

GOVERNMENT OF ZAMBIA

ACT

No. 18 of 2000

Date of Assent: 25th August, 2000.

An Act to amend the Banking and Financial Services Act

[1st September, 2000

ENACTED by the Parliament of Zambia

Enactment

1. (1) This Act may be cited as the Banking and Financial Services (Amendment) Act, 2000 and shall be read as one with the Banking and Financial Services Act, in this Act referred to as the principal Act.

Short title
and
commence-
ment
Cap. 387

(2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint.

2. Section *two* of the principal Act is amended—

Amendment
of section 2

(a) in subsection (1)—

(i) by the deletion of the definitions of “bank”, “banking business”, “company”, “Court”, “deposit”, “financial institution”, “regulated financial business”, “financial service”, and “regulated financial service”;

(ii) by the insertion, in the appropriate places, of the following new definitions:

“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

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Act No. 43
of 1996

(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;

“Bank of Zambia” means the Bank of Zambia established under the Bank of Zambia Act;

“banking business” means any of the following:

(a) the business of 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) financial services; and

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

“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 maintaining 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” means 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 per 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;

“ company ” has the same meaning as in the Companies Act;

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

“ deposit ” means—

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

(i) an equal amount or any part thereof is conditionally or unconditionally repayable, with or without a premium, on demand or at specified or unspecified dates or 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 or 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;

deposit-taking financial institution means a financial institution that in addition to carrying on financial service business accepts deposits;

“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 institution” means a person other than a bank, conducting a financial service business;

“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 forfaiting;
- (g) the issue and administration of credit cards, debit cards, travellers’ cheques or bankers’ drafts;
- (h) the issue of 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;

(q) 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;

“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;

“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 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*;

“ voting shares ” means common shares 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 of the share issuer;

(b) by the deletion of subsection (2) and the substitution therefor of the following subsection:

(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 or financial institution.

(c) in subsection (3) by the deletion from subparagraph (i) of paragraph (b) of the words “ an officer ” and the substitution therefor of the words “ a manager ”; and

(d) by the addition immediately after subsection (3) of the following new subsection:

(4) In subsection (1)—

(a) “ merchant 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.

Amendment
of section 3.

3. Section three of the principal Act is amended by the deletion of paragraphs (c), (d) and (e).

4. Section four of the principal Act is amended—

Amendment
of section 4

(a) in subsection (2)—

(i) by the deletion from paragraph (a) of the words
“memorandum and” and

(ii) by the deletion of paragraph (b) and the substitution
thereof of the following:

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

(b) by the insertion immediately after subsection (3) of the
following new subsections:

(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 im-
posed under subsections (2), (3) or (4) may differ
between different 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; and

(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.

Repeal and
replacement
of section 5

Determina-
tion of
application

5. The principal Act is amended by the repeal of section *five* and the substitution therefor of the following section:

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

Repeal and
replacement
of section 6

Application
for licence to
be refused in
certain cases

6. The principal Act is amended by the repeal of section *six* and the substitution therefor of the following section:

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.

Amendment
of section 8

7. Section *eight* of the principal Act is amended—

(a) in subsection (1)—

(i) by the insertion immediately after the word “regulations” in subparagraph (ii) of paragraph (b) of the words “guidelines, bulletins and regulatory statements”;

(ii) by the deletion of paragraph (f) and the substitution therefor of the following paragraph:

(f) finance leasing;

(ii) by the deletion of paragraphs (j), (k), (l) and (m) and the substitution therefor of the following paragraphs:

(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.

- (b) by the deletion of subsection (2); and
(c) by the renumbering of subsection (3) as subsection (2).

8. Section *nine* of the principal Act is amended—

Amendment
of section 9

- (a) by the deletion of the marginal note and of subsections (1) and (2) and the substitution therefor of the following:

9. (1) A bank 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
or other
establish-
ments of
banks

(2) A bank or subsidiary 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; and

- (b) by the deletion of subsection (4).

9. Section *ten* of the principal Act is amended in subsection (1) by the deletion of the word "regulated".

Amendment
of section 10

10. The principal Act is amended by the repeal of section *eleven* and the substitution therefor of the following section:

Repeal and
replacement
of section 11

11. Subsections (2) to (7) of section *four* and sections *five*, *six*, *seven*, and *nine* shall apply with necessary modifications to the licensing of financial institutions.

Application
of certain
provisions of
this Chapter
to financial
institutions

11. The principal Act is amended in Chapter III by the insertion of the following new Part immediately after Part 2:

Addition of
Part 2A to
Chapter III

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.

Licensing of
representa-
tive offices

(2) An application for a 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 office is to report directly; and
- (h) such other information and documents as the Registrar may reasonably require.

(3) After receiving an application and before determining it 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, make 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.

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.

Regulatory
requirements
for represen-
tative offices

Amendment
of section 13

12. Section *thirteen* of the principal Act is amended—

- (a) by the deletion of the words "the Bank of Zambia" wherever they appear and by the substitution therefor of the words "the Registrar";

(b) in subsection (2)—

- (i) by the deletion at the end of paragraph (a) of the word “ and ”
- (ii) by the deletion at the end of paragraph (b) of the full stop and the substitution therefor of a semi-colon and the word “ and ”; and
- (iii) by the addition immediately after paragraph (b) of the following new paragraph:

(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.

13. Section *sixteen* of the principal Act is amended—

Amendment
of section 16

(a) in section (1)—

- (i) by the deletion of the words “ after consultation with the Minister ”; and
- (ii) by the insertion, in paragraph (c), immediately after the word “ regulations ” of the words “ bulletins or other regulatory statements ”; and

(b) in subsection (3) by the insertion immediately after the word “ licensee ” of the words “ and every other copy of the licence that is in the possession of the licensee ”

14. The principal Act is amended by the repeal of section *seventeen* and the substitution therefor of the following section:

Repeal and
replacement
of section 17

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

Prohibition
of unli-
censed
business

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

(3) A bank or financial institution 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.

Amendment
of section 18

15. Section *eighteen* of the principal Act is amended in subsection (1) by the deletion of the word “regulated”

Amendment
of section 23

16. Section *twenty-three* of the principal Act is amended —

(a) in subsection (2)—

(i) by the deletion of the words “the person”, and the substitution therefor of the words “that person or another person”; and

(ii) by the addition at the end of that subsection of the following proviso:

“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.

(b) in subsection (3) by the deletion of the words “No bank shall” and the substitution therefor of the words “A bank shall not”; and

(c) in subsection (4) by the deletion of the words, “a person” and “the shareholder” in each case, where they appear the second time and in each case, by the substitution therefor of the words “that person”.

Insertion of
section 23A

17. The principal Act is amended by the insertion immediately after section *twenty-three* of the following new section:

Regulation
and
divestment
of other
control

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 bank or financial institution 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.

18. Section *twenty-four* of the principal Act is amended in subsection (2) by the deletion of the full-stop at the end of the subsection and by the addition thereafter of the words " so long as at the completion of the corporate restructuring, that person is in compliance with subsection (1)".

Amendment
of section 24

19. The principal Act is amended by the insertion immediately after section *twenty-four* of the following new section:

Insertion of
section 24A

24A. (1) A trust shall not own shares directly or indirectly in a bank or financial institution.

Prohibition
of ownership
of shares by
trusts

(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).

20. Section *twenty-six* of the principal Act is amended by the deletion of subsection (3) and the substitution therefor of the following subsection:

Amendment
of section 26

(3) A transaction effected in contravention of this section shall be void.

21. Section *twenty-nine* of the principal Act is amended in paragraph (d) of subsection (2) by the deletion of the words " future advances." wherever they appear and the substitution therefor of the words " past, present and future advances".

Amendment
of section 29

22. The principal Act is amended by the repeal of Part 3 of Chapter III and the substitution therefor of the following part:

Repeal and
replacement
of Part 3 of
Chapter III

Part 3: Boards of Directors

30. (1) Every bank and every financial institution 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 or financial institution.

Boards of
directors

(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.

Repeal and replacement of heading of Part 4 of Chapter III

23. The principal Act is amended by the repeal of the heading of Part 4 of Chapter III and the substitution therefor of the following heading:

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

Insertion of section 30A

24. The principal Act is amended by the insertion immediately after the heading of Part 4 of the following new section:

Chief executive officers and chief financial officers

30A. Every bank 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.

Amendment of section 31

25. Section *thirty-one* of the principal Act is amended—

(a) by the deletion of the marginal note and subsection (1) and the substitution therefor of the following:

Qualifications of directors and senior 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 executive officer, chief financial officer or manager of a bank 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) is an undischarged bankrupt;

(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 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;

and

(b) by the deletion from the section—

(i) of the word “ an officer ” wherever it appears and the substitution therefor of the words “ chief executive officer, chief financial officer or manager ”; and

(ii) of the word “ incorporated ” wherever it appears.

26. The principal Act is amended by the repeal of section thirty-three and the substitution therefor of the following section:

Repeal and replacement of section 33

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

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

(a) act honestly and in good faith and in the best interest of the bank; and

(b) exercise due care, diligence and skill.

27. The principal Act is amended by the repeal of section thirty-four.

Repeal of section 34

28. The principal Act is amended by the repeal of sections thirty-five and thirty-six and the substitution therefor of the following sections:

Repeal and replacement of sections 35 and 36

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.

Disclosure of interest

(2) A director, chief executive officer, chief financial officer or manager of a bank who—

(a) is a party to, or has a material interest in, a contract or a proposed contract with the bank; 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 bank.

shall disclose in writing to the bank the nature and extent of the interest or relationship.

(3) The disclosure required by subsection (2) shall be made forthwith after the contract or proposed contract comes to the knowledge of the person who has to make it.

(4) At any meeting of the board, a director who has a material interest or a material 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 thereto which becomes the subject of action by the board of the bank, but such departure from the meeting shall not disqualify the interested person for the purposes of constituting a quorum.

(5) 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 bank concerned or of any of its shareholders 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 so suspended.

(6) 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 he owns, directly or indirectly, more than ten per centum of any class of the voting shares, or of which he 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.

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

False statements and obstruction of inspection

(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 bank; or

(b) obstructs or endeavours to obstruct—

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

(ii) a lawful inspection of the bank 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.

29. Section *thirty-seven* of the principal Act is amended—

Amendment of section 37

(a) by the deletion of the word " officer " wherever it appears and the substitution therefor of the words " chief executive officer, chief financial officer or manager ";

(b) in subsection (1)—

(i) by the deletion of the words " The Minister may, on the recommendation of the Bank of Zambia ", and the substitution therefor of the words " The Bank of Zambia may "; and

(ii) by the deletion of the word " incorporated ";

(c) in subsection (2) by the insertion immediately after the word " director ", where it last appears, of the words " chief executive officer, chief financial officer or manager "; and

(d) by the addition immediately after subsection (3) of the following new subsection:

(4) The Bank of Zambia may recommend to a bank or financial institution the removal from office of 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.

Insertion of
new Part 4A
of Chapter
III

30. The principal Act is amended by the insertion immediately after Part 4 of Chapter III of the following new Part:

Part 4A-Organisation and Administration of Financial Institutions.

Structure of
unincorporated
financial
institutions

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

(a) voting rights; and

(b) subordination to all other depositors and creditors in the event of insolvency, dissolution or winding up.

Application
of Parts 1, 2
and 4 to
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.

Amendment
of section 40

31. Section forty of the principal Act is amended —

(a) by the insertion after the word “ bank ” and “ banks ” wherever they appear, of the words “ or financial institution ” and “ or financial institutions ”, respectively;

(b) in subsection (1)—

(i) by the deletion of the word “ or ” at the end of paragraph (c);

(ii) by the deletion of the full stop at the end of paragraph (d) and the substitution therefor of a semi-colon and the word “ or ” and by the insertion immediately after that paragraph of the following new paragraph:

(e) the provision of financial services in a manner that restricts competition.

Repeal and
replacement
of section 43

32. The principal Act is amended by the repeal of section forty-three and the substitution therefor of the following section:

Principal
administrative
office

43. (1) Every bank and financial institution 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 effected after written confirmation by the Bank of Zambia, of the suitability of the proposed location.

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

33. Section *forty-six* of the principal Act is amended in subsection (3) by the deletion from paragraph (b) of the words " that person's premises " and the substitution therefor of the words " the premises of that bank or financial institution ".

Amendment
of section 46

34. Section *forty-seven* of the principal Act is amended in subsection (3) by the deletion of the words " The Minister, on the recommendation of the Bank of Zambia may by regulation prescribe " and substituting therefor the words " The Bank of Zambia may prescribe ".

Amendment
of section 47

35. Section *forty-eight* of the principal Act is amended—

Amendment
of section 48

(a) in paragraph (a) by the insertion of immediately after the word " or " of the word " financial ";

(b) in paragraph (b) by the deletion of the words " an officer "

and the substitution therefor of the words " a manager ";

and

(c) in paragraph (c) by the deletion of the words " by regulation " and the substitution therefor of the words " by the Bank of Zambia "

36. Section *forty-nine* of the principal Act is amended—

Amendment
of section 49

(a) in subsection (1) by adding at the end of that subsection the words " and is liable on conviction to a fine not exceeding fifty thousand penalty units ";

(b) by the deletion of subsection (2); and

(c) by the renumbering of subsection (3) as subsection (2).

37. Section *fifty* of the principal Act is amended in subsection (1)—

Amendment
of section 50

(a) by the deletion of the word " officer " and the substitution therefor of the words " chief executive officer, chief financial officer, manager ";

(b) by the deletion of the fullstop at the end of paragraph (b) and the substitution therefor of a semi-colon and the word " or " ; and

(c) by the insertion immediately after paragraph (b) of the following paragraph:

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

Amendment
of section 51

38. Section *fifty-one* of the principal Act is amended in subsection (1) by the deletion of paragraph (g) and the substitution therefor of the following paragraph:

(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.

Amendment
of section 52

39. Section *fifty-two* of the principal Act is amended in subsection (1) by the deletion of the words " the Minister, on the recommendation of the Bank of Zambia may by regulation prescribe " and the substitution therefor of the words " the Bank of Zambia may prescribe ".

Amendment
of section 53

40. Section *fifty-three* of the principal Act is amended by the deletion of the words " by this Act or the regulations under this Act " and the substitution therefor of the words " by or under this Act ".

Repeal and
replacement
of section 54

41. The principal Act is amended by the repeal of section *fifty-four* and the substitution therefor of the following section:

Retention of
records

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

Amendment
of section 55

42. Section *fifty-five* of the principal Act is amended in subsection (1) by the deletion of the word " officer " and the substitution therefor of the word " manager ".

Amendment
of Part I of
Chapter V

43. Part I of Chapter V is amended by the addition at the end of the heading of that Part of the words " and Financial Institutions ".

Repeal and
replacement
of section 56

44. The principal Act is amended by the repeal of section *fifty-six* and the substitution therefor of the following section:

Annual
financial
statements

56. (1) The directors of a bank or financial institution shall place before the shareholders at every annual meeting—

(a) annual financial statements for the financial year immediately preceding the meeting and the finan-

cial 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 bank or financial institution 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 bank or financial institution 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 bank or financial institution 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 bank or financial institution; and

(b) any additional information concerning the financial position of the bank or 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 whereby two or more persons, by virtue of their relationship, will or are likely to benefit severally or jointly from funds or services arising from a transaction involving any one of them and a bank or financial institution.

Amendment
of section 57

45. Section *fifty-seven* of the principal Act is amended—

(a) in paragraph (a) by the insertion immediately after the word “bank”, wherever it appears, of the words “or financial institution”; and

(b) by the deletion of paragraph (b) and the substitution therefor of the following paragraph:

(b) such other information as the Bank of Zambia may prescribe.

Repeal and
replacement
of sections
58 and 59

46. The principal Act is amended by the repeal of sections *fifty-eight* and *fifty-nine* and the substitution therefor of the following sections:

Reserves for
bad and
doubtful
debts

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

Approval of
annual
financial
statements

59. Annual financial statements of a bank or financial institution shall be approved by the directors and the approval shall be signified by their signatures.

Amendment
of section 60

47. Section *sixty* of the principal Act is amended—

(a) in subsection—

(i) by the deletion of the words “Every bank shall deliver to the Bank of Zambia such number of copies, in such form and within such time after the end of each calendar month, as may be prescribed by regulation, of” and the substitution of the following words:

“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”;

(ii) by the deletion from subparagraph (ii) of paragraph (a) of the words “First Schedule” and the substitution therefor of the words “Second Schedule”;

(iii) by the deletion from paragraph (e) of the words “prescribed by regulation” and the substitution therefor of the words “prescribed by the Bank of Zambia”; and

(b) in subsection (2) by the insertion immediately after the word "bank", wherever it appears of the words " or financial institution ".

48. Section *sixty-one* of the principal Act is amended—

Amendment
of section 61

(a) by the insertion immediately after the word " bank ", wherever it appears, of the words " or financial institutions" ; and

(b) by the deletion of subsection (3) and the substitution therefor of the following subsection:

(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; and

(c) by the deletion of subsection (4) and the renumbering of subsection (5) as subsection (4).

49. The principal Act is amended by the repeal of the heading of Part 2 of Chapter V and the substitution therefor of the following heading:

Repeal and
replacement
of heading of
Part 2 of
Chapter V

Part 2-Audit of Accounts of Banks and Financial Institutions

50. Section *sixty-two* of the principal Act is amended—

Amendment
of section 62

(a) by the insertion immediately after the word " bank ", wherever it appears, of the words " or financial institution " and

(b) in subsection (1) by the deletion of the words " association of auditors " and the substitution therefor of the words " association of accountants "

51. The principal Act is amended by the repeal of sections *sixty-three*, *sixty-four* and *sixty-five* and the substitution therefor of the following sections:

Repeal and
replacement
of sections
63, 64 and 65

63. A person shall not be qualified for appointment or be qualified to act, as an auditor of a bank or financial institution if the person is—

Disqualifica-
tion of
auditor

(a) a director, chief executive officer, chief financial officer, manager or employee of a bank or financial institution 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 bank or financial institution;
- (c) a body corporate;
- (d) a manager or employee of a company that is controlled by the bank or financial institution; or
- (e) a person who personally, or through that person's partner or employee, regularly performs the duties of secretary or book keeper to the bank or financial institution.

Auditor's
report

64. (1) Every auditor of a bank or financial institution shall have the right of access at all times to all books, accounts and records of the bank or financial institution, 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.

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

- (a) express whether, in the auditor's opinion, the bank or financial institution 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 bank's or financial institution'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 bank or financial institution, whether a satisfactory response was received;
- (c) state whether in the auditor's opinion the bank or financial institution 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 bank or financial institution, 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 bank or financial institution 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 bank or financial institution or which was contrary to this Act or any other law; and
- (ii) any loan owing to the bank or financial institution by any person that is a 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.

65. (1) If an auditor resigns from the audit of a bank or financial institution, 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.

Resignation
or termina-
tion of
appointment
of auditor

(2) If a bank or financial institution terminates the appointment of its auditor, the bank or financial institution 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, a written statement setting out the reasons for the termination.

(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 bank or financial institution a written statement on the reasons set out by the bank or financial institution and the statement of the auditor may include refutations of those reasons.

Amendment
of section 6752. Section *sixty-seven* of the principal Act is amended—

(a) by the deletion of subsection (1) and the substitution thereof of the following subsection:

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

(b) by the insertion immediately after the word “ bank ”, wherever it appears, of the words “ or financial institution ”;

(c) in subsection (2)—

(i) by the deletion from paragraph (c) of the words “ control procedures ” and the substitution thereof of the words “ controls and procedures ”;

(ii) by the deletion from paragraph (d) of the words “ or any officer ” and the substitution thereof of the words “ chief executive officer, chief financial officer or any manager ”, and

(iii) by the deletion from paragraph (f) of the word “ officer ” and the substitution thereof of the word “ manager ”; and

(d) by the insertion immediately after subsection (8) of the following subsections:

(9) The directors of a bank of financial institution 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 in 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.

Repeal of
Part 3 of
Chapter V

53. The principal Act is amended by the repeal of Part 3 of Chapter V.

54. Section sixty-nine of the principal Act is amended—
(a) by the insertion immediately after the word “ bank ”, wherever it appears, of the words “ or financial institution ” ; and
(b) in subsection (1) by the deletion of the words “ prescribed by regulation ” and the substitution therefor of the words “ prescribed by the Bank of Zambia ”.

Amendment of section 69

55. Section seventy of the principal Act is amended—
(a) in subsection (1) by the deletion of the words “ or such portion of its ” ;
(b) by the deletion of subsection (3);
(c) by the deletion from subsection (4) of the words “ First Schedule ” and the substitution therefor of the words “ Second Schedule ”; and
(d) by the renumbering of subsection (4) as subsection (3).

Amendment of section 70

56. The principal Act is amended by the insertion, immediately after section seventy, of the following new section:

Insertion of section 70A

70A. The assets and liabilities for the computation of the prudential liquidity ratio for the categories of financial institutions set out in the First Schedule shall be as set out in the Third Schedule.

Prudential liquidity ratio

57. The principal Act is amended by the repeal of section seventy-one and the substitution therefor of the following section:

Repeal and replacement of section 71

71. Where the liquid assets of a bank are, or the prudential liquidity ratio of a financial institution is, 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

58. Section seventy-two of the principal Act is amended by the insertion, immediately after the word “ bank ” of the words “ or financial institution ”.

Amendment of section 72

Repeal and
replacement
of section 73

Limitations
on granting
advances

59. The principal Act is amended by the repeal of section *seventy-three* and the substitution therefor of the following section:

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 debts 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.

(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 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 directors has *de jure* or *de facto* control or is a director, partner, manager, agent or member;

in an aggregate amount in excess of twenty-five per centum of its primary capital.

(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, without 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 or 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 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 shall not, directly or indirectly, without 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 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.

Amendment
of section 74

60. Section *seventy-four* of the principal Act is amended in subsection (2)—

(a) by the insertion, immediately after the word “ bank ” wherever it appears of the words “ or financial institution ”; and

(b) by the deletion from paragraph (b) of the words “ exempted by regulation ” and the substitution thereafter of the words “ exempted by the Bank of Zambia ”.

Repeal and
replacement
of section 75

61. The principal Act is amended by the repeal of section *seventy-five* and the substitution therefor of the following section:

Limitations
on equity
investments

75. (1) A bank or deposit-taking 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.

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

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

(4) A bank or deposit-taking financial 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 deposit-taking financial institution's regulatory capital.

(5) Subsection (1) does not apply to an investment or investments by a bank or deposit-taking financial institution in the shares of its subsidiary, if the aggregate of all investments by the bank or deposit-taking 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 deposit-taking 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 deposit-taking financial institution of an equity interest in realisation of any part of the collateral provided to the bank or deposit-taking financial institution in a credit transaction with any person, if the bank or deposit-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 company licensed as 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 company licenced as a bank or of a financial institution whether employed or not by that 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.

Repeal and
replacement
of section 76

Unclaimed
funds or
personal
property

62. The principal Act is amended by the repeal of section seventy-six and the substitution therefor of the following section:

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

(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, or

- (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 towards 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;
 - (ii) corresponded in dealing 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 in accordance with the 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 the 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) A 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 relinquishment 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 or property presumed abandoned or may restore the property to that person.

Amendment
of section 77

63. Section seventy-seven of the principal Act is amended—

(a) by the insertion immediately after the word "bank" wherever it appears of the words "or financial institution";

(b) in subsection (3) by the insertion immediately after the word "bank's" of the words "or financial institution's" and by the insertion immediately after the word "deposits" of the words "or the payment of the interest thereon"; and

(c) by the insertion immediately after subsection (7) of the following new subsections:

(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.

Amendment
of section 78

64. Section seventy-eight of the principal Act is amended—

(a) by the deletion of the marginal note and the substitution of the following marginal note:

Inspection of banks and financial institutions;

(b) by the insertion immediately after the word "bank" wherever it appears of the words "or financial institution";

(c) by the deletion of the word "examination" wherever it appears and by the substitution thereof of the word "inspection", and

(d) by the insertion immediately after subsection (2) of the following subsection:

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

65. Section *seventy-nine* of the principal Act is amended—

Amendment
of section 79

(a) by the deletion of the marginal note and the substitution thereof of the following marginal note:

Scope of inspection;

(b) by the insertion immediately after the word "bank" wherever it appears of the words "or financial institution";

(c) by the deletion of the words "examination" and "examiner" wherever they appear and the substitution therefor of the words "inspection" and "inspector", respectively; and

(d) in subsection (1) by the insertion after the words "in Zambia" of the words "or elsewhere".

66. The principal Act is amended by the repeal of section *eighty* and the substitution therefor of the following section:

Repeal and
replacement
of section 80

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
representa-
tive 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.

67. The principal Act is amended by the insertion immediately after section *eighty* of the following new section:

Insertion of
section 80A

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
representa-
tive 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 outside Zambia, to deliver to the Bank of 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.

Repeal and
replacement
of section 81

Supervisory
actions

68. The principal Act is amended by the repeal of section *eighty-one* and the substitution therefor of the following section:

81. (1) Where—

- (a) a bank or financial institution refuses to comply with an order or directive of the Bank of Zambia under this Act;
- (b) a bank or financial institution refuses to permit an inspection to be made as provided by this Act or obstructs an inspection;
- (c) in the opinion of the Bank of Zambia, an inspection instituted under this Act shows—

(i) that the bank or financial institution 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 bank or financial institution is unable, or is likely to become unable, to continue its operations in the ordinary course of its business;

(iii) the bank or financial institution's capital is less than the prescribed minimum; or

(iv) the bank or financial institution is insolvent;

the Bank of Zambia shall take supervisory action against the bank or financial institution.

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

- (a) taking possession of the bank or financial institution;
- (b) suspending the bank's or financial institution's licence for a period not exceeding six months;
- (c) restricting the bank's or financial institution's licence; and
- (d) revoking the bank's or financial institution's licence.

(3) For the purposes of paragraph (c) of subsection (2), the Bank of Zambia may, by notice in writing served on a bank or financial institution, 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 bank or financial institution in respect of which it intends to take action under this section.

69. Section *eighty-two* of the principal Act is amended—

- (a) by the insertion immediately after the word "bank" of the words " or financial institution "; and
- (b) in paragraph (a) by the insertion immediately after the word " directors " of the words " chief executive officer, chief financial officer, managers ".

Amendment
of section 82

70. The principal Act is amended by the repeal of section *eighty-three* and the substitution therefor of the following section:

Repeal and
replacement
of section 83

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

(2) Every bank or financial institution 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 bank or financial institution—

- (a) shall be of such kinds, computed in such manner and of such amounts as prescribed by the Bank of Zambia, having due regard to internationally accepted guidelines, and the nature of the bank's or financial institution's business.

(b) may include such part of the bank's or financial institution'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) 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.

(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.

71. The principal Act is amended by the repeal of Part 2 of Chapter VI and the substitution therefor of the following Part:

Part 2-Taking Possession of Banks and Financial Institutions

84. When taking possession of a bank or financial institution under paragraph (a) of subsection (2) of section *eighty-one*, the Bank of Zambia shall post in each branch of the bank or financial institution 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.

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

(a) to continue or discontinue any operations;

Repeal and
replacement
of Part 2 of
Chapter VI

Notice of
taking
possession

Powers and
duties of the
Bank of
Zambia upon
taking
possession

- (b) to borrow money, whether or not on the security of the assets of the bank or financial institution;
- (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 bank or financial institution 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
- (h) to enforce the individual liability of the directors and of the shareholders of the bank or financial institution incurred in the ordinary course of business, and on unpaid shares.

84B. Upon taking possession of a bank or financial institution, 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:

Statement of
affairs of
assets and
liabilities
upon taking
possession

(a) where the statement of affairs of the assets and liabilities shows the bank or financial institution to be solvent:

- (i) to restructure or reorganise the bank or financial institution;
- (ii) to sell the bank or financial institution as a going concern;
- (iii) to close the bank or financial institution;
- (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 bank or financial institution is insolvent, to take such action as it considers appropriate under Part 4 of Chapter VII.

Appeal for
termination
of posses-
sion

84C. Within a period of twenty-one days after the date on which the Bank of Zambia takes possession of a bank or financial institution, the bank or financial institution 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.

Effect of
possession

84D. (1) When the Bank of Zambia takes possession of a bank or financial institution—

(a) any term, whether statutory or contractual, on the expiration of which a claim or right of the bank or financial institution 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 bank or financial institution) 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 bank or financial institution so long as the possession continues; and

(c) every payment or transfer of an asset or property of the bank or financial institution made with intent to effect a preference of the recipient over the other creditors of the bank or financial institution is void if so made within a period of twelve months before the Bank of Zambia takes possession of the bank or financial institution.

(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 bank or financial institution 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.

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 bank or financial institution, 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.

Restructuring and reorganisation

(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.

84F. Where depositors and other creditors refuse a restructuring 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—

Refusal of restructuring or reorganisation of plan

(a) modify the plan; or

(b) order the compulsory liquidation of the bank or financial institution in accordance with Chapter VII.

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 bank or financial institution in the possession of the Bank of Zambia.

Restructuring as to execution

(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 bank or financial institution or has attached any debt due to the bank or financial institution, 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 bank or financial institution.

Recovery of
expenses

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 bank or financial institution.

Appointment
of agent by
Bank of
Zambia

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

Amendment
of Chapter
VII

72. The principal Act is amended by the deletion of the heading of Chapter VII and the substitution thereof of the following heading:

Insolvency, Dissolution and Liquidation of Banks and Financial Institutions.

Amendment
of section 85

73. The principal Act is amended by the repeal of section *eighty-five* and the substitution therefor of the following section:

Precedence
of this Act

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.

Amendment
of section 86

74. Section *eighty-six* of the principal Act is amended—

(a) by the insertion immediately after the word “bank” and “banks” of the words “or financial institution” and “or financial institutions”, respectively; and

(b) by deleting the full stop at the end of that section and by adding thereafter the words “or the amount of its regulatory capital requirement prescribed by the Bank of Zambia is nil or lower”.

Amendment
of section 87

75. Section *eighty-seven* of the principal Act is amended—

(a) by the insertion immediately after the words “bank” and “banks” wherever they appear, of the words “or financial institution” and “or financial institutions” respectively;

(b) in subsection (1) by the deletion of paragraph (b) and the substitution therefor of the following paragraph:

(b) enter into any new, or continue to conduct any, existing, banking or financial services business, as the case may be, except that which is incidental to the orderly realisation, conservation and preservation of its assets;

(c) by the insertion immediately after subsection (1) of the following subsection:

(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 bank or financial institution if the transaction or settlement took place prior to a resolution to liquidate the bank or financial institution or prior to the appointment of a receiver or the taking possession of the bank or financial institution by the Bank of Zambia; and

(d) by renumbering subsection (2) as subsection (3) and by the deletion of the word "officer" from that subsection and the substitution therefor of the words "chief executive officer, chief financial officer, manager".

76. The principal Act is amended by the insertion immediately after section *eighty-seven* of the following new section:

Insertion of section 87A

87A. Where a financial institution licensed under this Act becomes insolvent—

Powers of Bank of Zambia in relation to insolvent financial institutions

(a) if it is a company under the Companies Act, 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*;

Cap. 388

(b) if it is not a company under the Companies Act but 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;

Cap. 388

(c) if it is a body established by written law, the Bank of Zambia shall revoke its licence and may recommend to the relevant authority that the institution be placed into liquidation or dissolution.

77. Section *eighty-eight* of the principal Act is amended—

Amendment of section 88

(a) by the insertion immediately after the word "bank" wherever it appears, of the words "or financial institution";

(b) by the insertion immediately after the words "winding up", wherever they appear, of the words "or dissolution";

(c) in subsection (1) by the deletion of the full stop at the end of that subsection and the substitution of a semi-colon and by the addition of the following words thereafter:

"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".

Amendment
of section 89

78. Section *eighty-nine* of the principal Act is amended—

(a) by the insertion immediately after the word "bank", wherever it appears, of the words "or financial institution";

(b) by the insertion immediately after the words "winding up", wherever they appear, of the words "or dissolution";

(c) in subsection (1) by the deletion from paragraph (a) of the words "liquidation" and the substitution therefor of the words "winding up or dissolution"; and

(d) in subsection (2) by the deletion of the word "officer" and the substitution therefor of the words "chief executive officer, chief financial officer, manager".

Amendment
of section 90

79. Section *ninety* of the principal Act is amended—

(a) by the insertion immediately after the word "bank" and "bank's" of the words "or financial institution" and "or financial institution's", respectively; and

(b) by the insertion immediately after the words "winding up" of the words "or dissolution".

Amendment
of section 91

80. Section *ninety-one* of the principal Act is amended—

(a) by the insertion immediately after the word "bank" of the words "or financial institution"; and

(b) by the insertion immediately after the words "winding up" of the word "or dissolution".

Amendment
of section 92

81. Section *ninety-two* of the principal Act is amended—

(a) in subsection (1) by the deletion of the words "When in the judgement of the Bank" and the substitution therefor of the words "Where in the opinion of the Bank of Zambia"; and

(b) in subsection (2) by the insertion immediately after the word "bank" of the words "or financial institution".

82. Section *ninety-three* of the principal Act is amended—
- (a) by the insertion immediately after the word “ liquidation ” of the words “ or dissolution ”;
 - (b) by the insertion immediately after the word “ bank ” wherever it appears, of the words “ or financial institution ”; and
 - (c) by the deletion of the words “ or petition the court for the continuance of the winding up to become subject to the supervision of the court ”.

Amendment
of section 93

83. The principal Act is amended by the repeal of sections *ninety-four to one hundred*.

Repeal of
sections 94
to 100

84. The principal Act is amended in Chapter VII by the insertion immediately before section *one hundred and one* of the following heading:

Insertion of
heading of
Part 4 of
Chapter VIII

Part 4-Compulsory Liquidation, Winding up or Dissolution

85. Section *one hundred and one* of the principal Act is amended—

Amendment
of section
101

(a) by the deletion of the marginal note and subsection (1) and the substitution therefor of the following:

- (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

(b) in subsection (2)—

- (i) by the insertion immediately after the word “ bank ” of the words “ financial institution ”; and
- (ii) by the deletion of the words “ such petition ” and the substitution of the words “ the order ”

86. The principal Act is amended by the repeal of section *one hundred and two* and the substitution therefor of the following:

Repeal and
replacement
of section
102

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

Power of
Bank of
Zambia to
appoint
agent

N.A.B. 21, 2000

Repeal and
replacement
of section
103

87. The principal Act is amended by the repeal of section *one hundred and three* and the substitution therefor of the following section:

Effect of
order of
compulsory
dissolution
etc.

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

Amendment
of section
104

88. Section *nine hundred and four* of the principal Act is amended—

(a) by the deletion of the marginal note and subsections (1), (2) and (3) and the substitution therefor of the following:

Powers of
Bank of
Zambia in
effecting
compulsory
liquidation
etc.

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.

(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 the 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.

(b) in subsection (5) by the deletion of the words "prescribed by regulation" and the substitution therefor of the words "prescribed by the Bank of Zambia"; and

(c) by the deletion of subsection (7).

89. Section *one hundred and five* of the principal Act is amended in paragraph (d) by the insertion immediately after the word "bank" of the words "or financial institution".

Amendment
of section
105

90. Section *one hundred and six* of the principal Act is amended in subsection (1) by the insertion immediately after the word "bank" of the words "or financial institution".

Amendment
of section
106

Amendment
of section
10791. (1) Section *one hundred and seven* of the principal Act is amended—

(a) in subsection (1)—

(i) by the deletion of the words “compulsory liquidation of a bank” and the substitution of the words “compulsory liquidation, winding up or dissolution of a bank or financial institution”; and

(ii) by the deletion of paragraph (e) and the substitution therefor of the following paragraph:

(e) claims established under a deposit protection scheme;

(b) by the deletion of subsections (2) and (3) and the substitution therefor of the following subsections:

(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.Repeal and
replacement
of section
10892. The principal Act is amended by the repeal of section *one hundred and eight* and the substitution therefor of the following section:Accounts
after
distribution
of assets

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.

Insertion of
sections
110A and
110B93. The principal Act is amended by the insertion immediately after section *one hundred and ten* of the following new sections:Restriction
of action by
third parties

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.

Recovery of
expenses

94. Section *one hundred and eleven* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following subsection:

Amendment
of section
111

(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.

95. The principal Act is amended by the repeal of section *one hundred and thirteen* and the substitution therefor of the following section:

Repeal and
replacement
of section
113

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

96. The principal Act is amended by the repeal of section *one hundred and nineteen* and the substitution therefor of the following section:

Repeal and
replacement
of section
119

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 bank or a financial institution 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 or financial institution 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).

Amendment
of section
120

97. Section *one hundred and twenty* of the principal Act is amended by the insertion immediately after the word "bank" of the words "or financial institution".

Amendment
of section
121

98. Section *one hundred and twenty one* of the principal Act is amended—

(a) by the insertion immediately after the word "bank" wherever it appears, of the words "or financial institution"; and

(b) in paragraphs (a) and (b) by the insertion immediately after the words "prescribed by regulation" of the words "or by the Bank of Zambia".

Insertion of
section 121A

99. The principal Act is amended by the insertion immediately after section *one hundred and twenty one* of the following new section:

Publication
of informa-
tion

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 or financial institution obtained in the exercise of its functions under this Act unless lawfully required to do so.

100. The principal Act is amended by the insertion immediately after section *one hundred and twenty-four* of the following new section:

Insertion of section 124A

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*.

Exercise of power of Bank of Zambia to prescribe

101. Section *one hundred and twenty-seven* of the principal Act is amended in subsection (1) by the deletion of the words "fifty thousand penalty units" and the subsection therefor of the words "one hundred thousand penalty units".

Amendment of section 127

102. The principal Act is amended by the insertion immediately after section *one hundred and twenty-seven* of the following new section:

Insertion of section 127A

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.

Prohibition of money circulation schemes

(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.

103. The principal Act is amended by the deletion of section *one hundred and twenty-eight* and the substitution therefor of the following section:

Repeal and replacement of section 128

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

104. The principal Act is amended by the repeal of section *one hundred and twenty-nine* and the substitution therefor of the following section:

Repeal and replacement of section 129

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

Offences by bodies of persons

(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 and that the director, like officer or partner did their part to prevent the commission of the offence having regard to all the circumstances of the case.

Insertion of
section 129A

105. The principal Act is amended by the insertion immediately after section *one hundred and twenty-nine* of the following section:

Utilisation of
collateral for
settlement of
certain
obligations

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.

Amendment
of section
130

106. Section *one hundred and thirty* of the principal Act is amended by the deletion of the words "any financial institution" and the substitution therefor of the words "any bank or financial institution".

Repeal and
replacement
of Schedules

107. The principal Act is amended by the repeal of the First and Second Schedules and the substitution therefor of the following Schedules:

FIRST SCHEDULE

(Section 37B)

Categories of financial institutions to which Parts 1, 2, and 4 of Chapter III of this Act apply:

First Category

All leasing companies (deposit-taking or non-deposit-taking) and other financial institutions including those issuing debentures and building or mutual society shares having characteristics identical or similar to those of six months term deposit;

Second Category

Non-deposit-taking financial institutions offering credit services, venture capital funding and other financial services as defined under section 2 (1); and

Third Category

Micro-finance institutions which mobilise voluntary savings and make loans.

SECOND SCHEDULE

(Section 70)

Classes of assets that qualify as liquid assets for the purposes of this Act:

(1) Notes and coins constituting the currency of Zambia and such foreign exchange in the form of currency notes as may from time to time be prescribed by the Bank of Zambia for the purposes of this paragraph.

(2) Reserves in excess of those required under the Bank of Zambia Act that are held by way of demand deposits in a current account in the Bank of Zambia.

(3) The net balance by which all credit balances held at branches in Zambia or at any branch in a country prescribed by Bank of Zambia for the purposes of this clause exceed all debit balances so held.

(4) Treasury bills and other securities issued by the Government and with an original term to maturity of not more than one hundred and eighty-two days.

(5) Bills of exchange, promissory notes and other negotiable instruments eligible for re-discount by the Bank of Zambia, within such limits as may be prescribed by the Bank of Zambia for the purposes of this paragraph.

THIRD SCHEDULE

(Section 70A)

Classes of assets and liabilities that constitute the computation of the prudential liquidity ratio for financial institutions for the purposes of this Act.

Numerator:

(a) Notes and coins constituting the currency of Zambia and such foreign exchange in the form of currency notes as may from time to time be prescribed by the Bank of Zambia for the purposes of this paragraph.

(b) Treasury bills and other Government securities issued by the Government and with an original term to maturity of not more than ninety days.

(c) Deposits with banks or other financial institutions;

(d) Confirmed lines of credit with banks and financial institutions;

Provided that such lines of credit comply with the large loans exposures and/or insider lending limits;

(e) Confirmed lines of credit from foreign banks and financial institutions acceptable to the Bank of Zambia;

(f) Other assets prescribed from time to time by the Bank of Zambia.

2. Denominator:

(a) Deposits or deposit-like instruments such as debentures or certificates of deposit with maturities of up to ninety days;

(b) Overdrafts with banks or financial institutions;

(c) Short-term bank loans payable within ninety days; and

(d) Other liabilities as may be prescribed by the Bank of Zambia from time to time.

FOURTH SCHEDULE

(Section 73)

The prohibition in section 73 (1) of this Act does not apply to the following transactions:

(1) A transaction—

(a) secured by a pledge of bills of exchange or promissory notes that have been issued for the price of goods purchased and sold in the ordinary course of trade subject to the Bank of Zambia's approval; and

(b) having an original term to maturity not greater than one hundred and eighty two days or such longer period as may be prescribed by the Bank of Zambia.

(2) A transaction having an original term to maturity not greater than two hundred and seventy days and which is—

(a) secured by readily marketable assets covered to their full insurable value by all perils insurance and having an ascertainable market or other value, as security, as found in good faith by an officer of the bank concerned, of at least fifty per centum more than the amount of the obligations thereby secured.

(b) secured in some other manner satisfactory to the Bank of Zambia; or

(c) a loan made to or guaranteed by the Government, a board or agency of the Government or a local authority that is enforceable by the bank within sixty days after demand following default.