

GOVERNMENT NOTICE No. 7

COMPANIES ACT

(ACT No 15 OF 2013)

COMPANIES (SHAREHOLDER ACTIONS) RULES, 2017

IN EXERCISE of the powers conferred by section 382 (3) of the Companies Act, 2013, I, ANDREW K. C. NYIRENDA, SC, Chief Justice, make the following Rules—

1. These Rules may be cited as the Companies (Shareholder Actions) Rules, 2017. Citation

2.—(1) These Rules apply in relation to petitions presented to the Court under, Division II, Part XIV of the Act. Application

(2) Except where they are inconsistent with the Act and these Rules, the rules of procedure applicable in the High Court or the Supreme Court of Appeal shall apply with necessary changes to proceedings under Division II, Part XIV of the Act.

3.—(1) This rule shall apply where a company or other incorporated body is alleged to be entitled to claim a remedy and a petition is filed by one or more members of the company or other incorporated body for it to be given that remedy (a "derivative claim"). Derivative claim

(2) A company or other incorporated body for whose benefit a remedy is sought shall be a respondent to a derivative claim under this rule.

(3) After a petition has been issued under subrule (1), the petitioner shall apply, by way of summons, to the Court for leave to continue the derivative claim under section 337 (2) and (3) of the Act, and shall not take any other step in the proceedings except—

(a) as provided by subrule (5); or

(b) where the Court grants leave.

(4) An application under subrule (3) shall be supported by written evidence.

(5) The petition, summons and written evidence in support of the summons, shall be served on the respondent within a period within which the petition is to be served and, in any event, at least fourteen (14) days before a court is to hear the application.

(6) Where a Court grants the petitioner leave to continue the derivative claim, the respondent shall file his defence within fourteen (14) days of being granted leave or such period as the Court may specify.

(7) The Court may order a company or other incorporated body to indemnify the petitioner against any liability in respect of costs incurred in a claim under section 338 of the Act.

4.—(1) All shareholder actions shall be by way of petition.

Presentation
of petition

(2) The petition shall specify the grounds on which it is presented and the nature of the relief which is sought by the petitioner, and shall be delivered to the court for filing with sufficient copies for service under rule 5.

(3) The Court shall fix a date, time and venue for a hearing (the "return day") on which, unless the Court otherwise directs, the petitioner and any respondent including the company shall attend before the High Court Registrar or a Judge for directions to be given in relation to the procedure on the petition.

(4) At the time of fixing the return day, the Court shall return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing.

(5) For avoidance of doubt, leave shall not be required for any other shareholder action other than a derivative claim.

Service of
petition

5.—(1) The petitioner shall, at least fourteen (14) days before the return day, serve a sealed copy of the petition on the company.

(2) In the case of a petition based upon section 343 of the Act, the petitioner shall also, at least fourteen (14) days before the return day, serve a sealed copy of the petition on every respondent named in the petition.

Return of
petition

6. On the return day, or at any time after the return day, the Court shall give such directions as it considers appropriate with respect to the following matters—

(a) service of the petition on any person, whether in connection with the date, time, and venue of a further hearing, or for any other purpose;

(b) whether points of claim and defence are to be delivered;

(c) whether, and if so by what means, the petition is to be advertised;

(d) the manner in which any evidence is to be adduced at any hearing before a Judge and in particular, but without prejudice to the generality of the foregoing, as to—

(i) the taking of evidence wholly or in part by witness statement or orally;

(ii) the cross-examination of any persons making a witness statement; and

(iii) the matters to be dealt with in evidence;

(e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition; and

(f) such orders, if any, including an order of stay of execution of judgment for any period, as the Court considers appropriate, with a view to mediation or other alternative dispute resolution mechanisms.

Advertisement
of the order

7. Where the court considers that an order made under paragraph (f) of rule 6 should be advertised, it shall give directions as to the manner and time of the advertisement.

Made this 14th day of December, 2016.

ANDREW K. C. NYIRENDA, SC
Chief Justice

GOVERNMENT NOTICE NO. 8

FINANCIAL SERVICES ACT

(CAP 44:05)

DETERMINATION OF A PROHIBITED PRACTICE

Pursuant to section 63 (1) of the Financial Services Act, I, CHARLES CHUKA, Registrar of Financial Institutions, hereby make a determination that imposition of fees or charges to customers by banks for maintaining a saving or ordinary personal current account is a prohibited practice within the meaning of section 63 (1) of the Act. The prohibition does not apply to charges and fees for accessing other services or products.

An ordinary personal current account does not provide or offer the account holder any special or value added services other than normal withdrawals and deposits.

This prohibition is with effect from 1st January, 2017.

Made this 29th day of December, 2016.

CHARLES S. R. CHUKA

Registrar of Financial Institutions

(FILE NO.SUD. 44/05)

CORRIGENDA

Land Act, 2016 (No 16 of 2016) published in the Malawi *Gazette* supplement, dated 2nd September, 2016—

(a) under section 27 (2), *delete* "a comma" between the words "those rents and however" which appears in the seventh line and *substitute* therefore with "a full stop;"

(b) *delete* the word "however" and *substitute* with the word "However" in the seventh line of subsection (2);

(c) under section 36 (2), *delete* the word "intended" in the last line;

(d) under section 39, *delete* the words " prior to the expiry of the three year period referred to in section 9 (2)," which appear at the beginning of the line; and

(e) *delete* the word "where" and *substitute* with the word "Where" in the second line of section 39.

