
**THE BANKING AND FINANCIAL SERVICES
ACT, 2017**

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY PROVISIONS

1. Short title and commencement
2. Interpretation
3. Application of Act
4. Relationship with other Acts

PART II

LICENSING OF FINANCIAL SERVICE PROVIDERS

5. Types of licences
6. Providing banking business, financial business or financial services without licence
7. Application for banking, financial business or financial institution licence
8. Grant of licence
9. Display of licence
10. Rejection of application for licence
11. Validity of licence
12. Authorised activities of banks
13. Transfer, pledge, assignment, encumbrance of licence
14. Variation of licence
15. Amendment of licence
16. Surrender of licence
17. Suspension or cancellation of licence
18. Loss or damage of licence
19. Opening branches, subsidiaries and other establishments
20. Representative office
21. Register of financial service providers
22. Publication of financial service providers
23. Appointment of Registrar and Deputy Registrars
24. Financial inclusion

PART III

OWNERSHIP AND CONTROL OF FINANCIAL SERVICE PROVIDERS

25. Limit on voting control
26. Divestment of control
27. Ownership
28. Prohibition of ownership of shares by trusts
29. Corporate restructuring transactions
30. Requirements for corporate restructuring transaction
31. Effect of corporate restructuring transaction

PART IV

CORPORATE GOVERNANCE

32. Responsibilities of Directors
33. Board meetings
34. Qualifications of directors, chief executive officers, chief financial officers
35. Non-executive directors to be in majority
36. Reporting obligations of Board and directors
37. Conduct of directors, chief executive officers, chief financial officers and managers
38. Disclosure of interest
39. False statement and obstruction of examinations
40. Suspension or dismissal of directors and senior officers by Bank and removal of shareholders
41. Fit and proper requirements
42. Corporate governance

PART V

BUSINESS OPERATIONS

43. Principal administrative office
44. Use and alteration of name
45. Business hours
46. Bank holiday
47. Records to be registered and maintained
48. Credit documentation
49. Manner of keeping records
50. Retention of records
51. Maintenance of records

PART VI**PRUDENTIAL REGULATION AND SUPERVISION**

52. Minimum capital requirements
53. Capital conservation buffer
54. Countercyclical capital buffer
55. Restriction on payment of dividends
56. Leverage ratio
57. Maintenance of liquidity
58. Constraints on contracts with associated person
59. Examination of financial service provider
60. Submission of returns
61. Consolidated supervision
62. Affiliates and crossborder supervision
63. Unsafe and unsound practices
64. Supervisory actions
65. Financial service provider suffering large losses
66. Under-capitalised financial service provider
67. Significantly under-capitalised financial service provider
68. Corrective actions against financial businesses
69. Modification, cancellation and upholding of regulatory statement
70. Notice of taking possession
71. Powers and duties of Bank on taking possession
72. Statement of affairs of assets and liabilities on taking possession
73. Actions where financial service provider is solvent
74. Actions where financial service provider is insolvent
75. Application to Court for termination of possession
76. Effects of possession
77. Restructuring and reorganisation
78. Refusal of restructuring or reorganisation
79. Restriction on execution of judgment
80. Recovery of expenses

PART VII

RESTRICTIONS ON TRANSACTIONS OF FINANCIAL SERVICES PROVIDERS

81. Secured borrowing
82. Limitations on granting credit facilities
83. Restriction on trade
84. Restriction on equity investments
85. Restriction on lease or other interest in real property
86. Limits, restrictions and prohibition on financial business and alternative financial services
87. Exemption of alternative financial services

PART VIII

FINANCIAL STATEMENTS AND ACCOUNTABILITY

88. Annual financial statement
89. Presentation of annual financial statement to shareholders
90. Reserve for bad and doubtful debts
91. Approval of annual financial statements
92. Publication of annual financial statements
93. Appointment of external auditor
94. Responsibilities of external auditor
95. Information by external auditor to Bank
96. Disqualification of external auditor
97. Access to information and auditor's report
98. Termination of appointment of external auditor
99. Statement on resignation of external auditor
100. Termination of appointment of external auditor by financial service provider

PART IX

ANTI-COMPETITIVE ACTIVITIES AND CONSUMER PROTECTION

101. Collusive conduct
102. Collateral contracts
103. Coercive behaviour
104. Misconduct during debt collection
105. Determination of benchmark base rate
106. Disclosure of interest rates and charges
107. Increase in service charges

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108. Responsible lending
 109. Prohibition against penal interest
 110. Recoverable amounts on non-performing loan
 111. Data protection and disclosure of information
 112. Prohibition of anti-competitive practice
 113. Complaints procedure for customers
 114. Ombudsperson for financial service providers
 115. Control of advertisements
 116. Prohibition of unfair business practices
 117. Prohibition of charges on prepayment
 118. Unfair contract terms
 119. Recognition of other laws

PART X

INSOLVENCY, DISSOLUTION AND LIQUIDATION OF FINANCIAL SERVICE PROVIDERS

120. Acceptance of deposits by insolvent financial service providers
121. Resolution to voluntarily wind-up or dissolve financial service provider
122. Duties of financial service provider on voluntary winding-up or dissolution
123. Notice of voluntary winding-up or dissolution
124. Rights of depositors and creditors
125. Distribution of assets on voluntary winding-up or dissolution
126. Powers of Bank where assets insufficient or completion unduly delayed
127. Powers of Bank in compulsory winding-up or dissolution
128. Powers of liquidator
129. Immunity of Bank against depositor or creditor claims
130. Limitation of filing of claims
131. Objection to liquidation schedule
132. Priority of creditors
133. Undistributed funds
134. Final distribution in compulsory winding-up or dissolution
135. Restriction of action by third parties
136. Power of Bank in relation to insolvent financial business

PART XI

COMPLAINTS AND APPEALS PROCESS

137. Reasons for decisions and right to be heard
138. Right of appeal
139. Appointment and convening of tribunal
140. Powers of tribunal
141. Decisions of tribunal

PART XII

GENERAL PROVISIONS

142. Investigations
143. Access to documents
144. Offences committed partly in and partly out of Zambia
145. Continuing acts or offences
146. Actions by Bank on conviction for offence
147. Use of word “bank”
148. Restriction on use of name to indicate banking or financial business or financial service provider
149. Validity of certain acts by financial service providers
150. Power to summon officers, directors and shareholders
151. Submission of information and documents to Bank
152. Alternative financial services
153. Publication of information
154. Extension of time limits
155. False document
156. Immunity of officer, agent or employee of Bank
157. Money circulation schemes
158. Utilisation of collateral for settlement of certain obligations
159. Special reserve or liability insurance
160. Unclaimed funds and personal property
161. Delegated supervision
162. Exemptions
163. General penalty
164. Offence by body corporate or unincorporated body
165. Administrative penalties
166. Industry reports
167. Regulatory statements
168. Rules
169. Regulations
170. Repeal of Cap. 387
171. Savings and transitional provisions

GOVERNMENT OF ZAMBIA

ACT

No. 7 of 2017

Date of Assent 12th April, 2017:

An Act to provide for a licensing system for the conduct of banking or financial business and provision of financial services; to provide for the incorporation of standards, principles and concepts of corporate governance in institutional systems and structures of banks and financial institutions; to provide for sound business practices and consumer protection mechanisms; to provide for the regulation and supervision of banking and financial services; to repeal and replace the Banking and Financial Services Act, 1994; and to provide for matters connected with, or incidental to, the foregoing.

[13th April, 2017

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Banking and Financial Services Act, 2017 and shall come into operation on the date appointed by the Minister by statutory instrument.

Short Title and Commencement

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

Interpretation

“ advance ” means—

(a) any direct or indirect payment of monies, a loan or an extension of credit to a person or common enterprise—

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

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

(b) the credit risks arising from actual claims, potential claims and credit substitutes; or

(c) a commitment to extend credit or acquire a debt security or other right to payment of a sum of money;

“ alternative financial service ” means a financial service that applies specific regulatory rules based on religious principles;

“ associated person ” means—

(a) a company in which a person is a manager or director;

(b) each person that beneficially owns shares in the same company;

(c) a third person that owns or exercises, or is capable of exercising, directly or indirectly, significant control over a company or person referred to in paragraph (a) or (b);

(d) persons that are in a partnership;

(e) persons that are both members of a voting trust or other arrangement relating to shares, except that this paragraph does not apply to a financial business where—

(i) two or more persons are affiliated if the persons are companies that are controlled by the same person; and

(ii) a company is the subsidiary of another company and if more than fifty percent of the issued voting shares of the company, other than qualifying directors' shares, are owned directly or indirectly by the other company; or

(f) the spouse, parent, child, brother or sister of a person, or of the person's parent, child, brother or sister; and

“ associate and association ” shall be construed accordingly;

“ articles of association ” has the meaning assigned to the term in the Companies Act, 2017;

“ bank ” means a company authorised to conduct banking business in accordance with this Act;

“ Bank ” means the Bank of Zambia established in accordance with the Constitution;

“ banking licence ” means a licence specified in section 5 and granted in accordance with section 8;

“ banking business ” means—

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

(b) providing financial services; and

(c) any custom, practice or activity, prescribed in rules issued by the Bank, as banking business;

“beneficial owner” means an individual who—

(a) exercises control over a financial service provider, legal person or arrangement; or

(b) owns or controls a customer or the person on whose behalf a transaction is conducted and, where two or more persons are associated through the beneficial ownership of shares in the same company, each person shall be a beneficial owner of the aggregate number of shares of the company;

“board” means the governing body of a financial service provider;

“body corporate” has the meaning assigned to the word in the Companies Act, 2017;

“borrower” includes a person who becomes indebted to a financial service provider due to a guarantee made for the repayment of an amount owed by another person;

“branch” means the permanent premises, other than the head office, at which a financial service provider conducts business in or outside Zambia;

“branchless banking” means the provision of banking services or financial services without relying on physical branches;

“bridge bank” means an institution created by the Bank to temporarily operate a failed bank or financial institution until a buyer is found for its operations;

“capital adequacy” means the legal capital prescribed by the Bank in terms of money or assets invested or available for investment in the business that is sufficient for the sustainability of the financial service provider;

“capital conservation buffer” means the mandatory capital that financial institutions are required to hold, in addition to minimum capital requirements, as prescribed, to be drawn down when losses are incurred during periods of stress;

Act No. of
2017

Act No. of
2017

- “chief executive officer” means the person engaged by a financial service provider who is responsible, under the immediate authority of the board, for the conduct of banking business or financial services for the financial service provider;
- “ chief financial officer ” means a person responsible for maintaining the accounts and accounting records of a financial service provider;
- “ chief risk officer ” means a senior employee of a financial service provider with distinct responsibility for risk management functions and the financial service provider’s enterprise-wide risk management framework;
- “ company ” has the meaning assigned to the word in the Companies Act, 2017;
- “ common enterprise ” means an undertaking of two or more persons with an equal right to direct and benefit from the undertaking and where the negligence of any of the persons may be imputed to the others;
- “ common equity tier one ” means the sum of the following:
- (a) paid-up common shares issued by a financial service provider;
 - (b) share premium, resulting from the issue of common shares;
 - (c) retained earnings;
 - (d) accumulated comprehensive income and other disclosed reserves;
 - (e) common shares issued by consolidated subsidiaries of the financial service provider and held by a third party that meets the criteria prescribed by the Bank, for inclusion in common equity tier one capital; and
 - (f) regulatory adjustments, applied in the calculation of the common equity tier one, as prescribed by the Bank;
- “ compliance officer ” means a senior employee of the financial service provider with overall responsibility for coordinating the identification and management of the financial service provider’s compliance risk and supervising the activities of the other employees responsible for the compliance functions of the financial service provider;
- “confidential information” means information that is not public, regarding—

- (a) the nature, amount or purpose of any payment made by or to a person;
- (b) the recipient of a payment made by a person;
- (c) the assets, liabilities, financial resources or financial condition of a person;
- (d) the business or family relations of a customer; or
- (e) any information of a personal nature that the customer disclosed, in confidence to the financial service provider;
- “ consumer ” has the meaning assigned to the word in the Competition and Consumer Protection Act, 2010;
- “ control ” means the control of a financial service provider by a person that –
- (a) beneficially owns more than one half of the issued share capital of the company;
- (b) is entitled to cast a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the casting of a majority of those votes, either directly or through a controlled entity of that person;
- (c) is able to appoint or to veto the appointment of a majority of the directors of the company;
- (d) is a holding company and the financial service provider is a subsidiary of that company as provided for in the Companies Act, 2017; or
- (e) has the ability to significantly influence the management, policy and affairs of the financial service provider in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (d);
- “ corporate ” means a legal entity, including a company or body corporate, that is separate and distinct from its owners and which is recognised as such by law and acts as a single entity;
- “ corporate restructuring transaction ” means a merger, takeover, amalgamation, reconstruction or acquisition where an entity, directly or indirectly, acquires or establishes control over the whole or part of the business of a financial service provider or where two or more financial service providers and another entity agree to adopt arrangements for common ownership or control over the whole or part of the business of a financial service provider, and includes such arrangements by an entity outside Zambia which affect a financial service provider in Zambia;

Act No. 24
of 2010

Act No. of
2017

“ counter cyclical capital buffer ” means an amount of capital prescribed by the Bank to be maintained by banks and financial institutions where there is excessive buildup of credit that is likely to lead to a system wide risk;

“ Court ” means the High Court of Zambia;

“ credit facility ” includes an advance, loan, financial guarantee or any other liability incurred by a person;

“ customer identification data ” means—

(a) in the case of a natural person, the person’s

- (i) name, including any forename or maiden name;
- (ii) permanent address;
- (iii) telephone number, fax number or email address;
- (iv) date and place of birth;
- (v) nationality;
- (vi) occupation or public office held and the name of the employer;
- (vii) official personal identification number or other unique identifier contained in a valid official document that bears a photograph of the person;
- (viii) bank or other type of account and the nature of the relationship the person has with a financial service provider; and
- (ix) signature; and

(b) in the case of a corporate, that corporate’s—

- (i) registered name;
- (ii) principal place of business;
- (iii) mailing address;
- (iv) contact telephone, fax number or electronic mail address;
- (v) official identification number, such as the tax identification number or official registration number;
- (vi) documents such as the original or certified copy of the certificate of incorporation, registration, articles of association or other internal governing rules confirming the legal existence of the account holder; and

- (vii) board resolution to open an account and the identification documents of the persons authorised to operate the account.;

“deposit” means—

- (a) an amount of money received by a bank or financial institution in the ordinary course of business that—
 - (i) the bank or financial institution may transform into assets at its own risk;
 - (ii) is repayable on demand or at a specified or unspecified date, or on terms agreed to, by, or on behalf of, the person making the payments;
- (b) an outstanding draft, a cashier’s cheque, money order or other officer’s cheque issued by the bank or financial institution and drawn on a customer’s funds for any purpose, in the ordinary course of business; or
- (c) such other obligations of a bank or financial institution as the Bank may prescribe by rules issued in accordance with this Act;

excluding electronic money and 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;

“Deputy Registrar” means a person holding office or acting as a Deputy Registrar of Financial Service Providers appointed in accordance with this Act;

“director” means a natural person who holds office as a member of a board;

“discretionary payments” means any payments or distributions, other than dividends, that are within the discretion of the financial service provider to make and, if not paid by the financial service provider, are not an event of default, including staff bonuses;

“equity interest in a person” means

- (a) in the case of a company, any share issued by a company, the terms of which entitle the registered holder or bearer to a share in the profits of the company; or
- (b) in the case of a partnership, association or other body of persons acting in concert, any right to share in the profits of that partnership, association or other body of persons acting in concert;

- “ 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;
- “ financing ” means the act or process of raising or providing funds;
- “ fit and proper requirements ” means the criteria set by the Bank in accordance with section 41 and as the Bank may prescribe;
- “ financial business ” means a body corporate that conducts a financial service business, excluding acceptance of deposits;
- “ financial business licence ” means a licence specified in section 5(b) and granted in accordance with section 8;
- “ financial derivative ” means a contract between two or more parties whose value is based on an agreed upon underlying financial asset, index or security;
- “ financial institution ” means a company, other than a bank, providing a financial service;
- “ financial institution’s licence ” means a licence specified in section 5(c) and granted in accordance with section 8;
- “ financial sector ” means the subsector of the economy concerned with or related to financial, banking and monetary matters and provision of banking and financial services to commercial and retail customers including banks, investment funds and capital markets;
- “ financial service ” means any one or more of the following services:
- (a) commercial or consumer financing services;
 - (b) brokering;
 - (c) factoring, with or without recourse;
 - (d) finance leasing;
 - (e) financing of commercial transactions, including forfeiting;
 - (f) issue and administration of credit cards, debit cards, traveller’s cheques or banker’s drafts;
 - (g) issue of guarantees, performance bonds or letters of credit, excluding those issued by insurance companies;
 - (h) lending on the security of, or dealing in, mortgages or any interest in real property;

- (i) payment of cheques or other demand orders drawn or issued by customers and payable from deposits held by the payer;
 - (j) purchase and sale of foreign exchange;
 - (k) issue of debentures and money market instruments;
 - (l) the acceptance of deposits;
 - (m) issue of building society and mutual society shares, with characteristics similar or identical to deposits;
 - (n) venture capital funding;
 - (o) micro-financing;
 - (p) development financing; and
 - (q) any other service that the Bank may designate, excluding the underwriting, marketing or administration of contracts of insurance or reinsurance;
- “financial service provider” means a bank, financial institution or financial business;
- “foreign financial service provider” means a financial service provider that is not incorporated in Zambia;
- “foreign company” has the meaning assigned to the word in the Companies Act, 2017;
- “insider” means—
- (a) an officer, director or principal shareholder of a bank or financial institution;
 - (b) a person who participates or has the authority to participate in major policy making functions of a bank or financial institution, whether or not employed by the bank or financial institution;
 - (c) a bank or financial institution in which a person referred to in paragraph (a) or (b) owns, directly or indirectly, alone or with one or more other persons specified in the paragraphs, more than twenty percent of the shares; or
 - (d) a company in which a bank or a financial institution owns more than ten percent of the outstanding shares;
- “insolvency” means a situation where a financial service provider —
- (a) is unable to pay debts as they fall due;
 - (b) has assets that are insufficient to meet liabilities; or
 - (c) has regulatory capital which is below the prescribed minimum;

- “ licence ” means a banking licence, financial institution licence, or financial business licence as the case may be;
- “ licensee ” means a financial service provider holding a licence;
- “manager” means an officer of a financial service provider who is in a position to control, direct or influence decisionmaking in a matter relating to banking business or financial services;
- Act No. of 2017 “ meeting ” has the meaning assigned to the word in the Companies Act, 2017;
- “merchant banking” includes the underwriting of securities for corporations, advising on and arranging finance for mergers and takeover bids, the financing of foreign trade by accepting bills of exchange, underwriting new issues and investment management;
- “ money circulation scheme ” means a plan, arrangement, agreement or understanding, between two or more persons that involves the pooling and distribution of funds by recruitment of subscribers, and which, for its continuous existence and realisation of its benefits, substantially depends on the incremental recruitment of subscribers for an unspecified period;
- “ money market instrument ” means a negotiable instrument with an original term to maturity of three hundred and sixtyfive days or less;
- Act No. of 2017 “ name ” means the name by which a financial service provider is incorporated as provided by the Companies Act, 2017;
- “ nominee shareholder ” means a person whose name appears on a company’s register as the registered shareholder but who holds the shares on behalf of another person;
- “ nonperforming loan ” means a loan in respect of which payment of principal or interest is in arrears for more than ninety days;
- “ physical presence ” means the physical location of a financial service provider within Zambia, or the control of the financial service provider;
- Cap. 30 “ practitioner ” has the meaning assigned to the word in the Legal Practitioners Act;
- “ primary capital ” means the sum of the—
(a) common equity tier one; and

- (b) additional tier one capital, as prescribed by the Bank by rules issued in accordance with this Act;
- “principal administrative office” means the office in which the overall administration of the affairs of a financial service provider, other than its banking business or financial service business, is carried on;
- “Register” means the Register of Financial Service Providers established and maintained in accordance with section 21;
- “Registrar” means the person holding office or acting as the Registrar of Financial Service Providers appointed in accordance with this Act;
- “Registrar of Companies” means the person appointed as Registrar in accordance with the Patents and Companies Registration Agency Act, 2010; Act No. 15 of 2010
- “Registrar of Lands and Deeds” means a person appointed as a Registrar in accordance with the Lands and Deeds Registry Act; Cap.185
- “regulatory capital” means the sum of the—
- (a) primary capital; and
- (b) secondary capital, as prescribed by the Bank, in rules issued in accordance with this Act;
- “related party transaction” means a transaction in which two or more persons, by virtue of their relationship, benefit severally or jointly from funds or services arising from a transaction involving any one of them and a financial service provider;
- “regulatory statement” means directives, guidelines, orders, circulars and bulletins issued by the Bank for the efficacious implementation of this Act, regulations and rules issued in accordance with this Act;
- “repealed Act” means the Banking and Financial Services Act, 1994; Cap. 387
- “representative office” means an office in Zambia belonging to or representing a foreign financial service provider;
- “senior officer” means a chief executive officer, chief financial officer, manager or other management personnel of a financial service provider;
- “shell bank” means a bank which does not have a physical presence in the country in which it is incorporated and licenced and which is unaffiliated with a regulated group to any financial service that is subject to consolidated statutory regulation supervision;

Act No. of
2017

“significant shareholding” means a direct or indirect shareholding or beneficial interest of ten percent or more of the share capital of a financial service provider, and the words “significant shareholder” shall be construed accordingly;

“subsidiary” has the meaning assigned to the word in the Companies Act, 2017;

“tribunal” means an *ad hoc* tribunal to determine appeals constituted in accordance with section 139;

“unsafe and unsound practice” means—

(a) conducting the affairs of a financial service provider in a manner that is;

(i) detrimental to the stability of the financial sector or the interests of depositors and creditors;

(ii) prejudicial to the interest of the financial service provider; or

(iii) in contravention of this Act or any other relevant written law;

(b) accumulating a high volume of nonperforming loans;

(c) making secured loans based on inadequate collateral;

(d) maintaining an inadequate level of reserves for loan losses;

(e) maintaining an inadequate level of common equity capital;

(f) advancing loans without regard to the borrower’s ability to pay;

(g) maintaining inadequate liquidity; or

(h) any other practice that the Bank may designate as unsafe and unsound practice;

“venture capital funding” means risk capital given by investors to start up small or medium sized businesses with perceived high growth potential, and includes the mobilisation of funds from various sources in risky projects that would not normally attract conventional finance;

“voting shares” means common shares in the capital of a financial service provider and any other shares of any designation or description that carry the right to vote on a resolution at a meeting; and

“Zambia Institute of Chartered Accountants” means the Institute established in accordance with the Accountants Act, 2008.

Act No. 13
of 2008

(2) In this Act, unless the context otherwise provides, words and expressions used and which are not defined, but are defined in the Companies Act, 2017, the Corporate Insolvency Act, 2017, the Securities Act, 2016, or any other relevant Act, shall have the meaning assigned to them in those Acts.

Act No. of 2017

Act No. of 2017

Act No.41 of 2016

3. (1) This Act applies to all financial service providers.

Application of Act

(2) This Act does not apply to—

(a) the Bank, except in so far as it expressly imposes a duty on the Bank; and

(b) a person registered in accordance with the Money Lenders Act.

Cap. 398

4. (1) Where any written law relating to, or impacting on, banking business or financial services is inconsistent with this Act, the provisions of this Act shall, to the extent of the inconsistency, prevail.

Relationship with other Acts

(2) Despite subsection (1), where there is an inconsistency between this Act and the Securities Act, 2016 in relation to the regulation of securities, the Securities Act, 2016 shall prevail to the extent of the inconsistency.

Act No. 41 of 2016
Act No. 41 of 2016

PART II

LICENSING OF FINANCIAL SERVICE PROVIDERS

5. The following licences shall be issued by the Bank in accordance with this Act:

Types of Licences

(a) a banking licence, which shall authorise a licensee to conduct a banking business;

(b) a financial business licence, which shall authorise a licensee to conduct a financial business; and

(c) a financial institution licence, which shall authorise a licensee to provide a financial service.

6. (1) A company shall not conduct a banking business without a banking licence.

Providing banking business, financial business or financial services without licence

(2) A body corporate shall not conduct a financial business without a financial business licence, or provide a financial service without a financial institution licence.

(3) A person that contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both.

Application
for banking,
financial
business or
financial
institution
licence

7. (1) An application for a banking licence, financial institution licence or financial business licence shall be made in the prescribed manner and form.

(2) An application for a licence, specified in subsection (1), shall be accompanied by the prescribed application fee and shall have attached to it or contain the following:

- (a) articles of association or other constitutive documents;
- (b) physical and postal addresses of the principal administrative office;
- (c) permanent residential addresses of the applicant's directors, chief executive officer, managers;
- (d) name and permanent residential address of every subscriber for any class or series of shares issued by the applicant;
- (e) addresses of each branch proposed to be opened by the applicant and, in the case of a mobile office, the area proposed to be served;
- (f) full particulars of the business it proposes to conduct;
- (g) amount of the applicant's capital; and
- (h) names of the applicant's associates and affiliates.

(3) An applicant may withdraw an application for a licence, by notice in writing to the Bank, in the prescribed manner and form, at any time before the licence is granted or the application is rejected.

(4) The Bank shall, in considering an application for a licence, made in accordance with subsection (1), have regard to the

- (a) capital adequacy of the applicant;
- (b) financial condition, resources and history of the applicant;
- (c) applicant's associates and affiliates;
- (d) transparency of the legal, operational, managerial, governance and ownership structures;
- (e) character and experience of the directors, significant shareholders, beneficial owners, founders or persons proposing to be concerned in the management of the banking business, financial business or financial service;
- (f) convenience and needs of the community intended to be served by the banking or financial business or provision of a financial service; and
- (g) prospects for the profitable operation of the banking or financial service business.

8. (1) Where an applicant meets the requirements of this Act, the Bank shall, within one hundred and twenty days of receipt of an application for a licence made in accordance with section 7, grant a licence. Grant of licence

(2) A banking licence, financial business licence or financial institution licence for a subsidiary of a foreign company may be granted if—

(a) the foreign company is a financial service provider and is authorised to engage in banking business in the country where its principal place of business is located; and

(b) the Bank determines that the foreign financial service provider is adequately supervised by competent authorities in the country of incorporation.

(3) A licence granted in accordance with subsection (1) or (2), may—

(a) contain terms and conditions that the Bank may determine in relation to the business as specified in this Act;

(b) provide for the payment of annual or other periodic fees that may be prescribed; and

(c) require the financial service provider to allow the Bank access to the offices, records, documents and information of the financial service provider whether inside or outside Zambia.

(4) A financial service provider shall not provide or offer to provide banking or financial services in breach of the terms and conditions of the licence.

9. A financial service provider shall display the licence issued to the financial service provider in a prominent place at its business premises. Display of licence

10. (1) The Bank shall reject an application for a licence where— Rejection of application for licence

(a) an applicant does not meet the requirements of this Act;

(b) a licence previously held by an applicant has been cancelled by the Bank;

(c) an applicant submits false information in relation to the application; or

(d) the name that a financial service provider is proposing to be registered is—

(i) identical with that of another financial service provider; or

(ii) resembles the name of another financial service provider and is likely to deceive the public.

(2) Where the Bank rejects an application for a licence, the Bank shall inform the applicant of its decision, in writing, within seven days of making the decision and shall give reasons for the rejection.

Validity of licence

11. A licence shall remain valid unless surrendered by the financial service provider or cancelled by the Bank.

Authorised activities of banks

12. (1) A banking licence may, subject to the conditions of the licence, authorise a bank to engage in the following activities in addition to banking business:

- (a) grant loans and extend credit, whether unsecured or on the security of property of any kind;
- (b) deal as a principal or an agent in the currency of Zambia and, subject to the rules and regulatory statements, made in accordance with this Act, in the currency of any other country, foreign exchange transactions, gold, silver, platinum, bullion or coins;
- (c) provide money transfer or transmission services from a customer's account;
- (d) issue and administer payment, credit or debit cards and, in cooperation with other prescribed service providers, the operation of payment, credit card and debit card systems;
- (e) act as a trustee, executor or administrator of an estate or in any fiduciary capacity for any person;
- (f) act as a financial agent for any person;
- (g) provide safekeeping and custodial services for financial assets and securities;
- (h) provide merchant banking services, including the arrangement and underwriting of shares, trade financing, corporate financing and provision of financial advice;
- (i) deal as a principal or agent for its customers in financial derivatives; and
- (j) provide branchless banking services.

(2) The Bank may prescribe other authorised activities that may be undertaken by financial service providers which are not inconsistent with this Act.

Transfer, pledge, assignment, encumbrance of licence

13. (1) Subject to subsection (2), a licence may, with the prior written approval of the Bank, be transferred, pledged, assigned or encumbered in the event of a corporate restructuring transaction.

(2) An application for a transfer, pledge, assignment or encumbrance of a licence, as specified in subsection (1), shall be made to the Bank in the prescribed manner and form.

(3) The Bank may, within thirty days of receipt of an application made in accordance with subsection (2)—

(a) approve the application on such terms and conditions as the Bank may determine; or

(b) reject the application and give reasons for the rejection.

14. (1) Subject to subsection (2), the Bank may, on the application of a licensee or by its own motion, vary the terms and conditions of a licence.

Variation of licence

(2) The Bank shall, before varying the terms and conditions of a licence, in accordance with subsection (1), give notice, in writing, to the licensee of the Bank's intention to make variations in the manner specified in the notice.

(3) The licensee may, within thirty days of receipt of the written notice, specified in subsection (2), make written representation to the Bank on the proposed variation.

(4) The Bank shall, in deciding whether to vary a licence, have regard to section 7.

(5) The Bank shall, on varying a licence in accordance with this section, notify the licensee of the variation, in writing, and the notice shall state the effective date of the variation.

(6) Compensation shall not be payable by the Bank to a financial service provider for a variation to a licence made in accordance with this section.

15. (1) The Bank may, on application by a licensee, and on payment of a prescribed fee, amend a licence where—

Amendment of licence

(a) a person has succeeded title to the interest in the licence, by substituting the name of the successor in title; or

(b) the name of a financial service provider has changed, by substituting the name so changed.

(2) The Bank shall, before amending a licence as specified in subsection (1), notify the public by publishing a notice in the *Gazette* and in a daily newspaper of general circulation or other media in Zambia.

16. (1) A licensee that intends to surrender a licence shall notify the Bank, in writing, in the prescribed manner and form of its intention to do so.

Surrender of licence

(2) A licensee shall agree with the Bank on the terms and conditions with respect to a surrender of a licence, with particular reference to any benefit obtained or liability incurred due to the licence or the requirements of any other relevant law.

Act No. of
2017
Act No. of
2017

(3) Where a licence is surrendered, in accordance with subsection (1), and the Bank is satisfied that all liabilities are or will be satisfied and the requirements of the Companies Act, 2017, or the Corporate Insolvency Act, 2017, where applicable, have or shall be complied with, the Bank shall cancel the licence.

(4) Where the Bank cancels a license surrendered in accordance with this section, section 17 (7), (8) and (9), shall apply, with the necessary modifications.

Suspension
or
cancellation
of licence

17. (1) Subject to this Act, the Bank may suspend or cancel a licence if the financial service provider—

- (a) obtained the licence by fraud or submitted false information or statements;
- (b) contravenes this Act or any other relevant written law;
- (c) breaches any term or condition of the licence;
- (d) effects a corporate restructuring transaction without the prior written approval of the Bank;
- (e) fails to comply with a decision, rule or regulatory statement made by the Bank in accordance with this Act;
- (f) fails to commence the business to which the licence relates within a period of twelve months from the date of grant of the licence;
- (g) enters into receivership or liquidation or takes any action for voluntary winding-up or dissolution;
- (h) enters into any scheme or arrangement, other than a corporate restructuring transaction;
- (i) ceases to conduct the business authorised by the licence;
- (j) is the subject of an order made by the Court or tribunal for its compulsory winding-up or dissolution;
- (k) ceases to fulfil the requirements specified in or by this Act; or
- (l) engages in unsafe and unsound practices.

(2) The Bank shall, before suspending or cancelling a licence, in accordance with subsection (1), give written notice, in the prescribed manner and form, to the financial service provider, of its intention to suspend or cancel the licence and shall—

-
- (a) give reasons for the intended suspension or cancellation; and
- (b) require the licensee to show cause, within a period of thirty days, why the licence should not be suspended or cancelled.
- (3) Where a financial service provider takes remedial measures to the satisfaction of the Bank, within the period referred to in subsection (2), the Bank shall not suspend or cancel the licence.
- (4) The Bank shall, in making its final determination on the suspension or cancellation of a licence, consider the submissions made by the financial service provider, in accordance with subsection (2), and shall consider any remedial measures taken in accordance with subsection (3).
- (5) The Bank may suspend or cancel a licence if the financial service provider, after being notified in accordance with subsection (2), fails to show cause why the licence should not be suspended or cancelled or does not take any remedial measures to the satisfaction of the Bank within the specified period.
- (6) Where a licence has been suspended, in accordance with this section, a financial service provider shall, for the period of the suspension of the licence, cease to be entitled to the rights and benefits conferred in accordance with the licence and this Act.
- (7) Where a licence is cancelled, a financial service provider shall—
- (a) cease to be entitled to the rights and benefits, conferred in accordance with the licence and this Act, with effect from the date of the cancellation;
- (b) surrender to the Bank, each copy of the licence in the possession of the financial service provider; and
- (c) take down any licence on display in every place of business of the financial service provider.
- (8) The Bank shall, where it suspends or cancels a licence, in accordance with this section—
- (a) publish a notice of the suspension or cancellation, in the prescribed manner and form, in the *Gazette* and in a daily newspaper or other media of general circulation in Zambia; and
- (b) take any additional steps necessary to inform the public of the suspension or cancellation of the licence.

(9) A financial service provider whose licence is cancelled shall not, from the date it receives a notice of the cancellation from the Bank—

(a) enter into a new contract relating to the banking business, financial business or provision of financial services; or

(b) renew or vary a contract relating to the banking business, financial business or provision of financial services.

Loss or
damage of
licence

18. (1) A financial service provider that has lost a licence shall inform the Bank, within seven days of the loss, and apply to the Bank for a duplicate licence, in the prescribed manner and form, and pay the prescribed fee.

(2) A financial service provider whose licence is defaced or damaged shall apply to the Bank for a duplicate licence, in the prescribed manner and form, and pay the prescribed fee.

(3) The Bank shall, where an application made in accordance with subsection (1) or (2) meets the requirements of this Act, issue a duplicate licence on payment by the applicant of the prescribed fee.

Opening
branches,
subsidiaries
and other
establishments

19. (1) A financial service provider shall not open a branch, subsidiary or other establishment without the prior written approval of the Bank.

(2) A financial service provider that intends to open a branch, subsidiary or other establishment shall apply to the Bank for approval in the prescribed manner and form and pay the prescribed fee.

(3) A bank or financial institution shall notify the Bank of its intention to close a branch, within sixty days before the closure.

(4) A financial business shall notify the Bank of its intention to close a branch, within thirty days before the closure.

Representative
office

20. The Bank shall prescribe the licensing and regulatory requirements for a representative office.

Register of
financial
service
providers

21. (1) The Bank shall establish and maintain a Register of financial service providers in which shall be entered the—

(a) names, addresses and other particulars of the licensees;
and

(b) names and particulars of persons whose licences are rejected or cancelled.

(2) The Register shall be open for public inspection at normal banking hours as prescribed.

- 22.** The Registrar shall publish, annually, in the *Gazette*—
- (a) the licences issued to, and the names of, the financial service providers; and
 - (b) a list of licences suspended or cancelled in accordance with this Act.
- 23.** (1) The Bank shall, in writing, and subject to such terms and conditions as it may determine, appoint a suitably qualified officer of the Bank as Registrar.
- (2) The Bank may designate officers of the Bank as Deputy Registrars who shall be subject to the control and direction of the Registrar and shall exercise the powers and perform the functions directed or delegated by the Registrar.
- (3) The Registrar and Deputy Registrars, specified in subsections (1) and (2), shall each hold office for a period of five years and shall be eligible for reappointment for a further period of five years.
- 24.** The Bank may authorise a financial service provider to provide banking and financial services without relying on physical branches in order to promote accessibility by unserved areas to banking and financial services.

Publication of financial service providers

Appointment of Registrar and Deputy Registrars

Financial inclusion

PART III

OWNERSHIP AND CONTROL OF FINANCIAL SERVICE PROVIDERS

- 25.** (1) Subject to subsection (2), a person shall not without prior approval of the Bank, in writing—
- (a) acquire any beneficial interest in the voting shares of a financial service provider; or
 - (b) enter into any voting arrangement or other agreement that would enable that person or another person to control more than twenty-five percent of the total votes that could be cast at a meeting of the financial service provider.
- (2) Subject to section 27 (3), where a person intends to—
- (a) acquire beneficial interest in the voting shares of a financial service provider; or
 - (b) enter into a voting arrangement trust or other agreement; that would enable that person to control more than twenty-five percent of the total votes that may be cast on a resolution at a meeting of the financial service provider, the financial service provider shall obtain the prior written approval of the Bank.

Limit on voting control

(3) Where a financial service provider referred to in subsection (1) is publicly traded, the financial service provider shall notify the Bank as soon as it becomes aware that a person has become a significant shareholder in the financial service provider.

(4) The Bank shall, within sixty days of receipt of a request for approval as specified in subsection (2), grant or reject the request.

(5) Where the Bank rejects a request for approval, made in accordance with subsection (2), the Bank shall inform the requester, in writing, of the reasons for the rejection within fourteen days of such rejection.

(6) Subsection (1) does not apply to a company which has more than fifty-one percent of its shares publicly traded on a securities exchange, whether within Zambia or outside Zambia, acceptable to the Bank.

(7) Despite subsection (1), the Bank may prescribe a different limit of voting control for financial businesses.

(8) The Bank may suspend the exercise of voting rights that are in excess of the limit of voting control specified in subsection (1) or prescribed in accordance with subsection (7).

(9) A beneficial owner shall, in person or by proxy, exercise only the voting rights on a voting share that is registered, in the name of the beneficial owner, on the share register of a financial service provider.

(10) A person that contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both.

Divestment
of control

26. (1) Where a financial service provider contravenes section 25, the Bank shall, on receiving notification, from any person, of the contravention, direct the financial service provider, in the prescribed manner and form, to dispose of the beneficial interest in the voting shares or terminate or modify the voting trust or other arrangement to reduce the person's control to the extent permissible by or in accordance with this Act.

(2) A financial service provider directed to dispose of a beneficial interest in voting shares, or terminate or modify the voting trust or other arrangement, shall do so within thirty days of receiving the direction from the Bank.

(3) The Bank may, for purposes of ensuring compliance with subsection (1), direct a financial service provider to submit to the Bank a plan of action with regard to the reduction of control and the Bank may give directions, in writing, for the implementation of the plan.

27. (1) A beneficial owner shall not own shares in the capital of, or acquire or maintain control in, more than one financial service provider, without the prior written approval of the Bank. Ownership

(2) A nominee may hold shares in a financial service provider only if the beneficial owner is identifiable and complies with this Act.

(3) A beneficial owner shall not transfer to another person any shares or other form of ownership in a financial service provider that constitutes a significant shareholding, without the prior written approval of the Bank.

(4) This section does not prevent a person from acquiring all the voting shares in the capital of a financial service provider for the purpose of implementing a corporate restructuring transaction in accordance with this Act, except that the person shall comply with section 25 at the completion of the corporate restructuring transaction.

(5) A request for the written approval of the Bank, made for purposes of this section, shall be made in the prescribed manner and form.

(6) A beneficial owner of the shares of a financial service provider shall not charge, use as collateral or encumber those shares.

(7) A person that contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both.

28. A trust or person that controls another person's property or money under an arrangement or agreement, shall not own shares in a financial service provider, unless the beneficial owner and persons that control the trust, arrangement or agreement are identifiable and comply with this Act and any other relevant written law. Prohibition of ownership of shares by trusts

29. (1) Subject to section 30, a financial service provider may effect a corporate restructuring transaction with another company, that is not a financial service provider, if the transaction is in furtherance of the business of the financial service provider. Corporate restructuring transactions

(2) A bank or financial institution may effect a corporate restructuring transaction with a financial business if the restructured company shall be a bank or financial institution.

Require-
ments for
corporate
restructuring
transaction

30. (1) Despite any other written law, a financial service provider shall not effect a corporate restructuring transaction without the prior written approval of the Bank.

(2) A financial service provider shall apply, in the prescribed manner and form, to the Bank for approval to effect a corporate restructuring transaction, in accordance with section 29, specifying—

- (a) the name of each financial service provider or company involved in the proposed corporate restructuring transaction;
- (b) a statement of the nature of the transaction proposed to be entered into;
- (c) the material documents intended to evidence or implement the corporate restructuring transaction; and
- (d) such other information as the Bank may require.

(3) The Bank shall, in considering an application for approval of a corporate restructuring transaction, have regard to the —

- (a) capital adequacy of each applicant in relation to the transaction;
- (b) general financial condition, resources and history of each applicant;
- (c) character and experience of the directors and persons concerned in the management of the company concerned;
- (d) prospects of profitability of the company's operation, if the transaction is approved;
- (e) probable effect of the transaction on competition in the financial sector;
- (f) requirements of the Competition and Consumer Protection Act, 2010; and
- (g) transparency of the legal, financial, operational, managerial, governance and ownership structure of the proposed restructured financial service provider.

(4) The Bank shall, where it grants approval for a corporate restructuring transaction, specify a date on which the corporate restructuring transaction shall take effect.

(5) The Bank shall, where it rejects an application for approval for a corporate restructuring transaction, inform the applicant within seven days of the decision and give reasons for the rejection.

Effect of
corporate
restructuring
transaction

31. (1) In this section—

“new entity” means a financial service provider formed by a corporate restructuring transaction; and

“old entity” means the financial service provider existing prior to the corporate restructuring transaction.

(2) Where a corporate restructuring transaction takes effect in accordance with this Act—

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

(b) the new entity shall submit a written statement to the Bank, confirming that the assets and liabilities of the old entity have been transferred in accordance with the approved restructuring proposal;

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

(d) the agreements, appointments, transactions and documents relating to transactions of the old entity, that were valid immediately before the corporate restructuring transaction took effect, shall continue to be valid and shall be deemed to have been entered into with the new entity; and

(e) a mortgage, bond, pledge, guarantee or other instrument relating to the corporate restructuring transaction given to secure past, present and future advances, facilities or services by the old entity, shall be deemed to be a mortgage, bond, pledge, guarantee or instrument given to, or in favour of, the new entity.

(3) The Registrar of Companies and a Registrar of Lands and Deeds shall make endorsements and alterations in the respective registers, so as to record the transfer of the property and any rights or liabilities in the property arising from a corporate restructuring transaction where the Registrar of Companies and the Registrar of Lands and Deeds are satisfied that —

(a) the Bank has approved the corporate restructuring transaction; and

(b) the transaction has been duly effected through a deed, instrument, mortgage or other document.

(4) This section does not affect the rights of any creditor, except to the extent specified in this section and the documents relating to the corporate restructuring transaction.

PART IV

CORPORATE GOVERNANCE

Responsibilities of Directors Act No. of 2017

32. (1) A board shall be responsible for the duties and functions specified in the Companies Act, 2017, and this Act.

(2) A board shall perform the following functions:

(a) formulation of policies for the financial service provider;

(b) ensuring corporate governance and business performance of the financial service provider;

(c) directing the affairs and business operations of the financial service provider;

(d) ensuring that the business of the financial service provider is carried on in compliance with all applicable laws and regulations and is conducive to safe and sound practices;

(e) constituting committees of the board as prescribed;

(f) reporting to the shareholders, at an annual general meeting, on the internal controls and systems and information management systems of the financial service provider;

(g) reporting to the Bank on any material changes in the activities, structure and condition of the financial service provider; and

(h) reporting to the Bank on matters that may affect the suitability of shareholders, directors and senior managers.

33. (1) Despite the provisions of this Act, the Companies Act, 2017, or the articles of association, the Bank may—

Board
meetings
Act No. of
2017

- (a) direct a board to meet within three days at such place in Zambia as the directive shall specify;
- (b) request a board to consider and decide on such items relating to the financial service provider as the Bank may direct; and
- (c) appoint an observer to a meeting of a board concerned in accordance with this section.

(2) Where a meeting is convened, in accordance with subsection (1) (a)—

- (a) the quorum for the meeting shall be three directors or one third of the total number of directors, whichever is the greater;
- (b) decisions shall be taken by a simple majority of the directors present; and
- (c) any decision taken in accordance with paragraph (b) shall be binding on the financial service provider.

(3) The Bank shall, where a board fails to convene a meeting as directed by the Bank in accordance with subsection (1), take appropriate action to safeguard the integrity of the financial system, the interests of the financial service provider and its customers.

34. (1) A person shall not be elected or appointed as a director, chief executive officer or chief financial officer of a financial service provider without the prior written approval of the Bank.

Qualifications
of directors,
chief executive
officers, chief
financial
officers
Act No. of
2017

(2) Despite anything to the contrary in the Companies Act, 2017, or any other written law, a person is not qualified for election or appointment as a director or senior officer if that person—

- (a) is not a fit and proper person to hold the relevant office in accordance with this Act;
- (b) is below the age of twentyone years;
- (c) has been adjudged bankrupt by a competent court or has made an arrangement or composition with that person's creditors, in Zambia or elsewhere;
- (d) has been convicted of an offence involving fraud or dishonesty;
- (e) has a mental disability that makes the person incapable of performing the functions of the office;

- (f) has been suspended or removed from office in accordance with this Act;
- (g) has been a director, member, chief executive officer, chief financial officer, manager or senior officer of a company that has—
 - (i) been adjudged insolvent;
 - (ii) entered into a composition with creditors; or
 - (iii) gone into liquidation or has entered into any other arrangement with creditors in Zambia or elsewhere;
- (h) has been removed by a competent court, in Zambia or elsewhere, from an office of trust on account of misconduct or breach of that trust; or
- (i) is an expatriate who does not meet such additional requirements as the Bank may prescribe by rules issued in accordance with this Act.

(3) A person shall not be a director of more than one financial service provider without the prior written approval of the Bank.

(4) A person who is a director or senior officer in a financial service provider, whose licence is cancelled in accordance with this Act, shall not, without the prior written approval of the Bank, be elected or appointed as a director or senior officer of another financial service provider.

(5) A person that contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both.

Non-executive directors to be in majority

35. (1) A board of a bank or financial institution may be constituted of executive and non-executive directors, except that the non-executive directors shall be in the majority.

(2) The Minister may, on the recommendation of the Bank, by statutory instrument, provide for the application of subsection (1) to a financial business.

Reporting obligations of Board and directors

36. (1) The Board and each director individually shall immediately report in writing to the Bank if they have reason to believe that the financial service provider—

- (a) may not be able to conduct its business as a going concern;
- (b) appears to be or is likely in the near future to be unable to meet all or any of its obligations as they fall due; and
- (c) does not or may not be able to meet its capital requirements as prescribed in this Act.

(2) Where the Board or a director fails, omits or neglects to report to the Bank any matter required to be reported under subsection (1), the Bank may suspend or remove the Board or director.

(3) Subject to section 165, a person who contravenes subsection (1) commits an offence and is liable upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

37. (1) A director, chief executive officer, chief financial officer or manager concerned in the management of a financial service provider, in exercising the powers and discharging the duties of office, shall ensure compliance with this Act, regulations and regulatory statements of the Bank.

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

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

38. (1) A director shall declare, annually, in writing, to the board the names and addresses of the director's associates and the material interests of the director.

Disclosure of interest

(2) A director or senior officer who—

(a) is a party to, or has a direct or indirect interest in, a contract or proposed contract with the financial service provider or in the granting of an advance by the financial service provider; or

(b) has a material relationship with a party or prospective party to a contract or a proposed contract with the financial service provider;

shall disclose, in writing, to the financial service provider, the nature and extent of the relationship.

(3) A disclosure of interest, to be made in accordance with this section, shall be made at a meeting of the board at which the question of entering into the contract or granting the advance is first considered, or if the director or senior officer is not, at the date of that meeting, interested in the proposed contract or advance, at a board meeting held immediately after the director or senior officer becomes interested.

(4) A director or senior officer with an interest or material relationship with a party to a contract, shall not participate in a meeting of the board at which the contract concerned is discussed and the director shall refrain from voting on any matter related to the contract, except that a departure of a director from the meeting, shall not disqualify the director for purposes of constituting a quorum.

(5) A director or senior officer shall not be required to make a declaration or give a notice in person, at a meeting of the board, if the director or senior officer delivers the notice and disclosure of interest to each director, at least seven days before the meeting.

(6) A director or senior officer who fails to comply with this section commits an offence and is liable, upon conviction, to a fine not exceeding seven thousand penalty units for each day that the offence continues.

(7) Where a director or senior officer fails to disclose an interest or material relationship as specified in this section, the Court may, on the application of a financial service provider, shareholder or the Bank—

(a) set aside the contract on such terms as it may determine; and

(b) suspend the director or senior officer from office.

(8) For purposes of this section—

(a) persons have a material relationship if they are associated persons or a transaction relates to or is connected with the wealth, business or family interests of the person; or

(b) a person has a material interest in an entity where the person owns, directly or indirectly, more than ten percent of any class of voting shares or is a director, proprietor or partner in the entity.

False
statement
and
obstruction
of examina-
tions

39. (1) A director, senior officer, or other employee, agent, accountant or adviser of a financial service provider shall not—

(a) negligently or with intent to deceive, make a false or misleading statement or entry or omit to make a statement or entry in any book, account, report or statement of the financial service provider; or

(b) obstruct or attempt to obstruct—

(i) the proper performance by an auditor of the auditor's duties in accordance with this Act, the Companies Act, 2017, or any other relevant law; or

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

Act No. of
2017

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

40. (1) The Bank may, by order in writing, suspend from office for a period not exceeding six months, a director or senior officer who fails to take reasonable steps to secure compliance by the financial service provider with the requirements of the Act, regulations, rules or regulatory statements made in accordance with this Act or any other relevant written law.

Suspension or dismissal of directors and senior officers by Bank and removal of shareholders

(2) The Bank may, at any time before the expiry of the period referred to in subsection (1), apply to the Court for an order extending the suspension on good cause shown or an order dismissing a director or senior officer and the Court may, by order—

(a) suspend from office the director or senior officer concerned for such period as it considers appropriate in the circumstances; or

(b) dismiss the director or senior officer from office.

(3) A director or senior officer who performs the functions of office during the period of suspension, or after being dismissed from office, commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or imprisonment for a term not exceeding three years, or to both.

(4) A significant shareholder shall cease to be a shareholder in a financial service provider if the Bank determines, on evidential grounds, that the significant shareholder is not a fit and proper person to continue holding shares in financial service provider.

(5) The Bank shall, upon application to the Court, dispose of any shareholding interest, of any person that ceases to be a shareholder in accordance with subsection (4), in a manner and to persons ordered by the Court, subject to the payment of compensation, where applicable.

41. (1) The Bank may prescribe fit and proper requirements for a shareholder, director or senior officer, which may include criteria relating to—

Fit and proper requirements

(a) probity, personal integrity and reputation;

(b) competency and capability; and

(c) financial integrity.

(2) The Bank may remove a shareholder, director or senior officer from office, if it considers that the person, on evidential grounds, has breached the requirements prescribed in subsection (1).

Corporate
governance

42. (1) The Bank shall, by rules issued in accordance with this Act, prescribe the contents of a corporate governance charter to be adopted by a financial service provider.

(2) A board shall develop its own corporate governance charter based on the contents prescribed in accordance with subsection (1).

(3) The Bank shall, by rules issued in accordance with this Act, prescribe—

(a) the number of directors to be appointed for a board of a bank or financial institution;

(b) the number and type of committees of a board to be constituted and their functions;

(c) mandatory conditions under which a senior officer or other employee concerned with the management or financial affairs of a financial service provider shall be removed from office by a board; and

(d) the reporting requirements relating to compliance of this Act, the Companies Act, 2017, and rules and regulations issued in accordance with this Act.

Act No. of
2017

PART V

BUSINESS OPERATIONS

Principal
administra-
tive office

43. (1) A financial service provider shall establish and maintain a principal administrative office in Zambia and shall inform the Bank, in the prescribed manner and form, of the location of the principal administrative office.

(2) A financial service provider shall not change the location of its principal administrative office without the prior written approval of the Bank.

(3) A financial service provider that intends to change the location of its principal administrative office shall, in the prescribed manner and form, and at least sixty days before the proposed change, apply to the Bank for the approval of the proposed change.

(4) The Bank shall, when considering an application made in accordance with subsection (3), take into consideration the suitability of the proposed location.

(5) Where the Bank rejects an application made in accordance with subsection (3), the Bank shall inform the financial service provider, in writing, within seven days of making the decision and give reasons for the rejection.

44. (1) A financial service provider shall use its name—

Use and alteration of name

(a) on letterheads, correspondence, official documents, advertisements or other communication published or issued by the financial service provider; and

(b) in written contracts to which a financial service provider is a party.

(2) A financial service provider shall not, without the prior written approval of the Bank, alter its name or use or refer to itself for any business purpose by any other name or an abbreviation of the name.

(3) A financial service provider may, with the written approval of the Bank, use its name with the name of a business or undertaking with which it has had a corporate restructuring transaction or, in the case of a change of name, by the subsequent name registered.

45. (1) A financial service provider shall remain open for business with the public during the hours prescribed by the Bank or such other hours as the Bank may authorise.

Business hours

(2) The Bank may, on application by a financial service provider, authorise the financial service provider to be closed on any business day subject to such terms and conditions as the Bank may determine.

46. (1) The Minister may, on the recommendation of the Bank, by statutory instrument, prescribe a bank holiday.

Bank holiday

(2) Where an obligation to be discharged by a bank or financial institution falls on a bank holiday, it shall be discharged on the next business day following the bank holiday.

(3) In this section, “bank holiday” means a day on which a bank or financial institution, except a bank’s or financial institution’s branch at an airport or border post, is not open for business with the public, whether or not that day is a public holiday.

47. (1) A financial service provider shall prepare and maintain records which shall contain—

Records to be registered and maintained

(a) the articles of association and amendments to the articles of association;

(b) a register of shareholders and the number of shares registered in the name of each shareholder;

- (c) the minutes of meetings and resolutions of the board;
- (d) the minutes of meetings and resolutions of the shareholders;
- (e) the business correspondence, with supporting accounting records, showing the state of its business affairs and transactions and the financial position of the financial service provider;
- (f) for each customer of the financial service provider, records showing, particulars of transactions with, or for the account of, the customer and the balance owing to or by the customer on a daily basis; and
- (g) such other records required to be prepared and maintained in accordance with this Act or as may be prescribed by the Bank.

(2) The records, referred to in subsection (1) *a*), *b*), *c*), *d*) and *e*) shall be kept and maintained at the principal administrative office of the financial service provider.

(3) The records, referred to in subsection (1), shall be open for inspection at reasonable times by—

- (a) the directors; and
- (b) except for records specified in subsection (1) *c*) and *f*), the shareholders and creditors, or their personal representatives, as provided in this Act and any other relevant law.

Credit
documentation

48. (1) A financial service provider shall cause to be established and maintained, at the principal administrative office, credit documentation and other information relating to the business of the financial service provider with customers and other persons, as the Bank may determine.

(2) In this section, “credit documentation” means the following documents attaching or relating to a contract entered into by a financial service provider with any other person for the provision of a banking or financial service or in respect of a banking or financial service performed or to be performed by the financial service provider:

- (a) the current financial statements showing indebtedness of a borrower to the financial service provider and where the debt is guaranteed, the details of the guarantor;
- (b) a description of the collateral over which the financial service provider has a mortgage or charge as security for the settlement of a credit facility;

- (c) a statement of the terms of the credit, including the principal amount, rate of interest, schedule of repayments and the borrower's objective or purpose for borrowing; and
- (d) documents evidencing the assessment and approval of the credit facility by the financial service provider.

49. A register or record that a financial service provider is required to establish and maintain in accordance with this Act shall be—

Manner of keeping records

- (a) bound in looseleaf or photographic film form;
- (b) entered or recorded by any system of mechanical or electronic data processing or any other device or process capable of reproducing the information in intelligible written form within a reasonable time; and
- (c) if kept in any one form, be capable of conversion to any other form.

50. (1) A financial service provider shall retain a register or record for a period of ten years.

Retention of records

(2) The Bank may require a financial service provider to retain records for a longer period than specified in subsection (1).

51. (1) A financial service provider shall, with respect to a register or record—

Maintenance of records

- (a) prevent loss or unauthorised destruction;
- (b) prevent falsification of entries;
- (c) facilitate the detection and correction of inaccuracies; and
- (d) prevent the use or access of information by an unauthorised person.

(2) A financial service provider may destroy a register or record, kept in accordance with this Act, at any time after the register or record has been converted to another form.

(3) A person shall not—

- (a) destroy, alter, mutilate or falsify any book, document, valuable security or account, which belongs to a financial service provider or customer, or any entry in such a book, document, or account, or be privy to any such act;
- (b) make or be privy to the making of a false entry in a book, document or account; or

(c) omit or be privy to an omission of a material particular from a book, document or account.

(4) A person who contravenes subsection (3) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

PART VI

PRUDENTIAL REGULATION AND SUPERVISION

Minimum
capital
requirements

52. (1) The Bank shall prescribe the minimum paidup capital, minimum common equity tier one, minimum primary capital and minimum regulatory capital requirements for financial service providers.

(2) A financial service provider shall compute its regulatory capital in the manner prescribed by the Bank.

(3) A financial service provider shall commence operations with the minimum paidup capital prescribed by the Bank.

(4) A financial service provider shall maintain the minimum common equity tier one, primary capital and regulatory capital ratios prescribed by the Bank.

(5) Despite subsection (4), the Bank may require a bank or financial institution to maintain common equity tier one and primary and regulatory capital ratios, in excess of the prescribed amounts, where a bank or financial institution—

- (a) has been operating for less than three years;
- (b) has been or is expected to have losses resulting in capital deficiencies;
- (c) has significant exposure to risk, whether credit, concentration of credit, interest risk, liquidity, operational or any other serious weaknesses in the quality of its assets or earnings;
- (d) has a high or severe volume of poor quality assets;
- (e) is growing rapidly, internally or through acquisitions;
- (f) may be adversely affected by the activities or conditions of its holding company, subsidiary or associates;
- (g) has deficiencies in its ownership or management, shareholding structure, composition, qualifications of its directors or senior officers or risk management policies and procedures; or

(h) may be adversely exposed in any other circumstance determined or prescribed by the Bank.

(6) A financial service provider shall not issue any share in its capital or other security other than a bonus share or a share in lieu of dividend or other prescribed security unless it receives the full face value thereof in *Zambian Kwacha*.

53. (1) A financial service provider shall build up a capital conservation buffer.

Capital
conservation
buffer

(2) The capital conservation buffer shall be in the form of common equity tier one as prescribed by the Bank.

(3) The Bank may prescribe different buffer requirements for different categories of financial service providers.

(4) A financial service provider shall not declare, credit or pay any dividends, or make other discretionary payments or make any transfer from retained earnings, if doing so would result in failure to provide for, or maintain, the required capital conservation buffer.

54. (1) Subject to subsection (3), the Bank may require banks and financial institutions to maintain a counter-cyclical capital buffer in their riskweighted assets and forms of common equity capital tier one.

Counter-
cyclical
capital
buffer

(2) Where the Bank adjusts the counter-cyclical capital buffer, the Bank shall announce the decision at least thirty days in advance of the effective date, except that a decision to decrease the level of the countercyclical capital buffer shall take effect immediately.

(3) A counter-cyclical capital buffer shall not be required where the Bank determines that the capital released shall help to absorb losses in a bank or financial institution that pose a risk to financial stability.

55. (1) A bank or financial institution that intends to declare a dividend shall apply to the Bank, for approval of the amount proposed to be declared.

Restriction
on payment
of dividends

(2) The Bank may, having regard to the impact on the capital adequacy, capital conservation buffer and the risk profile of the applicant—

- (a) approve the amount of dividend intended to be declared;
- (b) approve a reduced amount of dividend; or
- (c) prohibit the payment of any dividend.

Leverage ratio

56. The Bank may require banks and financial institutions to maintain common equity tier one, to total on and off balance sheet assets, at a ratio prescribed by the Bank.

Maintenance of liquidity

57. (1) A bank or financial institution shall maintain adequate and appropriate forms of liquidity as prescribed by the Bank.

(2) A bank or financial institution shall not—

(a) hold liquid assets, within the bank or financial institution, of less than the percentage level or proportion prescribed by the Bank; or

(b) grant or permit, for the period during which liquid assets are less than the percentage level or proportion prescribed by the Bank, an increase in its outstanding loans, overdrafts or investments.

(3) A bank or financial institution shall, within seven days from the date of a request on the liquidity position of the bank or financial institution by the Bank, provide the information to the Bank.

(4) The Bank may impose, on a bank or financial institution that fails to comply with this section, an administrative penalty on the amount of deficiency, at a rate of two or more percentage points above the annual interest rate prevailing in the most recent ninetyone day treasury bill auction.

Constraints on contracts with associated person

58. (1) A financial service provider may enter into a contract with an associated person if the—

(a) board approves the contract in advance, and the contract is on terms that are not less favourable to the financial service provider than the terms of similar contracts entered into by the financial service provider with persons who are not associated;

(b) contract is for a nominal sum or of a class or type exempted by the Bank from the operation of this section; or

(c) terms of the contract are in conformity with this Act.

Examination of financial service providers

59. (1) The Bank may cause an examination to be made of a financial service provider in order to determine whether the financial service provider is—

(a) in a sound financial condition; and

(b) complying with this Act, and any other relevant written law.

(2) Despite any other written law, the Bank may access the business of a financial service provider and examine—

- (a) oral and documented information including information in computers, books, minutes, accounts and vouchers;
- (b) cash and securities; and
- (c) any other thing in the possession, custody or under the control of a financial service provider or its affiliate.

(3) The Bank shall, after the completion of an examination undertaken in accordance with this section, submit a report on the examination to the chairperson of the board concerned and shall require the—

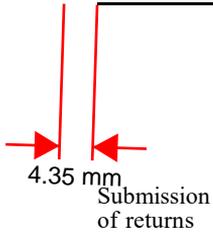
- (a) chairperson of the board to submit the report to a meeting of the board; and
- (b) financial service provider to provide satisfactory explanations, in writing, on actions to be taken on the issues raised in the report.

(4) A report submitted by the Bank, in accordance with subsection (3), shall be confidential and a director, senior officer or other employee of a financial service provider and any person who, by reason of the person's capacity or office, has access to the report shall not, without the prior written approval of the Bank, while holding that office, or after the termination of employment, communicate the report or any part of the report to any person other than a director, a senior officer or other employee of that financial service provider.

(5) The Bank may, where it determines that an examination undertaken in accordance with this section shows that the business of a financial service provider is conducted in a manner detrimental to the interests of the financial service provider or its shareholders—

- (a) require the financial service provider to take such remedial measures as the Bank may direct; or
- (b) appoint a person who is competent to advise the financial service provider on the necessary remedial measures to be taken in accordance with paragraph (a).

(6) A person who, in good faith, provides information or facilitates an examination of a financial service provider, in compliance with this section, shall be indemnified against any claim or sanction as a consequence of such action.



(7) A person who contravenes subsection (3), (4) or (5) commits an offence is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units, or to imprisonment for a term not exceeding one year, or to both.

60. (1) A bank or financial institution shall deliver to the Bank, in the form and within the period prescribed by the Bank—

- (a) a statement showing assets and liabilities as at the close of the last business day of that month;
- (b) the amount of its regulatory capital and reserve funds and the ratio that the amount of its liabilities to the public bears to the amount of its regulatory capital and reserve funds;
- (c) a statement showing the loans that are performing;
- (d) a statement showing the loans that are non-performing, loans that have been restructured including the terms of restructuring as the case may be; and
- (e) such other statements, further details or evidence concerning its operations, financial condition and resources as may be prescribed by the Bank.

(2) The Bank may require a financial business to provide periodic reports showing information on its operations, financial condition and resources as the Bank may prescribe.

Consolidated
supervision

61. (1) The Bank shall, where it considers it necessary for the safety and soundness of the financial service provider, safety of depositors, or to determine whether this Act is being complied with, require, in writing, an affiliate, associate, holding or subsidiary company, or a person that controls the financial service provider, to provide the Bank or its appointed agent such information or documents as may be necessary, including the financial statements and other financial records of that affiliate, associate, holding or subsidiary company or person in control, within the period specified in the notice.

(2) The Bank may appoint a competent person to undertake an examination of the operations and affairs of an affiliate, associate, holding or subsidiary company of a financial service provider or any person that controls a financial service provider, in order to determine whether the operations and affairs of the affiliate, associate, holding or subsidiary company or the person in control are detrimental to the safety and soundness of the financial service provider.

(3) A person who fails, refuses, omits or neglects to provide information requested in subsection (1) or (2) commits an offence is liable, upon conviction, for each day during which the contravention continues, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(4) A significant shareholder or director who fails, refuses, omits or neglects to provide information requested for in accordance with subsection (1) or (2) or is a party to the failure, refusal, omission or neglect, ceases to be a fit and proper person and shall not be or remain a significant shareholder or director in the financial service provider.

62. (1) The Bank may exercise its authority over an affiliate of a financial service provider where the Bank determines that it is necessary to implement supervision on a consolidated basis or to effectively supervise the financial service provider and the risks to which it is subjected.

Affiliates
and cross-
border
supervision

(2) The Bank may, in order to ensure effective supervision of a financial service provider that operates both within and outside Zambia, enter into arrangements for sharing supervisory information on a reciprocal basis with the competent supervisory authorities outside Zambia.

63. (1) The Bank may prescribe conduct or actions which constitute unsafe or unsound practices.

Unsafe and
unsound
practices

(2) Where the Bank determines that a financial service provider is committing or pursuing an act or course of conduct that is unsafe or unsound, the Bank may enter into a written agreement, within the time, form and content as directed by the Bank, with the financial service provider or its board to establish a programme of action to counteract the unsafe or unsound practice and to establish or maintain safe and sound practices in the conduct of the business of the financial service provider.

(3) Where the Bank is unable to agree with a financial service provider, as provided in subsection (2), or where the Bank considers that the need for prompt action makes the negotiating of an agreement impractical, the Bank may direct the financial service provider, board or chief executive officer to cease or refrain from doing the act, pursuing the course of conduct or performing any act to rectify the situation.

(4) The Bank may, where it determines that a financial service provider is committing or pursuing an act or course of conduct that is unsafe or unsound—

(a) direct the financial service provider to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) impose a limitation on the bank's acceptance of deposits, payment of interest on deposits, granting of credit, making of investments or payment of dividends;

(c) prohibit the bank or financial institution from soliciting deposits or paying interest on deposits made by or from specified persons or classes of persons;

(d) prohibit the financial service provider from entering into any other transaction or class of transactions or from commencing or continuing an activity that it is permitted in this Act; or

(e) require the suspension or removal from office of any director, senior officer or other person.

(5) A direction given in accordance with this section shall be given by written notice to the financial service provider or person concerned and may in like manner be varied or revoked.

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

(7) A person acting in contravention of an agreement made, or direction given, in accordance with this section, commits an offence and is liable, upon conviction, to a penalty not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(8) A person who carries out any unsafe or unsound practice, contrary to the provisions of this Act or rules issued in accordance with this Act, commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Supervisory
actions

64. (1) The Bank shall take supervisory action against a financial service provider where —

(a) the financial service provider fails to comply with this Act and any rule or regulatory statement issued in accordance with this Act or any other applicable law;

- (b) the financial service provider refuses to permit an examination or obstructs an examination from being made as provided in or in accordance with this Act;
- (c) an examination instituted in accordance with this Act shows that a financial service provider—
 - (i) conducts business in breach of any relevant written law or engages in conduct that is unsafe or unsound;
 - (ii) is unable, or is likely to become unable, to continue its operations in the ordinary course of its business;
 - (iii) has capital which is less than the prescribed minimum; or
 - (iv) is insolvent.

(2) Without prejudice to any other course of action taken by the Bank, the supervisory action that the Bank may take as specified in subsection (1), includes—

- (a) making directions, in writing, that the financial service provider takes remedial action to comply with any rule or regulatory statement;
- (b) issuing a regulatory statement or measures to be taken to improve the management, financial soundness or business methods of a financial service provider;
- (c) requiring the board or senior officers to execute an agreement on implementation of a regulatory statement issued in accordance with paragraphs (a) and (b);
- (d) performing or appointing an agent to perform a special examination of the financial service provider to determine the financial condition of the financial service provider at the cost of the financial service provider; or
- (e) taking possession of a financial service provider.

(3) Where a financial service provider fails, refuses or neglects to comply with a regulatory statement issued or an agreement made, in accordance with subsection (1), the Bank may do any of the following:

- (a) issue a cease and desist order, of temporary or indefinite duration, requiring the financial service provider and its board to—

- (i) stop the unsafe or unsound practice;
 - (ii) limit its lending or borrowing;
 - (iii) stop any declaration or payment of dividends; or
 - (iv) stop any other activity as may be specified by the Bank;
- (b) remove or suspend a person from the management of the affairs of the financial service provider;
- (c) impose penalties on the offending senior officer, which shall be paid by the senior officer;
- (d) appoint a person who, in the consideration of the Bank, is suitably qualified and competent to advise and assist the financial service provider, generally or for the purposes of implementing the orders, regulatory statement or agreement made in accordance with paragraph (a), (b) or (c);
- (e) appoint a person who is suitably qualified and competent to manage the affairs of a financial service provider for such period as shall be necessary to rectify the problem;
- (f) require the financial service provider to reconstitute its board within such period as shall be specified;
- (g) withhold approvals on establishment of new branches;
- (h) restrict or vary the financial service provider's licence;
- (i) require the financial service provider to increase its capital to such levels as may be specified; or
- (j) impose any administrative penalty as the Bank may consider appropriate in the circumstance.

Financial
service
provider
suffering
large losses

65. The Bank shall, where a financial service provider complying with the prescribed capital requirements incurs or is likely to incur large losses within any financial year, take the following actions against the financial service provider:

- (a) prohibit the financial service provider from declaring and distributing any dividends that are likely to cause the financial service provider not to comply with the capital requirements prescribed in this Act;
- (b) undertake more frequent examinations of the financial service provider; or
- (c) require the board or senior officers to provide a written explanation detailing the causes of losses and the measures to be taken by the financial service provider to rectify the position and avert future losses.

66. (1) Where a financial service provider is under-capitalised, the Bank shall, in addition to the actions specified in section 65, take the following actions against the financial service provider:

Under-capitalised financial service provider

- (a) order the financial service provider to submit to the Bank, within thirty days of the order, a capital restoration plan to restore the financial service provider to capital adequacy as prescribed in this Act;
- (b) require the financial service provider to increase the capital to prescribed levels, within ninety days of submission of the capital restoration plan; and
- (c) prohibit the financial service provider from awarding any bonuses or increments in the salary, emoluments and other benefits to directors and senior officers.

(2) The Bank may, in addition to the actions, specified in subsection (1), appoint a person who is suitably qualified and competent to advise and assist a financial service provider in designing and implementing a capital restoration plan.

(3) A person, appointed in accordance with subsection (2), shall report to the Bank the progress being made on the capital restoration plan, during such intervals as the Bank may direct.

(4) Where the Bank takes action, in accordance with subsection (1) or (2), and the financial service provider fails, refuses or neglects to comply, the Bank shall—

- (a) prohibit the financial service provider from opening new branches;
- (b) impose restrictions on growth of assets or liabilities of the financial service provider as the Bank shall determine;
- (c) restrict the rate of interest on savings and time deposits payable by the financial service provider to such rates as the Bank shall specify;
- (d) require the financial service provider to remove the senior officers responsible for the non-compliance; or
- (e) order the financial service provider to do any or such other things as the Bank may consider necessary to rectify the capital deficiency of the financial service provider.

(5) In this section, a financial service provider shall be considered as under-capitalised if it does not comply fully with any prescribed capital adequacy requirements.

Significantly under-capitalised financial provider

67. (1) Where a financial service provider is significantly undercapitalised, the Bank shall take any of the following actions against the financial service provider:

- (a) any action specified in section 66;
- (b) direct the board to rectify its significant under-capitalisation within ninety days and restore capital adequacy within one hundred and eighty days or within such shorter period as the Bank may direct;
- (c) restrict or vary the financial service provider's licence;
- (d) suspend the financial service provider's licence;
- (e) cancel the financial service provider's licence; or
- (f) take possession of the financial service provider.

(2) The Bank shall prescribe what constitutes significantly under-capitalised for the purposes of this section.

(3) The Bank shall, in writing, inform the Minister of the state of affairs of a bank or financial institution in respect of which the Bank has taken supervisory action in accordance with this section.

Corrective actions against financial businesses

68. (1) The Bank may take any of the supervisory actions, specified in this Act, against a financial business where it considers it appropriate and necessary so to do.

(2) The corrective actions, specified in sections 66 and 67, shall take precedence over any discretionary corrective actions available to the Bank as specified in this Act or any other law.

Modification, cancellation and upholding of regulatory statement

69. The Bank may, on representation made by a person, financial service provider or on its own motion, modify, cancel or uphold a regulatory statement issued specifically for or against a financial service provider and, on such modification or cancellation, impose conditions that the Bank considers necessary or appropriate in the matter.

Notice of taking possession

70. When taking possession of a financial service provider, the Bank shall post in each branch of the financial service provider concerned 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 pursuant to an insolvency the Bank shall transmit a copy of the notice to the Court.

71. The Bank shall, on taking possession of a financial service provider, be vested with full and exclusive powers of management and control of the financial service provider and shall have the power to—

Powers and duties of Bank on taking possession

- (a) dissolve the board;
- (b) continue or discontinue any operations;
- (c) borrow money, on the security of the assets of the financial service provider or not on such security;
- (d) suspend the payment of any obligation, including interest;
- (e) employ, reemploy, retain in employment, or terminate the employment of a senior officer, other employee of the financial service provider or professional advisor, where the Bank considers necessary;
- (f) execute an instrument in the name of the bank or financial institution and conduct in the name of the bank or financial institution any action or legal proceeding;
- (g) terminate the interests of shareholders and refer the determination of the value of the interest to the Court or an arbitrator;
- (h) enforce the personal liability of the directors and shareholders of the financial service provider incurred in the ordinary course of business and on unpaid shares; and
- (i) take any other appropriate action specified in this Act.

72. The Bank shall, on taking possession of a financial service provider, prepare a statement of affairs of the assets and liabilities of the financial service provider, within ninety days from the effective date of taking possession, in order to determine whether the financial service provider is solvent or insolvent.

Statement of affairs of assets and liabilities on taking possession

73. Where a statement of affairs of the assets and liabilities of a financial service provider, made in accordance with section 72 shows the financial service provider is solvent, the Bank shall—

Actions where financial service provider is solvent

- (a) restructure or reorganise the financial service provider;
- (b) sell the financial service provider as a going concern;
- (c) close the financial service provider;
- (d) transfer all or part of the business of the financial service provider to a bridge bank;

- (e) initiate a purchase and assumption transaction;
- (f) dispose of some of the assets of the financial service provider; or
- (g) take an action that the Bank considers necessary to enable the Bank carry out its functions in accordance with this Act.

Actions where financial service provider is insolvent

74. (1) Where a statement of affairs of the assets and liabilities, made in accordance with section 72, shows that the financial service provider is insolvent, the Bank shall take the following actions:

- (a) place the financial service provider under compulsory liquidation;
- (b) exercise any of the powers in section 73; or
- (c) with respect to a financial business, revoke the financial business licence and recommend to the appropriate authority to place the financial business, into liquidation.

(2) Despite the provisions of subsection (1), where a financial service provider is systemically important, the Bank in consultation with the Minister, may place the institution under temporary public control.

Application to Court for termination of possession

75. A financial service provider or any interested person acting on its behalf may, within twentyone days after the date on which the Bank takes possession of the financial service provider, institute proceedings in Court to require the Bank to show cause why the possession of the financial service provider should not be terminated.

Effects of possession

76. (1) Where the Bank takes possession of a financial service provider—

- (a) despite the provisions of any other relevant law relating to extension of time, any term, whether statutory or contractual, on the expiration of which a claim or right of the financial service provider would expire or be extinguished, shall be extended by six months from the date of such expiration;
- (b) an attachment or lien, except for an attachment or lien existing twelve months prior to the taking possession of the financial service provider, shall be vacated;
- (c) an attachment or lien shall not attach to assets or property of the financial service provider during the period that the possession continues, except an attachment or lien created—

- (i) by the Bank in carrying out its role of lender of last resort; or
 - (ii) in favour of a payment system, settlement system or settlement in netting or gross settlement arrangement;
- (d) every payment or transfer of an asset or property of the financial service provider made with intent to effect a preference of the recipient over the other creditors of a financial service provider or at less than the appraised book value, shall be void, if made within a period of twelve months before the Bank takes possession of the financial service provider;
- (e) a gratuitous transfer of any asset of the financial service provider made within twelve months before the possession by the Bank shall be void and all assets shall be surrendered to the Bank; and
- (f) any lending to a senior officer, other employee of the financial service provider, director or any associated person on preferential terms or without adequate security made within six months prior to the possession of the financial service provider may be rescinded and that senior officer, other employee of the financial service provider or associated person shall immediately refund the moneys advanced and interest accrued, at the prevailing rate at the time of possession, to the financial service provider.

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

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

77. (1) Where the Bank, acting in accordance with section 73 (a) commences a restructuring or reorganisation, or both, of a financial service provider, the Bank shall, after granting a reasonable opportunity for a hearing to all interested parties, develop and 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) A copy of a restructuring or reorganisation plan, specified in subsection (1), shall be accompanied by a notice stating that the Bank shall proceed to carry out the restructuring or reorganisation, if the plan is not rejected, in writing, within thirty days—

- (a) by persons holding at least one third of the aggregate amount of the deposits;
- (b) creditors comprising at least onethird in value of the aggregate of the claims of creditors, other than subordinated creditors; or
- (c) if within that period, no objection or appeal to the Court has been made and the Court does not order a stay of proceedings.

Refusal of restructuring or reorganisation

78. Where depositors and other creditors reject a restructuring or re-organisation plan developed by the Bank, in accordance with section 77, or when in the course of a restructuring or reorganisation it appears to the Bank that circumstances render the plan inequitable or its execution impossible or undesirable, the Bank may—

- (a) modify the plan; or
- (b) order the compulsory liquidation of the financial service provider in accordance with Part X.

Restriction on execution of judgment

79. (1) A writ of execution, attachment, garnishee order or other process of a similar nature shall not be issued or made against the assets or property of a financial service provider which is in the possession of the Bank.

(2) Where a creditor has issued or made a writ of execution or attachment, garnishee order or other process of a similar nature against the movable or immovable property of a financial service provider or has attached a debt due to the financial service provider, the creditor is not entitled to retain the benefit of the execution or attachment, unless the creditor has completed the execution or attachment twelve months before the effective date of the Bank taking possession of the financial service provider.

Recovery of expenses

80. All necessary and reasonable expenses, costs and charges incurred by the Bank in the application of this Part shall be defrayed from the funds of the financial service provider.

PART VII

RESTRICTIONS ON TRANSACTIONS OF FINANCIAL SERVICE PROVIDERS

- 81.** (1) A bank or financial institution shall not—
- (a) mortgage, charge or grant security to any person over an asset of a bank or financial institution other than—
 - (i) in the ordinary course of its business; or
 - (ii) to the Bank in order to secure short term liquidity advances made by the Bank in accordance with the Bank of Zambia Act; or
 - (b) acquire an asset that is subject to a mortgage, charge or other security interest in favour of any person, except to satisfy a debt or liability to the bank or financial institution.

Secured borrowing

Cap. 360

(2) Despite subsection (1) a bank or financial institution shall not enter into a lending agreement that authorises the lender to place the bank or financial institution into receivership.

- 82.** (1) A bank or financial institution shall not, directly or indirectly—
- (a) except as the Bank may prescribe, grant a credit facility or guarantee a debt of a person or common enterprise so that the total value of the credit facility and guarantee, in respect of a person or common enterprise, is more than twentyfive percent of the regulatory capital of the bank or financial institution;
 - (b) grant a credit facility against the security of its own shares or of those of a company affiliated to it;
 - (c) except with the prior written approval of the Bank, and on such terms and conditions as may be prescribed by the Bank, grant or permit to be outstanding any secured or unsecured grants, advances and guarantees which are more than five percent of common equity tier one capital of the bank or financial institution, to
 - (i) its directors, whether such advances are obtained by the directors individually, jointly or severally;
 - (ii) a person that has control of the bank or financial institution; or

Limitations on granting credit facilities

(iii) a body of persons in which one or more of its directors has control or is a director, partner, manager, agent or member; or

(d) grant or permit to be outstanding to a senior officer or other employee of the bank or financial institution, unsecured advances that on aggregate exceed the respective annual remunerations of the senior officer or other employee, except with the prior written approval of the Bank and on such terms and conditions as the Bank may prescribe.

(2) The total value of grants, credit facilities and guarantees, specified in subsection (1), shall not exceed twenty-five percent of the regulatory capital.

(3) Where the Bank, in imposing the limitations specified in subsections (1) and (2), determines that a group of two or more persons to whom a grant, credit facility or guarantee has been or shall be made, is a common enterprise or is so interrelated that the group should be considered as a unit, the Bank may, by notice, direct that the total indebtedness of that group shall be combined and shall be deemed to be the indebtedness of a single person.

(4) A bank or financial institution shall not be considered as having contravened subsection (1) or (2) by virtue of a determination, made in accordance with subsection (3), if the bank or the financial institution disposes of the indebtedness of the group to the extent that the indebtedness exceeds the relevant limitation within such reasonable time as the Bank may determine.

Restriction
on trade

83. A bank or financial institution shall not, directly or indirectly, without the prior written approval of the Bank and on such terms and conditions as may be prescribed, engage in any trade or business for which it is not licensed, except where it is necessary for a period not exceeding twelve months or such longer period as the Bank may allow, to secure any debt due to the bank or financial institution.

Restriction
on equity
investments

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

(2) A bank or financial institution shall not invest in an equity interest in a person, property or undertaking in an amount exceeding fifteen percent of the total of all equity interests in the person, property or undertaking.

(3) The aggregate investment in equity interests of a person, property or undertaking by the bank or financial institution shall not exceed fifteen percent of its primary capital.

(4) A bank or financial institution shall not acquire an equity interest in a person, property or undertaking where the value of the bank or financial institution's equity exceeds fifteen percent of its primary capital.

(5) A bank or financial institution shall not acquire an equity interest in a person, property or undertaking in which an insider has a related interest that exceeds ten percent of the bank or financial institution's primary capital.

(6) Subsection (2) does not apply to an investment by a bank or financial institution in the shares of its subsidiary or proposed subsidiary where the—

- (a) equity interest in the subsidiary is less than fiftyone percent of the total equity interests in the subsidiary; or
- (b) aggregate of the equity investments by the bank or financial institution is less than fifteen percent of its primary capital.

(7) Despite subsection (6), the Bank may approve the holding of more than fifty-one percent equity interest in a subsidiary on such terms and conditions as the Bank may determine.

(8) Subsection (2) does not apply to the acquisition by a bank or financial institution of an equity interest in the realisation of any part of collateral provided to the bank or financial institution in a credit transaction, if the bank or financial institution disposes of equity interest, in excess of the limits imposed by this section, within two years following its acquisition or such longer period as the Bank may determine.

85. (1) A bank or financial institution may acquire an interest in real property if the acquisition is necessary for—

- (a) conducting business, making provision for future expansion or providing housing for its senior officers and other employees; or
- (b) securing or satisfying a debt or other liability to it, which is disposed of within two years or subsequently continued with the prior written approval of the Bank.

Restriction
on lease or
other interest
in real
property

(2) A bank or financial institution shall not, directly or indirectly, without the prior written approval of the Bank and on such terms and conditions as the Bank may prescribe—

- (a) purchase, lease or acquire an interest in real property; or
- (b) lease or make available any personal property owned by the bank or financial institution in consideration of periodic payments, rent or other instalment payments.

(3) Nothing in this subsection shall prevent a bank or financial institution from lending and taking title to personal property for the purpose of satisfying a debt or obligation to a bank or financial institution, if the lease or other arrangement is disposed of within two years or subsequently continued with the prior written approval of the Bank.

Limits, restrictions and prohibition on financial business and alternative financial services

86. (1) Subject to this Part, the Bank may adopt, vary or amend the limits, restrictions and prohibitions with regard to the financial business and alternative financial services.

(2) Despite subsection (1) the Bank may—

- (a) establish lending and other limits, impose restrictions and prohibitions on financial businesses and may prescribe different limits for different categories of financial businesses; and
- (b) on application by a financial service provider, in the prescribed manner and form, exempt a financial service provider offering alternative financial services from some provisions of this Part, in a prescribed manner and form.

Exemption of alternative financial services

87. The Bank may, on application by a financial service provider, in the prescribed manner and form, exempt that financial service provider offering alternative financial services from some provisions of this Part.

PART VIII

FINANCIAL STATEMENTS AND ACCOUNTABILITY

Annual financial statement

88. (1) A board shall ensure that proper books of account and other records relating to the operations of the financial service provider are kept.

(2) A board shall prepare, for each financial year, financial statements, accounts and reports in accordance with international accounting standards as recognised by the Zambia Institute of Chartered Accountants and rules issued by the Bank in accordance with this Act.

(3) A financial service provider shall, not later than twentyone days before the date of an annual general meeting, send to each shareholder and to the Bank a copy of its audited financial statement for the preceding financial year.

(4) A board shall, not more than three months after the close of the financial year, send a copy of the audited financial statements to the Bank, together with any report made by an external auditor, including a management letter or other communication prepared in accordance with internationally accepted standards as specified in subsection (2).

(5) The Bank may, on receipt of a financial service provider's audited financial statement, as provided in subsection (5), direct that a trilateral meeting be held by the Bank with a financial service provider and the external auditor of the financial service provider, subject to the Bank's supervisory responsibilities that may have arisen in the course of a statutory audit.

(6) Where a financial service provider fails to comply with subsection (3), the annual general meeting shall be adjourned until such time as the financial service provider complies with the subsection.

89. (1) A board shall present to the shareholders, at an annual general meeting, all statements, reports and information that are required to be presented to shareholders at an annual general meeting as provided in the Companies Act, 2017, including—

Presentation
of annual
financial
statement to
shareholders
Act No. of
2017

(a) a directors' report, containing the following information:

- (i) common enterprise and related party transactions;
- (ii) risk management processes and practices;
- (iii) disclosed directors' interests; and
- (iv) the existence of prohibited borrowings or lendings;

(b) an audited report of its financial statements for the financial year;

(c) a list of subsidiaries, other than subsidiaries acquired on a realisation of security, showing with respect to each subsidiary—

- (i) its name and the address of its head or principal office;

- (ii) the book value in the aggregate of any shares of the subsidiary that is beneficially owned by the financial service provider and any other subsidiaries of the financial service provider; and
- (iii) the percentage of the voting shares of the subsidiary that is beneficially owned by the financial service provider and other subsidiaries of the financial service provider; and

(d) any information that may be provided in this Act or prescribed by the Bank in accordance with this Act or any other written law.

(2) Financial statements and reports, referred to in subsection (1), shall be a true and accurate representation of the financial service provider's financial position as at the end of the financial year, including the results of the operations and changes in the financial position of the financial service provider for the financial year.

Reserve for bad and doubtful debts

90. A financial service provider's annual financial statements shall comply with the regulatory statements, issued in accordance with this Act, for creation or variation of appropriate reserves for bad and doubtful debts.

Approval of annual financial statements

91. (1) A board shall approve the annual financial statements of the financial service provider.

(2) The annual financial statements, approved in accordance with subsection (1), shall be signed by at least two directors.

Publication of annual financial statements

92. (1) A financial service provider shall publish, in a newspaper of general circulation in Zambia, its quarterly financial statement and audited annual financial statements.

(2) The Bank shall prescribe the manner and form of publication of the financial statements referred to in subsection (1).

(3) A financial service provider shall display, in a conspicuous place in each branch, at all times when the branch is open for business, a copy of the financial service provider's quarterly and audited annual financial statements.

Appointment of external auditor

93. (1) A financial service provider shall appoint, at the beginning of each financial year, an external auditor.

(2) An external auditor, appointed in accordance with subsection (1), shall be a member of the Zambia Institute of Chartered Accountants, and meet such other conditions as the Bank may prescribe.

(3) The Bank shall prescribe term of appointment of an auditor and an engagement partner.

(4) A financial service provider shall pay an external auditor remuneration as agreed with the board.

(5) An external auditor of a financial service provider shall be the external auditor of a subsidiary of the financial service provider.

(6) A person that contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

(7) The Bank may exempt certain types of financial businesses from the requirements of this section.

94. (1) An external auditor shall audit the financial statements of a financial service provider and make a report to the shareholders of the financial service provider and express an opinion, in accordance with this Act, any other written law and standards promulgated by the Zambia Institute of Chartered Accountants on the—

Responsibilities
of external
auditor

(a) annual balance sheet, profit and loss account and other financial statements required to be submitted by the financial service provider in accordance with this Act; and

(b) compliance of the financial service provider with the requirements of this Act or other relevant written law, with respect to the accounts.

(2) An external auditor who, in the course of carrying out duties, as specified in subsection (1), finds that a financial service provider—

(a) is insolvent or is likely to become insolvent; or

(b) has contravened a requirement of this Act, a regulation, rule, guideline or regulatory statement issued in accordance with this Act, or a condition imposed by the financial service provider's licence;

shall report the finding, in the prescribed manner and form, to the Bank, within fourteen days of the finding.

(3) An external auditor that communicates in good faith with the Bank on a matter to which this section applies, is not in breach of a duty owed to a financial service provider.

Information
by external
auditor to
Bank

95. (1) The Bank may, by notice to an external auditor of a financial service provider, whether current or in the past, require the external auditor to provide information about the financial service provider, a subsidiary or an affiliate of the financial service provider.

(2) An external auditor who, being required to provide information as provided in subsection (1)—

(a) fails, refuses or neglects to provide the information; or

(b) provides false or misleading information;

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

Disqualification
of external
auditor

96. A financial service provider shall not appoint a person as an external auditor of that financial provider if that person is—

(a) a director, senior officer or other employee of the financial service provider or of any person associated or affiliated with the financial service provider;

(b) an associate of a director or senior officer;

(c) a body corporate; or

(d) a person who personally, or through that person's partner or employee, regularly performs the duties of secretary or book keeper to the financial service provider.

Access to
information
and auditor's
report

97. (1) An external auditor of a financial service provider has the right of access to all books, accounts and records of a financial service provider and is entitled to require from its directors, senior officers and agents such information and explanations that the external auditor requires to perform the external auditor's duties and responsibilities as provided in this Act and any other relevant law.

(2) A report made for the purposes of this Act by an external auditor shall—

(a) express whether, in the external auditor's opinion, the financial service provider made available all information necessary for the external auditor to comply with the requirements of this Act or other relevant law;

(b) state whether, in the external auditor's opinion, any of the statements in the annual financial statement —

- (i) is fully, fairly and properly drawn up;
 - (ii) exhibits a true and fair statement of the financial service provider's financial condition; and
 - (iii) requires an explanation or information from the board, senior officer or agent of the financial service provider or a satisfactory response has been received;
- (c) state whether in the external auditor's opinion the financial service provider has complied with the provisions, regulations, rules, regulatory statements specified in or under this Act and any other relevant law; and
- (d) state the transactions or conditions that have come to the attention of the auditor affecting the wellbeing of the financial service provider that, in the opinion of the external auditor, are not satisfactory and require rectification including—
- (i) any transaction of the financial service provider that has come to the attention of the external auditor and which, in the opinion of the external auditor, has not been within the powers of the financial service provider or which was contrary to this Act or any other law; and
 - (ii) a non-performing loan that is outstanding, has been restructured or the terms of repayment have been extended, if the principal amount of the loan is five percent or more of the regulatory capital of the financial service provider.

(3) A board shall submit a copy of the report of the external auditor, together with a copy of the annual financial statement, to the Bank and each shareholder of the financial service provider, within a period of three months from the end of a financial year.

98. (1) The Bank may cause the dismissal of an external auditor to a financial service provider for failure to perform duties and responsibilities, in accordance with this Act, or auditing standards approved by the Zambia Institute of Chartered Accountants.

Termination
of
appointment
of external
auditor

(2) Where an external auditor to a financial service provider is dismissed, in accordance with subsection (1), the financial service provider shall appoint another external auditor, subject to meeting the conditions prescribed by the Bank.

(3) Where a financial service provider fails to comply with subsection (2), the Bank shall order the dismissal of the external auditor.

Statement on resignation of external auditor

99. Where an external auditor of a financial service provider resigns, the external auditor shall prepare and deliver to the Bank, a written statement specifying the reasons for the resignation, within ten days after submission to the financial service provider of the auditor's resignation.

Termination of appointment of external auditor by financial service provider

100. (1) Where a financial service provider terminates the appointment of an external auditor, the financial service provider shall submit to the Bank and the external auditor, within ten days of the decision to terminate the appointment, a written statement setting out the reasons for the termination.

(2) An external auditor may, within ten days of receiving the statement referred to in subsection (1), submit to the Bank and the financial service provider a written statement responding to the reasons set out by the financial service provider.

PART IX

ANTI-COMPETITIVE ACTIVITIES AND CONSUMER PROTECTION

Collusive conduct

101. (1) Subject to subsection (3), a financial service provider shall not make an agreement or arrangement with another financial service provider with respect to the—

- (a) rate of interest to be levied on a deposit;
- (b) rate of interest or charge levied on a credit facility;
- (c) amount of a charge for the provision of a financial service;
- (d) provision of, or refusal to provide, banking or financial services to a person;
- (e) division of markets by allocating customers; or
- (f) provision of banking or financial services in a manner that restricts competition in the financial sector.

(2) A financial service provider that contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

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

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

102. (1) A financial service provider shall not compel a person to contract for another service with the financial service provider or another person as a condition for receiving a banking or financial service from the financial service provider. Collateral contracts

(2) A financial service provider that contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

103. A financial service provider shall not compel a customer to use the financial service provider's choice of a supplier of any service or goods. Coercive behaviour

104 (1) A financial service provider shall not harass, oppress or abuse a person in the collection of a debt. Misconduct during debt collection

(2) A financial service provider shall not use false, deceptive or misleading representation or means when collecting a debt.

105. The Bank may prescribe the benchmark interest rate that a financial service provider shall charge customers. Determination of benchmark base rate

106. (1) A financial service provider shall, at the time of opening a new account for a customer, provide a customer with a written statement of the— Disclosure of interest rates and charges

- (a) charges for maintaining, and accessing funds on the account;

(b) interest, if any, to be paid to the customer by the financial service provider; and

(c) manner in which the financial service provider shall inform the customer of new charges or changes in the charges or interest specified.

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

(3) The Minister, in consultation with the Bank, may prescribe the manner and form, and content of information, required to be disclosed by a financial service provider under this section.

Increase in
service
charges

107. A financial service provider shall, before introducing a new charge, or increasing the rate of an existing charge for retail customers or micro, small and medium scale enterprises, apply for the prior written approval of the Bank.

Responsible
lending

108. (1) A financial service provider shall, before advancing a credit facility to a customer, assess and determine the customer's ability to pay the credit, based on the customer's current and expected income, current obligations, employment status, other financial resources or assets to be given as security.

(2) A financial service provider shall not advance a credit facility to a customer whose total monthly debts due on outstanding obligations, including amounts under credit facility, exceed a limit prescribed by the Bank.

(3) A financial service provider that contravenes this section commits an offence.

Prohibition
against
penal
interest

109. (1) A financial service provider shall not impose on a borrower a charge or penalty as a result of the failure by the borrower to repay or pay in accordance with the contract governing the loan other than—

(a) interest on an overdue payment on a loan;

(b) legal costs incurred in collecting or attempting to collect a payment on a loan; or

(c) costs, including legal costs, incurred in protecting or realising the security on a loan.

(2) A financial service provider that contravenes subsection (1) commits an offence.

110. (1) A financial service provider shall recover the following amounts from a borrower on a non-performing credit facility:

Recoverable amounts on non-performing loan

- (a) the principal amount owing when the credit facility becomes non-performing;
- (b) any interest in arrears due in accordance with the credit facility agreement but not exceeding the principal amount owing when the loan becomes non-performing; and
- (c) expenses incurred in the recovery of amounts owed by the borrower.

(2) This section does not apply to interest awarded in terms of a Court order or judgment and accruing after the making of the order or judgment.

111. Subject to the Financial Intelligence Act, 2010, a financial service provider shall maintain the confidentiality of information obtained in the provision of a service to a customer and shall not divulge any information except—

Data protection and disclosure of information Act No. 46 of 2010

- (a) in accordance with the express consent of a customer;
- (b) in compliance with a court order;
- (c) where the interest of the financial service provider requires disclosure;
- (d) where the information requested is customer identification data required by another financial service provider for the purpose of conducting a due diligence; or
- (e) where the Bank, in the performance of its functions as provided in this Act, so requests or directs.

112. (1) A financial service provider shall not engage in anti-competitive practices.

Prohibition of anti-competitive practice

(2) A financial service provider that enters into an agreement, or makes a decision or engages into a concerted practice whose objective or effect is to prevent, restrict or distort competition to an appreciable extent in the financial sector shall be considered to have engaged in an unsafe and unsound practice.

113. A financial service provider shall—

Complaints procedure for customers

- (a) establish and make available, in writing, to each customer, in the portion of each branch that the public has access to, procedures for dealing with complaints made by a customer;

- (b) designate a senior officer or other employee to be a customer service officer responsible for implementing and administering the procedures specified in paragraph (a); and
- (c) create and maintain for two years, or such longer period as the Bank may prescribe, a record stating the complaints received, when and how they were dealt with or disposed of.

Ombudsperson
for financial
service
providers

114. (1) The Bank may designate or appoint a suitably qualified person as a Financial Ombudsperson to deal with matters relating to consumer protection in banking and financial services under this Act.

(2) The Bank may, prescribe the manner of dealing with complaints against financial service providers by their customers.

Control of
advertisements

115. (1) The Bank may make rules in respect of the publication, form and content of advertisements relating to a financial service provider.

(2) Rules made in accordance with subsection (1) may—

- (a) prohibit the publication of advertisements of any description, whether by reference to their contents, to the persons by whom they are published or otherwise;
- (b) make provision as to the matters which should or should not be included in such advertisements;
- (c) provide for any exemptions from any requirement imposed by this Act; and
- (d) provide for offences and penalties for the breach of any requirement of the rules.

(3) The Bank shall give such directives to the person who has published or caused to be published the advertisement as it considers appropriate in the circumstances, where it appears to the Bank that an advertisement made in accordance with this section—

- (a) fails to comply with any requirement imposed in the rules made in terms of this section; or
- (b) is false or misleading.

(4) A directive given, in terms of subsection (1), may require—

- (a) a person to modify the advertisement, in whole or in part;
or
- (b) the publication of the advertisement to cease.

(5) Nothing in this section shall prejudice any remedy that an aggrieved person may have against a person who published or caused to be published an advertisement contrary to the requirements of the rules made in accordance with this section.

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

116. (1) A financial service provider shall not engage in an unfair business practices.

Prohibition
of unfair
business
practices

(2) For purposes of this section, “unfair business practice” means—

- (a) a practice that is likely to mislead consumers in making decisions;
- (b) a practice that compromises the standard of honesty and good faith which a financial service provider can reasonably be expected to meet; or
- (c) a practice which places pressure on consumers and distorts their decisions, by use of harassment or coercion.

117. (1) A financial service provider shall not impose a charge or penalty on a borrower for making a prepayment of the principal or an instalment of the principal before its due date where—

Prohibition
of charges
on
prepayment

- (a) the amount of repayment exceeds an amount to be determined by the Bank or extinguishes the debt;
- (b) a loan is made to a natural person; and
- (c) the loan is not secured by a mortgage on real property.

(2) A financial service provider that contravenes subsection (1) commits an offence.

118. (1) An unfair term in a contract concluded with a customer by a financial service provider shall not be binding on the customer.

Unfair
contract
terms

(2) A contractual term shall be regarded as unfair if—

- (a) it has not been individually negotiated; and
- (b) contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the customer.

119. The provisions of this Part are without prejudice to any other law in force on the promotion of competition, consumer protection and fair trade.

Recognition
of other laws

PART X

INSOLVENCY, DISSOLUTION AND LIQUIDATION OF FINANCIAL
SERVICE PROVIDERS

Acceptance
of deposits
by insolvent
financial
service
providers
Act No. of
2017

120. (1) Despite the Corporate Insolvency Act, 2017, or any other law, an insolvent financial service provider shall not—

- (a) receive deposits; or
- (b) enter into any new, or continue to conduct existing, banking or financial service business, except that which is necessary or incidental to the orderly realisation, conservation and preservation of the assets of a financial service provider.

(2) A transaction with a depositor or a creditor and a settlement in a netting or gross settlement arrangement in accordance with a system of settlement approved by the Bank, or provided for in any other law shall not be treated as prohibited in accordance with subsection (1) by reason only that the insolvency transaction or settlement took place prior to—

- (a) a resolution to liquidate the financial service provider; or
- (b) the appointment of a receiver or the taking possession of the financial service provider by the Bank.

(3) A director, senior officer or other employee of a financial service provider who knows or, in the proper performance of duties, could reasonably be expected to know of the insolvency of the financial service provider and who causes or permits any act contrary to this section, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Resolution to
voluntarily
wind-up or
dissolve
financial
service
provider
Act No. of
2017

121. (1) A financial service provider shall not, except with the written approval of the Bank, pass a resolution for the voluntary winding-up or dissolution of the financial service provider in accordance with the Corporate Insolvency Act, 2017, or any other law.

(2) A financial service provider seeking the approval of the Bank for voluntary winding-up or dissolution, in accordance with subsection (1), shall submit—

- (a) a certified copy of the resolution; and

(b) an audited declaration of solvency by the directors to which shall be attached a statement of affairs of the financial service provider showing the—

- (i) assets and total amount expected to be realised therefrom;
- (ii) liabilities; and
- (iii) estimated expenses of the winding-up, made up to the latest practicable date before the resolution to wind-up was made.

(3) The Bank shall approve a voluntary winding-up if the Bank is satisfied that the financial service provider is solvent and has sufficient liquid assets to repay its depositors and all its other creditors in full and without delay.

(4) Where a bank or financial institution passes a resolution for voluntary winding-up or dissolution, the bank or financial institution shall record the date, hour and minute of the passing of the resolution.

(5) A director, senior officer or other employee of a financial service provider who makes a false declaration, causes or permits any false declaration to be made, contrary to subsection (2), commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

122. (1) If a financial service provider receives approval from the Bank for a voluntary windingup or dissolution, the financial service provider shall—

- (a) surrender its licence to the Bank, within seven days of receipt of the approval, and shall cease to do business and may exercise its powers only to the extent necessary to effect its orderly windingup or dissolution in accordance with the Corporate Insolvency Act, 2017, and this Act; and

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

(2) A director, senior officer or other employee of a financial service provider who knows or, in the proper performance of duties, could reasonably be expected to know of the insolvency of the institution and who causes or permits any act contrary to this section, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Duties of financial service provider on voluntary winding-up or dissolution

Act No. of 2017

Notice of
voluntary
winding-up
or
dissolution

123. (1) A financial service provider shall, within fourteen days after receiving approval for a voluntary winding-up or dissolution, by registered mail, or in the prescribed manner and form notify—

(a) every depositor and creditor of the financial service provider of the intended voluntary winding-up or dissolution; and

(b) a person entitled to funds or property held by the financial service provider as a trustee, fiduciary, lessor of a safe-keeping facility or bailee, of the proposed winding-up or dissolution.

(2) A notice, for the purposes of subsection (1), shall include such information as the Bank may specify.

(3) A copy of a notice, specified in subsection (1), shall be kept and displayed in a conspicuous place in the public part of each branch and the financial service provider shall cause the notice to be published in the *Gazette* and in a newspaper of general circulation or any other media in Zambia.

Rights of
depositors
and creditors

124. (1) An approval by the Bank for the voluntary winding-up or dissolution of a financial service provider as provided in this Part, shall not prejudice the right of a depositor or creditor to payment in full, or to the return of funds or property held, by the financial service provider.

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

Distribution
of assets on
voluntary
winding-up
or
dissolution
Act No. of
2017

125. (1) Where the Bank considers that a financial service provider has discharged all the obligations specified in this Act, the remainder of its property shall be distributed to the shareholders, in accordance with the Corporate Insolvency Act, 2017, and this Act.

(2) A distribution shall not be made, in accordance with subsection (1), before—

(a) all claims of depositors and other creditors have been paid in full;

(b) in the case of a disputed claim, the financial service provider has turned over to the Bank, sufficient funds to meet any liability that may be judicially determined; and

(c) uncollected funds, payable to a depositor or creditor, have been turned over to the Bank to be dealt with as unclaimed funds in accordance with this Act.

126. The Bank may take possession of the financial service provider being voluntarily wound-up or dissolved, if the Bank subsequently finds out that—

Powers of Bank where assets insufficient or completion unduly delayed

(a) the assets of a financial service provider are not sufficient to fully discharge all obligations; or

(b) completion of the winding-up or dissolution has been unduly delayed.

127. (1) Despite the Corporate Insolvency Act, 2017, or any other law, the Bank may order the compulsory winding-up or dissolution of a financial service provider and shall record the date, hour and minute that the order shall take effect.

Powers of Bank in compulsory winding-up or dissolution Act No. of 2017

(2) Within seven days of making an order, in accordance with subsection (1), the Bank shall, in the prescribed manner and form, notify each director, shareholder, depositor, creditor and any other interested party of the order.

(3) The persons notified, in accordance with subsection (2), may within thirty days of being notified file an appeal against the order to the Court, which shall state the grounds for the objection or appeal.

(4) The Court shall render a decision on an appeal, made in accordance with subsection (3), within seven days of the appeal being heard and may make any order the Court considers just in the circumstances.

128. (1) In effecting a compulsory winding-up or dissolution of the financial service provider, in accordance with this Act the Bank may, in addition to any other powers, exercise the powers of the financial service provider concerned.

Powers of liquidator

(2) Without limiting the generality of subsection (1), the Bank as liquidator of a financial service provider shall have the power to—

(a) bring, carry on or defend an action or legal proceedings in the name and on behalf of the financial service provider; and

(b) carry on the business of the financial service provider only for the beneficial winding-up or dissolution of the financial service provider.

Act No. of
2017

(3) Despite the Corporate Insolvency Act, 2017, and any other relevant written law, the Bank shall, after a decision to compulsorily windup or dissolve a financial service provider—

(a) take all necessary steps to terminate safe custody functions performed by the financial service provider and shall return to each owner all assets and property held by the financial service provider as a bailee in relation to the owner;

(b) cause to be made available at each branch for collection by each depositor, creditor, safe custody services customer and bailor of property held by the financial service provider, a customer's statement of the nature and amount for which each one's claim is shown in the financial service provider's records, and shall 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 customer statement at their respective branches.

(4) A customer's statement, made in accordance with subsection (3), shall state that—

(a) a claim by the depositor or creditor shall be filed with the Bank within sixty days from the date of the customer's statement being made available; and

(b) safe-custody services customers and bailors shall be required to withdraw their property within sixty days from the date of the customer's statement being made available.

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

(6) Any unclaimed funds and property held by the bank or financial institution as a bailee, together with inventories that have not been withdrawn, in accordance with this section, shall be unclaimed funds for the purposes of this Act and shall be dealt with accordingly.

Immunity of
Bank
against
depositor or
creditor
claims

129. Nothing in this Part shall be taken to impute liability on the Bank or place an obligation on the Bank to meet the claims of a depositor or creditor of a financial service provider that has been wound-up or dissolved.

130. The Bank shall, within six months after the last day specified in a customer's statement, for the purpose of the filing of claims as provided in section 128 (4) (a)—

Limitation on filing of claims

- (a) defer payment of any claim that is out of time;
- (b) determine the amount, if any, owing to each known depositor or creditor and the priority class of the claim in accordance with this Part;
- (c) file into Court, a liquidation schedule showing the steps that the Bank proposes to take;
- (d) reject any claim that appears to be of doubtful validity and notify, in the prescribed manner and form, each person whose claim has not been allowed in full; and
- (e) publish once a week for three consecutive weeks, in the *Gazette*, a newspaper of general circulation, or in other media in Zambia where the financial service provider had a branch, a notice of the date and place where the liquidation schedule is available for inspection, and the date, not earlier than thirty days after the date of the third publication of the notice, on which the Bank or person appointed shall file the liquidation schedule into Court.

131. (1) Within twenty days after the filing of a liquidation schedule, as specified in section 130 (c), a depositor, creditor or owner of a financial service provider, and any other interested party, may file with the Court an objection to any step proposed.

Objection to liquidation schedule

(2) The Court shall consider an objection, filed in accordance with subsection (1), and may—

- (a) order that appropriate modification of the schedule be made; or
- (b) set aside the objection.

(3) The Bank may, after the filing of the liquidation schedule, as specified in section 130 (c), make partial distribution to the holders of undisputed claims or claims that have been allowed by the Court, on condition that a proper reserve account is established for the payment of disputed claims.

132. (1) Despite the Corporate Insolvency Act, 2017, or any other written law, in any compulsory winding-up or dissolution of a financial service provider the following shall be paid in priority to all other debts in the order set:

Priority of creditors Act No. of 2017

- (a) expenses incurred in the process of compulsory winding-up or dissolution;
- (b) depositors;
- (c) taxes and rates due;
- (d) wages and salaries of employees of the financial service provider for a period of three months;
- (e) charges and assessments due to the Bank; or
- (f) other claims against the financial service provider in such order of priority as the Court may determine on application by the Bank.

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

(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 in equal proportions and for the purposes of this section each paragraph of subsection (1) constitutes a separate class of claims and the claims referred to subsection (2) constitute another separate class of claims.

(4) If the amount available for payment for any class of claims, referred to in subsection (1) is insufficient to provide payment in full, the claims shall abate in equal proportions.

(5) The Bank shall establish a scheme for the protection of depositors.

Undistributed funds

133. Any undistributed funds remaining after a final distribution, as provided for in this Part, shall be taken into possession and held by the Bank and subsequently dealt with in accordance with this Act.

Final distribution in compulsory winding-up or dissolution

134. Any assets remaining after all claims have been paid in a compulsory winding-up or dissolution of a financial service provider, shall be distributed among the shareholders.

Restriction of action by third parties Act No. of 2017

135. Despite the Corporate Insolvency Act, 2017, or any other written law to the contrary, a person shall not commence proceedings for the winding-up or dissolution of a financial service provider, except where the proceedings are commenced by a financial service provider in accordance with this Part.

136. Despite this Part, where a financial business becomes insolvent, unless the Bank determines that the winding-up or dissolution shall be proceeded with in accordance with this Part, the Corporate Insolvency Act, 2017, shall apply.

Power of Bank in relation to insolvent financial business Act No. of 2017

PART XI

COMPLAINTS AND APPEALS PROCESS

137. (1) Where the Bank makes a decision in accordance with this Act, the Bank shall, by notice in writing—

Reasons for decisions and right to be heard

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

(b) invite the person so affected to make written representations, against the decision of the Bank, within a time stated in the notice.

(2) The Bank may, on receipt of any representations made in accordance with subsection (1)(b), reaffirm, revoke or vary its decision and notify the person accordingly.

Right of appeal

(3) A decision of the Bank, made in accordance with subsection (1), shall remain in force unless reversed by the Bank or set aside by a tribunal on appeal or by the Court.

138. A person aggrieved by a decision of the Bank may, within seven days of receipt of the decision, notify the Bank and the Minister, in the prescribed manner and form, of the person's intention to appeal to the tribunal against the decision.

Appointment and convening of tribunal

139. (1) The Minister shall, within thirty days after receipt of a notice made in accordance with section 138, constitute and convene a tribunal.

(2) The tribunal shall consist of the following members appointed by the Minister—

(a) a chairperson, who shall be a person qualified to be appointed as a Judge of the Court; and

(b) two other members with knowledge and experience in law, banking and finance, commerce or accountancy.

(3) The members of a tribunal shall be appointed on such terms and conditions as maybe specified in their letters of appointment.

- Powers of tribunal
- 140.** (1) A tribunal shall determine an appeal on its merits, taking into account this Act and any other relevant written law.
- (2) A tribunal may determine its own procedure and shall not be bound by the rules of evidence.
- (3) A tribunal shall afford the appellant the right to appear personally or be represented by a practitioner or an agent.
- Decisions of tribunal
- 141.** (1) A tribunal may confirm, vary or quash the decision of the Bank on the matter before the tribunal.
- (2) A decision of a tribunal, except on a point of law, is final and binding on the parties to the appeal.
- (3) An appeal against a decision of a tribunal shall lie to the Court.

PART XII

GENERAL PROVISIONS

- Investigations
- 142.** (1) Where the Bank has reason to believe that a person is carrying on banking or financial business or providing financial services without a licence, contrary to the conditions of a licence or this Act, rules and regulations, the Bank shall, by its employees or agents, enter the premises on which the business is being conducted or services provided, to ascertain the facts of the matter and may access and examine the books, accounts and records of that person.
- (2) A person who refuses or fails to make available for examination any document or provide any information requested for purposes of or during an investigation, as provided in subsection (1), commits an offence, and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.
- Access to documents
- 143.** (1) Subject to this section, any person may, on request, review or copy any document lodged with the Bank in terms of this Act or any regulations or rules made in accordance with this Act.
- (2) The Bank may, by rules, specify procedures for making requests for access, as provided in subsection (1), and the terms and fees to be paid for purposes of such access.
- (3) The Bank may refuse to authorise a document to be reviewed or copied, in whole or part, where it determines that information in the document is—

- (a) confidential to the person lodging the document and has a real commercial value to the person that would be seriously and unreasonably prejudiced if the information were to be made generally available; or
- (b) personal information about a person and it is in the public interest that the information should not be generally available.

144. (1) Where this Act or any rules and regulations, made in accordance with this Act, provide that a person commits an offence where the person does a particular act, the offence is deemed to have been committed, even where the act is done partly outside Zambia.

Offences committed partly in and partly out of Zambia

(2) Where this Act or any regulations and rules, made in accordance with this Act, provide that a person commits an offence where the person does two or more particular acts, the offence is deemed to have been committed, even if some of those acts are done outside Zambia.

145. Where in accordance with this Act —

- (a) an act is required to be done within a particular period or before a particular time and the obligation to do the act continues after the period has ended or the time has passed; or
- (b) failure or refusal to comply with the provision is an offence and such failure continues;

Continuing acts or offences

the person commits a separate offence for each day on which the failure or refusal continues and is liable to an administrative penalty for each day on which the failure or refusal continues or, upon conviction, to a penalty prescribed by the Minister, by statutory instrument, for each day that the offence continues.

146. (1) A person who is convicted of an offence, in accordance with this Act, shall have that person's licence or authorisation cancelled, as the case may be, and may not be licensed or authorised in terms of this Act, for a period determined by the Bank, and may be barred from participating, in any manner, in the provision of a banking or financial service on such terms and conditions as the Bank may determine.

Actions by Bank on conviction for offence

(2) The Bank may, on representation, review the bar as specified in subsection (1) and may, where an applicant shows good cause, reduce the period determined in accordance with subsection (1).

Use of word
“bank”

147. A person, other than a bank, shall not, without the written approval of the Bank, use the word “bank”, or any of its derivatives in any language, or any other word or symbol indicating the transaction of banking business, in its name or in any prospectus, advertisement or statement of any kind published or made to describe its business in Zambia.

Restriction on
use of name to
indicate
banking or
financial
business or
financial
service
provider

148. (1) Subject to subsection (2), a person carrying on a business, unless the person is licenced as a financial service provider, shall not use any name which indicates or may reasonably be understood to indicate, whether in English or other language, that the business is being operated by a financial service provider or that it is carrying on banking or financial business.

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

(a) holds a licence to conduct any banking business or provide financial services; or

(b) is licensed to conduct any financial business of any kind.

(3) Any person acting contrary to this section commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(4) Subsection (1) shall not—

(a) prohibit the use of that kind of name 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) apply to—

(i) a regional or international financial service provider whose membership consists partly or wholly of member States; or

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

(5) An authority which, in accordance with any other written law, is responsible for the registration of companies or business names shall not register a company or a name of a business that would be in contravention of subsection (1).

(6) Where a company or the name of a business is already registered in a style that is prohibited by subsection (1), the Bank shall notify the authority responsible for the registration of the company or business name to direct the person or company to alter or modify the name so as to comply with subsection (1).

149. (1) A transaction entered into, in contravention of this Act, by a financial service provider, shall not be void or ineffective by reason only of the contravention, and shall not be voidable at the instance of the financial service provider, unless the Court orders otherwise.

Validity of certain acts by financial service provider

(2) Subject to a financial service provider's articles of association, it shall not be necessary for a financial service provider to pass a resolution in order to exercise any power conferred by this Act.

150. (1) Where the Bank considers that an officer, director or shareholder, past or present, of a financial service provider, has any information relating to the operations of the financial service provider which the Bank considers necessary for the performance of its supervisory functions, the Bank may, in the prescribed manner, summon that officer, director or shareholder, for an examination.

Power to summon officers, directors and shareholders

(2) A person who, when summoned by the Bank, in accordance with subsection (1)—

- (a) fails without reasonable excuse to appear before the Bank for the examination;
- (b) withholds information; or
- (c) provides information which is false in any material particular;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both.

151. (1) If in the exercise of any of its powers, performance of its functions or the discharge of its duties as provided in this Act, or in accordance with any other written law, the Bank requires any information from a financial service provider, any other person engaged in the provision of banking or financial services, a company affiliated, associated, holding or subsidiary company or any person that controls a financial service provider, on any matter relating to the affairs or business of the financial service provider, person or company, the financial service provider, person or company, shall submit the information to the Bank.

Submission of information and documents to Bank

(2) A financial service provider required to furnish or supply a document to the Bank shall, in the case of a document prepared by the financial service provider, the form of which has not been prescribed by the Bank, ensure that the document is signed by the chief executive officer and the chief financial officer or a person authorised by the financial service provider.

Alternative financial services

152. (1) The Bank may authorise a financial service provider to provide alternative financial services.

(2) The Bank shall prescribe the rules for the provision of alternative financial services.

Publication of information

153. (1) Where the Bank considers a publication to be necessary or appropriate, the Bank may publish, in whole or in part, any information or data furnished in accordance with this Act.

(2) The Bank shall not reveal to a person information regarding the affairs of a customer of a financial service provider that was obtained in the performance of the Bank's functions, as provided in this Act, unless lawfully required to do so.

Extension of time limits

154. The Bank may, at the request of a financial service provider or other interested person, extend any period within which a financial service provider is obliged to furnish any document or information in accordance with this Act.

False document

155. A person who issues or takes part in the issuance of a document, referred to in this Act, which is false in any material particular, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity of officer, agent or employee of Bank

156. An action or other proceeding shall not lie or be instituted against an officer, agent or employee of the Bank in respect of any act done or omitted to be done by that officer, agent or employee in good faith in the exercise or performance, of any powers, functions or duties conferred by or in accordance with this Act.

Money circulation schemes

157. (1) A person shall not—

- (a) conduct, or participate in, a money circulation scheme; or
- (b) issue a notice, circular, prospectus, proposal or other document inviting the public to subscribe to a money circulation scheme.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to an administrative penalty as specified in this Part.

158. (1) Collateral that is held by the Bank on behalf of a clearing house or a payment system for the purpose of settling the obligations of a financial service provider, which is a member of the clearing house or payment system, shall be utilised for that purpose by the Bank in accordance with the terms and conditions approved by the Bank and shall not be subject to any claim.

Utilisation of collateral for settlement of certain obligations

(2) A certificate, issued by the Bank, certifying that the collateral or any part thereof has been utilised to meet the obligations of the clearing house or payment system shall be *prima facie* evidence of the matters stated in the certificate.

(3) In the case of a financial service provider in respect of which the winding up, dissolution or liquidation has commenced in accordance with 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 Part X.

159. A financial service provider shall —

- (a) maintain a special reserve account, with an amount that the board considers adequate, which shall be reserved exclusively for making good any loss resulting from the negligence or dishonesty of any director, chief executive officer, chief financial officer, manager or other employee of the financial service provider;
- (b) insure itself against loss, to an amount that the board considers adequate; or
- (c) undertake a commitment that the Bank may consider acceptable for the purpose of this section.

Special reserve or liability insurance

Unclaimed funds and personal property

160. (1) This section applies to—

- (a) a demand, savings or matured time deposit, together with 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 identification documents with evidence of the deposit crediting the interest or dividends;
 - (ii) corresponded in writing with the bank or financial institution; or

- (iii) indicated an interest in the deposit as evidenced by a memorandum on file with the bank or financial institution;
 - (b) funds paid toward the purchase of a share or other interest in a security issued by a financial service provider 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 writing with the bank or financial institution; or
 - (iii) otherwise indicated an interest in the funds as evidenced by a memorandum in the records of the financial service provider; and
 - (c) funds or other personal property, removed from a safe deposit box or any other safe-keeping facility on which the lease or rental period has expired due to the nonpayment of rental charges or by reason of some other default by the lessee, or surplus amounts arising from the sale of the property thereof in accordance with any other written law, that have been unclaimed by the owner for more than ten years from the date on which the lease or rental period expired.
- (2) Any of the funds or personal property, specified in subsection (1) (a) (b) or (c), shall be presumed to be abandoned on the expiration of the periods specified in that subsection, if the person that owns the funds or personal property fails to respond to a notice in writing, sent by the financial service provider by prepaid registered post, to the last known address of the person in the records of the financial service provider.
- (3) A financial service provider holding funds or personal property presumed abandoned under this section shall report to the Bank on the amount and nature of such funds or property, in such form and at such time as may be prescribed by the Bank, and shall pay such funds or relinquish the property to the Bank upon expiration of the time provided in this section for the presumption of abandonment to arise.
- (4) The financial service provider shall retain records and inventory of funds paid or property relinquished in accordance with subsection (3).

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

(6) An action to recover, or other action in respect of, any funds or property presumed abandoned and paid in or relinquished in accordance with this section, may not be brought against the paying bank or against the Bank after the sixth year following payment or relinquishment to the Bank.

(7) Where unclaimed funds or property are not claimed after the expiration of the period referred to in subsection (5), the funds shall vest in the State.

161. The Bank may by rules, and on such terms and conditions as it may determine, delegate its licensing, or supervisory powers specified in this Act to an agent.

Delegated supervision

162. The Bank may, on such terms and conditions as it may prescribe, exempt any financial service provider from any of the provisions of this Act and may, in like manner, provide for the variation or revocation of any exemption granted.

Exemptions

163. A person that commits an offence in terms of this Act for which a penalty is not specified is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

General penalty

164. Where an offence under this Act is committed by a body corporate or unincorporated body, and the director, manager or shareholder of that body is suspected to have committed the offence and is charged of that offence, that director, manager or shareholder of the body corporate or unincorporated body is liable, upon conviction, to the penalty specified for the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Offences by body corporate or unincorporated body

165. (1) Where the Bank is satisfied, after due investigation, or where a person admits that the person has committed an offence in terms of this Act or regulations or rules made in accordance with this Act, the Bank may compound the offence and impose such an administrative penalty, as may be prescribed.

Administrative penalties

(2) If a person, on whom an administrative penalty is imposed, in accordance with this section, fails to pay the penalty within the time ordered by the Bank, the Bank may, recover the penalty by action in a court of competent jurisdiction.

Industry reports

166. (1) The Bank shall, within six months from the 1st day of January of each year, submit an industry report, to the Minister on the performance of the financial service providers for the twelve months ending on the preceding 31st December.

(2) The Minister shall, not later than thirty days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

Regulatory statements

167. (1) The Bank may issue and publish regulatory statements.

(2) The Bank may impose an administrative penalty on a financial service provider that contravenes a regulatory statement.

Rules

168. (1) The Bank may, by statutory instrument, make rules for or with respect to any matter that by this Act is required or permitted to be prescribed by the Bank, or that is necessary to be prescribed for purposes of carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), rules made under subsection (1) may make provision for—

- (a) the conduct of business by financial service providers and their representatives;
- (b) matters incidental to the licensing of any financial service providers in accordance with this Act;
- (c) the class of persons in relation to whom, and the manner and circumstances in which, financial service providers may conduct or provide banking or financial services;
- (d) the correction of any errors in any register or record kept in accordance with this Act;
- (e) particulars to be recorded for the purposes of this Act, in relation to accounts of financial service providers;
- (f) the lodgement of auditor's reports and the information to be contained in the auditor's report;
- (g) the operating hours for financial service providers;
- (h) the lodgement by financial service providers of annual financial statements;

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- (i) the exemption, on such terms and conditions as may be prescribed, of any financial service providers from any specified provision of this Act or any rule made in accordance with this Act, and the revocation of any such exemption or the modification of any such terms or conditions;
 - (j) administrative penalties to be imposed;
 - (k) the type of business that the Bank considers as constituting a banking or financial service;
 - (l) maintenance of the confidentiality of customers of financial service providers;
 - (m) information and the matters to be displayed on business stationery of financial service providers;
 - (n) insurance by financial service providers against negligence or default;
 - (o) the practice and conduct of share registers and other registers that are to be kept by financial service providers in accordance with this Act;
 - (p) the resolution of disputes among financial service providers;
 - (q) the making of annual or other regulatory returns to the Bank by financial service providers;
 - (r) mandatory disclosures and registration of interests in financial service providers;
 - (s) determination of fit and proper test for the purposes of this Act;
 - (t) antimoney laundering and countering the financing of terrorism by financial service providers; and
 - (u) any saving or transitional provisions the Bank considers necessary or convenient to be made in consequence of the enactment of this Act and the repealed Act.
- (3) The Bank may, by statutory instrument, make other rules to provide for—
- (a) the contents, form and issue of a prospectus, financial statements, annual reports and other documents required or provided for in this Act;
 - (b) requirements for the display and use of unique numbers allocated for licences;

- (c) requirements for transactions, including requirements prohibiting or restricting a licensed company from commencing or carrying out business;
- (d) the formulation and publication of codes of conduct for financial service providers, officers and employees;
- (e) requirements for financial service providers to make reports to the Bank, either regularly or on the occurrence of specified events or circumstances;
- (f) requirements for contents, publication and dissemination of reports to the Bank by—
 - (i) financial service providers; and
 - (ii) officers and former officers of financial service providers;
- (g) prudential rules, including rules as to capital adequacy, assets and other resources for financial service providers;
- (h) disclosures to be made by financial service providers;
- (i) keeping of books and records by financial service providers;
- (j) the transfer of business, contracts or other engagements of a financial service provider on insolvency or winding-up;
- (k) the taking of fees and the levying of charges;
- (l) the criteria for declaration as publicly traded companies; and
- (m) the effective administration and implementation of this Act.

(4) The Bank may issue rules prescribing the segregation and safe custody of customer moneys or other property.

Regulations

169. (1) The Minister may, on the recommendation of the Bank, make regulations for carrying out or giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made in accordance with subsection (1) may—

- (a) prescribe fees or charges payable in respect of any matter arising under, provided for, or authorised by, this Act;
- (b) prescribe offences and penalties not exceeding five hundred thousand penalty units or imprisonment for a period not exceeding five years, or both;

- (c) prescribe the forms for applications, licences, approvals, registers, notices, orders and other documents required for the purposes of this Act;
- (d) prescribe the information to be given in returns and other documents delivered or made for the purposes of this Act;
- (e) provide the procedure for the service of notices, orders and documents as specified in this Act and the times at which they shall be considered to have been served; and
- (f) prescribe the procedure for objections, for purposes of this Act, and the making, consideration, hearing and determination of objections and appeals.

170. The Banking and Financial Services Act, 1994 is repealed. Repeal of
Cap. 387

171. (1) Despite the repeal under section 170— Savings and
transitional
provisions

- (a) a financial service provider or a representative office that was, immediately before the commencement of this Act, licensed or deemed to be licensed in accordance with the repealed Act, shall be deemed to be the holder of a licence granted in accordance with this Act, and shall be subject to the same limitations and conditions attached to its licensing;
- (b) any application pending, in accordance with the repealed Act, shall be deemed to have been made in accordance with the corresponding provisions of this Act, and shall be dealt with in accordance with this Act;
- (c) any right or benefit accruing, or liability incurred, in accordance with the repealed Act, shall continue in accordance with and subject to this Act; and
- (d) any order, notice or direction made or given and in force, in accordance with the repealed Act, shall, unless inconsistent to this Act, continue in force until revoked in a manner specified in this Act.

(2) The Minister may, by statutory instrument, make such other savings and transitional provisions as may be considered just or expedient for a smooth transition from the structures, requirements and forms provided for in the repealed Act.
