

### STATEMENTS OF FACTS

Zinga Group ("Group") is one of the most powerful business groups of the Country Zuru which is democratic Republic having a separate and independent legislature, executive and judiciary. Zuru's Parliament has two houses, the Upper House of Representatives who are indirectly elected and the Lower House of Senators who are directly elected. The promoter of the Group is one Mr. Markas who came from a very modest background and worked very hard to build the conglomerate.

It was a known fact in Zuru that one cannot be a successful businessman without the support and favours of the Government. The Group had been suspected to be involved in corruption issues on a number of occasions in the past but no action was taken against the Group by the law enforcement agencies, which functioned under the absolute control and supervision of the Zuru Government which was headed by the majority Tiffo Democratic Front Political Party.

In 2007, one of the major businesses of the Group was manufacture of high quality steel used in the automobile industry. The most important raw material for the manufacture of this steel is iron ore. As such, the Group also was also engaged in the mining of iron ore and in fact, the Group alone directly/ indirectly controlled 70% of the iron ore mining in the Country through its web of Companies. Iron Ore was the single largest natural resource of the Country but its mining was largely unorganized till the late 1990's.

Under the Constitution of Zuru, which is the Supreme Law of the Country, the Government is competent to frame laws relating to mining. In the year 2003, the Zuru government came out with an Executive Order issuing the Iron Ore Mining Policy 2003 to regulate the business of mining. However, no legislation was passed by the Zuru Parliament. The reasons for coming out with the Iron Ore Policy was on account of the increasing pressure on the Government to de-monopolize the sector, and particularly on account of the Group's substantial control over the business. The pressure was both from the general public and the competitors of the Group as well as from international funding organisations such as the World One Banking Corporation.

As a result of the Iron Ore Mining Policy 2003, the Iron Ore reserves of the Country were divided into 15 different blocks and it was decided to grant 3 Permits for each block. The main features of the policy were:

1. All the applications received before the cut off date were to be treated as if received on the same date for the purposes of consideration and the Government, after taking into consideration the matter specified in Rule (3) of the Policy, could grant the mining lease to such one of the applications as it may deem fit.
2. The matters referred to in Rule (3) are the following:-
  - a. any special knowledge of, or experience in mining operations possessed by the applicant;
  - b. the financial resources of the applicant and long term investment capacity;
  - c. purpose of acquisition being i.e. captive use or commercial sale;
  - d. The minimum paid up equity of each Applicant has to be minimum Zuru \$ 1,00,00,000/-
  - e. the technical expertise of the management, personnel employed or to be employed by the applicant;
  - f. the investment which the applicant proposes to make in the mines and in the industry;
  - g. such other matters as may be prescribed.
3. To ensure that there was no monopolization in the sector, a clause was incorporated which read as *"No single entity can either directly or through its companion entities hold more than 2 permits in the same block and a total of more than 20 permits in all the blocks"*.
4. No definition of the word 'companion entities' has been provided in the Policy. But the term entity was defined as a company registered under the Zuru Companies Act, 1955, a society or a trust registered under the relevant law but not a partnership of persons under the Partnership Act of Zuru, 1943 which was copied from the English Partnership Act of 1890. The Applicant

Company was mandated to give an undertaking/certificate along with the Application that it is compliant with this clause.

5. Any violation of the terms and conditions of Policy and the permit can result in the cancellation of the permit and forfeiture of the entire permit fee.

In May 2003, the Government undertook the process of inviting applications. 4 Companies of the Group, incorporated under the Zuru Companies Act, 1955, through an Extra-Ordinary Board Resolution dated May 21, 2003 decided to make as many as 30 applications in the various blocks and was eventually granted the full quota of the 20 permits. In all the 30 successful applications, Mr. Markas was shown as the Promoter of the Companies seeking the permits. However, Mr. Markas did not hold any other position in these Companies nor was he on the board of any of these companies. The shareholding of Mr. Markas in all these 4 companies was 20 % each and the rest of the shares were held by other entities of the promoter Group. All these Companies had their independent Managing Director and Board of Directors.

In May 2004, one of the successful Permit Holder surrendered its permit in 'Benja' Block and it was decided by the Zuru Government to invite fresh applications for this permit. The Benja Block was the richest iron ore block both in quality and also availability of the iron ore. This block was also closely located to one of the new steel plants of the Group under construction near the surrendered block.

Since the permits granted to the Group already met the maximum grant quota i.e. total of 20 permits, the Group was not eligible to apply for another permit. However, this block was extremely crucial for the successful commissioning and running of the Group's new plant under construction and would help it achieve economies of scale like never before and hike up its profit margins.

One of the applications filed for the Benja block was by a company named Zipper Steels and Washeries Private Limited ("Zipper"), which was a newly incorporated company. The Promoter-Director of Zipper was one Mr. Abraham who also happened to be an ex-employee of Mr. Markas for 10 years between the period 1992 to 2002, after which he had left and set up his own steel plant as a proprietary concern which was later taken over by Zipper on its incorporation.

Zipper was incorporated on 1<sup>st</sup> June 2004 with an authorized share capital of 1,00,00,000 equity shares of Zuru \$ 10 each amounting to Zuru \$. 10,00,00,000/- and a paid up equity share capital of Zuru \$ 1,00,00,000/-.

In the application made on 2<sup>nd</sup> June 2004 by Zipper, i.e. just one day after its incorporation, the prior experience of Zipper with respect to the mining business was stated to be that of its promoter Mr. Abraham viz. a vis. his employment with the group companies of Mr. Markas. The Application and the accompanying Permit Quota Certificate were signed by the General Manager of Zipper, one Mr. Corum, a citizen of United States of America who was employed with Zipper on the same day.

There were a total of 6 applications received for the Benja block, however, the application made by Zipper was accepted and it was allotted the permit for the Benja block.

Two of the unsuccessful applicants approached the High Court of Zuru (the Highest Court in the Country) alleging arbitrary grant of permit to Zipper and for setting aside of the grant of the permit in favour of Zipper on the ground that their applications were more deserving than that of Zipper. In the High Court, the Government supported its decision of grant of permit to Zipper. However, the High Court after a detailed hearing quashed the grant of permit to Zipper on the ground that Zipper was incorporated just one day prior to the date of Application and therefore, it did not have the required past experience and expertise for grant of the permit. The High Court further observed that this fact shows that there is much more than what meets the eye and directed the ZID (Zuru Investigation Department) to conduct a criminal investigation into the grant of the permit.

On the directions of the High Court, a Criminal Offence Report was registered by ZID against Zipper, Mr. Abraham and unknown Government Officials for offences of cheating, conspiracy and corruption. During the investigation, the ZID could not find any material to establish the offence of corruption.

However, upon conclusion of the investigation, the ZID filed a Conclusion Report (as mandated by the Zuru Investigation Department & Criminal Evidence Act, 1975) against Mr. Markas, Mr. Abraham, Zipper and the 4 Permit Holder Companies of Mr. Markas for offences of cheating and criminal conspiracy. Importantly, no Director or official of these companies was made an Accused in the Final Report. Following allegations were made in the Conclusion Report:

- a. Zipper is a front for the 4 Permit Holder Companies of Mr. Markas and was incorporated to circumvent the Permit Quota Clause of the 2003 Policy
- b. Zipper did not meet all the eligibility requirements under the policy.
- c. The paid up share capital of Zipper was provided by one of the Permit Holder companies of Mr. Markas in the form of an unsecured loan @ 7% interest per annum on the date of its incorporation. The prevailing bank rate at that time was 7.9 % p.a. and average interest rate on corporate lending was between 9-10 % p.a.
- d. The Permit fee was paid by Zipper from an amount which it received as a loan from the National Bank of Zuru. This Bank had existing relations with the group companies of Mr. Markas, and Zinga Ports Limited (another one of the group companies of Mr. Markas) stood as a sole guarantor for the loan. Zinga Ports Limited charged 2% of the loan amount as guarantee commission from Zipper.
- e. A number of employees working in Zipper had at an earlier point of time been employees of the Zinga group and resigned from the Zinga Group just 2 days prior to the incorporation of Zipper and joined Zipper within 2 months of its incorporation.
- f. The motive of Mr. Markas to set up Zipper was to obtain the permit for the Benja Block which was extremely beneficial and profitable for its new steel plant.

- g. The Permit was obtained by Zipper on the basis of a fraudulent representation that it was compliant with the Permit Quota Clause and therefore, the offence of cheating.

Mr. Corum who had signed the Application and Certificate on behalf of Zipper, was made a prosecution witness and during the investigation his statement was recorded by the ZID, relevant portion of which is as follows:

*"I have signed the Application and the Permit Quota Certificate dated 2<sup>nd</sup> June 2004 on the instructions of one Mr. Joseph who was CEO of Zipper at that time. I did not examine whether Zipper is compliant with the Permit Quota Clause. However, Mr. Joseph assured me that Zipper is compliant and therefore, I signed the certificate."*

Mr. Joseph was also made a prosecution witness and during the investigation his statement was recorded by the ZID, relevant portion of which is as follows:

*"I do not recall telling Mr. Corum to sign the application and the certificate. Mr. Corum was the General Manager of the Company and examined the records before signing the Certificate."*

All the abovementioned accused namely Mr. Markas, Mr. Abraham, Zipper and the 4 Permit Holder Companies of Mr. Markas were formally indicted for the offence of cheating and criminal conspiracy but not corruption.

During the trial, Mr. Corum was called to depose in Court a day prior to Mr. Joseph. At this stage, 52 out of the total 75 prosecution witnesses stood examined.

In his examination in chief as led by the ZID Prosecutor, Mr. Corum reiterated his statement that he signed the Certificate on the assurance of Mr. Joseph. After conclusion of Mr. Corum's deposition and on the same day, Mr. Markas and his 4 Permit Holder Companies, relying on Mr. Corum's deposition, moved separate applications in Court making the following identical prayers:

- a. That Mr. Joseph be summoned as an Accused and be directed to face trial in this case.
- b. Till disposal of this application, Mr. Joseph should not depose in Court.

The Trial Judge on the same day dismissed prayer (b) of the applications and examined Mr. Joseph in Court the following day. Mr. Joseph in the examination in chief stated as follows:

*"I had told Mr. Corum to sign the Certificate on the instructions of Mr. Abraham who was in turn acting on the instruction of Mr. Markas. I was assured by Mr. Abraham that the Company is compliant with the Permit Quota Clause."*

In his cross examination by the Counsel of Mr. Markas and the 4 Permit Holder Companies, Mr. Joseph stated as follows:

*"In my statement before the ZID during the investigations, I did not state that I had told Mr. Corum to sign the Certificate on the instructions of Mr. Abraham who was in turn acting on the instruction of Mr. Markas. I also did not state that I was assured by Mr. Abraham that the Company is compliant with the Permit Quota Clause. I have never seen Mr. Abraham taking instructions from Mr. Markas, however, I have seen them interacting on various occasions."*

On his aforesaid cross examination by the Counsel of Mr. Markas, the Trial Court put the following question to Mr. Joseph:

*"Court Question: Why did you not tell the ZID the aforesaid facts in your statement made to the ZID?"*

*Answer: I was not questioned on these facts by the ZID"*

The Applications filed by Mr. Markas and his 4 Permit Holder Companies for summoning Mr. Joseph as an Accused was also dismissed by the Trial Judge during the course of the trial, against which Mr. Markas and the 4 Permit Holder Companies filed separate Appeals before the High Court of Zuru, which are currently pending.

After conclusion of the trial, the Learned Trial Judge found all the Accused guilty of the offences of cheating and criminal conspiracy and sentenced Mr. Markas and Mr. Abraham to rigorous imprisonment of 7 years and imposed a fine of Zuru \$ 1,00,00,000 each on the 5 Accused Companies.

The Trial Court arrived at its conclusion mainly relying on the deposition of Mr. Joseph and Mr. Corum.

The Trial Court also concluded that Zipper was a companion entity of the 4 Permit Holder Companies of Mr. Markas on the date of the application by Zipper and therefore, the undertaking/certificate given by Zipper was fraudulent. The Trial Court

arrived at this conclusion by relying on the definition of "Companion Entities" provided in the Financial Norms -26, which are norms/standards laid down by the Institute of Chartered Accountants of Zuru.

All the 5 companies and Mr. Markas and Mr. Abraham have filed separate appeals before High Court of Zuru.

The appeals of Mr. Markas against his conviction and against the Trial Court order dismissing his application for arraigning Mr. Joseph as an Accused, both titled '*Mr. Markas Vs. The Zuru Government*' have been consolidated and shall now be heard together.

**Note:**

1. Teams are to argue either for the Appellant (Mr. Markus) or for the Respondent (Zuru Government)
2. Trials in Zuru are conducted by a Magistrate without the aid of jury.
3. The onus of proof under the Zuru laws, is on the prosecution to prove the guilt of the Accused beyond reasonable doubt.
4. The relevant statutes are annexed as Annexure A.
5. Participants are expected to apply the principles of criminal law prevalent in common law jurisdictions and demonstrate the rational and desirability of applying the same in a cogent manner.
6. The maintainability of the appeals is not in issue in these proceedings. Participants must proceed on the basis that the abovementioned criminal appeals are maintainable.

**Annexure A**

**THE CONSTITUTION OF ZURU**

(Relevant Extracts)

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**CHAPTER IV - BILL OF RIGHTS**

**7. Rights**

1. This Bill of Rights is a cornerstone of democracy in Polkrajine. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
3. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

**8. Application**

1. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
2. A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
3. When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court
  - a. in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
  - b. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

**9. Equality**

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

#### **10. Human dignity**

Everyone has inherent dignity and the right to have their dignity respected and protected.

#### **11. Life**

Everyone has the right to life.

#### **12. Freedom and security of the person**

1. Everyone has the right to freedom and security of the person, which includes the right
  - a. not to be deprived of freedom arbitrarily or without just cause;
  - b. not to be detained without trial;
  - c. to be free from all forms of violence from either public or private sources;
  - d. not to be tortured in any way; and
  - e. not to be treated or punished in a cruel, inhuman or degrading way.
2. Everyone has the right to bodily and psychological integrity, which includes the right
  - a. to make decisions concerning reproduction;
  - b. to security in and control over their body; and
  - c. not to be subjected to medical or scientific experiments without their informed consent.

#### **13. Slavery, servitude and forced labour**

No one may be subjected to slavery, servitude or forced labour.

#### **14. Privacy**

Everyone has the right to privacy, which includes the right not to have

- a. their person or home searched;
- b. their property searched;
- c. their possessions seized; or
- d. the privacy of their communications infringed.

#### **15. Freedom of religion, belief and opinion**

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that
  - a. those observances follow rules made by the appropriate public authorities;
  - b. they are conducted on an equitable basis; and
  - c. attendance at them is free and voluntary.
3.
  - a. This section does not prevent legislation recognising
    - i. marriages concluded under any tradition, or a system of religious, personal or family law; or

- ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

#### **16. Freedom of expression**

1. Everyone has the right to freedom of expression, which includes
  - a. freedom of the press and other media;
  - b. freedom to receive or impart information or ideas;
  - c. freedom of artistic creativity; and
  - d. academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to
  - a. propaganda for war;
  - b. incitement of imminent violence; or
  - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

#### **17. Assembly, demonstration, picket and petition**

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

#### **18. Freedom of association**

Everyone has the right to freedom of association.

#### **19. Political rights**

1. Every citizen is free to make political choices, which includes the right
  - a. to form a political party;
  - b. to participate in the activities of, or recruit members for, a political party; and
  - c. to campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right
  - a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
  - b. to stand for public office and, if elected, to hold office.

#### **20. Citizenship**

No citizen may be deprived of citizenship.

#### **21. Freedom of movement and residence**

1. Everyone has the right to freedom of movement.
2. Everyone has the right to leave the Republic.
3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
4. Every citizen has the right to a passport.

## 22. Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

## 23. Labour relations

1. Everyone has the right to fair labour practices.
2. Every worker has the right
  - a. to form and join a trade union;
  - b. to participate in the activities and programmes of a trade union; and
  - c. to strike.
3. Every employer has the right
  - a. to form and join an employers' organisation; and
  - b. to participate in the activities and programmes of an employers' organisation.
4. Every trade union and every employers' organisation has the right
  - a. to determine its own administration, programmes and activities;
  - b. to organise; and
  - c. to form and join a federation.
5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

## 24. Environment

Everyone has the right

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
  - i. prevent pollution and ecological degradation;
  - ii. promote conservation; and
  - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

## 25. Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application
  - a. for a public purpose or in the public interest; and
  - b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including
  - a. the current use of the property;
  - b. the history of the acquisition and use of the property;

- c. the market value of the property;
  - d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - e. the purpose of the expropriation.
4. For the purposes of this section
    - a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all Polkaine's natural resources; and
    - b. property is not limited to land.
  5. The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
  6. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
  7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
  8. No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
  9. Parliament must enact the legislation referred to in subsection (6).

## **26. Housing**

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

## **27. Health care, food, water and social security**

1. Everyone has the right to have access to
  - a. health care services, including reproductive health care;
  - b. sufficient food and water; and
  - c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

## **28. Children**

1. Every child has the right
  - a. to a name and a nationality from birth;
  - b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
  - c. to basic nutrition, shelter, basic health care services and social services;
  - d. to be protected from maltreatment, neglect, abuse or degradation;
  - e. to be protected from exploitative labour practices;
  - f. not to be required or permitted to perform work or provide services that

- i. are inappropriate for a person of that child's age; or
    - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
  - g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
    - i. kept separately from detained persons over the age of 18 years; and
    - ii. treated in a manner, and kept in conditions, that take account of the child's age;
  - h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
  - i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
- 2. A child's best interests are of paramount importance in every matter concerning the child.
- 3. In this section "child" means a person under the age of 18 years.

### 29. Education

- 1. Everyone has the right
  - a. to a basic education, including adult basic education; and
  - b. to further education, which the state, through reasonable measures, must make progressively available and accessible.
- 2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
  - a. equity;
  - b. practicability; and
  - c. the need to redress the results of past racially discriminatory laws and practices.
- 3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that
  - a. do not discriminate on the basis of race;
  - b. are registered with the state; and
  - c. maintain standards that are not inferior to standards at comparable public educational institutions.
- 4. Subsection (3) does not preclude state subsidies for independent educational institutions.

### 30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

### 31. Cultural, religious and linguistic communities

- 1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
  - a. to enjoy their culture, practise their religion and use their language; and

- b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

### **32. Access to information**

1. Everyone has the right of access to
  - a. any information held by the state; and
  - b. any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

### **33. Just administrative action**

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must
  - a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
  - b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
  - c. promote an efficient administration.

### **34. Access to courts**

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

### **35. Arrested, detained and accused persons**

1. Everyone who is arrested for allegedly committing an offence has the right
  - a. to remain silent;
  - b. to be informed promptly
    - i. of the right to remain silent; and
    - ii. of the consequences of not remaining silent;
  - c. not to be compelled to make any confession or admission that could be used in evidence against that person;
  - d. to be brought before a court as soon as reasonably possible, but not later than
    - i. 48 hours after the arrest; or
    - ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
  - e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
  - f. to be released from detention if the interests of justice permit, subject to reasonable conditions.
2. Everyone who is detained, including every sentenced prisoner, has the right

- a. to be informed promptly of the reason for being detained;
  - b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
  - c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
  - e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
  - f. to communicate with, and be visited by, that person's
    - i. spouse or partner;
    - ii. next of kin;
    - iii. chosen religious counsellor; and
    - iv. chosen medical practitioner.
3. Every accused person has a right to a fair trial, which includes the right
- a. to be informed of the charge with sufficient detail to answer it;
  - b. to have adequate time and facilities to prepare a defence;
  - c. to a public trial before an ordinary court;
  - d. to have their trial begin and conclude without unreasonable delay;
  - e. to be present when being tried;
  - f. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
  - g. to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - h. to be presumed innocent, to remain silent, and not to testify during the proceedings;
  - i. to adduce and challenge evidence;
  - j. not to be compelled to give self-incriminating evidence;
  - k. to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  - l. not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  - m. not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - o. of appeal to, or review by, a higher court.
4. Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

### 36. Limitation of rights

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
  - a. the nature of the right;
  - b. the importance of the purpose of the limitation;

- c. the nature and extent of the limitation;
  - d. the relation between the limitation and its purpose; and
  - e. less restrictive means to achieve the purpose.
2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

### **37. Enforcement of rights**

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

- a. anyone acting in their own interest;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. an association acting in the interest of its members.

### **38. Interpretation of Bill of Rights**

1. When interpreting the Bill of Rights, a court, tribunal or forum
  - a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - b. must consider international law; and
  - c. may consider foreign law.
2. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
3. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

**The Zuru Investigation Department and Criminal Evidence Act , 1975**

**(Relevant Sections)**

**51. Examination of witnesses by ZID.**

(1) Any ZID officer making an investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The ZID officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

**79. Conclusion Report of ZID officer on completion of investigation.**

(1) Every investigation under this Act shall be completed without unnecessary delay.

(2) (i) as soon as it is completed, the ZID officer in charge shall forward to a Magistrate empowered to take cognizance of the offence on a Crime Offence Report, a conclusion report, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) The names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(ii) The ZID officer shall also communicate the action taken by him, to the person, if any by whom the information relating to the commission of the offence was first given.

(3) Along with the Conclusion Report, the ZID officer shall forward to the Magistrate-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 51 of all the persons whom the prosecution proposes to examine as its witness.

(4) If the ZID officer is of opinion that any part of any such statement is not relevant to the sub-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(5) Where the ZID investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(6) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, a ZID officer obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of sub-section (2) to (5) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

### **73. Power to proceed against other persons appearing to be guilty of offence.-**

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

### **186. Powers of the High Court in Appeal.**

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, the

High Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) In an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) In an appeal from a conviction-

(i) Reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate Court or committed for trial, or

(ii) Alter the finding, maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) In an appeal for enhancement of sentence-

(i) Reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a court competent to try the offence, - or

(ii) Alter the finding maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) In an appeal from any other order, alter or reverse such order;

(3) Make any amendment or any consequential or incidental order that may be just or proper.

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence, which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

**265. Finding or sentence when reversible by reason of error, omission or irregularity.**

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by the High Court, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Act, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Act, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could not should have been raised at an earlier stage in the proceedings.

**Section 320. Offences by companies.**

(1) If the person committing an offence under the Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Zuru Criminal Code, 1965****4. "Dishonestly".-**

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"

**5. "Fraudulently".-**

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

**105A. Definition of criminal conspiracy.**

When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation

It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

**105B. Punishment of criminal conspiracy.-**

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

**225. Cheating.-**

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

**230. Cheating and dishonestly inducing delivery of property.-**

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**The Zuru Companies Act, 1956**

**5. -Meaning of "officer who is in default".**

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression " officer who is in default " means all the following officers of the company, namely :

- (a) the managing director or managing directors ;
- (b) the whole-time director or whole-time directors ;
- (c) the manager ;
- (d) the secretary ;
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ;
- (f) any person charged by the Board with the responsibility of complying with that provision :

Provided that the person so charged has given his consent in this behalf to the Board ;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors :

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

**291. GENERAL POWERS OF BOARD.**

(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting:

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act,

or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

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**Financial Norms 26 –Relevant Provision**  
**(Related Party Disclosures)**  
**(Institute of Chartered Accountants of Zurr)**

**Objective**

The objective of these norms is to establish requirements for disclosure of:

- (a) related party relationships; and
- (b) transactions between a reporting enterprise and its related parties.

**Scope**

1. These Norms should be applied in reporting related party relationships and transactions between a reporting enterprise and its related parties. The requirements of These Norms apply to the financial statements of each reporting enterprise as also to consolidated financial statements presented by a holding company.
2. These Norms applies only to related party relationships described in paragraph 3.
3. These Norms deals only with related party relationships described in (a) to (e) below:
  - (a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);
  - (b) companion entities and joint ventures of the reporting enterprise and the investing party or venture in respect of which the reporting enterprise is an companion entity or a joint venture ;
  - (c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;
  - (d) key management personnel and relatives of such personnel; and
  - (e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.
4. In the context of these Norms, the following are deemed not to be related parties:
  - (a) two companies simply because they have a director in common, notwithstanding paragraph 3(d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);

(b) a single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and

(c) the parties listed below, in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process):

(i) providers of finance;

(ii) trade unions;

(iii) public utilities;

(iv) government departments and government agencies including government sponsored bodies.

5. Related party disclosure requirements as laid down in these Norms do not apply in circumstances where providing such disclosures would conflict with the reporting enterprise's duties of confidentiality as specifically required in terms of a statute or by any regulator or similar competent authority.

6. In case a statute or a regulator or a similar competent authority governing an enterprise prohibit the enterprise to disclose certain information which is required to be disclosed as per these Norms, disclosure of such information is not warranted. For example, banks are obliged by law to maintain confidentiality in respect of their customers' transactions and this Standard would not override the obligation to preserve the confidentiality of customers' dealings.

7. No disclosure is required in consolidated financial statements in respect of intra-group transactions.

8. Disclosure of transactions between members of a group is unnecessary in consolidated financial statements because consolidated financial statements present information about the holding and its subsidiaries as a single reporting enterprise.

9. No disclosure is required in the financial statements of state-controlled enterprises as regards related party relationships with other state-controlled enterprises and transactions with such enterprises.

#### Definitions

10. For the purpose of this Standard, the following terms are used with the meanings specified:

10.1 Related party - parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

10.2 Related party transaction - a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.

10.3 Control – (a) ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or

(b) control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or

(c) a substantial interest in voting power and the power to Related Party Disclosures direct, by statute or agreement, the financial and/or operating policies of the enterprise.

10.4 Significant influence - participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies.

10.5 Companion Entity - an enterprise in which an investing reporting party has significant influence and which is neither a subsidiary nor a joint venture of that party.

10.6 A Joint venture - a contractual arrangement whereby two or more parties undertake an economic activity which is subject to joint control.

10.7 Joint control - the contractually agreed sharing of power to govern the financial and operating policies of an economic activity so as to obtain benefits from it.

10.8 Key management personnel- those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise.

10.10 Holding company - a company having one or more subsidiaries.

10.11 Subsidiary - a company:

(a) in which another company (the holding company) holds, either by itself and/or through one or more subsidiaries, more than one-half in nominal value of its equity share capital; or

(b) of which another company (the holding company) controls, either by itself and/or through one or more subsidiaries, the composition of its board of directors.

10.12 Fellow subsidiary-- a company is considered to be a fellow subsidiary of another company if both are subsidiaries of the same holding company