

**THE WORKERS' COMPENSATION ACT**

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**Workers' Compensation**

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#### Section

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**GOVERNMENT OF ZAMBIA**


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**ACT****No. 10 of 1999****Date of Assent: 4<sup>th</sup> October 1999**

An Act to revise the law relating to the compensation of workers for disabilities suffered or diseases contracted during the course of employment; to provide for the merger of the functions of the Workers' Compensation Fund Control Board and the Pneumoconiosis Compensation of fund for the compensation of workers disabled by accident occurring, or diseases contracted in the course of employment; to provide for the payment of compensation to dependants of workers who die as a result of accidents or diseases; to employers; to provide for the appointment and powers of a Workers' Compensation Commissioner, the establishment and functions of a workers' Compensation Fund Board and a workers Compensation Tribunal; and to provide for matters connected with and incidental to the foregoing.

{18th October, 1999

ENACTED by the Parliament of Zambia

Enactment

**PART 1**

## Preliminary

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|----|---|------------------------------------|
| 1. | This Act may be cited as the Workers' Compensation Act, 1999, and shall come into operation on such date as the Minister may, by statutory instrument, appoint. | Short title<br>and<br>Commencement |
|----|---|------------------------------------|

## Interpretation

2. (1) In this Act, unless the context otherwise requires:
- “accident” means an accident resulting in injury to a worker or in damage to, or destruction of, any artificial aid used by a worker in the course of employment;
- “actuary” means the person appointed by the board under section twenty-five to carry out functions under this Act;
- “assessment” means an assessment or a provisional assessment made under Part VIII;
- “Board” means the workers’ Compensation Fund Control Board established by section ten;
- “business” means any industry, undertaking, trade occupation or other activity in which any worker is employed;
- “certificate” means any certificate issued by the Examiner under this Act;
- “child” means an unmarried son or daughter under the age of eighteen years, and includes
- (a) an illegitimate child;
  - (b) a posthumous child;
  - (c) an adopted child;
  - (d) the child of any person with whom the worker was, in the opinion of the Commissioner, living as man and wife at the time of the accident or disease if that child was wholly supported by the worker; and
  - (e) a child in respect of whom a worker had assumed, under the law and customs of the community of which the worker is a member, responsibility for support of that child and who was supported by the worker at the time of the accident or disease;
- “children’s allowance” means the monthly allowance payable in respect of a child or children of a disabled or deceased worker under Part V;
- “Commissioner” means the worker’s Compensation Commissioner appointed under section sixteen;
- “Compensation” means compensation under this Act, and includes medical aid and any benefit of any nature to which a worker or that worker’s dependants may be entitled under this Act and children shall be construed accordingly;



“disablement” in relation to a worker, means disablement which results in the loss or diminution of wage-earning capacity or in the reduction of the chances of obtaining employment;

“dissolved Boards” means the workers’ Compensation Board and the Pneumoconiosis Compensation board established under the Workers’ Compensation Act and the Pneumoconiosis Act, respectively;

Cap.271

Cap 217

“ domestic worker” means a person who is employed in domestic service in a private household;

“earnings” means the average remuneration of a worker at he time of an accident or disease calculated in the manner provided in section seventy-nine;

“employer” means a person regarded as, or deemed to be, an employer under section five, and includes a principal and the lawful representatives, successors or assigns of that person or principal;

“Examiner” means any person, body of persons or institution appointed by the minister, by statutory order, to conduct medical examinations under the Act;

“ exempted employer” means an employer to whom exemption has been granted under section one hundred and eleven, and includes the State;

“financial year” means the period between the 1<sup>st</sup> April in any year and the 31<sup>st</sup> March next following, both dates included;

“fund” means the workers’ Compensation Fund established under Part IX;

“injury” means a personal injury and includes the contraction of a disease;

“ legal practitioner” has the meaning assigned to it by the legal Practitioners Act;

“medical aid’ means any or all of the benefits prescribed in paragraphs (a) to (e) subsection (1) of section one hundred and one;

“medical practitioner” means a person registered as a medical practitioner under the medical and Allied Professions Act and, in relation to any medical examination of, or report, upon, any worker who is for the time being in ant country outside Zambia, a person entitled to practice medicine in that country who has been approved for the purpose concerned by the Commissioner;

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“member” means a member of the Worker’s Compensation fund Control Board;

“miner” means, subject to the provisions of subsection (2) –

(a) any person employed or who has been employed at a scheduled mine and the nature of the employment necessitates working below the surface of the ground or in any scheduled place;

(b) any other person whom an Examination certificates to have contracted pneumoconiosis, which in the opinion of the Board after consultation with an Examiner, was contracted as a result of employment at a scheduled mine or place;

“partial disablement”, in relation to a worker means:

(a) the inability of that worker, as a result of an accident or disease in respect of which compensation is payable, to respect whole of the work at which that worker was employed at the time of the accident or incidence of the disease;

(b) the inability to obtain other suitable work at the same rate of earnings as the worker was receiving at the time of the accident or incidence of the disease;

“pension” means the amount payable monthly under Part, V, but does not include children’s allowances or periodical payments;

“periodical payment” means a periodical payment of compensation under sections sixty-six and sixty –seven;

“person under disability” means a minor, and a mentally disabled or defective person;

pneumoconiosis” means any form of the lung disease due to the inhalation of dust;

“ principal” means a person referred to as a principal in section eight;

Cap.271 “ repealed Acts” means the workers Compensation Act, 1964

Cap. 217 and the Pneumoconiosis Act, 1950;

“representative” means the executor or other person lawfully appointed to take charge of the estate of a deceased worker and, if there is no person so appointed, means any person appointed by the commissioner under this Act to make an application on behalf of the deceased worker’s dependants for compensation, and in other respects to act the representative of that worker for the purposes of this Act;

“scheduled disease” means any disease specified in the First Schedule;

“scheduled mine” means any mine specified in the sixth Schedule;

“scheduled place” means any place specified in the Second Schedule;

“serious and willful misconduct” means-

(a) drunkenness;

(b) a contravention of any law or instructions of the employer made for the purpose of ensuring the safety or health of workers or of preventing accidents or diseases to workers, if the contravention was committed deliberately or with a reckless disregard of the provisions of that law; or

(c) any other act or the provision which the commissioner or any court on appeal may, having regard to all circumstances of an accident or disease, declare to be serious and willful misconduct;

“total disablement” in relation to a worker, means the inability of that worker, as a result of an accident or disease in respect of which compensation is payable, to perform the work for which the worker was employed at the time of the accident or other suitable work; and

“Tribunal” means the Workers' compensation Appeal Tribunal established under the provisions of section one hundred and seventeen.

(2) For the purpose of the definition of “miner” in subsection(1),”working does not include the performance, whether underground or in a scheduled place, of-

(a) infrequent inspections or other occasional duties; or

(b) any work or duty necessitated by and performed during any serious emergency.

(3) where there is doubt or a dispute arises whether duties are infrequent, occasional or otherwise, or whether any emergency was serious or not, or as to the duration of any emergency, the advice shall be sought of the person in charge of mine safety under the Mines and Minerals Act.

- Meaning of worker 3. (1) In this Act, unless the context otherwise requires, subject to subsection (3), "worker"-
- (a) means any person who has entered into, or works under, a contract of service or of apprenticeship or of learnership with an employer, whether the contract is expressed or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind; and
  - (b) includes any person whose occupation is conveying for gain persons or goods by means of any vehicle, vessel or aircraft, the use of which that person has obtained under any contract other than a purchase or a hire-purchase agreement, whether or not the remuneration of the person under such a contract is partly an agreed sum and partly a share in takings, but does not include any person whose remuneration is fixed solely by a share in takings.
- (2) If, in any claim for compensation under this Act, it appears to the Commissioner that the contract of service or apprenticeship or learnership under which the injured worker was working at the time when the accident causing the injury happened was illegal or otherwise unenforceable for any reason, the commissioner may deal with the matter as if the contract had at the time been a valid contract of service, or apprenticeship or learnership.
- (3) The following persons are excepted from the definition of "worker".
- (a) any person in-
    - (i) the Zambia Police force or the Public Service;
    - (ii) the public service of any government or authority specified by the Minister, by statutory notice;
  - (b) any person employed casually by an employer and not in connection with the employer's trade or business;
  - (c) any person to whom articles or materials are given out by any employer to be made up, cleaned, washed, ornamented, finished or repaired or adapted for sale on premises not under the control of the employer;
  - (d) a member of the Defence Force; or
  - (e) any person who is a member of a Service Commission established under the provisions of the Service Commissions Act.

(4) Any reference in this Act to a worker who has been injured or infected by disease shall, when the worker is dead or is a person under disability, include a reference to that workers' representative or to the dependants or to any other person to whom or for shows benefit compensation is payable.

4. (1) Subject to the provisions of this section and unless the context otherwise meaning of requires, "dependant" means - "dependant"

- (a) the spouse of a worker living with the worker at he time of the accident or disease concerned;
- (b) any child of a worker if born before or within ten months after the time of the accident or disease concerned;
- (c) any parent or step-parent of a worker if the Commissioner is satisfied that the worker was adopted and the adoption was prior to the accident or incidence of disease;
- (d) any brother, sister, half-brother or half-sister, or any grandparent or grandchild of a worker; or
- (e) any other relation to the worker, whether by consanguinity or affinity, who was wholly dependant for support and maintenance upon the worker at he time of the accident or incidence of the disease concerned.

(2) A person who falls within the provision of paragraph (a) (b), (c) or (d) of subsection (1) shall only be deemed to be dependant if that person was wholly or partly dependant for support and maintenance upon the worker at the time of the accident or incidence of the disease concerned.

(3) Notwithstanding the other provisions of this section, the child of a worker or a person in respect of whom a declaration has been made under the provisions of section seventy-four shall be deemed to be dependent for support and maintenance upon the worker.

(4) In the case of a worker who leaves two or more spouses, the spouses shall be entitled to share between themselves such compensation as would be payable to a single spouse of the deceased worker, jointly or in such proportions as the Commissioner may decide.

5. (1) The government and any person or any body of persons, corporate or Meaning of incorporate, having a contract of service or apprenticeship with a worker shall "employer" be regarded, for the purposes of this Act, as the employer of that worker, whether the contract was entered into before the commencement of this Act.

(2) If the services of a worker are temporarily lent or let on hire to another person by the person with whom a contract of service apprenticeship or learnership is made shall, except as provided in subsection (1) of section eight, be deemed to continue to be the employer of the worker while the worker is working for that other person

(3) In the case of a worker whose occupation is conveying for gaining person or goods by means of any vehicle, vessel or aircraft the used of which the worker obtained from some other persons under a contract other than a purchase or hire-purchase agreement, the other person shall, for the purpose of this Act, be deemed to be the employer.

(4) In the case of a worker employed by a club or other association of persons, the members of the managing committee, or if there be no committee, the secretary or other responsible officer, of the club or association shall be deemed to be the employer.

(5) For the purpose of the giving or receiving of statements, notices or other documents under this Act, the term "employer", includes a manager, secretary, accountant, treasurer, duly authorized agent or other responsible person appointed by the worker's employer.

## PART II

### APPLICATION OF ACT

Civil Liability of Employer	<p>(6) (1) Where any injury is caused or disease contracted by a worker by a worker by the negligence, breach of statutory duty or other wrongful act or omission of the employer, or of any person for whose act or in any way affect any civil liability of the employer independently of this Act.</p> <p>(2) Any damages awarded to a worker in an action at common law or under any law in respect of any negligence, breach of statutory duty, wrongful act or omission, under subsection (1), shall be reduced by the value, as decided by the court, of any compensation which has been paid or is payable by the fund under this Act in respect of injury sustained or disease contracted by the worker.</p> <p>(3) For the purpose of subsection (1) "compensation" includes, in the case of a continuing liability, the capitalist value, as determined by the court, of the pension, periodical payment or allowance, which constitutes the liability.</p>
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7. (1) where an accident or disease in respect of which compensation is payable Concurrent  
was caused or contracted in circumstances creating legal liability in some remedies  
person other than the employer, in this section referred to as the "third party" to pay  
damages to the worker in respect therefore-
- (a) the worker may both claim compensation under this Act and take proceedings against the third party in a court to recover damages:  
Provided that where any proceedings are instituted the court shall, in awarding damages, have regard to the amount which, by virtue of the provisions of Commissioner or the exempted employer, by the third party; and
- (b) the Commissioner or the exempted employer by whom compensation is payable shall have a right of action against the third party for the recovery of the compensation that the employer is obliged to pay under this Act as a result of the accident or disease and may exercise the right either by joining in a suit instituted by the worker against the third party or by instituting a separate suit:  
Provided that the amount recoverable under this paragraph shall not exceed the amount of damages, if any, which would have been awarded to the worker but for the provisions of this Act.
- (2) A worker shall, before instituting proceedings under subsection (1), notify the Commissioner or the exempted employer in writing of the intention to do so and shall notify the Commissioner or the employer if the worker decides to abandon the proceedings or to relinquish or settle the claim for damages.
- (3) For the purpose of this section, "compensation" includes in the case of a continuing liability, the capitalized value, as determined by the court, of the pension, periodical payment or allowance which constitutes the liability.
- (8) (1) Where any person, in this section referred to as the principal, in the Principals  
course of or the purposes of that person's trade and  
or business, contracts with any other person, in this section referred contracts  
to as the contractor, for the execution by or under the supervision of the contractor, of the whole or any part of any work undertaken by the principal, any worker engaged on such work shall be deemed to.

be the worker of the principal unless and until the contractor respect of the work has been assessed as an employer and has paid all assessments due the Fund for the current year, and any reference in this Act to the employer shall be deemed to be reference to the principal:

Provided that if compensation becomes payable to the worker under this Act, the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed.

(2) Where the principal has paid an assessment or compensation which, but for the provisions of subsection (1), the principal would not have been liable to pay, the principal shall be entitled to reimbursement by the contractor to an extent as the Commissioner, on application made by the principal, finds that the contractor would have been liable had that contractor been deemed under this Act to be the employer of the worker.

(3) The principal shall ensure that my assessment for which the contractor is liable is paid and if the principal fails to do so, that principal shall be personally liable to pay the assessment to the Commissioner and the provisions of this Act with regard to enforcing assessments shall apply to the principal but that principal shall be entitled to reimbursement by the contractor of any sum paid out under this subsection.

(4) Where a principal has paid to the Commissioner any assessment or compensation under the provisions of subsection (2) or (3), the principal shall, unless reimbursed by the contractor, be entitled to deduct an amount determined in accordance with subsection (2) from any moneys due by the principal to the contractor.

(5) Notwithstanding anything contained in this section, the Commissioner shall first proceed against the contractor for the recovery of compensation instead of against the principal, and the event of failure to recover fully from the contractor, may recover the balance from the principal.

(6) This section shall not be construed so as impose any liability on the principal in respect of any accident which occurs or disease that is contracted else where than on, in or about the premises on which the principal has undertaken to execute the work or which are otherwise under the principal's control or management.



Workers  
employed  
Zambia, etc.

9. (1) Where an employer carried on business chiefly within Zambia and the usual place of employment of the worker is in outside Zambia and an accident occurs or a disease is contracted by the worker while temporarily employed by the employer out of Zambia, the worker shall be entitled to compensation in the same manner as if the accident or disease had occurred or been contracted in Zambia.

(2) The provisions of this subsection shall cease to apply to a worker after being employed out of Zambia for a continuous period of twelve months unless the Commissioner has, before the end of that period, agreed with the worker and the employer concerned that those provisions should, subject to conditions as the Commissioner may determine, continue to apply.

(3) Where an employer carries on business chiefly outside Zambia and an accident occurs or a disease is contracted by a worker ordinarily employed outside Zambia but temporarily employed by the employer in Zambia at the time of the accident or incident of disease, that worker shall not be entitled to compensation out of the Fund unless the employer has previously agreed with the Commissioner that such a worker shall be entitled to compensation, and has paid assessment.

(4) Where, by the law of the country in which an accident occurs or a disease is contracted, a worker in the circumstances described in subsection (1) is entitled to compensation in respect of the accident in disease, or where the accident occurs or the disease is contracted in Zambia and the worker would be entitled to compensation under the law of any other country as under this Act, the worker shall, by notice to the Commissioner, elect to claim compensation either under this Act or under the law of the other country.

(5) A worker who elects to claim compensation under this Act as required under subsection (4) shall-

- (a) present a claim under this Act; and
- (b) cede to the commissioner or the exempted employer the claim under the law of the other country, and if the amount recoverable under that other law exceeds the amount of compensation under this Act, the cession shall be effective in respect of so much of the claim as equals the amount of such compensation.

(6) A worker who elects to claim compensation under the law of another country as required under subsection (4) shall, where the amount recoverable is less than the compensation which would have been payable under this Act, receive compensation not exceeding the amount of the difference.

(7) Where a worker elects to claim compensation under the law of another country as required under subsection(4) and the claim lies against the employer who has paid assessments, the Commissioner shall reimburse the employer to the extent of the compensation payable under this Act.

### PART III

#### WORKER'S COMPENSATION FUND CONTROL BOARD

Establishment of  
Workers'  
Compensation  
Fund Board

10.(1) There is hereby established the workers' Compensation Fund Control Board which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued and in its corporate name, subject to the provisions of this Act, to do all such acts and thins as a body corporate may by law do or perform and as are necessary for or incidental to the carrying out of its functions under this Act.

(2) The Board shall consist of eleven members who shall be appointed by the Minister as follows;-

- (a) the chairperson of the Board;
- (b) three persons from associations representing employers;
- (c) three persons from associations representing workers;
- (d) three representatives from the Government; and
- (e) one person from an association of pensioners.

Functions of  
Board

11.(1) Subject to the provisions of this Act, the Board shall be responsible for the administration of the Fund and for advising the Minister on any matters in connection with the Fund or this Act,

(2) Without prejudice to the generality of subsection (1), the board shall –

- (a) direct the Commissioner for the effective administration of the Act; and
- (b) after the conclusion of the financial year, report to the minister on the administration of the Fund and of this Act during the year.

(3) The board may promote, establish and subsidize out of the Fund any organization or scheme the objects of which consist of, or include, one or more of the following:

- (a) the prevention of accidents or of any disease which are due to nature of any occupation;
- (b) the promotion of the health or safety of workers; or
- (c) the provision of facilities designed to assist injured or afflicted workers to return to work or to reduce or remove any handicap resulting from the injuries or disease.

Tenure of office of  
Members of Board

12 (1) Subject to the other provisions of this Act, a member shall hold office for a period of three years from the date of appointment and may be re-appointed for a further like period.

(2) A member shall cease to hold office if the member

- (a) dies;
- (b) resigns;
- (c) is adjudged bankrupt or enters into any arrangement for the benefit of that member's creditors;
- (d) is adjudged to be of unsound mind;
- (e) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (f) without reasonable cause is absent from three consecutive meetings of the Board of which the member had notice; or
- (g) is removed by the minister under subsection (3).

(3) The Minister may remove a member from the Board if in the opinion of the Minister the member is incapable of performing functions specified under the Act.

13. (1) The Board may meet together for the dispatch of business, adjourn and other wise, regulate its meetings and proceedings as it deems fit. Proceedings  
of Board

(2) A majority of members shall constitute a quorum of any meeting of the board, and all acts, matters or things authorized or required to be done by the Board shall be decided by resolution of any meeting at which a quorum is present.

(3) Where the Chairperson is absent from a meeting of the board the members Present, if they constitute a quorum shall elect one of their number to be Determined by the Board. Seal of  
Board

14. (1) The seal of the board shall be such device as may be determined by the Board.

(2) The seal shall not be affixed to any instrument except by authority of a resolution of the board, and the sealing of any instrument shall be authenticated by the signature of the Chairperson or such other person as the Board may appoint for the purpose.

15. (1) The members of the board shall be paid such remuneration, traveling and substance allowances, as the minister may approve. Remuneration and  
Allowances

(2) The remuneration and allowances under subsection (1) shall be paid out of the Fund.

(16) (1) the minister shall, in consultation with the board, Commissioner  
appoint the workers' Compensation Commissioner who shall and other staff  
hold office for a period of three years but shall be eligible for reappointment.

(2) The Board may appoint such other persons as, its opinion, are necessary for the administration of this Act.

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**Workers' Compensation**

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(3) The Commissioner may, subject to the general or special directions of the Board, delegate any of the powers and functions under section seventeen to any person appointed under subsection(2).

(4) The amount of remuneration and the terms and conditions of service of all persons appointed under this section shall, subject to the approval of the minister, be determined by the Board and that remuneration shall be paid out of the Fund.

17. Subject to the provision of this Act, the Commissioner shall be empowered to –

Duties and powers  
of commissioner

- (a) receive notices of accidents and claims for compensation;
- (b) inquire into or cause inquiry to be made into accidents;
- (c) determine whether any person is a worker, employer, principal or contractor for the purpose of this Act;
- (d) pay compensation payable from the Fund under the provision of this Act;
- (e) decide any question relating to -

- (i) the right to compensation;
- (ii) the submission, consideration and determination of claim for compensation;
- (iii) compensation of earnings;
- (iv) the degree of disablement of any worker;
- (v) the amount and method of payment of any compensation;

- (vi) the withholding of any compensation; and
- (vii) any other matter referred to the commissioner ;
  - (f) determine whether any person is a dependant under this Act and, if so, the degree of dependence, which dependant shall receive compensation and the allocation of compensation among them;
  - (g) determine any question arising in respect of the necessity for, or the character or the sufficiency of any medical aid;
  - (h) determine any question relating to the rendering of statements of wages, liability for assessment, rates of assessment, amount of assessment and method payment of assessment.;

- (i) after the conclusion of each financial year, report to the board on the administration of this Act during that year;
- (j) collect, compile and maintain statistics and information relating to the occurrence or cause of accidents and disease or scheduled disease and the accidents and diseases or scheduled diseases and the grant of benefits to person under this Act as the Commissioner may deem necessary or as may be required by the board;
- (k) in investigate whether any disease should be included in, or deleted from, the second schedule and make recommendations to the Board n regard thereto;
- (l) make any investigations and perform such other functions and duties or as may be deemed necessary for the commissioner or as may be deemed necessary for the administration of this Act; and
- (m) determine any other question falling within the Commissioner's purview in connection with the application of this Act, or in respect of any employer or worker.

18. (1) The Commissioner may, in writing, authorize any Inspection  
 competent person either generally or specially to investigate any matter and  
 failing within the Commissioner's powers and to report the investigation  
 Commissioner any such matter.

(2) Any person authorized under subsection (1) shall have the power to inquire and take affidavits or declarations as to any matter to which the investigation or report relates, or to take any other declarations required under this Act, and in all cases to administer oaths ad after attest declarations.

(3) Upon the production of the written authority referred to in subsection (1), a person authorized by the commissioner may, with a warrant and at all reasonable times enter upon any land, works, premises or other place, and may question any employer or other person and inspect any part of the land, works, premises or other place or any books or documents which may contain information required for the purposes of the Act and take copies of extracts from such books or documents.

(4) Any person who willfully obstructs any person authorized under subsection (1) in the lawful exercise of that person's functions under this section or who makes or subscribes to any statement, knowing it is false, or who willfully refuse to answer any question or produce any document, commits an offence.

(19)(1) If any person in the exercise of any powers conferred or Secretary in the performance of any duties imposed by or under this Act acquires information relating to the financial affairs of any other person, firm or business, or to any manufacturing or commercial secrets or working processes that person not disclose such information to any other person, except-

(a) to a court of law or to person who by law is vested with the power to compel the disclosure of such information; or

(b) to the Board or to any person acting in the execution of this Act in so far as such information may be necessary for the execution of the Act.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

Revision of  
Compensation  
By Commissioner

20. (1) The commissioner may, after giving notice in writing to the person concerned and giving that person an opportunity to be heard, at any time review any compensation granted on any of the following grounds;

(a) that the worker has not attended examination or has not submitted a medical report when required so to do under this Act;

(b) that the disablement which gave rise to the award is continued or aggravated by the unreasonable refusal or willful neglect of the worker to attend medical or surgical treatment;

(c) that in the opinion of the Commissioner the degree of disablement has increased or diminished or that the worker is no longer permanently disabled;

(d) that any compensation awarded is or has become either excessive or insufficient to meet the circumstances of the case; or

(e) that the award was based on a mistake or misrepresentation of fact, or that a different award might have been made if evidence presently available but which was not available when the commissioner made the award has been produced.

(2) The Commissioner may, after giving notice in writing to any person concerned and after giving that person an opportunity to be heard, at any time review any decision, not being an award of compensation, given by the Commissioner under this Act.

(3) The Commissioner may, after making inquiry or receiving evidence as may be considered necessary, confirm the award of compensation or order the discontinuance, suspension, reduction or increase of that compensation, or in the case of any decision referred to in subsection (2) confirm, set aside or vary that decision.

(4) For the purpose of this section, "compensation" include medical aid expenses.

Power of commissioner

21. (1) The commissioner may summon any person who -

In respect of witness, etc.

(a) may be able to give material information concerning the subject of any investigation under this Act; or

(b) the Commissioner suspects or believes has in that person possession or custody, any book, documents or thing which has any bearing on an investigation under this Act to appear before the Commissioner at a time and place specified in the summons, to produce the book, document or thing.

(2) Any interested party may request the Commissioner to summon any person under subsection (1) and the commissioner shall summon that person.

(3) The Commissioner may retain for further examination any relevant book, document or thing produced by any person under subsection (1).

(4) A summons under subsection (1) shall be signed by the Commissioner.

(5) The Commissioner may call and administer an oath to any person summoned under subsection (1), and the Commission may question the person on the book, document or thing that person produced to the Commissioner.

(6) Any person duly summoned under subsection (1) who fails, without sufficient cause, to attend at the time and place specified in the summons commits an offence.

(7) Any person duly summoned under subsection (1) or called under subsection (5) who –

- (a) fails to remain in attendance under excuse by the Commissioner from further attendance;
- (b) refuse to be sworn or affirmed as a witness;
- (c) fails to answer fully and satisfactorily to the best of that person's knowledge and belief all or any questions lawfully put to that person; or
- (d) fails to produce any book, document or thing in that person's possession, custody or under the person's control:

Commits an offence and is liable on conviction to a fine not exceeding twenty thousand penalty units or imprisonment for a period not exceeding one year, or to both.

(8) A person summoned to appear before the Commissioner may, if the Commissioner is satisfied that the person has, by reason of the appearance, suffered any pecuniary loss or been put to any expenses, be paid out of the Fund such allowances as may prescribed or the amount of the loss or expense.

22. Any person aggrieved by the decision of the Commissioner Appeal from  
 may appeal to the Tribunal within twenty-one days of that decision decision  
 or within such further period as the Tribunal may allow on good cause shown.

Establishment  
 Of workers  
 Compensation  
 Fund Board

23. (1) Except as the Commissioner may order, no obligation to pay any assessment, compensation or other amount to the commissioner or the Fund, or any periodical payment to or respect of a worker by reason of a decision of the commissioner shall be suspended or deferred by reason of the fact that an appeal has been lodged under section twenty-two  
 (2) If, as a result of a review under section twenty-two the amount payable by reason of the original decision is varied the person who made the payment shall be entitled to refund or be liable to pay the addition amount

Functions of Board

24. (1) The Commissioner may appoint an assessor any person skilled in technical questions. Other than medical, dental, or surgical questions, to act in an advisory capacity in any investigation by the Commissioner under this Act .



- (2) A person shall not be appointed as an assessor under this section or, if appointed, no person shall sit if-
- (a) that person is an employee or, associated in any pecuniary manner with, the employer of the worker concerned; or
  - (b) that person has, in connection with the injury or death out of which the formal inquiry arises, given professional in dispute to any party to the payment of compensation under this Act to such worker.
- (3) There shall be paid out of the Fund to any assessor such fees as may be prescribed.

Appointment  
Of actuary

25. The Board shall appoint an actuary who shall have qualifications approved by the Board, for the purposes of exercising the powers and duties imposed or conferred by this Act.

Actuarial  
Valuation of Funds

26. The actuary shall value the Fund at intervals not exceeding three and the actuary shall-

- (a) prepare a report on the state of the Fund;
- (b) State any surplus or deficiency in the Fund; and
- (c) Recommend any action to be taken

Action on  
Actuarial report

27. (1) Upon receipt of the report of the actuary the Board shall with

- (a) increase or decrease the rates of assessments payable in respect of employers; or

(b) require employers to pay such sums as the actuary may determine to

lower any deficiency directly attributable to an action of such employers.

(2) If, within six months of the receipt of the actuary's report by the Board, the Board fails to carry out any recommendation contained in the report, the Minister may exercise any of the powers conferred on the Board under subsection (1) and the exercise of such powers by the Minister shall have the same effect as the powers were exercised by the Board.

#### **PART IV**

##### MEDICAL EXAMINATIONS, CERTIFICATE OF FITNESS AND REPORT

28. This Part shall only apply to persons employed as miners and their employers.

Application of part

IV

29. The Examiner may issue the following certificates under this part.

Types of Certificates

(a) initial certificates and initial ( restricted) certificate under section thirty-four;

(b) periodical certificates and periodical ( restricted) certificate under section thirty-eight; or

(c) a special certificate under section thirty.

30. (1) Any person who employs, as a miner, a person who is -

No employment

Without, or in breach

(a) not the subject of a valid certificate of fitness; or

of, certificate of fitness

(b) the subject of an initial (restricted) certificate or a periodical

(restricted) certificate in a manner other than that set out in the certificate; or

(c) the subject of a special certificate for more than an aggregate of one hundred hours in any period of thirty days;

Commits an offence.

(2) Any person who works as a miner;

(a) without a valid certificate of fitness;

(b) in a manner than that set out in the person's initial (restricted) certificate or periodical (restricted) certificate; or

(c) for more than an aggregate of one hundred hours in any period of thirty days and is a subject of a special certificate;

Commits an offence.

(3) For the purpose of reckoning any period of days under this section regard shall be had to the power of the Examiner to authorize the extension of the validity of a certificate of fitness after its expiry as provided by section thirty-six.

(4) A certificate of fitness shall not be issued under this part unless the person concerned has undergone the appropriate examination prescribed by this Act.

(5) An employer or prospective employer wishing to present any person for a prescribed examination shall do so at a date and time to be arranged between the Examiners, or medical practitioner outside Zambia authorized by the Examiner, and the employer or prospective employer.

(6) Any person not employed as a miner or wishes to undergo an examination, shall apply to the Examiner in person, or in writing, and shall attend for examination at the date and time fixed by the Examiner for the purpose.

Application  
forms for  
prescribed  
examination

31. (1) Any application for a prescribed examination shall be in the form supplied by the Examiner.
- (2) The form, for application for a prescribed examination shall be completed. –
- (a) in the case of a person not employed as a miner, by that person; or
- (b) in the case of a person employed as a miner or a person with an offer for employment as a miner, by the employer or prospective employer.
- (3) Every application under this section shall contain a declaration that the particulars supplied in the application are correct and the applicant shall sign or affix their thumb-print to the declaration.
- (4) Any person who knowing makes a false statement in the application form or who knowing leads another to record a false statement on the form, commits an offence.

Delivery of previous  
Certificate  
Before new examination

32. (1) At every examination prescribed under this Act of a person who is in employment as a miner, the employer who has custody of the miners certificate of fitness shall deliver the certificate to the Examiner before the new examination may be performed.
- (2) At every examination prescribed under this Act of a person who is not at the time of examination in employment as a miner but has not returned the certificate to the Examiner, that person shall deliver the certificate to the Examiner before the new examination may be performed.

(3) If the Examiner is satisfied that a certificate which is not delivered in terms of subsections (1) and (2) has been lost or destroyed, the Examiner may proceed with the examination and issue a certificate appropriate to the case, having regard to the Examiner's record of previous examinations and certificates in respect of the person concerned.

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33. (1) Upon any examination prescribed under this Act, after both clinical and radiological examination of the person and having regard to the occupational history of that person and to any other factor considered by the Examiner to be relevant if-

Stages of  
pneumoconiosis

(a) the Examiner is satisfied that pneumoconiosis is present in the lungs of that person and that the pneumoconiosis shows-

(i) radiological evidence of nodulation accompanied by no. or only very slight incapacity;

or

(ii) no radiological evidence of nodulation but is accompanied by moderate incapacity;

the Examiner shall certify that such person is suffering from pneumoconiosis in the stage;

(b) the Examiner is satisfied that pneumoconiosis is present in the lungs of that person

and is accompanied by definite and appreciable incapacity, the examiner shall certify that the person is suffering from pneumoconiosis in the second stage; or

( c ) the Examiner is satisfied –

- (a) that pneumoconiosis is present in an advanced stage in the lungs of that person; and
- (b) that the pneumoconiosis is accompanied by serious incapacity.

The Examiner shall certify that the person is suffering from pneumoconiosis in the third stage;

(2) Any certificate issued under this section shall be conclusive evidence that the person concerned is suffering from the stage of pneumoconiosis specified in the certificate.

(3) For the purpose of this section, “ incapacity” means physical incapacity, attributable to pneumoconiosis, for work on the part of the person concerned.

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**Workers’ Compensation**

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Initial examination

34. (1) A person desiring employment as a miner who does not hold a valid certificate of fitness and who is not eligible for a periodical examination-

- (a) when that person has been offered employment as a miner, shall be presented by the prospective employer to the Examiner for examination; and
- (b) where that person has no definite offer of employment as a miner, may make the application personally to the Examiner offer examination.

(2) At every initial examination the applicant shall be clinically and radiologically examined, and upon such examination the Examiner may find that the applicant –

- (a) is free from tuberculosis or any other respiratory disease and is physically suitable for work as a miner in occupations involving exposure to dust likely to cause long disease and entitled to be issued with an initial certificate;

(b) does not conform to the standard laid down in paragraph (a) but is nevertheless free from tuberculosis and from pneumoconiosis in the third stage and is –

(i) medically fit for work as a miner at a particular scheduled mine in some particular occupation; and

(ii) eligible for the issue of an initial (restricted) certificate;

(c) does not conform to the standard laid down in paragraph (a) but is nevertheless free from tuberculosis and from pneumoconiosis in the third stage and is –

(i) medically fit for work as a miner at a particular scheduled mine in some particular occupation; and

(ii) eligible for the issue of an initial (restricted) certificate

(d) is not fit for work as a miner at the time of the examination but may be re-examined after the expiration of a period as the Examiner may specify; or

(e) is not fit for work as a miner in any circumstances.

(3) Notwithstanding section thirty-five the re-examination of a person who has been employed as a miner by virtue of that person having been the holder of a special certificate of fitness shall be deemed to be an initial examination, and the provisions of this section shall apply accordingly.

(4) Where a person has been examined by the Examiner under this section and has been found to be entitled to, or eligible for, the issue of a certificate of fitness as provided in subsection(2), the Examiner shall forthwith issue the appropriate certificate in the prescribed form:

Provided that the Examiner shall not issue an initial (restricted) certificate or a special certificate unless it is satisfied the suitable employment is, or will be available for the applicant.

(5) where a person

(a) is presented for examination by a prospective employer under this section; or

(b) applies for examination under this section and has a definite offer of employment as a miner;

that person shall undergo the examination free of charge.

(6) Where an application for an examination prescribed under this Act is not made by a prospective employer or a person with a definite offer of employment as a miner, the applicant shall pay a fee as the Examiner may determine.

35. (1) Subject to the provisions of section thirty-seven, every person whether in periodical employment as a miner or not, in respect of whom a certificate of fitness has examination been issued –

(a) if in employment as a miner, may be presented to the Examiner by the employer; or

(b) If not in employment as a miner, may apply personally to the Examiner for an examination under this Act.

(2) An examination under this section, shall be known as a periodical examination and shall be for the purpose of ascertaining –

(a) whether the applicant is suffering from tuberculosis or pneumoconiosis, the stage in which that disease is; or

(b) if the person is such as is mentioned in subsection (2) of section forty-two, whether the applicant's fitness for work as a miner has been seriously impaired by any disease or by old age.

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**Workers' compensation**

36. An employer having the custody of a certificate of fitness for a miner shall arrange with the Examiner within days before the expiry of the certificate of fitness for the miner concerned to undergo a periodical examination.

Employer to  
arrange  
examination  
On expiry of certificate of  
fitness

persons eligible for  
periodical  
examination

37. (1) A person shall not be eligible for a periodical examination unless-

(a) the examination is undertaken within fifteen days before the date of the expiry of the validity of the certificate of fitness;

(b) the application for a periodical examination is made with in one year and six months from the date of expiry of the validity of the certificate of fitness.

(c) at the date of the last examination by the Examiner, the applicant was found to be free from tuberculosis and from

pneumoconiosis in the third stage; and

(d) where the last issued certificate of fitness was an initial certificate, the applicant has been employed as a miner.

(2) A person who has worked as a miner at any one or more of the scheduled mines for five years or more shall not be excluded from eligibility to a periodical examination, under paragraph (b) of subsection (1) if the applicant, since the applicant, since the applicant's last work, has not worked in any occupation which would expose that applicant to the risk of inhaling dust likely to cause lung disease.

Issue of periodical  
Certificates of fitness

38. (1) At every periodical examination the applicant shall be clinically and radiologically examined, and if upon Examination the examiner finds that the person examined is Free from tuberculosis and from pneumoconiosis in the third Stage, the examiner shall-

- (a) issue a certificate of fitness, to be known as a periodical certificate of fitness;
- (b) issue of a certificate of fitness to the known as a periodical (restricted) certificate, which shall contain restriction as appropriate; or
- (c) in the case of a person admitted to a periodical examination under subsection (2) section thirty –even, refuse to dom from tuberculosis and pneumoconiosis in the third stage, the Examiner finds that the applicant's fitness for work as a miner has not been impaired by any disease by old age.

(2) when, at the time of any periodical examination, the Examination cannot forthwith determine with certainty the presence absence of tuberculosis, the Examiner may-

- (a) suspend the validity of an existing certificate of fitness for the remaining period of its validity or any period thereof; and
- (b) withhold the issue of a periodical certificate for any period not exceeding thirty days.



(a) a miner is about to cease or has ceased to be employed by the by employer; before leave or discharge

(b) a miner whose existing certificate of fitness when issued was valid for one year and whose total service as a miner is five years or more, is about to proceed on leave for a period exceeding ninety days if the miner has not been examined within the proceeding one hundred and eighty days.

(c) a miner whose existing certificate of fitness when issued was valid for less than one year, is about to proceed on leave for a period exceeding thirty-One days.

(2) The examiner shall, so far as is practicable, supply the information required by subsection (1) not more than fourteen days and not less than seven days before the date on which any miner is due to proceed on leave or to cease to be employed.

(3) the Examiner shall on receipt of the report under subsection(1) and after an examination of its records as to health of a miner who is proceeding on leave or about to cease to be employed, inform the employer whether the miner is required to be presented for examination.

(4) if the examiner, acting in accordance with subsection(3) requires the miner to be examined, the employer shall instruct and arrange for the miner concerned to be presented for examination by the examiner.

(5) Any employer or miner who contravenes or fails to comply with any provision of this section commits an offence.

40. (1) An examination under section thirty-nine shall be known as discharge examination.

Description  
of examination

41. (1) When a medical practitioner employed by the owner of a scheduled mine has reason at any time to suspect that any person employed as a miner at the mine may be suffering from tuberculosis or pneumoconiosis, the medical practitioner shall inform the employer who shall arrange for the miner to be examined by the Examiner.

miners suspected  
compensable  
disease to be  
examined

(2) An examination under this section shall be known as a suspect examination.

42.. (1) Any person who-

examination

(a) was formally but is no longer employed as a miner;

of benefits

(b) is not the holder of a valid certificate of fitness

(c) is not qualified from a periodical examination; or

(d) has not, within the twelve months immediately preceding the application, been examined by the examiner under this section; May apply for, and shall be entitled to receive, a medical examination with a view to ascertaining whether the applicant is suffering from a disease for which compensation is payable under this part.

(2) An examination under this section shall be known as a benefit examination.

43. (1) A person who is employed as a miner who- Additional examination  
(a) believes to be or may be suffering from a reparatory on miner's request  
disease which might entitle the person to a benefit under this Act.

(b) submits to the Examiner a written request to be specially examined together with a certificate signed by a registered medical practitioner to the effect that the medical practitioner considers the request and the belief which led to the request to be reasonable; and

(c) has informed the employer of the intention to submit a request under this section; shall be entitled to be examined by the Examiner once in any calendar year in addition to any other examination prescribed under this Act during that year.

(2) An examination under this section shall be known as an additional examination and may be both clinical and radiological.

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**Workers' Compensation**

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44. (1) Subject to the other provisions of this part, the period of validity of a certificate of fitness shall be one year. period of  
Validity of  
certificate of  
fitness

(2) notwithstanding the provisions of subsection (1) the examiner, in any case in which it is considered desirable, for medical reasons, make the validity of a periodical or periodical (restricted) or special certificate for a lesser period as the Examiner may consider appropriate.

(3) whenever a report issued by the Examiner certificate tuberculosis with or without pneumoconiosis in the third stage to be present in a person examined, any certificate of fitness which may be in existing in respect of that person shall forthwith become invalid and the person having custody of the certificate shall return it to the examiner.

(4) Any person having custody of a certificate of fitness, who fails to return it to the examiner as required by subsection(2) commits an off offence.

45. (1) when the examiner as issued a certificate of fitness and subsequently becomes satisfied that, at the date of issue, the certificate and cancel the incorrect certificate.

power to  
correct certificate  
Fitness

(2) If on the fact known to the Examiner at the date of recalling an incorrect certificate, the issue of a certificate is required by any provision of this Act, the Examiner shall on respect of the incorrect certificate for cancellation, issue the appropriate certificate with particulars as would have been contained had the facts been known to the examiner at the date of issue of the incorrect certificate.

(3) The Examiner shall inform every person who was informed of the issue of an incorrect certificate under this part that the Examiner has recalled that certificate.

(4) Any person who refuses or neglects to return to the Examiner any certificate recalled under the provisions of this section commits an offence.

46. (1) where any person is entitled to the issue of a certificate of fitness under the provisions of this part-

issue and  
custody of

(a) if the person examined is in employment as a miner or is presented to the examiner by a prospective employer for examination with a view to engage that person as a miner, the certificate shall be sent by the examiner to the employer or prospective employer

certificates of fitness

(b) If a person examined is neither in employment as a miner nor presented for examination by a prospective employer, the certificate shall be sent by the Examiner to the person examined, who shall, when being engaged for work as a miner, deliver the certificate into the custody of the employer.

(2) Every employer shall keep custody of each certificate received in accordance with the provisions of subsection (1) during the period of the validity of the certificate and during the continuance of the employment as a miner of the person in respect of whom the certificate is issued.

(3) When a person's employment as a miner ceases, the employer shall deliver to that person the certificate of fitness which was in that employer custody.

(4) The provisions of subsection (3) shall not apply and the employer shall continue to keep the certificate of fitness if a person has ceased to be employed as a miner but continues to work for the same employer in an occupation other than that of a miner, and the employer shall instruct and arrange for that person to attend periodical examinations by the examiner in accordance with section thirty-seven.

(5) Any employer who contravenes or fails without reasonable cause to comply with any provision of this section commits an offence.

Lost or destroyed  
Certificate of  
Fitness

47. (1) the Examiner may replace a certificate of fitness which has been lost or destroyed where-

- (a) application for replacement is made in person or in writing to the Examiner by the person responsible under this Part for the custody of the missing certificate at the time its loss or destruction was discovered;
- (b) at the time of application for replacement, the certificate was still valid;
- (c) the examiner is satisfied –

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**Workers' Compensation**

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- (i) that the certificate has in fact been lost or destroyed ;
- (ii) that any applicant for replacement of a certificate issued in respect of that person is in fact the person in respect of whom the lost or destroyed certificate was issued; and
- (d) a prescribed fee is paid to the Fund by the applicant.

(2) A certificate issued in accordance with subsection (1) shall be identical in its particulars with the lost or destroyed certificate.

48. (1) After every examination prescribed under this Part, the examiner shall issue a report of the findings in the prescribed form.

Examiner  
Issue  
reports

(2) The original of each report issued in accordance with subsection (1) shall-

- (a) in the case of a person presented by an employer or prospective

employer for examination be sent by the examiner to the employer or prospective employer and where the Examiner certifies the presence of pneumoconiosis or tuberculosis in the person examined, a copy of the report shall be sent to that person;

(b) in the case of any other person –

(i) if that person is a miner, be sent by the Examiner to such person

and a copy of the report shall be sent to the mine which the person was last employed.

(ii) if that person is not a miner, be sent by the Examiner to that person

49. (1) Every medical practitioner who carries out a postmortem

Post-mortem

examination upon the body of a person shall -

examination

(a) if that medical practitioner finds tuberculosis to be present in the deceased and if the medical practitioner has reason to believe that the deceased had at any time been employed as a miner; or

(b) if that medical practitioner finds pneumoconiosis to be present in the lungs of the deceased;

send the heart and lungs of the deceased to the Examiner, accompanied by a report as may be supplied as to health of the deceased during the thirty days prior to death.

(2) Any medical practitioner who fails to comply with the provision of subsection

(1) commit an offence and shall be liable on conviction to a fine not exceeding one thousand penalty units.

50. (1) where a mine has closed and the examiner considers it necessary

examiner

for the proper determination of cause of death or the presence or absence

may direct post-mortem

of tuberculosis or pneumoconiosis or the stage

examination

Of the letter if present, the Examiner may direct that a post-mortem examination of the body of the deceased be carried out.

(2) Where a miner who has worked at a scheduled mine for not less than five years has died within Zambia, and a dependant of the examination, the Examiner a written request for a post-mortem examination, the Examiner shall direct that a post-mortem examination be carried out.

(3) A post-mortem examination may, for the purpose of this section, be made by any registered medical practitioner in accordance with arrangements made by the Examiner.

## **PART V**

### **RIGHT TO COMPENSATION**

51. (1) If an accident or disease occurs to a worker arising out of and in the course of employment and results in the worker's disablement or death, the worker, or if the worker dies, that worker's dependants shall be entitled to compensation in accordance with the provisions of this Act.

Right to  
compensation

(2) Notwithstanding the provisions of subsection (1), no compensation under this section shall be payable-

- (a) if the accident or disease is attributed to the serious and willful misconduct of the worker;
- (b) in respect of death, if the worker dies more than twelve months after the occurrence of the disease, unless it is proved that the accident or disease caused the death or was the principal contributory cause.

(3) For the purposes of this Act, an accident shall be deemed to arise out of and in the course of employment notwithstanding that the worker was at the time accident happened –

- (a) acting in contravention of any law applicable to the worker's employment;
- (b) acting in contravention of any instructions issued by or on behalf of the employer; or
- (c) acting without instructions from the employer:

provided that the accident would have been deemed to have arisen had the act not been done in contravention of any law, or instructions of the employer and the act was done for the purposes of and in connection with the employer's trade or business.

(4) An accident occurring while a work is traveling from home to the place of work and from the place of work to home, whether by a vehicle supplied by or on behalf of the employer or by any other means, shall be deemed to arise out of and in the course of employment if the worker was, in the opinion of the Commissioner, traveling by a reasonably direct route and with reasonable dispatch.

(5) An accident occurring to a worker in or about any premises at which the worker is for the purposes of the employer's trade or business shall be deemed to arise out of and in the course of the employment if it happened while the worker is taking steps, on an actual or supposed emergency at those premises, to rescue persons believed to be injured or imperiled, or to avert or minimize serious damage to property.

52. when a worker is involved in an accident - Accident during

(a) while, with the consent of the employer, being trained in first aid training  
ambulance or rescue work or engaged in any completion or rescue work

in connection therewith;

(b) in, at about any premises other than the employer's while, with the consent of the employer, engaged in any first aid, ambulance., or rescue work; or

(c) in, at or about, the employer's premises while engaged in any first aid, ambulance or rescue work;

where the work sustains injury resulting in disablement or death the injury shall, for the purpose of this Act, be deemed to arise out of and in the course of employment.

53. (1) If a worker or any of that worker's dependants who is entitled to compensation under this Act has received or will receive any Compensation  
determining the amount of the compensation, no reduction shall be not affected by  
other pension

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Made by way of such pension or gratuity.

(2) If a work or any of that worker's dependants who entitled to compensation under this Act has received or will receive any pension or gratuity from a pension, superannuation or provident fund to which the employer has contributed, then, in determining the amount of the compensation, no reduction shall be made in respect of the amount which has been received or will be received or will be received by the worker or any of that worker's dependants from the Fund.

(54) (1) Subject to section fifty- three, the Commissioner may in awarding or revising the award of any compensation to a worker in respect of permanent disablement or to that worker's dependants, have regard to –

Successive  
awards of  
compensation

(a) in the case of worker, any compensation for permanent disablement previously awarded to the worker under the workers' compensation law of any country, whether as the result of one or more than one accident or paid by one or more than one employer, or any benefit granted to the worker under any law on account of permanent disablement;

(b) in the case of a dependant, any benefits or settlements granted to them under any law on account of the death of the worker.

(2) The compensation payable to a worker, whether in respect of one or more than one accident, shall not, in any case, exceed the compensation payable in respect of one hundred per centum disablement: Provided that, in determining such compensation, the calculation shall be based upon the earnings most favourable to the worker at the time of any such accident.

(4) Whenever a worker has received compensation for permanent disablement under this Act and subsequently gets involved in an accident resulting in further disablement in respect of which compensation is payable under this Act, the commissioner may, if the worker shows to the satisfaction of the Commissioner that would be advantageous to do so, calculate the worker's compensation in respect of the further disablement on the earning that the worker at the time of any previous accident in respect of while compensation was paid.

Contracting out

Prohibited

55. (1) Any provision in a contract existing at the out of this Act or thereafter entered into, whereby a worker or the worker's dependant relinquish any right to compensation, whether for the any dependants shall not be valid.



- (2) Notwithstanding anything contained in this Act, where the Commissioner is satisfied that by reason of old age or serious physical defect or infirmity or any previous injury, a person –
- (a) if employed as a worker, is most likely to be involved in an accident; or
  - (b) if that person meets with an accident, is most likely to sustain injury:
- the commissioner may, in connection with any contract for such employment, authorize the worker and the employer to enter into an agreement in writing that an amount less than that payable under this Act shall be paid of the disablement or death of the person.
- (3) An agreement under subsection (2) –
- (a) shall only be effective when the old age or serious physical defect or infirmity or previous injury has caused or contributed to the accident; and
  - (b) shall be valid unless the amount agreed to be paid in respect of the disablement or death is at least one-half of the amount that would otherwise be payable as compensation under this Act.

Deductions  
From earnings  
prohibited

56. (1) Any employer who withholds any moneys due from employer to any of the workers or any sum which the employer is or may become liable to pay as compensation or assessment under this Act, or who requires or permits any worker to contribute under this Act, commits an offence.

(2) Any court convicting an employer of an offence under subsection (1) may, in addition, order the employer to pay to the worker unlawfully required or permitted to contribute and such shall have the effect of a civil judgment of the court.

No order shall be made under subsection

(3) unless and until the employer has been afforded an opportunity to show cause why the order should not be made.

57. (1) Where a worker has received medical treatment in consequence of an injury or death or

of any accident or disease arising out of and in the course of employment and the treatment, whether through negligence or otherwise, resulting through no willful default on the part of the worker, in the death or disablement, or increased or continued disablement shall be deemed to have resulted from the accident or disease and the compensation payable shall be assessed accordingly.

disablement  
effects of  
medical  
treatment

(2) Where a worker or any dependant of a worker received any payment, not being compensation payable under this Act, in respect of any disablement, increased or continued disablement or death attributed to such medical treatment, then, in assessing any compensation payable under this Act, regard shall be had to such payment

(3) where a worker or any dependant of a worker receives under the provisions of this Act, any compensation or increased compensation in respect of any disablement increased or death which is attributed to any medical treatment received by the worker, any right of action of such worker or dependant, on account of such treatment shall, if not exercised by the worker or dependant, vest and be exercisable by the Commissioner or by the exempted employer

58. Where there exists any right to compensation in respect of the death or disablement of any worker as a result of an accident or disease the compensation and he Commissioner, or, authorized thereto by the Commissioner, the exempted employer, may further refuse to pay the Whole or a portion of the compensation and the commissioner, or, if Authorized thereto by the commissioner, exempted employer, may further refuse to pay the whole portion of the cost of medical aid-

Circumstances  
precluding  
award of  
compensation

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(a) if the worker has at any time represented to the employer or the Commissioner that the worker was not suffering or had not previously suffered from a serious injury or a serious illness knowing that the

representation was false, and the accident or disease has been caused by or the death has resulted from or the disablement has resulted from or been aggravated by the injury, or illness: or

(b) if, in the opinion of the commissioner, the death was caused or the disablement was caused, continued or aggravated by an unreasonable refusal or willful neglect of the worker to submit to medical or surgical treatment in respect of any injury, or illness whether caused by that accident or disease or contracted before the accident or disease concerned.

Cessation

And revival

Of periodical

Payments

59. (1) Subject to section sixty-six, the right to periodical payments shall cease and the worker shall be entitled to compensation for any permanent disablement the worker may suffer –

(a) when the worker's, in the opinion of the Commissioner, able to resume the work at the place which the worker was employed at the time of the accident or disease to other suitable work having the same or greater emoluments; or

(b) when, in the opinion of the Commissioner, the injury or illness causing the disablement become static and no further medical aid will be required by the worker in respect of the injury or illness before the expiration of eighteen months from the commencement of the disablement.

(2) The Commissioner may revive the right to periodical payments if –

(a) the worker suffers further disablement as the result of the same accident or disease; or

(b) the worker undergoes further medical, surgical or remedial treatment necessitating further absence from work, if, in the opinion of the Commissioner, the treatment will reduce the

disablement from which the worker suffers;  
and any compensation for permanent disablement payable to the worker shall be suspended while the worker is entitled to periodical payments under this subsection.

60. (1) If a worker –

(a) refuses or willfully neglects to submit to medical examination or in any way wilfully obstructs or unnecessarily delays such examination; or

(b) to the prejudice and without the consent of the employer, is absent in such a manner that any notice under this Act cannot be served upon the worker; the right to periodical payments, or the continuance of the payments. Shall automatically be suspended during the period that the circumstances exist which gave rise to the suspension, and no payments shall be payable by the Commissioner or an exempted employer in respect of the period of suspension.

(2) The commissioner may, on good cause shown, condone the action of the worker and make payments shall be payable by the commissioner or an exempted employer in respect of the period of suspension as in the circumstances the commissioner considers just.

61. Except provided under this Act, there shall be no abatement of the amount of compensation which the Commissioner or the exempted employer has to pay under this Act by reason of the fact that in consequence of become due to the worker or the worker's dependant under an accident or life assurance policy effected by the worker other than the exempted employer.

**No. abatement**  
compensation  
if worker  
insured

62. An employer shall not, without the consent of the commissioner terminate a contract of service with a worker who has suffered disablement in circumstances which entitle the worker to compensation under the provisions of this Act until -

contract of  
service not  
terminated  
during  
disablement

(a) the worker has been certified by a medical practitioner to be fit to resume the work for which the worker was employed at the time of the accident or disease concerned; or

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(b) compensation for permanent disablement becomes payable to the worker under the provisions this Act.

63. Notwithstanding any term, express or implied, in the contract under which a worker is employed, that the worker is required to do an entire work for an entire sum, the worker shall, if disabled by an accident or disease arising out of and in the course of employment, be entitled to pay from the employer of such part of the entire sum as bears the same proportion to the entire sum as the work done upon the time of the disablement bears to the entire work.

64. (1) Where an employer, during the time a worker is disabled by an accident arising out of and in the course of employment or disease pays to the worker the full earnings, the worker shall not be entitled to any periodical payments and the employer shall be entitled to be reimbursed from the fund to the extent of periodical payments to which the worker would otherwise have been entitled.

(2) An employer shall not be entitled to be reimbursed under subsection (1) if the employer is –

(i) a exempted employer;

(ii) an employer who at the date of the accident was in default in complying with section one hundred and twelve ; or

(iii) an employer who at the date of the accident was in default in the payment of assessments.

## **PART VI**

### **LIABILITY FOR COMPENSATION AND AMOUNT AND PAYMENT OF COMPENSATION**

Liability to

65. Compensation shall be paid by –

Pay compensation

(a) the exempted employer; or

(b) the commissioner.

Amount of

66. (1) Compensation in the case of total disablement shall be

Compensation for

made by periodical payments during the period of

Total disablement

disablement and shall be calculated at fifty per centum of the assessed earnings of the worker

(2) periodical payment under tis section shall be made once a month

(3) The commissioner may pay or order the exempted employer that the payments under subsection (1) be made at shorter intervals than one month to a propoionate reduction in the amount of payments.

Amount of  
Compensation for  
Partial

67(1) Compensation in the case of partial disablement shall bear the same proportion to the periodical payments described in section seventy-two as the partial disablement bears to total

disablement.

(2) Where a worker who has been receiving compensation for total disablement returns is at a lower rate of earning than that payable at the time of the accident or incidence of the disease, the employer shall inform the Commissioner-

- (a) of the fact of the difference in the earnings;
  - (b) of the earnings at the time of the accident of the disease; and
  - (c) of the present earnings of the section shall be made once a month
- (3) Periodical payment under this section shall be made once a month.

(4) The commissioner may pay or order the exempted employer that payments under subsection (1) made at shorter intervals than one month, subject to a proportionate reduction in the amount of the payments.

(5) Subject to section sixty-eight, periodical payments for partial disablement shall not be made for more than eighteen months.

68. (1) A worker who has received periodical payments for total or partial disablement or for total and partial disablement a period of eighteen months from the date of the commencement of the disablement shall no longer be entitled to periodical payments and shall be deemed to have suffered permanent disability.

(2) The Commissioner may, on proof that no permanent disablement exists in respect of a worker, direct the continuance of periodical payments during the continuance of any such disablement for a further period not exceeding six months.

69. (1) Compensation in the case of permanent disablement shall be according to the degree of disablement, and shall be calculated as follows:

- (a) where the degree of disablement is one hundred per centum, a monthly pension calculated at fifty per centum of the assessed earnings of the worker;
- (b) where the degree of disablement is under one hundred per centum but exceeds ten per centum, a monthly pension bearing the same proportion to the pension calculated in accordance with paragraph (a) as the degree of such disablement bears to one hundred per centum;
- © where the degree of disablement does not exceed ten per centum, a lump sum so calculated on such basis as the Minister may prescribe.

(2) In any case where the lump sum so calculated exceeds that which is prescribed by regulations made under section one hundred and fifty-two compensation shall not be payable as such a lump sum,

But shall be payable in accordance with paragraph (b) of subsection(1) as though that paragraph applied to every degree of disablement under one hundred percent.

(3) where a worker has sustained an injury or contracted disease specified in the First Schedule, that worker shall be regarded for the purpose of this Act as being permanently disabled at least to the degree set out for such injury or disease in that schedule.

(4) where the injury, including any injury to genital parts, of disease is not specified in the first Schedule, a percentage of disablement which is not inconsistent with the provisions of the schedule shall be regarded as the minimum degree of permanent disablement for the said injury or disease.

(5) No deduction shall be made from any compensation payable under this section on account of any periodical payments in respect of total or partial disablement under sections sixty-six or sixty –seven.

(6) In this section, “ monthly pension”, means a pension payable monthly during the lifetime of the worker.

Further

70. (1) A worker who is receiving a pension who undergoes medical aid medical, surgical or remedial treatment, which necessitates

Receiving

further absence from work and which will reduce the

Pension

the disablement from any children’s allowance suspended and the worker shall then be entitled to payments .

(2) Subsection (1) shall only apply to a worker in respect of whom a period of eighteen months has lapsed from the date of commencement of the disablement.

(3) the suspension of the pension and any children’s allowance may consider just.

Amount of

71. Where a worker dies as a result of an accident or disease, compensation shall be determined as follows:-

Compensation for

Death of worker

(a) if the worker leaves as a dependant a spouse and no dependant children,

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**Workers’ Compensation**

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there shall be paid to the spouse a monthly pension equal to four fifths of the monthly pension which the deceased worker had been receiving or would have received if the worker had been entitled to a monthly pension for permanent disablement;

(b) if the worker leaves as dependants a spouse and one or more children, there shall be paid to-

- (i) the spouse, the monthly pension mentioned in paragraph (a)
- (ii) the children, in the manner provided subsection(3) section eight-nine a monthly allowance accordance with the fourth Schedule based on the monthly pension which the deceased worker had been receiving or would have received if the worker had been entitled to a monthly pension for permanent disablement;
- © if the worker leaves no dependant spouse but one or more children as dependants, or if the serving spouse dies leaving dependant children of the worker, a monthly allowance in respect of the children shall be payable in accordance with the fifth schedule based on the monthly pension which the deceased worker had been receiving or would have received if the worker had been entitled to a monthly pension for permanent disablement;
- (d) if the worker leaves no dependant children, an amount not exceeding three years' earning shall be paid to any other dependant wholly dependant upon the worker;
- (e) if the worker leaves no dependant children or dependant wholly dependant upon the worker but leaves or dependants whose dependant is partial, a sum-
  - (i) three times the amount of the value of the benefits received by the dependant from the worker during the twelve months immediately before the accident or incidence of the disease; or

(ii) which could, but for the death, have been reasonably expected to be received by the dependant from the worker during the twelve months immediately after the accident or incidence of the disease:

which ever can better be calculated to give the amount of value of the benefits.

Provided that the aggregate amount payable dependants under this paragraph shall not exceed three year's earnings, over the total amount of the allowances likely to be payable under paragraph (c) other dependant in proportions as the Commissioner may determine.

(2) No dependant who was not wholly dependant upon a worker shall be entitled to receive a greater payment than that to which the dependant would have been entitled under paragraph (e) of subsection (1).



(3) Except as is provided in section sixty, no deduction shall be made from the compensation awarded under this section in respect of any compensation awarded to the worker for the same accident or disease.

(4) the right to any pension or allowance in respect of a deceased worker shall vest on the amount of the pension or allowance shall be calculated from that date.

(5) Where a worker dies as a result of an accident or disease and the funeral expenses have been paid by any dependant or person, there shall be paid to that dependant or person the total amount of the funeral expenses or such amount as the Minister may, by statutory instrument, prescribe.

Compensation

Where worker

Receipt of

Pension dies

72. Where a worker who is receiving a monthly pension for permanent disablement or who would have been entitled to pension dies due to other causes than the accident or disease for which they pension is being paid, the spouse shall be paid a monthly pension equal to four-fifths of the monthly pension which the deceased worker had been receiving or would have received if the worker had been entitled to a monthly pension.

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(2) In addition to the monthly pension payable under subsection (1) the spouse shall be paid a monthly allowance for any dependant children of the deceased worker calculated in accordance with the Fourth Schedule and based on the monthly pension payable to the deceased worker at the time of death.

(3) where a worker who is receiving a monthly pension for permanent disablement or who would have been entitled to that pension dies due to other causes than the accident or disease for which the pension is being paid and leaves no spouse but one or more children, there shall be paid to the child or children a monthly allowance in accordance with the Fifth Schedule based on the monthly pension payable to the deceased worker at the time of death.

(4) Where a spouse who is in receipt of a pension under subsection (1) dies and leave dependant children of a worker, there shall be paid to the children the allowance prescribed in subsection(3).

73. If owing to age, marriage or death, any child cease to fall within the definition of “child” the allowance prescribed in this part shall, subject to section seventy-four, be demised or ceased.

74. If any child of a deceased worker who does not fall within the definition of the term “child” is –

- (a) unable, by reason of mental or physical disability to earn an income; or
- (b) attending a full-time education course;

the Commissioner may, upon application of any interested person, declare that the child shall be deemed to be a child for the purpose of determining the allowances for children under this part of such period as the Commissioner may determine.

75. (1) If a worker who is receiving a pension under this Act wishes to reside outside Zambia, that worker shall seek the written permission of the Commissioner which shall

Stipulate the period for which such residence is permitted.

(2) Any worker who resides outside Zambia without the commissioner’s permission or who outstays the period laid down in the permit granted under subsection(10 shall, at own expenses, furnish proof of the continuance of the degree of disablement for which compensation was awarded and such other particulars as the Commissioner may require.

(3) where a worker fails to furnish proof of continued disablement or provide such other particulars as required under subsection (2) the Commissioner may discontinue, suspend or reduce the pension due to that worker.

76. (1) Where a dependant resides outside Zambia at he time of death of the worker, that dependant shall seek the written permission of the Commissioner which shall stipulate the period for which such resident is permitted.

(2) Where a dependant resides out Zambia without the Commissioner’ s permission or outstays the period laid down in the permit granted under subsection(1), the Commissioner may award a lump sum payment, in place of the pension payable to any dependant under this Act.

77. (1) subject subsection (3) if a spouse who is receiving a pension under the provisions of this Act marries, the pension payable to that spouse shall cease with effect from the date of the marriage.

(2) the provision of subsection (1) shall not affect any allowance payable in respect of children of the deceased worker to whom the spouse was married.

(3) notwithstanding subsection (1) where the pension payable to a spouse ceases there shall be paid to that spouse an amount equal to twenty-four times of the monthly pension.

78. (1) On the death of a worker, the spouse within one month of the death, notify the commissioner of that death.

(2) Where a spouse who receives or is entitled to receive a pension in respect to the death of a husband or wife marries,

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that spouse shall, within one month of the date of the marriage.

(3) Any person who receives an allowance in respect of a child of a deceased worker shall within fourteen days notify the Commissioner of the happening of any of the following events:

(a) the death of the child

(b) the marriage of the child

(c) the marriage of the conditions for which the Commissioner has made a declaration under section seventy-four.

(4) Any person who contravenes any provision of this section commits an offence.

Method of calculating

Earning

79. (1) The earning of a worker shall be computed in a manner best calculated to give the monthly rate at which the worker was remunerated by the employer at the time of the accident or incidence of the disease concerned.

(2) In computing earning under subsection (1) regard shall not be had to temporary absence from work during sickness, holiday leave or unemployment.

(3) The earning of a worker computed under subsection (1) shall also include twelve and one half per centum of the workers' basic wages or basic salary but shall not include any of the following:

- (a) remuneration of intermittent overtime;
- (b) casual payments of a non-recurrent nature;
- (c) sums paid by an employer to a worker to cover any special expenses incurred by the worker on account of the nature of the work;
- (d) ex-gratia payments, whether made by the employer or other person;

- (e) sums paid under any provident fund;
- (f) payment by way of pension;
- (g) special cash payment, other than the normal leave pay made when the worker is going on leave;
- (h) housing allowance or the cost of any food or quarters supplied by the employer; or
- (i) cost of living allowance.

(4) Where a workers' remuneration is –

- (a) fixed at a rate calculated upon work performed; or
- (b) subject to fluctuation by reason of the terms of the employment;

the earnings shall be the average monthly remuneration from similar work upon the same terms of remuneration for a period not exceeding twelve months immediately proceeding the accident or incident of the disease.

(5) Where it is impracticable to compute a worker's earnings due to the shortness of time during which a worker has been in the employment of a particular employer, the earnings shall be calculate as follows:

- (a) upon the basis of the amount which the worker earned at work on the same terms of remuneration with another proceeding the accident or incidence of the disease concerned; or
- (b) upon the basis of the amount which, during the twelve months immediately proceeding the accident, has been earned by other workers with the same employer at similar employment on the same terms of remuneration or would have been earned by the worker during proceeding twelve months had the worker been employed.

(6) where a worker has earned into contracts of service with two or more employers the shall be computed as if they were earning in the employment of the employer for whom the worker was working at the time of the accident or incidence of the disease.

(7) Nothing in this section shall be construed so as to prevent computation of earning on a weekly basis, and, where earnings re so computed, the monthly earnings shall be calculated as equal to four one-third times the amount of the weekly earnings.

Calculation  
Of earnings of  
Permanently  
Disabled worker  
Twenty-one years

80. Where a worker who has suffered permanent disablement was at he date of the accident or incidence of the disease concerned, under twenty-one years of age or was employed under a contract of apprenticeship or learnship, the amount of compensation for the permanent disablement shall be based on the earnings, which that worker would have been receiving at the end of three years after the accident or incident of the disease or upon completion of apprenticeship or learnship.

81. (1) Where the monthly pension for permanent disablement does not exceed an amount as may be presented, the Commissioner may, upon the application of the worker, pay or order the payment of a lump sum instead of a portion or the whole of the pension.

(2) Where the pension exceeding the prescribed amount, the Commissioner may, upon the application of the worker, instead of apportion of the pension, pay or order the payment of lump sum not exceeding the maximum sum which would have been payable under subsection (1) had the pension not exceeded the prescribed amount:

Provided that if the balance of the pension payable is less than that prescribed by the Minister by regulation per month, the Commissioner may pay or order the payment of a lump sum instead of the whole of the pension.

(3) Any lump sum under this section shall be calculated on a basis prescribed by the minister and payment shall be subject to the control of the Commissioner as provided in section eight-three.

(4) Where the Commissioner pays or orders the payment of a lump sum instead of the whole a pension the Commissioner may also

pay or order the payment of a lump sum of any children's allowances which Commissioner has under the provisions of subsection (3) of section eight-thee, determined shall be paid to the worker.

Worker

82. Where the injury or disease in respect of which compensation is requiring payable causes disablement of such a nature that the worker is constant attendance unable to perform the essential actions of life, without the content Help of another person, the commissioner may from time to time grant an allowance in addition to any other benefits under this Act, or require an exempted employer to pay an allowance, towards the cost of that help as may be required for a specified period.

(2) The Commissioner may revise any order made under the provision of subsection (1).

83. (1) where compensation is payable in the form of a lump sum by an exempted employer, that sum shall, unless the commissioner otherwise directs, be paid to the section and the receipt of the Commissioner shall be a sufficient discharge in respect of the amount paid.

(2) Any compensation payable in the form of a lump sum to worker or dependant may, for reasons considered by the Commissioner to be sufficient –

- (a) be paid to the worker or dependant in the form of a lump sum or in maintenance, or to on behalf of persons dependent for maintenance on the worker or dependant;
- (b) be invested or applied as the Commissioner may consider to be the advantage of the worker or dependant, or those dependent on either of them for maintenance;
- (c) be paid to a trustee or other person top be used subject to such conditions as may be imposed by the Commissioner; or
- (d) be dealt with partly in one and partly in another in more than one of the ways mentioned in paragraphs (a), (b) and (c) as the Commissioner may determine.

(3) Any children's allowance payable under the provision of this Act shall be paid to the parent, step – parent, step – parent, adoptive parent or such other person on behalf or for the benefit of the child as the Commissioner may determine.

84. Where a pension or children's allowances are payable by an exempted employer, the payments shall be made –

(a) by the exempted employer ; or

(b) by agreement with the Commissioner, by the Commissioner from funds furnished by the exempted employer for this purpose.

85. (1) In anticipation of the award of compensation, the Commissioner may, where the interest or pressing need of the worker or of a dependant warrants it, make an advance as the Commissioner may determine.

(2) Any moneys advanced in terms of subsection (1) shall be recovered , in such installments and in such manner as the Commissioner may decide, from any amounts awarded as compensation to the worker or the dependants.

86. the Board may, in consultation with the actuary, not more than once in each calendar year, review any amount payable under this part as pension or children's allowance and may increase in the cost of living according to the official cost of living index of the Republic.

## PART VII

### PROCEDURE FOR OBTAINING COMPENSATION

Notice of  
Accidents or  
Given

87. (1) in order that compensation may be obtained under this Act –

(a) notice of an accident or incidence of a disease causing disablement or death of a worker shall be given by or on behalf of the worker, or dependant of the worker, as soon as reasonable possible after the occurrence of the accident or incidence of the disease to the employer.

(c) except as is other wise provided in this Act, a claim for compensation shall, in the case of disablement or death of a worker shall , in the case of

disablement, be lodged with the Commissioner or the exempted employer, within twelve months after the date of the accident or incidence of the disease or, in the case of death, within twelve months after the date of the death.

(2) Where a worker has been receiving periodical payments, a claim for compensation for permanent disablement in respect of the same accident or disease shall be lodged within twelve months after the date on which the periodical payments finally cease to be payable.

(3) No claim for compensation under this Act shall be considered unless it is lodged with the exempted employer or the Commissioner in the manner prescribed within twelve months after the date of the accident or incidence of the disease, or in the case of death, within twelve months after the death.

(4) The provisions of paragraph (b) of subsection (1) shall be construed as enabling a claim to be made for compensation in accident or a death which occurred more than twelve months after an accident or incidence of a disease, if no claim for compensation has been made by the worker within twelve months after the date of that accident or incident of the disease.

(5) Notwithstanding anything contained in this section –

(a) failure to give notice shall not bar the right to compensation if it proved that the accident or incidence of the disease from any other source at or about the time of the accident or incidence of the disease;

(b) failure to give notice or to make a claim within the period of twelve months mentioned in this section or any defect or inaccuracy shall not bar the right to compensation if, in the opinion of the Compensation –

(i) the fund or the exempted employer is not or would not be, if notice or an amended notice were then given, seriously prejudiced by the failure, defect or inaccuracy; or

(ii) the failure, defect or inaccuracy was occasioned by a mistake, absence from Zambia, or other reasonable cause.

88. (1) Every employer shall, within three days after having

(a) gained knowledge of the occurrence of an accident or incidence of a disease in respect of a worker, worker

Employer to  
give notice  
of accident



same to the Commissioner in a form as may be prescribed; and commissioner

(b) received written notice of an accident of a disease in respect of a worker: forward the written notice to the Commissioner.

(2) Any employer who fails to comply with the provisions of subsection (1) commits an offence.

(3) A report made by an employer to the Commissioner under the provisions of subsection (1) shall constitute a claim for compensation by the worker notwithstanding that it may contain information which would negative the claim.

(4) Notwithstanding the provisions of subsection (1), an employer may, if specifically authorized by the Commissioner, report accidents or the incidence of disease at intervals and in a manner as the Commissioner may, from time to time approve.

89. 91) A worker shall supply further particulars of any accident or disease as the employer, Tribunal or Commissioner may require.

Additional  
Information to  
be supplied

(2) An employer shall supply further particulars of any accident or disease to or suffered by a worker, the earnings of that worker and such other matters as are within the knowledge of the employer or concerning the worker and the accident or disease as the Tribunal or Commissioner may require.

(3) A worker or employer who fails to comply with the provisions of this section commits an offence.

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90.(1) where an employer is convicted for the contravention of subsection (1) of section eight-eight or subsection(2) of section eighty – nine the Court before which the employer is convicted shall, on the application of the Board and in addition to imposing any penalty, either judgment in favour of the Board for a sum equal to the loss suffered by the Board on account of the employer's default.

Entry  
judgment  
favour  
of  
Board

(2) the sum for which judgment is entered in favour of the Board under subsection shall not exceed the full amount of the compensation payable on account of the (1)accident or disease in respect of which the employer was in default.

(3) Any sum ordered by the Court under subsection (1) shall be recoverable by the Board as a civil debt.

(4) In this section “ compensation” in the case of a continuing liability, including any sum determined by the Commissioner as the capitalized value of the pension, whether or not a lump sum is paid a any time in lieu of the whole or part of the pension, periodical payment or allowance or allowance which constitutes the liability.

91. (1) A worker who claims compensation shall, when required by the Commissioner or exempted employer, furnish a certificate from a medical practitioner or dentist, showing the nature and extent of the workers injury or illness, whether or not the worker is fit for work and the reason for the unfitness, if any, and the period of likely temporary disablement.

(2) where any certificate is forwarded to the employer in terms of subsection (1) the employer shall forward the certificate to the Commissioner.

92. (1) The Commissioner may at any time require any worker who has suffered any injury or contracted any disease to obtained and furnish to the commissioner medical reports concerning the condition and extent of the injury to, or disease suffered by the worker, and any matter necessary to enable the Commissioner to carry out functions under the Act.

(2) Any fee payable for a report or other matter under subsection (1) shall be paid out of the Fund.

93. In the case of death of a worker as a result of an accident or disease or where any person who is in receipt of compensation dies, the Commissioner may call for evidence of the death of the worker or person as may be required for the purpose of this Act.

94. (1) The Commissioner or an exempted employer may require that a worker claiming compensation or to whom compensation has paid submits to medical examination.

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(2) The request under subsection (1) shall be written notice and the examination shall be by a medical nominated by the Commissioner or the exempted employer, at a time and place to be agreed.

(3) Any expenses incurred by the worker in complying with the provision of this section shall be paid by the Commissioner or the exempted employer.

(4) A worker shall be entitled to have a medical practitioner nominated by the worker, to be present at any examination made under the provisions of this section.

95. whenever it comes to the notice of the Commissioner that an accident has happened to a worker which might result in a claim under this Act, shall-  
procedure  
upon Commissioner  
information  
of accident

(a) make or cause to be made an inquiry, or take or cause to be taken other steps as may be deemed necessary to enable the Commissioner decide on any claim or question of liability under this Act.

(b) At the request of an injured worker or of that workers employer, supply information as the Commissioner considers necessary to enable the worker or that worker's employer to comply with the requirements of this Act.

96. (1) Upon receipt of any claim for compensation the Commissioner shall, after making inquiries as may be considered necessary, determine claim in part or in whole.

(2) Where a worker has suffered permanent disablement, the Commissioner shall determine the degree of disablement of that worker in relation to the First Schedule and all the circumstances of the case.

(3) The Commissioner shall, as soon as a determination has been made under the provisions of this section, y notice in writing, inform the claimant and the exempted employer, if such employer is concerned, of the result of the determination.

97. (1) Notwithstanding anything contained in this Act, the Commissioner may authorize an exempted employer to make Provisional settlement of claims for compensation with a worker

provisional  
settlement of  
claim by  
Exempted  
Employer

(2) The employer who settle a claim for compensation under subsection (1) shall report the provisional settlement to the Commissioner, giving particulars and at intervals such as the Commissioner may determine.

3) The Commissioner may either confirm provisional settlement made by an employer under subsection (1) or proceed to determine the claim in the manner provided in this part as if the provisional settlement had not been made.

Commissioner

May require

Employer to

Make periodical

Payments

98. (1) The Commissioner may require an employer, other than an exempted employer to make periodical payments of compensation in cash or in kind or both in cash and in kind o a disabled worker.

(2) The Commissioner shall refund to an employer, such periodical payments as the employer has made to a worker under The provisions of subsection (1)

Provided that before making any refund in respect of payments in cash the commissioner may require the transmission of a certificate in the prescribed form of the payment.

**PART VIII**  
**MEDICAL AID**

First aid	<p><b>99.</b> (1) An employer shall provide and maintain appliances and services as may be prescribed for the rendering of first aid to workers in case of any accident in respect of the trade of the trade or business in which the employer is engaged.</p> <p>(2) The provisions of subsection (1) shall not apply where appliances and services for the rendering of first aid are provided and maintained in accordance with the provisions of any other written law.</p> <p>(3) Any employer who fails to comply with the provisions of subsection (1) commits an offence.</p>
Conveyance of Injured worker	<p><b>100</b> (1) the event of an accident occurring to a worker in the course of employment which necessitates removal to a hospital or that workers' place of residence, the employer shall forthwith provide the necessary conveyance for that worker.</p> <p>(2) The Commissioner or the exempted employer shall defray the reasonable expenses incurred by any person in complying with the provisions of subsection (1).</p>
Medical aid Expenses	<p><b>101.</b> (1) Subject to the provisions of this section, the Commissioner or an exempted employer shall defray any expenses reasonable and necessarily incurred by a worker as the result of an accident arising out of, and in the course of, employment in respect of the following matters.</p>

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- (a) dental, medical, surgical or hospital treatment;
- (b) nursing services;
- (c) the supply of medicines and surgical dressing;
- (d) traveling and subsistence in connection with the worker's journey to and from and treatment in a place either within or outside Zambia where the worker was directed by a medical practitioner to go for treatment;
- or for the obtaining of any artificial limb or apparatus referred to in paragraph (e).

(e) the supply, maintenance, repair and renewal of artificial limbs and apparatus or aid necessitated by the accident and the repair or replacement of artificial limbs or apparatus or aid used by a worker in the course of employment and damaged or destroyed as the result of an accident.

(2) The liability of the Commissioner or an exempted employer shall be limited-

(a) in the case of the matters mentioned in paragraph (a) to (d) of subsection (1), to an amount as may be prescribed: and

(b) in the case of the matters mentioned in paragraph (e) of subsection (1) to an amount as may be prescribed.

(3) Notwithstanding subsection (2) if the Commissioner is satisfied on a medical certificate that the injury to the worker was of a serious nature, the Commissioner may determine that an additional amount as is considered just in the circumstances shall be paid.

(4) The Board or an exempted employer shall only be liable in respect of traveling andistence expenses in connection with a worker's journey to and from and treatment in a place outside Zambia if the Commissioner has approved of the journey.

(5) for the purpose of this section, hospital treatment shall include the maintenance of a worker detained in hospital.

102. All disputes as to liability for or the necessity for or the character or sufficiency of any medical aid provided or to be provided under this part shall be determined by the Commissioner

Decision of  
Commissioner  
in regard to  
medical aid

103. The fees and charges for medical aid to a worker shall be in accordance with such a scale as the Minister may prescribe after consultations with associations or bodies representing medical practitioners or dentists entitled to practice in Zambia, and no

power to  
prescribe  
fees for  
medical aid

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aim for an amount in excess of a fee in accordance with that scale shall lie against any worker, the Commissioner or an exempted employer in respect of any medical aid.

## PART IX

### COMPENSATION FUND

Establishment  
Of fund

104. (1) there shall, on the commencement of this Act, be established and maintained a fund to be known as the worker's compensation fund which shall be vested in the Board.

- (2) The Fund shall consist of –
- (a) the assessments paid by employers under this Act;
  - (b) any money paid by employers to the Board under this Act;
  - (c) any moneys paid as penalties imposed under this Act, other than penalties imposed by a court of law;
  - (d) interest from investments of the fund;
  - (e) any payments made to the Board by exempted employers under the provisions of this Part; and
  - (f) any other sums to which the Fund may become entitled.

Application  
Of Fund

105. (1) The moneys of the Fund shall be applied by the Commissioner for the due administration thereof.

(2) Any surplus in the Fund may, with the approval of the Minister

(a) be applied by the board in the reduction of further assessment; or

(b) be transferred to reserves.

(3) there may be established within the Fund such reserve funds as the Board, with the approval of the Minister, considers necessary for the purpose of this Act.

Payment of  
Compensation by  
Commissioner  
Inrespect of  
Accidents arising  
Under repealed Act

106. (1) Where under the provisions of the repealed Acts a worker has become entitled to compensation from an employer who was required by the repealed Acts to be insured, but who has not so insured, and from whom no or insufficient compensation has been recovered by the Board, the Commissioner may, with the approval of the Board and notwithstanding anything to the contrary Compensation or, where insufficient compensation has been recovered, the amount by which such compensation is deficient.

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(2) Any sum paid by the Commissioner to a worker under subsection

(1) shall be a debt due to the Board by the employer of such worker and may recovered from the employer by the Commissioner a civil debt.

107. The Board may –

(a) borrow money for all or any of the purposes of this Act, or in order to meet any unforeseen contingency or expenditure incurred in connection with the administration of this Act, or to meet any liquid deficiencies in the Fund;

funds and  
assets of  
Board

(b) with the approval of the Minister receive grants or loans from outside Zambia.

(c) purchase or otherwise acquire property required wholly or partly so acquired; or

(d) with the approval of the minister pledge such portion of the assets of the board as may be necessary to provide security for loans received.

108. (1) All moneys received by the Board or by the Commissioner on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn there from except by means of cheques signed by such person or persons as may be authorized by the Board in that behalf.

holding of  
assets of  
fund

(2) A proportion of the Funds shall be held in liquid assets and such proportion may be determined and varied from time to time by the Board, having regard to the due execution of the provisions of this Act, and such liquid portion of the Fund may be held in the banking account or on deposit with banks or registered building societies or in Treasury bills of the Government.

(3) The Board shall hold the remainder of the Fund in such investments as it may determine.

109. (1) The Commissioner shall cause to be kept proper books of accounts, and other books and records in relation thereto, in which shall be recorded all the financial transactions of the Fund.

Account and  
audit

(2) The account of the Fund auditors who shall all times have the Board, may appoint

(3) The board shall appoint auditors who shall at all times have the right to inspect the accounts of the Fund.

(4) The Board shall as soon as practicable but not later than six months after the expiry of each financial year, submit to the Minister a report concerning the activities of the Board including the audited balance sheet and audited statement of income and expenditure.

(5) The Minister shall, as soon as possible after the receipt of the audited balance sheet and statement of the transactions of the Fund under this Act, lay copies thereof before the National assembly.

## PART X

### ASSESSMENT

Liability to  
Assessment

110. Every employer, other than –  
(a) the State; and

(c) any employer exempted by the Minister under the provisions of section one hundred and eleven during the period of that exemption; shall be liable to assessment under this part.

Exemption

111. (1) The Minister may, on the advice of the Board, exempt an employer from the payment of assessment for a period and subject to conditions as may be prescribed.

(2) An employer shall only be eligible for exemption under subsection (1) if-

(a) the employer proves to the satisfaction of the Minister that there has been established, ad provision has been made for the maintenance of a fund for insurance against any liability which may arise under this Act in respect of the workers; and

(b) the employer has deposited sufficient security with the board, to meet all claims for compensation which may be due or become due under this Act.

(3) The Minister may dispense with the obligation of depositing security under the provisions of paragraph (b) of subsection (2) in the case of any body incorporated directly by any law.

(4) Any employer to whom exemption was granted under the provisions of repealed Acts, and whose exemption was in force immediately before the commencement of this Act shall be deemed to have been exempted under the provisions of subsection (1).

(5) The Board may, upon the application of an employer referred to in this section, permit the employer to pay assessments in respect of that employer's workers and that employer shall, from a date to be fixed by the board, cease to be individually to pay

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Compensation except in respect of accidents which occurred or disease that were contracted before that date.

Employers

to submit information

112. (1) Subject to section one hundred and fifteen every employer liable to assessment shall, before a date prescribed by the minister information in year or, if the employer becomes liable to be assessed after that Date, within fourteen days after having becomes liable, transmit to the Commissioner a statement in the prescribed form, certificate as true, showing –



- (a) the amount of earning of each of that employer's workers during the past financial year;
  - (b) an estimate of the earnings for which the employer expects to become liable during the current financial year, and
  - (c) such other information as may be prescribed, or as the Commissioner may require from the employer in respect of that employers workers or their earnings.
- (2) In any particular case the Commissioner may on good cause shown extend the time within the statement under subsection (1) shall be transmitted.
- (3) Where an employer carries on a business in more than one place or carries on more than one class of business, the Commissioner may require from that employer a separate statement in respect of each such place or class of business.
- (4) If in any statement submitted under subsection (1), the amount of earnings alleged to have been due and paid during any period less than the amount actually due and paid the Board, may impose upon the employer who transmitted that statement, as a penalty, such proportion, not exceeding ten per centum, of the difference between the amount state and the correct amount, as the Board may determine.
- (5) Any employer aggrieved by the imposing of a penalty under subsection (4) may, within twenty-one days of the imposition or written such longer period as the Tribunal may allow on good cause shown, appeal to the Tribunal.

(6) If in any statement submitted under the provisions of paragraph (b) of subsection (1), the estimate of earnings for which the employer expects to become liable during any period is, in the opinion of the Board, too low, the Board may direct the Commissioner to estimate the earnings for which the employer will probably become liable during that period and inform the employer of that estimate.

(7) An employer who fails to comply with the provisions of this section commits an offence.

113.(1) The Commissioner shall, as soon as practicable after receipt of the statement referred to in section one hundred and twelve assess the employer concerned on the basis of the rates fixed under the provisions of subsection (2) and shall give notice to the employer shall be paid.

(2) The rates of assessment payable by any employer or class of employers shall be fixed from time to time by the board according to the estimated requirements of the Fund and to the risk and costs of

compensation payable as determined by the actuary and the Board may direct that a minimum assessment may be levied on any employer.

(3) The Board shall cause notice of the rate of assessment fixed by it under paragraph (a) to be published in the Gazette.

(4) Any employer who objects to the rates of assessment fixed by the board may, within thirty days of their publication, make representations in writing to the Tribunal.

(5) After considering any objections under this section the Tribunal may confirm, amend or vary the rates of assessment.

(6) The rates of assessment fixed in accordance with subsection (2) shall –

(a) be confirmed, amended or varied by the Minister; and

(b) be published in the Gazette.

(7) The rates under subsection (3) unless the board otherwise specifies, shall apply to assessments in respect for the financial year in which they are published.

(8) In estimating the rates of assessment deemed to be necessary for the requirements of the Fund, the Board shall make provisions for the capitalized values of pensions and other liabilities due or likely to become due in respect of accidents or diseases during the year of assessment.

(9) For the purpose of assessment, earning shall be determined in a manner as may from time to time be prescribed.

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(10) When the earning actually paid by an employer during any period have been ascertained, the assessment in respect of that period shall be adjusted accordingly.

(11) If the annual assessment is less than the adjusted assessment, the employer shall pay the difference when called upon to do so, and if the annual assessment is more than the adjusted assessment, the Commissioner shall refund the difference to the employer or credit the employer with that amount in respect of the employer's following annual assessment.

(12) If an employer has failed to transmit before the prescribed date, a statement of wages and earnings as required by earning one hundred and twelve in respect of any period, the Commissioner may estimate the amount of wages paid or payable by the employer and assess the employer accordingly.

(13) If the amount assessed under subsection (9) would have been greater had the employer transmitted the statement before the prescribed date, the employer shall pay to the Commissioner the difference between the amount assessed and the amount

which would have been assessed had the statement been available.

(14) If an employer liable to assessment who, in respect of any period, has transmitted to the Commissioner the statement referred to in subsection (1) of section one hundred and twelve has not been assessed in respect of that period, the employer shall nevertheless be liable to be assessed at any time thereafter.

(15) The Commissioner may, on the application of the employer, permit payment of an application of the employer, permit payment of an employers assessment by installments at the times and on conditions as the Commissioner may specify.

**114.** (1) If during any period, the claims, accident and disease occurrence experience of an employer are in the opinion of the board more favorable than the claims and accident or disease occurrence experience of employers in that employer's class of business, he Board may award that employer as a bonus, a special rebate on any assessment payable or paid by that employer.

(2) If, during any period the claims, accident or disease occurrence experience of an employer are in the opinion of the Board less favorable than the claims and accident or diseases, occurrence or experience of employers in that employer class of business, the Board may assess that employer at a higher rate than that fixed under section one hundred and thirteen.

**115.** (1) This section shall apply to every employer who employs one or more than one domestic workers.

Assessments  
Of employers  
of domestic  
Workers.

(2) The rate of assessment payable by employer to whom this section applies in respect of domestic workers employed by that employer shall be a sum as the Minister may, after consultation with and acting on the advice of the Board, prescribe.

(3) The assessment payable under this section by an employer to whom this section applies shall become due and payable to the employer on the 30<sup>th</sup> April in each year, or, if the employer becomes liable to assessment on a later date, within a period of not more than thirty days from that later date.

(4) The provisions of sections one hundred and two, one hundred and thirteen and one hundred and fourteen shall not apply to any employer to whom this section applies in relation to any domestic servant employed by that employer.

(5) The minister may, by statutory instrument, make Regulations prescribing –

(a) the rate of assessment payable under this section;

(b) the procedure to be followed and the form to be used in connection with the payment of the assessment.

**116.** (1) Notwithstanding anything contained in this Act, an exempted employer shall, subject to the provisions of subsection(2) pay annually to the commissioner in a manner and at time as the Commissioner may determine and notify to the employer, the contribution towards the expenses incurred by the Commissioner in the administration of this Act in relation to that employer as the Board may consider equitable.

(2) Any employer aggrieved by-

- (a) the liability to pay contributions;
- (b) the amount of contributions payable by that employer; or
- (c) the manner of time of payment of contributions;

may, within thirty days of notification by the Commissioner of the amount of contributions manner and time of payment, appeal to the Tribunal.

## **PART XI**

### **WORKER'S COMPENSATION TRIBUNAL**

**117.** There is hereby established a Tribunal to be known as the Workers Compensation Tribunal.

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Workers' compensation

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Compensation Of tribunal	118. The Tribunal shall consist of a Chairperson, and four other members appointed by the minister as follows- <ul style="list-style-type: none"><li>(a) legal practitioner of a least ten years' standing who shall be the Chairperson;</li><li>(b) a medical practitioner in the service of the Government;</li><li>(c) a trade union representative; and</li><li>(d) two other person.</li></ul>
Tenure of Office to member	119. A member of the Tribunal shall, subject to section one hundred and twenty, hold office for a period of four years the Date of appointment and may be eligible for re-appointment for a further like period.
Vacation of Office of member	120. (1) The office of a member of the Tribunal shall become vacant – <ul style="list-style-type: none"><li>(a) upon the member's death;</li><li>(b) if a member is absent without reasonable excuse from three consecutive meetings of the Tribunal of which the member had notice;</li><li>(c) if the member is an undercharged bankrupt;</li></ul>

- (d) if the member who is a legal practitioner or medical practitioner ceases to practice as such on disciplinary grounds;
- (e) if the member is convicted of a criminal offence and sentenced to a term in prison exceeding six months.

(2) If a vacancy occurs in accordance with subsection(1), a new member may be appointed in accordance with section one hundred and eighteen, but that member shall hold office only for the unexpired part of the term.

(3) A person shall not sit or act as a member of the Tribunal if that person has given professional advice in regard to the accident or disease to any party who may become liable for the payment compensation under this Act.

121. There shall be paid to members of the Tribunal such remuneration and allowances as the Minister may determine.

122. (1) There shall be a secretariat for the Tribunal which shall consist of such properly qualified officers as the Minister may appoint

123. The functions of the Tribunal shall be –

- (a) to hear any appeal made to it under this Act;
- (b) to perform such other functions as are assigned to it under this Act;
- (c) generally, to deal with all matters necessary or incidental to the performance of its functions under this Act;

124. All questions or matters requiring to be decided by the Tribunal shall be decided by majority vote of the members present except any questions as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the chairperson alone.

125. (1) The Chief Justice shall make rules to regulate the procedures of the Tribunal and in any case not covered by the rules best suited to do substantial justice and to effect and carry out the objects and provisions of this Act.

(2) Rules made under this section may provide for the examination, at the instance of the Tribunal, by a medical practitioner or a dentist of a worker is a party to the dispute.

(3) the Tribunal may appoint technical experts to assist it in the performance of functions under this Act.

Representation  
Of parties

126. (1) At any hearing before the Tribunal any party may appear-

- (a) in person;
- (b) by a legal practitioner;
- (c) by a member of that party's family;
- (d) by a person in the permanent and exclusive employment of the party.
- (e) In the case of a company, by any director, secretary or other an officer of the body.

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- (f) in the case of employer, by an officer of an employers' organization;
- (g) in the case of a company, by any director, secretary or other officer of the company; or
- (h) in the case of a corporate body which is not a company, by an officer of the body

(2) the Chairperson may permit an interested party under this Act to appear by any other person than those listed in subsection (10,

(3) no person other than a legal practitioner shall be entitled to recover any fee or reward, other than necessary out of pocket disbursements and expenses, for appearing on behalf of any person before the Tribunal.

Powers of  
Tribunal

127. The Tribunal may-

- (a) confirm, vary reverse the decision appealed from ;

If the record does not furnish sufficiency evidence or information for the determination of the appeal, remit the matter to the Commissioner with instructions in regard to the further information.

- (c) order the parties of either of them to produce to the Tribunal at some convenient time further proof as the tribunal considers necessary or desirable ;
- or

- (d) take any other course which may lead to the just speedy and inexpensive selectment of the matter.

Summoning etc  
Of witnesses

128. (1) The Tribunal shall have the owner to summon witnesses, to call for the production of or inspection of books, documents and Other things, and no examine witness on oath, and for these purposes, the Chairperson is hereby authorized to administer oaths.

(2) A summons for the attendance of witness or the production of books, documents or other things shall be signed by the Secretary to the Tribunal and served in a manner to be prescribed.

129. (1) The Chairperson may issue a warrant against any person who is summoned to give evidence or to produce any book, document or thing of that person fails to attend as required or, if

the person fails to remain in attendance until duly excused by the Chairperson.

(2) The warrant issued under subsection (1) shall be signed by the Chairperson.

(3) A warrant under subsection(1) may only be issued if-

- (a) the person summoned had reasonable notice of the time and place at which attendance was required;
- (b) there is a return by the person charged with the service of the summons that the summons were duly served upon the person; and
- (c) no sufficient reason for the failure to attend seems to exist.

(4) A warrant issued under subsection (1) may only be executed by a police officer of the rank of his Inspector or above to whom it is delivered.

(5) A person apprehended in execution of a warrant under subsection (1) shall be brought before the Tribunal to give evidence or to produce the book, document or other things.

(6) Any person who is brought before a Tribunal on execution of a warrant under subsection (1) and who-

- (a) refuse to be sworn or affirmed as a witness;
- (b) having been sworn as witness, refuse to answer any question lawfully put to that person; or
- (c) fails to produce any book, document or other thing;

commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand penalty units or imprisonment for a term not exceeding one year, or to both.

130 Any person who knowingly gives false testimony regarding any matter which is material to a question in any proceedings before the Tribunal commits an offence and shall be liable on conviction to a fine not exceeding thirty thousand penalty units on to imprisonment for a period not exceeding one year or to both.

131. A person summoned under the provisions of section one hundred and twenty-eight may, on the order of the Tribunal, be paid out of the Fund such allowance as may be prescribed.

132. (1) The Tribunal may make an order as to costs as it may consider just having regard to the means of the parties and the merits of the appeal.

(2) Subject to subsection (1)-

- (a) the costs and charges in connection with proceedings before the Tribunal shall be payable in accordance with the scale of costs as prescribed;

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(b) payment of costs awarded by the Tribunal may not be enforced until they have been taxed by the Clerk of a subordinate Court of the first Class of the district in which the appeal is heard.

Appeal to  
High Court

133. (1) Any person who being a party to any appeal before the Tribunal, is dissatisfied-

- (a) with the determination of the Tribunal as being erroneous in point of law or fact; or
- (b) with any decision of the Chairperson of the Tribunal as to whether the matter for determination by the Tribunal is a matter of fact or a matter of law;

may appeal therefore to the High Court within thirty days of the determination.

(2) The Court may permit a further period within which to appeal against a determination of the Tribunal, in terms of subsection (1) as it may consider fit.

(3) Upon the hearing of an appeal under this section, the High Court may-

- (a) confirm, vary or reverse the decision of the Tribunal;
- (b) refer the matter back to the Tribunal with instructions for the taking of further evidence or setting out of further information;
- (c) make such order as to costs as it may consider just; or
- (d) take any other course which leads to the just, speedy and expensive settlement of the matter.

## PART XII

### MISCELLANEOUS

Employers  
To supply  
Particulars of  
Business

134. (1) Every employer carrying on business in Zambia shall, within fourteen days of commencing business furnish the Commissioner with prescribed particulars of their business.

(2) The Commissioner may, from time to time, require particular Additional to those supplied under subsection (1) within a period as The Commissioner may fix.



(3) The particulars required under subsection (1) shall be furnished separately in respect of each business conducted by the employer and every employer shall inform the Commissioner of any changes in the particulars within fourteen days of the change.

(4) The representative present in Zambia of any non-resident employer -

- (a) shall, within fourteen days after the date on which that employer commences business in Zambia, whichever is the later notify to the Commissioner in writing the following particulars;
  - (i) the name and address of the chief representative; and
  - (iii) the address of the Principal office or place of business of the employer in Zambia; and
- (b) shall, in the same manner, notify any change in the particulars within fourteen days after the change; and
- (c) shall, for all the purpose of this Act, be deemed to be the employer of all workers employed within Zambia by that non-resident employer.

(5) For the purpose if subsection (4), “ non-resident employer” means any person who is not resident or in the case of a company or other body of persons, whose registered office is not situated in Zambia, and who carries on any business in connection with which any worker is employed in Zambia

(6) Where under the provisions of this section the Commissioner is to be furnished with, informed or notified of any particulars within a fixed time, the Commissioner in any particular case may on good cause shown extend the time so fixed.

(7) Any person who fails to comply with the provisions of this section commits an offence.

135. (1) Every employer shall keep records of wages paid, time worked and payment made for piece work and overtime in respect of all workers and any other particulars prescribed and the employer shall at all reasonable time produce records for inspection on demand by any person authorized thereto this Act.

(2) An employer who fails to comply with subsection (1) or who compels or attempts to compel any worker to do or omit to do any act, the doing or omission of which deprives or is intended to deprive that worker or the workers dependants of any right to compensation, commits an offence and shall be liable, on conviction, to a fine not exceeding six months, or to both.

- False statement 137. Any person who, in a claim for compensation under this Act, or in any notice report or statement required to be given, made or furnished under the provisions of this Act, knowingly makes or cause to be made a statement which is false in a material particular, commits an offence.
- Failure to  
Pay assessments 138. (1) If an assessment or any installment thereof is not fully paid by an employer shall be liable to pay, in addition to the percentage, not exceeding ten per centum per annum, of the amount unpaid as the Commissioner may determine.
- (2) Any employer who fails pay the assessment or to render within the prescribed period the returns referred to in section one hundred and twelve shall, in addition to any other penalty, pay to the Board a penalty, as determined by the Board not exceeding the full amount of the compensation payable in respect of any accident or incidence of the disease, to worker in that employer's employment during the period of default.
- (3) If the Commissioner is satisfied that –
- (a) the default was due to inadvertence or to some cause over which the employer has no control; or
  - (b) the payment of the full amount of the capitalized value would be likely to result in the bankruptcy of the employer, where the employer is a company, the winding up of the company;
- (4) Any employer who fails to pay to the assessment or any penalty imposed by, or other payment due to, the Board under the provisions of this Act, commits an offence.
- (5) Whenever an employer fails to pay to the Board any money due, the Board may recover that money from the employer as a civil debt.
- (6) For the purpose of this section, “compensation” includes in the case of a continuing liability, also the capitalized value, as determined by the Board of the pension(irrespective of whether a lump sum is any time paid in lieu of the whole or a portion of such pension)

139. (1) Compensation recovered or recoverable in respect of the death of a worker shall not form part of the deceased worker's estate for the purpose of the law relating to the administration of estates.

Compensation  
not to form  
deceased  
Worker's estate

(2) Where compensation is payable by any person other than the Board, it shall, unless the Board otherwise directs, be paid to the Board.

140. If any benefits have been paid which were not due under the provisions of this Act, the Board may recover the amount of those benefits by civil action, or by deduction from any benefits to which the worker or any dependant has or may become entitled under this Act.

Recovery  
benefits paid  
in error

141. (1) In the event of an employer becoming bankrupt or, if the employer is a company, in the event of the company having commenced the process of winding-up, the amount of any assessment, penalty or other payments due to the Board as a compensation due to any worker or the workers dependants, by the employer –

Priority of  
payment

(a) at the date of the receiving of the receiving order, or

(b) at the date of the commencement of the winding –up;

shall, notwithstanding anything to the contrary contained in any other law, be included in the debts which under section three of the preferential claims in Bankrupt Act, are in the distribution of the assets of a company being wound up be paid in priority to all other debts.

(2) when the compensation is in the form of a pension, children's allowance or periodicals payment, that shall, for the purpose of this section, be taken to be the capitalized value of that pension allowance or payment as determined by the Board.

142. (1) Compensation shall not-

(a) be capable of being assigned or charged;

- (b) be attached by the order of any court; or
  - (c) be set off against any debt by the person entitled to the compensation,
- (2) Notwithstanding subsection (1), the Board or the exempted employer may, out of any compensation payable to a worker recover either wholly or partly any amount which, with approval of the Commissioner of the employer, has after the occurrence of the accident or the disease, in respect of which the compensation

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Workers' Compensation

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is payable, been advanced to the worker, subject to repayment out of such compensation.

143. (1) Every record of a decision or award made by the commissioner and every copy of extract from an entry in any book or record kept by the Commissioner, and of any document filed with the Commissioner to be a true copy or extract, shall upon production be received as proof thereof.

(2) In any proceedings under this Act court, an affidavit purporting to be made by the Commissioner, or by a person to whom purporting to be made by Commissioner under subsection (3) of section eleven in which it is state-

- (a) that any person or body or body of persons is an employer principal, contractor, worker or dependant under this Act;
- (b) that any person is or has been lawfully required under this Act to pay any amount to the Board, or to a worker or other person named in the affidavit;
- (c) that any amount referred to in paragraph (b) or any portion thereof had or had not been paid on a date specified in the affidavit; or
- (d) that any decision has been taken by the Commissioner or by a person in pursuance of the powers so delegated to them;

shall, on its mere production in those proceedings by any person, but subject to subsection (3), be prima facie proof of the facts stated therein

(3) The person presiding over the proceedings in which any document affidavit referred to in subsection(1) or (2) is adduced in evidence, may cause the Commissioner or other person making the affidavit to be summoned to give oral evidence, or may cause written interrogatories to be submitted for reply and the interrogatories to be a reply from that person shall in like manner be admissible as evidence in the proceedings.

144. The President may, by statutory instrument, make rules for the purpose of giving effect to any convention with any foreign government providing for reciprocity in matters relating to compensation

to workers for accidents or incidence of disease causing disablement or death, and without prejudice to the generality of this power, rules may contain provision-

- (a) for determining in any case where a worker is entitled to compensation both under this Act and under the law of any country with which the convention is made, under the law of which party to the convention the worker or the workers dependants shall be entitled to recover compensation;

(b) for conferring on the commissioner and the Tribunal powers for the admission of evidence taken in any such country and the procuring and taking of evidence for use in that country or otherwise for the purpose of facilitating proceedings for the recovery of compensation under the respective laws of any such country; and

(c) whereby compensation awarded in any such country to persons resident or becoming resident in Zambia may be transferred to and administered by the Commissioner, and whereby compensation awarded under this Act to persons resident or becoming resident in that country may be transferred to, and administered by, a competent authority in that country.

145. (1) every employer, when so required by the Commissioner shall cause to be affixed and at all times to be kept affixed in a conspicuous place where that employer's workers are employed a clearly printed summary in a form and language as the Commissioner may require, of the procedure laid down in this Act for the recovery of compensation in the event of an accident.

Summary of  
procedure for  
recovery of  
compensation

(2) Any employer who fails to comply with the provisions of subsection (1) commits an offence.

146. Notwithstanding anything contained in this Act, the board may, with the approval of the Minister, enter into arrangement with any institution administration or regulation matters of social security in the Republic, under which any or all the functions of the Commissioner or the Board in relation to receipt and disbursement of assessment, and pension or Other benefit under this Act may be carried out by the Chief Executive of that Institution as the agent of the Board or the Commissioner.

Arrangement  
with  
institutions  
administering social  
security

147. (1) On the appointed date there shall be transferred to, and vest in the Workers' compensation Board by virtue of this Act and

vesting of  
assets and

- (a) the undertaking of the dissolved Boards;
  - (b) subject to the provisions of this Act, all rights, liabilities and obligations which immediately before the commencement of this Act were the property, rights, liabilities and obligations of the dissolved Boards.
- (2) Subject to the approval of the Workers' Compensation Board and as hereinafter provided, every deed, bond and agreement (other than an agreement for personal service) to which the dissolved Board was a party immediately before the commencement of this Act, whether in writing or not, and obligations hereunder could be assigned, shall, unless its

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its subject matter or terms make it impossible that it should have effect as modified in this manner provided by this subsection have effect as from the date of the assignment thereof, as if-

- (a) the workers' Compensation Board and the pneumoconiosis compensation Board had been a party thereto;
  - (b) for any reference to any other officer of the dissolved boards not being a party thereto and beneficially interested therein, there were substituted, as respects anything failing to be done or after the commencement of this Act, a reference to such officer of the board as shall be designated.
- (3) subject to the provisions of subsection(2) documents, other than those referred to therein, which specially or generally to the dissolved board shall be construed in accordance with the said subsection as far as applicable.

148. Whenever in pursuance of this Act, any property, rights liabilities or obligations of the dissolved boards are deemed transferred and is one in respect of which any written law provides for registration, the dissolved boards shall make an application in writing to the appropriate registration authority for the registration of such transfer, and such officer shall make entries in the appropriate register as shall give effect to the transfer and where appropriate issue to the transferee concerned a certificate of the title in respect of the said property or make necessary amendments to the register as the case may be, and if presented therefore, make endorsement on the deed relating to the title, right or obligation concerned; and no registration fees, stamp duty or other duties shall be payable in respect thereof.

149. (1) On or after the commencement of this Act, the dissolved boards shall notify such of the employees of the dissolved boards as it wishes to retain for the purpose of transfer to the Worker's

Compensation Board and such employees shall be engaged on such conditions as the workers' compensation Board shall determine.

(2) employees not engaged under subsection (1) shall, before the commencement of this Act, be notified to that effect by the pneumoconiosis board and may retained by the Government.

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150. (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the workers' Compensation Board and other persons shall, as from to commencement of this Act, have the same rights, power and remedies, and in particular the rights as o the instituting or defending of legal proceedings or the making or resisting of applications to any authority for ascertaining, perfecting or enforcing that right, liability or obligation as they would have as if it had at all times been a right, liability or obligation of the Worker's Compensation Board.

Legal  
proceedings

(2) Any legal proceedings or application to any authority pending immediately before the commencement of this Act or against the dissolved boards may be contained by or against the workers' Compensation board.

(3) After the commencement of this Act proceedings in respect of any right, liability or obligation which was vested in, held enjoyed, incurred or suffered by the dissolved boards may be instituted by or against the Workers' Compensation Board.

151. Any person who commits an offence under this Act in respect of which no special penalty is provided shall be liable, upon conviction, to a fine not exceeding one thousand penalty units or to imprisonment for a period not exceeding three months, or to both.

Penalty

152. the minister may, by statutory instrument, make regulations as to all or any of the follwing matters:

Regulations

(a) the procedure to be followed in connection with claims for compensation under

this Act;

(b) the forms to be used in connection with the procedure under or which may be used for any other matter dealt with by, this Act;

(c) the fees which may be charged by medical practitioners, dentists and technical experts in respect of anything done under or for the purposes of this Act;

(d) prescribing any matter which by this Act is required or permitted to be prescribed, not being a matter which this Act provides shall be prescribed by a specific person;

and generally for the better carrying out of the objects and purposes of this Act.

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Workers' Compensation

153. (1) The Workers' Compensation Act and the Pneumoconiosis Act, are hereby Repeal and  
repealed.

- (2) A claim for compensation in respect of an accident or disease that occurred or which contracted or before the commencement of this Act shall be determined in accordance with this Act:
- (3) On or after commencement date the determination of a claim that is already existing and for which pensions were being paid under the repealed Acts shall determined under this Act but shall not have retrospective effect.
- (4) On or after the commencement date, all claims compensation for an accident that has occurred or disease that has been contracted by a worker shall be determined under this Act.

### FIRST SCHEDULE

(Section 69)

#### MINUM DEGREES OF DISABLEMENT

	Minimum degree of disablement per centum
injury	
Loss of two limbs	
Loss of both hands or of fingers and thumbs	
Total paralysis	100
Injuries resulting in being bedridden permanently	
Any loss of remaining arm by one-armed worker	70
Loss of arm at shoulder	68
Loss of arm between wrist and elbow	60
Loss of four fingers and thumb of one hand	60
Loss of our fingers	35
Loss of thumb-both phalanges	25
One phalanges	10
Loss of index finger-three phalanges	10





6/6 or 6/9	6/24	15
6/6 or 6/9	6/36	20
6/6 or 6/9	6/60	20
6/6 or 6/9	6/30	20
6/12	Nil	30
6/12	6/18	15
6/18	6/24	30

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When best visual Acuity is in one		Minimum degree of Disablement per centum
Eye	other	
6/18	6/36	40
6/18	6/60	40
6/18	6/60	40
6/18	nil	50
6/24	6/24	30
6/24	6/36	40
6/24	6/60	50
6/24	6/24	40
6/36	6/36	80
6/36	6/60	90
6/36	6/60	80
6/36	6/36	90
6/60	nil	80
6/60	nil	90
6/60	3/60	100

6. For the purpose of this schedule, a one-eye worker means a workman who has no sight in one eye  
loss of teeth

1-2	1
3	1 ½
4-5	2 ½
6	3

7 3 ½

8 4

Thereafter per centum for every additional tooth up to a maximum of 10 per centum for thirty-two teeth.

Total permanent loss of members shall be treated as loss of member

The percentage loss of use of member shall be treated as loss of member.

The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100 per centum of the incapacity for loss of the part at the joint, according to whether the joint anklosed in a favourable or unfavorable position.

Where there is loss to two more parts of the hand the percentage of incapacity shall not be more than for the whole hand.

Where there are two or more injuries, the sum of the percentage for such injuries may be increased and where such injuries are to the hand, the following basis of computing the increase shall be adopted, namely:

- (a) where two digits have been injured, the sum total of the percentages shall be increased by twenty per centum of such sum total:

(b) where three digits have been injured, the sum total of the Percentages shall be increased by thirty per centum of such sum total;

(c) where four digits have been injured, the sum total of the percentage shall be increased by forty per centum of such sum total.

Pneumoconiosis and Tuberculosis

Pneumoconiosis	20
Stage 1	20
Stage 3	60
Stage	100
Tuberculosis	
Service throughout a period of one year or longer or Periods amounting in the aggregate to one year or Longer but less in either case than ten years	10
service throughout a period of ten years or longer or periods amounting in the aggregate to ten years or longer	60
Pneumoconiosis plus Tuberculosis	100

**FOURTH SCHEDULE**

(Section 71 and 72)

**MONTHLY, ALLOWANCES IN RESPECT OF CHILDREN**

	Percentage of Worker's pension
In respect of one child	15
In respect of two children	20
In respect of three children	25
In respect of four children	30
In respect of five children	35
In respect of six children	40
In respect of seven children	45
In respect of more than seven children	50

## **Fifth Schedule**

### **Section 71 and 72) MONTHLY ALLOWANCES IN RESPECT OF CHILDREN**

	<b>Percentage of Worker's pension</b>
In respect of one child	30
In respect of two children	40
In respect of three children	50
In respect of four children	60
In respect of five children	70
In respect of six children	80
In respect of seven children	90
In respect of more than seven children	100

## **SIXTH SCHEDULE**

### **Section 2) SCHEDULED MINES**

For purposes of this Act the following are the Schedule mines:

- (1) The Roan Copper Mines, operated at the commencement of this Act by Roan Antelope Copper Mines Limited from the 1<sup>st</sup> March, 1962, by the Roan Division of Rhodesia Selection Trust Limited; from the 1<sup>st</sup> April, 1968, by Luanshya Mines Limited From the 15<sup>th</sup> August, 1970, by the Luanshya Division of Roan Consolidated Mines Limited; from 1<sup>st</sup> of April, 1981, by the Luanshya Division of Zambia Consolidated Copper Mines Limited; from the 30<sup>th</sup> September, 1997, by Roan Antelope Mining Corporation of Zambia, Plc.
- (2) The Mufulira Copper Mines, operated at the commencement of this Act by Mufulira Copper Mines Limited; from the 15<sup>th</sup> December, 1967 by the Mufulira Division of Mufulira Copper Mines Limited, from the 15<sup>th</sup> August, 1970, by the Mufulira Division Copper Mines Consolidated Mines Limited; from the 1<sup>st</sup> April, 1981, by the Mufulira Division of Zambia Consolidated Copper Mines Limited.
- (3) The Nkana Copper Mines, including the Mindolo section thereof operated at the Commencement of this Act of Rokana Corporation Limited; from 26<sup>th</sup> June, 1970, by the Rokana Division of Nchanga Consolidated Copper Mines Limited; from the April, 1981, by the Rokana Division of Zambia Consolidated Copper Mines Limited and also any open-pit operated by the Rokana Division of the last named company.

(4) The Nchanga Copper Mine operated at the commencement of this Act by Nchanga Consolidated Copper Mines Limited; from 26<sup>th</sup> June, 1970, by the Chingola Division of Zambia Consolidated Copper Mines Limited; from 1<sup>st</sup> April 1981, by Chingola Division of Zambia Consolidated Cooper Mines Limited; also any open (eligible words) from 21<sup>st</sup> January, 1956, by Nchanga Consolidated Copper Mines Limited from the June, 1970, by the Chingola Division of the last; named company; from 1<sup>st</sup> April, 1981, by the Chingola Division of Zambia Consolidated Copper Mines Limited.

(5) The Chibuluma Mine, operated from the 16<sup>th</sup> October, 1951, by Mufulira Copper Mines Limited from the 1<sup>st</sup> May 1952, by Chibuluma Mines Limited; from the 15<sup>th</sup> August 1970, by

the Chibuluma division of Roan Consolidated Copper Mines Limited; from the April, 1981, by Chibuluma division of Zambia consolidated Copper Mines Limited; from the 30<sup>th</sup> September, 1997, by Chibuluma Mines Plc.

(6) The Bancroft Mine, operated from the 19<sup>th</sup> January, 19954, by Bancroft Mines Limited; from the 26<sup>th</sup> June, 1970, by the Konkola division of Nchanga Consolidated Copper Mines Limited; from the 1<sup>st</sup> April, 1981, by the Konkola Division of Zambia Consolidated copper Mines Limited.

(7) The Broken Hill Mine, operated from the 9<sup>th</sup> September, 1957, by Rhodesia Broken Hill Development Company Limited; from the 3<sup>rd</sup> April, 2965, by Zambia, Broken Hill Development Company Limited; from the 1<sup>st</sup> April, 1981, by the Broken Hill Division of Zambia Consolidated Copper Mines Limited and thereafter privatized.

(8) The Chambishi Mine, and any open-operated from the 21<sup>st</sup> January, 1963, by Chambishi Mine Limited; from the 1<sup>st</sup> December, 1957, by the Chambishi Division of Maufulira Copper Mines Limited; from the 15<sup>th</sup> August, 1970, by 1981, by the Chibuluma Division of Zambia Consolidated Copper Mines Limited from the 29<sup>th</sup> June, by NFC Mining Plc.

(9) The Bwana Mkubwa Mine and any open-pit operated from March, 1968, by the Rokana division of Nchanga Consolidated Copper Mines Limited; from 1<sup>st</sup> April, 1981, by the Rokana Division of Zambia Consolidated Copper Mines Limited.

(10) The Kalengwa Mines and any open-pit operated from 1978, by the Chibuluma Division of Roan Consolidated Copper Mines Limited; from 1<sup>st</sup> April, 1981, by Zambia Consolidated Copper Mines Limited.

(11) The Maamba Coal Mine and any open-pit operated by Maamba Collieries Limited.

(12)The Nampundwe Mine operated from 1970 by the Broken Hill Division of Nchanga consolidated Copper Mines Limited and thereafter privatized.

(13) The Kansanshi Mine, and any open-pit operated from August, 1977, by the konkola Division of Nchanga Consolidated Copper Mines Limited; from 1<sup>st</sup> April, 1981, by Konkola Division of Zambia consolidated Copper mines Limited from 16<sup>th</sup> January , 1997, by Amax Kansanshi Plc

(14) The Kansanshi Mine and any open-pit cast working operated at the date of its addition to this Schedule, by the copper Mining Enterprises Trust Limited (COMET).

(COMET)

Note: In this Schedule “ open-pit” means the surface beneath the original surface of the ground which earlier mentioned surface of this ground exist due to the mining of metaliferous but does not match any trench or other description of pit.

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