

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 97 of 1996

The Banking and Financial Services Act
(Act No. 21 of 1994)

The Banking and Financial Services (Insider Lending)
Regulations, 1996

In EXERCISE of the powers contained in sections *seventy-three* and *one hundred and twenty-four* of the Banking and Financial Services Act, 1994, the following Regulations are hereby made:

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| 1. These Regulations may be cited as the Banking and Financial Services (Insider Lending) Regulations, 1996. | Title |
| 2. In these Regulations, unless the context otherwise requires- | Interpretation |

"control" in relation to a company, bank or financial institution means a situation where one or more persons, acting in concert, directly or indirectly-

- (a) own, control, or have the power to vote twenty-five per centum or more of any class of voting shares of another person;
- (b) control in any manner the election of a majority of the directors of a company, bank or financial institution; or
- (c) have the power to exercise controlling influence over the management policies of a company, bank or financial institution;

but does not include a person who has control or ability to exercise a controlling influence over the management policies of a company, bank or financial institution solely by virtue of his position as an officer or director of the company, bank or financial institution;

"director" means-

- (a) any person who occupies the position of a director in

- accordance with the Companies Act;
- (b) any director of a bank or financial institution, whether or not receiving compensation;
 - (c) any director of a holding company of which the bank or financial institution is a subsidiary;
 - (d) any director of any other subsidiary of a holding company of a bank or financial institution; or
 - (e) any person who participates, or who has the authority to participate, other than in that person's capacity as a director, in major policy making functions of a company, bank, or financial institution, whether or not-
 - (i) that person is an employee of the company, bank or financial institution; or
 - (ii) that person is serving without a salary or compensation;

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1994

"holding company" in relation to a bank or financial institution means any company which has control over a bank or financial institution;

"immediate family" means the spouse and children of a person;

"insider" means-

- (a) any officer, director or principal shareholder of a company, bank or financial institution;
- (b) any person who participates or has the authority to participate in major policy-making functions of a company, bank or financial institution whether employed or not by that institution;
- (c) a company where an insider of a bank or financial institution owns, directly or indirectly, alone or together with one or more other insiders, more than twenty per centum of the shares of the company or exercises control over the management of the company; or
- (d) a company where the bank or financial institution owns more than ten per centum of the outstanding shares of the company or, in the opinion of the Bank of Zambia, is likely to exercise influence over the management of the company;

"large loan" means an exposure of a bank or financial institution to any person in an amount equal to, or exceeding, ten per centum of the bank's or financial institution's regulatory capital;

"loans and extensions of credit" means-

- (a) any direct or indirect advance of funds to an insider-
 - (i) made on the basis of any obligation of that insider to repay the funds; or
 - (ii) repayable from specific property pledged by that insider or by any other person on behalf of that insider;
- (b) all credit risk 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;

"principal shareholder" means a person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls or has the power to vote more than ten per centum of any class of voting shares of a company, bank or financial institution;

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule to the Banking and Financial Services (Capital Adequacy) Regulations;

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1995

"related interest" means a company that is controlled by a person, the funds or services of which will benefit that person;

"subsidiary" means any company which is controlled by another company, bank or financial institution.

3. These Regulations shall apply to-

Application

- (a) all banks and financial institutions licenced under the Act, and all directors and principal shareholders of these banks and financial institutions;
- (b) the holding company of which a bank or financial institution

- is a subsidiary, and to any other subsidiary of that holding company;
- (c) any company included within the meaning of an insider as defined in these Regulations; and
- (d) a political or campaign committee that benefits or is controlled by an insider.
4. A bank or financial institution shall not make a loan or extend credit to any of its directors, principal shareholders or any related interest of that person or to any persons included within the meaning of an insider as defined in these Regulations, unless the loan, advance or extension of credit-
- Credit worthiness
- (a) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank or financial institution with other persons that are not covered by these Regulations and who are not employed by the bank or financial institution; and
- (b) does not involve more than the normal risk of repayment.
5. A bank or financial institution shall not extend credit to any insider or the insider's related interest, when-
- Lending limits
- (a) the aggregate of any new and outstanding loans, advances or extensions of credit to that person and his related interests exceeds ten per centum of the bank's or financial institution's regulatory capital; or
- (b) the aggregate of all loans, advances or extensions of credit, including any proposed new extension of credit, to all insiders and their related interests, exceeds one hundred per centum of the bank's or financial institution's regulatory capital.
6. (1) A bank or financial institution shall not make any loans, advances or extensions of credit to any of its directors, or principal shareholders or to any related interest of that person if the aggregate of any new extension of credit and all outstanding loans and extensions of credit to that person and his related interests exceeds five per centum of that bank's or financial institution's regulatory capital unless-
- Prior approval
- (a) all outstanding amounts of loans or extensions of credit have

- first been acknowledged, in writing, by the Board of Directors of the bank or financial institution;
- (b) the new loans or extensions of credit have been approved in advance by a majority of the members of the Board of Directors of the bank or financial institution; and
- (c) the interested party has abstained from participating directly or indirectly in the voting.
- (2) Any participation in the discussion, or any attempt to influence the voting by the Board of Directors of a bank or financial institution regarding a loan, advance or extension of credit to any director, principal shareholder, or to any related interest of that person shall constitute indirect participation in the voting by the Board of Directors and shall nullify the authorization by the Board of Directors of the loan, advance or extension of credit.
7. The total amount of credit extended by a bank or financial institution to a partnership shall be deemed to be extended to any member of the partnership. Partnership interests
8. Any director of a bank or financial institution who becomes indebted to any bank or financial institution other than the bank or financial institution of which he is a director, in an aggregate amount greater than five per centum of the regulatory capital of the bank or financial institution of which he is a director shall, within ten days from the date the indebtedness reached that level, make a written report to the Board of Directors of the bank or financial institution of which he is a director, which report shall state- Reports by directors
- (a) the lender's name;
- (b) the date of the loan;
- (c) the amount of the loan, advance or extension of credit;
- (d) the intended use of the proceeds;
- (e) the source of repayment; and
- (f) security pledged as collateral.
9. Any loan, advance or extension of credit by a bank or financial institution to an insider shall be approved in advance, and in writing, by a majority of the members of the Board of Directors of the bank or financial institution or by a special committee consisting of a majority of the members of the Board of Directors specially constituted for that purpose. Credit approval

10. (1) Every bank or financial institution shall-
- Submission of reports
- (a) submit to the Bank of Zambia within ten working days following its month-end, in the Form prescribed in the Schedule, a monthly report of its insider loans;
 - (b) if requested by the Bank of Zambia submit further detailed information on all or any outstanding exposure to an insider; and
 - (c) report to the Bank of Zambia any loan, advance or extension of credit which is outstanding to an insider-
 - (i) where that loan, advance or extension of credit is outstanding on the date of coming into force of the Regulations and that loan, advance or extension of credit has a balance owing that would have contravened these Regulations if the loan had been made on or after the date of the coming into force of these Regulations;
 - (ii) if the aggregate of the loans or extensions of credit to insiders exceeds the maximum amount authorised under regulation 5.
- (2) The report referred to in sub-regulation (1) shall be made not later than twenty-one days from the date of coming into force of these Regulations and shall set out details of the exposure and a period, not exceeding one year, within which the exposures shall be brought within the limits set by regulation 5.
11. Any renewal of a loan, advance or extension of credit on or after the date of coming into force of these Regulations shall be made only on such terms as shall bring the facility into compliance with the limits prescribed by regulation 5.
- Renewal of loan, advance or extension of credit
12. (1) A bank or financial institution which contravenes these Regulations shall be guilty of an offence and liable, for every day that the contravention continues, to a fine assessed by the Bank of Zambia not exceeding six hundred penalty units or, on conviction, to a fine not exceeding the fine prescribed in the Act, and all its insiders, including directors and shareholders, and any person concerned in the management of the bank or financial institution shall be personally liable to the same fine and upon conviction, to imprisonment for a term not exceeding two years, or to both.
- Penalty for non-compliance

(2) Any director or any person referred to in sub-regulation (1) shall, in addition to the penalties prescribed in that sub-regulation, be liable for removal from office and barred from holding office in the banking and financial sector.

SCHEDULE
(Regulation 10)

BANK OF ZAMBIA INSIDER LENDING EXPOSURE REGULATIONS

Reporting Bank:

Month ending:

Regulatory Capital (item IV of Regulatory Capital Calculation): K

Name of Borrower	Relationship to Institution	Loans, Advances and Extensions of Credit Authorised K'Million	As a % of Regulatory Capital	Amount Outstanding K'Million	As a % of Regulatory Capital	Rate of Interest %	Interest Capitalised Included in Amounts Outstanding K'Millions	Expiry Date of Facility	Security	Status Current\ Non-Current
Total										

LUSAKA
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R. D. S. PENZA
Minister of Finance