stock exchanges.

Table 2: Growth Pattern of Listings on selected African Stock Exchanges 1997-2017

Country	No. of Listings 1997	No. of Listings 2017	20 Year Gain
Botswana	12	34	22
Ghana	21	37	16
Kenya	58	65	7
Zambia	7	22	15
Malawi	3	13	10

Mauritius	40	98	58
Namibia	13	39	26
Nigeria	182	170	-12
Zimbabwe	64	63	-1
South Africa	642	472	-170

Although the general growth pattern of listings on the securities exchanges which appear in Table 2 above has been relatively unattractive, it is worth-noting that while some key securities exchanges like the Johannesburg Stock Exchange, Nigerian Stock Exchange and the Zimbabwean Stock Exchange have been gradually losing some listings, other stock exchanges have, over the period which is under consideration, recorded quite impressive growth.^[37] These include Mauritius Stock Exchange, Namibia, Malawi, Zambia, ^[38] Kenya, Ghana and Botswana. This fact calls for evidence-based regulatory interventions in Africa rather than an indiscriminate adoption of reforms which have been implemented in other markets. As Cohn observes:

The disparities among African exchanges is further proof that one must be very careful in discussing African markets, for generalizations run the risk of overstatement. The disparities also point out that market regulators must concentrate on what is on the ground in their own country and adopt policies particular for their own economies rather than follow policies adopted elsewhere, even policies adopted in successful markets.^[39]

THE ROLE OF CROSS-LISTINGS IN ENHANCING THE LIQUIDITY OF THE SECONDARY SECURITIES MARKET

In order to appreciate fully the contribution of cross-border cross-listings to the enhancement of the liquidity of secondary securities markets, the empirical evidence which indicates a positive relationship between cross-listing activities, and the increase in liquidity should be examined in the light of the pertinent legal and economic arguments which are made for the reduction of reliance on cross-listings.

Empirical Evidence on the Positive Relationship between Cross-listings and Growth in Liquidity

This section introduces empirical evidence on the effect of cross-listings on securities market liquidity, deepening and development. An IMF study which was led by Adelegan^[40], analysed the impact of cross-listings on the liquidity, depth and performance of the primary securities markets. The study analysed data from 1990—2007 for a panel of 22 Sub-Saharan stock exchanges.

The study sought to provide answers to the following questions:

- i. Can a regional approach promote stock market development?
- ii. Can regional cross-listings improve liquidity and facilitate stock market deepening? and
- iii. Whether regionally integrated stock markets are more successful than those which are not?

Using an event study methodology, the study posts positive effects on stock market depth around cross-listing events. The results show that growth in regional cross-listing of stocks enhances stock market liquidity, performance and development.^[41] The positive effect of cross-listings on stock market liquidity and deepening has been confirmed by recent empirical studies which were conducted on EAC securities markets.^[42] Given the results of the studies cited above, it is submitted that African securities markets are likely to benefit from cross-border cross-listings.^[43] It should be noted, however, that the benefits of cross-listings accrue only to the exchange of primary listing—at least this is what the studies have shown so far.

Some Legal and Economic Arguments for the Reduction of Reliance on Cross-listings

As a possible way of increasing capitalization and boosting the liquidity of African securities markets, experts have often recommended the implementation of measures which increase cross-border cross-listings. [44] However, cross-border cross-listing in Eastern and Southern Africa and the rest of Africa suffers from quite a number of regulatory and institutional constraints. Chief among such shortcomings is lack of an international passport to region-wide cross-border cross-listing and multi-jurisdictional disclosure system. [45] Therefore, this article argues that cross-border cross-listings only serve to increase investment opportunities for foreign investors. This tends to increase opportunities for foreign portfolio investment flows to the jurisdiction of primary listing. This increases capital flight from the jurisdiction of secondary listing. Therefore, it could be argued that cross-listing does not spur the growth of the domestic economy of the jurisdiction of secondary listing at all. Thus, what cross-listings do is to give a false sense of progress to the jurisdiction of secondary listing. The author argues that as far as the capital of the cross-listed entity is concerned, it is foreign capital which does not in any wise form part and parcel of the aggregate capital of the indigenous entities for Gross Domestic Product purposes. Therefore, the proposal for the promotion of the participation of MSMEs, and VCFs in domestic securities markets which has been made in this study has been mooted as a complement to the role which is played by cross-listings in enhancing the liquidity of the secondary securities market.

EMPIRICAL EVIDENCE ON THE CONSTRAINTS WHICH AFFECT THE EFFICACY OF THE REGULATORY AND INSTITUTIONAL FRAMEWORK TO PROMOTE THE PARTICIPATION OF SMEs ON DOMESTIC SECURITIES EXCHANGES

Before we introduce some empirical evidence on the constraints which affect the efficacy of the regulatory and institutional framework to promote the participation of SMEs on domestic securities exchanges, it is imperative to give a definition of a SME. There is no universally accepted definition of a SME. [46] The definitions which have been proposed over the years hinge on capitalization, turnover or size of workforce. These definitions, however, tend to suffer from inherent conceptual defects when carefully scrutinized. This is simply because firms differ in their level of capitalization, sales and size of workforce. [47] On the danger of applying such definitions to each and every jurisdiction without regard to its peculiar conditions, Kayanula and Quartey observe:

Hence, definitions which employ measures of size (number of employees, turnover, profitability, net worth, etc.) when applied to one sector could lead to all firms being classified as small, while the same size definition when applied to a different sector could lead to a different result. [48]

It is submitted that due to difference in the levels of economic development, and the prevailing socio-economic conditions among nations, it is difficult to craft a one-size-fits-all definition of an SME. Thus, it would be prudent to leave it to each jurisdiction to define the phrase with special regard to the prevailing socio-economic conditions.

Defining Small and Medium-Sized Enterprise in Zambia

In Zambia the Small Business net consists of micro-enterprises, small enterprises and medium-sized enterprises.

A micro enterprise is any business enterprise which is registered with the Registrar of Companies, and has the following characteristics, namely:

- i. the total investment, excluding land and buildings, is a maximum of Eighty Thousand Kwacha (K80,

000.00);

- ii. the annual turnover is a maximum of One hundred and Fifty Thousand Kwacha (K150, 000.00); and
- iii. its workforce is maximum of ten (10) persons. [\[49\]](#)

A small enterprise is any business enterprise which is registered with the Registrar of Companies, and has the following characteristics, namely:

1. in the case of manufacturing and processing enterprises, the total investment, excluding land and building, is a minimum of Eighty Thousand Kwacha, [\[50\]](#) and a maximum of Two Hundred Thousand Kwacha (K80, 000.00 – K200, 000.00) in plant and machinery. In the case of trading and service providing enterprises, the total capital is a maximum of Hundred and Thousand (K150, 000, 000) Kwacha;
2. the annual turnover is a minimum of One Hundred and Fifty Million, and a maximum of Two Hundred and Fifty Million (K150, 000—K250, 000,000) Kwacha; and
3. the workforce is a minimum eleven persons, and a maximum of forty nine persons (11-49 persons). [\[51\]](#)

A medium enterprise is any business enterprise which is larger than a small enterprise which is registered with the Registrar of companies, and has the following characteristics, namely:

1. in the case of a manufacturing and processing enterprise, the total investment, excluding land and building, is a minimum of Two Hundred Thousand Kwacha, [\[52\]](#) and a maximum of Five Hundred Thousand (K200,000.00 –K500, 000.00) Kwacha in plant and machinery. In the case of trading and service providing enterprises, the total investment is a minimum of One Hundred and Fifty-One Thousand and Three Hundred Thousand (K151, 000.00 –K300,000.00) Kwacha;
2. the annual turnover is a minimum of Three Hundred Thousand Kwacha, and a maximum of Eight Hundred Thousand Kwacha (K300, 000.00 – K800, 000.00); and
3. The workforce is a minimum of Fifty-One person, and a maximum of One Hundred persons (51-100 persons). [\[53\]](#)

The scope of this research work is limited to small and medium-sized enterprises as defined above. It does not extend to micro-enterprises, as defined above.

Empirical Evidence on Constraints on SME Participation on Stock Exchanges in Zambia

A hundred (100) respondent SMEs were randomly selected and asked by way questionnaires the questions which appear below. In terms of distribution, fifty (50) were drawn from the Lusaka Province which is both the political and commercial capital, while another fifty (50) were drawn from the Copper-belt Province which is the industrial hub. The respondents were asked the following questions, namely:

1. Whether they were trading as incorporated companies or unincorporated associations or otherwise;
2. Whether they had ever raised capital from the Lusaka Securities Exchange;
3. If the answer to question (b) above was ‘yes’, a follow-up question was asked as to what prompted the entrepreneur to look to the LuSE;
4. If the answer to question (b) above was ‘no’, the respondent entrepreneur was asked to state the reasons why that was the

The findings were as follows:

All the respondents were responsive. Eighty-Four (84) of the respondents indicated that they were trading as companies which are registered under the Companies Act. Fifty-Eight (58) respondents indicated that they were trading as un-incorporated associations, while Forty-Four (44) respondents indicated that they were

trading as sole-proprietorships. Fourteen (14) respondents indicated that they were trading as partnerships. All the respondents (100 respondents) indicated that they had not, at the time the questionnaires were administered, sought to raise capital on the LuSE. Although the reasons for not doing so generally varied, the following were common to their responses, namely:

1. Thirty (30) respondents cited lack of knowledge about the possibility of raising capital on a stock exchange as an alternative to banks, as the reason for not participating on the LuSE;
2. Fifty-Four (54) indicated in one way or the other that the cost of raising capital on a stock exchange was prohibitive given their small working capital; the cost of hiring a broker, the cost of complying of listing requirements, the cost of registering the relevant documents and the cost of complying with continuous disclosure obligation. They generally thought that banks were cheaper and much quicker.

It is submitted that these are some of the constraints which affect the efficacy of the regulatory and institutional framework, which is under examination, to facilitate the raising of capital on the LuSE by SMEs. As a possible way of promoting the participation of SMEs on the LuSE, it is proposed that an alternative investment market (AIM) be investor-financial education, and the established on the LuSE. It is also proposed that the Zambian Securities, and Exchange Commission embarks on vigorous issuer financial education by targeting SMEs. It is strongly recommended that these measures, and other measures which have been proposed in this study as a possible way of tackling the constraints which affect the efficacy of the regulatory and institutional framework, be implemented alongside those measures which have been proposed as a possible way of tackling the constraints which are inherent in the said framework. The argument here is that, if they are left unchecked, the former set of measures will only serve to water down the efficacy of new regulatory and institutional framework the for participation of SMEs and VCFs on domestic securities exchanges.

LEGAL ASPECTS OF CROSS-BORDER CROSS-LISTINGS

Cross-listings allow domestic entities to participate in foreign deeper markets. This increases the number of the possible sources of funds for the issuers, especially when the issues are too large to be absorbed by a single market.^[54] Cross-listings also allow foreign investors to trade stocks as if they were domestic stocks.^[55]

Two points may be collected from the foregoing, namely:

1. Cross-listed issuers are foreign entities;
2. Cross-listed securities are foreign assets;

These classifications are briefly considered below, in turn.

Cross-Listed Entities as Foreign Entities

As foreign entities which are established according to foreign law, cross-listed issuers are under the legal obligations which arise under the law of the jurisdiction of their incorporation. Thus, cross-listed entities are under an obligation to pay corporate tax or other taxes which are imposed on entities which trade under other different styles. Therefore, the tax benefits go to the jurisdiction of establishment—traditionally the jurisdiction of primary listing—as opposed to the jurisdiction of secondary listing.^[56]

The share capital of a company is not the property of the company. It is the common property of shareholders,^[57] and is not a debt which is due to shareholders from the company.^[58] Thus, where an IPO is made in multiple jurisdictions, the cross-listing will only facilitates the export of capital from the foreign investors to the jurisdiction of the foreign issuer—the jurisdiction of primary listing. That way, IPOs which are made in multiple jurisdiction serve as an opportunity for capital flight. It is therefore submitted that the

capital of cross-listed issuers does not add to the capitalization of the securities exchange on which the cross-listing resides. Instead, the capital which is represented by the cross-listed securities is part and parcel of the capitalization of the exchange on which the primary listing resides. Rather, as indicated by the IMF study which was conducted on the Sub-Saharan securities exchanges,^[59] cross-listing stimulates the growth of the breadth and depth of the securities exchange of primary listing. And, in the event that the cross-listed securities are traded in the secondary market, cross-listing only creates further opportunities for the domestic investors to hold foreign assets. This would entail further flight of capital from the jurisdiction of secondary listing. Lastly on this score, the jurisdiction of primary listing—which is usually the country of incorporation, enjoys the benefit of corporate social responsibility of the listed entity. All these benefits accrue to the economy of the jurisdiction of primary listing. It is submitted that for the securities exchange of secondary listing to realize maximum benefits from cross-listing, it must promote the cross-listing of its primary listings so that the benefits which accrue to the exchange of primary listing can accrue.

Cross-Listed Securities as Foreign Financial Assets

Cross-border cross-listed securities are securities—financial assets—which are issued out of foreign entities. These assets establish a legal relationship between the foreign issuer and the foreign investor. It is the measure of the interest or stake of the foreign investor in the foreign cross-listed issuer. It is also a measure of certain legal obligations which the holder assumes towards the foreign cross-listed issuer. The right to receive a dividend is one such interest which attaches to shareholding while the liability which exists on the part of shareholders to contribute to the assets of the company in winding up for purpose of discharging the liabilities of the company is one such obligation.^[60] The shareholder's right to a dividend as a unit of the sub-bundle of rights constituted in a share—the share as an indivisible bundle of rights and obligations—is found in the classical description of a share by Justice Farwell in the case of *Borland's Trustee v Steel Brothers & Company Ltd.*^[61] His Lordship had the following to say:

A share in the company is the interest of the shareholder in the company measured by a sum of money, for the purposes of liability in the first place, and interest in the second, but also consisting of mutual covenants entered into by all shareholders *inter se* in accordance with section 16 of the companies Act of 1862, and made up of various rights and liabilities contained in the contract, including the right to a certain sum of money.^[62]

A dividend once it is declared, attracts tax which tax goes to the government of the jurisdiction of incorporation of the foreign issuer. The foreign investor has no obligation to pay and does not pay the tax on a dividend to his government. As observed earlier, the possibility of double taxation is eliminated by Double-Taxation Agreements which may exist between the jurisdiction of primary listing, and the jurisdiction of secondary listing.

It is submitted that the real beneficiary of a successful cross-border cross-listing is the jurisdiction of the primary listing. Since privatizations, and family businesses have not made meaningful contribution to the growth domestic primary listings on African securities exchanges, it would be prudent for African securities exchanges to look in new directions—such as courting SMEs. An argument is made promoting participation of MSMEs. The argument here is that a competitive and vibrant Alternative Investment Market (AIM) could serve as a steady source of listings for the Official List (the main Securities Market) as the listed SMEs migrate to the Official List.

The corollary argument is that the participation of domestic SMEs, which together hold the preponderant portion of domestic capital, in the AIM could be promoted by the development of less stringent listing rules which facilitate the listing of SMEs, and the enactment of effective regulatory rules which facilitate the active participation of domestic and foreign Venture Capital Funds (VCFs) on domestic securities exchanges. As noted earlier, a successful, competitive and vibrant AIMs is likely to enhance the

capitalization and liquidity of African securities markets, and stimulate real economic growth. As Kayanula and Quartey observe:

The dynamic role of small and medium enterprises (SMEs) in developing countries as engines through which the growth objectives of developing countries can be achieved has long been recognised... These enterprises have been identified as the means through which the rapid industrialisation and other developmental goals of these countries can be realised. It is estimated that SMEs employ 22% of the adult population in developing countries. The sector employs about 15.5% and 14.09% of the labour force in Ghana and Malawi respectively, and has experienced higher employment growth than micro and large scale enterprises (5% in Ghana and 11% in Malawi).^[63] In Ghana, the sector's output as a percentage of GDP accounted for 6% of GDP1 in 1998.^[64]

REGULATING THE RAISING OF CAPITAL ON A SECURITIES EXCHANGE IN ZAMBIA

This section examines the regulatory framework for the public issue of securities—particularly shares, so as to establish whether or not the said framework provides adequate incentives for the public issue of shares by SMEs.

REGULATING PUBLIC ISSUES OF SECURITIES IN ZAMBIA

The law which governs the public issue of securities in most jurisdictions in Africa is couched in mandatory terms. Thus, in Zambia, an issuer who wishes to raise capital from the public by issuing shares to the public is under an obligation to register with the Securities and Exchange Commission (the SEC) the securities it proposes to issue.^[65] This is achieved by filing a statement in the prescribed form.^[66] The registration statement must contain the details which are stipulated in the First Schedule to the Securities (Registration of Securities) Rules.^[67] A registration statement which conforms with the requirement of section 75 of the Securities Act 2016 must:

1. be signed by an officer of the issuer who is duly authorized to do so;
2. contain details which are stated under rule 8; and
3. be accompanied by a prospectus where a public offer of securities is sought.^[68]

Therefore, a prospectus is required as an accompaniment of a registration statement where an issuer proposes to issue securities to the public. The information which is contained in the accompanying prospectus should be of the nature that is reasonably expected by investors and their professional advisers to be included in a prospectus, and required for the purpose of making an informed assessment of the assets and liabilities, the financial position, the profits and losses, and the prospects of the issuer of the securities.^[69]

Once the securities are listed on a securities exchange, the issuer SME will have to comply with the continuous disclosure obligation of keeping the SEC, the listing exchange and the general public informed of all information which is likely to have a material effect on the value or price of its securities if it were publicly available.^[70] Besides, there is the traditional periodic disclosure obligation whereby the SME is required to disclose periodically—usually on quarterly or yearly basis, in the manner aforesaid, all material information which relates to the issuer or its securities.^[71]

Complying with continuous disclosure obligations would not only be time consuming and cumbersome to the issuing SME but also an additional cost. Also, the cost of preparing a registration statement and the accompanying prospectus—the cost of hiring the experts such as financial economists, brokers and lawyers—the cost of raising capital from a securities exchange by an SME is likely to exceed their capital needs. It is, therefore, submitted that this state of affairs is likely to prohibit SMEs from raising capital on

securities exchanges. As Cohn observes in this respect:

The registration process is not conducive to SME capital-raising. As noted, SMEs are in frequent need of capital infusions for additional hiring, equipment, facilities, and marketing programs. Revenues rarely meet capital demands, especially in early growing years. Registration of securities for a formal public offering is a time-consuming process, yet time is usually not on the SMEs side. Moreover, the amounts of capital needed from time to time are much too low to justify the large expenditures required by registered offerings, including lawyers, accountants, underwriters, transfer agents, subscription agents and printers. These are not only high costs, but they are incurred without knowing whether the offering will be fully subscribed. In short, the delays, costs, and risks of a formally registered public offering are beyond reasonable bounds for most SMEs in need of capital to sustain their growth.^[72]

Similarly, Gondwe observes that:

The role that SMEs play in an economy cannot be over-emphasised. SMEs provide sustainable economic growth through job creation, development of entrepreneurial skills and the potential to contribute significantly to export earnings. However, provision of finance to the SME sector in Zambia still remains a challenge. A survey conducted by the World Bank on Enterprise Development in Zambia (2007) identified poor access to finance as a major impediment to investment and growth in Zambia. Only 16% of firms surveyed reported having a loan or line of credit from a financial institution, compared with 23% for the region and 35% for all countries surveyed. Therefore, while Zambia's cost of doing business index has progressively improved in recent years, access to finance [by SMEs] continues to feature among the three key constraints to investment and growth.^[73]

It is submitted that these constraints point to the need to develop special listing rules which would facilitate the listing of SMEs in the AIM. However, it should be borne in mind that the stringent registration and disclosure requirements which regulate the Official List are meant to protect the investors from unscrupulous issuers who may want to defraud the public by cooking up company statistics. Such a cautionary step is likely to ensure that the increased SME participation is not achieved at the expense of investor protection. Compromised investor protection in the AIM is likely to hinder its success, and defeat the objective which inspired its formation in the first place. Therefore, a balance must be struck between the need to promote the participation of SMEs in the AIM through relaxed regulatory rules, and the need to protect the interests of investors by ensuring a certain level of investor protection.

Other Constraints Pointing to the Stock Exchange as an Alternative Platform for Capital-Raising

An empirical study which was conducted by Nuwagaba on SMEs in Zambia, shows that SMEs employ over 50 per cent of the working class, similar to Indonesia, Tanzania and Kenya.^[74] The study shows that 90 per cent of SMEs in Zambia operate in the informal sector which makes it difficult for the Government to support them or assess their real contribution to the growth of the economy.^[75] This also makes them unattractive to micro-finance institutions for purposes of funding.^[76] The other major constraint on SME-access-to-finance is the *lack of collateral for loans*.^[77] This study argues that equity finance which does not depend on availability of collateral, is likely to overcome this constraint on SME-access-to-finance.^[78] Nuwagaba recommends dedicated initiatives such as government grants, encouraging personal savings, and promoting access to loans as a possible way of stimulating the growth of the SME sector in Zambia.^[79]

The Alternative Investment Market as a Launch Pad to the Main Official List

The Lusaka Securities Exchange has established an Alternative Market for SMEs. Listing rules for the LuSE Alt Market have been formulated. It is therefore highly recommended that the Zambian Central Government together with the SEC provide incentives that will accelerate growth and success of the LuSE's

AIM. The idea is that, today's alternative investment market SME-listing might be tomorrow's success, and a potential listing for the Official List.^[80] That is why the underlying economic objective of establishing an AIM is to nurture the SMEs and ensure that they develop into profitable large-scale enterprises which are fit and proper to list on the Official List. Consequently, an AIM could be viewed as a deliberate breeding ground for future listings for the Official or Main List.^[50] Thus, an AIM could be likened to a Football Academy or Team B for soccer teams in the Premiership League.

CONSTRAINTS RELATING TO THE MANDATORY CHARACTER OF STATUTORY PROVISIONS

Traditionally, the power to make listing rules is vested in the listing exchange. Accordingly, subject to the approval of the Commission, a securities exchange in Zambia may make such rules as it considers necessary or desirable for the proper and efficient regulation, operation, management and control of the securities exchange.^[81] However, it worth noting that the rules for the AIM, which are statutory instruments^[82], cannot effectively modify the mandatory application of the registration and disclosure rules which are contained in the Securities Act 2016.^[83] Thus, in order to ensure the effectiveness of the special listing rules which we have proposed for the AIM, the rules should be expressly recognized as a special exception under Part VIII of the Securities Act. The following provision is hereby proposed:

Notwithstanding the provisions of this Part, an issuer which offers or proposes to issue securities to the public in the Alternative Investment Market shall do so in accordance with the provisions of the "Alternative Investment Market (Registration and Listing of Securities) Rules,^[84] and the Lusaka Stock Exchange Alternative Investment Market Listing Rules.

Another possible way of avoiding the force of the mandatory provisions is to invoke the general exemption which is provided under the Securities Act 2016. By section 4(2) of the Securities Act 2016, the SEC has power to exempt, by way of publication in the Gazette or newspaper of general circulation, any person or securities from strict compliance with the Act or any part of the Act. This power could be used to exempt SMEs or their securities from strict compliance with the prospectus and disclosure requirements which are stipulated in Part VIII of the Zambian Securities Act 2016. These remedial regulatory reforms, if implemented, are likely to ensure that the SMEs raise capital from the AIM within their means.

CONSTRAINTS RELATING TO THE NARROW RANGE OF LISTABLE ISSUERS

Under the LuSE Listing Rules 2012, an issuer which wishes to list on the LuSE may apply as a 'new applicant'. This is a requirement for issuers who have not listed on the exchange before.^[85] In the event that an issuer wishes to apply for further listing, they have to apply as 'applicants'.^[86] The In the LuSE Listing Rules, the term 'company' is defined as follows:

A body corporate [wherever incorporated or established] including any other legal person, association of persons or entities and any trust or similar device [wherever established] that issues securities which are capable of being listed on the Lusaka Stock Exchange.^[87]

From the definition of 'company' which is given above, the following legal positions may be collected, namely that:

1. both domestic and foreign un-incorporated bodies like associations and trusts that issue securities may list on LuSE;^[88]
2. other domestic bodies corporate like cooperatives—domestic or foreign—which issue shares may also list on the LuSE;
3. domestic companies incorporated pursuant to successive Zambian Companies Acts as well as foreign

- companies may also apply for cross-listing on the LuSE;^[89] and
4. other bodies corporate like domestic authorities and parastatals which issue public debt securities may list on the LuSE.

It is submitted that the LuSE Listing Rules 2012 claw in a wide range of styles of *listable* issuers. An argument is made here by the author that such a provision is likely to encourage the listing of different styles of issuers—domestic and foreign. However, as established below, the breadth of the LuSE Listing Rules is severely curtailed by the Securities Act 2016.

Constraints relating to the narrow Definition of 'Listed Securities' under the Securities Act 2016

Despite the broad definition of 'company' which is given in the LuSE Listing Rules 2012, the Zambian Securities Act 2016 narrowly defines 'listed securities' as "securities of a listed company".^[90] 'Listed company' is a company which is incorporated under the laws of Zambia whose securities have been registered with the SEC and admitted to trading on a securities exchange.^[91] The term 'company' assumes the definition which is given in the Companies Act 2017 as 'a company which is incorporated under the current or predecessor Companies Acts.'^[92] There is thus, conflict between LuSE Listing Rules and the Zambian Securities Act 2016 regarding *listable entities*. With respect to the said conflict, the position in Zambia is that the Parent Act overrides any statutory instrument which is made under it.^[93] It is therefore submitted that other entities than domestic companies cannot competently list on Zambian securities exchanges.

The author argues here that this sort of restriction is likely to exclude many other *listable styles of issuer* within the SME category such as foreign companies, and domestic and foreign cooperatives, other forms of bodies corporate, trusts, collective investment schemes and associations from listing on the LuSE and participating in the AIM. It is submitted that this sort of regulatory approach is likely to constrict the supply of securities to the AIM. It is therefore, humbly submitted that the regulatory and institutional framework does not provide adequate incentives for the listing of SMEs on domestic securities exchanges, and participation in the LuSE AIM.

As a possible way of overcoming this shortcoming in the regulatory and institutional framework, proposals are made for the amendment of the definition of 'listed company' and 'listed securities' as follows:

'Listed Company' should be amended to 'Listed issuer', and 'listed issuer' should mean "an issuer whose securities have been admitted to official listing and trading on a securities exchange".^[94] 'Listed securities' should be redefined as "securities of a listed issuer. 'Official Listing' means 'the Main List or the Alternative Investment Market List'.

PROMOTING THE SUCCESS OF THE ALTERNATIVE INVESTMENT MARKET THROUGH INCREASED VENTURE CAPITAL FUND PARTICIPATION

Venture Capital Funds (VCFs) were not part of the 1993 regulatory landscape. VCFs now fall under Part X of the Securities Act 2016. 'Venture Capital Funds' means risk capital which is contributed by investors to start-up firms and small and medium sized businesses which have a perceived high growth potential.^[95] With the authority of the SEC, a person may establish a VCF in Zambia.^[96] However, the authorization of VCFs which are established in foreign jurisdictions is not provided for. This in effect serves as a constraint on the efficacy of the regulatory and institutional framework to promote the success of the AIM. Jurisdictions such as South Africa and Nigeria have active VCFs which could venture their capital into high-growth Zambian SMEs which might be listed in the AIM.^[97] The author argues here that the disclosure requirements of the AIM, although they are relaxed, are likely to enhance the attractiveness of listed SMEs to domestic and foreign VCFs.^[98] Therefore, it could be argued that the participation of domestic and

foreign VCFs on the LuSE, or other domestic exchange in Africa is likely to ensure success of the AIM.^[99]

Constraints relating to restrictions on admission to the LuSE Alternative Market

Careful perusal the Listing Rules for the LuSE AIM reveals that only companies which are incorporated under the *Zambian Companies Act 2017* (or the predecessor Acts) are eligible for listing on the AIM.^[100] Such a restriction effectively excludes sole proprietorships, partnerships and other styles of un-incorporated bodies from participating on the LuSE AIM, it is submitted. An argument is made that such a regulatory constraint is likely to hinder the success of the LuSE AIM. As a possible solution to such a shortcoming in the regulatory framework, it is proposed that sole proprietorships, partnerships and other styles of un-incorporated bodies which fall into the category of SMEs be eligible to list on the LuSE AIM, as proposed earlier.

Using appropriate economic models, the Bank of Zambia in conjunction with the Zambia Development Agency could, by using certain financial benchmarks, come up with a criterion for assessing the growth potential of SMEs in Zambia. On the strength of such a criterion, SMEs could be graded as ‘high-growth’, or ‘medium-growth’ or ‘low-growth’. Securities of high-growth SMEs could be guaranteed by either the Central Government or the Bank of Zambia.

Similarly, an International Development agency like the World Bank or the International Monetary Fund. Such guarantee would serve as insurance for investment risk which is normally associated with subscribing for securities which could be issued by a SME in the AIM.^[101] An argument is made that the availability of a grading system for the securities of SMEs, and the institutional insurance or guarantee of those securities is likely to encourage the participation of VCFs and other forms of investors in the AIM, and ensure its success.

THE ROLE OF CREDIT RATING AGENCIES IN THE GRADING SECURITIES OF SMEs

Jurisdictions which have credible credit rating systems could also subject, to a credit rating, those SMEs which meet the basic assessment criteria.⁶⁰ Such a credit rating could serve as a yardstick for according securities guarantee and insurance to the participating SMES by the Central Government, the Bank of Zambia, and the Zambia Development Agency or an International Finance and Development Agency such as the Multi-lateral Investment Guarantee Agency or the World Bank.

INCREASING ISSUER PARTICIPATION IN THE ALTERNATIVE INVESTMENT MARKET THROUGH AN EFFICIENT SECURITIES MARKET COMPENSATION FUND

A properly managed, liquid and efficient compensation fund—in the sense of paying prompt, effective and adequate compensation—has the potential of boosting the integrity of the market and investor and issuer confidence.^[102] Such a fund is likely to provide incentives for both domestic and foreign issuers and investors to list or cross-list or indeed invest in securities on a particular securities market.^[103] The rise in market confidence is attributable to the assurance which the issuers and investors have that compensation is available for any loss they may suffer as a result of default on the part of a market intermediary which is licensed to operate in a particular market.^[104]

The Compensation Fund—for the LuSE—which was established under the repealed Securities Act 1993 has continued in force as if it was established under the Securities Act No. 41 of 2016.^[105] The purpose of the Compensation Fund for the LuSE is to compensate persons who suffer pecuniary loss as a result of default of a licensed person—licensed dealer, licensed investment advisor or an employee of such dealer or advisor or investment advisor.^[106] Reference to ‘persons’ here could include both issuers and investors who suffer pecuniary loss as result of the default of a licensed broker, dealer or investment advisor

or an employee of any such licensed person. The author argues that the availability of compensation for any loss that issuers and investors who participate in the LuSE AIM might suffer is likely to encourage issuer and investor participation.

What about investor loss which is occasioned by conduct of the issuer?

‘Licensed person’ means a person who is granted a licence, as the case may be, in accordance with the Securities Act 2016.^[107] Thus, the net of market operators which is envisaged by section 177 of the Securities Act 2016 excludes issuers. Thus, whereas issuers who suffer pecuniary loss at IPO stage as a result of the default of a dealer or investment advisor could have recourse to the Fund, investors who suffers pecuniary loss on account of misleading conduct of issuer SME could not have recourse to the Fund since the defaulting person—the issuer—is not a ‘licensed person’ to hold it. Besides, an investor who incurs pecuniary loss as a result of breach of continuous disclosure obligation by an issuer cannot recover loss by invoking “breach of statutory duty”.^[108] As a result of this shortcoming in the regulatory framework, in both instances which have been highlighted above, the injured investor will have to look to the Capital Markets Tribunal and pursue the common law remedies that may be available to them in contract or tort. Since IPOs are governed by prospectuses, the injured investors—who suffers pecuniary loss as a result of a misrepresentation, whatever its form,^[109] will have to prove that they suffered pecuniary loss as a result of ‘relying’ on the disclosed or undisclosed facts.^[110] While ‘pure untruths’ readily satisfy this requirement, ‘half-truths’ and ‘pure non-disclosure’ fail this test since it is not possible for the investor to rely on undisclosed facts.^[111] Undoubtedly, such a shortcoming in the regulatory framework compromises investor protection at IPO stage. The author also argues that limited investor protection at IPO stage is likely to discourage risk-averse investors from participating in IPOs which are made by SMEs. As a possible way of ensuring adequate investor protection at IPO stage, and promoting the success of the LuSE AIM, it is proposed that:

1. i) civil recovery for pure non-disclosure be introduced in section 81 of the Zambian Securities Act 2016;
2. ii) the regulatory concept of “fraud-on-the-market with a rebuttable presumption of reliance” be introduced in sections 166 and 167 of the Zambian Securities Act

Besides, inadequate investor protection at IPO state, generally, litigation in Africa is costly and lengthy. The danger is that the cumulative cost of lengthy and protracted litigation which is instituted against an SME by individual investors might hinder the enforcement of violated investor rights. Also, during the duration of the litigation, securities which are the subject of litigation cannot be disposed of. Thus, the length and cost of litigation which is commenced against an issuer SME is likely to negatively affect the cost and time dimensions of liquidity.

CONCLUSION

The article has examined the Zambian regulatory and institutional framework which governs the listing of entities on domestic securities exchanges so as to establish whether or not it provides adequate incentives for participation of various styles of SMEs and VCFs. The general conclusion which has been reached in this article is that the said framework has not done so. In particular, the article has established that although most African countries relied on the privatization of SOEs as a source of listings for their newly established securities exchanges, this source has proved to be unreliable, alongside domestic enterprises. It was noted that although most African countries have over the years have turned to cross-listings as a way of increasing securities market activity, cross-border cross-listings do not contribute to the real growth of the capitalization of the exchange of secondary listing, and as such gives a false sense of progress. This view was rationalized by the position that the capital of a cross-listed entity is foreign capital which does not in

any wise form part and parcel of the aggregate capital base of indigenous entities for growth GDP purposes. As an alternative or complement to the cross-listing efforts, it was proposed that SMEs—whose aggregate capital constitutes the larger portion of domestic capital in developing economies—be encouraged to participate in the AIMS of African securities exchanges, alongside VCFs. It was noted that although domestic VCFs are permitted to participate in domestic securities markets, foreign VCFs are not. Proposals were made for remedial legislative reform. It was argued that foreign VCF, especially those which operate in Egypt, Kenya and South Africa could venture their capital in the AIM and ensure its success.

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Foot Notes

[1] See, Irving, J. (2005). Regional Integration of Stock Exchanges in Eastern and Southern Africa: Progress and Prospects. *International Monetary Fund Working Paper*; IMF Working Paper/05/122/2005, 3

[2] *ibid*

[3] *ibid*

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[6] *ibid*

[7] N’gambi, S.P. (2014). *The Resource Nationalization Cycle, Stabilization Clauses and the need for Flexibility in Concession Agreements’* (PhD Thesis, Leicester University 2014) <https://ira.le.ac.uk/bitstream/2381/31484/1/SangwaniPatrickCorrectedThesis.pdf>> accessed 3 January, 2023

[8] See, Samamba, L.T. (2020). *Legal Aspects of Cross-border Trade in Securities: The Case of Eastern and Southern Africa* (PhD Thesis, University of Lusaka 2020) at 92, [‘Samamba, L.T., PhD Thesis’].

[9] The Industrial Development Corporation (IDC) is an investment, and management company which has been incorporated by the Government of the Republic of Zambia to manage parastatals, invest surplus resources of the State, advise the Boards of Directors of state-owned enterprises, and to continue the privatization of SOEs, on behalf of the State.

[10] Zambia Forestry and Forest Industries Corporation Limited (ZAFFICO) a State-Owned-Enterprise (SoE) was listed on the Lusaka Securities Exchange in the year 2020.

[11] For this sort of conception, see, Samamba, L.T. (2017). *Strategies for Increasing Liquidity of Eastern and Southern African Frontier Stock Markets*. *Afri. L. J.* 3, 5-24.

[12] *ibid*

[13] For some of the regulatory and institutional constraints on cross-border securities advertisement, see, Samamba, L.T. (2018). *Regulating Cross-border Securities Advertisement in the COMESA Region—Some Gaps in the Law*. *International Journal of Marketing and Technology*, 8:6, 1-23.

[14] Shoprite Checkers PLC is primarily listed on the Johannesburg Stock Exchange and secondarily listed (cross-listed) on the Lusaka Stock Exchange. In 24 years of her existence, this translates to an average of 1 new listing (Initial Public Offer ‘IPO’) per year.

[15] The Chairman of the Uganda Capital Markets Authority stated in 1997 that the following SOEs were expected to make public offerings in the “near future”: National Insurance Corporation, Uganda Commercial Bank, Uganda Consolidated Properties, Ltd., Uganda Airlines, the government’s 30% holding in BAT, Uganda Grain Milling Corporation, The New Vision, and Uganda General Machinery. *The New Vision* (July 26, 1997, p. 27), interview with Leo Kibirango, Chairman of the Ugandan Capital Markets Authority.

[16] Cohn, S.R. (2004). *A New Direction for African Capital Markets: Facilitating Capital-Raising Opportunities for Small and Medium-Sized Enterprises*, 1-17, 7 [hereinafter ‘Cohn (2004)’].

[17] See, section 84(2) of the Zambia Development Agency Act 2006. Section 26 of the ZDA Act 2006 reproduces verbatim and seriatim the provisions of section 17 of the Zambia Privatization Act 1992.

[18] See, section 84(2) of the Zambia Development Agency Act 2006.

[19] Samamba, L.T. (2019). *The Political Economy as a Constraint on Integration of Securities Markets and Cross- border Trade in Securities in the COMESA Region: From the Lagos Plan of Action to COMESA*. *International Journal of Research in Social Sciences*, 10, 1-27, 19

[20] The concern which relates to the loss of control by the founding family could be readily avoided by careful planning, and a positive assurance to the founding family that such control will be retained by them. For a discussion of such measures, see, Cohn, S.R. (2002). *The Development of Micro-Cap Securities Markets in Sub-Saharan Africa: New Approaches to Fostering Enterprise Growth*, in *Promoting Growth in*

African Capital Markets, UNITAR Doc. No. 18 (2002), [Cohn (2002)].

[21] Cohn (2004), at 7, *op.cit*

[22] As the entities migrate to the Main or Official List.

[23] Adelegan, O.J. (2008). Can Regional Cross-Listings Accelerate Stock Market Development? Empirical Evidence from Sub-Saharan Africa. International Monetary Fund Working Paper, IMF/WP/08/281/2008, [Adelegan (2008)]

[24] The other element of the volume dimension is breadth.

[25] See, Samamba, L.T. (2020). Cross-border Insider Trading Regulation: Current Legal, Regulatory and Institutional Challenges. Beau Bassin. Lambert Academic Publishing. 24. For a detailed examination of this aspect, see, Hearn, B. & Piesse, J. (2000). Pricing Southern African Shares in the presence of Illiquidity: A Capital Asset Model augmented by Size and Liquidity. SSRN Electronic J.; Hearn, B. & Piesse, J. (2009). Liquidity and Stock Market Premia in Emerging Financial Markets. South Afr. Fin. Econ 1.

[26] Marone, H. (2003). Small African Stock Markets: The Case of the Lusaka Stock Exchange. International Monetary Fund Working Paper Series.

[27] Balogun, Dahalan and Hassan, observe that for the securities exchange to contribute to economic development, its capitalization must grow to about the size of the national economy: Balogun, W.O., Dahalan, J.B. & Hassan, S.B. (2016). Long-Term Effects of Liquidity on Stock Market Development. J. Econ. & Sust. Dev. 7:4, 26-46.

[28] Soumare, I., Kanga, D., Tyson, J. & Raga, S. (2021). Capital Market Development in Sub-Saharan Africa: Progress, Challenges and Innovations. The ODI Series of Financial Development in Africa.

[29] Cohn, S.R. (2004). A New Direction for African Capital Markets: Facilitating Capital-Raising. Opportunities for Small and Medium-Sized Enterprises, 1-17.

[30] See, Balogun, W.O., Dahalan, J.B. & Hassan, S.B. (2016). Long-Term Effects of Liquidity on Stock Market Development. J. Econ. & Sust. Dev. 7:4, 26-46.

[31] *Ibid*; Yartley, C.A. (2008). The Determinants of Stock Market Development in Emerging Markets: Is South Africa Different? International Monetary Fund Working Paper Series, WP/08/32, 44.

[32] Balogun et al, observe that for the securities exchange to contribute to economic development, its capitalization must grow to about the size of the national economy: Balogun, W.O., Dahalan, J.B. & Hassan, S.B. (2016). Long-Term Effects of Liquidity on Stock Market Development. J. Econ. & Sust. Dev. 7:4, 26-46.

[33] For a detailed discussion of this approach, see, Salter, M. & Mason, J. (2007). Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research. Essex. Pearson Education Limited.

[34] Dobinson, I. & John, N. (2007). Qualitative Legal Research, in McConville, M. & Chiu, W.H. (eds). (2007). Research Methods for Law. Edinburgh. Edinburgh University Press. 16-45.

[35] Salter, M. & Mason, J. (2007). *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*. Essex. Pearson Education Limited.

[36] The actual average score is '0.7777'. However, a decimal cannot effectively denote the number of events. Where the decimal places are preceded by a number greater than zero (0), such as one (1), the number of events is taken to be the value of the digit which precedes the decimals—the decimal places are disregarded. For example, 2.7777 is taken to represent only two (2) events.

[37] However, the said progress incorporates cross-listings. Thus, the only way to establish the real progress which has been made by these securities exchanges is to exclude cross-listings. Thus, without cross-listings, these exchanges are worse-off.

[38] As at 25th January, 2023, the Lusaka Securities Exchange had twenty-four (24) listings.

[39] Cohn (2004), 8, *op.cit*

[40] Adelegan, O.J. (2008). *Can Regional Cross-Listings Accelerate Stock Market Development? Empirical Evidence from Sub-Saharan Africa*. International Monetary Fund Working Paper, IMF/WP/08/281/2008, [Adelegan (2008)]

[41] In particular, the study shows that market capitalization is higher for stock markets with cross-listings (32.5%) than that of stock markets without cross-listings (23.8%). Liquidity was far much higher for stock markets with cross-listings than those without such initiatives. In particular, the values of stock traded and domestic credit as a share of GDP were 16.7% for stock exchanges with cross-listings and 6.5% for those without such measures. Finally, the value of stock traded was about five (5) times higher for stock markets with cross-listings than those without cross-listings: *ibid* 12-27

[42] Onyuma, S., Mugo, R. & Karuiya, J.K. (2012). *Does Cross-border Listing (Still) Improve Firm Financial Performance in Eastern Africa?* *Journal of Business, Economics and Finance*, 1; Makau, S.M., Onyuma, S.O. & A.N. Okumu, A.N. (2015). *Impact of Cross-border Listing on Stock Liquidity: Evidence from East African Community'* (2015) 3(1) *Journal of Finance and Accounting*, 3:1, 10-18 ['Makau, Onyuma & Okumu (2015)'].

[43] As proposed above. Also, empirical evidence shows that internationalization of listings enhances liquidity of securities and the destination markets provided the market is in good state: Chipunza, J.K. & McCollough, K. (2018). *the Impact of Internationalization on Stock Liquidity: Evidence from the Johannesburg Stock Exchange*. *Economics and Financial Studies Journal*, 11:1, 1-23; Roosenboom, P. & van Dijk, M.A. (2009). *the Market Reaction to Cross-listing: Does the Destination Market Matter?* *Journal of Banking and Finance*, 1.

[44] Adelegan (2008). *op.cit* <www.researchgate.net/publication/23691345_Can_Regional_Cross-listings_Accelerate_Stock_Market_Development_Empirical_Evidence_from_Sub-Saharan_Africa> accessed 18 September 2022. See also, Mwenda, K.K. (2000). *Legal Aspects of Corporate Finance: A Case for Emerging Stock Markets* (PhD Thesis, Warwick University) 2-3, [Mwenda (2000)']<<http://wrap.warwick.ac.uk/2474/>> accessed 18 September 2022.

[45] Samamba, L.T. (2018). *Legal Constraints on the Growth of Cross-border Cross-listings in Eastern and Southern Africa*. *Afri L. J.*, 4:4, 72-102, 82-89.

[46] Storey D. (1994). *Understanding the Small Business Sector*. London, Routledge, 1-4

[47] Kayanula, D. & P Quartey, P. (2000). The Policy Environment for Promoting Small and Medium-Sized Enterprises in Ghana and Malawi. University of Manchester Working Paper Series, Paper No. 15/2000 <www.businessenvironment.org/dyn/be/docs/60/fdwp15.pdf> accessed 4 October 2018 (hereinafter 'Kayanula & Quartey. (2000))

[48] Kayanula & Quartey.(2000). 6-7, *op.cit*

[49] Kambone, S.M. (2017). The Impact of Small and Medium-Sized Enterprises in Achieving Sustainable Development and Growth. The International Journal of Multi-Disciplinary Research, 5, 1-64, 5 ['Kambone (2017)'].

[50] Eighty Thousand Kwacha, plus One Kwacha (K 80, 001).

[51] Kambone (2017), 6, *op..cit*

[52] Two Hundred Thousand Kwacha, plus One Kwacha (K 200, 001).

[53] *ibid*

[54] Common Market for Eastern and Southern Africa. (2007). Report on the First Round Table Meeting of Chief Executives of Stock Exchanges in COMESA Region 2007 (Cairo, Egypt, July 16-17, 2007) 4

[55] *ibid*

[56] Usually in practice, Double-Taxation Agreements are concluded between/among the jurisdictions which are concerned so as to avoid double or multiple taxation of entities concerned: See, Samamba, L.T. (2023). Legal Aspects of Promoting the Participation of Collective Investment Schemes in Eastern and Southern Africa Frontier Securities Markets. Int'l J. Res. Innov. Soc. Sci (*forthcoming*)

[57] A share is the personal property of the shareholder: *Zambian Companies Act 2017*, s 141(1). There the number of shares and their aggregate value represent the size of the interest which the shareholders has in the common property. This is what is implied by the proposition that a share is unit of account for measuring the interest of a member in a company: French, D., Stephen, M. & Ryan, C. (2015). *Mayson French & Ryan on Company Law*. Oxford, Oxford University Press, 160

[58] That is why shareholders are entitled to the return of capital in proportion to their shareholding (their capital). Share capital is the investment of the shareholders as opposed to a debt: See, *Oakbank Oil Co vs Crum* [1882] 8 App Cas 65; *Birch vs Cropper* (1889) 18 App Cas 525; *Re Anglo-Continental Corporation of Western Australia* [1898] 1 Ch 327.

[59] Adelegan (2008), *op.cit*

[60] For this obligation, see, *Zambian Companies Act 2017*, s 125(1)(b)(i)(ii)(iii)

[61] [1901] 1 Ch. D. 279

[62] *Borland's Trustee*, 288. See, the *Zambian Companies Act 1994*, s 21, for this sort of contract and covenants contained therein.

[63] Parker, R.L., Riopelle, R. & Steel, W.F. (1995). Small Enterprises Adjusting to Liberalization in Five African Countries. World Bank Discussion Paper No. 271, African Technical Department Series.

[64] Kayanula and Quartey (2000), 4, *op.cit*

[65] Zambian Securities Act 2016, s 75(1)

[66] *ibid*

[67] See, Securities (Registration of Securities) Rules, Statutory Instrument No. 164 of 1993, rr 5 and 6

[68] See, Securities (Registration of Securities) Rules, Statutory Instrument No. 164 of 1993, r 4(a)(b)

[69] Zambian Securities Act 2016, s 76(a)

[70] Zambian Securities Act 2016, s 81(1)

[71] A company—public, private or other authorized forms of entities—is under an obligation to lodge with the Registrar an annual return within ninety days after the end of each financial year in the prescribed form: Zambian Companies Act 2017, s 270. A public company is under an obligation to lodge with the Registrar, together with the annual return, a certified copy of every financial statement, statement of comprehensive income, group accounts, directors' report and auditors' report sent to members and debenture holders since the last annual return was made: Zambian Securities Act 2017, s 273.

[72] Cohn (2004), 11, *op.cit*

[73] See, Gondwe, M. (2012). Promoting Financial Inclusion of SMEs in Zambia. Speech by Michael Gondwe, the then Governor of the Central Bank of Zambia, which was made at the launch of the Soweto branch of Stanbic Bank Zambia Limited, New Soweto market, Soweto, Lusaka, 31 August 2012 <https://www.bis.org/review/r120911e.pdf> accessed 5 October 2022.

[74] Nuwagaba, A. (2015). Enterprises (SMEs) in Zambia. International Journal of Economics, Finance and Management, 4:4, 146-153 <http://www.ejournalofbusiness.org/archive/vol4no4/vol4no4_2.pdf > accessed 5 October 2022

[75] *ibid*

[76] *ibid*

[77] See, LuSE Listing Rules 2012, s 21

[78] Unlike collateralized debt financing, be it by way of a bank loan or the issue of debt securities or public debt securities.

[79] Nuwagaba, A. (2015). Enterprises (SMEs) in Zambia. International Journal of Economics, Finance and Management, 4:4, 146-153 <http://www.ejournalofbusiness.org/archive/vol4no4/vol4no4_2.pdf > accessed 5 October 2022

[80] In most countries, the minimum capital (investment) requirement for admission as 'foreign investor' is way above the maximum capital ceiling for SMEs. Against this backdrop, an argument is made that an SME cannot be a foreign issuer—it can only exist as domestic issuer. This is why, in most jurisdictions, SMEs are purely indigenous entities. Thus, on account of loyalty, patriotism, morality, sympathy and the existing business relations with the listing stock exchange of the AIM, a successful SME which is listed on the AIM is more likely than not to migrate to the Main List of its listing exchange than to a different domestic securities exchange or a foreign securities exchange for that matter. The indigenous character of SMEs also

supports the view that that they are likely to make a real contribution to the growth of the capitalization of the listing exchange, and the Gross Domestic Product of the domestic economy.

[81] *Zambian Securities Act 2016, s 67(1)*

[82] See, *Zambian Constitution (as amended by Act No. 2 of 2016), art 266 (definition of ‘statutory instrument’); Zambian Securities Act 2016, s 67(1)*

[83] *Attorney General v Mooka Mubiana*, Supreme Court of Zambia, Appeal No. 38 of 1993; *Interpretations and General Provisions Act, s 25, Chapter 2 of the Laws of Zambia.*

[84] Rules which are made by the Securities and Exchange Commission. This would ensure that the SEC has authority to regulate the AIM. The enforcement of the LuSE Listing Rules is the preserve of the LuSE as the exchange regulator. Enforcement of other regulatory rules than the LuSE Listing Rules is the province of the SEC. Such dual regulatory oversight is likely to ensure the investor protection which is necessary for the success of the AIM.

[85] LuSE Listing Rules 2012, s 5.1. ‘Applicant’ is defined as an issuer company applying for further listing some of whose securities have been already listed. ‘New applicant’ is defined as an issuer company applying for the first time no class of whose securities is already listed: See, LuSE Listing Rules 2012, The Definition Section (definition of ‘applicant’ and ‘new applicant’)

[86] LuSE Listing Rules 2012, s 5.1

[87] LuSE Listing Rules 2012, definition section (definition of ‘company’). The term ‘company’ runs through the definition of ‘applicant’ and ‘new applicant’ in the LuSE Listing Rules 2012. It is worth noting that the definition of ‘applicant’, ‘new applicant’ and ‘company’ in the LuSE Listing Rules 2012 accords with the definition of ‘listed securities’ which we have proposed above.

[88] Provided the range of securities falls within the definition of ‘securities’ which is given under section 2 of the Securities Act 2016.

[89] Provided the range of their securities falls within the definition of ‘securities’ which is given under section 2 of the Securities Act 2016.

[90] See, *Zambian Securities Act 2016, s 2 (definition of ‘Listed company’)*

[91] See, the definition of ‘listed company’ in the *Zambian Securities Act 2016, s 2*; definition of ‘company’ in the *Zambian Companies Act 2017, s 3*, and definition of ‘company’ in the *Zambian Securities Act 2016, s 2*

[92] See, *Zambian Securities Act 2016, s 2 (Definition of the term ‘company’); Zambian Companies Act 2017, s 3 (Definition of the term ‘company’).*

[93] See, the *Interpretation and General Provisions Act, s 20(4), Cap 2 of the Laws of Zambia; Bank of Zambia vs Anderson (Supreme Court of Zambia Judgment No. 13 of 1993) and Attorney General vs Mooka Mubiana (Supreme Court of Zambia, Appeal No. 38 of 1993)*

[94] And ‘issuer’ here means ‘a body corporate [wherever incorporated or established] including any other legal person, association of persons or entities and any trust or similar device [wherever established] that issues securities which are capable of being listed on the Lusaka Stock Exchange’.

[95] [Zambian Securities Act 2016, s 129\(1\)](#)

[96] At the time of writing this article, due diligence revealed that only two domestic venture capital funds were registered with the [Zambian Securities and Exchange Commission](#), namely (i) [Kukula Venture Capital Fund](#) and (ii) [Zambia Venture Capital](#). No foreign venture capital was registered.

[97] See, [Africa Development Bank Group. \(2021\). Entrepreneurship and Free Trade: Volume II—Towards a New Narrative of Building Resilience, 1-64](#). The other leaders in venture capital funding are Kenya and Egypt: *ibid*

[98] In addition to complying with the listing requirements for AIM and the Companies Act, Applicant Issuers who are listed on the LuSE AIM are required to disclose in their Annual Financial Statements (i) their Code of Corporate Practices and Conduct, and (ii) a statement on the extent of compliance or non-compliance with the Code of Corporate Practices and Conduct contained in the Corporate Governance Code for Small and Medium Enterprises (SMEs in Zambia): [LuSE Listing Rules, 21\(a\)\(b\)](#).

[99] Recall here that the participation of institutional investors in securities markets ensures the success of the underlying securities exchange: See, [Ding, M., Nilsson, B. & Suardi, S. \(2013\). Foreign Institutional Investors and Stock Market Liquidity in China: State Ownership, Trading Activity and Information Asymmetry. Knut Wicksell Working Paper 2013, 14, 2; Samamba, L.T. \(2023\). Legal Aspects of Promoting the Participation of Collective Investment Schemes in Eastern and Southern Frontier Securities Markets. Int'l J. Res. Innov. Soc. Sci \(forthcoming\)](#)

[100] The mandatory requirement to comply with the Companies Act on the part of entities applying for listing on the Alt-M seems to suggest that only entities which are regulated by the Companies Act are eligible to apply for listing. An argument is made that since other entities than companies and recognized bodies corporate are not regulated by the Companies Act, they are not eligible to apply for listing on the LuSE Alt-M; in particular, see, [LuSE Listing Rules 2012, s 21\(a\)\(b\)](#).

[101] Once implemented, this measure is likely to encourage the participation of risk-averse investors in the Alternative Investment Market.

[102] [Samamba, L.T. \(2018\). The Role of a Compensation Fund in Promoting Securities Market Participation—A Case for a Regional Compensation Fund. Afri L. J., 5, 1-35, 2](#)

[103] *ibid*

[104] *ibid*

[105] [Zambian Securities Act 2016, s 176](#)

[106] [Zambian Securities Act 2016, s 177](#)

[107] [Zambian Securities Act 2016, s 2](#)

[108] [Samamba, L.T. \(2018\). The Zambian Continuous Disclosure Legal Regime—Adequate to ensure efficient disclosure? Int'l J. Res. Soc. Sci., 8:6, 128, 147-152](#)

[109] A misrepresentation in this context could take the form of an untruth, a half-truth, or pure non-disclosure.

[110] See, *Zambian Securities Act 2016*, 166(1); *cf* *Zambian Securities Act 2016*, 167(1) which dispenses with the requirement of ‘reliance’ cases of loss caused by misrepresentation in other disclosure documents than prospectuses.

[111] Samamba, L.T. (2018). Conflicting Approaches to causation and loss for Non-disclosure and Misrepresentation in Disclosure Documents in Zambia—A Case for the Fraud on the Market Approach. *Int’l J. Res. Soc. Sci.*, 8:6, 61, 70, 86-88.