

CHAPTER 387

THE BANKING AND FINANCIAL SERVICES ACT. ARRANGEMENT OF SECTIONS

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CHAPTER 387

BANKING AND FINANCIAL SERVICES ACT

An Act to provide for the regulation of the conduct of banking and financial services; to provide safeguards for investors in and customers of banks and financial institutions; and to provide for matters connected with or incidental to the foregoing.

[3rd June, 1994]

Act No.

21 of 1994

13 of 1994

28 of 1995

18 of 2000

25 of 2005

CHAPTER I PRELIMINARY

1. This Act may be cited as the Banking and Financial Services Act. Short title

Commencement

Cap. 387

2. (1) In this Act, unless the context otherwise requires-

"advance" means-

(a) any direct or indirect advance of funds, a loan or extension of credit, to a person or common enterprise-

(i) made on the basis of an obligation of that person or common enterprise to repay the funds; or

(ii) repayable from specific property pledged by, or on behalf of, a person or common enterprise;

(b) all credit risks arising from actual claims, potential claims of all kinds and credit substitutes; or

(c) commitments to extend credit and any commitment to acquire a debt security or other right to payment of a sum of money"

"bank" means a company conducting banking business;

(As amended by Act. 18 of 2000)

"banking licence" means a licence granted under section *four*;

"Bank of Zambia" means the Bank of Zambia established under the Bank of Zambia Act.

(As amended by Act. 18 of 2000)

"banking business" means the business of-

(a) receiving deposits from the public including chequing account and current account deposits and the use of such deposits, either in whole or in part, for the account of and at the risk of the person carrying on the business, to make loans, advances or investments

(b) providing financial services; and

(c) any custom, practice or activity prescribed by the Bank of Zambia as banking business;

(As amended by Act. 18 of 2000 and Act No. 25 of 2005)

"branch" means any place of business of a bank or financial institution that is open to the public, and includes a mobile office and a banking machine installation;

"company" has the same meaning as in the Companies Act;

Interpretation

Cap. 360

Act No. 43 of 1996

"Court" means the High Court or any other court of competent jurisdiction;

"board" means a board of directors of a bank or financial institution as provided in section *thirty*;

"chief executive officer" means the person responsible, under the immediate authority of the directors, for the conduct of the business of a bank or financial institution;

"chief financial officer" means the person responsible for maintain the accounts and related records of a bank or financial institution;

"common enterprise" means two or more persons representing a single risk arising from the direct or indirect control of one of those persons over the others; and

"control" a situation where-

(a) one person. or a combination of two or more persons acting in concert, directly or indirectly owns, controls or has the power to vote twenty-five centum or more of any class of voting shares of another person;

(b) one person, or a combination of two or more persons acting in concert, controls in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions, of another person; or

(c) any circumstances exist which indicate that one person, or a combination of two or more persons acting in concert, directly or indirectly, exercise a controlling influence over the management, policies or affairs of another person;

"*de facto* control" of a company by a person means direct or indirect influence of a kind that, if exercised, would result in the person's controlling the financial provider in fact, and includes any such influence exercisable by virtue of any such influence over, or the *de jure* control of, another financial service provider or other companies;

"*de jure* control" of a financial service provider by a person means beneficial ownership of more than fifty per centum of any class of the issued voting shares of the financial service provider by a person;

Cap. 388

"deposit" means-

(a) an amount of money paid to a bank or financial institution in respect of which-

(i) an equal amount of any part thereof is conditionally or unconditionally repayable, with or without a premium, on demand or at specified or unspecified dates in terms agreed to, by, or on behalf of, the person making the payment and the bank or financial institution receiving it; and

(ii) no interest is payable on the amount so paid or interest is payable thereon at specified or unspecified intervals, notwithstanding that the payment is limited to a fixed amount that a transferable or

non-transferable certificate or other instrument providing for the repayment of the amount referred to in subparagraph (i) or the interest referred to in this subparagraph is issued in respect of that amount or interest;

(b) trust funds received from or held by a bank or financial institution;

(c) money received or held by a bank or financial institution or the credit given for money or its equivalent received or held in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including:

(i) escrow funds and funds held as security for an obligation due to the bank or financial institution;

(ii) funds deposited by a debtor to meet maturing obligations; and

(iii) funds held to meet its acceptances or letters of credit;

but does not include funds which are received by the bank or financial institution for immediate application to the reduction of an indebtedness to the receiving bank or financial institution;

(d) outstanding draft, cashier's cheque, money order, or other officer's cheque issued by the bank or financial institution and drawn on

customer funds for any purpose in the ordinary course of business; or

(e) such other obligations of a bank or financial institution as the Bank of Zambia may prescribe from time to time;

(As amended by Act. 18 of 2000)

"director" means a person who holds office as a member of the board of directors of a bank or financial institution in accordance with section *thirty*;

"financial business" means a person that conducts a financial service business but does not accept deposits;

"financial institution" means a person other than a bank, conducting a financial service business which includes receiving deposits from the public but does not include chequing;

"financial institution's licence" means a licence issued under section *ten*;

"financial service" means any one or more of the following services:

(a) commercial or consumer financing services;

(b) credit reference services;

(c) deposit brokering;

(d) factoring, with or without recourse;

(e) financial leasing or finance leasing;

(f) financing of commercial transactions, including forfeiting;

(g) the issue and administration of credit cards, debit cards, travellers' cheques or bankers' drafts;

(h) the issue guarantees, performance bonds or letters of credit;

(i) lending on the security of, or dealing in, mortgages or any interest in real property;

(j) merchant banking services;

(k) money transfer or transmission services or the payment of cheques or other demand payment orders drawn or issued by customers and payable

from deposits held by the payer;

(l) purchase and sale of foreign exchange;

(m) issuance of debentures and money market instruments and the acceptance of six months (or such other period as prescribed by the Bank of Zambia) term deposits, other than current accounts and chequing deposits;

(n) issuance of building society and mutual society shares, having characteristics similar or identical to those of deposits;

(o) venture capital funding;

(p) secured or unsecured credit services including micro financing;

(q) development financing; and

(r) any other services as the Bank of Zambia may designate, but does not include-

(i) the underwriting, marketing or administration of contracts of insurance or reinsurance; or

(ii) any service excluded from the scope of this definition by a provision of this Act or by the Bank of Zambia under this Act;

“financial service provider” means a bank, financial institution or financial business;

"foreign bank" or "foreign financial institution" means a bank or financial institution which is not incorporated in Zambia;

"foreign company" has the same meaning as in the Companies Act

“incorporated” means-

(a) formed under the Companies Act; or

(b) established under an Act of Parliament as a body corporate;

"non-performing loan" means a loan in respect of which any payment of principal or interest is in arrears in excess of ninety days;

"person" includes an individual, a company, a partnership, an association and any group of persons acting in concert, whether or not incorporated;

"Register" means the Register of Banks and Financial Institutions established under this Act;

"Registrar" means the person holding office or acting as the Registrar of Banks and Financial Institutions under this Act;

"Registrar of Companies" means the person holding office or acting as Registrar under the Companies Act;

"regulated financial service business" means the business of performing or offering to perform any regulated financial services to the public;

"voting shares" means common shares in the capital of the share in the capital of a bank or financial institution and any other shares of any designation or description that carry the right to vote on any resolution at any meeting.

"manager" means a person (other than a chief executive officer and chief financial officer) who, under the immediate authority of a director or chief executive officer of a bank or financial institution -

(a) exercises managerial functions;

(b) is responsible for maintaining accounts or other records; or

(c) is responsible for the management of credits;

"money circulation scheme" means a scheme, plan, arrangement, agreement or understanding, between two or more persons which involves the pooling and distribution of funds by recruitment of subscribers, the continuation of whose existence and the realisation of any of its benefits substantially depends on the incremental recruitment of subscribers from the public for an unspecified period;

"primary capital" means any one or more of the following-

(a) paid up common shares;

(b) qualifying preferred shares consisting of:

(i) perpetual preferred shares;

(ii) compulsory convertible preferred shares where conversion to securities which would qualify as primary capital represents the only redemption option; or

(iii) preferred shares which have an original term of maturity of twenty years or more, where no redemption occurs within the first ten years and where the maximum redemption obligation in any one year is restricted

Cap 388

Cap 388

Cap. 388

to five per cent or less of the original issued amount;

(c) such other capital components as may be prescribed by the Bank of Zambia;

"regulatory capital" means the instruments which comprise capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for determining compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, calculated in a manner prescribed by the Bank of Zambia;

"representative office" means an office in Zambia licensed under this Act to represent a foreign bank or a foreign financial institution;

"Tribunal" means an Appeal Tribunal appointed under section *one hundred and thirteen*;

(As amended by Act. 18 of 2000)

2) In this Act, "deposit" does not include instruments issued by a bank or financial institution in respect of an advance or for the purpose of fulfilling a payment for goods supplied or services rendered to the Bank.

(As amended by Act No. 18 of 2000)

(3) For the purposes of this Act-

(a) where two or more persons, each of whom beneficially owns shares of the same company, are associated with each other, each of them shall be regarded as a single person who beneficially owns the aggregate number of shares of the company;

(b) two persons are associated if-

(i) one person is a company of which the other person is a manager or director;

(ii) one person is a company that is controlled *de jure* or *de facto* by the other person;

(iii) one person is a partnership of which the other person is a partner;

(iv) both persons are members of a voting trust or other arrangement relating to the shares of a share issuer; or

(v) one person is the spouse, parent, child, brother or sister of the other person, or of the other person's parent, child, brother or sister,

(c) two or more persons are affiliated if all are companies that are controlled, *de jure* or *de facto*, by the same person; and

(d) a company is the subsidiary of another company if more than fifty per centum of the issued voting shares of the company (except any qualifying directors' shares) are owned directly or indirectly by the other company.

(4) In subsection (1)-

(a) "mercharnt banking" includes the underwriting of securities for corporations, advising on and arranging finance for mergers and take-over bids, the financing of foreign trade by accepting bills of exchange, underwriting new issues and investment management; and

(b) "venture capital funding" includes the mobilisation of funds from various sources in risky projects which would not normally attract conventional finance.

(As amended by Act No. 18 of 2000 and Act No. 25 of 2005)

3. This Act applies to all banks, financial institutions and financial businesses, whether or not constituted by any Act:

Application of this

Act

Provided that the requirements of this Act are not binding on the Bank of Zambia, except in so far as this Act expressly imposes a duty on that Bank.

Act confers or imposes any powers or functions on that bank.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

CHAPTER II

LICENSING OF BANKS AND FINANCIAL INSTITUTIONS

Part 1-Licensing of Banks

4. (1) Upon application by a company, the Registrar, in consultation with the Minister, may grant a licence authorising the company to conduct banking business.

Licensing of
companies as
banks

(2) The application shall be in such form and accompanied by such fees as may be prescribed by regulation, and the form of application shall require at least the following particulars to be supplied:

(a) the articles of association of the company; Cap. 388

(b) the physical and postal addresses of its head office and the permanent residential addresses of its directors, chief executive officer, managers and shareholders;

(c) the name and permanent residential address of every subscriber for

any class or series of shares issued by the company in a number that will exceed one per centum of all the shares of that class or series, whether such shares carry the right to vote in all circumstances or not;

(d) the addresses of each branch proposed to be opened by the applicant and, in the case of a mobile office, the area proposed to be served;

(e) full particulars of the business it proposes to conduct under the authority of the licence;

(f) the amount of its capital; and

(g) such assurances and evidence of the foregoing as the Registrar may require to be given by the applicant.

(3) An appeal shall lie under Chapter VIII against a decision of the Registrar to refuse to grant the application.

(4) At any time after receiving an application and before determining it, the Registrar may by written notice require the applicant to provide to the Registrar additional information or documents or direct the applicant to comply with such other requirements as the Bank of Zambia may require.

(5) The directions and requirements given or imposed under this section may differ between different applicants or categories of applicants.

(6) Any information or statement to be provided to the Registrar under this section shall be in such form as the Registrar may specify; and the Registrar may by written notice require the applicant to cause a report to be provided by an accountant or other qualified person approved by the Bank of Zambia on such aspects of that information as may be specified by the Registrar.

(7) An applicant may withdraw an application by written notice to the Registrar at any time before it is granted or refused.

(8) A banking licence for a subsidiary of a foreign company may be granted if-

(a) the foreign company is a bank and is authorised to engage in banking business in the country where its head office is located

(b) the Bank of Zambia is satisfied that the foreign bank is adequately supervised by the competent authorities in the country where its head office is located.

(As amended by Act. 18 of 2000 and Act No. 25 of 2005)

5. The Registrar shall, within one hundred and eighty days of the receipt of an application for a licence make a decision whether to grant the licence.

Determination of applications

(Repealed and replaced by Act No. 18 of 2000 and No. 25 of 2005)

6. (1) The Registrar shall not grant a licence if the applicant does not meet the requirements prescribed by the Bank of Zambia

(2) An applicant for a licence aggrieved by the refusal of the Registrar to grant a licence may appeal against that decision in accordance with Chapter VIII.

(Repealed and replaced by Act No. 18 of 2000)

Application for
licence to be
refused in certain
cases

7. In deciding whether or not to grant a licence, and in deciding what conditions should be attached to such a licence, the Registrar shall have regard to-

- (a) the capital adequacy of the applicant;
- (b) the financial condition, resources and history of the applicant and the applicant's associates and affiliates;
- (c) the character and experience of the directors and major shareholders or other owners or founders and of persons proposing to be concerned in the management of the business to be undertaken under the authority of the licence;
- (d) the convenience and needs of the community intended to be served by that business; and
- (e) the prospects for profitable operation of that business.

Investigation of
applicants

(As amended by Act No. 25 of 2005)

8. (1) Except where the conditions attached to a particular licence otherwise provide, a banking licence shall be taken to authorise its holder to engage in any of the following activities in addition to banking business:

Authorised
activities of banks
in addition to
taking of deposits

- (a) making loans and extending credit to any person on the security of property of any kind or unsecured;
- (b) dealing as a principal or as an agent in-
 - (i) bills of exchange, promissory notes, cheques, travellers' cheques and like instruments;
 - (ii) the currency of Zambia and, subject to the guidelines, bulletins and regulatory statements made under this Act, in the currency of any other country and foreign exchange transactions; and
 - (iii) gold, silver or platinum bullion or coins;
- (c) providing money transfer services and facilities;
- (d) the issue and administration of payment, credit or debit cards and, in co-operation with others, the operation of payment, credit card and debit card systems;
- (e) providing guarantees, letters of credit and other assurances of payment:
- (f) finance leasing;
- (g) factoring, with or without recourse;
- (h) acting as a trustee of any trust, executor or administrator of any estate or in any fiduciary capacity for any person;
- (i) acting as a financial agent for any person;

(j) providing safekeeping and custodial services for financial assets and securities;

(k) Providing merchant banking services including the arrangement and underwriting of shares trade financing, corporate financing and the provision of financial advice; and

(l) dealing as a principal or as an agent for its customers in financial futures and options and in exchange, currency and interest rate swap agreements.

(2) The Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe the meaning to be given to any expression used in this section and not otherwise defined for the purposes of this Act.

(As amended by Act No. 18 of 2000)

9. (1) A bank or financial institution shall not, whether of itself or by a subsidiary, open a branch, subsidiary or other establishment within or outside Zambia without the prior written approval of the Bank of Zambia.

Branches, subsidiaries
of other
establishments of
banks

(2) A bank or financial institution or a subsidiary of a bank or financial institution proposing to open a branch, subsidiary or other establishment shall make an application in the form prescribed by the Bank of Zambia and accompanied by such fees as may be prescribed by the Minister on the recommendation of the Bank of Zambia.

(3) At least sixty days before closing a branch, a bank or financial institution shall notify the Bank of Zambia in writing of its intention to do so.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

Part 2-Licensing of Financial Institutions

10. (1) Upon application by any person the Registrar may grant a licence authorizing the applicant to conduct businesses as a financial institution, if the applicant is-

(a) a company; or

(b) a body corporate, created under an Act of Parliament, that is recognized by the Bank of Zambia as an acceptable form for a financial institution;

and falls within a defined category of financial institutions, as determined by the Bank of Zambia.

(2) The applicant shall be in such form and accompanied by such fees as may be prescribed by the regulation, and the form of application shall require at least the particulars required under subsection (2) of section *four*, except as otherwise provided in this section.

(3) If an applicant is not a company, then, in lieu of the information referred to in paragraphs (a) and (c) of subsection (2) of section *four*, the applicant shall provide information with respect to the formation, governance and owners of the applicant, by whatever term designated,

as shall be prescribed by the Bank of Zambia.

(4) The governance documents referred to in subsection (3) shall, in the case of a building society, include the rules of such building society.

(5) The Bank of Zambia may limit the activities of a financial institution licensed under this section to those activities that the Bank of Zambia determines are appropriate for an institution that accepts deposits:

Provided that the limits referred to in this subsection may be in the form of conditions of a licence or may be prescribed by the Bank of Zambia.

(6) The regulations made under subsection (5) may create different categories of financial institutions that are permitted to conduct different financial services.

(7) An appeal shall lie under Chapter VII against a decision of the Registrar to refuse to grant the application.

Grant of licence

(As amended by Act No. 18 of 2000 and repealed and replaced by No. 25 of 2005)

11. Subsections (3) to (7) of section *four* and sections *five, six, seven* and *nine* shall apply with necessary modifications to the licensing of financial institutions.

(Repealed and replaced by Act No. 18 of 2000 and repealed and replaced by No. 25 of 2005)

Application of certain provisions of this Chapter to financial institutions

12. Repealed by Act No. 25 of 2005

Part 2A - Licensing of, and Regulatory Requirements for, Representative offices

12A. (1) A foreign bank or financial institution shall not establish a representative office in Zambia unless it holds a licence for the purpose.

(2) An application for licence to establish a representative office shall be in such form and accompanied by such fees as may be prescribed by regulation and shall set out the following particulars:

(a) the name and address of the applicant;

(b) an authenticated copy of the laws of the country pursuant to which the applicant is established;

(c) a description of the business and operations of the bank or financial institution;

(d) the physical or proposed physical address of the representative office in Zambia;

(e) the name of each officer it is intended to assign to the representative office;

(f) a description of the manner in which the bank or financial institution will supervise the operations of the representative office;

(g) the name and address of the officer of the foreign bank or financial institution to which the representative is to report directly; and

(h) such other information and documents as the Registrar may

Licensing of
representative

reasonably require.

(3) After receiving an application and before determining if the Registrar may by written notice require the applicant to provide additional information or documents.

(4) Subsections (3) to (8) of section *four* and sections *five*, *six* and *seven* shall apply with necessary modifications to a representative office.

(5) Notwithstanding subsection (1), where a foreign bank or financial institution has established a representative office in Zambia before the date of coming into force of this Act, it shall, within three months from that date, making an application in writing to the Registrar for a licence under this Part.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding five years or both.

(As amended by Act No. 18 of 2000)

Part 2B - Licensing of Financial Businesses

12B. The Bank of Zambia may prescribe regulatory requirements for representative offices in existence on the date this Act comes into force or established after that and in respect of the representative officers and employees of those offices.

(As amended by Act No. 18 of 2000)

12C(1) Upon application by any person, the Registrar may grant a licence authorizing the applicant to conduct a financial service business other than as a financial institution.

(2) The applicant shall be in such form, contain such information and be accompanied by such fees as the Bank of Zambia may, by regulations prescribe.

(3) The Bank of Zambia may establish designations for different categories of financial business and may impose different requirements for each category.

(4) The Registrar shall, within one hundred and eighty days after receipt of an application for a licence under subsection (1) consider the application and shall if satisfied that the applicant has satisfied the

Regulatory
requirements for
representative
offices

Grant of licences

requirements for licensing under this Part grant a licence and may refuse to grant the licence if not so satisfied.

(5) Any applicant for a licence who is aggrieved by the refusal of the Registrar to grant a licence may appeal against the decision in

accordance with Chapter VIII.

12D. (1) Unless the conditions of a licence limit or restrict the financial businesses to one or more specific sites or locations, a financial business may conduct, at any place or places in Zambia, any financial service that it is licensed to conduct.

(2) Within fourteen days after opening a new branch, a financial business shall notify the Bank of Zambia in writing of the fact and of its location.

(3) At least sixty days before closing a branch, a financial business shall notify the Bank of its intention to do so.

12E. Any financial business in existence at the commencement of this Act that is licensed as a financial institution but does not accept deposits shall be deemed to be licensed under this part as a financial business and shall be subjected to the requirements applicable to financial businesses beginning on the date of the commencement of this Act.

(As amended by Act No. 25 of 2005)

Part 3-Operation of Licences

Branches of
financial
businesses
Existing financial
businesses.

13. (1) A licence is subject to such conditions as the Registrar thinks fit to specify in the licence when it is granted and, where those conditions are varied under this section, is subject to the conditions attached to the licence for the time being.

Conditions of
licences

(2) Without limiting the generality of subsection (1) the conditions of a licence may:

(a) contain such restrictions as to the nature and scope of the business to be conducted by the licensee as the Registrar thinks fit to impose;

(b) provide for the payment, on such terms and calculated in such manner as the conditions may specify, of annual or other periodic licence fees;

(c) in relation to a licence for a subsidiary of a foreign bank, a foreign financial institution or a representative office, require the foreign bank or financial institution to allow access by the Bank of Zambia to the offices and records of the bank or financial institution outside Zambia for the purpose of enabling the Bank to assess compliance with this Act by the subsidiary or the representative office.

(3) Upon application made by a licensee, the Registrar may, by order in writing, vary the conditions for the time being attached to a licence.

(4) In deciding whether to grant the variation, the Registrar is to have regard to such of the provisions of section *seven* as it

considers relevant and to the public interest.

(5) An appeal shall lie under Chapter VIII against a decision of the Registrar to impose a particular condition on grant of a licence or to refuse a variation of the conditions pursuant to an application under this section.

(As amended by Act No. 18 of 2000)

14. A licence remains in force until revoked by the Registrar under this Part.

Duration of
licences

15. A licence shall not be transferred, assigned or encumbered in any manner:

Provided that a licence may be transferred in the event of an amalgamation or similar corporate restructuring transaction, on such terms and conditions as the Bank of Zambia may approve.

(As repealed and replaced by No. 25 of 2005)

Licences not
transferable

16. (1) The Registrar may, revoke a licence if it appears to the Registrar that-

Revocation of
licences

(a) the application for the licence was fraudulent or contained a materially false statement;

(b) the licensee has failed to comply with any condition or qualification of its licence or with any order of the Bank of Zambia under this Act;

(c) the licensee is seriously or persistently in breach of any provision of this Act or the regulations, bulletins or other regulatory statements under this Act or any of the conditions of its licence; or

(d) the licensee fails to commence to conduct the business authorised by the licence within a period of twelve months following the grant of the licence or ceases or announces its intention to cease to conduct that business.

(2) An appeal shall lie under Chapter VIII against a decision of the Registrar to revoke a licence.

(3) When a licence is revoked, the licensee shall surrender to the Registrar each copy of the licence that is on display in every place of business of the licensee and every other copy of the licence that is in the possession of the licensee and the Registrar shall, as soon as practicable, publish notice of the revocation in the Government Gazette and in a newspaper of general circulation in Zambia, and may take any additional steps which, in his opinion, are necessary to inform the public of the revocation.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

Part 4-Prohibition of Unlicensed Business Etc.

17. (1) A person shall not conduct or offer to conduct banking business unless the person holds a licence for that purpose.

Prohibition of
unlicensed
business

(2) A person other than a licensed bank or a licensed financial institution or a licensed financial business shall not conduct or offer to conduct financial service business.

(3) A bank, a financial institution or financial business shall not conduct any banking or financial service business-

(a) that it is not authorised, by this Act or the terms and conditions of its licence, to conduct; or

(b) in contravention of the conditions of its licence.

(4) a person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(Repealed and replaced by Act No 18 of 2000, amended by Act No. 25 of 2005)

18. (1) A person holding funds obtained by conducting any banking business or financial service business in contravention of this Part shall repay such funds in accordance with the Bank of Zambia's directions.

Repayment of
funds

(2) A person who fails to repay funds as required under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) To the extent that any funds repayable under this section remain unpaid at the end of the time limited by the directions of the Bank of Zambia for their repayment, they are a debt due to the Bank of Zambia upon trust for any persons appearing to the Bank of Zambia to be lawfully entitled to them and are recoverable at the suit of the Bank of Zambia in any court of competent jurisdiction.

(4) Nothing in this section relieves any person from liability to criminal proceedings under the other provisions of this Act arising out of the person's contravention of any provision of this Act.

(As amended by Acts No. 13 of 1994 and 18 of 2000)

Part 5-Register of Licences

19. The Registrar shall create and maintain two registers, to be known as the Register of Banks and Financial Institutions and the Register of Financial Business, in which shall be entered the particulars of all licensees and of the licences they hold.

(As amended by Act No. 25 of 2005)

The Register

20. (1) The Minister shall, on the recommendation of the Bank of Zambia, Financial Institutions and Financial Businesses to administer the registers referred to in section nineteen and to exercise and perform such other functions as are conferred or imposed upon the Registrar by or under this or any other Act or by the Governor of the Bank of Zambia, and may designate an employee of the Bank of Zambia as the Deputy Registrar of Banks, Financial Institutions and Financial Businesses who shall be subject to the control and direction of the Registrar and be competent to exercise and perform any of the powers and functions of the Registrar:

Provided that any person appointed as Registrar of Banks and Financial Institutions as Deputy Registrar of Banks and Financial Institutions before the date of coming into force of this Act shall continue to hold office as Registrar of Banks, Financial Institutions and Financial Businesses or as Deputy Registrar of Banks, Financial Institutions and Financial Businesses as if appointed under this Act.

The Registrar

(2) The Registrar and Deputy Registrar shall each hold office for a term of five years unless removed for negligence of duty or misconduct, and shall be eligible for reappointment.

(3) The Registrar shall enter into the Register the name, the head office address and such other particulars as the Registrar considers appropriate concerning each person granted a licence, and shall remove from the Register the name and particulars of every person whose licence is revoked.

(4) Except as otherwise provided by this Act, the Registrar and Deputy Registrar, in the exercise and performance of their powers and functions, are subject to the control and direction of the Bank of Zambia.

(As amended by Act No. 25 of 2005)

21. (1) For the purpose of ascertaining the facts concerning the licensing, or unlicensed status, of any person, entries made in

Use of Register

in evidence

the Register shall be *prima facie* evidence as to those facts.

(2) A document certified by the Registrar as a true copy or extract from the Register shall be admissible in any court as *prima facie* evidence of the contents of the Register.

22. The Register or a copy of the Register shall be available for inspection by the public at the head office of the Bank of Zambia during regular business hours upon payment of such fee as may be prescribed by regulation.

Inspection of

Register

CHAPTER III

ORGANISATION AND ADMINISTRATION

Part 1-Ownership and Control of Financial Service Providers

23. (1) Shares issued by a bank or financial institution shall be only of such classes or series as may be approved by the Bank of Zambia.

Limitation on
voting control

(2) That person or another person shall not, without the prior approval in writing of the Bank of Zambia-

(a) acquire any beneficial interest in the voting shares of a financial service provider; or

(b) enter into any voting trust or other agreement, that would enable the person to control more than twenty-five per centum of the total votes that could be cast on any general resolution at a general or special meeting of the financial service provider.

Provided that this subsection shall not apply to a company which is publicly listed on a securities exchange in a jurisdiction outside the Republic acceptable to the Bank of Zambia.

(2A) Notwithstanding the provisions of paragraph (b) of subsection (2), the Bank of Zambia may prescribe a different limit of voting control for financial businesses.

(as amended by Act No. 18 of 2000 and No. 25 of 2005)

(3) A financial service provider shall not register any transfer of its voting shares to any person if, as a result of the transfer, the person would contravene subsection (2).

(as amended by Act No. 18 of 2000 and No. 25 of 2005)

(4) Where a person (in this subsection referred to as the "shareholder") acquires an interest in or control over voting shares in contravention of subsection (2), that person shall not, in person or by proxy, exercise the voting rights of any voting share owned or controlled by that person other than such shares as are registered in the name of that person on the share register of the financial service provider.

(as amended by Act No. 18 of 2000 and No. 25 of 2005)

(5) Where, on the date this section comes into force, a person owns or controls or is deemed, by the operation of any provision of this Act, to own or control shares in contravention of subsection (2), the person may retain any such shares or control, but may not sell or otherwise dispose of the same except in such a manner that no transferee from or successor to the person will thereby contravene that subsection.

(6) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

23A. (1) A person who, by virtue of subsection (5) of section *twenty-three* has, immediately before the date of coming into force of this Act, the type of control of a financial service provider that would

otherwise be prohibited under subsection (2) of that section shall dispose of the beneficial interest in the voting shares or terminate or modify the voting trust or other arrangement so as to reduce the person's control to the extent permissible under subsection (2) of that section.

(2) A person who is required by subsection (1) to dispose of any beneficial interest in voting shares or to terminate or modify a voting trust or other arrangement shall do so within a period not exceeding two years from the date of coming into force of this Act.

(3) The Bank of Zambia may, in any particular case, order a person to whom subsection (1) applies to submit to the Bank of Zambia a plan of action regarding the reduction of control and may give directions for the implementation of the plan.

(As amended by Act No. 13 of 1994, Act No. 18 of 2000 and No. 25 of 2005)

Regulation and
divestment of other
control

24. (1) A person who has *de jure* or *de facto* control of the financial service provider shall not own any share in the capital of, or acquire or maintain *de jure* or *de facto* control of, any other financial service provider without the prior written approval of the Bank of Zambia;

Ownership

(2) This section does not preclude any person from acquiring all the voting shares in the capital of a financial services provider for the purpose of implementing an amalgamation in accordance with this Act so long as at the completion of the corporate restructuring, that person is in compliance with subsection (1).

(3) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

24A. A trust shall not own shares directly or indirectly in a bank or financial institution.

(2) The Minister may, by statutory instrument, make regulations for the purpose of enabling trusts in existence on the date this Act comes into force to comply with subsection (1)

(As amended by Act No. 13 of 1994 and Act No. 18 of 2000)

Prohibition of
ownership of
shares by trust

Part 2-Amalgamation And Restructuring Of Banks Or Financial
Institutions

25. In this part, "corporate restructuring transaction" means-

(a) the amalgamation of a bank or financial institution with another company; or

(b) the transfer by a bank or financial institution to any other company of the whole or more than the prescribed part of its assets or liabilities in

Zambia otherwise than in the ordinary course of its business.

(As amended by Act No. 25 of 2005)

Meaning of
"corporate
restructuring
transaction"

26. (1) A bank or financial institution shall not effect a corporate restructuring transaction with another company that is not a bank, financial institution or financial business.;

(1A) A bank or financial institution may effect a corporate restructuring transaction with another company that is a financial business as long as the bank or financial institution is the surviving company and the business being acquired through such transaction only conducts activities that the bank or financial institution is permitted to conduct.

Prohibition of
corporate
restructuring
transactions

(2) A bank or financial institution shall not effect a corporate restructuring transaction with another bank or financial institution without the prior written consent of the Bank of Zambia.

(3) A transaction effected in contravention of this section shall be void.
(As amended by Act No. 13 of 1994, Act No. 18 of 2000 and No. 25 of 2005)

27. (1) An application for any consent of the Bank of Zambia to a corporate restructuring transaction shall include-

Consent to
corporate
restructure etc.

(a) a statement of the nature of the transaction proposed to be entered into;

(b) the text of all material documents intended to evidence or implement the transaction; and

(c) such other information, in such form, as the Bank of Zambia may reasonably require for the purposes of an informed consent or as may be prescribed by regulation.

(2) Each bank or financial institution or other company involved in the proposed corporate restructuring transaction shall be named in the application and is an applicant for the purposes of this Part.

(As amended by Act No. 25 of 2005)

28. (1) In considering an application for consent to a corporate restructuring transaction, the Bank of Zambia shall have regard to-

Investigation of
applicants for
consent

(a) the adequacy of the capital of each applicant in relation to the transaction;

(b) the general financial condition, resources and history of each such applicant;

(c) the character and experience of the directors and persons concerned in the management of each such applicant;

(d) the prospects of each such applicant for profitable operation if the transaction is permitted; and

(e) the probable effects of the transaction upon competition in the banking business or the financial services business likely to be affected by the transaction.

(2) If the Bank of Zambia decides to grant its consent, it shall specify a date on which the corporate restructuring transaction will take effect.

(3) An appeal shall lie under Chapter VIII against a decision of the Bank of Zambia to refuse to grant the application.

29. (1) In this section: Effect of amalgamation or transfer

(a) a bank or financial institution formed by an amalgamation, or to which assets and liabilities are transferred, in accordance with a corporate restructuring transaction to which consent has been given by the Bank of Zambia is referred to as "the new entity";

(b) an amalgamating bank, financial institution or financial business or financial business transferring assets in accordance with such a transaction is referred to as "the old entity";

(2) When the corporate restructuring transaction takes effect-

(a) all assets and liabilities of the old entity or, in the case of a transfer of assets and liabilities, those assets and liabilities agreed to be transferred, shall vest in and become binding upon the new entity;

(b) the new entity shall have the same rights and shall be subject to the same obligations as were, immediately before the transaction took effect, binding upon the old entity or, in the case of a transfer of assets and liabilities, the same rights and obligations as were applicable to the old entity with respect to the assets and liabilities transferred;

(c) all agreements, appointments, transactions and documents relating to the subject-matter of the transaction and made, entered into, drawn or executed by, with or in favour of the old entity, and in force immediately before the transaction took effect, shall remain of full force and effect and shall be deemed to have been made, entered into, drawn or executed by, with or in favour of the new entity; and

(d) any mortgage, bond, pledge, guarantee or other instrument relating to the subject-matter of the transaction and made or given to secure past, present and future advances facilities or services by the old entity, which was in force immediately before the transaction took effect, shall remain of full force and effect and shall be deemed to be a mortgage, bond, pledge, guarantee or instrument given to or in favour of the new entity, as security for past, present and future advances, facilities or services by that entity.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

(3) The Registrar of Companies, the Registrar of Lands and Deeds and every officer in charge of an office in which is registered any title to

property belonging to, or any mortgage, bond or other right in favour of, the old entity shall-

(a) upon being satisfied that the Bank of Zambia has under this Part consented to the corporate restructuring transaction and that the transaction has been duly effected; and

(b) upon the production to him of any relevant deed, instrument, mortgage, charge, bond, certificate, letter of appointment, licence or other document,

make such endorsements in the register concerned and such alterations thereto as may be necessary to record the transfer thereof and of any rights or liabilities thereunder from the old entity to the new entity.

(4) No transfer fees, stamp duty, registration fees, licence fees or other charges shall be payable in respect of the transfer or any endorsement or alteration made under subsection (3).

(5) The provisions of this section shall not affect the rights of any creditor of the old entity or of the new entity, except to the extent provided by this section.

(As amended by Act. No. 25 of 2005)

Part 3-Boards of Directors

30. (1) Every bank, financial institution and incorporated financial business shall have a board of directors in which shall vest all the powers of management and control and which shall be responsible for the formulation of policies of the bank, financial institution or incorporated financial business.

(2) A board shall consist of not less than five members each of whom holds the minimum qualifications set out in Part 4 of this Chapter.

(Repealed and amended by Act No. 18 of 2000 and Amended by Act No. 25 of 2005)

Part 4-Directors, Chief Executive Officers, Chief Financial Officers and Managers of Banks

Boards of
Directors

(Repealed and replaced by Act No. 18 of 2000)

30A. Every incorporated financial service provider shall have a chief executive officer and a chief financial officer, each of whom possesses the requisite qualifications, expertise and integrity to hold the relevant office and is not disqualified under section *thirty-one*, but a person may not hold more than one such office

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

Chief executive officers and
chief financial officers

31. (1) Notwithstanding anything to the contrary in the Companies Act or any other written law, a person shall not be qualified to be elected a director or to be appointed a chief

Qualifications of
directors and
senior officers

executive officer, chief financial officer or manager of a licensee if that person-

- (a) is not a fit and proper person to hold the relevant office in relation to integrity and professional expertise;
- (b) is not above the age of twenty-one years;
- (c) at any time has been adjudged bankrupt by a competent court, whether in Zambia or elsewhere, or is a person who, whether in Zambia or elsewhere, has made an arrangement or composition with the person's creditors;
- (d) has been convicted of a felony or any offence involving dishonesty;
- (e) has been declared or otherwise adjudged in any official proceedings to be mentally incompetent to manage one's own affairs;
- (f) is under suspension or has been removed from office under this Act; or
- (g) has been a director, chief executive officer, chief financial officer or manager of a company or financial service provider which has been adjudged insolvent, entered into a composition with creditors, gone into liquidation, declared bankrupt or has entered into any other arrangement with creditors or taken any other action with similar effect in Zambia or elsewhere unless that person shows that the person was not responsible for the insolvency, liquidation, composition with creditors, bankruptcy, other arrangement with creditors or other action with similar effect in Zambia or elsewhere;
- (h) has been removed by a competent court, whether in Zambia or elsewhere, from an office of trust on account of misconduct or breach of that trust.

(2) Any person who is a director or a chief executive officer, chief financial officer or manager concerned in the management of a bank, financial institution or incorporated financial business shall forthwith cease to hold office upon-

- (a) becoming bankrupt, suspending payments or compounding or proposing a compromise with that person's creditors generally;
- (b) being charged with a felony or any offence involving dishonesty;
- (c) being declared or otherwise adjudged in any official proceedings to be mentally incompetent to manage affairs; or
- (d) being suspended or removed from office by order of the Bank of Zambia under this Act.

(3) A person who has been a director or chief executive officer, chief financial officer or manager concerned in the management of a licensee whose licence has been revoked shall not, without the approval of the Bank of Zambia, act or continue to act as a

director or be directly concerned in the management of any bank or financial institution or incorporated financial business.

(4) A person shall not directly or indirectly, be a director of more than one financial service provider without the prior written approval of the Bank of Zambia.

(5) Any person acting in contravention of subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994, No. 18 of 2000 and No. 25 of 2005)

32. (1) A majority of the members of the board of directors of a bank or financial institution shall be persons who are not officers or employees of the bank or financial institution.

Directors from
outside to be in the
majority

(2) The Minister, on the recommendation of the Bank of Zambia, may by regulation provide for the application of subsection (1) to any other class or type of incorporated financial business.

(As amended by Act No. 25 of 2005)

33. Every director, chief executive officer, chief financial officer or manager concerned in the management of a financial service provider, in exercising the powers and discharging the duties of that person's office, shall-

(a) act honestly and in good faith and in the best interest of the financial service provider; and

(b) exercise due care, diligence and skill.

Conduct of
directors, chief
executive officers,
chief financial
officers and
managers

(Repealed and replaced by Act No. 18 of 2000, amended by Act No. 25 of 2005)

34. Repeal of section 34 by Act No. 18 of 2000

35. (1) A director shall declare in writing to the board annually, the names and addresses of the director's associates and full particulars of every material interest.

(2) A director, chief executive officer, chief financial officer or manager of a financial service provider who-

(a) is a party to, or has an interest, pecuniary or otherwise, direct or indirect, in a contract or proposed contract with the financial service provider or in the granting of an advance by the financial service provider shall declare the nature of the director, officer or manager's interest to the board of directors of the financial service provider in accordance with this section; or

(b) has an interest in, or a material relationship to, a party or prospective

party to a contract or a proposed contract with the financial service provider shall disclose in writing to the financial service provider the nature and extent of the interest or relationship.

(3) In the case of a proposed contract or a proposed advance, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract or granting the advance is first taken into consideration, or, if the director was not at the date of that meeting interested in the proposed contract or advance, at the next meeting of the directors held after the directors becomes so interested.

(4) Where a director becomes interested in a contract after it is made, the declaration required by this section shall be made at the first meeting of the directors held after the director becomes interested in the contract.

(5) At any meeting of the board, a director who has an interest or a relationship within the scope of this section shall leave the meeting at which the contract concerned is discussed, and shall refrain from voting on any matter related to the contract which becomes the subject of action by the board of the financial service provider, but departure from the meeting shall not disqualify the interested director for the purposes of constituting a quorum.

(6) A director need not make a declaration or give a notice under this section by attending in person at a meeting of the directors, if the director takes reasonable steps to ensure that the declaration or notice is brought up and read at the meeting.

Disclosure of interests

(7) For the purposes of this section, a general notice given at a meeting of directors of a building society by a director to the effect that the director is a member of a specified company or firm, and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, is a sufficient declaration of interest in relation to any contract made after that date with that company or firm.

(8) A director, chief executive officer, chief financial officer or manager who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding seven thousand five hundred penalty units.

(9) Where a director, chief executive officer, chief financial officer or manager fails to disclose a material interest in accordance with this section-

(a) the court shall, on the application of the financial service provider concerned or of its shareholders or members or of the Bank of Zambia, set aside the contract on such terms as it may determine; and

(b) the Bank of Zambia may suspend the director, chief executive officer, chief financial officer or manager from office in writing addressed to the person suspended.

(10) For the purposes of this section-

(a) an interest is material if it is material with reference to the wealth,

business or family interests of the person having the interest and, without limiting the generality of the foregoing, a person has a material interest in-

(i) any company of which the person owns, directly or indirectly, more than ten per centum of any class of the voting shares, or of which the person is a director; and

(ii) any partnership in which the person is a partner; and

(b) persons have a material relationship with each other if, by virtue of paragraph (b) of subsection (3) of section *two*, they are associates.

(Repealed and replaced by Act No. 18 of 2000, repealed and replaced by Act No. 25 of 2005)

36. A director, chief executive officer, chief financial officer, manager, employee, agent, accountant, legal adviser or any other adviser of a

False statements
and obstruction of
examinations

financial service provider who-

(a) negligently or with intent to deceive, makes any false or misleading statement or entry or omits any statement or entry that should be made in any book, account, report or statement of the financial service provider.

(b) obstructs or endeavors to obstruct-

(i) the proper performance by an auditor of the auditor's duties in accordance with this provisions of this Act; or

(ii) a lawful inspection of the service provider by a duly authorised inspector appointed by the Bank of Zambia,

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

(Repealed and replaced by Act No. 18 of 2000 and No. 25 of 2005)

37. (1) The Minister may, on the recommendation of the Bank of Zambia, by order in writing served on him, suspend from office for any period not exceeding six months, any director or chief executive officer, chief financial officer or manager concerned in the management of a financial service provider who fails to take all reasonable steps to secure compliance by the financial service provider with the requirements of this Act.

Suspension or
dismissal of
directors and
managers

(2) At any time before the expiry of the period of six months referred to in subsection (1), the Bank of Zambia may apply to the Court for an order extending the suspension and the Court may, by order, suspend from office the director or chief executive officer, chief financial officer or manager concerned for such period as it thinks fit or, if the Court is satisfied that such an order is justified, remove the director from office permanently.

(3) A director or officer who exercises or performs any power or duty pertaining to his office during any period of suspension imposed, or

after removal from office, under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

(4) The Bank of Zambia may recommend to a financial service provider the removal from office a director, a chief executive officer, a chief financial officer or a manager referred to in subsection (1) without first suspending the director, officer or manager.

(As amended by Act No. 13 of 1994, Act No. 18 of 2000 and Act No. 25 of 2005)

Part 4A-Organisation and administration of Financial Businesses

37A. Every financial business which is not incorporated shall have and maintain a structure which has the following characteristics:

- (a) voting rights for the members or owners; and
- (b) subordination of those with voting rights to all creditors in the event of insolvency, dissolution or winding up.

(As amended by Act No. 25 of 2005)

Structure of
unincorporated
financial
institutions

37B. The provisions of Parts 1, 2, and 4 of this Chapter shall apply, with such modifications as the Minister, on the recommendation of the Bank of Zambia may determine, to the categories of financial institutions set out in the First Schedule.

Application of
Parts 1, 2, and 4
to financial
institutions

(As amended by Act No. 18 of 2000)

Part 5-Constitution of Banks and Incorporated Financial Institutions

38. Notwithstanding anything to the contrary in the Companies Act, the Registrar of Companies shall not approve nor accept any document, the effect of which is to add, vary or delete any provision of or change in any way the legal effect of the memorandum or articles of association of a bank or financial institution or financial business that is a company unless the same is submitted together with written evidence of the knowledge and approval of the Registrar.

(As amended by Act No. 25 of 2005)

Variation of
corporate
constitutions

39. Where the Bank of Zambia notifies a bank, financial institution, or financial business in writing that the Bank of Zambia considers that any specified provision in its memorandum, articles of association or other corporate documents is inappropriate for carrying on the business for which it is licensed or has applied to be licensed, the bank or institution shall, before the conclusion of its next annual or special meeting of

shareholders, amend its corporate documents so as to remove the offending provision or amend it according to the directions of the Bank of Zambia.

(As amended by Act No. 25 of 2005)

Amendment of
constitution by
Bank of Zambia

CHAPTER IV OPERATIONS

Part 1-Anti-Competitive Conduct

40. (1) A financial service provider shall not make any agreement or arrangement with another financial service provider with respect to-
Interest rates and
charges

- (a) the rate of interest on a deposit by any person;
- (b) the rate of interest or charge on a loan to any person;
- (c) the amount of any charge to any person for the provision of a financial service;
- (d) the provision of, or refusal to provide any financial service to, any person; or
- (e) the provision of financial services in a manner that restricts competition.

(2) Any financial service provider acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units.

(3) Subsection (1) does not apply to an agreement or arrangement-

- (a) for the performance of a financial service by one financial service provider to another;
- (b) evidencing a syndication or other agreement for the provision of credit and other banking services to a person by two or more financial service providers;
- (c) for the underwriting or distribution of any security by a bank or financial institution or a group of persons including a financial service provider;
- (d) for the exchange of statistics or audit information, the development and use of systems, forms, methods, procedures and standards, the use of common facilities, joint research and development or any matter in connection therewith;
- (e) the provision of financial services in a manner that restricts competition

(As amended by Act No. 13 of 1994, Act No. 18 of 2000 and No. 25 of 2005)

41. Any financial service provider that requires any person to contract Collateral contracts to receive any financial service as a condition of being permitted to contract with it or any other person to receive any other financial service, or any goods or other service shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred

thousand penalty units or imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994 and No. 25 of 2005)

42. The provisions of this Part are in addition to, and do not limit the operation of, any other law in force for the promotion of competition and free trade.

Part 2-Business Practices and Dealings With The Public

Other laws not affected

43. (1) Every financial service provider licensed under this Act shall-

- (a) maintain a principal administrative office in Zambia;
- (b) inform the Bank of Zambia in writing-
 - (i) of the location of its principal administrative office; and
 - (ii) of any proposed change in the location of its principal administrative office at least sixty days prior to the proposed change, and the change shall only be affected after written confirmation by the Bank of Zambia, of the suitability of the proposed location.

Principal administrative office

(2) In subsection (1), "principal administrative office" means the office in which the over-all administration of the affairs of a financial service provider, other than its banking business or financial service business is carried on.

(Repealed and replaced by Act No. 18 of 2000 and No. 25 of 2005)

44. (1) Every financial service provider shall, in easily legible letters in the English language, display its name and a statement of its licensed status as a financial service provider, as the case may be-

Display of names

- (a) prominently at the entrance to every place where it carries on any part of its business;
- (b) on every letter, advertisement or other communication published or issued by or on its behalf; and
- (c) in every written contract that it enters into or offers to enter into and in every receipt that it issues.

(As amended by Act No. 25 of 2005)

45. (1) A financial service provider shall not, without the prior written consent of the Bank of Zambia, alter the name under which it is licensed,

Use of licensed name

or in the course of or for any purpose connected with its business, use or refer to itself by-

- (a) a name other than the name under which it is licensed;

or

- (b) an abbreviation of that name.

(2) Nothing in this section shall prevent a financial service provider, with the consent of the Bank of Zambia, from using or referring to itself in conjunction with its licensed name by the name of a business or undertaking with which it has been amalgamated or, in the case of a

change of name authorised under this section, by the name by which it was previously known.

(As amended by Act No. 25 of 2005)

46. (1) The Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe one or more days to be a bank holiday on which no bank or financial institution may be open for business with the public, whether or not such a day is also a public holiday:

Holidays

Provided that branches at airports and border posts shall remain open throughout.

(2) A bank or financial institution shall remain open for business with the public during hours agreed to by the Bank of Zambia.

(3) A private obligation that-

(a) can be discharged only with a designated bank or financial institution; and

(b) falls due on a day on which the premises of the bank or financial institution are not open for business, shall be deemed to fall due on the first following business day.

(As amended by Act No 18 of 2000)

47. (1) When a bank or financial institution opens a new account for a person, it shall, at the same time, provide the person in writing with-

Disclosure of
interest rate and
charges

(a) a statement of all charges for maintaining the account and accessing the funds on account;

(b) a statement of the interest to be paid by the bank or institution; and

(c) a statement of how the bank or institution will advise the person of any new charges or changes in the charges or interest disclosed.

(2) A financial service provider that agrees to make a loan or credit available to a person shall, at the same time, disclose the cost of borrowing to the person in writing.

(3) The Bank of Zambia, may prescribe the form, content, method of calculation and of disclosure, and the means and frequency of publishing, any information or change of information required by this section to be disclosed.

(As amended by Act No 18 of 2000 and No. 25 of 2005)

48. A bank or incorporated financial institution shall-

(a) establish, and make available in writing to its customers in the public portion of each branch, procedures for dealing with complaints made by customers concerning their relations with the financial service provider;

(b) designate manager or employee to be the customer service officer and to be responsible for implementing and administering those procedures, including receiving, dealing with or otherwise disposing of all complaints received; and

(c) create and maintain for two years, or such longer period as may be prescribed by the Bank of Zambia, a record of every complaint received

and how it was dealt with or disposed of.

Customer
complaints

(As amended by Act No 18 of 2000 and No. 25 of 2005)

49. (1) A financial service provider that publishes or permits the publication of any advertisement concerning any financial service offered by it or by any other financial service provider, or quoting a fee, rate or charge for any such service, that is false or misleading in a material particular shall be guilty of an offence and is liable on conviction to a fine not exceeding fifty thousand penalty units.

Advertisement by
licensee

(2) For the purposes of this section, an "advertisement" includes a paid radio or television announcement, a poster, billboard or handbill, and a paid advertisement in a regularly published newspaper or magazine.

(As amended by Act No 18 of 2000 and No. 25 of 2005)

50. (1) A financial service provider and every director, chief executive officer, chief financial officer, manager and employee thereof shall maintain the confidentiality of all confidential information obtained in the course of service to the financial service provider and shall not divulge the same except-

Confidentiality

(a) in accordance with the express consent of the customer, or the order of a court; or

(b) where the interest of the licensee itself requires disclosure; or

(c) where the Bank of Zambia, in carrying out its functions under this Act, so requests.

(2) For the purposes of this section, confidential information about a person includes information that is not public, concerning-

(a) the nature, amount or purpose of any payment made by or to the person;

(b) the recipient of a payment by the person;

(c) the assets, liabilities, financial resources or financial condition of the person;

(d) the business or family relations of the person; or

(e) any matter of a personal nature that the person disclosed to the financial service provider in confidence.

(3) Notwithstanding the provisions of any law to the contrary, in any case where evidence of commission of an offence is to be found in the books, accounts or records of a financial service provider, such evidence shall not be sought or obtained from the bank or institution otherwise than in accordance with the provisions of any other written law.

(As amended by Act No 18 of 2000 and No. 25 of 2005)

51. (1) Every bank, financial institution or financial business that is a company shall prepare and maintain at its head office records containing-

Records of
constitution and of

compliance with
this Act

- (a) its articles and memorandum of association and all amendments thereto;
- (b) a register of its shareholders, including the number of shares registered in the name of each shareholder;
- (c) minutes of meetings and resolutions of the directors;
- (d) minutes of meetings and resolutions of the shareholders;
- (e) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position in such a way as to enable the Bank of Zambia conveniently to determine whether the bank has complied with all the provisions of this Act;
- (f) records showing, for each customer of the bank or institution on a daily basis, particulars of its transactions with or for the account of the customer and the balance owing to or by the customer; and
- (g) such other records as are required to be prepared and maintained by or under this Act or by order of the Bank of Zambia.

(2) At all reasonable times, the records described in this section-

- (a) shall be open to inspection by the directors; and
- (b) shall (except for records described in paragraphs (c), (f) and (g) of subsection (1)) be open to inspection by the shareholders and creditors of the bank, financial institution or financial business and their personal representatives.

(As amended by Act No 18 of 2000 and Act No. 25 of 2005)

52. (1) Every financial service provider shall cause to be created and shall maintain in its principal office in Zambia proper credit documentation and any other information concerning its business relations with its customers and other persons that , the Bank of Zambia, may prescribe.

Credit
documentation

(2) For the purposes of this section, "credit documentation" means, with respect to a contract entered into by a financial service provider with any other person for the provision of a financial service, or in respect of a financial service performed or to be performed by the financial service provider-

- (a) reasonably current financial statements of the indebtedness of the borrower and any guarantor of the borrower to the bank or institution;
- (b) a description of any collateral over which the financial service provider has any mortgage or charge as security for the due payment of the indebtedness to it;
- (c) a statement of the terms of the credit, including the principal amount, rate of interest, schedule of repayments and the borrower's objective or purpose for borrowing; and
- (d) the signature of each person who authorised the credit on behalf of the financial service provider.

(As amended by Act No 18 of 2000 and No. 25 of 2005)

53. A register or record required or authorised by or under this Act to be prepared and maintained by a financial service provider-

- (a) may be in bound or loose-leaf form or in photographic film form; or
- (b) may be entered or recorded by any system of mechanical or electronic data processing or any other device or process that is capable of reproducing any required information in intelligible written form within a reasonable time; and
- (c) if kept in any one form, may be converted to any other form authorised by this Act.

Manner of keeping records

(As amended by Act No 18 of 2000 and No. 25 of 2005)

54. A register or record required or authorised by or under this Act to be prepared and maintained shall be retained by the financial service provider that prepared it for a period of at least six years or, in the case of

Retention of records

a register or record relating to unclaimed funds, for a period of at least ten years.

(Repealed and replaced by Act No. 18 of 2000, amended by Act No. 25 of 2005)

55. (1) Every bank, and every manager, employee and agent thereof, shall take reasonable precautions to-

Maintenance of records

- (a) prevent loss or destruction of;
- (b) prevent falsification of entries in;
- (c) facilitate detection and correction of inaccuracies in; and
- (d) ensure that no unauthorised person obtains access to or the use of information in,

every register and record required or authorised by this Act to be prepared and maintained by the financial service provider.

(2) A financial service provider may destroy any register or record kept under this Part at any time after the register or other record has been converted to another form.

CHAPTER V

FINANCIAL ACCOUNTABILITY

Part 1-Financial Statements of Banks and Financial Institutions

(As amended by Act No. 18 of 2000)

56. (1) The directors of a financial service provider shall place before the shareholders at every annual meeting-

Annual financial statement

(a) annual financial statements for the financial year immediately preceding the meeting and the financial year, if any, immediately preceding that year showing separately-

- (i) a balance sheet as at the end of each of those financial years;
- (ii) a profit and loss account for each of those financial years;
- (iii) a cash flow statement for the last financial year;

- (iv) a statement of changes in the shareholders' equity for the last financial year;
- (v) a capital adequacy computation as at the end of each of those financial years;
- (b) a directors' report containing the following information:
 - (i) common enterprise and related party transactions;
 - (ii) risk management, processes and practices during the year;
 - (iii) directors' interests disclosed;
 - (iv) the existence of prohibited borrowings or lendings; and
 - (v) internal control; and
- (c) any information that may be required by or under the law under which the financial service provider is established.

(2) The information and particulars referred to in subsection (1) shall contain what is necessary to present fairly, in accordance with generally accepted accounting principles consistently applied, the financial position of the financial service provider as at the end of the financial year to which it relates and the results of the operations and changes in the financial position of the financial service provider for that financial year.

(3) The directors shall also place before the shareholders at every annual meeting-

- (a) the report of the auditor of the financial service provider; and
- (b) an additional information concerning the financial institution and the results of its operations as may be prescribed by the Bank of Zambia.

(4) In subsection (1), a related party transaction means a transaction where by two or more persons, by virtue of their relationship, will or likely to benefit severally or jointly from funds or services arising from a transaction involving any one of them and a financial service provider.
(Repealed and replaced by Act No. 18 of 2000, amended by No. 25 of 2005)

57. A financial service provider shall include with its annual statement-

(a) a list of subsidiaries, other than subsidiaries acquired upon a realisation of security, showing with respect to each subsidiary-
Statement as to
subsidiaries

- (i) its name and the address of its head or principal office;
- (ii) the book value in the aggregate of any shares of the subsidiary beneficially owned by the financial service provider and any other subsidiaries of the financial service provider; and
- (iii) the percentage of the voting shares of the subsidiary that is beneficially owned by the financial service provider and by other subsidiaries of the financial service provider; and

(b) such other information as the Bank of Zambia may prescribe.
(As amended by Act No. 18 of 2000 and No. 25 of 2005)

58. Annual financial statements of financial service provider shall comply with any regulations, guidelines and prescriptions relating to the creation or variation of appropriate reserves for bad and doubtful debts.

Reserves for bad
and doubtful debts

(Repealed and replaced by Act No. 18 of 2000, amended by No. 25 of 2005)

59. Annual financial statements of financial service provider shall be approved by the directors and the approval shall be signified by their signatures.

Approval of annual
financial
statements

(Repealed and replaced by Act No. 18 of 2000 and No. 25 of 2005)

60. (1) Every bank or financial institution shall deliver to the Bank of Zambia such number of copies of the following in such form and within such time after the end of each calendar month as may be prescribed by the Bank of Zambia;

Monthly
statements

(a) a statement showing, as at the close of the last business day of that month-

(i) its liabilities to the public; and

(ii) (a) the amount of each of the liquid assets specified in the Second Schedule to this Act which it holds, its aggregate holding of such assets and the proportion that the aggregate holding of such assets bears to its liabilities to the public;

(b) a statement showing its assets and liabilities as at the close of the last business day of that month;

(c) the amount of its regulatory capital (as defined by regulation) and reserve funds and the ratio that the amount of its liabilities to the public bears to the amount of its regulatory capital (as so defined) and reserve funds;

(d) a statement showing those of its loans that are non-performing or that have been restructured or the terms of repayment of which have been extended; and

(e) such other statements concerning its operations, financial condition and resources as may be prescribed by the Bank of Zambia

(2) The Bank of Zambia may require any bank or financial institution to supplement with further details or evidence any information provided by the bank in accordance with subsection (1).

(3) The Bank of Zambia may require any financial business to provide periodic reports showing information concerning its operation, financial condition and resources as the Bank of Zambia may determine.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

61. (1) A bank or financial institution shall, not later than twenty-one days before the date of each annual meeting, send to each shareholder and to the Bank of Zambia, a copy of its annual statement.

Publication of
financial statement

(2) Where a bank or financial institution fails to send a copy of the annual statement to the Bank of Zambia and to each shareholder in accordance with subsection (1), the annual meeting of the bank or financial institution shall be adjourned until such time as that requirement has been complied with.

(3) A bank or financial institution shall publish in a newspaper of general circulation in Zambia a copy of-

- (a) each of its annual financial statements; and
- (b) its monthly financial statements for each quarter.

(4) The Bank of Zambia shall cause to be published in a newspaper of general circulation throughout Zambia four times each year, a copy of monthly statements provided to it by each bank or financial institution.

(5) Every bank shall display in a conspicuous place in each branch, at all times when it is open for business-

- (a) a copy of the monthly statement last published in accordance with this Part; and
- (b) a copy of the annual statement last published in accordance with this Part.

(As amended by Act No 18 of 2000)

Part 2-Audit of Accounts of Banks and Financial Institutions

(Repealed and replaced by Act No. 18 of 2000)

62. (1) Every financial service provider shall appoint annually, at the beginning of each financial year, an auditor approved by the Bank of Zambia who shall be a member in good standing of a professional association of accountants recognized by the Bank of Zambia.

Appointment of auditor

(2) The auditor's duties shall be to audit the accounts and to make a report to the shareholders or members of each such financial service provider upon the annual balance sheet, profit and loss account and other matters as required by this Act.

(3) An auditor may be re-appointed from time to time.

(4) The remuneration of the auditor, whether appointed by the bank, financial institution or by the Bank of Zambia, shall be paid by the financial service provider and, in the case of an auditor appointed by the Bank of Zambia, shall be fixed by the Bank of Zambia.

(5) The auditors of the subsidiary of any financial service provider in Zambia shall be the same as the auditors of the bank or financial institution unless the Registrar gives approval for different auditors.

(6) An auditor who does not meet the requirements of subsection (1) but who:

(a) was engaged by a bank or financial institution on the enactment of this Act; and

(b) is an otherwise professionally qualified person satisfactory to the Bank of Zambia,

may continue his engagement until it terminates in accordance with its terms.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

63. A person shall not be qualified for appointment or to act as auditor of a financial service provider if the person is-

(a) a director, chief executive officer, chief financial officer, manager or employee of that financial service provider or of any person associated

or affiliated with it;

(b) the spouse, parent, child or partner of a director, chief executive officer, chief financial officer, manager or employee of that financial service provider;

(c) a body corporate;

(d) a manager or employee of a company that is controlled by the financial service provider; or

(e) a person who personally, or through that person's partner or his employee, regularly performs the duties of secretary or book keeper to the bank or financial institution.

Disqualification of auditor

(Repealed and replaced by Act No. 18 of 2000, amended by Act No. 25 of 2005)

64. (1) Every auditor of a financial service provider shall have the right of access at all times to all books, accounts and records of the financial service provider, and shall be entitled to require from its directors, chief executive officer, chief financial officer, managers and agents such information and explanations as the auditor requires to perform the auditor's duties under this Act.

Auditor's report

(2) In every report made for the purposes of this Act by an auditor, the auditor shall-

(a) express whether, in his opinion, the financial service provider made available all necessary information to enable the auditor to comply with the requirements of this Act:

(b) state whether, in the auditor's opinion, each of the statements included in the annual statement are fully, fairly and properly drawn up, whether they exhibit a true and fair statement of the financial service provider's financial condition and, if the auditor has called for explanation or information from the directors, chief executive officer, chief financial officer, managers or agents of the financial service provider, whether a satisfactory response was received;

(c) state whether in the auditor's opinion the financial service provider has complied with the provisions of this Act and the regulations, guidelines and prescriptions under this Act and any other written law; and

(d) report any transactions or conditions that have come to the attention of the auditor affecting the well being of the financial service provider that, in the opinion of the auditor, are not satisfactory and require rectification and, without limiting the generality of the foregoing, shall, report on-

(i) any transaction of the financial service provider that has come to the attention of the auditor and which, in the opinion of the auditor, has not been within the powers of the financial service provider or which was contrary to this Act or any other law; and

(ii) any loan owing to the financial service provider by any person that is non-performing loan, or that has been restructured or the terms of

repayment of which have been extended, if the principal amount of the loan is five per centum or more of the regulatory capital of the bank or financial institution.

(3) The directors shall submit a copy of the report of the auditor, together with a copy of the annual financial statement to the Bank of Zambia and each shareholder of the bank or financial institution within a period of three months from the end of each financial year.

(Repealed and replaced by Act No. 18 of 2000, amended by No. 25 of 2005)

65. (1) If an auditor resigns from the audit of a financial service provider, the auditor shall prepare and deliver to the Bank of Zambia within ten days after delivery to the bank or financial institution of the auditor's resignation a written statement of the reasons therefor.

(2) If a financial service provider terminates the appointment of its auditor, the financial service provider shall prepare and deliver to the bank of Zambia and send a copy directly to the auditor, within ten days of the decision to terminate the appointment, written statement setting out the reasons for the termination.

Resignation or
termination of
appointment of
auditor

(3) The auditor shall, within ten days of receiving the statement referred to in subsection (2), deliver to the Bank of Zambia and to the financial service provider a written statement on the reasons set out by the financial service provider and the statement of the auditor may include refutations of those reasons.

(Repealed and replaced by Act No. 18 of 2000, amended by Act No. 25 of 2005)

66. No person shall have any claim against an auditor for or with respect to any oral or written statement or report made by the auditor in good faith in the performance of the auditor's functions under this Act.

Immunity of
auditor

67. (1) The directors of each financial service provider shall establish an audit committee of at least three directors, a majority of whom are persons who do not hold offices of chief executive officer, chief financial officer, manager or employee of the bank or financial institution or any company that is associated or affiliated to it.

Audit committee

(2) The audit committee shall-

(a) review the annual financial statement of the financial service provider before it is approved by the directors;

(b) review or cause to be reviewed such other informational returns as the financial service provider shall have made in accordance with the requirements of this Act and the regulations under this Act;

(c) ensure that appropriate internal controls and procedures are in place;

(d) review such investments and transactions that could materially adversely affect the financial condition of the financial service provider

as the auditor or chief executive officer, chief financial officer or any manager may bring to the attention of the committee;

(e) meet with the auditor to discuss the annual statement, the returns, investments and transactions referred to in this subsection; and

(f) meet with the chief internal auditor or the manager or employee of the financial service provider acting in a similar capacity, and with the management, to discuss the effectiveness of the internal control procedures as practised in the financial service provider.

(3) To ensure the proper discharge of its responsibilities under subsection (2), the audit committee or any member thereof may initiate inquiries and, upon majority vote of the committee, retain at the expense of the financial service provider any expert legal, accounting and auditing advisers that the committee may reasonably require and the audit committee shall report in writing to the board of directors the findings of any such inquiry undertaken by it.

(4) The audit committee shall report to the directors before any approval required by this Act or the regulations under this Act is given by the board to any financial statement of the financial service provider.

(5) The audit committee may call a meeting of the board to consider any matter of concern to the committee.

(6) The audit committee shall meet at least once per quarter and at such other times as the board of directors may by resolution require, or as any member of the committee may request.

(7) A resolution of the audit committee shall require the affirmative votes of two members in order to pass.

(8) A member of the committee who votes against a resolution that is carried by a majority vote shall provide a written statement to the board of directors explaining the reasons for that dissent.

(9) The directors of a financial service provider shall submit a certificate of compliance with this section to the Bank of Zambia within six months after the end of each financial year or such other period as the Bank of Zambia may allow or at such other times as the Bank of Zambia may require any particular case.

(10) The Bank of Zambia may, in respect of any category of financial institutions as it may specify, allow the board to carry out such functions provided for in this section as it may determine.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

Part 3 Chapter V is repealed by Act 18 of 2000

CHAPTER VI

SUPERVISION AND PRUDENTIAL REGULATION

Part 1-Provisions Relating to Financial Service Providers

69. (1) A financial service provider shall maintain a reserve account and before declaring any dividend shall transfer to its reserve account, Reserves

out of the net profits of each year after due provision has been made for taxation, the minimum amount prescribed by the Bank of Zambia.

(2) The Bank of Zambia may by regulation prescribe the amount

required to be transferred to the reserve account, the method of computing that amount, the form of the reserve account and any other matter it considers necessary to give effect to this section:

Provided that the Bank of Zambia may, by statutory instrument, prescribe different reserve requirements for different categories of financial service providers and may vary any matters prescribed under this section for different categories of financial service providers.

(3) No financial service provider shall declare, credit or pay any dividend or make any other transfer from surplus if to do so would result in an impairment of the capital adequacy requirements of this Act.

(4) No financial service provider shall, without the approval of the Bank of Zambia, declare, credit or pay any dividend or make any transfer from surplus if to do so would result in the impairment of the reserve account requirements of this Act.

(5) The Bank of Zambia may permit a reduction of the reserve account when the relevant payment or transfer is made for the purpose of increasing the capital, and when the Bank of Zambia is satisfied that that is the only practicable means of preventing an impairment of the financial service provider's capital or of enabling the financial service provider's to make provisions that the Bank of Zambia considers to be necessary.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

70. (1) Every bank shall at all times maintain liquid assets amounting to not less than such percentage of its total of its liabilities to the public in Zambia as the Bank of Zambia may by instrument in writing prescribe specifically for it or, in default of such prescription, as the Bank of Zambia may, by regulation, prescribe for banks or financial institutions of the same category:

Liquid assets

Provided that-

(a) the percentage in either manner prescribed shall not be greater than fifty per centum;

(b) the distribution of amounts between the various classes of liquid assets may be made at the discretion of each bank or financial institution; and

(c) no bank or financial institution may be required to maintain any higher percentage than any other bank or financial institution of the same category.

(2) Any variation in a regulation made for the purposes of subsection (1) shall take effect-

(a) if it provides for a decrease, immediately; or

(b) if it provides for an increase, only after reasonable notice thereof has been given in writing to each bank affected by the variation, and only if the variation does not increase the liquid asset requirement of any bank or financial institution by more than fifteen per centum.

(3) For the purpose of this section the Bank of Zambia may prescribe, by regulations-

- (a) assets that qualify as liquid assets; and
- (b) liabilities that qualify as liabilities to the public:

Provided that the regulations made under this section may provide for different liquid assets and liabilities for different categories of financial institutions.

(4) For the purpose of this section, "liquid assets" means assets that are transferable free of any charge or lien whatsoever and that are of the classes described in the Second Schedule to this Act.

(As amended by Act No 18 of 2000 and Act No. 25 of 2005)

70A. The Bank of Zambia shall, by regulations, prescribe the assets and liabilities for the computation of the prudential liquidity ratio for financial institutions.

Prudential
liquidity
ratio

(As amended by Act No. 18 of 2000 and Act No. 25 of 2005)

71. Where the liquid assets of a bank or financial institution are, less than the amount for the time being prescribed in respect of it, the Bank of Zambia may order the bank or financial institution to pay to the Bank of Zambia, as a fine, interest on the amount of the deficiency, with respect to each day or part of a day that the deficiency continues, at an annual rate not exceeding the highest annual rate fixed, at the time of the deficiency, by the Bank of Zambia under the Bank of Zambia Act for any of its operations.

Deficiency of
liquid assets or
prudential
liquidity ratio
Act No, 43 of
1996

(Repealed and replaced by Act 18 of 2000, amended by Act no. 25 of 2005)

72. A bank or financial institution shall not-

- (a) mortgage, charge or grant security to any person over any asset of the bank or financial institution otherwise than-

Prohibition of
unsecured
borrowing

- (i) in the ordinary course of business; or
- (ii) to the Bank of Zambia to secure short-term liquidity advances made by it under the Bank of Zambia Act; or

- (b) acquire an asset that is subject to a mortgage, charge or other security interest in favour of any person, except to satisfy a debt or other liability to it.

Cap. 360

(As amended by Act No 18 of 2000 and No. 25 of 2005)

73. (1) A bank or financial institution shall not, directly or indirectly, except as provided in the Fourth Schedule, grant any advance, or make any guarantee of the debtors of any person or common enterprise so that the total value of any such advances and guarantees with or in respect of

any one person or common enterprise is at any time more than twenty-five per centum of the regulatory capital of the bank or financial institution.

Limitations on granting advances

(2) A bank or financial institution shall not, directly or indirectly, grant any advance against the security of its own shares.

(3) A bank or financial institution shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as may be prescribed, grant or permit to be outstanding any secured or unsecured advances to-

(a) its directors, whether such a advances are obtained by them jointly or severally;

(b) any person who has *de jure* or *de facto* control of the bank or financial institution; or

(c) any body of persons of which any one or more of its directos has *de jure* or *de facto* control or is a director, partner, manager, agent or member;

grant any advance or credit, or make any guarantee of the debts of any person, so that the total value of any such grants, advances and guarantees with or in respect of any one person is at any time more than twenty-five per centum of the regulatory capital (as defined by regulation) of the bank.

(4) A bank or financial institution shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as may be prescribed, grant or permit to be outstanding to a chief executive officer, chief financial officer, manager or employee of the bank or financial institution unsecured advances, which in the aggregate exceed their respective annual remunerations.

(5) A bank or financial institution shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as may be prescribed, engage in any trade or business except the business or businesses for which it is licensed, except in so far as may be necessary for a temporary period (and in any event for not longer than twelve months or such longer period as the Bank of Zambia may allow) in the conduct of its business or to obtain the satisfaction of debts due to it.

(6) A bank financial institution shall not, directly or indirectly, without the prior written approval of the Bank of Zambia and on such terms and conditions as may be prescribed, acquire ownership of any interest in any commercial, agricultural, industrial or other business undertaking, except such interest as it may acquire for the purpose of securing or satisfying a debt or other liability payable to it and which is disposed of within two years or subsequently continued with the prior consent of the Bank of Zambia.

(7) A bank or financial institution shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and

on such terms and conditions as prescribed, purchase, lease or otherwise acquire an interest in real property except-

(a) as may be reasonably necessary for the purpose of conducting its business, including provision for future expansion and providing housing accommodation for its officers and employees; or

(b) as may be reasonably necessary for the purpose of securing or satisfying a debt or other liability to it and which is disposed of within two years or subsequently continued with the prior consent of the Bank of Zambia.

(8) A bank or financial institution shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as the Bank of Zambia may prescribe lease or otherwise contract to make available to any person in consideration of periodic payments or of rent or other instalment payment terms, any personal property owned by it; but nothing in this subsection shall prevent a bank or financial institution from lending on the security of any personal property and taking title thereto for such purpose, including the purpose of satisfying a debt or obligation to it, if the lease or other arrangement is disposed of within two years or subsequently continued with the prior consent of the Bank of Zambia.

(9) In the application of the limitations imposed by subsections (1) and (3), if the Bank of Zambia determines that a group of two or more persons to whom any grants, advances or guarantees have been or are to be made are a common enterprise or are so inter-related that they should be considered as a unit, the total indebtedness of that group shall, if the Bank of Zambia by notice served on the bank or financial institution concerned so provides, be combined and shall be deemed to be the indebtedness of a single person:

Provided that a bank or financial institution shall not be taken to have contravened subsection (1) or (3) by virtue of a determination under this subsection, if the bank or financial institution disposes of the indebtedness of the group, to the extent that it exceeds the relevant limitation, within such reasonable time as the Bank of Zambia may determine.

(10) The provisions of this section shall apply with necessary modifications to financial businesses:

Provided that the Bank of Zambia may establish lending and other limits for, and impose restrictions and prohibitions on, financial businesses similar to those specified under this section and may impose different limits for different categories of financial businesses.

(As repealed and replaced by Act No. 18 of 2000 amended by No. 25 of 2005)

74. (1) For the purposes of this section, each person referred to in subsection (3) of section *seventy-three* is designated a "related

person".

Constraints on
contracts with
related persons

(2) A financial service provider may enter into a contract with a related person only if-

(a) the board of directors approves of the contract in advance and the contract is on terms no less favourable to the bank or financial institution than the terms of similar contracts that are entered into by the financial service provider with persons who are not related; or
(b) the contract is for a nominal sum or is of a class or type exempted by the Bank of Zambia from the operation of this section.

(As amended by Act No. 25 of 2005)

75. (1) A bank or financial institution shall not invest in an equity interest in any person, property or undertaking in an amount exceeding fifteen per centum of the total of all equity interests in the person, property or undertaking.

Limitations on
equity investments

(2) The aggregate investment in equity interests of persons, properties or undertakings by a bank or financial institution shall not exceed twenty-five per centum of its regulatory capital.

(3) A bank or financial institution shall not acquire an equity interest in any single person, property or undertaking where the value of the bank's or institution's equity exceed twenty-five per centum of its regulatory capital.

(4) A bank or institution shall not acquire an equity interest in any single person, property or undertaking in which an insider has a related interest that exceeds ten per centum of the bank's or financial institution's regulatory capital.

(5) Subsection (1) does not apply to an investment or investments by a bank or financial institution in the shares of its subsidiary, if the aggregate of all investments by the bank or financial institution does not exceed twenty five per centum of its regulatory capital.

(6) The Bank of Zambia shall prescribe a period within which a bank or financial institution which is in breach of any of the provisions of this section on the coming into force of this Act shall be required to comply with this section.

(7) Subsection (1) does not apply to an acquisition by a bank or financial institution of an equity interest in realisation of any part of the collateral provided to the bank or financial institution in a credit transaction with any person, if the taking financial institution, within two years following its acquisition or such longer period as the Bank of Zambia may allow, disposes of any equity interest in excess of the limits imposed by this section.

(8) In this section-

(a) "equity interest in a person" means

(i) in the case of a company, any share issued by the company, the terms of which entitle the registered holder or bearer to a share in the profits of the company; or

(ii) in the case of a partnership, association or other body of persons acting in concert, any

right to share in the profits of the person;

(b) "equity interest in a property or undertaking" means an ownership interest and includes any right to share in the profits of the operation or proceeds of disposition of the property or undertaking; and

(c) in subsection (4), "insider" means-

(i) any officer, director or principal shareholder of a bank or of a financial institution;

(ii) any person who participates or has the authority to participate in major policy making functions of a bank or of a financial institution whether employed or not by the bank or financial institution;

(iii) a bank or financial institution in which a person referred to in subparagraph (i) or (ii) owns directly or indirectly, alone or together with one or more other persons falling within the meaning of any of those subparagraphs, more than twenty per centum of the shares; or

(iv) a company in which a bank or a financial institution owns more than ten per centum of the outstanding shares.

(Repealed and replaced by Act No. 18 of 2000 and by Act No. 25 of 2005)

76. (1) Any funds held or owed by a bank or financial institution under the circumstances set out in paragraph (a) or (b) of subsection (2) or any funds or personal property referred to in paragraph (c) of that subsection shall be presumed abandoned upon the expiration of the respective periods provided for in that subsection and if the person in whose name the funds were, or the personal property was, held does not respond to a notice in writing sent by the bank or financial institution by prepaid registered post to the last known address of the person in the records of the bank or financial institution.

(2) Subsection (1) applies to-

Unclaimed funds or
personal property

(a) any demand, savings or matured time deposit together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, in respect of which the owner has not, within the last ten years-

(i) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest or dividends;

(ii) corresponded in writing with the bank or financial institution

(iii) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the bank or financial institution;

(b) any funds paid toward the purchase of a share or other interest in a security issued by a bank or financial institution and any interest or dividends relating thereto excluding any charges that may lawfully be withheld, in respect of which the owner has not, within the last ten years-

(i) increased or decreased the amount of the funds or deposit; or

(ii) corresponded in writing with the bank or financial institution; or

(iii) otherwise indicated an interest in the funds as evidenced by a memorandum in the records of the bank or financial institution; and

(c) any funds or other personal property, removed from a safe deposit box or any other safekeeping facility on which the lease or rental period has expired due to the non-payment of rental charges or by reason of some other default by the lessee, or any surplus amounts arising from the sale of the property thereof

in accordance with law, that have been unclaimed by the owner for more than ten years from the date on which the lease or rental period expired.

(3) A bank or financial institution holding funds or personal property presumed abandoned under this section shall report to the Bank of Zambia on the amount and nature of such funds or property in such form and at such time as may be prescribed by the Bank of Zambia, and shall pay such funds or relinquish the property to the Bank of Zambia upon expiration of the time provided by this section for the presumption of abandonment to arise.

(4) The bank or financial institution shall retain its records concerning funds paid or property relinquished by it under subsection (3).

(5) A person whose funds have been paid or whose property has been relinquished to the Bank of Zambia in accordance with this section may claim the funds from the Bank of Zambia within a period of six years from the date of receipt of the funds or the property by the Bank of Zambia.

(6) No action to recover, and no other action in respect of any funds or property presumed abandoned and paid in or relinquished in accordance with this section may be brought against the paying bank or against the Bank of Zambia after the sixth year following payment or relinquished to the Bank of Zambia, but where the Bank of Zambia considers it desirable, to avoid hardship or injustice, the Bank of Zambia may make a payment to a claimant in respect of funds presumed abandoned or may restore the property to that person.

(Repealed and replaced by Act No. 18 of 2000)

77. (1) Where, in the opinion of the Bank of Zambia, a financial service provider or any person on behalf of a bank or financial institution is committing or pursuing or is about to commit or pursue on behalf of the financial service provider any act or course of conduct that is considered by the Bank of Zambia as unsafe or unsound practice, the Bank of Zambia may enter into one or more written agreements with the financial service provider or its board of directors to establish a programme of action to counteract the unsafe or unsound practice and to establish or maintain safe and sound practices in the conduct of the business of the financial service provider.

Unsafe and
unsound practices

(2) Where the Bank of Zambia is unable to obtain an agreement under subsection (1) within a time, and in a form and content, satisfactory to the Bank of Zambia, or where the Bank of Zambia considers that the need for prompt action makes the negotiation of such an agreement impractical, the Bank of Zambia may direct the financial service provider or any director, manager or other person concerned in its management to do either or both of the following:

(a) cease or refrain from doing the act or pursuing the course of conduct;
(b) perform such acts as, in the opinion of the Bank of Zambia, are necessary to rectify the situation.

(3) In particular, but without limiting the generality of subsection (2), the Bank of Zambia may-

- (a) direct the financial service provider to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose any limitation on the financial institution acceptance of deposits or the payment of the interest thereon, the granting of credit, the making of investments or the payment of dividends;
- (c) prohibit the solicitation of deposits or the payment of the interest thereon either generally or from specified persons or classes or persons;
- (d) prohibit the financial service provider from entering into any other transaction or class of transactions, or from commencing or continuing any activity which it is permitted under this Act to carry on; or
- (e) require the suspension or removal from office of any director, officer or other person.

(4) Directions given under this section shall be given by notice in writing to the financial service provider or person concerned and may in like manner be varied or revoked.

(5) A direction given under this section shall be effective immediately and shall remain in effect in accordance with its terms unless discontinued on appeal.

(6) Any person acting in contravention of the provisions of an agreement made or direction given under this section shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(7) An appeal lies under Chapter VIII against a decision of the Bank of Zambia to give a direction under this section.

(8) The Minister may, in consultation with the Bank of Zambia, prescribe Acts which constitute unsafe or unsound practice.

(9) A person shall not carry out any unsafe or unsound practice

(10) A person who carries out any unsafe or unsound practice commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment not exceeding three years or to both.

(As amended by Act No. 13 of 1994, No. 18 of 2000 and No. 25 of 2005)

78. (1) The Bank of Zambia may cause an examination to be made of a financial service provider to determine whether it is in a sound financial condition and operating safely and that the requirements of this Act, the Bank of Zambia Act and other laws of Zambia have been complied with in the conduct of its business.

Inspection of
financial service
provider

(2) When, in conducting an examination of a financial service provider under this section, the Bank of Zambia considers it necessary to do so, the Bank of Zambia may at the same time cause a like inspection to be made of any other company in Zambia that is a subsidiary, associate or affiliate of the financial service provider concerned.

(3) The Bank of Zambia may order an inspection any time it considers appropriate and may charge such inspection fees for the inspection as may be prescribed by the Bank of Zambia.

(As amended by Act No. 18 of 2000)

79. (1) A financial service provider shall: Scope of inspection

(a) produce, and cause each company that is a subsidiary affiliate or associate of the financial service provider to produce, for the inspection of any inspector appointed by the Bank of Zambia, at such times as the inspector specifies, all books, accounts and records relating to its business in Zambia or elsewhere; and

(b) supply all information concerning its business in Zambia or elsewhere as may reasonably be required by the inspector within such time as the inspector specifies.

(2) Where the most recent report of the auditor of a financial service provider contains information that the Bank of Zambia reasonably considers justifies an inspection of the financial service provider to be conducted, the auditor shall co-operate with officials of the Bank of Zambia or the inspector to investigate, and in that connection, the auditors shall, at the request of the Bank of Zambia, produce any books, accounts and records in the possession of the auditor that, in the auditor's or the Bank of Zambia's opinion, would be of assistance in the investigation.

(3) The Bank of Zambia may from time to time arrange meetings with the auditor, or with the auditor and officers of the bank, to discuss any matters relevant to the Bank of Zambia's supervisory responsibilities which may have arisen in the course of the statutory audit of the.

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

80. (1) The Bank of Zambia shall from time to time, make or cause to be made such inspection into the operation of representative offices and the conduct of the personnel in those offices as may be necessary for the purpose of ascertaining whether the offices are being operated, and the personnel of those offices are performing their functions, in conformity with this Act.

Inspection of
representative
offices

(2) For the purposes of an inspection, the chief representative or other person in charge of the representative office shall allow the Bank of Zambia or any person acting under its authority to have access during normal business hours to the premises of the representative office and to any information required by the Bank of Zambia.

80A. (1) The Bank of Zambia may, by notice in writing, require a foreign bank or financial institution which has a representative office in Zambia to provide

the Bank of Zambia with such information or documents as the Bank of Zambia may reasonably require.

Duty to provide information and documents relating to representative offices

(2) Without prejudice to the generality of subsection (1), the Bank of Zambia may by notice in writing, from time to time, require a foreign bank or financial institution which has a representative office in Zambia and is authorised to take deposits or conduct banking business by the relevant supervisory authority in Zambia within a specified period, a certified copy of any certificate from that authority conferring the authorisation.

(3) If at any time a certificate of authorisation of which a copy was required to be delivered to the Bank of Zambia under subsection (2) is amended or the authorisation is withdrawn, the foreign bank or financial institution shall, not later than one month after the amendment or withdrawal, deliver to the Bank of Zambia a copy of the amended certificate or, as the case may be, a notice stating that the authorisation has been withdrawn.

(As repealed and replaced by Act No. 18 of 2000)

81. (1) Where- Supervisory actions

(a) a financial service provider refuses to comply with an order or directive of the Bank of Zambia under this Act;

(b) a financial service provider refuses to permit an inspection to be made as provided by this Act or obstructed an inspection;

(c) in the opinion of the Bank of Zambia, an inspection instituted under this Act shows-

(i) that the financial service provider concerned conducts its business in breach of any written law or engages in a course of conduct that is unsafe or unsound;

(ii) that for any reason the financial service provider is unable, or is likely to become unable, to continue its operations in the ordinary course of its business;

(iii) the financial service provider's capital is less than the prescribed minimum; or

(iv) the financial service provider is insolvent;

the Bank of Zambia shall take supervisory action against the financial service provider.

(2) The supervisory action the Bank of Zambia may take includes-

(a) taking possession of the financial service provider;

(b) suspending the financial service provider's licence for a period not

exceeding six months;

(c) restricting the financial service provider's licence; and

(d) revoking the financial service provider's licence.

(3) For the purposes of paragraph (c) of subsection (2), the Bank of Zambia may, by notice in writing served on a financial service provider, vary the conditions of its licence so as to impose any restriction.

(4) The Bank of Zambia shall, in writing, inform the Minister, regarding the state of affairs of a financial service provider in respect of which it intends to take action under this section.

(As repealed and replaced by Act No. 18 of 2000 and No. 25 of 2005)

82. A bank or financial institution shall-

(a) maintain a special reserve account, to an amount which the Bank of Zambia considers adequate, reserved exclusively for the purpose of making good any loss resulting from the negligency or dishonesty of any of its directors, chief executive officers, chief financial officers, manager or employees;

Special reserve or
liability insurance

(b) insure itself against such loss, to an amount which the Bank of Zambia considers adequate, with a person approved by the Bank of Zambia carrying on insurance business or the business of guaranteeing against such loss; or

(c) undertake such other commitment as the Bank of Zambia may consider acceptable for the purpose of this section.

(Amended by Act No. 18 of 2000)

83. (1) The Bank of Zambia shall, by *Gazette* Notice, prescribe the minimum required primary capital and the minimum required regulatory capital for every category of financial service provider.

Capital adequacy

(2) Every financial service provider shall maintain primary capital in an amount at least equal to the minimum amount prescribed by the Bank of Zambia in accordance with subsection (1).

(3) The minimum required primary capital of a financial service provider-

(a) shall be of such kinds, computed in such manner and of such amount as prescribed by the Bank of Zambia, having due regard to internationally accepted guidelines, and the nature of the financial service provider's business;

(b) may include such part of the financial service provider's reserve account, undivided profits, retained income and other reserves as may be prescribed by the Bank of Zambia; and

(c) may be fixed with reference to such of the assets and contingent liabilities or other exposures of the bank or financial institution or to such portion, type or class thereof, as may be prescribed by the Bank of Zambia.

(4) For banks or financial institutions, the minimum required regulatory capital to be prescribed by the Bank of Zambia shall not be less than six

per centum of a bank's or financial institution's assets, contingent liabilities and other exposures and shall be calculated as may be prescribed by the Bank of Zambia;

Provided that the Bank of Zambia may prescribe a minimum regulatory capital requirement for any category of financial business that the Bank determines should be subject to such requirement.

(5) A bank or financial institution shall not issue any share in its capital or other security (other than a bonus share or share in lieu of dividend or other prescribed security) unless it receives the full-face amount thereof in Zambian kwacha.

(6) Any person acting in contravention of this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(As repealed and replaced by Act No. 18 of 2000 and Act No. 25 of 2005)

Part 2-Taking Possession of Banks and Financial Institutions

84. When taking possession of a financial service provider under paragraph (a) of subsection (2) of section *eighty-one*, the Bank of Zambia shall post in each branch of the financial service provider a notice announcing its action and specifying the date, hour and minute at which the possession takes effect; and if the taking of possession is attributable to insolvency, the Bank of Zambia shall transmit a copy of the notice to the court.

(As amended by Act No. 25 of 2005)

84A. The Bank of Zambia upon taking possession of a financial service provider under paragraph (a) of subsection (2) of section *eighty-one* shall be vested with full and exclusive powers of management and control of the financial service provider, including the power-

- (a) to continue or discontinue any operations;
- (b) to borrow money, whether or not on the security of the assets of the financial service provider;
- (c) to stop or limit the payment of any obligation, including interest;
- (d) to employ, re-employ or retain in employment any officer, employee or professional advisor the Bank of Zambia considers necessary;
- (e) to execute any instrument in the name of the financial service provider and to initiate or defend and conduct in the name of the bank or of the financial institution any action or legal proceedings;
- (f) to terminate the employment of any director, chief executive officer, chief financial officer, manager or employee;
- (g) to terminate the interests of the shareholders at a value to be determined by the court; and

Notice of taking
possession
Powers and duties
of the Bank of
Zambia upon

taking position

(h) to enforce the individual liability of the directors and of the shareholders of the financial service provider incurred in the ordinary course of business, and on unpaid shares.

(As amended by Act No. 25 of 2005)

84B. Upon taking possession of a financial service provider, the Bank of Zambia shall prepare a statement of affairs of the assets and liabilities and shall within ninety days from the effective date of taking possession take any of the following actions:

(a) where the statement of affairs of the assets and liabilities shows the financial service provider to be solvent-

(i) to restructure or reorganise the financial service provider;

(ii) to sell the financial service provider as a going concern;

(iii) to close the financial service provider;

(iv) to take any action which is necessary to enable the Bank of Zambia to carry out its functions under this Act; or

(b) where the financial service provider is insolvent, to take such action as it considers appropriate under Part 4 of Chapter VII

(As amended by Act No. 25 of 2005)

84C. Within a period of twenty-one days after the date on which the Bank of Zambia takes possession of a financial service provider, the financial service provider or any interested person acting on its behalf may institute proceedings in court to require the Bank of Zambia to show cause why the possession should not be terminated.

(As amended by Act No. 25 of 2005)

84D. (1) When the Bank of Zambia takes possession of a financial service provider-

(a) any term, whether statutory or contractual, on the expiration of which a claim or right of the financial service provider would expire or be extinguished, shall be extended by six months from the date of such expiration or extinction;

(b) any attachment or lien (except an attachment or lien existing twelve months prior to the taking possession of the financial service provider)

Statement of
affairs of assets and
liabilities upon
taking possession

Appeal for
termination of
possession

Effect of
possession

shall be vacated, and no attachment or lien except an attachment or lien created by the Bank of Zambia in carrying out its role of lender of last resort or an attachment or lien created in favour of a payment or settlement system, shall attach to any of the assets or property of the financial service provider so long as the possession continues; and

(c) every payment or transfer of an asset or property of the financial

service provider made under with intent to effect a preference of the recipient over the other creditors of the financial service provider is void if so made within a period of twelve months before the Bank of Zambia takes possession of the financial service provider.

(2) Where a payment or transfer referred to in paragraph (c) of subsection (1) has the effect of preferring the recipient, it shall be presumed to have been made with that intent, except in the case of-

(a) a payment made to a creditor in the ordinary course of business to discharge in whole or in part a debt or other liability of the financial service provider to the recipient; or

(b) a transfer of an asset or property made in a current exchange for valuable consideration equal to the fair market value of the asset or property transferred.

(As amended by Act No. 25 of 2005)

84E. (1) Where the Bank of Zambia, acting under paragraph (a) of subsection (1) of section *eighty-four B* decides to commence the restructuring or reorganisation, or both, of the financial service provider, the Bank of Zambia shall, after granting a reasonable opportunity for a hearing of all interested parties, send a copy of the restructuring or reorganisation plan to each depositor and any other creditor who, under the plan, would not receive full payment.

(2) The copy of the restructuring or reorganisation plan shall be accompanied by a notice stating that, if the plan is not refused in writing within a period of thirty days by persons holding at least one third of the aggregate amount of the deposits and creditors comprising at least one-third in value of the aggregate of the claims of creditors (other than subordinated creditors), or if within the same period of thirty days no objection or appeal to a court has been made and the court does not order a stay of proceedings, the Bank of Zambia will proceed to carry out the restructuring or reorganisation.

(As amended by Act No. 25 of 2005)

84F. (1) Where depositors and other creditors refuse a re-structuring
Restructuring and
reorganisation

or reorganisation plan prepared by the Bank of Zambia under this Part, or when in the course of restructuring or reorganisation it appears to the Bank of Zambia that circumstances render the plan inequitable or its execution impossible or undesirable, the Bank of Zambia may-

(a) modify the plan; or

(b) order the compulsory liquidation of the financial service provider in accordance with Chapter VII

(As amended by Act No. 25 of 2005)

84G. (1) No writ of execution, attachment, garnishee order or other process of a similar nature shall be issued or made against the assets or property of a financial service provider in the possession of the Bank of Zambia.

(2) Where a creditor has issued or made a writ of execution, attachment,

garnishee order or other process of a similar nature against the movable or immovable property of a financial service provider or has attached any debt due to the financial service provider the creditor shall not be entitled to retain the benefit of the execution or attachment unless the creditor has completed the execution or attachment before the date of the Bank of Zambia taking possession of the financial service provider.
(As amended by Act No. 25 of 2005)

84H. All necessary and reasonable expenses incurred by the Bank of Zambia in the application of the provisions of this Chapter shall be defrayed from the funds of the financial service provider.
(As amended by Act No. 25 of 2005)

84I. The Bank of Zambia may appoint an agent to carry out any of its functions under this Chapter.

Refusal of
restructuring or
reorganisation of
plan
Restructuring as to
execution
Recovery of
expenses
Appointment of
Agent by Bank of
Zambia

(As repealed and replaced by Act No. 18 of 2000)

CHAPTER VII

INSOLVENCY, DISSOLUTION AND LIQUIDATION OF BANKS AND FINANCIAL INSTITUTIONS

Part 1-Preliminary

85. Where, in relation to banking business or financial service business any written law is inconsistent with this Act, the provision of this Act shall, to the extent of the inconsistency, prevail.
(Repealed and replaced by Act No. 18 of 2000)

Precedence of this
Act

86. For the purposes of Chapter VI and this Chapter, a financial service provider is insolvent when it ceases to be able to meet its obligations as they fall due or when its assets are insufficient to meet its liabilities.

Meaning of
"insolvent"
(As amended by Act No. 25 of 2005)

87. (1) A financial service provider shall not, while insolvent: Acceptance of deposits by insolvent banks
(a) receive any deposit; or
(b) enter into any new, or continue to conduct any existing, banking or financial service business, as the case may be, except that which is incidental to the orderly realisation, conservation and preservation of its assets;

(2) A transaction with a depositor or a creditor and a settlement in a netting or gross settlement arrangement under the system of settlement approved by the Bank of Zambia or provided for in or under any written law shall not be treated as prohibited under subsection (1) only because of the insolvency of a financial service provider if the transaction or settlement took place prior to a resolution to liquidate the financial service provider or prior to the appointment of a receiver or the taking possession of the financial service provider by the Bank of Zambia.

(3) A director, chief executive officer, chief financial officer, manager or employee of a financial service provider who knows or, in the proper performance of his duties, could reasonably be expected to know of the insolvency of the financial service provider and who causes or permits any act in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994, No. 18 of 2000 and No. 25 of 2005)

87A. Where a financial service provider licensed under this Act becomes insolvent-

(a) if it is a company under the Companies Act or if it is a body corporate established by or under any written law, the Bank of Zambia shall take possession of the institution in accordance with the provisions of paragraph (a) of subsection (2) of section *eighty-one*;

(b) if it is not a company under the Companies Act and is subject to the supervision or control of another authority, the Bank of Zambia shall revoke its licence and give directions to the appropriate authority to place the institution into liquidation or dissolution.

Powers of Bank of
Zambia in relation
to insolvent
financial
institutions
Cap 388

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

87B. Notwithstanding the provisions of sections *eighty-four*, *eighty-four A*, *eighty-four B*, *eighty-four C*, *eighty-four D*, *eighty-four E*, *eighty-four F*, *eighty-four G* and *eighty-four H*, where a financial business licensed under this Act becomes insolvent, the provisions of the company Act regarding the winding up of a company or body corporate, as the case may be, shall apply to such insolvent financial business, unless the bank of Zambia has determined that the insolvent financial business be dealt with in accordance with provisions of sections *eighty-four*, *eighty-four A*, *eighty-four B*, *eighty-four C*,

Power of Bank
of Zambia in
relation to
insolvent

financial
businesses.
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*eighty-four D, eighty-four E, eighty-four F, eighty-four G and
eighty-four H.*

(As amended by Act No. 25 of 2005)

Part 2-Voluntary Winding up and Liquidation

88. (1) A bank or financial institution shall not, except with the approval of the Bank of Zambia, pass any resolution for voluntary winding up or dissolution under the Companies Act; or under any other written law; and where a bank or financial institution passes a resolution for its voluntary winding up or dissolution, it shall record the date, hour and minute of the passing of the resolution.

(2) The Bank of Zambia shall grant approval to a voluntary winding up on such terms and conditions it may determine and only if it appears to the Bank of Zambia that the bank is solvent and has sufficient liquid assets to repay its depositors and all its other creditors in full and without delay.

(As amended by Act No. 18 of 2000)

Approval of Bank
of Zambia required
for voluntary
winding up

89. (1) When a bank or financial institution has received approval from the Bank of Zambia for voluntary winding up or dissolution, it shall-

Duties of bank on
voluntary
liquidation

(a) immediately surrender its licence to the Registrar, cease to do business and thereafter exercise its powers only to the extent necessary to effect its orderly winding up or dissolution;

(b) repay in full its depositors and other creditors; and

(c) wind up or dissolve all operations undertaken prior to the receipt of the approval.

(2) A director, chief executive officer, chief financial officer, manager or employee of a bank or financial institution who knows or, in the proper performance of his duties, could reasonably be expected to know of the insolvency of the institution and who causes or permits any act in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994 and Act No. 18 of 2000)

90. (1) Within fourteen days after receiving approval for its voluntary winding up or dissolution, a bank or financial institution shall by

Notice of voluntary
winding up and
liquidation

registered mail notify-

(a) every depositor and other creditor of the bank or financial institution;
and

(b) any person otherwise entitled to any funds or property held by the bank as a trustee, fiduciary, lessor of a safe-keeping facility or bailee, of its intention to wind up or dissolve.

(2) A notice for the purposes of subsection (1) shall set forth such information as the Bank of Zambia may require by notice to the bank or financial institution concerned.

(3) A copy of the bank's or financial institution notice shall be kept displayed in a conspicuous place in the public part of each branch of the bank or financial institution and the bank or financial institution shall publish it in the *Government Gazette* and in a newspaper of general circulation throughout Zambia.

(As amended by Act No. 18 of 2000)

91. (1) The approval by the Bank of Zambia under this Part for the voluntary winding-up or dissolution of a bank or financial institution shall not prejudice the rights of a depositor or other creditor to payment in full of a claim nor the right of an owner of funds or other property held by the bank or financial institution to the return thereof.

Rights of
depositors and
creditors

(2) All lawful claims shall be paid promptly and all funds and other property held by the bank or financial institution shall be returned to their rightful owners within such maximum period as the Bank of Zambia may in writing direct.

(As amended by Act No. 18 of 2000)

92. (1) Where in the opinion of the Bank of Zambia a bank or financial institution has discharged all the obligations referred to under section *eighty-nine*, the remainder of its property shall be distributed to its rightful owner or owners.

Distribution of
assets on voluntary
liquidation

(2) Distribution under subsection (1) shall not be made before-

(a) all claims of depositors and other creditors have been paid in full or, in the case of a disputed claim, the bank or financial institution has turned over to the Bank of Zambia funds sufficient, in the opinion of the Bank of Zambia, to meet any liability that may be judicially determined;
and

(b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the Bank of Zambia to be dealt with as unclaimed funds in accordance with this Act.

(As amended by Act No. 18 of 2000)

93. If the Bank of Zambia finds that the assets of a bank or financial institution whose voluntary winding-up or liquidation or dissolution it has approved will not be sufficient for the full discharge of all its

obligations or that completion of the winding-up or liquidation or dissolution is unduly delayed, it may, if it considers it proper to do so, take possession of the bank or financial institution.

(As amended by Act No. 18 of 2000)

Part 3-Seizure of Banks

Powers of Bank of
Zambia if assets
insufficient or
completion unduly
delayed

(Section 94 - 100 repealed by Act 18 of 2000)

Part 4 - Compulsory Liquidation, Winding up or Dissolution.

101. (1) The Bank of Zambia may, by resolution, order the compulsory liquidation, winding up or dissolution of a bank or financial institution; and where the Bank of Zambia makes an order under this subsection, it shall record the date hour and minute of the passing of the resolution; and

Compulsory
liquidation,
winding up or
dissolution

(2) Upon making an order under subsection (1), the Bank of Zambia shall notify each director, shareholder, other owner, depositor and other creditor of the bank or financial institution and every other interested party of such order by written notice to such of those persons for whom the Bank of Zambia discovers a name and address, and by published or other form of public notice.

(3) Each person notified shall have a period of thirty days to file an objection or appeal to the Court.

(4) The Court shall render its decision in any such application or appeal within a period of thirty days after the end of the period during which objections to the liquidation were admissible and in so doing may make any order it considers just in the circumstances.

(As amended by Act No. 18 of 2000)

102. The Bank of Zambia may appoint an agent to carry out any of its functions under this Part.

Powers of Bank of
Zambia to appoint
agent

(As repealed and replaced by Act No. 18 of 2000)

103. Section *eighty-four D, eighty-four G and eighty four H* shall apply to a bank or financial institution in respect of which an order under section *one hundred and one* has been made by the Bank of Zambia in Effect of order of compulsory dissolution etc

the same manner as they apply to a bank or financial institution under possession by the Bank of Zambia.

(As repealed and replaced by Act No 18 of 2000)

104. (1) In effecting a compulsory liquidation, winding up or dissolution of a bank or financial institution under this Act, the Bank of Zambia may, in addition to any other powers, exercise any of the powers, whether express or implied, of the bank or financial institution concerned.

Powers of Bank of Zambia in effecting compulsory liquidation etc.

(2) Upon an order for compulsory liquidation, winding up or dissolution-

(a) every contract of employment of any person with the bank or financial institution shall terminate with effect from the date on which the order comes into effect;

(b) the Bank of Zambia may terminate-

(i) any contract for the provision of goods or services to which the bank or financial institution is a party; or

(ii) any obligation of the bank or financial institution as a lessee of real property; but a lessor to whom the Bank of Zambia gives not less than ninety days' notice of termination of lease shall have no claim for rent other than rent accrued and outstanding on the date of termination of the lease, nor any claim for damages by reason of such termination.

(3) After the decision to liquidate, wind up or dissolve a bank or financial institution, the Bank of Zambia shall-

(a) take any necessary steps to terminate all fiduciary functions performed by the bank or financial institution, return to each owner all assets and property held by the bank or financial institution as a

fiduciary in relation to the owner, and settle its fiduciary account; and

(b) cause to be made available at each branch for collection by each depositor, other creditor, safe-keeping services customer and bailor of property held by the bank or financial institution, a statement (in this Part called "the customer's statement") of the nature and amount for which each one's claim is shown in the bank's or financial institution's records, and cause to be published in a newspaper of general circulation in Zambia, a notice informing all such persons of the availability for collection of the statement at their respective branches.

(4) The customer's statement shall note that any claim must be filed with the Bank of Zambia before a specified date not earlier than sixty days thereafter and shall call upon safe-keeping services customers and bailors to withdraw their property.

(5) Any property held in safe-keeping on the premises of the bank or financial institution that has not been withdrawn before the date specified in the customer's statement shall be taken into possession by the Bank of Zambia in the manner prescribed by the Bank of Zambia.

(6) Any unclaimed funds and property held by the bank or financial institution as a bailee, together with inventories pertaining thereto, shall

be deemed to be unclaimed funds for the purposes of the provisions of this Act dealing with unclaimed funds and shall be dealt with accordingly.

(As amended by Act No. 18 of 2000)

(7) deleted by 18 of 2000

105. Within six months after the last day specified in the customer's statement for the filing of claims the Bank of Zambia shall-

(a) defer payment of any claim that is out of time and reject any claim that appears to be of doubtful validity;

(b) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his claim in accordance with this Part;

(c) prepare for filing with the Court a Schedule of the steps it proposes to take (in this Part called a "liquidation schedule"); and

(d) notify each person whose claim has not been allowed in full and publish once a week for three consecutive weeks, in a newspaper of general circulation in every place in Zambia where the bank or financial institution had a branch, a notice of the date and place where the liquidation schedule will be available for inspection, and the date, not earlier than thirty days after the date of the third publication of the notice, on which the Bank of Zambia will file the schedule with the Court.

Limitation of filing
of claims

(As amended by Act No. 18 of 2000)

106. (1) Within twenty days after the filing of the liquidation schedule, any depositor, other creditor or owner of a bank or financial institution, and any other interested party, may file with the Court an objection to any step proposed.

Objections to
liquidation
schedule

(2) Any objection so filed shall be considered by the Court, upon such notice to the Bank of Zambia and interested parties as the Court may by order direct to be given.

(3) If an objection is sustained, the Court shall direct that appropriate modification of the schedule be made.

(4) After filing the schedule the Bank of Zambia may, from time to time, make partial distribution to the holders of the claims which are undisputed or which have been allowed by the Court, on condition that a proper reserve is established for the payment of disputed claims.

(5) As soon as possible after all objections have been decided upon, the Bank of Zambia shall make final distribution.

(As amended by Act No. 18 of 2000)

107. (1) In any compulsory liquidation, winding up or dissolution of a bank or financial institution there shall be paid in priority to all other debts in the following order:

Priority of
creditors

- (a) necessary and reasonable expenses incurred by the Bank of Zambia in the application of the provisions of this Part;
- (b) taxes and rates due, whether payable to the Government or to a local authority;
- (c) wages and salaries of officers and employees of the bank for the three-month period preceding the effective date of seizure, within the limit of an amount not exceeding one hundred thousand kwacha per person or such higher amount as may be prescribed by regulation;
- (d) fees and assessments due to the Bank of Zambia;
- (e) claims established under a deposit protection scheme.
- (f) other deposits; or
- (g) other claims against the bank in such order of priority as the Court may determine upon application by the Bank of Zambia.

(2) After payment of all claims submitted and accepted, the remaining claims which are not submitted within the time allowed under this Part shall be paid and thereafter interest, if any, in the order of the priority of their submission and at a rate to be fixed by the Bank of Zambia.

(3) If the amount available for payment for any class of claims referred to in subsections (1) and (2) is insufficient to provide payment in full, the claims within a class shall abate *pari passu*; and for the purposes of this section each paragraph of subsection (1) constitutes a separate class of claims and the claims referred to in subsection (2) constitute another separate class of claims.

(As amended by Act No. 28 of 1995 and Act No. 18 of 2000)

108. As soon as all assets of a bank or financial institution have been distributed as provided for in this Part, the Bank of Zambia shall render an account to the court and shall be relieved of any liability in connection with the winding up, dissolution or liquidation.

Accounts after
distribution of
assets

(Repealed and replaced by Act No. 18 of 2000)

109. Any unclaimed funds remaining after a final distribution provided for under this Part shall be taken into possession and held by the Bank of Zambia and subsequently dealt with in accordance with this Act.

Unclaimed funds

110. Any assets remaining after all claims have been paid upon compulsory liquidation of a bank shall be distributed among the owners in accordance with their respective rights and interests.

Final
distribution in
compulsory
liquidation

110A. Upon taking possession of a bank or financial institution by the Bank of Zambia under this Act, no proceedings may be instituted by any

person, other than the Bank of Zambia, for the liquidation, winding up, dissolution or other action of a similar nature.

110B. All necessary and reasonable expenses incurred by the Bank of Zambia in the application of the provisions of this Chapter shall be defrayed from the funds of the bank or financial institution concerned.

Restriction of
action by third
parties
Recovery of
expenses

(As amended by Act No. 18 of 2000)

CHAPTER VIII APPEALS

111. (1) Where the Registrar or the Bank of Zambia makes any decision against which, as provided by this Act, an appeal lies under this Chapter, the Registrar or the Bank of Zambia as the case may require, shall, by notice in writing-

Reasons for
decisions and right
to be heard

(a) inform the applicant or other person affected by the decision of the reasons for the decision; and

(b) invite the applicant or person to make such written representations as he wishes within a time limited by the notice.

(2) The decision of the Registrar or of the Bank of Zambia shall remain in force unless reversed by the Registrar or by the Bank of Zambia, as the case may be, or set aside by the Tribunal on an appeal or by a court

(3) The Registrar or the Bank of Zambia may, on receipt of any representations referred to in paragraph (b) of subsection (1), reaffirm, revoke or vary his or its decision and shall notify the applicant or other person accordingly.

(As amended by Act No. 18 of 2000)

112. (1) If, after receipt of any representations from the applicant or person affected by its decision, the Registrar or the Bank of Zambia reaffirms his or its decision, the applicant or other person (hereinafter called the "appellant") may, within seven days of receipt of the notice reaffirming the decision, notify the Minister that he desires to appeal against the decision.

Right of appeal

(2) The decision of the Registrar or of the Bank of Zambia, as the case may be-

(a) does not take effect until the expiry of the period limited by subsection (1) for giving notice of an appeal; and

(b) where a notice of appeal is lodged within that time, is further stayed pending the outcome of the appeal.

113. Within seven days after receipt of a notice under subsection (1) of section *one hundred and twelve*, the Minister shall appoint and convene an Appeal Tribunal consisting of a Chairman who is an advocate of the

High Court of not less than seven years' standing and two other persons having qualifications and experience in relation to the matters involved in the appeal.

Appointment and
Convening of
Tribunal

(Repealed and replaced by Act No. 18 of 2000)

114. (1) The Appeal Tribunal is to determine the appeal on its merits, having regard to the provisions of this Act and the public interest, and may confirm, vary or quash the decision the subject of the appeal.

Powers of Tribunal

(2) The Tribunal may determine its own procedure and is not bound by the rules of evidence, and may inform itself of any matter in such manner as it sees fit.

(3) The Appeal Tribunal shall afford the appellant the right to appear by himself or by counsel or agent.

115. The decision of the Tribunal is final and binding on the parties to the appeal except as to any point of law, and in cases where the appeal is

Decisions of
Tribunal

allowed, it is the duty of the Registrar or the Bank of Zambia, as the case may require, to give effect to the decision of the Tribunal.

CHAPTER IX

MISCELLANEOUS

116. (1) Whenever the Bank of Zambia has reason to believe that any person is carrying on banking business or regulated financial service business on any premises without a licence or in contravention of the conditions of a licence, or for the purpose of ascertaining whether the provisions of this Act or the regulations under this Act are being complied with, the Bank of Zambia shall have the right by its servants or agents to enter the premises to ascertain the facts of the matter and may for that purpose-

Investigations

(a) require any person apparently having access to them to deliver to the Bank of Zambia the books, accounts and records of the person; and

(b) examine any such books, accounts and records and take copies of or make extracts from them.

(2) A person who refuses to make available for examination the person's books, accounts and records within five business days after having been duly requested to do so by the Bank of Zambia shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

117. (1) A person other than a bank shall not, without the consent of the Bank of Zambia, use the word "bank" or any of its derivatives in any language, or any other word or symbol indicating the transaction of banking business, in its name or in any prospectus, advertisement or

statement of any kind published or made to describe its business in Zambia

Use of the word
"bank"

(2) A person shall not falsely represent to the public or any member of the public-

(a) that the person holds a licence to conduct any financial service business; or

(b) that the person is licensed to conduct any financial service business of a particular kind.

(3) Any person acting in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

118. A licence shall not be granted to any person under a name that so closely resembles the name of an existing licensee as would be likely, in the opinion of the Registrar, to mislead the public, unless the person is associated or affiliated with the licensee or otherwise has the consent of the licensee.

Misleading and
unlicensed names

119. (1) Subject to subsection (2), a person carrying on a business shall not use any name which indicates or may reasonably be understood to indicate (whether in English or any other language) that the business is a financial service provider or is carrying on banking business or financial service business unless the business is licensed under this Act.

Restriction on use
or registration of
banking and
related names

(2) Subsection (1)-

(a) does not prohibit the use of the kind of name referred in that subsection by a company or other entity incorporated or otherwise established outside Zambia and which has no permanent place of business in Zambia for the purposes of soliciting business or advertising its business in Zambia

(b) does not apply to-

(i) a bank, financial institution or financial business established by or under a written law of Zambia;

(ii) a regional or international bank or financial institution whose membership consists partly or wholly of member States; or

(iii) such other person as the Minister may, by statutory instrument, exempt.

(3) An authority which, under any written law, is responsible for the registration of businesses or business names shall not register a business or the name of a business that would be in contravention of subsection (1).

(4) Where on the coming into force of this Act a business or the name of a business is already registered in a style that is otherwise prohibited by subsection (1), the authority responsible for the registration shall, within three months after

the coming into force of this Act, notify the Bank of Zambia of the registration and order the owner of the business or the business name to alter or modify the name so as to comply with subsection (1).

(Repealed and replaced by Act 18 of 2000 and amended by No. 25 of 2005)

120. (1) A transaction entered into in contravention of this Act is not void or ineffective by reason only of the contravention, and is not voidable at the instance of the bank, financial institution or financial business except in a court's discretion.

Validity of certain
acts by banks

(2) Subject to its memorandum and articles, it shall not be necessary for a bank or financial institution to pass a by-law in order to exercise any power conferred by this Act.

(As amended by Act No 18 of 2000 and No. 25 of 2005)

121. A bank, financial institution or financial business does not comply with a provision of this Act requiring it to furnish or supply a document to the Bank of Zambia unless-

(a) in the case of a document prepared by that bank, financial institution or financial business, the form of which has not been prescribed by the Bank of Zambia, the document is-

Documents

(i) signed by the chief executive officer and the chief accounting officer of the bank, financial institution or financial business; or

(ii) signed by such other person as is required by a provision of this Act to sign or certify the document; and

(b) in the case of a document prepared by that bank or financial institution, the form of which has been prescribed by the Bank of Zambia, the document is signed by the person holding the office or offices required by the text of the prescribed form.

(As amended by Act No 18 of 2000 and No. 25 of 2005)

121A. (1) The Bank of Zambia may publish in whole or in part, at such times as it may determine, any information or data furnished under this Act if the Bank of Zambia considers the publication to be in the public interest.

(2) The Bank of Zambia shall not reveal to any person any information regarding the affairs of any customer of a bank, financial institution or financial business obtained in the exercise of its functions under this Act unless lawfully required to do so.

Publication of
information

(As amended by Act No. 18 of 2000 and No. 25 of 2005)

122. At the request of a bank, financial institution or financial business or other person, the Bank of Zambia may extend from time to time any

Extension of time
limits

period within which a bank, financial institution or financial business is, in accordance with the provisions of this Act, obliged to furnish any document or information.

(As amended by Act No. 25 of 2005)

123. No act, matter or thing done by any officer or person employed by the Bank of Zambia or by any other person in the exercise or performance or purported exercise or performance, in good faith, of any power or function under this Act shall give rise to any action, claim, liability, suit or demand against the officer or person concerned.

Immunity of Bank
of Zambia
officials, etc.

124. (1) The Minister, on the recommendation of the Bank of Zambia, may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed by regulation or that is necessary or convenient to be so prescribed for carrying out or giving effect to this Act.

Regulations

(2) The regulations may provide for fines not exceeding fifty thousand penalty units, and for terms of imprisonment not exceeding two years, or both, for any contravention of the regulations.

(As amended by Acts No. 13 of 1994)

124A. Where a provision of this Act authorises the Bank of Zambia to prescribe anything, the power to prescribe shall be exercised by the publication of the matter by *Gazette* Notice.

(As amended by Act No. 18 of 2000)

Exercise of power
of Bank of Zambia
to prescribe

125. The Bank of Zambia shall have power to prescribe and publish such guidelines, bulletins or other regulatory statements as the Bank of Zambia may consider necessary or desirable for the administration or execution of this Act.

Guidelines

126. (1) The Bank of Zambia shall, within six months from the 1st day of January in each year, submit to the Minister a report on the operations of banks and financial institutions in Zambia during the twelve months ended on the preceding 31st December.

Bank of Zambia's
report

(2) The Minister shall lay a copy of the report before the National Assembly within fourteen days of its receipt by him or, if the National Assembly is not then in session, within fourteen days after the commencement of its next sitting.

127. (1) Subject to subsection (2), if a person issues or takes part in the issue of a document referred to in this Act which is false in any material particular, that person and every other person who signed it shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both

False documents

(2) A person shall not be guilty of an offence under this section if the person did not know and could not reasonably be expected to have known that the document was false when the person signed it, issued it or took part in its issue as the case may be.

(As amended by Acts No. 13 of 1994 and 18 of 2000)

127A (1) A person shall not-

(a) conduct, or participate in, a money circulation scheme; or
(b) issue a notice, circular, prospectus, proposal or other document inviting the public to subscribe to a money circulation scheme.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding three years or both.

(As amended by Act No. 18 of 2000)

Prohibition of
money circulation
schemes

128. A person who commits an offence under this Act for which no penalty is specifically provided is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both.

Penalty for
offences where
no specific
penalty provided

(Repealed and replaced by Act No. 18 of 2000)

129. (1) Where an offence under this Act is committed by a body of persons-

(a) in the case of a body corporate, every director or like officer of the body commits the offence; and

(b) in the case of a partnership every partner commits the offence; unless the director, or like officer of the body corporate or partner proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of that director, like officer, or partner did their part to prevent the commission of the offence having regard to all the circumstances of the case.

Offences by body of
persons

(Repealed and replaced by Act No. 18 of 2000)

129A. (1) Collateral held by the Bank of Zambia on behalf of a clearing house, a payment system or a payment association for the purpose of settling the obligations of a bank or financial institution which is a member of the clearing house, payment system or payment association shall be utilised for that purpose by the Bank of Zambia in accordance with the terms and conditions approved by the Bank of Zambia and shall not be subject to any claim.

(2) The Bank of Zambia shall be indemnified and a certificate issued by the Governor of the Bank of Zambia that the collateral or any part thereof has

been utilised to meet the obligations of the clearing house, payment system or payment association shall be *prima facie* evidence of the matters stated in the certificate.

(3) In the case of a bank or financial institution in respect of which the winding up, dissolution or liquidation has commenced under this Act, the balance of the collateral, after the collateral has been utilised in accordance with subsection (1), shall be dealt with in accordance with Chapter VII.

(As amended by Act No. 18 of 2000)

Utilisation of collateral for
settlement of certain
obligations

130. The Minister, on the recommendation of the Bank of Zambia, may by regulation, on such terms and conditions as the Minister considers appropriate, exempt any bank or financial institution from all or any of the provisions of this Act and may provide for the variation or revocation, by regulation or by notice in writing to the affected person or persons, of any such exemption at any time.

(As amended by Act No. 18 of 2000)

Exemptions

131. (1) The Banking Act is hereby repealed. Repeal of Cap. 700 and savings of the 1971 Edition

(2) Notwithstanding the repeal of the Banking Act-

(a) a commercial bank, within the meaning of that Act, that was, immediately before the commencement of this Act, registered as a bank under that Act shall be deemed to be the holder of a licence under section *four* of this Act that is subject to the same limitations and conditions as pertained to its registration;

(b) a financial institution, within the meaning of that Act, that was, immediately before the commencement of this Act registered as such under that Act shall be deemed to be the holder of a licence under section *ten* of this Act that is subject to the same limitations and conditions as pertained to its registration;

(c) any applications pending under that Act shall be deemed to have been made under the corresponding provisions of this Act, and shall be dealt with under this Act;

(d) any right or benefit accruing, or liability incurred, under that Act shall continue in accordance with and subject to this Act; and

(e) any regulation, order, notice or direction made or given and in force, immediately before the commencement of this Act, under that Act shall, unless contrary to this Act, continue in force until revoked, as if made or given under this Act.

(3) The Minister may by regulation make such savings and transitional provisions as he may consider just or expedient in consequence of the enactment of this Act and the repeal of the Banking Act.