

The Laws of Zambia

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICES ACT

CHAPTER 387 OF THE LAWS OF ZAMBIA

CHAPTER 387 THE BANKING AND FINANCIAL SERVICES ACT.

THE BANKING AND FINANCIAL SERVICES ACT.

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

1. Short title
2. Interpretation
3. Application of this Act

CHAPTER II

LICENSING OF BANKS AND FINANCIAL INSTITUTIONS

Part 1-Licensing of Banks

4. Licensing of companies as banks
5. Determination of applications
6. Application for licences to be refused in certain cases
7. Investigation of applicants
8. Authorised activities of banks in addition to taking of deposits
9. Branches of banks

Part 2-Licensing of Financial Institutions

10. Grant of licence
11. Application of certain provisions of this Chapter to financial institutions
12. Branches of financial institutions

Part 2A Licensing of, and Regulatory Requirements for, Representative Offices

- 12A Licensing of representative offices
- 12B Regulatory requirements for representative offices

Part 2B - Licensing of Financial Businesses

- 12C Grant of licences
- 12D Branches of Financial Businesses
- 12E Existing financial businesses

Part 3-Operation of Licences

13. Conditions of licences
14. Duration of licences
15. Licences not transferable
16. Revocation of licences

Part 4-Prohibition of Unlicensed Business, etc.

17. Prohibition of Unlicensed business
18. Repayment of funds

Part 5-Register of Licences

19. The Register
20. The Registrar
21. Use of Register in evidence
22. Inspection of Register

CHAPTER III

ORGANISATION AND ADMINISTRATION

Part 1-Ownership and Control of Financial Service Providers

23. Limitation on voting control
- 23A Regulation and divestment of other control
24. Ownership
- 24A Prohibition of ownership of shares by trusts

Part 2-Amalgamation and Restructuring of Banks or Financial Institutions

25. Meaning of "corporate restructuring transaction"
26. Prohibition of prescribed transactions
27. Consent to corporate restructure, etc.
28. Investigation of applicants for consent
29. Effect of amalgamation or transfer

Part 3- Boards of directors

30. Application of Parts 1 and 2 to incorporated financial institutions

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

30A Chief Executive officers and financial officers

31. Qualification of Directors and senior officers

32. Directors from outside to be in the majority

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

34. Indemnity of directors and others

35. Disclosure of interests

36. False statements and obstruction of inspection

37. Suspension or dismissal of directors and managers

Part 4A-Organisation and Administration of Financial Businesses

37A Structure of unincorporated financial businesses

37B Application of Parts 1, 2 and 4 to financial institutions

Part 5-Constitution of Banks and Incorporated Financial Institutions

38. Variation of corporate constitutions

39. Amendment of constitution by Bank of Zambia

CHAPTER IV

OPERATIONS

Part 1-Anti-Competitive Conduct

40. Interest rates and charges

41. Collateral contracts

42. Other laws not affected

Part 2-Business Practices and Dealings with the Public

43. Principal administrative office

44. Display of names

45. Use of licensed name

46. Holidays
47. Disclosure of interest rate and charges
48. Customer complaints
49. Advertisement by licensee
50. Confidentiality

Part 3-Records

51. Records of constitution and of compliance with this Act
52. Credit documentation
53. Manner of keeping records
54. Retention of records
55. Maintenance of records

CHAPTER V

FINANCIAL ACCOUNTABILITY

Part 1-Financial Statements of Banks and Financial Institutions

56. Annual financial statements
57. Statement as to subsidiaries
58. Reserves for bad and doubtful debts
59. Approval of annual financial statements
60. Monthly statements
61. Publication of financial statements

Part 2-Audit of Accounts of Banks and Financial Institutions

62. Appointment of auditor
63. Disqualification of auditor
64. Auditor's report
65. Resignation or termination of appointment of auditor
66. Immunity of auditor
67. Audit committee

Part 3-

68. Repealed by Act No. 18 of 2000

CHAPTER VI

SUPERVISION AND PRUDENTIAL REGULATIONS

Part 1-Provisions Relating to Financial Service Providers

- 69. Reserves
- 70. Liquid assets
- 70A Prudential liquidity ratio
- 71. Deficiency of liquid assets or prudential liquidity ratio
- 72. Prohibition of unsecured borrowing
- 73. Limitations on granting advances
- 74. Constraints on contracts with related persons
- 75. Limitations on equity Investments
- 76. Unclaimed funds or personal property
- 77. Unsafe and unsound practices
- 78. Examination of banks
- 79. Scope of examination
- 80. Inspection of representative offices
- 80A Duty to provide information and documents relating to representative offices
- 81. Supervisory actions
- 82. Special reserve or liability insurance
- 83. Capital adequacy

Part 2-Taking Possession of Banks and Financial Institutions

- 84. Notice of taking possession
- 84A Powers and duties of the Bank of Zambia upon taking possession
- 84B Statement of affairs of assets and liabilities upon taking possession
- 84C Appeal for termination of possession
- 84D Effect of possession
- 84E Restructuring and reorganisation
- 84F Refusal of restructuring or reorganisation of plan

- 84G Restructuring as to execution
- 84H Recovery of Expenses
- 84I Appointment of agent by Bank of Zambia

CHAPTER VII

INSOLVENCY, DISSOLUTION AND LIQUIDATION OF BANKS AND FINANCIAL INSTITUTIONS

Part 1-Preliminary

- 85. Precedence of this ActConflict of laws
- 86. Meaning of "insolvent"
- 87. Acceptance of deposits by insolvent banks
- 87A Powers of Bank of Zambia in relation to insolvent financial institutions
- 87B Power of Bank of Zambia in relation to insolvent financial businesses Cap. 388

Part 2-Voluntary Winding up and Liquidation

- 88. Approval of Bank of Zambia required for voluntary winding up
- 89. Duties of bank on voluntary liquidation
- 90. Notice of voluntary winding up and liquidation
- 91. Rights of depositors and creditors
- 92. Distribution of assets on voluntary liquidation
- 93. Powers of Bank of Zambia if assets insufficient or completion unduly delayed

PART3-SEIZURE OF BANKS

- 94. *Repealed by Act No. 18 of 2000*
- 95. *Repealed by Act No. 18 of 2000*
- 96. *Repealed by Act No. 18 of 2000*
- 97. *Repealed by Act No. 18 of 2000*
- 98. *Repealed by Act No. 18 of 2000*
- 99. *Repealed by Act No. 18 of 2000*
- 100. *Repealed by Act No. 18 of 2000*

Part 4-Compulsory Liquidation, Winding up or Dissolution

- 101. Compulsory liquidation, winding up or dissolution
- 102. Power of Bank of Zambia to appoint agent
- 103. Effect of compulsory dissolution etc.
- 104. Powers of Bank of Zambia in effecting compulsory liquidation etc.
- 105. Limitation of filing of claims
- 106. Objections to liquidation schedule
- 107. Priority of creditors
- 108. Accounts after distribution of assets
- 109. Unclaimed funds
- 110. Final distribution in compulsory liquidation
- 110A Restriction of action by third parties
- 110B Recovery of expenses

CHAPTER VIII

APPEALS

- 111. Reasons for decisions and right to be heard
- 112. Right of appeal
- 113. Appointment and convening of Tribunal
- 114. Powers of Tribunal
- 115. Decision of Tribunal

CHAPTER IX

MISCELLANEOUS

- 116. Investigations
- 117. Use of the word "bank"
- 118. Misleading and unlicensed names
- 119. Restriction on use or registration of banking and related names
- 120. Validity of certain acts by banks
- 121. Documents
- 121A Publication of information

- 122. Extension of time limits
- 123. Immunity of Bank of Zambia officials, etc.
- 124. Regulations
- 124A Exercise of power of Bank of Zambia to prescribe
- 125. Guidelines
- 126. Bank of Zambia's report
- 127. False documents
- 127A Prohibition of money circulation schemes
- 128. Penalty for offences where no specific penalty provided
- 129. Offences by body of persons
- 129A Utilisation of collateral for settlement of certain obligations
- 130. Exemptions
- 131. Repeal of Cap. 700 and savings

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

CHAPTER 387

BANKING AND FINANCIAL SERVICES ACT

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

Act No.
21 of 1994
13 of 1994
28 of 1995
18 of 2000
25 of 2005

[3rd June, 1994]

CHAPTER I PRELIMINARY

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

Short title
Commence-
ment
Cap. 387

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

Interpretation

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

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

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

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

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

"bank" means a company conducting banking business;

(As amended by Act. 18 of 2000)

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

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

(As amended by Act. 18 of 2000)

"banking business" means the business of-

Cap. 360
Act No. 43 of 1996

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

(b) providing financial services; and

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

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

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

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

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

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

Cap. 388

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

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

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

"control" a situation where-

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

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

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

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

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

"deposit" means-

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

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

(ii) no interest is payable on the amount so paid or interest is payable thereon at specified or unspecified intervals, notwithstanding that the payment is limited to a fixed amount that a transferable or non-transferable certificate or other instrument providing for the repayment of the amount referred to in subparagraph (i) or the interest referred to in this subparagraph is issued in respect of that amount or interest;

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

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

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

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

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

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

(d) outstanding draft, cashier's cheque, money order, or other officer's cheque issued by the bank or financial institution and drawn on customer funds for any purpose in the ordinary course of business; or

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

(As amended by Act. 18 of 2000)

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

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

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

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

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

(a) commercial or consumer financing services;

(b) credit reference services;

(c) deposit brokering;

(d) factoring, with or without recourse;

(e) financial leasing or finance leasing;

(f) financing of commercial transactions, including forfeiting;

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

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

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

(j) merchant banking services;

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

(l) purchase and sale of foreign exchange;

(m) issuance of debentures and money market instruments and the acceptance of six months (or such other period as prescribed by the

Bank of Zambia) term deposits, other than current accounts and chequing deposits;

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

(o) venture capital funding;

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

(q) development financing; and

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

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

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

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

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

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

“incorporated” means-

(a) formed under the Companies Act; or

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

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

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

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

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

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

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

Cap 388

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

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

Cap 388

- (a) exercises managerial functions;
- (b) is responsible for maintaining accounts or other records; or
- (c) is responsible for the management of credits;

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

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

Cap. 388

- (a) paid up common shares;
- (b) qualifying preferred shares consisting of:
 - (i) perpetual preferred shares;
 - (ii) compulsory convertible preferred shares where conversion to securities which would qualify as primary capital represents the only redemption option; or
 - (iii) preferred shares which have an original term of maturity of twenty years or more, where no redemption occurs within the first ten years and where the maximum redemption obligation in any one year is restricted

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

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

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

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

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

(As amended by Act. 18 of 2000)

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

(As amended by Act No. 18 of 2000)

(3) For the purposes of this Act-

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

(b) two persons are associated if-

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

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

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

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

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

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

(d) a company is the subsidiary of another company if more than fifty

per centum of the issued voting shares of the company (except any qualifying directors' shares) are owned directly or indirectly by the other company.

(4) In subsection (1)-

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

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

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

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

Application of this Act

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

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

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

CHAPTER II

LICENSING OF BANKS AND FINANCIAL INSTITUTIONS

Part 1-Licensing of Banks

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

Licensing of companies as banks

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

(a) the articles of association of the company;

Cap. 388

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

(c) the name and permanent residential address of every subscriber for any class or series of shares issued by the company in a number that will

exceed one per centum of all the shares of that class or series, whether such shares carry the right to vote in all circumstances or not;

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

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

(f) the amount of its capital; and

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

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

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

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

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

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

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

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

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

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

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

Determination of applications

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

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

Application for licence to be refused in certain cases

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

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

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

Investigation of applicants

(a) the capital adequacy of the applicant;

(b) the financial condition, resources and history of the applicant and the applicant's associates and affiliates;

(c) the character and experience of the directors and major shareholders or other owners or founders and of persons proposing to be concerned in the management of the business to be undertaken under the authority of the licence;

(d) the convenience and needs of the community intended to be served by that business; and

(e) the prospects for profitable operation of that business.

(As amended by Act No. 25 of 2005)

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

Authorised activities of banks in addition to taking of deposits

(a) making loans and extending credit to any person on the security of property of any kind or unsecured;

(b) dealing as a principal or as an agent in-

(i) bills of exchange, promissory notes, cheques, travellers' cheques and like instruments;

(ii) the currency of Zambia and, subject to the guidelines, bulletins and regulatory statements made under this Act, in the currency of any other country and foreign exchange transactions; and

- (iii) gold, silver or platinum bullion or coins;
- (c) providing money transfer services and facilities;
- (d) the issue and administration of payment, credit or debit cards and, in co-operation with others, the operation of payment, credit card and debit card systems;
- (e) providing guarantees, letters of credit and other assurances of payment:
- (f) finance leasing;
- (g) factoring, with or without recourse;
- (h) acting as a trustee of any trust, executor or administrator of any estate or in any fiduciary capacity for any person;
- (i) acting as a financial agent for any person;
- (j) providing safekeeping and custodial services for financial assets and securities;
- (k) Providing merchant banking services including the arrangement and underwriting of shares trade financing, corporate financing and the provision of financial advice; and
- (l) dealing as a principal or as an agent for its customers in financial futures and options and in exchange, currency and interest rate swap agreements.

(2) The Minister, on the recommendation of the Bank of Zambia, may by regulation prescribe the meaning to be given to any expression used in this section and not otherwise defined for the purposes of this Act.
(As amended by Act No. 18 of 2000)

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

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

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

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

Part 2-Licensing of Financial Institutions

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

(a) a company; or

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

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

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

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

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

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

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

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

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

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

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

Application of certain provisions of this Chapter to financial institutions

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

12. Repealed by Act No. 25 of 2005

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

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

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

Licensing of representative

(a) the name and address of the applicant;

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

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

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

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

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

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

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

reasonably require.

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

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

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

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

(As amended by Act No. 18 of 2000)

Part 2B - Licensing of Financial Businesses

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

(As amended by Act No. 18 of 2000)

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

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

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

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

Regulatory
requirements for
representative
offices

Grant of licences

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

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

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

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

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

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

(As amended by Act No. 25 of 2005)

Part 3-Operation of Licences

Branches of
financial
businesses

Existing financial
businesses.

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

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

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

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

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

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

(4) In deciding whether to grant the variation, the Registrar is to have regard to such of the provisions of section *seven* as it considers relevant and to the public interest.

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

(As amended by Act No. 18 of 2000)

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

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

Licences not transferable

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

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

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

Revocation of licences

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

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

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

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

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

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

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

Part 4-Prohibition of Unlicensed Business Etc.

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

Prohibition of unlicensed business

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

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

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

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

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

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

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

Repayment of funds

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

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

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

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

Part 5-Register of Licences

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

(As amended by Act No. 25 of 2005)

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

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

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

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

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

(As amended by Act No. 25 of 2005)

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

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

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

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

CHAPTER III

ORGANISATION AND ADMINISTRATION

Part 1-Ownership and Control of Financial Service Providers

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

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

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

(b) enter into any voting trust or other agreement,

that would enable the person to control more than twenty-five per centum of the total votes that could be cast on any general resolution at a general or special meeting of the financial service provider.

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

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

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

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

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

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

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

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

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

23A. (1) A person who, by virtue of subsection (5) of section *twenty-three* has, immediately before the date of coming into force of this Act, the type of control of a financial service provider that would otherwise be prohibited under subsection (2) of that section shall dispose of the beneficial interest in the voting shares or terminate or modify the voting trust or other arrangement so as to reduce the person's control to the extent permissible under subsection (2) of that section.

Regulation and
divestment of other
control

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

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

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

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

Ownership

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

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

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

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

Prohibition of ownership of shares by trust

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

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

Part 2-Amalgamation And Restructuring Of Banks Or Financial Institutions

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

Meaning of "corporate restructuring transaction"

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

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

(As amended by Act No. 25 of 2005)

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

Prohibition of corporate restructuring transactions

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

(2) A bank or financial institution shall not effect a corporate

restructuring transaction with another bank or financial institution without the prior written consent of the Bank of Zambia.

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

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

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

Consent to corporate restructure etc.

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

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

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

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

(As amended by Act No. 25 of 2005)

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

Investigation of applicants for consent

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

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

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

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

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

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

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

29. (1) In this section:

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

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

(2) When the corporate restructuring transaction takes effect-

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

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

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

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

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

(3) The Registrar of Companies, the Registrar of Lands and Deeds and every officer in charge of an office in which is registered any title to property belonging to, or any mortgage, bond or other right in favour of, the old entity shall-

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

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

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

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

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

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

Part 3-Boards of Directors

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

Boards of
Directors

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

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

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

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

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

Chief executive officers and
chief financial officers

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

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

Qualifications of
directors and
senior officers

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

(a) is not a fit and proper person to hold the relevant office in relation to integrity and professional expertise;

(b) is not above the age of twenty-one years;

(c) at any time has been adjudged bankrupt by a competent court, whether in Zambia or elsewhere, or is a person who, whether in Zambia or elsewhere, has made an arrangement or composition with the person's creditors;

(d) has been convicted of a felony or any offence involving dishonesty;

(e) has been declared or otherwise adjudged in any official proceedings to be mentally incompetent to manage one's own affairs;

(f) is under suspension or has been removed from office under this Act; or

(g) has been a director, chief executive officer, chief financial officer or manager of a company or financial service provider which has been adjudged insolvent, entered into a composition with creditors, gone into liquidation, declared bankrupt or has entered into any other arrangement with creditors or taken any other action with similar effect in Zambia or elsewhere unless that person shows that the person was not responsible for the insolvency, liquidation, composition with creditors, bankruptcy, other arrangement with creditors or other action with similar effect in Zambia or elsewhere;

(h) has been removed by a competent court, whether in Zambia or elsewhere, from an office of trust on account of misconduct or breach of that trust.

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

(a) becoming bankrupt, suspending payments or compounding or proposing a compromise with that person's creditors

generally;

(b) being charged with a felony or any offence involving dishonesty;

(c) being declared or otherwise adjudged in any official proceedings to be mentally incompetent to manage affairs; or

(d) being suspended or removed from office by order of the Bank of Zambia under this Act.

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

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

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

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

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

Directors from outside to be in the majority

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

(As amended by Act No. 25 of 2005)

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

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

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

(b) exercise due care, diligence and skill.

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

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

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

Disclosure of
interests

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

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

(b) has an interest in, or a material relationship to, a party or prospective party to a contract or a proposed contract with the financial service provider shall disclose in writing to the financial service provider the nature and extent of the interest or relationship.

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

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

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

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

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

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

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

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

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

(10) For the purposes of this section-

(a) an interest is material if it is material with reference to the wealth, business or family interests of the person having the interest and, without limiting the generality of the foregoing, a person has a material interest in-

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

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

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

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

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

False statements
and obstruction of
examinations

financial service provider who-

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

(b) obstructs or endeavors to obstruct-

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

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

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

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

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

Suspension or dismissal of directors and managers

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

(3) A director or officer who exercises or performs any power or duty pertaining to his office during any period of suspension imposed, or after removal from office, under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

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

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

Part 4A-Organisation and administration of Financial Businesses

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

Structure of unincorporated financial institutions

(a) voting rights for the members or owners; and

(b) subordination of those with voting rights to all creditors in the event of insolvency, dissolution or winding up.

(As amended by Act No. 25 of 2005)

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

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

(As amended by Act No. 18 of 2000)

Part 5-Constitution of Banks and Incorporated Financial Institutions

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

Variation of corporate constitutions

(As amended by Act No. 25 of 2005)

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

Amendment of constitution by Bank of Zambia

(As amended by Act No. 25 of 2005)

CHAPTER IV

OPERATIONS

Part 1-Anti-Competitive Conduct

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

(a) the rate of interest on a deposit by any person;

(b) the rate of interest or charge on a loan to any person;

(c) the amount of any charge to any person for the provision of a financial service;

(d) the provision of, or refusal to provide any financial service to, any person; or

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

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

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

(a) for the performance of a financial service by one financial service provider to another;

(b) evidencing a syndication or other agreement for the provision of credit and other banking services to a person by two or more financial service providers;

(c) for the underwriting or distribution of any security by a bank or financial institution or a group of persons including a financial service provider;

(d) for the exchange of statistics or audit information, the development and use of systems, forms, methods, procedures and standards, the use of common facilities, joint research and development or any matter in connection therewith;

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

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

41. Any financial service provider that requires any person to contract Collateral contracts

to receive any financial service as a condition of being permitted to contract with it or any other person to receive any other financial service, or any goods or other service shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

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

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

Part 2-Business Practices and Dealings With The Public

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

(a) maintain a principal administrative office in Zambia;

(b) inform the Bank of Zambia in writing-

(i) of the location of its principal administrative office; and

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

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

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

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

(a) prominently at the entrance to every place where it carries on any part of its business;

(b) on every letter, advertisement or other communication published or issued by or on its behalf; and

(c) in every written contract that it enters into or offers to enter into and in every receipt that it issues.

(As amended by Act No. 25 of 2005)

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

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

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

(b) an abbreviation of that name.

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

(As amended by Act No. 25 of 2005)

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

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

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

(3) A private obligation that-

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

(b) falls due on a day on which the premises of the bank or financial institution are not open for business,

shall be deemed to fall due on the first following business day.

(As amended by Act No 18 of 2000)

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

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

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

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

(2) A financial service provider that agrees to make a loan or credit

available to a person shall, at the same time, disclose the cost of borrowing to the person in writing.

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

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

48. A bank or incorporated financial institution shall-

Customer
complaints

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

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

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

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

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

Advertisement by
licensee

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

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

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

Confidentiality

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

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

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

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

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

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

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

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

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

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

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

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

Records of constitution and of compliance with this Act

(a) its articles and memorandum of association and all amendments thereto;

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

(c) minutes of meetings and resolutions of the directors;

(d) minutes of meetings and resolutions of the shareholders;

(e) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position in such a way as to enable the Bank of Zambia conveniently to determine whether the bank has complied with all the provisions of this Act;

(f) records showing, for each customer of the bank or institution on a daily basis, particulars of its transactions with or for the account of the customer and the balance owing to or by the customer; and

(g) such other records as are required to be prepared and maintained by or under this Act or by order of the Bank of Zambia.

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

(a) shall be open to inspection by the directors; and

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

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

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

Credit
documentation

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

(a) reasonably current financial statements of the indebtedness of the borrower and any guarantor of the borrower to the bank or institution;

(b) a description of any collateral over which the financial service provider has any mortgage or charge as security for the due payment of the indebtedness to it;

(c) a statement of the terms of the credit, including the principal amount, rate of interest, schedule of repayments and the borrower's objective or purpose for borrowing; and

(d) the signature of each person who authorised the credit on behalf of the financial service provider.

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

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

Manner of keeping
records

(a) may be in bound or loose-leaf form or in photographic film form; or

(b) may be entered or recorded by any system of mechanical or electronic data processing or any other device or process that is capable of reproducing any required information in intelligible written form within a reasonable time; and

(c) if kept in any one form, may be converted to any other form authorised by this Act.

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

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

Retention of
records

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

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

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

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

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

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

CHAPTER V

FINANCIAL ACCOUNTABILITY

Part 1-Financial Statements of Banks and Financial Institutions

(As amended by Act No. 18 of 2000)

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

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

- (i) a balance sheet as at the end of each of those financial years;
- (ii) a profit and loss account for each of those financial years;
- (iii) a cash flow statement for the last financial year;
- (iv) a statement of changes in the shareholders' equity for the last financial year;
- (v) a capital adequacy computation as at the end of each of those financial years;

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

- (i) common enterprise and related party transactions;

- (ii) risk management, processes and practices during the year;
 - (iii) directors' interests disclosed;
 - (iv) the existence of prohibited borrowings or lendings; and
 - (v) internal control; and
- (c) any information that may be required by or under the law under which the financial service provider is established.

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

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

(a) the report of the auditor of the financial service provider; and

(b) an additional information concerning the financial institution and the results of its operations as may be prescribed by the Bank of Zambia.

(4) In subsection (1), a related party transaction means a transaction where by two or more persons, by virtue of their relationship, will or likely to benefit severally or jointly from funds or services arising from a transaction involving any one of them and a financial service provider.

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

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

Statement as to
subsidiaries

(a) a list of subsidiaries, other than subsidiaries acquired upon 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 beneficially owned by the financial service provider and any other subsidiaries of the financial service provider; and

(iii) the percentage of the voting shares of the subsidiary that is beneficially owned by the financial service provider and by other subsidiaries of the financial service provider; and

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

58. Annual financial statements of financial service provider shall comply with any regulations, guidelines and prescriptions relating to the creation or variation of appropriate reserves for bad and doubtful debts.
(Repealed and replaced by Act No. 18 of 2000, amended by No. 25 of 2005)

Reserves for bad and doubtful debts

59. Annual financial statements of financial service provider shall be approved by the directors and the approval shall be signified by their signatures.
(Repealed and replaced by Act No. 18 of 2000 and No. 25 of 2005)

Approval of annual financial statements

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

Monthly statements

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

(i) its liabilities to the public; and

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

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

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

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

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

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

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

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

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

Publication of
financial statement

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

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

(a) each of its annual financial statements; and

(b) its monthly financial statements for each quarter.

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

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

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

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

(As amended by Act No 18 of 2000)

Part 2-Audit of Accounts of Banks and Financial Institutions *(Repealed and replaced by Act No. 18 of 2000)*

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

Appointment of
auditor

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

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

(4) The remuneration of the auditor, whether appointed by the bank, financial institution or by the Bank of Zambia, shall be paid by the

financial service provider and, in the case of an auditor appointed by the Bank of Zambia, shall be fixed by the Bank of Zambia.

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

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

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

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

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

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

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

Disqualification of auditor

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

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

(c) a body corporate;

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

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

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

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

Auditor's report

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

(a) express whether, in his opinion, the financial service provider made

available all necessary information to enable the auditor to comply with the requirements of this Act:

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

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

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

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

(ii) any loan owing to the financial service provider by any person that is non-performing loan, or that has been restructured or the terms of repayment of which have been extended, if the principal amount of the loan is five per centum or more of the regulatory capital of the bank or financial institution.

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

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

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

Resignation or termination of appointment of auditor

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

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

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

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

Immunity of auditor

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

Audit committee

(2) The audit committee shall-

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

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

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

(d) review such investments and transactions that could materially adversely affect the financial condition of the financial service provider as the auditor or chief executive officer, chief financial officer or any manager may bring to the attention of the committee;

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

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

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

findings of any such inquiry undertaken by it.

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

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

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

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

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

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

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

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

Part 3 Chapter V is repealed by Act 18 of 2000

CHAPTER VI

SUPERVISION AND PRUDENTIAL REGULATION

Part 1-Provisions Relating to Financial Service Providers

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

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

(2) The Bank of Zambia may by regulation prescribe the amount required to be transferred to the reserve account, the method of computing that amount, the form of the reserve account and any other matter it considers necessary to give effect to this section:

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

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

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

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

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

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

Provided that-

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

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

(c) no bank or financial institution may be required to maintain any

higher percentage than any other bank or financial institution of the same category.

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

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

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

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

(a) assets that qualify as liquid assets; and

(b) liabilities that qualify as liabilities to the public:

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

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

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

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

Prudential
liquidity
ratio

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

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

Deficiency of
liquid assets or
prudential
liquidity ratio

Act No, 43 of
1996

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

72. A bank or financial institution shall not-

Prohibition of
unsecured
borrowing

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

(i) in the ordinary course of business; or

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

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

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

73. (1) A bank or financial institution shall not, directly or indirectly, except as provided in the Fourth Schedule, grant any advance, or make any guarantee of the debtors of any person or common enterprise so that the total value of any such advances and guarantees with or in respect of any one person or common enterprise is at any time more than twenty-five per centum of the regulatory capital of the bank or financial institution.

Limitations on
granting advances

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

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

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

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

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

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

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

(5) A bank or financial institution shall not, directly or indirectly,

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

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

(7) A bank or financial institution shall not, directly or indirectly, except with the prior written approval of the Bank of Zambia and on such terms and conditions as prescribed, purchase, lease or otherwise acquire an interest in real property except-

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

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

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

(9) In the application of the limitations imposed by subsections (1) and (3), if the Bank of Zambia determines that a group of two or more persons to whom any grants, advances or guarantees have been

or are to be made are a common enterprise or are so inter-related that they should be considered as a unit, the total indebtedness of that group shall, if the Bank of Zambia by notice served on the bank or financial institution concerned so provides, be combined and shall be deemed to be the indebtedness of a single person:

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

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

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

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

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

Constraints on contracts with related persons

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

(a) the board of directors approves of the contract in advance and the contract is on terms no less favourable to the bank or financial institution than the terms of similar contracts that are entered into by the financial service provider with persons who are not related; or

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

(As amended by Act No. 25 of 2005)

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

Limitations on equity investments

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

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

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

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

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

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

(8) In this section-

(a) "equity interest in a person" means

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

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

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

- (i) any officer, director or principal shareholder of a bank or of a financial institution;
- (ii) any person who participates or has the authority to participate in major policy making functions of a bank or of a financial institution whether employed or not by the bank or financial institution;
- (iii) a bank or financial institution in which a person referred to in subparagraph (i) or (ii)

owns directly or indirectly, alone or together with one or more other persons falling within the meaning of any of those subparagraphs, more than twenty per centum of the shares; or

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

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

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

Unclaimed funds or
personal property

(2) Subsection (1) applies to-

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

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

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

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

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

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

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

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

(c) any funds or other personal property, removed from a safe deposit box or any other safekeeping facility on which the lease or rental period has expired due to the non-payment of rental charges or by reason of some other default by the lessee, or any surplus amounts arising from the sale of the property thereof in accordance with law, that have been unclaimed by the owner for more than ten years from the date on which the lease or rental period expired.

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

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

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

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

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

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

Unsafe and
unsound practices

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

(a) cease or refrain from doing the act or pursuing the course of conduct;

(b) perform such acts as, in the opinion of the Bank of Zambia, are

necessary to rectify the situation.

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

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

(b) impose any limitation on the financial institution acceptance of deposits or the payment of the interest thereon, the granting of credit, the making of investments or the payment of dividends;

(c) prohibit the solicitation of deposits or the payment of the interest thereon either generally or from specified persons or classes or persons;

(d) prohibit the financial service provider from entering into any other transaction or class of transactions, or from commencing or continuing any activity which it is permitted under this Act to carry on; or

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

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

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

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

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

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

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

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

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

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

Inspection of
financial service
provider

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

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

(As amended by Act No. 18 of 2000)

79. (1) A financial service provider shall:

Scope of
inspection

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

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

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

(3) The Bank of Zambia may from time to time arrange meetings with the auditor, or with the auditor and officers of the bank, to discuss any matters relevant to the Bank of Zambia's supervisory responsibilities

which may have arisen in the course of the statutory audit of the.
(As amended by Act No. 18 of 2000 and No. 25 of 2005)

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

Inspection of
representative
offices

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

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

Duty to provide
information and
documents
relating to
representative
offices

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

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

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

81. (1) Where-

Supervisory
actions

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

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

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

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

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

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

(iv) the financial service provider is insolvent;

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

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

(a) taking possession of the financial service provider;

(b) suspending the financial service provider's licence for a period not exceeding six months;

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

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

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

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

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

82. A bank or financial institution shall-

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

Special reserve or
liability insurance

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

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

(Amended by Act No. 18 of 2000)

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

Capital adequacy

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

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

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

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

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

(4) For banks or financial institutions, the minimum required regulatory capital to be prescribed by the Bank of Zambia shall not be less than six per centum of a bank's or financial institution's assets, contingent liabilities and other exposures and shall be calculated as may be prescribed by the Bank of Zambia;

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

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

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

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

Part 2-Taking Possession of Banks and Financial Institutions

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

Notice of taking possession

(As amended by Act No. 25 of 2005)

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

Powers and duties of the Bank of Zambia upon taking position

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

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

(As amended by Act No. 25 of 2005)

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

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

Statement of affairs of assets and liabilities upon taking possession

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

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

(iii) to close the financial service provider;

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

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

(As amended by Act No. 25 of 2005)

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

(As amended by Act No. 25 of 2005)

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

Appeal for termination of possession

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

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

Effect of possession

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

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

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

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

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

(As amended by Act No. 25 of 2005)

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

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

Restructuring and
reorganisation

(As amended by Act No. 25 of 2005)

84F. (1) Where depositors and other creditors refuses a re-structuring

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

(a) modify the plan; or

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

(As amended by Act No. 25 of 2005)

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

Refusal of restructuring or reorganisation of plan

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

(As amended by Act No. 25 of 2005)

84H. All necessary and reasonable expenses incurred by the Bank of Zambia in the application of the provisions of this Chapter shall be defrayed from the funds of the financial service provider.

Restructuring as to execution

(As amended by Act No. 25 of 2005)

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

Recovery of expenses

Appointment of Agent by Bank of Zambia

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

CHAPTER VII

INSOLVENCY, DISSOLUTION AND LIQUIDATION OF BANKS AND FINANCIAL INSTITUTIONS

Part 1-Preliminary

85. Where, in relation to banking business or financial service business any written law is inconsistent with this Act, the provision of this Act shall, to the extent of the inconsistency, prevail.

Precedence of this Act

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

86. For the purposes of Chapter VI and this Chapter, a financial service provider is insolvent when it ceases to be able to meet its obligations as they fall due or when its assets are insufficient to meet its liabilities.
(As amended by Act No. 25 of 2005)

Meaning of "insolvent"

87. (1) A financial service provider shall not, while insolvent:

Acceptance of deposits by insolvent banks

(a) receive any deposit; or

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

(2) A transaction with a depositor or a creditor and a settlement in a netting or gross settlement arrangement under the system of settlement approved by the Bank of Zambia or provided for in or under any written

law shall not be treated as prohibited under subsection (1) only because of the insolvency of a financial service provider if the transaction or settlement took place prior to a resolution to liquidate the financial service provider or prior to the appointment of a receiver or the taking possession of the financial service provider by the Bank of Zambia.

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

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

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

- (a) if it is a company under the Companies Act or if it is a body corporate established by or under any written law, the Bank of Zambia shall take possession of the institution in accordance with the provisions of paragraph (a) of subsection (2) of section *eighty-one*;
- (b) if it is not a company under the Companies Act and is subject to the supervision or control of another authority, the Bank of Zambia shall revoke its licence and give directions to the appropriate authority to place the institution into liquidation or dissolution.

Powers of Bank of Zambia in relation to insolvent financial institutions

Cap 388

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

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

Power of Bank of Zambia in relation to insolvent financial businesses.
Cap. 388

eighty-four D, eighty-four E, eighty-four F, eighty-four G and eighty-four H.
(As amended by Act No. 25 of 2005)

Part 2-Voluntary Winding up and Liquidation

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

Approval of Bank of Zambia required for voluntary winding up

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

(As amended by Act No. 18 of 2000)

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

Duties of bank on voluntary liquidation

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

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

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

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

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

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

Notice of voluntary winding up and liquidation

registered mail notify-

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

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

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

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

(As amended by Act No. 18 of 2000)

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

Rights of
depositors and
creditors

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

(As amended by Act No. 18 of 2000)

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

Distribution of
assets on voluntary
liquidation

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

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

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

(As amended by Act No. 18 of 2000)

93. If the Bank of Zambia finds that the assets of a bank or financial institution whose voluntary winding-up or liquidation or dissolution it has approved will not be sufficient for the full discharge of all its obligations or that completion of the winding-up or liquidation or dissolution is unduly delayed, it may, if it considers it proper to do so, take possession of the bank or financial institution.

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

(As amended by Act No. 18 of 2000)

Part 3-Seizure of Banks

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

Part 4 - Compulsory Liquidation, Winding up or Dissolution.

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

Compulsory liquidation, winding up or dissolution

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

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

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

(As amended by Act No. 18 of 2000)

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

Powers of Bank of Zambia to appoint agent

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

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

Effect of order of compulsory dissolution etc

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

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

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

Powers of Bank of Zambia in effecting compulsory liquidation etc.

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

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

(b) the Bank of Zambia may terminate-

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

(ii) any obligation of the bank or financial institution as a lessee of real property; but a lessor to whom the Bank of Zambia gives not less than ninety days' notice of termination of lease shall have not claim for rent other than rent accrued and outstanding on the date of termination of the lease, nor any claim for damages by reason of such termination.

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

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

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

(4) The customer's statement shall note that any claim must be filed with the Bank of Zambia before a specified date not earlier than sixty

days thereafter and shall call upon safe-keeping services customers and bailors to withdraw their property.

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

(6) Any unclaimed funds and property held by the bank or financial institution as a bailee, together with inventories pertaining thereto, shall be deemed to be unclaimed funds for the purposes of the provisions of this Act dealing with unclaimed funds and shall be dealt with accordingly.

(As amended by Act No. 18 of 2000)

(7) deleted by 18 of 2000

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

Limitation of filing
of claims

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

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

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

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

(As amended by Act No. 18 of 2000)

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

Objections to
liquidation
schedule

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

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

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

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

(As amended by Act No. 18 of 2000)

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

(a) necessary and reasonable expenses incurred by the Bank of Zambia in the application of the provisions of this Part;

(b) taxes and rates due, whether payable to the Government or to a local authority;

(c) wages and salaries of officers and employees of the bank for the three-month period preceding the effective date of seizure, within the limit of an amount not exceeding one hundred thousand kwacha per person or such higher amount as may be prescribed by regulation;

(d) fees and assessments due to the Bank of Zambia;

(e) claims established under a deposit protection scheme.

(f) other deposits; or

(g) other claims against the bank in such order of priority as the Court may determine upon application by the Bank of Zambia.

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

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

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

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

Accounts after distribution of assets

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

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

Unclaimed funds

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

Final distribution in compulsory liquidation

110A. Upon taking possession of a bank or financial institution by the Bank of Zambia under this Act, no proceedings may be instituted by any person, other than the Bank of Zambia, for the liquidation, winding up, dissolution or other action of a similar nature.

Restriction of action by third parties

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

Recovery of expenses

(As amended by Act No. 18 of 2000)

CHAPTER VIII

APPEALS

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

Reasons for decisions and right to be heard

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

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

(2) The decision of the Registrar or of the Bank of Zambia shall remain

in force unless reversed by the Registrar or by the Bank of Zambia, as the case may be, or set aside by the Tribunal on an appeal or by a court

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

(As amended by Act No. 18 of 2000)

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

Right of appeal

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

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

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

113. Within seven days after receipt of a notice under subsection (1) of section *one hundred and twelve*, the Minister shall appoint and convene an Appeal Tribunal consisting of a Chairman who is an advocate of the High Court of not less than seven years' standing and two other persons having qualifications and experience in relation to the matters involved in the appeal.

Appointment and
Convening of
Tribunal

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

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

Powers of Tribunal

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

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

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

Decisions of
Tribunal

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

CHAPTER IX

MISCELLANEOUS

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

Investigations

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

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

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

(As amended by Act No. 13 of 1994)

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

Use of the word "bank"

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

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

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

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

(As amended by Act No. 13 of 1994)

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

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

(2) Subsection (1)-

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

(b) does not apply to-

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

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

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

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

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

and order the owner of the business or the business name to alter or modify the name so as to comply with subsection (1).

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

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

Validity of certain acts by banks

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

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

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

Documents

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

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

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

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

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

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

Publication of information

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

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

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

Extension of time limits

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

(As amended by Act No. 25 of 2005)

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

Immunity of Bank of Zambia officials, etc.

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

Regulations

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

(As amended by Acts No. 13 of 1994)

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

Exercise of power of Bank of Zambia to prescribe

(As amended by Act No. 18 of 2000)

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

Guidelines

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

Bank of Zambia's report

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

127. (1) Subject to subsection (2), if a person issues or takes part in the issue of a document referred to in this Act which is false in any material particular, that person and every other person who signed it shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both

False documents

(2) A person shall not be guilty of an offence under this section if the person did not know and could not reasonably be expected to have known that the document was false when the person signed it, issued it or took part in its issue as the case may be.

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

127A (1) A person shall not-

Prohibition of money circulation schemes

(a) conduct, or participate in, a money circulation scheme; or

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

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding three years or both.

(As amended by Act No. 18 of 2000)

128. A person who commits an offence under this Act for which no penalty is specifically provided is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both.

Penalty for offences where no specific penalty provided

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

129. (1) Where an offence under this Act is committed by a body of persons-

Offences by body of persons

(a) in the case of a body corporate, every director or like officer of the body commits the offence; and

(b) in the case of a partnership every partner commits the offence;

unless the director, or like officer of the body corporate or partner proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of that director, like officer, or partner did their part to prevent the commission of the offence having regard to all the circumstances of the case.

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

129A. (1) Collateral held by the Bank of Zambia on behalf of a clearing house, a payment system or a payment association for the purpose of settling the obligations of a bank or financial institution which is a member of the clearing house, payment system or payment association shall be utilised for that purpose by the Bank of Zambia in accordance with the terms and conditions approved by the Bank of Zambia and shall not be subject to any claim.

Utilisation of collateral for settlement of certain obligations

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

(3) In the case of a bank or financial institution in respect of which the winding up, dissolution or liquidation has commenced under this Act, the balance of the collateral, after the collateral has been utilised in accordance with subsection (1), shall be dealt with in accordance with Chapter VII.

(As amended by Act No. 18 of 2000)

130. The Minister, on the recommendation of the Bank of Zambia, may by regulation, on such terms and conditions as the Minister considers appropriate, exempt any bank or financial institution from all or any of the provisions of this Act and may provide for the variation or revocation, by regulation or by notice in writing to the affected person or persons, of any such exemption at any time.

Exemptions

(As amended by Act No. 18 of 2000)

131. (1) The Banking Act is hereby repealed.

Repeal of Cap. 700 and savings of the 1971 Edition

(2) Notwithstanding the repeal of the Banking Act-

(a) a commercial bank, within the meaning of that Act, that was, immediately before the commencement of this Act, registered as a bank under that Act shall be deemed to be the holder of a licence under section *four* of this Act that is subject to the same limitations and conditions as pertained to its registration;

(b) a financial institution, within the meaning of that Act, that was, immediately before the commencement of this Act registered as such under that Act shall be deemed to be the holder of a licence under

section *ten* of this Act that is subject to the same limitations and conditions as pertained to its registration;

(c) any applications pending under that Act shall be deemed to have been made under the corresponding provisions of this Act, and shall be dealt with under this Act;

(d) any right or benefit accruing, or liability incurred, under that Act shall continue in accordance with and subject to this Act; and

(e) any regulation, order, notice or direction made or given and in force, immediately before the commencement of this Act, under that Act shall, unless contrary to this Act, continue in force until revoked, as if made or given under this Act.

(3) The Minister may by regulation make such savings and transitional provisions as he may consider just or expedient in consequence of the enactment of this Act and the repeal of the Banking Act.

FIRST SCHEDULE

Repealed by Act No. 25 of 2005

SECOND SCHEDULE

Repealed by Act No. 25 of 2005

THIRD SCHEDULE

Repealed by Act No. 25 of 2005

FOURTH SCHEDULE

(Section 73)

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

(1) A transaction-

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

(b) having an original term to maturity no greater than two hundred and eighty-two days or such longer period as may be prescribed by the

Bank of Zambia.

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

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

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

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

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

SUBSIDIARY LEGISLATION

BANKING (DESIGNATION OF URBAN AND RURAL AREAS) ORDER [ARRANGEMENT OF REGULATIONS]

Regulation

1. Title
2. Designation of rural and urban areas

THE BANKING AND FINANCIAL INSTITUTIONS (DESIGNATION OF URBAN AND RURAL AREAS) ORDER.

Statutory Instrument 92 of 1989

1. This Order may be cited as the Banking and Financial Services (Designation of Rural and Urban Areas) Order.

Title

2. (1) The areas specified in the First Schedule to this Order are hereby designated as urban areas.

Designation of rural and urban areas

(2) The area specified in the Second Schedule to this Order are hereby designated as rural areas.

FIRST SCHEDULE

(Paragraph 2 (1))

URBAN AREAS

Central Province

Kabwe
Mumbwa
Serenje
Kapri Mposhi
Mkushi

Copperbelt Province

Ndola
Kitwe
Chingola
Mufulira
Chililabombwe
Luanshya
Kalulushi

Eastern Province

Chipata
Petauke

Luapula Province

Mansa

Lusaka Province

Lusaka
Kafue

Northern Province

Kasama
Mpika
Isoka
Mbala

North-Western Province

Solwezi
Zambezi

Southern Province

Choma
Livingstone
Mazabuka
Monze
Kalomo

Siavonga
Maamba
Western Province
Mongu

SECOND SCHEDULE

(Paragraph 2(2))

RURAL AREAS

Those areas not specified in the First Schedule.

BANKING REGULATIONS [ARRANGEMENT OF REGULATIONS]

Regulation

1. Title
2. Interpretation
3. Application for registration as commercial bank or financial institution
4. Registered commercial bank to submit monthly statements to Registrar
5. Registered financial institution to submit monthly and quarterly statements to Registrar
6. Rate of conversion of non-Zambian money to Zambian currency to be stated

***THE BANKING REGULATIONS**

Regulations by the Minister

** Continued in force by virtue of Section 15 of the Interpretation and General Provision Act.*

***Statutory
Instrument
226 of
1973***

1. These Regulations may be cited as the Banking Regulations.

Title

2. In these Regulations, unless the context otherwise requires- Interpretation

"form" means the appropriate form prescribed in the Schedule.

3. An application for registration as a commercial bank or a financial institution made in terms of paragraphs (a) and (b) of subsection (1) of section *four*, or of section *five* of the Act shall be in revised Form ZBK No. 1 and shall be accompanied by the following documents: Application for registration as commercial bank or financial institution

(a) a true copy, certified by the chairman and a director of the applicant, of the memorandum and articles of association, or other document relating to the incorporation or registration of the applicant as a body corporate, and regulating the conduct of the business of the applicant; and

(b) a true copy, certified by the Registrar of Companies, of the certificate of incorporation of the applicant, issued in terms of the law relating to companies; and

(c) a statement certified by the chairman, a director and the auditors of the applicant showing the authorised and paid-up capital of the applicant at a date not earlier than thirty days before the date of the application.

4. (1) The monthly statement which a registered commercial bank is required to prepare and submit to the Registrar in terms of- Registered commercial bank to submit monthly statements to Registrar

(a) paragraph (a) of subsection (1) of section sixty of the Act shall be in revised Form ZBK No. 2;

(b) paragraph (b) of subsection (1) of section sixty of the Act shall be in revised Form ZBK No. 3.

(2) For the purposes of paragraph (c) of subsection (1) of section sixty of the Act, a registered commercial bank shall prepare and submit to the Registrar within *twenty-eight* days after the last day of every calendar month a supplementary statement of the assets and liabilities of its offices and branches in Zambia at the close of the last business day of that month.

(3) The supplementary statement referred to in sub-regulation (2) shall be in revised Form ZBK No. 3.

* Continued in force by virtue of Section 15 of the Interpretation and General Provisions Act.

5. (1) The monthly statement which a registered financial institution is required to prepare and submit to the Registrar in terms of paragraph (a) of subsection (1) of section *sixty* of the Act shall be in revised Form ZBK No. 4.(2) The quarterly statement which a registered financial institution is required to prepare and submit to the Registrar in terms of paragraph (b) of subsection (1) of section *sixty* of the Act shall be in revised Form ZBK No. 5.

Registered financial institution to submit monthly and quarterly statements to Registrar

(3) For the purposes of paragraph (c) of subsection (1) of section *twenty-nine* of the Act, a registered financial institution shall prepare and submit to the Registrar within thirty-five days after the last day of each quarter ending on the 31st March, the 30th June, the 30th September and the 31st December a supplementary statement of the assets and liabilities of its offices and branches in Zambia at the close of the last business day of that quarter.

(4) The supplementary statement referred to in sub-regulation (3) shall be in revised Form ZBK No. 5.

6. If in a document furnished to the Registrar in terms of these Regulations a sum of money is not stated in the currency of Zambia, the appropriate rate of conversion of the sum of money to Zambian currency shall be stated in the document or in an annexure thereto.

Rate of conversion of non-Zambian money to Zambian currency to be stated

SCHEDULE

(Regulation 2)

PRESCRIBED FORMS

Form ZBK No. 1 (Revised): Application for registration as a commercial bank or financial institution.

Form ZBK No. 2 (Revised): Monthly Statement of-

(a) Liabilities to the Public; and

(b) Liquid Assets;

of a Commercial Bank in Zambia.

Form ZBK No. 3 (Revised): Monthly Statement of Assets and Liabilities and Supplementary Statement of a Commercial Bank in Zambia.

Form ZBK No. 4 (Revised): Monthly Statements of-

(a) Liabilities to the Public;

(b) Capital; and

(c) Liquid Assets;

of a Financial Institution in Zambia.

Form ZBK No. 5 (Revised): Quarterly Statement of Assets and Liabilities and Supplementary Statement of a Financial Institution in Zambia.

Form ZBK No. 1 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICES ACT

(Section 4)

THE BANKING REGULATIONS

(Regulation 3)

APPLICATION FOR REGISTRATION AS A COMMERCIAL BANK OR A
FINANCIAL INSTITUTION

1. Name

(The name under which the applicant(s) wants/want to be registered)

2. Nature of business

(The business in respect of which the application is made)

3. Address of applicant's head office

4. Address of applicant's principal administrative office

5. *In the case of a Commercial Bank:*

(a) Names of Directors

(b) Names of Local Directors

(These must be Zambian citizens and/or established residents of Zambia)

(c) What is the proposed authorised capital and paid-up capital of the Commercial Bank to be registered?

K

6. *In the case of a Financial Institution:*

(a) What is the proposed authorised capital and paid-up capital of the Financial Institution to be registered? K

(b) State the amount of unimpaired reserve funds which the Financial Institution to be registered intends to maintain K

7. Name of General Manager

8. Name of Chief Executive Officer

9. Name of Chief Accounting Officer

10. Name and qualifications of applicant's auditors

11. Please lodge with your application the following documents:

(a) Memorandum and Articles of Association;

(b) Statement of paid-up capital; and

(c) Certificate of incorporation under the Companies Act of Zambia.

12. I/We* hereby certify that to the best of my/our* knowledge and belief the information given above is correct and true.

Chairman

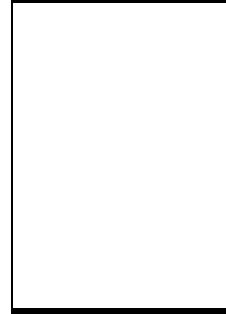
Director

Date

Chief Executive Officer

(j) Other assets approved by the Minister under paragraph (e) of sub-section (3) of section *twenty-one* of the Banking Act, 1971

TOTAL LIQUID ASSETS . . .



Total liquid assets as a percentage of total liabilities to the publicper cent
Total liquid assets (as stated above) as a percentage of total liabilities to the public at the end of
the previous monthper cent

Form ZBK No. 3 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICING
(Section 60 (1) (b) and (c))

THE BANKING REGULATIONS
(Regulations 4 (1) (b), (2) and (3))

**MONTHLY STATEMENT OF ASSETS AND LIABILITIES AND SUPPLEMENTARY
STATEMENT OF A BANK OF ZAMBIA**

REPORTING BANK

DATE TO WHICH THIS RETURN REFERS ,19

	Supplementary statement in terms of section 28 (1) (c) of the Act	Statement in terms of section 28 (1) (b) of the Act. (For publication where applicable in the Government Gazette)
ASSETS	K	K
1. <i>Notes and coin</i>		
(a) Zambian notes 		
(b) Zambian coin 		
(c) Other notes and coin 		
..		
2. <i>Balances held with the Bank of Zambia</i>		
(a) Statutory Reserves		
(b) Other balances 		
3. <i>Balances held with registered Commercial Banks in Zambia</i>		
(a) Assets in transit . . .		
(b) Other items 		
..		
4. <i>Balances held with Banks abroad</i>		
(a) head office and/or branches in-		
(i) Britain 		
..		
(ii) Zimbabwe 		
(iii) Malawi 		
..		

- (iv) Republic of South Africa
- (v) Other countries
- (b) Other banks in-
 - (i) Britain
 - ..
 - (ii) Zimbabwe
 - (iii) Malawi
 - ..
 - (iv) Republic of South Africa
 - (v) Other Sterling Area countries.
 - (vi) Dollar Area countries
 - (vii) Other countries
 - ..
- 5. *Government of Zambia Securities (at book value)*
- 6. *Other investments in Zambia (at book value)*
- 7. *Treasury Bills issued by the Government of Zambia*

--	--

	Supplementary statement in terms of section 28 (1) (c) of the Act	Statement in terms of section 28 (1) (b) of the Act. (For publication where applicable in the <i>Government Gazette</i>)
ASSETS	K	K
8. <i>Bills of Exchange</i>		
(a) discounted and purchased		
(b) receivable		
..		
9. <i>Loans and advances to</i>		
(a) The public		
(b) Government		
(c) Statutory Bodies, Municipalities, T.M.B.s, Local Authorities, etc.		
(d) Non-residents		
(e) Parastatal organisations		
10. <i>Balances held with branches</i>		
(a) Assets in transit		
(b) Other items		
..		
11. <i>Bank premises</i>		
12. <i>Acceptances</i>		
13. <i>Other Assets</i>		
TOTAL ASSETS		

	K	K
LIABILITIES		
1. <i>Demand Deposits</i>		
(a) Public Deposits		
(b) Government Deposits		
(c) Deposits of Statutory Bodies, Municipa- lities, T.M.B.s, Local Authorities, etc.		
(d) Non-residents' Deposits		

- (e) Parastatal organisations
- 2. *Savings Deposits*
 - (a) Public Deposits
 - (b) Government Deposits
 - (c) Deposits of Statutory Bodies, Municipalities, T.M.B.s, Local Authorities, etc.
 - (d) Non-residents' deposits
 - (e) Parastatal organisations
- 3. *Time Deposits*
 - (a) Public Deposits
 - (b) Government Deposits
 - (c) Deposits of Statutory Bodies, Municipalities, T.M.B.s, Local Authorities, etc.
 - (d) Non-residents' deposits
 - (e) Parastatal organisations

--	--

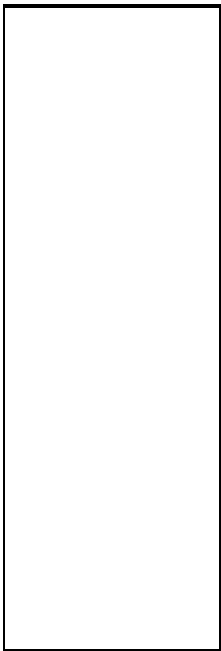
	Supplementary statement in terms of section 28 (1) (c) of the Act	Statement in terms of section 28 (1) (b) of the Act. (For publication where applicable in the Government Gazette)
LIABILITIES	K	K
4. <i>Amounts owing to registered Commercial Banks in Zambia</i> <ul style="list-style-type: none"> (a) Liabilities in transit (b) Other items. 		
5. <i>Amounts owing to banks abroad</i> <ul style="list-style-type: none"> (a) Head office/or branches in- <ul style="list-style-type: none"> (i) Britain (ii) Zimbabwe (iii) Malawi (iv) Republic of South Africa 		

	(v) Other countries . . . . .	..	..	..
(b)	Other banks in-			
	(i) Britain . . . . .	..	..	..
	..			
	(ii) Zimbabwe . . . . .	..	..	..
	(iii) Malawi . . . . .	..	..	..
	..			
	(iv) Republic of South Africa . . . . .	..	..	..
	(v) Other Sterling Area countries			
	(vi) Dollar Area countries . . . . .	..	..	..
	(vii) Other countries . . . . .	..	..	..
	..			
6.	<i>Bills Payable</i>			
7.	<i>Amounts owing to branches</i>			
(a)	Liabilities in transit . . . . .	..	..	..
(b)	Other items . . . . .	..	..	..
	..			
8.	<i>Capital</i>			
9.	<i>Reserves</i>			
10.	<i>Acceptances</i>			
11.	<i>Amounts owing to Bank of Zambia</i>			
12.	<i>Other Liabilities</i>			

TOTAL LIABILITIES

--	--

1.	Notes and coin in the currency of Zambia	..	..	.	.
..					
2.	Balances with registered commercial banks in Zambia	..	.	.
..					
3.	Money at call with any bank . . .	..	..	..	.
..					
4.	Treasury Bills issued by the Government	..	..	.	.
..					
5.	Bills of exchange and promissory notes accepted, endorsed or made, as the case may be, by a bank, maturing in not more than ninety days exclusive of days of grace and payable at any place in Zambia. .	..	..	..	..
6.	Local registered securities which are guaranteed by the Government and which have a final maturity date of not more than six years and such other securities as the Minister may have approved. . . .	..	..	..	..
TOTAL LIQUID ASSETS					
...					



Total liabilities to the public (net of liquid assets) as a percentage of paid-up equity capital and unimpaired reserve funds per cent

Total liquid assets as a percentage of total liabilities to the public per cent

Total liquid assets (as stated above) as a percentage of total liabilities to the public at the end of the previous month per cent

Form ZBK No. 5 (Revised)

REPUBLIC OF ZAMBIA

THE BANKING AND FINANCIAL SERVICES ACT
(Section 60 (1) (b) and (c))

THE BANKING REGULATIONS
(Regulation 5 (2), (3) and (4))

QUARTERLY STATEMENT OF ASSETS AND LIABILITIES AND SUPPLEMENTARY STATEMENT OF A FINANCIAL INSTITUTION IN ZAMBIA

REPORTING FINANCIAL INSTITUTION

DATE TO WHICH THIS RETURN REFERS 19

ASSETS					
1.	<i>Notes and Coin</i> . .	..	..	..	..
2.	<i>Balances held with registered Commercial Banks in Zambia</i> . .	..	..	..	..
3.	<i>Money at call with any bank</i>	..	..	..	..

Supplementary statement in terms of section 29 (1) (c) of the Act	Statement in terms of section 29 (1) (b) of the Act. (For publication where applicable in the <i>Government Gazette</i>)
K	K

1. These Regulations may be cited as the Banking and Financial Services (Cost of Borrowing) Regulations. Title

2. In these Regulations, unless the context otherwise requires- Interpretation

"borrower" includes a person to whom a loan is proposed to be made;

"cost of borrowing" includes administrative charges for services or transactions and any similar charges, but excludes-

(a) a charge for arranging or renewing the loan;

(b) a charge for the issuance of a certificate of search, the provision for examination or the making of copies of a registered document, or the provision of similar services;

(c) a charge for a survey;

(d) a charge or disbursement for the services of a lawyer or notary;

(e) a charge for an appraisal or inspection of assets;

(f) a charge for insurance;

(g) an administrative charge in respect of an overdrawn account, including a charge for honouring a cheque written on an overdrawn account;

(h) a charge for making a pre-payment on the loan; or

(i) a commitment fee as compensation for funds being made available by the lender for use by the borrower and which could be deployed elsewhere.

"principal" means the amount of money borrowed and outstanding at any time, but does not include any portion of the cost of borrowing.

3. These Regulations shall not apply to-

Application

- (a) a loan in respect of which the principal amount is less than K250,000 and the cost of borrowing on that loan is disclosed to the borrower as an amount expressed in Kwacha and ngwee;
- (b) a loan made under any Act of Parliament where the rate of interest or the discount that may be charged to the borrower is prescribed under that Act and is disclosed to the borrower;
- (c) a loan resulting from the discount or negotiation by a bank or financial institution of a promissory note or other instrument payable by a person other than the borrower; and
- (d) a loan made pursuant to a letter of credit.

4. (1) For loans obtained through the use of a line of credit, an overdraft, a payment, credit or charge card, a bank or financial institution shall express the rate of interest charged to a customer as "the annual effective rate of interest" or the annual percentage rate (APR).

Determination
of annual rate of
interest

(2) The annual percentage rate shall be determined as follows:

$$APR = (1 + \frac{r}{q})^q - 1$$

Where: q = the frequency of compounding in a year, and
r = the nominal rate of interest

5. (1) For loans repayable in equal instalments, the cost of borrowing is determined by the following formula:

Cost of
borrowing for
loans repayable
in equal
instalments

$$R = \frac{C}{T \times P}$$

where:

"C" is the total cost of borrowing over the term of the loan, expressed as an amount and includes interest plus all other charges of borrowing;

"P" is the average of the principal of the loan that is outstanding at the end of each interest calculation period before applying any payment due at that time;

"R" is the cost of borrowing over the term of the loan, expressed as a rate per annum; and

"T" is the term of the loan, expressed in years.

(2) For the purpose of the calculation set out in sub-regulation (1)-

(a) the rate per annum of the cost of borrowing shall be rounded off to the nearest eighth of a per cent; and

(b) a year shall be calculated as having 365 days.

6. (1) For the purposes of regulations 7 to 9, where information is to be disclosed by means of a written statement, the information shall be delivered to the borrower personally or sent to the last address of the borrower shown in the records of the bank or financial institution. Disclosure requirements

(2) The statement through which the disclosure is made shall contain the information set out in the Schedule.

7. (1) A bank or financial institution shall disclose the cost of borrowing to the borrower, at or before the time at which the loan is made. Disclosure of cost of borrowing

(2) The disclosure referred to in sub-regulation (1) shall-

(a) in the case of an overdraft, be made by means of a written statement or by a notice displayed in each branch of the bank or financial institution; and

(b) in the case of a loan made under the security of a letter of credit or any other arrangement, or where the loan is repayable on demand in amounts that are not fixed or on dates that are not fixed, by means of-

(i) a written statement in the loan agreement or proposed loan agreement;

- (ii) a separate written statement; or
- (iii) a notation on the promissory note signed or to be signed by the borrower; and

(c) in any other case, by means of a written statement disclosing the information set out in the attached Schedule.

(3) Where a loan referred to in paragraph (b) or sub-regulation (2) is made, the bank or financial institution shall also disclose to the borrower in the manner described in clauses (i) to (iii) of that paragraph-

(a) the manner of calculating the cost of borrowing and determining it as a rate per annum; and

(b) in the case of a loan made pursuant to a line of credit or other arrangement, the maximum principal that can be borrowed under the line of credit or other arrangement.

(4) Where the cost of borrowing in respect of a loan is subject to variation, the bank or financial institution shall by means of a written statement or by a notice displayed in each branch of the bank or financial institution, and within a reasonable time, disclose to the borrower any variation that affects the amount of any periodic payments to be made by the borrower.

8. A bank or financial institution shall disclose to the borrower the information required by sub-section (2) of section *forty-seven* of the Act, at or before the time at which the loan is made-

Manner of disclosure of information

(a) by means of a written statement in the loan agreement or proposed agreement between the bank or financial institution and the borrower; or

(b) through a separate statement in writing,

9. (1) A bank or financial institution shall disclose to each holder of a payment, credit or charge card, at or before the time at which the card is issued-

Payment, credit or charge card

(a) the particulars of the holder's rights and obligations relating to-

(i) the credit limit authorised under the card and the maximum

amount of indebtedness that may be outstanding at any time;

(ii) the period of time for which each statement of account is issued;

(iii) the manner, if any, in which the holder may use the card and avoid any charge;

(iv) the minimum amount, if any, that must be paid at the end of each statement period, which amount may be stated as a percentage of the amount outstanding; and

(v) the maximum amount of the card-holder's liability for authorised use of the card where it is lost or stolen;

(b) the amount of any charge for which the holder is responsible by reason of accepting or using the card and the manner in which the charge is calculated;

(c) the cost of borrowing and the manner in which it is calculated; and

(d) any charges or penalties to be paid by the borrower as a result of the failure to repay or pay in accordance with the contract governing the loan.

(2) Where a bank or financial institution intends to change any of the matters disclosed to a card-holder in accordance with sub-regulation (1), other than a disclosure under clause (i) of paragraph (a), the bank or financial institution shall send or deliver to the card-holder a written statement of the change at least fourteen days before the effective date of the change.

10. (1) A bank or financial institution shall not impose on a borrower any 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-

No charge or penalty for failure to pay

(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 bank or financial institution shall not impose a charge or penalty on a borrower for making a pre-payment of the principal or an instalment of the principal before its due date where-

(a) the amount of the repayment exceeds K50,000 or extinguishes the debt;

(b) the loan is made to a natural person; and

(c) the loan is not secured by a mortgage on real property.

11. A bank or financial institution may disclose an estimate of an amount or of other information required to be disclosed under these Regulations instead of the actual amount or information where- Disclosure of estimates

(a) at the time of disclosure, the amount or information is unknown or unavailable to the bank or financial institution;

(b) the bank or financial institution has made all reasonable efforts to ascertain the amount or information;

(c) the estimate is clearly identified as such; and

(d) the estimate is based on the best information available.

SCHEDULE

(Regulation 6)

CONTENTS OF DISCLOSURE STATEMENT

1. The name and address of the bank or financial institution.
2. The name and address of the borrower.
3. A description of any property to be used as security and its location.
4. A description of any guarantees and/or other collateral.
5. The date when the first payment on the loan is due.
6. In the case of a mortgage, whether it is first, second, etc.
7. The principal of the loan, including:
 - (a) the total amount of all charges to be financed; and
 - (b) the net amount of money to be paid to the borrower or to be disbursed at the borrower's direction.

8. The rate of interest expressed as a rate per annum, if that rate does not vary.
9. The initial rate of interest expressed as a rate per annum, if the rate varies from time to time.
10. A description of any factors that would cause the rate of interest to vary.
11. The length of the term of the loan.
12. The period during which an offer letter to a customer is valid, before it expires.
13. A description of any factors that would cause the term of the loan to vary.
14. The total cost of borrowing over the term of the loan, expressed as a rate per annum.
15. A list of each charge to be financed.
16. A description of any terms and conditions applicable to pre-payment of the principal.
17. A description of any charge or penalty that would be imposed for failure to make a payment or to repay the loan when due.
18. The date of the statement.
19. The name and signature of the representative of the bank or financial institution.

SECTIONS 124, 4, 10, 13 AND 22-THE BANKING AND FINANCIAL SERVICES (PAYMENT OF FEES) REGULATIONS

Statutory Instrument 180 of 1995

Regulations by the Minister

- | | |
|---|----------------------------------|
| <p>1. These Regulations may be cited as the Banking and Financial Services (Payment of Fees) Regulations.</p> | <p>Title</p> |
| <p>2. The fees set out in the Schedule, shall be paid in respect of the services set out in that Schedule.</p> | <p>Fees</p> |
| <p>3. Fees payable under these Regulations shall be paid by a bank certified cheque, postal order or money order in favour of the Bank of Zambia, provided that such payments may be allowed where the fee is delivered by hand.</p> | <p>Method of payment of fees</p> |
| <p>4. The fees paid under these Regulations shall not be refundable.</p> | <p>Fees non-refundable</p> |
| <p>5. (1) A bank or financial institution which is operational during the</p> | <p>Annual licence</p> |

month of January of a particular year shall pay the annual licence fee not later than the 31st of January of that year. fee

(2) A bank or financial institution which is registered after the 31st of January of a particular year shall, before the end of the month in which it is so registered, pay a proportion of the annual licence fee equivalent to the number of full months it would be in operation for that year, multiplied by the annual licence fee.

6. A bank or financial institution which fails to pay the full amount of the applicable licence fee prescribed for a particular period shall, in addition to such licence fee, pay for each month or part thereof during which it remains in contravention, a penalty calculated at the rate of twenty per centum of the licence fee remaining unpaid from the date the payment became due. Penalty for failure to pay a fee

7. Fees and penalties collected under these Regulations shall accrue to the Bank of Zambia and shall be used for the benefit of the Bank of Zambia. Fees and penalties to accrue to Bank of Zambia

SCHEDULE

(Regulation 2)

	Fee Units
1. Application for a licence to conduct banking services	50,000
2. Application for a licence to conduct a regulated financial service business	30,000
3. Annual licence fee-banking business	25,000
4. Annual licence fee-financial service business	15,000
5. Inspection of the Register of Banks and Financial Institutions	10,100

SECTIONS 124 AND 76-THE BANKING AND FINANCIAL SERVICES (RETURN OF UNCLAIMED FUNDS) REGULATIONS

Statutory Instrument 181 of 1995

Regulations by the Minister

<p>1. These Regulations may be cited as the Banking and Financial Services (Return of Unclaimed Funds) Regulation.</p>	<p>Title</p>
<p>2. A bank or financial institution shall, within sixty days of the end of each calendar year, submit to the Registrar annual returns in the form set out in the First and Second Schedules, in respect of all funds in Zambian currency in that bank or financial institution for which no transaction has taken place and no statement of account has been requested or acknowledged by the person in whose name the funds were being held, for a period of ten years or more.</p>	<p>Annual returns of unclaimed funds</p>
<p>3. The period of 10 years referred to in regulation 2 shall commence-</p> <p>(a) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated; or</p> <p>(b) in the case of other funds, from the day on which the last transaction by customer took place or a statement of account was last requested or acknowledged by the person in whose name the funds were held, whichever is the later.</p>	<p>Computation of the period</p>
<p>4. An annual return made under regulation 2 shall indicate, in so far as is known to the bank or financial institution-</p> <p>(a) the name of each person for whom funds are held;</p> <p>(b) the recorded address of each person for whom funds are held;</p> <p>(c) the classification of funds;</p> <p>(d) the outstanding amount;</p> <p>(e) the date on which the bank last transaction took place in respect of the funds; and</p> <p>(f) the branch of the bank or financial institution in which transactions took place in respect of these funds.</p>	<p>Content of return</p>
<p>5. The information required under regulation 4 may be excluded from the annual returns when the total amount outstanding in the name of a person is less than ten thousand Kwacha.</p>	<p>Amounts under ten thousand kwacha</p>

FIRST SCHEDULE

(Regulation 2)

Return of Unclaimed Funds (Section 76(2))

Name of Bank

This return relates to the calendar year ended 31st December, 19

- 1. Total amount of items reported in detail on attached sheets numbered 1 to
of Second Schedule K _____
- 2. Total of accounts and instruments under K1,000 not reported in detail
K _____
- 3. Interest accrued on interest bearing accounts not added to individual accounts
K _____
- 4. Total amount of unclaimed funds as at 31st December, 19
K _____

We declare that, having regard to the latest information available to us, this return is, to the best of our knowledge and belief, correct according to the books and records of the bank and presents fairly the information required by the Banking and Financial Services Act.

Signature

Title

Signature

Title

Dates at this day of 19

SECOND SCHEDULE

(Regulation 2)

Return of Unclaimed Funds (Section 76(2)) for Calendar year ended 31st December, 19
Name of Bank

Name of person	Address	Classification	Amount outstanding	Date	Branch Address

- (1) Classify as a, b or c according to the following:
 - (a) Demand, savings or matured time deposit (Section 76 (1)(a));
 - (b) Funds paid toward the purchasing of a share or other interest in a security issued by the bank (Section 76 (1)(b));

(c) Funds or other personal property tangible or intangible removed from a safekeeping facility (Section 76 (1)(c)).

SECTIONS 69 AND 124-THE BANKING AND FINANCIAL SERVICES (RESERVE ACCOUNT) REGULATIONS

Statutory Instrument 182 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Reserve Account) Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Intepretation

"reserve fund" means a fund of a bank or financial institution generated from actual earnings or by way of recoveries, or a surplus on the realization of the scale of capital assets, but does not include any surplus resulting from a revaluation of assets.

3. A bank or financial insttution shall maintain a reserve fund and shall, out of its retained earnings of distributable profits from the current financial year, before any dividend is declared, transfer to that fund a sum equal to not less than-

Transfers to a reserve fund

(a) fifty per centum of such profits, whenever the amount of the reserve fund does not exceed half of its paid-up equity capital; or

(b) twenty per centum of such profits or such sum as shall make the amount of the reserve fund equal to the paid-up equity capital, whenever the amount of the reserve fund exceeds half of its paid-up equity capital, but is less than the paid-up equity capital.

SECTION 47-THE BANKING AND FINANCIAL SERVICES (DISCLOSURE OF DEPOSIT CHARGES AND INTEREST) REGULATIONS

Statutory Instrument 183 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Disclosure of Deposit Charges and Interest) Regulations.

Title

2. (1) A bank or financial institution shall, by means of a written

Disclosure of

statement, disclose to its customers and to the public all charges on deposit accounts with that bank or financial institution for any of the following services in respect of such deposit accounts, namely-

charges

- (a) acceptance of deposits;
- (b) acceptance of coins, cheques or Bank of Zambia notes for deposit;
- (c) issuance of cheques;
- (d) certification of cheques;
- (e) handling of a cheque presented or issued by a customer that is subsequently returned because there are no sufficient funds, or for technical reasons such as where words and figures do not agree, etc;
- (f) holding of a cheque for deposit;
- (g) handling of a cheque or negotiable item, such as a draft or a money order drawn in a foreign currency;
- (h) processing of a stop payment on a cheque or other instrument;
- (i) handling of overdrafts;
- (j) transfers between accounts;
- (k) supplying of account statements;
- (l) handling of account confirmations;
- (m) conducting searches related to an account;
- (n) providing information in regard to an account balance; and
- (o) closing of an account.

(2) A bank or financial institution shall display and make available

copies of the written statement referred to in sub-regulation (1) to customers and to the public at each branch of the bank or financial institution at which such account is kept.

(3) The written statement referred to in sub-regulations (1) and (2) may be in the form of a tariff and shall indicate that the statement-

(a) sets out all charges for services provided in respect of deposit accounts with the bank or financial institution; or

(b) does not set out all of the charges for services in respect of deposit accounts with the bank or financial institution and that charges for services not included in the statement shall be disclosed on request or at the time the service is offered.

3. (1) Where a bank or financial institution increases a charge on a service referred to in sub-regulation (1) of regulation 2, it shall disclose the increased charge in a notice:

Disclosure of increased charge

Provided that this Regulation shall not apply to a customer who has agreed in writing that the bank or financial institution shall charge an amount, other than an amount required to be disclosed under sub-regulation (1) or regulation 2.

(2) The notice referred to in sub-regulation (1) shall be displayed for a period of at least 30 days immediately before the effective date of the increase at all branches of the bank or financial institution.

4. A bank or financial institution shall-

Maintenance of list of charges

(a) maintain, at each branch, a list of all charges applicable to deposit accounts and services provided by the bank or financial institution to its customers and to the public; and

(b) on request, make available at each branch the list requested to in paragraph (a) to its customers and to the public for inspection during business hours.

5. (1) A bank or financial institution shall disclose to a person who wishes to open an interest bearing deposit account with it, the rate of interest applicable to the account and the manner in which the amount of

Disclosure of interest rates

interest shall be calculated.

(2) The disclosures referred to in sub-section (1) shall-

(a) be in writing, copies of which shall be made available and displayed in each branch of the bank or financial institution where such accounts are kept; or

(b) be made by way of a general notice displayed in each branch of the bank or financial institution where such account is kept.

(3) The disclosure referred to in sub-regulation (1) shall include-

(a) the annual rate of interest;

(b) the frequency of payment of interest;

(c) the manner, if any, in which the balance in the interest bearing deposit account will affect the rate of interest; and

(d) any other circumstances that affects the rate of interest.

6. Where there is a change in the rate of interest, or in the manner of calculating the amount of interest on an interest bearing deposit account, the bank or financial institution shall disclose the changes by means of- Changes in rate of interest

(a) a written statement, delivered to the person in whose name the account is maintained;

(b) a written statement, copies of which are available and displayed in each branch of the bank or financial institution where such account is kept;

(c) a general notice that is displayed in each branch of the bank or financial institution where such account is kept; or

(d) an advertisement in a daily newspaper.

7. Where a bank or financial institution renews a fixed term deposit account, it shall disclose the rate of interest and the manner of calculating the amount of interest on the deposit account in accordance with sub-regulation (1) of regulation (5) and clauses (1) and (ii) of Renewal of fixed term deposit account interest.

paragraph (b) of sub-regulation 2 of regulation 5.

8. Where a bank or financial institution makes an advertisement in respect of interest bearing deposits or debt obligations, a bank or financial institution shall disclose how the amount of interest applicable to each deposit and debt obligation shall be calculated by clearly indicating in the advertisement-

Disclosure of advertisement

(a) in respect of interest-bearing deposits, the manner, if any, by which the balance of the account shall affect the rate of interest;. and

(b) any other circumstances that may affect the rate of interest.

SECTIONS 83 AND 84-THE BANKING AND FINANCIAL SERVICES (CAPITAL ADEQUACY) REGULATIONS

***Statutory Instrument
184 of
1995***

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Capital Adequacy) Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Interpretation

"associate" means a company in which more than 20 per cent but not more than 50 per cent of the outstanding voting shares (except any qualifying directors' shares) are owned directly or indirectly by the reporting bank or financial institution and the business activities and financial affairs of which the reporting bank or financial institution or its subsidiaries are able to materially influence;

"capital deficiency" means a shortfall in the minimum capital required by these Regulations.

"common shareholders equity" includes common shares and related contributed surplus, retained earnings, general reserves and the statutory reserve fund;

"goodwill" means the difference between cost and the acquired company's interest in the identifiable net assets;

"off balance sheet risks" means all items not shown on the balance sheet where the bank's or financial institution's capital is potentially at risk, and includes letters of credit, guarantees, commitments to re-purchase loans or securities, acceptances, performance bonds and other items deemed to constitute credit risk by the Bank of Zambia;

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

"general reserves" means an appropriation of retained earnings to reflect additional potential losses based on an assessment of the bank's overall situation by management;

"revaluation reserves" means the increment in the recorded or book value of a bank or financial institution's own premises, fixed assets or long term equity investments arising from a formal revaluation to reflect their current value or an amount closer to their current value than historical cost;

"subordinated debt" means a security which is, by its terms, subordinated in right of payment to all deposit liabilities and all other liabilities of the entity that issued the security other than liabilities that, by their terms, rank equally with, or are subordinated to, that security;

"subsidiary" means a company in which more than 50 per cent of the issued voting shares of the company (except any qualifying director's shares) are owned directly or indirectly by the reporting bank or artificial institution.

3. (1) Every bank shall commence operations with primary paid-up capital of not less than two thousand million kwacha, or such other higher amount as may be prescribed by the Bank of Zambia from time to time and shall maintain this minimum amount at all times. Minimum capital of a bank

(2) A bank which does not meet the minimum capital requirement at the coming into force of these Regulations shall enter into negotiations with the Bank of Zambia to progressively build up its primary capital to at least one billion, two hundred and fifty million kwacha by not later than 30th June, 1996, and to two billion by 31st December, 1996.

4. (1) Every financial institution shall, subject to such other higher amounts as may be prescribed by the Bank of Zambia commence operations with primary paid-up capital of not less than, for- Minimum capital of a financial institution

(a) deposit-taking institutions, two thousand million kwacha;

(b) leasing companies, two hundred and fifty million kwacha; and

(c) other types of financial institutions, an amount prescribed by the supervisory authority, to be not less than twenty-five million kwacha; and shall maintain that minimum amount at all times.

(2) A financial institution which is operational at the coming into force of these Regulations which does not meet the applicable minimum capital requirement at the coming into force of these Regulations shall enter into negotiations with the Bank of Zambia to progressively build up its primary capital to at least the level prescribed by the Bank of Zambia by not later than 12 months after the coming into force of these Regulations.

5. Regulation 4 applies to a bank or financial institution which is a subsidiary of an adequately capitalised bank or other financial institution, irrespective of the amount of control exercised by the holding bank. Application of regulation 4 to subsidiary

6. (1) Every bank and financial institution shall at all times maintain a minimum total capital equivalent of not less than 10 per cent of its total risk-weighted assets and off balance sheet exposures. Minimum capital ratio

(2) Primary or tier one capital shall be a minimum of 5 per cent of the bank's or financial institution's total risk-weighted assets.

(3) A bank or financial institution operating at or near the level referred to in sub-regulation (2) but which has serious weaknesses in the quality of its assets, diversification of risk, liquidity or earnings, shall maintain capital levels well in excess of those prescribed in sub-regulation (1).

7. (1) In determining which funds should be included in the capital base of a bank or financial institution for purposes of the required minimum capital and for measuring capital adequacy, three criteria shall be considered, namely- Determination of regulatory capital

(a) permanence;

(b) being free of mandatory fixed charges against earnings;
and

(c) the subordinated legal position to the rights of depositors and other creditors of the bank or financial institution.

(2) Regulatory capital shall be determined in accordance with the Second Schedule.

8. For purposes of assessing capital adequacy for regulatory purposes, a bank's or financial institution's primary or tier one capital includes- Primary or tier one capital

(a) common shareholders' equity; and

(b) the following categories of preferred shares-

(i) perpetual preferers;

(ii) compulsory convertible preferers, where conversion to securities which would qualify as primary capital represents the only redemption option; and

(iii) preferers which have an original term to maturity of 20 years or more, where no redemption occurs within the first ten years, and where the maximum redemption obligation in any one year is restricted to five per cent or less of the original amount.

9. Minority interests or common shareholders' equity attributable to consolidated subsidiaries shall qualify as primary or tier one capital if they possess the three essential criteria for capital and shall be designated as a legitimate add-on component of the consolidated primary or tier one capital. Conditions for securities of subsidiaries to qualify as primary or tier one capital

10. For purposes of assessing capital adequacy for regulatory purposes, a bank's or financial institution's secondary or tier two capital includes preferred shares issued by a bank or financial institution which meet the requirements under regulation 13. Secondary or tier two capital

11. Failure by a bank or financial institution to meet a preferred dividend payment shall not constitute grounds for bankruptcy, but an omission or an interest payment on any form of debt shall constitute grounds for bankruptcy. Failure to meet preferred dividend payment not to

constitute
grounds for
bankruptcy

12. Notwithstanding the separate legal status of secondary or tier two capital, securities of subsidiaries shall qualify for inclusion in consolidated secondary or tier two capital for measuring capital adequacy for regulatory purposes, provided that:

Conditions for
securities of
subsidiaries to
qualify as
secondary or
tier two capital

(a) there are no parent guarantees or other contractual features governing the issue that could in effect rank the investors' claims equal to or ahead of the claims of depositors;
and

(b) they are fully subordinated to the other liabilities of the subsidiary;

(c) they meet the minimum criteria referred to in paragraph (b) of sub-regulations (1) and (3) of regulation 13 for qualifying debentures.

13. (1) A preferred share shall qualify as secondary or tier two capital if-

Qualifications
for inclusion in
secondary or
tier two capital

(a) there is subordination to all of the deposit obligations of the bank; and

(b) it has an initial term greater than five years, with no redemptions permitted in the first five years.

(2) A share referred to in sub-regulation (1) may be redeemed before maturity only with the prior written approval of the Bank of Zambia.

(3) A loan stock or capital and other subordinated debentures issue shall not be included in secondary capital unless it meets the standards set in sub-regulation (1) and is free of restrictive covenants which could potentially interfere with a bank's or financial institution's ability to conduct normal banking operations, such as covenants mandating accelerated redemption in the event of failure to meet particular earnings coverage tests or in the event of missing dividend.

14. Any bank or financial institution intending to issue capital instruments shall seek the opinion of the Bank of Zambia as to whether or not these instruments qualify as capital. Bank's opinion to be sought

15. (1) For purposes of determining adequacy under these regulations, a bank or financial institution shall submit to the Bank of Zambia its state of affairs, and the results of its operations and those of all of its subsidiaries and associates which conduct banking or financial services business. Submission of state of affairs and results of operations to bank

(2) A bank or financial institution shall provide the Bank of Zambia with details of the activities of each subsidiary and associate to enable the Bank of Zambia to verify which enterprises, if any, should not be considered.

16. Primary or tier one capital includes- Components of primary or tier one capital

- (a) paid-up common shares;
- (b) qualifying preferred shares referred to in regulation 8;
- (c) contributed surplus (including premium on issues of shares, less any payments of premium on redemption; and capital contribution by shareholders without the issuance of shares);
- (d) retained earnings;
- (e) general reserves;
- (f) statutory reserves; and
- (g) minority interests (in the equity of subsidiaries which are less than wholly owned).

17. Secondary or tier two capital is composed of residual financial instruments which possess some of the features of capital and which meet the standards set out in regulation 13 and any other form of capital as may be determined and announced by the Bank of Zambia, and includes- Components of secondary or tier two capital

- (a) forty per cent of the reserves arising from the revaluation of tangible fixed assets;
- (b) subordinated term debt, or loan stock or capital with a minimum original term of maturity of over five years, subject to a straight-line amortization during the last five years leaving no more than 20 per cent of the original amount outstanding in the final year before redemption;

and

(c) other instruments or forms of capital which the Bank of Zambia may allow:

Provided that no part of accumulated goodwill shall be considered as capital.

18. In determining the amount of available capital for purposes of computing the minimum capital and the capital ratio required under these Regulations, the following items shall be deducted from the amount of capital derived under regulations 16 and 17:

Deductions
from primary or
tier one capital

- (a) goodwill and other intangible assets;
- (b) investments in unconsolidated subsidiaries and associates where the bank or financial institution has a direct and indirect ownership of 20 per cent or more;
- (c) lending of a capital nature to subsidiaries and associates;
- (d) holdings of other banks' or financial institutions' capital instrument; and
- (e) the value of assets pledged to secure liabilities if such assets are not available to meet the liabilities of the bank or financial institution.

19. In computing the minimum total capital required under regulation 6-

Limitations and
restrictions

- (a) part of revaluation reserves shall not be considered as primary capital;
- (b) the total of secondary or tier two capital shall be limited to a maximum of 100 per cent of primary or tier one capital;
- (c) revaluation reserves shall only qualify as secondary capital if-
 - (i) they relate to the revaluation of long-term investments and immovable fixed assets which have been formally identified as strategic long term investments by the board of directors of the bank of financial institutions;
 - (ii) the revaluation is made by an independent appraiser or another appropriate independent party, whose qualifications are considered appropriate by the respective bank's auditors, at intervals in accordance with the accounting policy of the reporting institution and generally

accepted accounting practice;

(iii) the assets being revalued are of a similar nature, e.g., investments in premises, and the revaluation of all such assets is undertaken at the same time;

(iv) a reduction in the value of any such assets is taken into account where current market values are no longer supportive of balance sheet values; and

(v) details of all such revaluations are disclosed in the annual financial statements of the reporting institution.

20. (1) Eligible supplementary capital described in sub-regulation (b) of regulation 17 components shall be subject to straight-line amortization in the final five years prior to maturity or the effective dates governing shareholders' retraction rights. Amortization of outstanding balances

(2) When subordinated debentures and qualifying subsidiary debt instruments approach maturity, redemption or retraction, outstanding balances shall be amortized on the basis of the following criteria:

YEARS TO MATURITY	AMOUNT IN CAPITAL	INCLUDED
5 years or more	100%	
4 years but less than five years	80%	
3 years but less than 4 years	60%	
2 years but less than 3 years	40%	
1 year but less than 2 years	20%	
Less than 1 year	0%	

21. (1) For the purposes of this regulation, risk assets in relation to a bank or financial institution means assets that are normally recorded on the balance sheet and obligations which are assumed by the bank or financial institution and which are recorded off balance sheet. Risk weighted assets

(2) For the purposes of calculating the risk-weighted capital ratio, risk assets are classified into the following categories-

(a) cash and equivalent items, generally considered riskless, carrying a risk weight of zero per cent;

- (b) assets with little risk and a high degree of liquidity, carrying a risk weight of twenty per cent;
- (c) assets with a moderate degree of risk and having more credit and liquidity risk than those in paragraphs (a) and (b), carrying a risk weight of fifty per cent;
- (d) the remaining assets typically found in the portfolio of a bank or financial institution, carrying a risk weight of one hundred per cent.

(3) Assets and their associated risk weights are as set out in parts 1 and 2 of the First Schedule.

22. (1) Any guarantees made by a bank or financial institution applicable to the liabilities of a subsidiary and which are already incorporated into the consolidated balance sheet shall be excluded to avoid double counting. Guarantees made by bank

(2) The inclusion for off-balance sheet items shall apply to arms' length contingent liabilities of the bank or financial institution and its subsidiaries, and shall exclude corresponding inter-company commitments.

23. The Bank of Zambia shall, in implementing capital adequacy standards, do so on an individual institution basis and shall rely on the criteria set out below: Implements of capital adequacy standards

- (a) the size of the institution;
- (b) the diversification of its assets and liabilities;
- (c) degree of risk exposures;
- (d) level of profitability; and
- (e) management strength including liquidity management.

24. The total risk-weighted assets of each bank or financial institution shall be determined by multiplying the outstanding book value of its assets, net of allowance for losses and depreciation, by the prescribed risk weight factors of such assets, and aggregating the risk adjusted values of those assets following the format shown in Parts 1 and 2 of the First Schedule. Calculation of risk weighted assets

- 25.** If the Bank of Zambia, after conducting a review of both on and off balance sheet risks, finds that a bank or financial institution has insufficient capital to meet the requirements under regulation 6, the Bank of Zambia, in accordance with its powers to correct unsafe and unsound practices under Section *seventy-seven* of the Act, shall direct that such bank or financial institution effect an increase of its capital or a reduction of its assets and off-balance sheet exposures, within a period of three months. Capital deficiency
- 26.** (1) Any bank or financial institution which, for a continuous period of fourteen days, incurs capital deficiencies shall automatically stop to grant new loans and other credit facilities, including the issuance of letters of credit and guarantees, without the prior approval of the Bank of Zambia. Suspension of banks or financial institutions, branch networks, etc.
- (2) A bank or financial institution to which sub-regulation (1) applies shall have its branch network and all capital expenditures suspended.
- (3) The suspension of a bank's or financial institution's lending privilege, branch expansion and capital expenditures shall remain in force for as long as the bank or financial institution is unable to increase its capital or reduce its assets or off-balance sheet exposures as directed by the Bank of Zambia, or to restructure its balance sheet risks to the satisfaction of the Bank of Zambia.
- 27.** (1) Any director, officer or employee of a bank or financial institution who sanctions or votes for the approval of any loan or credit facility, branch expansion or capital expenditure while the bank remains under suspension as provided under regulations 25 and 26 shall be considered automatically suspended from office. Suspension of Director
- (2) The suspension referred to in sub-regulation (1) shall be without prejudice to any other punitive measures which may be applied against the director, officer or employee and which have been provided for in the Act.
- 28.** Every bank and financial institution shall maintain suitable records to facilitate verification of its capital position. Maintenance of records

29. For the purpose of computing its capital position, the principal office of each bank or financial institution in Zambia, all of its branches, agencies, subsidiaries, and associated companies regardless of country of domicile, shall be considered as a single unit. Consolidated reports

30. Every bank and financial institution shall- Submission of reports

(a) submit to the Bank of Zambia a monthly report on its capital position within 21 days following the reference month, in the form set out in the First and Second Schedules; and

(b) require its external auditors-

(i) to compute its capital position at the end of each financial year taking into account the requirements of the Act and all relevant prudential guidelines and regulations issued by the Bank of Zambia; and

(ii) to render a statement to the bank or financial institution on the adequacy or inadequacy of its capital and send a copy to the Bank of Zambia.

FIRST SCHEDULE

(Regulations 21 and 24)

PART 1

CALCULATION OF RISK-WEIGHTED ASSETS

Name of Bank/Financial Institution

As at

	(1)	(2)	(3)
	Risk weight %	Balance (Net of allowance for losses) (K millions)	Risk-Weighted assets (1 × 2) (K millions)

ASSETS

Notes and Coins

-Zambian notes and coins		0	
--------------------------	--	---	--

-other notes and coins	0	
Balances held with the Bank of Zambia		
-statutory reserves	0	
-other balances	0	
Balances held with commercial banks in Zambia		
-with residential maturity of up to 12 months	20	
-with residential maturity of more than 12 months	100	
Abroad		
-with residential maturity of up to 12 months	20	
-with residential maturity of more than 12 months	100	
Assets in transit		
-from other commercial banks	50	
-from branches of reporting bank	20	
Investment in Debt Securities		
-treasury bills	0	
-other government securities	20	
-issued by Local Government Units	100	
-Private securities	100	
Bills of Exchange		
-portion secured by cash or treasury bills	0	
-others	100	
Loans and Advances		
-portion secured by cash or treasury bills	0	
-loans to or guaranteed by the Government of Zambia	50	
-loans repayable in instalments and secured by a mortgage on owner-occupied residential property	50	
-loans to or guaranteed by local Government Units	100	
-loans to parastatals	100	
Inter-bank advances and loans/ advances guaranteed by other banks		
-with a residual maturity of 12 months	20	
-with a residual maturity of more than 12 months	100	
Bank premises	100	
Acceptances	100	
Other assets	100	
Investment in equity of other companies	100	
TOTAL RISK-WEIGHTED ASSETS		<hr/>

(on balance sheet)

PART 2

OFF-BALANCE SHEET OBLIGATIONS

	(1)	(2)	(3)
	Risk weight %	Balance (Net of allowance for losses) (K millions)	Risk-Weighted assets (1 ´ 2) (K millions)
Letters of Credit			
-sight import Letters of credit	20		
-portion secured by Cash/Treasury bills	0		
-standby Letters of credit	100		
-portion secured by Cash/Treasury bills	0		
-export Letters of credit confirmed	20		
Guarantees and Indemnities			
-guarantees for loans, trade and securities	100		
-portion secured by Cash/Treasury bills	0		
-performance bonds	50		
-portion secured by Cash/Treasury bills	0		
-securities purchased under resale agreement	100		
-other contingent liabilities	100		
-net open position in foreign currencies	100		
TOTAL RISK-WEIGHTED ASSETS		_____	_____
(off balance sheet)			
TOTAL RISK-WEIGHTED ASSETS		_____	_____
(on and off balance sheets)			
		_____	_____

SECOND SCHEDULE

(Regulation 7)

COMPUTATION OF CAPITAL POSITION

As at

Name of Bank/Financial Institution

.....		
I. PRIMARY (TIER 1) CAPITAL		<i>(K millions)</i>
(a)	Paid-up common shares	.....
(b)	Eligible preferred shares	.....
(c)	Contributed surplus	.....
(d)	Retained earnings	.....
(e)	General reserves	.....
(f)	Statutory reserves	.....
(g)	Minority interests (common shareholders' equity)	.....
(h)	Sub-total	.....
LESS		
(i)	Goodwill and other intangible assets	
(j)	Investments in unconsolidated subsidiaries and associates	
(k)	Lending of a capital nature to subsidiaries and associates	
(l)	Holding of other bank's or financial institution's capital instruments	
(m)	Assets pledged to secure liabilities	
(n)	Sub-total	
(o)	Total primary capital (h-n)	
II. SECONDARY (TEIR 2) CAPITAL		
(a)	Eligible preferred shares (regulations 13 and 17)	
(b)	Eligible subordinated term debt (regulation 23 (b))	
(c)	Eligible loan stock\capital (regulation 23 (b))	
(d)	Revaluation reserves (regulation 23 (a))	
(e)	Other (regulation 23 (c)) specify	
(f)	Total secondary capital	
III. ELIGIBLE SECONDARY CAPITAL		
(the maximum amount of secondary capital is limited to 100% of primary capital)		
IV. ELIGIBLE TOTAL CAPITAL (I (o) + III)		
(Regulatory capital)		
V. MINIMUM CAPITAL REQUIREMENT:		
(10% of total on and off balance sheet risk-weighted		

assets as established in the First Schedule, or K2,000 million, whichever is the higher)

VI. EXCESS (DEFICIENCY)

(IV minus V)

SECTION 124-THE BANKING AND FINANCIAL SERVICES (FIXED ASSETS INVESTMENT) REGULATIONS

Statutory Instrument 185 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Fixed Assets Investment) Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Interpretation

"fixed assets of a bank or financial institution" include bank premises (including land), furniture, fixtures, equipment and vehicles, whether such assets are owned or leased, and any leasehold improvements;

"primary capital" includes-

(a) paid up common shares;

(b) the following qualifying preferred shares;

(i) perpetual preferreds;

(ii) compulsory convertible preferreds, where conversion to securities which would qualify as primary capital represents the only redemption option; and

(iii) preferreds which have an original term to maturity of 20 years or more, where no redemption occurs within the first ten years, and where the maximum redemption obligation in any one year is restricted to five per cent or less or the original issued amount;

- (c) contributed surplus (including premium on issues of shares, less any payments of premium on redemption; and capital contribution by shareholders without the issuance of shares);
- (d) retained earnings;
- (e) general reserves;
- (f) statutory reserves; and
- (g) minority interests (in the equity of subsidiaries which are less than wholly owned).

"secondary capital" means residential financial instruments that possess some of the features of capital and which meet the standards set out in regulation 13 of the Banking and Financial Services (Capital Adequacy) Regulations, and any other form of capital as may be determined and announced from time to time by the Bank of Zambia, and, subject to a limit which shall not exceed 100 per cent of primary capital and includes the following: Cap. 387

- (a) forty per cent of the reserves arising from the revaluation of tangible fixed assets;
- (b) subordinated term debt, or loan stock or capital with a minimum original term of maturity of over five years, subject to a straight-line amortization during the last five years leaving no more than 20 per cent of the original amount outstanding in the final year before redemption;
- (c) other instruments or forms of capital which the Bank of Zambia may allow, provided that no part of accumulated goodwill shall be considered as capital;

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule of the Banking and Financial Services (Capital Adequacy) Regulations. Cap. 387

3. A bank or financial institution shall not, without the approval of the Prohibition of

Bank of Zambia-

- (a) invest directly in fixed assets;
- (b) invest in the stock, bonds, debentures or obligations of any corporation holding the fixed assets of such bank or financial institution; or
- (c) make loans to or on the security of the stock of any such corporation;

if the aggregate of all such investments and loans exceed the amount of the regulatory capital of such bank or financial institution.

investments
without Bank of
Zambia
approval

4. A bank or financial institution shall obtain the approval of the Bank of Zambia before making any investment in fixed assets which will result in all such investments exceeding the amount of its regulatory capital.

Approval
before
investment in
fixed assets

5. Where a bank or financial institution whose fixed assets exceed regulatory capital at the coming into force of these Regulations, such excess shall be covered, within a reasonable period of time to be determined by the Bank of Zambia, either by a reduction of such assets or an increase in capital which will result in its fixed assets being in compliance with these Regulations.

Covering of
excess assets

6. All fixed assets acquired by a bank or financial institution shall be booked at cost, and shall be stated in the balance sheet of the bank or financial institution at cost less accumulated depreciation or amortization.

Fixed assets to
be booked at
cost

7. For book purposes, a bank or financial institution shall depreciate assets over their useful life, using a straight line method.

Method of
depreciation of
assets

8. (1) A bank or financial institution shall capitalise all leases relating to fixed assets in its report to the Bank of Zambia.

Capitalisation
of leases

(2) In reports to the Bank of Zambia, the Bank shall require that the amount of all leases pertaining to fixed assets obligations be capitalized.

(3) The amount capitalized under sub-regulation (2) shall be the present

value of the minimum required payments over the non-cancellable term of the lease and the rate of interest shall be not more than the bank or financial institution's prime lending rate.

9. A bank or financial institution which contravenes these Regulations shall be liable to a penalty of one thousand penalty units per day for the period during which the contravention continues. Penalty for contravening Regulations

10. (1) A bank or financial institution shall report, twice a year to the Bank of Zambia, as at the end of June and December, the amount of its fixed assets and how these relate to regulatory capital. Report on fixed assets

(2) The report referred to in sub-regulation (1) shall be made in the form set out in the Schedule.

SCHEDULE

(Regulation 2)

STATEMENT OF INVESTMENTS IN FIXED ASSETS OF A BANK OR FINANCIAL INSTITUTION INCORPORATED IN ZAMBIA

Name of Bank/Financial Institution (K'000)

.....

At close of business on 19

1. TOTAL REGULATORY CAPITAL

(As calculated by using the Second Schedule of the Banking and Financial Services (Capital Adequacy) Regulations, Cap. 387. Attach calculation. _____

2. FIXED ASSETS

(a) Bank Premises (including land) _____

(b) Furniture and Fixtures _____

(c) Equipment _____

(d) Vehicles _____

(e) Leasehold improvements _____

(f) Other _____

Total _____

3. INVESTMENTS IN CORPORATION HOLDING FIXED ASSETS OF THE REPORTING BANK OR FINANCIAL INSTITUTION

(a)	Stock	_____
(b)	Bonds	_____
(c)	Debentures	_____
(d)	Obligations	_____
	Total	_____

4. ADVANCED/LOANS MADE TO OR ON THE SECURITY OF THE STOCK OF THE REPORTING BANK OR FINANCIAL INSTITUTION

(a)	Advances	_____
(b)	Loand	_____
	Total	_____

5. TOTAL INVESTMENT IN FIXED ASSETS (Items 2 + 3 + 4) _____

6. TOTAL REGULATORY CAPITAL (line 1) A
A PERCENTAGE OF FIXED ASSETS (line 5) _____

Authorised Signature Authorised Signature

SECTIONS 73 AND 124-THE BANKING AND FINANCIAL SERVICES (INSIDER LENDING) REGULATIONS

Statutory Instrument 97 of 1996

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Insider Lending) Regulations. Title

2. In these Regulations, unless the context otherwise requires- Interpretation

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

(a) own, control, or have the power to vote twenty-five per centum or more of any class of voting shares of another person;

(b) control in any manner the election of a majority of the directors

of a company, bank or financial institution; or

(c) have the power to exercise controlling influence over the management policies of a company, bank or financial institution;

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

"director" means-

(a) any person who occupies the position of a director in accordance with the Companies Act; Cap. 388

(b) any director of a bank or financial institution, whether or not receiving compensation;

(c) any director of a holding company of which the bank or financial institution is a subsidiary;

(d) any director of any other subsidiary of a holding company of a bank or financial institution; or

(e) any person who participates, or who has the authority to participate, other than in that person's capacity as a director, in major policy making functions of a company, bank, or financial institution, whether or not-

(i) that person is an employee of the company, bank or financial institution; or

(ii) that person is serving without a salary or compensation;

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

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

"insider" means-

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

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

(c) a company where an insider of a bank or financial institution owns, directly or indirectly, alone or together with one or more other insiders, more than twenty per centum of the shares of the company or exercises control over the management of the company; or

(d) a company where the bank or financial institution owns more than ten per centum of the outstanding shares of the company or, in the opinion of the Bank of Zambia, is likely to exercise influence over the management of the company;

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

"loans and extensions of credit" means-

(a) any direct or indirect advance of funds to an insider-

(i) made on the basis of any obligation of that insider to repay the funds; or

(ii) repayable from specific property pledged by that insider or by any other person on behalf of that insider;

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

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

"principal shareholder" means a person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls or

has the power to vote more than ten per centum of any class of voting shares of a company, bank or financial institution;

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule to the Banking and Financial Services (Capital Adequacy) Regulations; Cap. 387

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

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

3. These Regulations shall apply to-

Application

(a) all banks and financial institutions licenced under the Act, and all directors and principal shareholders of these banks and financial institutions;

(b) the holding company of which a bank or financial institution is a subsidiary, and to any other subsidiary of that holding company;

(c) any company included within the meaning of an insider as defined in these Regulations; and

(d) a political or campaign committee that benefits or is controlled by an insider.

4. A bank or financial institution shall not make a loan or extend credit to any of its directors, principal shareholders or any related interest of that person or to any persons included within the meaning of an insider as defined in these Regulations, unless the loan, advance or extension of credit-

Credit
worthiness

(a) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank or financial institution with other persons that

are not covered by these Regulations and who are not employed by the bank or financial institution; and

(b) does not involve more than the normal risk of repayment.

5. A bank or financial institution shall not extend credit to any insider or the insider's related interest, when- Lending limits

(a) the aggregate of any new and outstanding loans, advances or extensions of credit to that person and his related interests exceeds ten per centum of the bank's or financial institution's regulatory capital; or

(b) the aggregate of all loans, advances or extensions of credit, including any proposed new extension of credit, to all insiders and their related interests, exceeds one hundred per centum of the bank's or financial institution's regulatory capital.

6. (1) A bank or financial institution shall not make any loans, advances or extensions of credit to any of its directors, or principal shareholders or to any related interest of that person if the aggregate of any new extension of credit and all outstanding loans and extensions of credit to that person and his related interests exceeds five per centum of that bank's or financial institution's regulatory capital unless- Prior approval

(a) all outstanding amounts of loans or extensions of credit have first been acknowledged, in writing, by the Board of Directors of the bank or financial institution;

(b) the new loans or extensions of credit have been approved in advance by a majority of the members of the Board of Directors of the bank or financial institution; and

(c) the interested party has abstained from participating directly or indirectly in the voting.

(2) Any participation in the discussion, or any attempt to influence the voting by the Board of Directors of a bank or financial institution regarding a loan, advance or extension of credit to any director, principal shareholder, or to any related interest of that person shall constitute indirect participation in the voting by the Board of Directors and shall nullify the authorization by the Board of Directors of the loan,

advance or extension of credit.

7. The total amount of credit extended by a bank or financial institution to a partnership shall be deemed to be extended to any member of the partnership.

Partnership
interests

8. Any director of a bank or financial institution who becomes indebted to any bank or financial institution other than the bank or financial institution of which he is a director, in an aggregate amount greater than five per centum of the regulatory capital of the bank or financial institution of which he is a director shall, within ten days from the date the indebtedness reached that level, make a written report to the Board of Directors of the bank or financial institution of which he is a director, which report shall state-

Reports by
directors

- (a) the lender's name;
- (b) the date of the loan;
- (c) the amount of the loan, advance or extension of credit;
- (d) the intended use of the proceeds;
- (e) the source of repayment; and
- (f) security pledged as collateral.

9. Any loan, advance or extension of credit by a bank or financial institution to an insider shall be approved in advance, and in writing, by a majority of the members of the Board of Directors of the bank or financial institution or by a special committee consisting of a majority of the members of the Board of Directors specially constituted for that purpose.

Credit approval

10. (1) Every bank or financial institution shall-

Submission of
reports

(a) submit to the Bank of Zambia within ten working days following its month-end, in the Form prescribed in the Schedule, a monthly report of its insider loans;

(b) if requested by the Bank of Zambia submit further detailed information on all or any outstanding exposure to an insider; and

(c) report to the Bank of Zambia any loan, advance or extension of credit which is outstanding to an insider-

(i) where that loan, advance or extension of credit is outstanding on the date of coming into force of the Regulations and that loan, advance or extension of credit has a balance owing that would have contravened these Regulations if the loan had been made on or after the date of the coming into force of these Regulations;

(ii) if the aggregate of the loans or extensions of credit to insiders exceeds the maximum amount authorised under regulation 5.

(2) The report referred to in sub-regulation (1) shall be made not later than twenty-one days from the date of coming into force of these Regulations and shall set out details of the exposure and a period, not exceeding one year, within which the exposures shall be brought within the limits set by regulation 5.

11. Any renewal of a loan, advance or extension of credit on or after the date of coming into force of these Regulations shall be made only on such terms as shall bring the facility into compliance with the limits prescribed by regulation 5.

Renewal of loan, advance or extension of credit

12. (1) A bank or financial institution which contravenes these Regulations shall be guilty of an offence and liable, for every day that the contravention continues, to a fine assessed by the Bank of Zambia not exceeding six hundred penalty units or, on conviction, to a fine not exceeding the fine prescribed in the Act, and all its insiders, including directors and shareholders, and any person concerned in the management of the bank or financial institution shall be personally liable to the same fine and upon conviction, to imprisonment for a term not exceeding two years, or to both.

Penalty for non-compliance

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

SCHEDULE

(Regulation 10)

BANK OF ZAMBIA INSIDER LENDING EXPOSURE REGULATIONS

Reporting Bank:

Month ending:

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

Name of Borrower	Relation-ship to Institution	Loans, Advances and Extensions of Credit Authorised K'Millions	As a % of Regulatory Capital	Amount Outstanding K'Millions	As a % of Regulatory Capital	Rate of Interest %	Interest Capitalised Included in Amounts Outstanding K'Millions
Total							

SECTIONS 73 AND 124-THE BANKING AND FINANCIAL SERVICES (LARGE LOAN EXPOSURES) REGULATIONS

Statutory Instrument 96 of 1996

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Large Loan Exposures) Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Interpretation

"common enterprise" means-

(a) two or more persons constituting a single risk arising from the direct or indirect control of one of those persons over the others; or

(b) two or more persons having no relationship of control over one another, but who constitute a single risk as a result of being interconnected to the extent that if one of them experienced financial problems, the other or all of them would, in the opinion of the Bank of Zambia encounter repayment difficulties;

"control" in relation to a common enterprise, means a situation where-

(a) one or more persons acting in concert, directly or indirectly, own, control or have the power to vote twenty-five per centum or more of any class of voting shares of another person;

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

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

"corporate group" means-

(a) a corporation and all its subsidiaries; or

(b) a subsidiary of any person which directly or indirectly owns or controls more than fifty per centum of the voting shares of a corporation;

"large loan" means an exposure of a bank or financial institution to any person or common enterprise which equals or exceeds ten per centum of the bank's or financial institution's regulatory capital;

"loans and extension of credit" means-

(a) any direct or indirect advance of funds to a person or common enterprise-

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

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

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

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

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule to the Banking and Financial Services (Capital Adequacy) Regulations. Cap. 387

3. These Regulations shall apply to all banks and financial institutions licensed under the Act, and which accept deposits, money market instruments or the equivalent of deposits or money market instruments. Application

4. A bank or financial institution shall not incur an exposure to any single person in an amount which, in the aggregate, exceeds twenty-five per centum of the bank's or financial institution's regulatory capital. Limit on single exposures

5. Where a loan or an extension of credit has been made to a common enterprise, the total exposure of the bank or financial institution to that group shall be aggregated and considered as a single exposure and shall not exceed, in the aggregate, twenty-five per centum of the bank's or financial institution's regulatory capital. Limit on exposures to a common enterprise

6. Notwithstanding the limits prescribed in regulations 4 and 5, a bank's or financial institution's large loans exposures to persons and common enterprises shall not exceed, in the aggregate, six hundred per centum of the bank's or financial institution's regulatory capital. Limit on the aggregate of large loans exposures

7. (1) There shall be no limits on loans and extensions of credit to the Government.

Exceptions,
exemptions and
other limits

(2) There shall be a limit of fifty per centum of the bank's or financial institution's regulatory capital on loans and extensions of credit to the following organisations:

- (a) a foreign government, its agencies and instrumentalities;
and
- (b) the International Monetary Fund and the World Bank.

(3) The limit referred to in sub-regulation (2) shall apply to the aggregate of the loans and extensions of credit to each of the organisations referred to in that sub-regulation.

(4) In the case of loans, advances and extensions of credit in the inter-bank market-

(a) there shall be no limit where the inter-bank exposure is fully secured by the Government, including treasury bills and Government bonds with a residual maturity of less than one year.

(b) a bank or financial institution may grant another bank or financial institution a loan and an extension of credit on the security of a Government bond with a residual maturity of one year, but not more than five years, for any amount not exceeding seventy-five per centum of the face value of the pledged securities; and

(c) there shall be an exposure limit of fifty per centum of a bank's or financial institution's regulatory capital in respect of unsecured exposures.

(5) The loans, advances or extensions of credit referred to in sub-regulation (4) shall comprise repayment terms which shall not exceed five working days.

(6) Any treasury bills and Government bonds pledged as security against loans, advances or extensions of credit shall be deducted from the bank's or financial institution's holdings reported to the Bank of

Zambia and shall not be counted towards the calculation of the minimum liquidity requirements of the bank.

8. Where a bank or financial institution agrees with one or more other banks or financial institutions to collectively make a loan or extend credit to a person, only that portion of the loan or credit which is actually advanced by the bank or financial institution and representing its *pro rata* share of the syndicated loan shall be subject to the loan limits prescribed by regulations 4, 5, 6 and 7.

Loan syndications

9. The lending limits prescribed by regulations 4, 5, 6 and 7 shall not apply to any portion of a loan, advance or extension of credit that represents accrued or discounted interest, unless such interest has been capitalised or is, in any other manner, converted to principal.

Interest or discount on loans

10. The Bank of Zambia shall have the authority-

Combining of loans to separate borrowers

(a) to determine whether or not, and if so determined, when a loan, advance or extension of credit made to one person shall be attributed to, or combined with, those of another person;

(b) to combine the loans, advances or extensions of credit of one or more persons with those of another person when-

(i) the proceeds of the loans or extensions of credit are used for the direct benefit of the other person;

(ii) a common enterprise is deemed to exist between the persons.

11. All large loans, advances and extensions of credit together with any other loans, advances or extensions of credit which, added to an already existing facility equals or exceeds ten per centum of a bank's or financial institution's regulatory capital shall be approved in advance, and in writing, by a majority of the members of the Board of Directors of the bank or financial institution or a special committee consisting of a majority of the members of that Board specially constituted for that purpose.

Credit approval

12. Every bank or financial institution shall-

Submission of reports

(a) within ten days following its month-end and in the Form

prescribed in the Schedule, submit to the Bank of Zambia a monthly report of its large loans; and

(b) if requested by the Bank of Zambia, submit further detailed information on all or any other credits.

13. (1) Every loan, advance or extension of credit which is outstanding on the coming into force of these Regulations and which would violate these Regulations if the loan, advance or extension of credit was made after that date shall be reported to the Bank of Zambia not later than twenty-one days following the coming into force of these Regulations. Compliance with limits of these Regulations

(2) Subject to sub-regulation (3), the report referred to in sub-regulation (1) shall set out the details of the loan, advance or extension of credit and a period, not exceeding one year or such other period as may be provided for in the original loan agreement, within which to progressively bring the loan, advance or extension of credit within the limits of these Regulations.

(3) Notwithstanding sub-regulation (2), any renewal of a loan, advance or extension of credit done on or after the effective date of these Regulations shall be made only on such terms as shall bring the renewal of a loan, advance or extension of credit into compliance with the limits of these Regulations.

14. (1) A bank or financial institution which contravenes these Regulations shall be guilty of an offence and liable, for every day during the contravention continues, to a fine assessed by the Bank of Zambia not exceeding six hundred penalty units or, on conviction, to a fine not exceeding the fine prescribed in the Act, and every director, and any person concerned in the management of the bank or financial institution shall be personally liable to the same fine, or upon conviction, to imprisonment for a term not exceeding two years, or both. Penalty for non compliance

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

SCHEDULE

(Regulation 12)

BANK OF ZAMBIA LARGE LOAN EXPOSURES REGULATIONS

Reporting Bank:

Month ending:

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

Name of Borrower	Loans, Advances and Extensions of Credit Authorised K'Millions	As a % of Regulatory Capital	Amount Outstanding K'Millions	As a % of Regulatory Capital	Rate of Interest %	Interest Capitalised Included in Amounts Outstanding K'Millions	Expiration Date of Facility
Total							

SECTIONS 58 AND 124-THE BANKING AND FINANCIAL SERVICES (CLASSIFICATION AND PROVISIONING OF LOANS) REGULATIONS
Regulations by the Minister

Statutory Instrument
142 of
1996

PART I PRELIMINARY

1. These Regulations may be cited as the Banking and Financial Services (Classification and Provisioning of Loans) *Regulations.

Title

*The Banking and Financial Services (Classification and Provisioning of Loans) Regulations came into operation on the 1st January, 1997.

2. In these Regulations, unless the context otherwise requires-

Interpretation

"allowance for loan losses" means a balance sheet valuation account established, through charges to the income statement, to absorb anticipated losses in respect of a bank's or a financial institution's on-balance sheet and off-balance sheet loans and commitments;

"Board" means the Board of Directors of a bank or a financial institution;

"capitalisation of interest" means-

(a) the process whereby accrued but uncollected interest is added to the unpaid principal balance at the payment date or maturity of a loan; or

(b) interest which is refinanced or rolled-over into a new loan facility;

"in the process of recovery" means that the efforts of collecting a debt are proceeding on course with the final recovery not expected to exceed one hundred and twenty days, either through-

(a) legal action against the borrower; or

(b) collection efforts which do not involve legal action, but which, in the near future, are expected to result in the repayment of the loan, including interest or, in its restoration to current status through payment of all the principal and the interest due;

"loan" means-

(a) any direct or indirect advance of funds, whether secured or unsecured, made on the basis of any obligation of the recipient or on the recipient's behalf to repay the funds; or

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

commitments to extend credit and to acquire a debt security or other right of payment of a sum of money;

"non-accrual loan" means a loan-

(a) on which interest is no longer being taken into income unless paid by the borrower in cash;

(b) which has been placed on a cash basis for the purpose of financial reporting;

(c) on which principal or interest is due and unpaid for ninety days or more; or

(d) on which interest payments equal to ninety days' interest or more have been capitalised, refinanced, or rolled-over;

"non-performing loan" has the same meaning as in the Act;

"past due loan" means a loan where payment of principal or interest is contractually past due, but which has not yet been included in non-accrual loans;

"provision for loan losses" means a charge against income which is added to the Allowance for Loan Losses Account to ensure that the account is maintained at an adequate level in order to cover all anticipated loan losses, after taking into account any write-offs or recoveries of specific loans;

"renegotiated loan" means a loan which has been refinanced, rescheduled, rolled-over, or otherwise modified on such terms and conditions as may have been agreed by the parties thereto because of the weakened financial condition of the borrower resulting in the borrower's inability to repay in accordance with the original terms of the loan;

"senior management" means the officers responsible for the administration of a bank or a financial institution;

"well secured" means securing a loan by-

(a) collateral in the form of perfected liens on, or pledges of, real or

personal property;

(b) securities that have realisable value net of realisation costs which is documented in writing and available for examination and which is sufficient to repay the debt and accrued interest in full; or

(c) the guarantee of a financially responsible party, irrevocable guarantees issued by banks which are internationally rated as "first class" banks, multi-national companies, and governments where the beneficiary bank has performed the financial analysis necessary to determine that the issuer is financially sound, well-capitalised, and able to pay the guarantee on demand or upon the default of the borrower and which guarantee is properly acknowledged by the issuer through independent confirmation.

3. These Regulations shall apply to all banks and financial institutions licensed under the Act. Application

PART II

LOAN REVIEW SYSTEM AND RELATED POLICIES AND PROCEDURES

4. The Board shall adopt a loans policy which shall specify, at a minimum-

Loans policy

(a) standards for loans and extensions of credit; and

(b) the bank's or financial institution's functions of lending and approving of loans, delegation of responsibilities, and the process of reviewing the quality of loans.

5. (1) The Board shall establish, in writing, a loan review system which shall identify risk, assure the adequacy of the Allowance for Loan Losses Account, and properly reflect such result in its financial statements.

Loan review system

(2) The loan review system referred to in sub-regulation (1) shall, at a minimum, ensure that-

- (a) the loan portfolio and lending function of a bank or a financial institution conforms to the loans policy referred to in regulation 4;
- (b) the executive management and the Board are at all times adequately informed about portfolio risk;
- (c) all loans are regularly evaluated using an objective grading system which is consistent with these Regulations;
- (d) loans which have, or are likely to have, a problem are properly identified, classified and placed on non-accrual status, in accordance with these Regulations;
- (e) timely, appropriate provisions and write-offs of identified losses are made to the Allowance for Loan Losses Account, so as to maintain the account at a level which will-
 - (i) accurately reflect the fair and realisable value of the loans in the balance sheet; and
 - (ii) meet the overall minimum provisioning levels specified in these Regulations;
- (f) allowances and provisions are properly reflected in the bank's or the financial institution's financial statements.

(3) The loan review system referred to in sub-regulation (1) shall be reassessed on a regular basis in the light of current circumstances and shall be submitted to the Board at least once a year, for review and approval.

6. (1) There shall be a Loans Review Committee in every bank or financial institution which shall consist of not less than three members. Loans Review Committee

(2) The Chief Executive Officer of the bank or the financial institution shall be a member of the Loans Review Committee referred to in sub-regulation (1).

(3) The members of the Loans Review Committee referred to in sub-regulation (1) shall be appointed by the Board from amongst the members of the Board.

(4) A bank or a financial institution shall, through the Loans Review Committee and at least once every calendar quarter, review the quality and collectability of all loans in its loan portfolio, including any accrued and unpaid interest.

(5) The Loans Review Committee shall, immediately after the review referred to in sub-regulation (4), make a detailed report of such review directly to the Board, which shall take appropriate action on the report.

(6) A bank or a financial institution shall at all times maintain reasonable records in support of the evaluations and related entries of those records and shall make the records available for inspection as and when requested by the Bank of Zambia.

PART III

DETERMINATION AND TREATMENT OF NON-ACCRUAL LOANS AND RELATED ACCOUNTS

7. (1) A bank or a financial institution shall place a loan in non-accrual status if- Transfer to non-accrual status

(a) there is reasonable doubt about the ultimate collectability of the principal or the interest;

(b) a specific provision has already been established on the loan;

(c) except in the case of a restructured loan, the loan has been partially or entirely written off; or

(d) the principal or the interest has been in default for a period of ninety days or more, or the account has been inactive for ninety days and deposits are insufficient to cover the interest capitalised during the period.

8. Where a loan is placed in non-accrual status under these

Treatment of

Regulations-

- (a) all previously accrued but uncollected interest taken into income shall be reversed, at the latest, by the end of the quarter in which the loan was placed in non-accrual status;
- (b) interest which has accrued during a current quarter shall be reversed against the income of that quarter; and
- (c) interest accrued in periods other than the current quarter shall be charged to the Allowance for Loan Losses Account.

income on
non-accrual
loans

9. (1) Where a loan is placed in non-accrual status, any cash payments received shall first be applied to reduce the amount of the principal outstanding and due.

Treatment of
cash payments
on non-accrual
loans

(2) Where the principal outstanding of the loan which is due has been fully recovered, any further excess payments may be taken into income, provided the amount of income recognised is limited to the amount which would have been due to the bank or the financial institution if the loan had been current at its contractual rate.

(3) Any further excess payments referred to in sub-regulation (1) shall be applied against any additional balance outstanding on the loan.

(4) Where a renegotiated or a restructured loan exists, payments shall be taken into income on the basis of the revised terms of the loan agreement.

(5) Any determination by senior management or the Board that a loan is ultimately collectable shall be supported by-

- (a) a current, well-documented credit evaluation of the borrower's financial condition and prospects for repayment; and
- (b) a consideration of the borrower's historical repayment performance.

10. (1) A non-accrual loan shall only be restored to accrual status when-

Restoration to
accrual status

- (a) all payments of the principal and interest become fully current and senior management has determined that there is no

reasonable doubt the ultimate collectability of the principal or the interest of the loan; or

(b) when the loan otherwise becomes well-secured and is in the process of recovery.

(2) For the purposes of paragraph (a) of sub-regulation (1), a bank or financial institution shall have received repayment of all the principal and the interest in arrears, unless the loan has been formally restructured and qualifies for accrual status.

(3) Until a loan is restored to accrual status, any cash payments received shall be treated in accordance with the provisions of regulation 9.

11. (1) A renegotiated loan shall return to performing status-

Renegotiated
loans

(a) When the rate charged for the loan is equivalent to the rate that would be charged on a new fully performing loan of similar merit; and

(b) where all payments are fully current and senior credit management has determined, based on available and documented information, that there is no reasonable doubt about ultimate collectability of the principal or the interest.

(2) Where a loan is reclassified from non-current to performing status, all existing specific provisions shall be extinguished prior to that reclassification.

12. Where a bank or a financial institution has a number of loans outstanding to a single borrower, and one of those loans meets the criteria from non-accrual status, the bank or the financial institution shall evaluate all other loans to that borrower and if the bank or the financial institution considers it appropriate, place one or more of such other loans in non-accrual status.

Treatment of
multiple loans
to one borrower

13. (1) A bank or a financial institution shall maintain at all times a balance, in the Allowance for Loan Losses Account, that is the best possible estimate of probable loan related losses existing in the portfolio of on-and off-balance sheet items in the light of current conditions.

Allowance for
Loan Losses
Account

(2) The Allowance for Loan Losses Account shall-

(a) in the case of balance sheet assets, except for acceptances, appear as deduction from the applicable asset; and

(b) in the case of acceptances and off-balance sheet items such as guarantees or letters of credit, appear as a separate item with other liabilities.

14. (1) Any additions to, or reductions from, the Allowance for Loan Losses Account shall be made through charges or credits to the Provision for Loan Losses Account in the income statement, and all loan write-offs or recoveries shall be charged or credited directly to the Allowance for Loan Losses Account.

Additions and reductions to the Allowance for Loan Losses Account

(2) A loan loss or recovery shall not be charged or credited directly to "retained earnings" or to any other capital related account.

15. (1) The amount of the provision for loan losses that is charged to the income statement shall be the amount that is required to establish a balance in the Allowance for Loan Losses Account which management considers adequate to absorb all credit related losses in its portfolio of on-and off-balance sheet items and which, at a minimum, meets the provisioning requirements specified in these Regulations.

Provision for loan losses

(2) All loans that are written off shall be charged directly to the Allowance for Loan Losses Account.

(3) Where no provisions are established, a provision shall be made in an amount sufficient to cover the loan amount that is to be written off, and shall be written off against the Allowance for Loan Losses Account.

PART IV

DETERMINATION OF AMOUNT OF POTENTIAL LOSS AND

CLASSIFICATION OF LOANS

16. (1) In determining the amount of potential loss related to individual loans and to the aggregate of the loans portfolio of a bank or a financial institution, the following factors shall be considered: Determination of amount of potential loss

- (a) the historical loan loss experience;
- (b) the current economic conditions;
- (c) the delinquency trends;
- (d) the effectiveness of the bank's or financial institution's lending policies and collection procedures; and
- (e) the timeliness and accuracy of the bank's or financial institution's loan review function.

17. (1) Subject to regulation (2), all loans of a bank or a financial institution shall be classified by the bank or the financial institution in one of the categories outlined in sub-regulations (3) to (6). Classification of loans

(2) Notwithstanding sub-regulation (1), an adverse classification may be warranted and appropriate where-

- (a) a significant departure from the intended source of repayment develops even if a loan is current and supported by underlying collateral value; or
- (b) where repayment terms originally were too liberal or a delinquency has been cured by modifications, refinancing, or additional advances.

(3) A loan shall be classified in the "pass" category if it is-

- (a) considered current and performing in accordance with its contractual terms and expected to continue doing so; and
- (b) fully protected by the current sound worth and paying capacity of the borrower or of the collateral pledged.

(4) A loan shall-

- (a) be classified "standard" if it-
 - (i) is inadequately protected by the current sound worth

and paying capacity of the borrower or of the collateral pledged; or

(ii) has well-defined weaknesses that may jeopardize the orderly repayment of the debt.

(b) at a minimum, be classified "substandard" if it is in arrears as to the principal or interest for ninety days or more, but less than one hundred and twenty days.

(5) A loan shall-

(a) be classified "doubtful" loan if-

(i) it is considered to have all the weaknesses inherent in a substandard loan; and

(ii) collection or orderly repayment in full, on the basis of currently existing facts, conditions and values, is highly questionable.

(b) at a minimum, be classified "doubtful" if it is in arrears as to principal or interest for one hundred and twenty days or more, but less than one hundred and eighty days.

18. (1) The loan classification set out in the First Schedule shall apply to the corresponding minimum percentages set out in that Schedule.

Minimum
provisioning
requirements

(2) Any loan or portion of a loan which is fully secured by cash, by a segregated deposit in the lending bank, or by a security issued by the Government of Zambia shall be exempt from the provisioning requirements referred to in sub-regulation (1).

(3) Any loan or portion of a loan which is assigned a "Loss" classification shall be fully provisioned at the time the loss is identified.

(4) The Bank of Zambia may, under exceptional circumstances, with its prior written approval and under such terms and conditions as it may consider necessary, vary a provisioning level for a period not exceeding one year.

19. (1) A bank or a financial institution shall maintain reasonable

Examiner

records in support of its evaluation of potential loan losses and of the entries made to ensure that an adequate provisioning level is maintained in the Allowance for Loan Losses Account. review

(2) The records and entries referred to in sub-regulation (1) shall be made available to the Bank of Zambia for review in order to enable it to assess management's estimation procedures, the reliability of the information on which estimates are based, and the adequacy of the Allowance for Loan Losses Account.

20. A bank or a financial institution shall, within ten days after the last day of every month, or such other reporting period as may be determined by the Bank of Zambia, submit to the Bank of Zambia- Reporting requirements

(a) a balance sheet which reflects the Allowance for Loan Losses Account in an amount which is adequate to absorb potential losses within the bank's or the financial institution's on-and-off-balance sheet exposures;

(b) an income statement which reflects the provision for loan losses which is necessary to maintain the Allowance for Loan Losses Account at an adequate level;

(c) details of the classification of its loan portfolio in the Form set out in the Second Schedule; and

(d) such other information, report or detailed information as may be requested by the Bank of Zambia in the format and within such time as the Bank of Zambia may request.

FIRST SCHEDULE

(Regulation 18)

BANK OF ZAMBIA

MINIMUM PROVISIONING PERCENTAGES APPLYING TO LOAN CLASSIFICATION

Loan Classification

Pass
Substandard

Provisioning Percentage

At bank discretion
Twenty per centum (90-119 days)

Doubtful
Loss

Fifty per centum (120-179 days)
One hundred per centum (180 days +)

SECOND SCHEDULE
(Regulation 20)
BANK OF ZAMBIA

**CLASSIFICATION OF LOANS AND
PROVISIONS**

Name of institution:

As at: (month/year):

(in K'000)

	<i>Total Gross Balances</i>	<i>Total of Specific and General Provisions</i>	<i>Net Balances</i>
(I) PASS			
Number of accounts	-----	-----	-----
-----	-----	-----	-----
(II) SUBSTANDARD			
(a) List names of accounts (K10m and above)			
-			
-			
-			
-			
(b) Others (number of accounts below K10m)			
-----	-----	-----	-----
Sub-total (II) (a + b)	-----	-----	-----
-----	-----	-----	-----

(III) DOUBTFUL

(a) List names of accounts (K10m and above)

-
-
-
-
-

(b) Others (number of accounts below K10m)

Sub-total (III) (a + b)

(V) LOSS

(a) List names of accounts (K10m and above)

-
-
-
-

(b) Others (number of accounts below K10m)

Sub-total (IV) (a + b)

TOTAL (I) to (IV)

NOTES: The total of the "Total Gross Balances" column must agree with the Loans account balance appearing in a bank's or financial institution's balance sheet.

The total of the "Net Balances" column must agree with the net of the Loans account balance less the Allowance for the Loan Losses Account in a bank or financial institution's balance sheet.

MANAGEMENT AND EXPOSURE) REGULATIONS

57 of 1996

Regulations by the Minister

1. These Regulations may be cited as the Banking and Financial Services (Foreign Exchange Risk Management and Exposure) Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Interpretation

"currency" means the legal tender of any country and includes precious metals and other similar tradeable commodities;

"fixed forward contract" means a foreign exchange bought or sold forward in advance for delivery on a fixed value date longer than spot, at a pre-determined specified rate of exchange;

"option forward contract" means a forward exchange contract which gives the counterparty the right to exercise the contract over a defined period instead of solely on one value date;

"foreign exchange option contract" means a contract which gives the holder the right, but not the obligation, to sell or buy an agreed sum of money on an agreed date, or at any time between agreed dates at an agreed price or rate, on payment of a non-refundable fee or premium to the writer of the option;

"long position" means the excess of assets over liabilities in a particular currency;

"net forward position" means all amounts to be received less all amounts to be paid in the future as a result of foreign exchange transactions which have already taken place;

"open position" means a situation where assets in a particular currency do not equal liabilities in that currency, including unhedged forward commitments to purchase or sell the currency;

"overnight position" means the holdings of any open positions in foreign currencies of a bank or financial institution at the close of each business day;

"regulatory capital" means those instruments which comprise the capital resources of a bank or financial institution, and the total of which is used by the Bank of Zambia for compliance by a bank or financial institution with the minimum capital standard and for assessing capital adequacy, and is calculated in accordance with the Second Schedule to the Banking and Financial Services (Capital Adequacy) Regulations; Cap. 387

"short position" means the excess of liabilities over assets in a particular currency;

"spot exchange rate" means the latest market price for a currency;

"spot foreign exchange contract" means an agreement with a counterparty to buy or sell a given amount of one currency against the agreed countervalue of another, usually for settlement in two working days' time.

3. These Regulations shall apply to all banks and financial institutions licensed under the Act. Application

4. (1) Every bank or financial institution shall manage its foreign exchange risk exposures within the framework of a comprehensive risk management plan, setting out its policies, procedures and other safeguards necessary to prudently manage and control exposure to foreign exchange risk. Foreign exchange risk management plan

(2) The risk management plan referred to in sub-regulation (1) shall be drawn in the context of other risks and considerations and shall-

(a) take into account the ability of the bank or financial institution to absorb a potential loss;

(b) at a minimum, include-

(i) the establishment and implementation of sound and prudent foreign exchange risk management policies; and

(ii) the development and implementation of appropriate and effective foreign exchange risk management and control procedures.

(3) The policies and control procedures referred to in sub-regulation (2) shall be reviewed and reassessed at least once in a year and shall be submitted to the board of directors of the bank or financial institution for review and approval.

(4) The bank or financial institution shall, after the policies and control procedures referred to in sub-regulation (3) have been dealt with by its board of directors in accordance with that sub-regulation, refer them to the Bank of Zambia.

5. (1) Every bank or financial institution engaged or proposing to engage in foreign exchange activities shall set forth in its risk management plan a well-articulated policy of the objectives of its foreign exchange risk management strategy, and shall include, at a minimum-

Foreign
exchange risk
management
policies

(a) a statement of risk principles and objectives governing the extent to which the bank or financial institution is willing to assume foreign exchange risk;

(b) subject to the limits specified in regulation 7, explicit and prudent limits on the bank's or financial institution's exposure to foreign exchange risk;

(c) the currency or currencies in which the institution is prepared to incur exposure; and

(d) clearly defined levels of delegation of trading authorities.

6. (1) Every bank or financial institution engaged or proposing to engage in foreign exchange activities shall-

Foreign
exchange risk
management
and control
procedures

(a) as part of its risk management plan, develop, implement and oversee procedures to manage and control foreign exchange risk in accordance with its foreign exchange risk management policies; and

(b) be of a level of sophistication commensurate with the size, frequency and complexity of the institution's foreign exchange activities.

(2) The foreign exchange risk management and control procedures referred to in sub-regulation (1) shall include, at a minimum-

(a) the use of accounting and management information systems to measure, monitor and reconcile, on a daily basis, foreign exchange

positions, foreign exchange risk and foreign exchange gains or losses;

- (b) regular monitoring and reporting techniques to senior management;
- (c) controls governing the management of foreign currency activities; and
- (d) regular independent inspections or audits to assess compliance with, and the integrity of, the foreign exchange policies and procedures.

7. A Bank or financial institution's foreign exchange positions and exposures shall be calculated in accordance with the First, Second and Third Schedules. Foreign exchange exposure limits

8. (1) The Bank of Zambia may, where it considers that the financial institution of a bank or financial institution warrants a lower limit, prescribe such lower limit as it may consider appropriate. Overall currency exposure

(2) Notwithstanding sub-regulation (1), every bank or financial institution shall-

- (a) maintain its overall foreign exchange risk exposure as at the close of each business day to a maximum of twenty-five percentum of its regulatory capital; and
- (b) ensure that its intra-day overall foreign exchange risk exposure is maintained within the objectives set out in its risk management policies and managed prudently and responsibly;

Provided that at no time shall the total of the foreign exchange risk exposure exceed forty percentum of the bank's or financial institution's regulatory capital.

9. (1) The Bank of Zambia may, where it considers that the financial situation of a bank or financial institution warrants a lower limit, prescribe such lower limit as it may consider appropriate. Single currency exposure

(2) Notwithstanding sub-regulation (1), every bank or financial institution shall-

- (a) maintain its foreign exchange risk position as at the close of each business day in any single currency to a maximum of twenty percentum of its regulatory capital; and

(b) ensure that its intra-day foreign exchange risk position in any single currency is maintained within the objectives set out in its risk management policies and managed prudently and responsibly:

Provided that at no time shall the total in any single currency exceed thirty percentum of the bank's or financial institution's regulatory capital;

(3) In this regulation-

"overall foreign exchange risk exposure" means the sum of the domestic currency equivalent amount, currency by currency, of all foreign currency denominated assets and liabilities, including the net forward or off balance sheet currency, of all net short and net long positions in currencies in which the bank or financial institution has positions, at the currently prevailing spot foreign exchange rates in connection with which the bank or financial institution shall be subject to gain or loss if there is a variation in the exchange rate of these currencies.

"foreign exchange risk" in any given single currency is the domestic currency equivalent amount, including the net forward position in that currency, at the currently prevailing spot foreign exchange rate of the foreign currency amount in connection with which the bank or financial institution will be subject to gain or loss if there is a variation in the exchange rate of that currency.

10. Every bank and financial institution which engages in foreign exchange operations shall submit to the Bank of Zambia, within ten working days following the reference month, a report of its foreign exchange positions and exposures, in the forms set out in the First, Second and Third Schedules.

Submission of reports

FIRST SCHEDULE

(Regulations 7 and 8)

- | | | | |
|----|---|---|-------|
| 1. | Total Regulatory Capital
(as calculated by using the Second Schedule of the
Banking and Financial Services (Capital Adequacy)
Regulations, Cap. 387). Attach calculation | K | _____ |
| 2. | Overall Foreign Currency Exposure
Item 3 of the Second Schedule | K | _____ |

As a percentage of Regulatory Capital (item 1

above) _____ %

3. Foreign Currency Exposure on a Per Currency Basis

Currency	Long (short)	As a percentage of Regulatory Capital
DEM		
FFR		
ZAR		
GBP		
USD		
OTHERS (specify)		

SECOND SCHEDULE

(Regulations 7 and 8)

Positions in Domestic Currency Equivalent of the Spot and Forward Positions of Foreign Currencies (1) (using prevailing rates quoted in the third schedule)						
Currency	Balance Sheet		Forward		Overall	
	Long	Short	Long	Short	Long	Short
DEM						
FFR						
ZAR						
GBP						
USD						
OTHERS (SPECIFY)						
NET POSITION						
OVERALL EXPOSURE						

(1) Report all unhedged positions, including interest rate hedges, forward contracts, derivatives, etc.

(2) The net position is the difference between the " total long" and " total short" positions.

(3) The overall foreign currency exposure is the sum total of all long and short positions.

THIRD SCHEDULE

(Regulations 7 and 8)

Positions in Foreign Currencies and Net Domestic Currency Equivalent Positions (- sign indicates a short position)					
Currency	Net Balance	Off Balance Sheet *(Forward)	Total	Prevailing Spot Forex Rate (at Date of this Return)	Net Domestic Currency Equivalent Position
DEM					
FFR					
ZAR					

GBP					
USD					
OTHERS (SPECIFY)					

*Report all unhedged positions, including options, interest rate hedges forward contracts, derivatives, etc.