Note By Veritas
Gazetted and in Force
13th Masy 2016

ZIMBABWE

ACT

To amend the Banking Act [*Chapter 24:20*], the Reserve Bank of Zimbabwe Act [*Chapter 22:15*], the Deposit Protection Corporation Act [*Chapter 24:29*] and the Schedule to the Reserve Bank of Zimbabwe Amendment Act, 2010 (No. 1 of 2010); to repeal the Troubled Financial Institutions (Resolution) Act [*Chapter 24:28*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

This Act may be cited as the Banking Amendment Act, 2015.

2 Amendment of section 2 of Cap. 24:20

Section 2 ("Interpretation") of the Banking Act [*Chapter 24:20*] (hereinafter called "the principal Act") is amended—

(a) in subsection (1)—

(i) by the repeal of the definition of "associate" and the substitution of—

""associate", in relation to a body corporate, including a banking institution, means—

(a) its subsidiary, as defined in section 143 of the Companies Act [*Chapter 24:03*]; or

(b) any company of which the body corporate is the single largest shareholder; or

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(c) its holding company, as defined in section 143 of the Companies Act [*Chapter 24:03*]; or

(d) where the body corporate is itself a subsidiary of a holding company, as defined in section 143 of the Companies Act [*Chapter 24:03*], any other such subsidiary of the same holding company; or

(e) any person who has power, directly or indirectly, to control the body corporate's management or policies;";

(ii) by the repeal of the definition of "bank";

(iii) by the insertion of the following definitions—

""close relative", in relation to any person, means—

(a) a spouse;

(b) a child, step-child, parent or step-parent;

(c) the spouse of any of the persons mentioned in paragraph (b);

"compliance officer" means the compliance officer of a banking institution or controlling company referred to in section 20(2);

"controlling company" means a company which controls a banking institution as provided in section 15F;

"credit information", in relation to a person, means any information that may reasonably be taken into account in determining the person's credit-worthiness, and includes—

(a) where the person is an individual, information about—

(i) his or her identity, including his or her full name, nationality, domicile, date of birth, place of residence, previous places of residence and marital status; and

(ii) the name and other identity particulars of his or her spouse; and

(iii) his or her place of employment and previous places of employment;

(b) where the person is an association, whether corporate or unincorporated, information about—

(i) the person's establishment or incorporation, including the head office or principal place of business of the person; and

(ii) the members of the person's board of directors or management committee; and

(iii) the person's employees and agents;

(c) in all cases, information about—

(i) the person's paying habits, outstanding debt obligations, assets and credit history; and

(ii) the person's business or occupation, and the persons with whom the person does business; and

(iii) the person's finances and financial statements; and

(iv) the person's compliance with any enactment regulating his or her business or occupation; and

(v) taxes paid or payable by the person; and

(vi) any pending prosecution for a criminal offence, or previous conviction for a criminal offence, and other information relevant to the person's financial integrity;

"credit rating" means an opinion as to the creditworthiness of any person who takes on or may take on any debt, or who issues or proposes to issue any debt-like securities;

"credit rating agency" means an entity whose principal business is the issuance of credit ratings on Government and corporate debt issues with the object of evaluating the creditworthiness or ability and willingness of the debt issuer to make timely payments of principal and interest, and to assess the credit quality of, and assign credit ratings to, any debt and debt-like securities;

"credit reference bureau" means an entity whose principal business consists in providing credit reference services;

"credit reference services" means services related to the compilation, storage, processing and dissemination of credit information;

"financial institution" means any of the following entities—

(a) a banking institution; or

(b) a building society registered in terms of the Building Societies Act [*Chapter 24:04*]; or

(c) an insurer registered in terms of the Insurance Act [*Chapter 24:07*]; or

(d) a fund registered in terms of the Pension and Provident Funds Act [*Chapter 24:09*]; or

(e) the Small and Medium Enterprises Development Corporation established by the Small and Medium Enterprises Act [*Chapter 24:12*]; or

(f) the Infrastructure Development Bank of Zimbabwe established by the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*]; or

(g) a trustee or manager of a collective investment scheme registered in terms of the Collective Investment Schemes Act [*Chapter 24:19*]; or

(h) the People's Own Savings Bank of Zimbabwe established by the People's Own Savings Bank of Zimbabwe Act [*Chapter 24:22*]; or

(i) the company exercising the functions of the Corporation in terms of the Agricultural Finance Act [*Chapter 18:02*]; or

(j) the Reserve Bank; or

(k) the National Social Security Authority established by the National Social Security Authority Act [*Chapter 17:04*]; or

(l) the Sovereign Wealth Fund of Zimbabwe established by the Sovereign Wealth Fund of Zimbabwe Act [*Chapter 22:04*] (No. 7 of 2014); or

(m) such other institution as may be prescribed;

"foreign banking institution" means a banking institution which is not registered in Zimbabwe and whose head office is situated outside Zimbabwe;

"group of companies" means a holding company and its subsidiaries, as defined in section 143 of the Companies Act [*Chapter 24:03*], and "member" in relation to such a group means any one of those companies;

"independent", in relation to a director of a banking institution or controlling company, has the meaning given to it in subsection (4);

"mobile banking" means an arrangement that allows a customer of—

(a) a banking institution; or

(b) a licensee under the Postal and Telecommunications Act [*Chapter 12:05*]; or

(c) any other operator of a wireless communication system;

to access any financial service activities through a mobile device, whether the arrangement is operated by the banking institution, licensee or operator concerned or by an independent operator;

"principal officer", in relation to a banking institution or controlling company, means an officer referred to in section 20(2);

"principal shareholder", in relation to a banking institution or controlling company, means a person who owns or controls more than—

(a) five *per centum*; or

(b) such other percentage as may be prescribed for the purpose of any provision of this Act;

of the shares or voting stock of the banking institution or controlling company;

"problem banking institution" means a banking institution whose capital adequacy, asset quality or liquidity or solvency is, or will be (in the opinion of the Registrar), significantly impaired unless there is a major improvement in its financial resources, risk profile, strategic business direction, risk management capabilities or quality of management;

"special purpose vehicle" means (by whatever other name it is called, including a special purpose entity or special purpose company) a company or entity created by a banking institution or controlling company solely or primarily for one or any combination of the following purposes—

(a) the owning or securitising of a particular set of loans, assets or other investments, and distributing the risk to investors;

(b) the marketing of financially engineered products;

(c) avoiding tax;

(d) as a vehicle for structuring financial transactions that can have a material effect on the banking institution or controlling company in such a way that they do not appear on the institution's or company's balance sheet;

(e) any specific or temporary purpose whatsoever;";

(iv) in the definition of "registered" by the insertion after "banking institution" of "or controlling company";

(b) in subsection (2) by the insertion after paragraph (e) of the following paragraphs—

"or

(f) the banking institution fails to pay any deposit on demand by the depositor or, in the case of a term deposit, on due date; or

(g) the banking institution establishes an entity such as a special purpose vehicle without the approval of the Reserve Bank in terms of section 32A or, having established such an entity with such approval, uses it for a purpose or in a manner that was not authorised by the Reserve Bank; or

(h) the banking institution carries out activities that are prohibited in terms of this Act or any other enactment.";

(c) by the insertion after subsection (3) of the following subsections—

"(4) A director of a banking institution or controlling company shall be regarded as independent for the purposes of this Act if he or she—

(a) does not hold such number of shares in the institution or company as would require the Registrar's permission in terms of section 15A or would constitute a significant interest in terms of section 15B(1); and

(b) is not an officer or employee of the institution or company, and has not been such an officer or employee for the preceding three years; and

(c) on his or her appointment, has not been a director of the institution or company for the preceding two years; and

(d) is not a director, officer or employee of any company in a group of companies of which the institution or controlling company is a member; and

(e) is not a professional advisor of the institution or company; and

(f) is not a nominee, representative, associate or close relative of—

(i) a shareholder with a shareholding referred to in paragraph (a); or

(ii) an officer, employee or professional advisor of the institution or company; or

(iii) a director, officer or employee of a company in a group of companies of which the institution or controlling company is a member;

and

(g) does not have and has not had any contractual or business relationship, direct or indirect, with the institution or company which might reasonably be regarded as likely to impair his or her independence as a director; and

(h) does not receive and has not received any remuneration from the institution or company apart from a director's fee; and

(i) does not represent (whether as a nominee or in a professional or other capacity) a shareholder of the institution or company; and

(j) is not a member of a pension scheme run by the institution or company; and

(k) is not a close relative of any director, officer or adviser of the institution or company; and

(l) does not represent a shareholder of the institution or company; and

(m) generally, has no relationship with the institution or company or with its directors, staff, business associates or customers, which might reasonably be regarded as compromising his or her independence.

(5) Whenever in this Act any notice or other thing is required to be "written" or to be done "in writing", or the word "publish" or any of its derivatives is used in connection with a requirement or power of publication, such requirement shall be fulfilled by the sending of an electronic communication in accordance with conditions (including adequate conditions as to the recording, despatch and authentication of documents that are likely to be acceptable to a court as proof of the service thereof) agreed beforehand by the sender and the recipient of the communication.".

3 Amendment of section 4 of Cap. 24:20

Section 4 ("Registrar of Banking Institutions and other officers") of the principal Act is amended by the repeal of subsections (2) and (3).

4 New sections inserted in Cap. 24:20

Part II ("Administration") of the principal Act is amended by the insertion after section 4 of the following sections—

"4A Functions of Registrar and other officers

(1) The Registrar shall be responsible for—

(a) registering banking institutions and cancelling their registration in terms of this Act; and

(b) performing any other functions that are conferred or imposed upon him or her by or in terms of this Act or any other enactment.

(2) The officers, other than the Registrar, referred to in section 4 shall perform such of the Registrar's functions as the Registrar may assign to them, and in the performance of those functions they shall be subject to the Registrar's direction and control.

4B Exercise of functions by Registrar

(1) The Registrar shall exercise his or her functions under this Act in an impartial, clear and, subject to section 76, open manner.

(2) Before reaching a decision that affects or is likely to affect the rights or interests of any person, the Registrar shall, to the fullest extent practicable—

(a) give the person due and clear notice of the nature of the decision the Registrar is to make and of the factors the Registrar is likely to take into consideration when making it; and

(b) subject to section 76, allow the person reasonable access to the information available to the Registrar in regard to the matter under consideration; and

(c) give the person a reasonable opportunity to make representations in the matter; and

(d) take into account any representations that the person may make in the matter;

and generally the Registrar shall observe due process and the rules commonly known as the rules of natural justice.

(3) Subject to section 76, where the Registrar has made a decision or taken any action that adversely affects the rights or interests of any person, the Registrar shall provide that person, promptly on demand, with full written reasons for the decision or action.

(4) The Governor, with the approval of the Board of the Reserve Bank (or, in cases of urgency, by ratification by the Board afterwards of any directions given), may give the Registrar general directions of policy to be adopted by the Registrar in the performance of his or her functions:

Provided that all such directions shall be in writing and kept by the Registrar at his or her office, where they may be inspected free of charge by members of the public at all reasonable times during office hours.

(5) Except as provided in subsection (4), the Registrar shall not, in the performance of his or her functions under this Act, be subject to the direction or control of the Governor or any other officer of the Reserve Bank.

(6) Subsections (2) and (5) do not apply in cases of urgency in which, in the opinion of the Registrar or the Governor, as the case may be, the interests of defence, public safety, public order, public morality or the general public interest is affected:

Provided that the Registrar or the Governor, as the case may be, shall make a written record of the reasons for the urgency and avail the same to any interested person.

4C Adoption of prudential standards of bank supervision

(1) The Registrar, on reasonable written notice to the banking institutions and controlling companies concerned, may adopt such sound prudential supervisory and regulatory standards and practices as he or she considers appropriate for the purpose of monitoring and supervising the activities of banking institutions and controlling companies.

(2) The Registrar shall ensure that the standards and practices adopted in terms of subsection (1) are made known to the banking institutions and controlling companies affected by them.

4D Registrar and Reserve Bank to co-operate with other authorities

(1) For the better exercise of their functions and in the interests of ensuring the efficient and co-ordinated regulation and development of the financial sector in Zimbabwe and the proper enforcement of the law, the Registrar and the Reserve Bank shall be furnished at his, her or its request with such information as he, she or it may require from—

(a) the Chief Registrar of Companies referred to in section 5 of the Companies Act [*Chapter 24:03*]; and

(b) the Commissioner of Insurance, Pension and Provident Funds appointed in terms of section 19 of the Insurance and Pensions Commission Act [*Chapter 24:21*] (No. 7 of 2000); and

(c) the Registrar of Collective Investment Schemes referred to in section 4 of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997); and

(d) the Director of the Bank Use Promotion and Suppression of Money Laundering Unit appointed in terms of section 3 of the Bank Use Promotion Act [*Chapter 24:24*] (No. 2 of 2004); and

(e) the Chief Executive Officer of the Securities Commission established by section 3 of the Securities and Exchange Act [*Chapter 24:25*] (No. 17 of 2004); and

(f) the Registrar of Asset Managers referred to in section 4 of the Asset Management Act [*Chapter 24:26*] (No. 16 of 2004); and

(g) the Chief Executive Officer of the Deposit Protection Corporation.

(2) Notwithstanding section 76, the Registrar and the Reserve Bank may provide the persons referred to in subsection (1) with information concerning banking institutions and controlling companies generally, or concerning any particular banking institution or controlling company, where the information is likely to assist those persons in the exercise of their functions or promote the co-ordinated regulation of the financial sector in Zimbabwe.".

5 Amendment of section 8 of Cap. 24:20

Section 8 ("Registration of banking institutions") of the principal Act is amended—

(a) in subsection (1) by the insertion after "registration" of "as a banking institution";

(b) in subsection (3)—

(i) in paragraph (a) by the deletion of "company" and the substitution of "public company";

(ii) by the repeal of paragraph (b1) and the substitution of the following paragraphs—

"(b1) the applicant's directors, principal officers and principal shareholders are fit and proper persons to be directors, principal officers or shareholders, as the case may be, of a banking institution; and

(b2) where the applicant is a subsidiary, the directors, principal officers and principal shareholders of the applicant's controlling company are fit and proper persons to be directors,

principal officers or shareholders, as the case may be, of the controlling company of a banking institution; and";

(iii) in paragraph (c) by the deletion of "chief executive officer, chief accounting officer and such other officers as may be prescribed" and the substitution of "principal officers";

(iv) by the repeal of paragraph (d) and the substitution of the following paragraphs—

"(d) the applicant's business plan is appropriate for the class of banking business the applicant wishes to conduct;

(d1) the applicant's structural organisation and internal procedures—

(i) are consistent with generally recognised standards of corporate governance, including those fixed or prescribed in terms of this Act; and

(ii) are appropriate to the class of banking business the applicant wishes to conduct; and

(iii) will enable the applicant to comply with its obligations under the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013);

and

(d2) where the applicant is part of a group of companies, the structure and governance of the group does not hinder effective supervision of the applicant or endanger the stability of the financial system; and";

(d) in subsection (4) by the insertion in paragraph (a) after "situated" of "and does carry on banking business in that country";

(e) by the insertion after subsection (6) of the following subsection—

"(7) As soon as reasonably possible after registering an applicant, the Registrar shall inform the Deposit Protection Corporation.".

6 New section inserted in Cap. 24:20

The principal Act is amended by the insertion after section 13 of the following section—

"13A Notification of application

As soon as reasonably possible after registering an applicant, the Registrar shall inform the Deposit Protection Corporation and cause notice of the registration to be published in the *Gazette* and in one or more issues of a newspaper circulating in the area in which the applicant's head office is situated.".

7 Amendment of section 14 of Cap. 24:20

Section 14 ("Cancellation of registration") of the principal Act is amended—

(a) in subsection (1) by the insertion after paragraph (f) of the following paragraph—

"(f1) the institution has knowingly or recklessly permitted its facilities to be used for the purposes of money-laundering or the financing of terrorism as described in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013); or";

(b) in subsection (2)(b) by the insertion after "the banking institution" of "and the Deposit Protection Corporation".

8 New Part inserted in Cap. 24:20

The principal Act is amended by the insertion after Part III of the following Part—

"PART IIIA

SHAREHOLDING AND CONTROL OF BANKING INSTITUTIONS

15A Limitation on shareholding in banking institutions and controlling companies

(1) Subject to this Act, without the permission of the Registrar given in terms of subsection (2)—

(a) no individual shall hold shares in a banking institution or a controlling company if the shares exceed twenty-five *per centum* of the total nominal value or the total voting rights of all the issued shares of the banking institution or controlling company;

(b) no body corporate, other than—

(i) a financial institution; or

(ii) a registered controlling company; or

(iii) a body corporate approved in terms of section 15F(1)(b);

shall hold shares in a banking institution or a controlling company if the shares exceed twenty-five *per centum* of the total nominal value or the total voting rights of all the issued shares of the banking institution or controlling company.

(2) Upon written application to that effect having been made by the shareholder concerned, the Registrar may, by written notice to the shareholder and the banking institution or controlling company concerned, give permission for the shareholder to hold more shares in a banking institution or controlling company, if the Registrar is satisfied that—

(a) the shareholding will not be contrary to—

(i) the public interest; or

(ii) the interests of the banking institution concerned or its depositors or of the controlling company concerned, as the case may be;

and

(b) where the shareholder is—

(i) an individual, he or she is a fit and proper person to hold shares in a banking institution or controlling company, as the case may be;

(ii) a body corporate, the persons who control the body corporate are fit and proper persons to control a shareholder in a banking institution or a controlling company, as the case may be.

(3) If the result of giving permission in terms of subsection (2) would be to transfer control of the banking institution or controlling company concerned, the Registrar, through the Governor, shall consult the Minister before giving such permission.

(4) If, on application being made, the Registrar refuses to give permission in terms of subsection (2), the Registrar shall, within ten days

after reaching his or her decision, notify the applicant, in writing, of the decision and of the reasons for it.

(5) As soon as possible after a banking institution or controlling company becomes aware that a person holds its shares in contravention of subsection (1), the institution or company shall notify the Registrar, in writing, of that fact.

(6) For the purposes of this section, shares in a banking institution or controlling company which are held by—

(a) an individual shall be deemed to include any shares in the same banking institution or controlling company which are held by a close relative of the individual;

(b) a body corporate shall be deemed to include any shares in the same banking institution or controlling company which are held by an associate of the body corporate:

Provided that this subsection shall not apply to shares purchased by the close relative or associate through a securities exchange registered under the Securities and Exchange Act [*Chapter 24:24*] (No. 17 of 2004).

(7) This section shall not apply in respect of shares that are held temporarily (and in any event for not more than twelve months) by an underwriter pending their acquisition by other persons.

15B Acquisition of significant interest in banking institution or controlling company

(1) In this section—

"significant interest" means a percentage of—

(a) the share capital of a banking institution or controlling company; or

(b) the voting rights of members of a banking institution or controlling company;

which exceeds five *per centum* or more of the total share capital or voting rights of members, as the case may be, of the banking institution or controlling company.

(2) No—

(a) person shall knowingly acquire a significant interest in a banking institution or controlling company;

(b) banking institution or controlling company shall permit any one person to acquire a significant interest in it;

unless the Registrar, by written notice to the person and the banking institution or controlling company concerned, has given permission for the acquisition.

(3) As soon as possible after becoming aware that a person has acquired or obtained a significant interest in a banking institution or controlling company, the institution or company concerned shall notify the Registrar, in writing, of that fact.

(4) In any proceedings in which it is alleged that a person has contravened subsection (2), it shall be presumed, unless the contrary is proved, that the person had the knowledge referred to in that subsection.

(5) If, on application being made, the Registrar refuses to approve the acquisition by any person of a significant interest in a banking institution, the Registrar shall, within ten days after reaching his or her decision, notify the applicant, in writing, of the decision and of the reasons for it.

(6) For the purposes of this section, shares in a banking institution or controlling company which are held by—

(a) an individual shall be deemed to include any shares in the same banking institution or controlling company which are held by a close relative of the individual;

(b) a body corporate shall be deemed to include any shares in the same banking institution or controlling company which are held by an associate of the body corporate:

Provided that this subsection shall not apply to shares purchased by the close relative or associate through a securities exchange registered under the Securities and Exchange Act [*Chapter 24:25*].

(7) If a dividend is paid to or received by a person on any share that is held by him or her in contravention of section 15A or 15B, or on any share that has been allotted, issued or transferred to the person or registered in his or her name in contravention of section 15C(1), such dividend shall, if not returned by the person concerned , constitute a debt due to the banking institution or controlling company concerned, and shall. at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the banking institution or controlling company.

(8) Subject to section 73, a shareholder who is required to divest himself or herself of any shares in terms of subsection (5) and who fails without just cause to comply with the requirement within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (a) below, shall—

(a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the shareholder remains in default, not exceeding a period of one hundred and eighty-one days:

Provided that the Registrar shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(b) if the shareholder continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

15C Nominee shareholding

(1) Subject to subsection (2), no banking institution or controlling company shall—

(a) allot or issue any of its shares to, or register any of its shares in the name of, any person other than the intended beneficial shareholder; or

(b) transfer any of its shares in the name of a person other than the beneficial shareholder.

(2) Subsection (1) shall not affect the allotment or issue, or the registration of the transfer, of shares in a banking institution or controlling company in the name of—

(a) a manager or trustee of a collective investment scheme registered in terms of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997); or

(b) an executor of a deceased estate, a trustee of an insolvent estate or the liquidator of a company in liquidation; or

(c) a curator or guardian of a person under a disability; or

(d) a holder of a licence issued in terms of Part V of the Securities and Exchange Act [*Chapter 24:25*] (No. 17 of 2004); or

(e) a central securities depository established in terms of Part IX of the Securities and Exchange Act [*Chapter 24:25*] (No. 17 of 2004); or

(f) such other persons as may be prescribed.

(3) A banking institution or controlling company may, and if so directed by the Registrar shall, request any person to whom it is about to allot, issue or transfer any of its shares to furnish it with such information as the banking institution or controlling company may require to enable it to comply with subsection (1), and if the person fails or refuses within a reasonable time to comply with the request the banking institution or controlling company shall not allot, issue or transfer the shares to him or her.

(4) If a banking institution or controlling company has reason to believe that any of its shares are held in the name of a person other than the beneficial shareholder or a person referred to in subsection (2), the banking institution or controlling company may request the person to provide it with such information as will identify the beneficial shareholder and additionally, or alternatively, the capacity in which the person holds the shares, and the person shall without delay comply with the request.

15D Effect of shareholding in contravention of this Part

(1) Where a share in a banking institution or controlling company—

(a) is held by a person in contravention of section 15A or 15B; or

(b) has been allotted, issued or transferred to a person, or registered in a person's name, in contravention of section 15C(1);

then—

(c) no person shall, either personally or by proxy, cast a vote attached to the share nor shall any person receive a dividend payable on the share; and

(d) the Registrar may, subject to this section, require the person to divest himself or herself of the share.

(2) For so long as a shareholder of a banking institution or controlling company fails or refuses to comply with a request in terms of section 15C(4), he or she shall not, either personally or by proxy, cast a vote attached to the share nor receive a dividend payable on the share.

(3) The validity of any resolution adopted by a banking institution or controlling company shall not be affected by a vote cast in contravention of subsection (1)(c) or (2), if the resolution was adopted by the requisite majority of votes which were validly cast.

(4) A dividend referred to in subsection (1) or (2) shall accrue to the banking institution or controlling company concerned.

(5) Before requiring a shareholder to divest himself or herself of a share in terms of subsection (1), the Registrar shall inform—

(a) the shareholder; and

(b) the person from whom he or she acquired the share, if that person is readily identifiable; and

(c) the banking institution or controlling company concerned;

of his or her reasons for requiring the shareholder to do so, and shall give all those persons an adequate opportunity to make representations in the matter.

(6) If a person fails or refuses without just cause to divest himself or herself of a share after having been required to do so in terms of subsection (5), the Registrar may by written notice to the person declare the transaction by which he or she acquired the share to be void, whereupon the transaction shall become void and the person shall be divested of all his or her rights in the share.

(7) Subject to section 73, a shareholder who has been required to divest himself or herself of any shares in terms of subsection (5) and who fails without just cause to comply with the requirement within a reasonable period shall be subject to the penalties referred to in section 15B(8).

15E Divestment of shares to prevent undue influence by shareholder

(1) If the Registrar is satisfied that a shareholder of a banking institution or controlling company has unlawfully or improperly influenced a decision of the board of the institution or company or any of its principal officers, or has attempted so to influence such a decision, the Registrar may, subject to this section, by written notice require the shareholder to divest himself or herself of all or any of his or her shares in the banking institution or controlling company concerned.

(2) Before requiring a shareholder to divest himself or herself of any shares in terms of subsection (1), the Registrar shall inform the shareholder and the banking institution or controlling company concerned, in writing, of his or her reasons for requiring the shareholder to do so and shall give the shareholder and the institution or company an adequate opportunity to make representations in the matter.

(3) Subject to section 73, a shareholder who has been required to divest himself or herself of any shares in terms of subsection (1) and who

fails without just cause to comply with the requirement within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (a) below, shall—

(a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the shareholder remains in default, not exceeding a period of one hundred and eighty-one days:

Provided that the Registrar shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(b) if the shareholder continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

15F Restriction on right to control banking institution

(1) No person other than—

(a) a registered financial institution; or

(b) a body corporate which conducts business similar to that of a banking institution in a foreign country and which has been approved by the Registrar; or

(c) a registered controlling company;

may exercise control over a registered banking institution.

(2) For the purposes of subsection (1), a person shall be deemed to exercise control over a banking institution if—

(a) where the person is a body corporate, the banking institution is its subsidiary; or

(b) whether the person is an individual or a body corporate, the person together with any associates or close relatives—

(i) is entitled to exercise more than fifty *per centum* of the voting rights in respect of any class of issued shares of the banking institution; or

(ii) is entitled or has the power to determine the appointment of a majority of the directors of the banking institution; or

(iii) holds shares in the banking institution whose total nominal value represents more than fifty *per centum* of the nominal value of all the issued shares of the banking institution unless, due to limitations on the voting rights attached to the shares, the person and any associates or close relatives, voting together, cannot decisively influence the outcome of the voting at any general meeting of the banking institution's shareholders.

(3) Subsection (2)(b)(i) and (iii) shall not apply in respect of shares held temporarily by an underwriter pending their acquisition by other persons.

(4) For the purposes of subsection (2)(b)(ii), if a person's appointment as director of a banking institution follows necessarily from his or her appointment as a director of another company or body corporate, that company or body corporate shall be deemed to have power to determine his or her appointment as a director of the banking institution.

(5) If for any reason it is unclear whether or not a person exercises control over a banking institution, the Registrar may, by written notice to the person and the banking institution concerned, determine whether or not he or she exercises such control:

Provided that before making such a determination the Registrar shall give the person and the banking institution an adequate opportunity to make representations in the matter.

(6) Where the Registrar determines under subsection (5) that a shareholder is a person who exercises control over a banking institution in contravention of this section, such determination shall constitute a requirement by the Registrar that the shareholder divest himself or herself of the shares concerned in compliance with section 15D(1)(d).

(7) Subject to section 73, a shareholder who is required to divest himself or herself of any shares in terms of subsection (6) and who fails without just cause to comply with the requirement within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (a) below, shall—

(a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the shareholder remains in default, not exceeding a period of one hundred and eighty-one days:

Provided that the Registrar shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(b) if the shareholder continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

15G Registration of controlling companies

(1) An application for registration as a controlling company shall be made to the Registrar in the prescribed form and manner and shall be accompanied by—

(a) a certified copy of the applicant's memorandum of association and articles of association; and

(b) the names and details of the qualifications and experience of the applicant's directors and principal officers; and

(c) details of the applicant's authorised and issued share capital; and

(d) the name, address and such other particulars as may be prescribed of each person who holds five *per centum* or more of the applicant's voting stock; and

(e) the prescribed fee; and

(f) such other information and documents as may be prescribed or as the Registrar may reasonably require.

(2) Before deciding whether or not to grant an application submitted in terms of subsection (1), the Registrar shall, through the Governor, notify the Minister and shall provide the Minister with such information regarding the application as the Minister may reasonably require.

(3) Subject to subsection (4), if on consideration of an application in terms of subsection (1) the Registrar is satisfied that—

(a) the applicant is a public company; and

(b) the applicant's memorandum and articles of association contain no provision that is inconsistent with this Act or that is undesirable in so far as it concerns banking institutions; and

(c) the applicant's directors and principal officers—

(i) as far as can be reasonably ascertained, are fit and proper persons to hold the offices concerned; and

(ii) have sufficient qualifications and experience to manage the affairs of the applicant in its capacity as a controlling company;

and

(d) every person who holds five *per centum* or more of the applicant's voting stock is, so far as can be reasonably ascertained, a fit and proper person to be a member of a controlling company; and

(e) the applicant is in a financially sound condition; and

(f) generally, the applicant will comply with such of the provisions of this Act as are applicable to it;

the Registrar shall register the applicant as a controlling company.

(4) Subject to section 73, if on consideration of an application in terms of subsection (1) the Registrar—

(a) is not satisfied as to any matter referred to in paragraphs (a) to (f) of subsection (3); or

(b) considers that it would not be in the public interest to register the applicant as a controlling company;

he or she shall refuse to register the applicant concerned:

Provided that—

(i) before refusing to register an applicant, the Registrar shall notify the applicant, in writing, that he or she proposes to refuse the application and of the reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;

(ii) within ten days after deciding to refuse to register an applicant, the Registrar shall notify the applicant, in writing, of the decision and of the reasons for it.

(5) The period between the Registrar's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which he or she notifies the applicant of his or her decision or proposed decision in terms of subsection (4) shall not exceed six months unless the applicant consents to an extension of the period.

(6) Registration of a controlling company shall be subject to such terms and conditions as may be prescribed or as the Registrar may reasonably determine.

15H Register of controlling companies

(1) The Registrar shall maintain, or cause to be maintained, a register of controlling companies in which shall be recorded, in relation to each such company—

(a) its name; and

(b) its registered office, that is to say, its address for service of notices, legal process and other official communications; and

(c) the banking institution which it controls; and

(d) any terms and conditions subject to which it is registered; and

(e) any amendment or cancellation of its registration.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the office of the Registrar on payment of the prescribed fee, if any.

15I Amendment of registration of controlling company

(1) Subject to this section, the Registrar may at any time amend a controlling company's registration or any term or condition of its registration—

(a) to correct an error; or

(b) if the company requests the amendment; or

(c) if for any other reason the Registrar considers the amendment necessary or desirable in the public interest.

(2) Before amending a controlling company's registration in terms of subsection (1), otherwise than at the company's request, the Registrar shall notify the company, in writing, of the nature of the amendment he or she proposes to make and of the reasons for wishing to make it, and shall give the company an adequate opportunity to make representations in the matter.

(3) If the Registrar refuses to make an amendment in terms of subsection (1) at the company's request, he or she shall, within ten days after reaching the decision, notify the company, in writing, of the decision and of the reasons for it.

15J Cancellation of registration of controlling company

(1) Subject to subsections (2) and (3), the Registrar may, by notice in writing to the controlling company concerned, cancel a controlling company's registration if—

(a) the company requests the cancellation; or

(b) the Registrar has reasonable grounds for believing that—

(i) the registration was obtained in error or through fraud or the misrepresentation of a material fact by the company; or

(ii) the company has contravened any provision of this Act that is applicable to it; or

(iii) the company has failed to establish control over the banking institution in respect of which it is registered; or

(iv) the company no longer exercises control over the banking institution in respect of which it is registered; or

(v) any person who exercises substantial control over the company, whether as director or shareholder, is not a fit and proper person to exercise such control.

(2) Before cancelling a controlling company's registration in terms of subsection (1)(b), the Registrar shall, through the Governor, notify the Minister and thereafter shall inform the company, in writing, that he or she proposes to cancel the company's registration and of the reasons for proposing to do so:

Provided that, if the Registrar believes on reasonable grounds that it is not possible so to notify the company at its registered office, the Registrar shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the company's registered office is situated, stating that its registration will be cancelled unless the company lodges an appeal with the Minister in terms of section 73 within thirty days from the date of publication of the notice in the *Gazette*.

(3) The Registrar shall not cancel a controlling company's registration in terms of subsection (1)—

(a) until—

(i) the period within which an appeal may be lodged in terms of section 73 has elapsed; or

(ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso;

unless the company concerned has consented to the cancellation;

(b) if an appeal is lodged in terms of section 73, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, the Registrar is notified that his or her decision has been upheld.

(4) Upon the cancellation of the registration of a banking institution in respect of which a controlling company is registered, the registration of the controlling company, in so far as it relates to that banking institution, shall be deemed to have been cancelled simultaneously.

(5) If the Registrar refuses to cancel a controlling company's registration at the company's request, he or she shall, within ten days after reaching his or her decision, notify the company, in writing, of the decision and of the reasons for it.

(6) Where the registration of a controlling company has been cancelled in terms of this section, the company shall without delay relinquish its control over any banking institution, and shall comply with any directions the Registrar may give it for that purpose and, with respect to any divestment of shares required by such relinquishment, the provisions of section 15D(1) and (6) shall apply as if the Registrar had given the company the requisite notices of divestment in terms of those provisions on the day of the cancellation.

(7) Subject to section 73, a controlling company whose registration is cancelled in terms of this section and which fails, within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (c) below—

(a) to divest himself or herself of any shares in terms of subsection (6); or

(b) without just cause, to comply with any direction of the Registrar given in terms of subsection (6);

shall—

(c) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the company remains in default, not exceeding a period of one hundred and eighty-one days:

Provided that the Registrar shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(d) if the company continues to be in default after the period specified in paragraph (c), be guilty of an offence and liable on conviction to—

(i) a fine not exceeding level ten; and

(ii) a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the company.

15K Registration and cancellation of registration of controlling company to be notified in *Gazette* and in newspaper

Whenever the Registrar registers a controlling company or cancels its registration in terms of this Part, he shall cause notice thereof to be published in the *Gazette* and in one or more issues of a newspaper circulating in the area in which the company's head office is situated.".

9 Amendment of section 16 of Cap. 24:20

Section 16 ("Commencement of banking business") of the principal Act is amended in subsection (1) by the insertion in paragraph (a) after "risk management systems" of ", its corporate governance framework and its systems for the detection and prevention of money-laundering and the financing of terrorism".

10 Amendment of section 18 of Cap. 24:20

Section 18 ("Board of banking institution") of the principal Act is amended—

(a) by the repeal of subsection (1d) and the substitution of the following subsections—

"(1d) Subject to subsection (1e), the Registrar shall approve the appointment or re-appointment of a person as director of a banking institution or controlling company unless the Registrar believes on reasonable grounds that the person—

(a) is disqualified for appointment in terms of section 19 of this Act or section 173 of the Companies Act [*Chapter 24:03*] or in terms of the memorandum and articles of association or constitution of the banking institution concerned; or

(b) has knowingly been involved, whether in Zimbabwe or elsewhere, in money-laundering or financing of terrorism as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013); or

(c) is otherwise not a fit and proper person to be a director of a banking institution or controlling company, as the case may be.

(1e) The Registrar shall not approve the appointment or re-appointment of a person as director of a banking institution or controlling company if the person was a director or principal officer of a banking institution or controlling company which, in Zimbabwe or elsewhere, was wound up, liquidated or placed under judicial management or curatorship on the ground that it was unable to pay its debts or contravened any regulatory requirement applicable to it, unless the person satisfies the Registrar by a sworn declaration that he or she was not responsible for the conduct which led to the institution or company being wound up, liquidated or placed under judicial management or curatorship.

(1f) If the chief financial officer or (upon the failure of the chief financial officer to do so within a reasonable time) any of the principal officers of a banking institution or controlling company becomes aware of—

(a) any material change in the information that was provided to the Registrar in terms of subsection (1b) in regard to a director of the banking institution or controlling company; or

(b) any fresh information concerning a director of the banking institution or controlling company;

which might reasonably be expected to cause the Registrar to reconsider his or her approval of the director concerned, the chief executive officer or principal officer shall forthwith and in writing inform the Registrar of that change or provide the Registrar with that fresh information, as the case may be.

(1g) No secrecy or confidentiality provision in any contract or law shall prevent a chief financial officer or any of the principal

officers of a banking institution from furnishing to the Registrar the information referred to in subsection (1f), and no banking institution (or controlling company of such institution) shall dismiss or in any other way penalise the chief financial officer or any principal officer for furnishing such information.

(1h) Subject to section 73, a banking institution or controlling company that—

(a) contravenes subsection (1a); or

(b) fails, through its chief financial officer, to comply with subsection (1f); or

(c) dismisses or in any other way penalises the chief financial officer or any principal officer for furnishing the information required under subsection (1f); or

shall—

(d) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution or company remains in default (which default shall, in the case of a contravention referred to in paragraph (c), be calculated from the date of the dismissal of or other penalty imposed upon the chief financial officer or principal officer, and be deemed to continue until such action is reversed), not exceeding a period of one hundred and eighty-one days:

Provided that the Registrar shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(e) if the institution or company continues to be in default after the period specified in paragraph (d), be guilty of an offence and liable on conviction to—

(i) a fine not exceeding level ten; and

(ii) a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution or company.";

(b) by the repeal of subsections (2) and (3) and the substitution of the following subsections—

"(2) Not fewer than two and not more than two-fifths of the directors of a banking institution or controlling company shall be officers or employees of the institution or company and, of the remainder, the majority shall be non-executive and independent.

(3) The chairperson of the board of a banking institution or controlling company shall be a non-executive and independent director.

(3a) The chairperson of every committee of the board of a banking institution or controlling company, other than a committee with executive functions, shall be a non-executive and independent director.".

11 Amendment of section 19 of Cap. 24:20

Section 19 ("Disqualification for appointment to board of banking institution") of the principal Act is amended—

(a) in subsection (1)—

(i) by the repeal of paragraph (a) and the substitution of the following paragraphs—

"(a) in the case of a non-executive director, he or she is a director of more than four other companies in Zimbabwe; or

(a1) in the case of an executive director, he or she is a director of more than three other companies in Zimbabwe; or";

(ii) in paragraph (c) by the deletion from subparagraph (iii) of "or perjury" and the substitution of ", perjury, money-laundering or the financing of terrorism";

(b) by the insertion after subsection (2) of the following subsection—

"(3) No person who has served as a director of a banking institution for a continuous period of ten years shall be eligible for reappointment to the board of that institution unless at least five years have elapsed since he or she last served on that board.".

12 Amendment of section 20 of Cap. 24:20

Section 20 ("Principal administrative office and principal officers of banking institution") of the principal Act is amended—

(a) by the repeal of subsections (1) and (2) and the substitution of—

"(1) Every banking institution and controlling company shall maintain a principal administrative office in Zimbabwe and shall inform the Registrar, in writing, of the office's address.

(2) Every banking institution and controlling company shall, upon written notification to the Registrar of their names and other prescribed particulars, and with the approval of the Registrar (which approval shall not be withheld except upon positive evidence of the unfitness of the persons concerned to hold office) appoint in Zimbabwe—

(a) a chief executive officer; and

(b) a chief accounting officer; and

(c) a compliance officer; and

(d) an internal auditor; and

(e) a company secretary and

(f) such other officers as may be prescribed.

(2a) The chief executive officer and the chief accounting officer appointed in terms of subsection (2) shall (despite anything to the contrary in the memorandum or articles of association of the banking institution or controlling company) be non-voting members of the board of the banking institution or controlling company.

(2b) A banking institution or controlling company shall not—

(a) appoint a person to hold simultaneously two or more of the offices referred to in subsection (2) except on a temporary or acting basis (and in that event for not more than six months continuously); or

(b) without the written permission of the Registrar, appoint a person to an office referred to in subsection (2) if he

or she holds that or any other such office in a company which is part of a group of companies of which the banking institution or controlling company concerned is a member (except on a temporary or acting basis).

(2c) Until the Registrar signifies his or her approval in writing to the banking institution or controlling company of any of the appointments it wishes to make in terms of subsection (2), the appointee in question shall not be deemed to be employed, whether in terms of the Labour Act, any contract of employment or any other law, but if the Registrar delays by more than thirty days to make any response to a written notification of the proposed appointment by the institution or company, then it is deemed that the Registrar has approved the appointment in question.";

(b) in subsection (3) by the repeal of paragraph (b) and the substitution of—

"(b) appoint a new person to an office referred to in subsection (2);";

(c) by the insertion after subsection (3) of the following subsection—

"(3a) A banking institution or controlling company shall not appoint a person to an office referred to in subsection (2) if that person, directly or indirectly, holds or controls more than five *per centum* of the shares in the institution or company.".

13 New sections inserted in Cap. 24:20

The principal Act is amended by the insertion after section 20 of the following sections—

"20A Responsibilities and conduct of directors and principal officers of banking institutions and controlling companies

(1) Each director and principal officer of a banking institution or controlling company owes a fiduciary duty and a duty of care and skill to the institution or company and, in particular, owes a duty to—

(a) act *bona fide* for the benefit of the institution or company and for the benefit of its depositors and shareholders; and

(b) avoid any conflict between his or her personal interests and the interests of the institution or company and its depositors and shareholders; and

(c) possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar appointment and carrying out similar functions as those that he or she carries out; and

(d) exercise such care in the carrying out of his or her functions in relation to the institution or company as may reasonably be expected of a diligent person who holds the same appointment under similar circumstances, and who possesses both the knowledge and skill mentioned in paragraph (c) and any additional knowledge and skill that he or she may have.

(2) Without derogation from subsection (1), the directors and principal officers of all banking institutions and controlling companies shall, in the performance of their functions as such, observe any written prudential standards issued from time to time by the Reserve Bank.

(3) Except with the written approval of the Registrar, no director or principal officer of a banking institution or controlling company shall hold any executive position in another banking institution or controlling company.

(4) A director of a banking institution or controlling company who fails, without just cause, to attend at least three-quarters of the meetings of the board of his or her institution or company that are convened during any period of a year shall be regarded as not having exercised the degree of diligence required of him or her by subsection (1)(d).

(5) In addition to anything contained in section 318 of the Companies Act [*Chapter 24:03*], where a banking institution or controlling company has been placed under curatorship or judicial management or has been wound up, and it is established that the business of the institution or company has been carried on without regard for the prudential norms and standards and other requirements provided for in this Act, or to good corporate governance principles generally—

(a) every person who was a director or principal officer of the institution or company when its business was being carried on in that manner; and

(b) every shareholder who was knowingly a party to the carrying on of the business of the institution or company in that manner;

shall be jointly and severally liable with the institution or company for any loss or damage suffered by creditors, including depositors, of the institution or company:

Provided that this subsection shall not apply to a director or officer who, on a balance of probabilities, is able to show that he or she—

(a) was not responsible for the manner in which the business of the institution or company was carried on; and

(b) complied with his or her duties under subsections (1) and (2).

(6) The Registrar and the chief executive officer of the Deposit Protection Corporation may institute proceedings—

(a) against a director, principal officer or shareholder of a banking institution or controlling company in respect of any liability incurred by that person under subsection (5); or

(b) in terms of section 318 of the Companies Act [*Chapter 24:03*] against any director or principal officer of a banking institution or controlling company who was knowingly a party to the carrying on of the business of the institution or company in the manner envisaged in that section.

(7) Any amount recovered as a result of proceedings instituted by the Registrar or the Deposit Protection Corporation as envisaged in subsection (5) or (6), shall be applied—

(a) first to reimburse all expenses reasonably incurred by the Registrar or the Deposit Protection Corporation, as the case may be, in bringing the proceedings; and

(b) thereafter to set off against any amount paid to depositors by the Deposit Protection Corporation or any governmental

body, as part or full compensation for the losses suffered by depositors as a result of the banking institution concerned being unable to repay their deposits; and

(c) thereafter for the *pro rata* repayment of the losses of creditors (not including any creditor who is a director or principal officer or principal shareholder of the banking institution or controlling company, or any other person who is an associate or close relative of any of the foregoing, against whom the Registrar or Deposit Protection Corporation has instituted proceedings under this section) of the banking institution or the controlling company concerned.

(8) This section is additional to, and shall not be regarded as limiting—

(a) the provisions of any other law concerning the duties of directors, officers and shareholders of banking institutions and controlling companies; or

(b) the right of a creditor of a banking institution or controlling company to institute proceedings against the institution or company for the recovery of any loss or damage the creditor may have suffered.

20B Disclosure of interests by directors of banking institutions and controlling companies

(1) Upon his or her appointment, and annually thereafter, every director of a banking institution or a controlling company shall deliver to the chief executive officer of the institution or company a document in the prescribed form setting out the full extent of the director's assets, business activities and financial and proprietary interests and those of his or her spouse.

(2) The chief executive officer of the banking institution or controlling company concerned shall ensure that every document received by him or her in terms of subsection (1) is kept available for inspection by the Reserve Bank at all times:

Provided that any such document and the information contained in it shall be strictly confidential to the Reserve Bank and shall not be released to anyone outside the Reserve Bank except with the written consent of the person to whom it relates.

(3) Subject to section 73, a banking institution or controlling company that—

(a) fails, within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (c) below (calculated from the date of the appointment or each anniversary of the appointment, as the case may be), to comply with subsection (1); or

(b) contravenes subsection (2); or

shall—

(c) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day

the institution or company remains in default, not exceeding a period of one hundred and eighty-one days:

Provided that the Registrar shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(d) if the institution or company continues to be in default after the period specified in paragraph (c), be guilty of an offence and liable on conviction to—

(i) a fine not exceeding level fourteen; and

(ii) a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution or company.

(4) While a director of a banking institution or a controlling company is in default of his or her obligations under subsection (1)—

(a) the director shall not be entitled to any remuneration, allowance or benefit accruing to him or her as a director; and

(b) anything done by him or her in his or her capacity as director shall be voidable at the instance of the institution or company.".

14 Amendment of section 24 of Cap. 24:20

Section 24 ("Alteration of constitution or rules of conduct by banking institution") of the principal Act is amended by the insertion after subsection (4) of the following subsection—

"(4a) As soon as reasonably possible after consenting to an alteration in terms of subsection (1) or receiving notification of an alteration in terms of subsection (4), the Registrar shall inform the Deposit Protection Corporation.".

15 Amendment of section 25 of Cap. 24:20

Section 25 ("Amalgamations and transfers of business") of the principal Act is amended—

(a) in subsection (5) by the deletion of "and any views expressed by the Deposit Protection Corporation";

(b) by the insertion after subsection (9) of the following subsection—

"(10) As soon as reasonably possible after receiving notification of an amalgamation or transfer in terms of subsection (9), the Registrar shall inform the Deposit Protection Corporation.".

16 New section substituted for section 26 of Cap. 24:20

Section 26 of the principal Act is repealed and the following section is substituted—

"26 Closing and establishment of branches in Zimbabwe by banking institutions

(1) In this section—

"branch" means any premises, other than the head office of a banking institution, where the banking institution conducts banking business.

(2) No banking institution shall close a branch in Zimbabwe or establish a new branch in Zimbabwe unless it has given the Registrar at least fourteen business days' written notice of its intention to close the branch or establish the new branch, as the case may be.

(3) If the Registrar has reasonable grounds for believing that the establishment of a new branch by a banking institution is economically unsound and may lead to non-compliance by the institution with any requirement of this Act, in the light of—

(a) the banking activities engaged in by the banking institution; and

(b) the financial condition of the banking institution; and

(c) the volume of business expected to be generated by the branch;

the Registrar may, within seven days after being notified of the banking institution's intention to establish the branch, and after affording the banking institution an opportunity to make representations on the matter, direct the institution not to do so, or to do so subject to such terms and conditions as the Registrar may specify, and the banking institution shall comply with the direction.

(4) A direction in terms of subsection (3) shall be in writing and shall state the grounds on which it is given.

(5) Subject to section 73, a banking institution that fails to comply with a direction in terms of subsection (3) shall—

(a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution remains in default, not exceeding a period of one hundred and eighty-one days; and

(b) if the institution continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to—

(i) a fine not exceeding level fourteen; and

(ii) a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution.".

17 New sections inserted in Cap. 24:20

Part IV ("Conduct of Business by Banking Institutions") of the principal Act is amended by the insertion after section 28 of the following sections—

"28A Corporate governance

(1) Every banking institution controlling company shall establish and maintain adequate and effective procedures of corporate governance consistent with such prudential standards as may be prescribed and with

the nature, complexity and risks inherent in the activities and business of the banking institution or controlling company concerned.

(2) The procedures of corporate governance referred to in subsection (1) shall be directed towards achieving the strategic and business objectives of the banking institution or controlling company concerned efficiently, effectively, ethically and equitably, within acceptable risk parameters, so as to ensure—

(a) commitment by the principal officers of the banking institution or controlling company to adhere to corporate behaviour that is universally recognised and accepted as correct and proper; and

(b) accountability on the part of the board and principal officers of the banking institution or controlling company towards shareholders; and

(c) a balance between the interests of shareholders and other persons who may be affected by the conduct of the board and principal officers of the banking institution or controlling company; and

(d) the establishment and maintenance of mechanisms and procedures to minimise or avoid potential conflicts of interests between the business interests of the banking institution or controlling company and the personal interests of its directors and principal officers; and

(e) responsible conduct by the directors and principal officers of the banking institution or controlling company; and

(f) the achievement of the maximum level of efficiency and profitability of the banking institution or controlling company within an acceptable risk profile; and

(g) the timely, accurate and meaningful disclosure of matters that are material to the business of the banking institution or controlling company or the interests of its shareholders and other interested persons; and

(h) retention by the board of control over the strategic and business direction of the banking institution or controlling company, whilst enabling its principal officers to manage its business and activities; and

(i) compliance with this Act and any other enactments relating to banking institutions or controlling companies.

28B Compliance function

(1) The board of every banking institution shall establish, as part of a risk management framework, an independent compliance function, headed by a compliance officer, to—

(a) identify, assess, monitor and advise the board on compliance risk; and

(b) advise the board on ways to comply with all applicable laws, codes of conduct and standards of good practice, and assist the board in complying with them.

(2) The compliance officer of a banking institution shall perform his or her functions subject to such requirements and conditions as may be prescribed.

28C Risk committee

(1) Subject to subsection (3), the board of every banking institution and controlling company shall appoint three or more of its members, all of whom shall be non-executive directors, to serve on a risk committee.

(2) The functions of the risk committee shall be to assist the board of the banking institution or controlling company concerned—

(a) to evaluate the adequacy and efficiency of the risk policies, procedures, practices and controls applied within the institution or company in the day-to-day management of its business; and

(b) to identify and assess the risks to which the institution or company is exposed; and

(c) to develop risk mitigation strategies to ensure that the institution or company manages optimally the risks to which it is exposed; and

(d) to ensure that institution or company undertakes a formal risk assessment at least annually; and

(e) to identify and regularly monitor all key risks and key performance indicators to ensure that the institution or company maintains at a high level its decision-making capability and the accuracy of its reporting; and

(f) to facilitate and promote communication, through reporting structures, regarding the matters referred to in paragraph (a) and any other related matter, between the board and the officers and employees of the institution or company; and

(g) where the institution or company is a member of a group of companies, to co-ordinate the monitoring of risk management on a group basis; and

(h) to establish and implement a process of internal controls and reviews to ensure the efficacy of the overall risk and capital management process; and

(i) to establish and implement policies and procedures designed to ensure that the institution or company identifies, measures, and reports all material risks; and

(j) to establish and implement a process that relates capital to the level of risk; and

(k) to perform such other functions as may be prescribed.

(3) The Registrar, upon written application, may exempt a banking institution from the obligation to appoint a risk committee, where the Registrar is satisfied that the institution's controlling company has appointed a risk committee which is able to assume adequately the responsibilities of a risk committee for the banking institution.".

18 New Part inserted in Cap. 24:20

The principal Act is amended by the insertion after Part IV of the following Part—

"PART IVA

CONSUMER PROTECTION

28D Publication of certain information by banking institutions

(1) At all times when it is open for banking business, a banking institution shall display in a conspicuous place in every building in Zimbabwe in which it carries on such business—

(a) a copy, in a form approved by the Registrar, of the latest statement it submitted to the Registrar in terms of section 38(1); and

(b) a copy, in a form approved by the Registrar, of the latest statement or balance sheet and profit and loss account it submitted to the Registrar in terms of subsection (2) or (3), as the case may be, of section 38; and

(c) a notice in a form approved by the Reserve Bank that is clearly visible to the public setting out its interest rates on deposits and loans, and indicating the terms and conditions under which it accepts deposits and makes loans; and

(d) such other information as may be prescribed.

(2) At least once every six months, a banking institution shall cause to be published in a newspaper circulating in each area in which the institution carries on banking business, a notice setting out the interest rates offered by the institution on deposits and loans, and the terms and conditions under which it accepts deposits and makes loans.

(3) The Minister may at any time, if he or she is satisfied that it is in the public interest to do so, direct that subsection (2) shall be suspended until such time as, in the Minister's opinion, the public interest permits the lifting of the suspension.

28E Disclosure of certain information to customers of banking institutions

(1) Upon opening a new account for a person, a banking institution shall provide the person in writing with a written statement of—

(a) all its charges for maintaining the account and allowing the person access to the funds in the account; and

(b) the interest it will pay on the funds in the account, and the interest the person will have to pay on any overdraft; and

(c) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d).

(2) Where a banking institution extends credit to a borrower, it shall—

(a) disclose to the borrower, in writing—

(i) the interest charged and the manner in which it is to be calculated; and

(ii) any applicable fee or other charge and the manner in which it is to be calculated; and

(iii) every term or condition applicable to the credit, clearly identifying the obligations of the borrower; and

(iv) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d);

and

(b) during the period of the credit agreement, send or make available to the borrower and the guarantor, if any, a statement of account in written or electronic form, not later than the end of the month following each six-month period, showing—

(i) the amounts outstanding, as principal and interest, at the beginning and at the end of the six-month period; and

(ii) the payments received, as principal and interest, during the six-month period; and

(iii) the annual rate of interest applicable during the six-month period; and

(iv) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d).

(3) Where a banking institution issues a credit or debit card to a person, it shall disclose to him or her, in writing—

(a) his or her rights and obligations in respect of—

(i) the credit limit authorised under the card and the amount of indebtedness outstanding at any time; and

(ii) the period for which each statement is issued; and

(iii) any charges and interest costs for which the person becomes responsible by accepting and using the card; and

(iv) the minimum amount in respect of the balance outstanding that must be paid at the end of each statement period; and

(v) the maximum amount of the cardholder's liability for unauthorised use of the card if it is lost or stolen;

and

(b) the cost of borrowing in respect of any loan obtained through the use of the card, the exchange rate applied and the manner in which it is calculated and, in the event that the required instalment is not paid on due date, particulars of the charges and penalties to be paid by the cardholder; and

(c) the amount of any fee or charge for which the cardholder is responsible for accepting or using the card and the manner in which the fee or charge is calculated; and

(d) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d).

(4) Before changing any of the matters referred to in subsection (1), (2) or (3), a banking institution shall give the account-holder, borrower or cardholder, as the case may be, at least thirty days' written notice of the change.

(5) After changing any of the matters referred to in subsection (1), (2) or (3), a banking institution shall give the account holder, borrower or card holder written notice of the changes within fourteen days.

(6) No banking institution shall impose any fee or other charge for the information it is required to provide to a user of its services under subsection (1), (2), (3) or (4).

28F Customer complaints procedures

(1) Every banking institution shall establish procedures for dealing with complaints made by customers and members of the public concerning their relations with the banking institution, and shall—

(a) display a notice in the public portion of each of its branches and premises where it conducts banking business, explaining the procedures and the manner in which complaints are to be made and dealt with; and

(b) designate an employee in each of its branches and premises where it conducts banking business as a customer service officer responsible for receiving and dealing with complaints from its customers and members of the public.

(2) Every banking institution shall keep a record of every complaint it receives and the way in which it was dealt with, and shall preserve the record for two years or such longer period as may be prescribed.

28G Civil penalties for non-compliance by banking institutions with Part IVA

Subject to section 73, a banking institution that fails to comply with any provision of this Part shall—

(a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution remains in default, not exceeding a period of one hundred and eighty-one days; and

(b) if the institution continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to—

(i) a fine not exceeding level fourteen; and

(ii) a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution.".

19 Amendment of section 29 of Cap. 24:20

Section 29 ("Minimum capital of banking institutions") of the principal Act is amended by the repeal of subsection (1a) and the substitution of—

"(1a) The minimum capital of banking institutions referred to in subsection (1) shall be maintained in such currency or in such other form as may be prescribed.".

20 Amendment of section 31 of Cap. 24:20

Section 31 ("Prescription of further financial requirements") of the principal Act is amended in subsection (2) by the insertion after paragraph (e) of the following paragraph—

"(e1) the investments and other assets to be held by banking institutions;".

21 New sections inserted in Cap. 24:20

Part V ("Financial Requirements") of the principal Act is amended by the insertion after section 31 of the following sections—

"31A Credit rating of banking institutions

(1) At least once a year, at such times as may be determined by the Reserve Bank, every banking institution shall have its financial state assessed or rated by a credit rating agency accredited by the Reserve Bank.

(2) The Reserve Bank shall publish guidelines for the accreditation of credit rating agencies and for the circumstances in which their accreditation may be suspended or cancelled.

(3) The cost of an assessment or rating under subsection (1) shall be borne by the banking institution concerned.

(4) The Reserve Bank may, not more than once in a calendar year, publish a summary of the results of any assessment or rating under subsection (1).

31B Credit reference bureaux to be licensed

(1) No person, other than a company licensed by the Registrar, shall—

(a) carry on the business of providing credit reference services; or

(b) hold himself or herself out as a credit reference bureau.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

31C Issue of credit reference bureau licences

(1) Any company wishing to carry on the business of providing credit reference services shall apply to the Registrar in the form and manner prescribed for a credit reference bureau licence.

(2) An application under subsection (1) shall be accompanied by—

(a) such information and documents as the Registrar may reasonably require for determining the application; and

(b) the prescribed fee.

(3) Within thirty days after receiving an application under subsection (1) and any necessary information and documents, the Registrar shall determine whether or not to license the applicant and within seven days thereafter shall inform the applicant of his or her decision and, in the case of a refusal, of the reasons for his or her refusal.

(4) A credit reference bureau licence shall be valid for such period, and shall be subject to such terms and conditions, as may be prescribed or as the Registrar may fix.".

22 New sections substituted for section 32 of Cap. 24:20

Section 32 ("Banking institution not to buy or make loans against own shares") of the principal Act is repealed and the following sections are substituted—

"32 Restrictions on purchase and pledging of shares in banking institutions and controlling companies

(1) No banking or controlling company shall—

(a) purchase its own shares or the shares of any associate; or

(b) make any loan or advance on the security of its own shares or the shares of any associate.

(2) Except with the prior approval of the Registrar (which approval shall not be unreasonably withheld), no person holding a significant interest in a banking institution or controlling company (as defined in section 15B(1)) shall pledge, hypothecate or otherwise encumber any shares in a banking institution or controlling company if the encumbrance may result in a transfer of shares or voting rights in the institution or company equal to or exceeding ten *per centum* of the shares or voting rights in the institution or company.

(3) Subject to section 73, a banking institution or controlling company which or person who contravenes subsection (1) or (2) shall—

(a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution, company or person remains in default, not exceeding a period of one hundred and eighty-one days; and

(b) if the institution, company or person continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction—

(i) in the case of a banking institution or controlling company—

A. to a fine not exceeding level ten; and

B. to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution;

(ii) in the case of an individual other than a director or member referred to in subparagraph (i)B, to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

32A Special purpose vehicles

(1) Except with the written approval of the Reserve Bank and subject to such terms and conditions as the Reserve Bank may specify, no banking institution or controlling company shall form or maintain a special purpose vehicle.

(2) The formation of a special purpose vehicle in contravention of subsection (1) shall be void.

(3) Any transaction carried out by or on behalf of a special purpose vehicle formed by a banking institution or controlling company shall be deemed to have been carried out by the institution or company that formed it.

(4) Any asset held by or liability accruing to a special purpose vehicle formed by a banking institution or controlling company shall be deemed to be held by or to have accrued to the institution or company that formed it.".

23 Amendment of section 35 of Cap. 24:20

Section 35 ("Restriction on extending of credit to officers, employees and certain shareholders and relatives") of the principal Act is amended—

(a) in subsection (1) by the repeal of the definition of "relative";

(b) in subsection (2)—

(i) in paragraph (a) by the deletion of "officers" and the substitution of "principal officers";

(ii) in paragraph (c) by the deletion of "relative" and the substitution of "close relative";

(c) by the insertion after subsection (2) of the following subsections—

"(3) A banking institution shall not extend credit exceeding such amount as may be prescribed to any of its directors, shareholders or principal officers, or to a close relative or associate of any of those persons (hereinafter referred to as "insiders"), unless—

(a) the transaction has been approved by the board of the banking institution (without the participation of any director or principal officer to whom the credit is sought to be extended in the decision to approve the extension of the credit); and

(b) the credit does not exceed ten *per centum* of the paid-up equity capital of the banking institution; and

(c) the credit is covered by one hundred *per centum* collateral; and

(d) the credit is deducted from the paid-up equity capital of the banking institution.

(4) Where a banking institution extends credit, exceeding such amount as may be prescribed, to any insider, it shall without delay inform the Registrar of that fact and provide the Registrar with such information concerning the credit as the Registrar may reasonably require.

(5) For the avoidance of doubt, subsections (3) and (4) does not apply to the extension of credit to any employee of the banking institution as part of the employee's conditions of service that are applicable to other employees generally.

(6) Any contract or arrangement whereby a banking institution extends credit to any person in contravention of this section shall be voidable at the instance of—

(a) the board of the banking institution; or

(b) the Registrar;

and the credit shall be repayable to the concerned banking institution together with interest (at the banking institution's prevailing lending rate) by any person in whose favour it was made within the period stipulated by the board or the Registrar, as the case may be.

(7) Subject to section 73—

(a) a banking institution which contravenes subsection (2), (3) or (4);

(b) any director, shareholder or principal officer of a banking institution (whether on his or her own behalf or on behalf of any of his or her close relatives or associates) who—

(i) receives any credit from the banking institution of which he or she is the director, shareholder or principal officer while knowing or not having a reasonable belief that the conditions for the extension of that credit in terms of subsection (3) have or have not been fully complied with (as the case maybe); or

(ii) fails, within the stipulated period, to repay fully together with interest (at the concerned banking institution's prevailing lending rate) any credit under a contract or arrangement voided by the Registrar under subsection (6);

shall be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution, director, shareholder or principal officer (as the case may be) remains in default, not exceeding a period of one hundred and eighty-one days; and

(c) if the institution, director, shareholder or principal officer (as the case may be) continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction—

(i) in the case of a banking institution—

A. to a fine not exceeding level ten; and

B. to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution;

(ii) in the case of a director, shareholder or principal officer, to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(8) In addition, and independently of the institution of any criminal or civil penalty proceedings under subsection (7), any property of any description obtained by means of an extension of credit made in contravention of subsection (2), (3) or (4), shall be deemed to be "tainted property" resulting from the commission of a "serious offence" for the purposes of section 80 ("Civil forfeiture orders") of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013), and may be recovered at the instance of the Reserve Bank in proceedings instituted by it in terms of that section, as if the "Reserve Bank" were substituted for the "Attorney-General" or "Prosecutor-General" in that section.

(9) The income and any proceeds from the realisation of property in respect of which a court has granted a civil forfeiture order in terms of subsection (8) shall be applied in the following sequence—

(a) meeting the costs incurred by the Reserve Bank in obtaining the civil forfeiture order and the costs of any other proceedings instituted to establish a claim to the property or an interest in the property; and

(b) repaying to the banking institution concerned the credit that was extended in contravention of subsection (2), (3) or (4), together with interest at the banking institution's prevailing lending rate; and

(c) any amount remaining after application of the amounts referred to in paragraphs (a) and (b) shall form part of the Recovered Assets Fund established by section 96 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013).

(10) Until the maximum amount of credit that may be extended to insiders is prescribed for the purposes of this section, no banking institution shall extend credit to any insider, and any extension of such credit shall be deemed to be an extension of credit to insiders in contravention of subsection (2), (3) or (4).".

24 Repeal of section 39 of Cap. 24:20

Section 39 of the principal Act is repealed.

25 Amendment of section 40 of Cap. 24:20

Section 40 ("Audit committees") of the principal Act is amended—

(a) by the repeal of subsection (2) and the substitution of—

"(2) No executive director, officer or employee of the banking institution concerned shall be appointed to the audit committee of a banking institution.";

(b) in subsection (3) by the insertion after paragraph (e) of the following paragraph—

"and

(f) to appoint the banking institution's internal auditor and to oversee the discharge of the internal audit function.".

26 Amendment of section 45 of Cap. 24:20

Section 45 ("Responsibilities of Reserve Bank") of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a) by the deletion of "and associates of banking institutions" and the substitution of ", controlling companies and associates of banking institutions and controlling companies,";

(ii) in paragraph (b) by the deletion of "or class of such institutions" and the substitution of "or controlling company or class of such institutions or companies";

(b) in subsection (2) by the insertion in paragraph (b) by the insertion after "institutions" of "or companies";

(c) by the insertion after subsection (2) of the following subsection—

"(3) Section 4B shall apply, with any necessary changes, to the Reserve Bank in the exercise of its functions under this Act.".

27 Amendment of section 47 of Cap. 24:20

Section 47 ("Powers of supervisors") of the principal Act is amended by the repeal of subsection (4) and the substitution of—

"(4) As soon as practicable after completing a report on a banking institution or controlling company, a supervisor shall send a copy of the report to the Deposit Protection Corporation.".

28 Amendment of section 48 of Cap. 24:20

Section 48 ("Action that may be taken by Reserve Bank where banking institution found to have contravened Act or condition of registration, etc") of the principal Act is amended—

(a) in subsection (1) by the repeal of the proviso;

(b) in subsection (2) by the insertion in the proviso after "prevent" of "the banking institution becoming a problem banking institution, or to prevent";

(c) by the insertion after subsection (2) of the following subsections—

"(3) The immediate action referred to in the proviso to subsection (2) may include—

(a) requiring the banking institution concerned to develop and implement a capital restoration plan; and

(b) restricting the activities or investments of the banking institution concerned; and

(c) taking control of any assets of the banking institution concerned or prohibiting or restricting the disposal or use of any such assets; and

(d) any other action referred to in subsection (1).

(4) The Reserve Bank may take action in terms of subsection (1) in respect of an associate of a banking institution if the Reserve Bank considers it is necessary to do so in order to preserve the integrity of the financial system of Zimbabwe, and where it takes such action any reference in subsection (2) to a banking institution shall be construed as a reference to the associate concerned.".

29 New sections inserted in Cap. 24:20

The principal Act is amended by the insertion in Part IX after section 52 of the following sections—

"52A Problem banking institutions

(1) This section applies where the Reserve Bank determines that, in relation to a particular problem banking institution, it is in the public interest or in the interests of the depositors or creditors of a banking institution to avoid cancelling the registration of a banking institution, if possible, in order to achieve any one or more of the following objectives—

(a) to protect and enhance the stability of the financial system; and

(b) to protect and enhance public confidence in the banking system; and

(c) to protect depositors; and

(d) where applicable, to protect public funds.

(2) Where the Reserve Bank, following a report by an inspector or an investigation in terms of section 49, or on the basis of financial intelligence which in its opinion is sound and sufficient, has identified a banking institution as a problem banking institution because—

(a) it can no longer maintain the prescribed minimum amounts of capital and reserves, or is otherwise in an unsound financial condition; or

(b) it can no longer maintain net assets which, together with other financial resources available to it, are of an amount and nature sufficient to safeguard its creditors; or

(c) it can no longer provide adequate security for the assets entrusted to it; or

(d) it is facing liquidity problems, or its prudential liquidity ratios are below the prescribed regulatory minimum; or

(e) it has failed to put in place and implement a sound corporate governance framework and risk management framework, or it is in breach of good corporate governance requirements or its operations exhibit poor risk management; or

(f) it is carrying out non-permissible activities or employing undesirable methods in carrying on its business; or

(g) it has not complied with any instruction, requirement or condition imposed by the Registrar in terms of this Act; or

(h) it is not being operated or is not conducting its activities in the best interests of its depositors;

the Reserve Bank may, subject to this section, formulate and implement a plan of resolution in relation to the banking institution (hereinafter called a "bank resolution plan") involving any of the following measures—

(i) the merging of the problem banking institution with another banking institution;

(j) the acquisition of the problem banking institution by another banking institution;

(k) the acquisition by or transfer to a third party of any asset or liability of the problem banking institution, including any asset held in trust;

(l) the establishment of a bridging banking institution to acquire part or all of the assets and liabilities of the problem banking institution;

(m) the taking of control of the problem banking institution by a curator with powers to establish and institute a timely plan of resolution;

(n) the winding up of the problem banking institution;

(o) the taking of any action necessary to give effect to the plan of resolution, including the sale or closure of any branch, agency or other office of the problem banking institution and, subject to any other law, the dismissal of any of its officers or employees.

(3) If the Reserve Bank makes a determination in terms of subsection (1) in relation to a banking institution it has identified as a problem banking institution under subsection (2), it shall, after affording the banking institution an adequate opportunity to make representations in the matter—

(a) serve on a principal officer of such banking institution at its registered office—

(i) a notice (hereinafter called a "problem bank notice")

announcing that the banking institution has been declared a problem banking institution; and

(ii) the bank resolution plan that the Reserve Bank shall be implementing or cause to be implemented in terms of the Act;

and

(b) publish the problem bank notice in the *Gazette*:

Provided that, where the Reserve Bank considers that immediate action is necessary to prevent irreparable harm to the banking institution or its depositors, creditors, members or employees, the Reserve Bank may take such action before affording the banking institution an opportunity to make representations in terms of this subsection.

(4) In formulating a bank resolution plan, the Reserve Bank shall—

(a) have regard to the public interest; and

(b) ensure that any measures authorised by or taken under the plan are proportionate to the harm they are intended to remedy; and

(c) ensure that where any property or interest or right in property is to be acquired under the plan (other than shares and assets of the problem banking institution)—

(i) reasonable notice is given to everyone whose interest or rights will be affected by the acquisition; and

(ii) fair and adequate compensation is paid within a reasonable time after the acquisition; and

(iii) if the acquisition is contested, an application is made to a court of competent jurisdiction for an order authorising or confirming the acquisition; and

(iv) the property, interest or right is returned or not acquired if the court, on an application referred to in subparagraph (iii), does not authorise or confirm the acquisition;

and

(d) ensure that all bidders or offerors seeking to acquire assets of the problem banking institution are treated equally and fairly; and

(e) ensure that, so far as practicable, any person who acquires assets of the problem banking institution acquires an equivalent value of its liabilities.

(5) The Reserve Bank or its agents may disclose confidential information concerning a problem banking institution, subject to a confidentiality agreement, to a bidder or offer or who proposes to acquire the institution or any of its assets or liabilities under a bank resolution plan.

(6) Pending the formulation and implementation of a bank resolution plan (whether before or after the confirmation of the problem bank notice in terms of section 52B), the Reserve Bank may take such measures in relation to the banking institution concerned as, in its opinion, are reasonably necessary in order to—

(a) preserve the capital, assets and liquidity of the banking institution concerned; and

(b) protect the interests of depositors and other creditors of the banking institution concerned.

(7) Measures referred to in subsection (6) may include—

(a) restricting the activities of the banking institution concerned; and

(b) removing or replacing all or any of the directors of the banking institution concerned; and

(c) prohibiting or restricting the disposal of any assets of the banking institution concerned; and

(d) any action referred to in section 48(3).

52B Confirmation of problem bank notice

(1) At any time before a bank resolution plan is implemented, the problem bank notice shall be confirmed by application made by or on behalf of the Reserve Bank to a judge of the High Court in chambers on not less than fourteen days' written notice (accompanied by the documentation in support of the application referred to in paragraphs (a) and (b) of subsection (2)) to the directors, shareholders, principal officers and creditors of the problem banking institution:

Provided that the publication by or on behalf of the Reserve Bank of a notice in the *Gazette* addressed to the directors, shareholders, principal officers and creditors of the problem banking institution (whether named individually or by class)—

(i) notifying them of the intention of the Reserve Bank to make such an application not earlier than fourteen days from the date of publication of the notice in the *Gazette*; and

(ii) informing them of their right to oppose the application; and

(iii) containing particulars of where the documentation in support of the application referred to in paragraphs (a) and (b) of subsection (2) may be collected by any party interested in the application;

shall be deemed to constitute sufficient service of the notice of the application upon any such party.

(2) There shall be submitted together with the application referred to in subsection (1)—

(a) a copy of the problem bank notice relating to the banking institution which is the subject of the application; and

(b) a statement of the reasons why it appeared to the Reserve Bank that any one or more of the circumstances referred to paragraph (a) to (h) of section 52A(2) were present in relation to the banking institution; and

(c) a statement of the affairs of the banking institution indicating the extent of its assets and liabilities; and

(d) proof that a principal officer of the banking institution had been served with the problem bank notice under section 52A(2)(p).

(3) A decision by a judge not to issue a confirming order in terms of subsection (1), or to issue it subject to any amendment or variation, shall not prevent the Reserve Bank from making a fresh application in terms of that subsection on the basis of new evidence obtained since the original application, or to correct any mistake in the original application, and subsections (1) and (2) shall apply to such fresh application.

(4) Where an appeal is noted against a decision of the High Court in an application referred to in this section, the Supreme Court shall ensure that, where possible, it delivers judgment in the appeal within thirty days after the appeal was filed in accordance with rules of court.

(5) Notwithstanding any other law, if an appeal is noted against a decision of the High Court in an application referred to in this section, no court shall set aside the decision of the Reserve Bank made pursuant to a bank resolution plan without the consent of the Reserve Bank, unless the court is satisfied that the decision was made corruptly or in bad faith:

Provided that this subsection shall not prevent a court from awarding fair and adequate compensation to any person who has suffered loss as a result of the decision.

(6) Pending the determination of an application referred to in this section or any appeal in relation thereto, the Reserve Bank may take any of the measures referred to in section 52A(6) or any other formal supervisory or enforcement action against the problem banking institution concerned in the interests of its creditors or depositors or in the public interest.

(7) Where a problem bank notice is confirmed by the court in terms of this section and the bank resolution plan in relation to it proposes to place the problem banking institution concerned under liquidation, it shall not be necessary to issue a separate notice of liquidation in terms of section 57.

52C Implementation of bank resolution plan

(1) In this section "curator" means an agent of the Reserve Bank acting as an independent contractor or the Reserve Bank itself operating through one of its employees, and includes any special asset management company established in terms of Part IXA of the Reserve Bank Act.

(2) Where a curator has taken control of a problem banking institution under a bank resolution plan, the shareholders of the institution shall have no rights with respect to shares, except to the extent permitted under the plan.

(3) Within ninety days after a curator has taken control of a problem banking institution under a bank resolution plan, the Reserve Bank, after consultation with the Deposit Protection Corporation, shall—

(a) determine whether to restructure, reorganise or wind up the institution; and

(b) determine an alternative bank resolution plan based upon any combination of restructuring, reorganisation or winding up of the institution or, subject to this section, any other option which provides for expeditious resolution of the problems of the institution:

Provided that if the new bank resolution plan is materially at variance with the one submitted in connection with an application in terms of section 52B, the Reserve Bank shall seek the leave of the court that confirmed the application to depart from the original bank resolution plan, and the court may make any directions on the matter that it thinks fit.

(4) For a period of ninety days after a curator has taken control of a problem banking institution under a bank resolution plan, no proceedings may be commenced against the institution by its creditors.

(5) Notwithstanding any other law, where under a bank resolution plan—

(a) any asset of a problem banking institution has been transferred to any person; or

(b) control of a problem banking institution has been transferred to any person; or

(c) the whole or part of the business of a problem banking institution has been transferred to any person;

no court shall set aside the transfer without the consent of the Reserve Bank, unless the court is satisfied that the transfer was made fraudulently, corruptly or in bad faith:

Provided that this subsection shall not prevent a court from awarding fair and adequate compensation to any person who has suffered loss as a result of the transfer.".

30 Amendment of section 53 of Cap. 24:20

Section 53 ("Placing of banking institution under curatorship") of the principal Act is amended—

(a) in subsection (1) by the insertion after "consulting" of "the Minister and";

(b) in subsection (2) by the deletion of "shall consult the Minister and";

(c) in subsection (3) by the insertion after paragraph (b) of the following paragraph—

"(b1) the security to be furnished by the curator for the proper performance of his or her duties; and".

31 Amendment of section 55 of Cap. 24:20

Section 55 ("Duties and powers of curator") of the principal Act is amended by the insertion after subsection (3) of the following subsection—

"(3a) Any person alleging to be a creditor of a banking institution under curatorship may, upon furnishing such written proof to the curator as will satisfy the curator that the person is able to prove a claim against the banking institution, and upon payment of the prescribed fee (if any), request that any specific report or every report made by the curator under subsection (1)(e), (f) and (g) be availed to him or her as soon as practicable after the curator avails it to the Reserve Bank, and the curator shall comply with such request.".

32 New section inserted in Cap. 24:20

The principal Act is amended by the insertion after section 56 of the following section—

56A Expenses of curatorship

(1) The Reserve Bank may recover from a banking institution that has been placed under curatorship all the expenses it has necessarily incurred in connection with the curator's administration of the institution.

(2) In any proceedings in a court for the recovery of any expenses referred to in subsection (1), a certificate purporting to be signed by the Governor or a Deputy Governor of the Reserve Bank and setting out the amount of the expenses concerned shall be *prima facie* proof of their amount.".

33 New section substituted for section 57 of Cap. 24:20

Section 57 of the principal Act is repealed and the following is substituted—

"57 Winding up of banking institutions

(1) The Reserve Bank may in accordance with this section order the winding up of a banking institution—

(a) pursuant to a plan of resolution in terms of section 52A; or

(b) following cancellation of the institution's registration in terms of this Act; or

(c) where the institution has been placed under curatorship, on the recommendation of the curator; or

(d) on any ground on which a company may be compulsorily wound up in terms of the Companies Act [*Chapter 24:03*];

where the Reserve Bank considers such an order to be in the interests of the creditors, depositors or shareholders of the banking institution concerned, or necessary to preserve the integrity of the financial system of Zimbabwe.

(2) Notwithstanding anything to the contrary in the Insolvency Act [*Chapter 6:04*] or the Companies Act [*Chapter 24:03*]—

(a) no person shall apply to a court for the winding up of a banking institution; or

(b) no banking institution shall pass a resolution for its voluntary winding up or dissolution;

without the consent of the Reserve Bank and in accordance with any conditions the Reserve Bank may specify:

Provided that the Reserve Bank shall not consent to the voluntary winding up of a banking institution unless it is satisfied that the institution is solvent and has sufficient liquid assets to pay its creditors, including its depositors, in full without delay.

(3) Upon making an order under subsection (1), the Reserve Bank shall—

(a) by written notice, inform the banking institution concerned of the terms of the order and the reasons for making it; and

(b) cause a notice embodying the order to be published in the *Gazette* and in one or more newspapers circulating in the area in which the banking institution concerned carries on business; and

(c) in the notice referred to in paragraph (b), invite any director, shareholder, depositor or other creditor of the institution who objects to its winding up to apply to the High Court,

within such reasonable period as may be specified in the notice, for the order to be set aside.

(4) In an application referred to in subsection (3)(c), the High Court may not, despite any other law, reverse or set aside the order of the Reserve Bank to wind up a banking institution made in terms of subsection (1) without the consent of the Reserve Bank, unless the court is satisfied that the decision was made corruptly or in bad faith:

Provided that this subsection shall not prevent the High Court or any other court from awarding fair and adequate compensation to any person who has suffered loss as a result of the decision.

(5) Where an appeal is noted against a decision of the High Court in an application referred to in subsection (3), the Supreme Court shall ensure that, where possible, it delivers judgment in the appeal within thirty days after the appeal was filed in accordance with rules of court.

(6) The Reserve Bank shall appoint the Deposit Protection Corporation as the liquidator of the banking institution that is being wound up, and the Corporation shall have the same powers and duties as a liquidator of a company appointed in terms of Part V of the Companies Act [*Chapter 24:03*], any reference in that Part to the court being construed as a reference to the Reserve Bank.

(7) During the voluntary winding up of a banking institution, the Deposit Protection Corporation as liquidator shall furnish the Reserve Bank with every return and statement which the institution would have been obliged to furnish to the Reserve Bank in terms of this Act were the institution not being wound up.

(8) The claims of—

(a) depositors; and

(b) the Reserve Bank and the Deposit Protection Corporation in respect of any fees and expenses incurred in the exercise of their functions under this Act or any other enactment;

against a banking institution that is being wound up shall enjoy such priority as may be prescribed.".

34 New section inserted in Cap. 24:20

Part XI ("Additional Powers of Reserve Bank and Registrar") of the principal Act is amended by the insertion after section 64 of the following section—

"65 Powers of Registrar when determining whether person is fit and proper

(1) When determining for the purposes of this Act whether anyone is a fit and proper person to hold any shares or to occupy any post or office, the Registrar may request the person concerned to provide the Registrar with information, on oath or otherwise as the Registrar may specify, relating to any matters which, in the Registrar's opinion, will enable the Registrar to assess the person's fitness and probity.

(2) If a person to whom the Registrar has made a request in terms of subsection (1) fails or refuses to provide the requested information or provides the Registrar with information which is materially inaccurate, misleading or incomplete, the Registrar may determine that he or she is

not a fit and proper person to hold the shares or occupy the post or office concerned.".

35 Amendment of section 73 of Cap. 24:20

Section 73 ("Appeals") of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a) by the deletion of "subsection (4) or (5) of section *eight*" and the substitution of "section 8 or 15G";

(ii) in paragraph (b) by the deletion of "an institution in terms of subsection (3) of section *eight*" and the substitution of "a banking institution or controlling company in terms of section 8 or 15G";

(iii) by the repeal of paragraphs (c), (d) and (e) and the substitution of—

"(c) any amendment of the registration of a banking institution or controlling company in terms of section 14 or 15I, or a refusal by the Registrar to make such an amendment; or

(d) a proposal by the Registrar to cancel the registration of a banking institution or controlling company in terms of section 14 or 15J; or

(e) a refusal by the Registrar to cancel the registration of a banking institution or controlling company at the request of the institution or company in terms of section 14 or 15J; or";

(iv) by the insertion after paragraph (e) of the following paragraphs—

"(e1) a refusal by the Registrar to give permission for a person—

(i) to hold more shares in a banking institution or controlling company than is specified in section 15A; or

(ii) to acquire a significant interest in a banking institution or controlling company in terms of section 15B; or

(e2) a requirement by the Registrar in terms of section 15D or 15E that a person should divest himself or herself or any share in a banking institution or controlling company; or

(e3) a determination by the Registrar in terms of section 15F(5) whether or not a person exercises control over a banking institution; or

(e4) a refusal by the Registrar to approve the appointment or re-appointment of a director of a banking institution or controlling company in terms of section 18 or

(e5) a withdrawal by the Registrar of his or her approval of the appointment or re-appointment of a director of a banking institution or controlling company in terms of section 18; or

(e6) a decision of the Registrar not to register an applicant as a controlling company in terms of section 15G; or

(e7) any term or condition attached to the registration of a company as a controlling company in terms of section 15G; or

(e8) any amendment of a controlling company's registration in terms of section 15I or a refusal by the Registrar to amend a controlling company's registration in terms of that section; or

(e9) a proposal by the Registrar to cancel a controlling company's registration in terms of section 15J, or a refusal by the Registrar to cancel its registration in terms of that section; or";

(v) by the insertion after paragraph (f) of the following paragraph—

"(f1) a direction by the Registrar in terms of section 26 not to establish a branch; or";

(b) in subsection (3) by the insertion of the following proviso, the existing proviso becoming proviso (i)—

"(ii) the Minister shall determine the appeal—

A. within fourteen days, in the case of an appeal against a direction by the Registrar in terms of section 26;

B. ninety days, in the case of any other appeal.".

36 New section inserted in Cap. 24:20

The principal Act is amended by the insertion after section 77 of the following section—

"77A Issuance of civil penalty orders

(1) Where in this Act provision is made for the imposition of a civil penalty, such provision shall be construed as authorising the Registrar to issue to the person specified by this Act to be responsible for the infringement in respect of which the penalty is imposed (hereinafter called "the infringer") any one of the following kinds of orders (called a "civil penalty order") addressed to an infringer, which order shall be issued within such of the following parameters as may be appropriate to the infringement, namely a civil penalty order imposing—

(a) a fixed civil penalty for a specified completed and irremediable infringement, for which—

(i) the penalty shall not exceed a fixed penalty of level ten or the penalty prescribed by or under this Act, as the case may be; and

(ii) the penalty for each day (beginning on the day after the issuance of the civil penalty order) during which the infringer fails to pay the civil penalty, shall not exceed a penalty of level three (twenty United States dollars) per day for a maximum period of one hundred and eight (180) days;

and

(b) a fixed civil penalty for a specified completed but remediable infringement—

(i) for which the prescribed penalty shall not exceed a fixed penalty of level five (one hundred United States dollars) or the penalty prescribed by or under this Act, as the case may be; and

(ii) which must be suspended conditionally upon the infringer taking the remedial action specified in the civil penalty order within the time specified in that order; and

(iii) which (upon the civil penalty becoming operative because of non-compliance with the requested remedial action) may provide for the prescribed penalty for each day (beginning on the day after the last day on which the infringer should have effected the remedial action) during which the infringer fails to pay the civil penalty referred to in subparagraph(i), which shall not exceed a penalty of level two (ten

United States dollars) per day for a maximum period of one hundred and eight (180) days; and

(c) a fixed civil penalty for a continuing infringement—

(i) for which the prescribed penalty shall not exceed a penalty of level one (five United States dollars) for each day during which the infringement continues (or the penalty prescribed by or under this Act, as the case may be), not exceeding a maximum period of one hundred and eight (180) days; and

(ii) which must be suspended conditionally upon the infringer immediately (that is say, on the day the civil penalty order is issued) ceasing the infringement; and

(d) a fixed civil penalty for a specified continuing infringement where the time for compliance is of the essence—

(i) for which the prescribed penalty shall not exceed a fixed penalty of level ten (six hundred United States dollars) or the penalty prescribed by or under this Act, as the case may be; and

(ii) which must be suspended conditionally upon the infringer taking the remedial action specified in the civil penalty order within the time specified in that order; and

(iii) which (upon the civil penalty becoming operative because of non-compliance with the requested remedial action) may provide for the prescribed penalty for each day (beginning on the day after the last day on which the infringer should have effected the remedial action) during which the infringer fails to pay the civil penalty referred to in subparagraph (i), which shall not exceed a penalty of level two (ten United States dollars) per day for a maximum period of one hundred and eight (180) days.

(2) A civil penalty order that becomes payable by the infringer shall constitute a debt due by the infringer to the Registrar and shall. at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Registrar.

(3) The amount of a civil penalty shall be paid into and form part of the funds of the Reserve Bank.".

37 New sections substituted for sections 78 and 78A of Cap. 24:20

Section 78 ("Annual reports of Reserve Bank and Registrar") and 78A ("Co-operation between Registrar, Reserve Bank and Deposit Protection Corporation") of the principal Act are repealed and the following sections are substituted—

"78 Annual reports of Reserve Bank and Registrar

(1) As soon as possible after the end of every calendar year, and in any event not more than six months thereafter, the Reserve Bank and the Registrar shall submit to the Minister a report on banking business and the financial sector generally during that year, which report shall—

(a) summarise significant action taken by the Reserve Bank and the Registrar under this Act during the year in question; and

(b) contain any recommendations the Reserve Bank and the Registrar may wish to make regarding the financial soundness of the financial sector and its further development.

(2) The Minister shall lay a copy of every report submitted to him or her in terms of subsection (1) before the House of Assembly on one of the fourteen days on which the House next sits after he or she received it.

(3) The Reserve Bank and the Registrar shall cause a summary of every report submitted to the Minister in terms of subsection (1) to be published electronically, in a form that can be readily understood by members of the public, on the Reserve Bank's website.

78A Exemption from liability of Registrar and other persons

No liability shall attach to—

(a) the Registrar or any person acting with the authority or under the direction of the Registrar; or

(b) the Governor or any officer, employee or agent of the Reserve Bank; or

(c) any curator or person acting with the authority or under the direction of a curator;

for loss or damage sustained as a result of the *bona fide* exercise of any function conferred or imposed on the person concerned by or under this Act:

Provided that this section shall not be construed as preventing anyone from recovering damages or compensation for loss or damage that was caused by negligence or breach of contract.".

38 Amendment of section 81 of Cap. 24:20

Section 81 ("Regulations")(2) of the principal Act is amended—

(a) in paragraph (d) by the insertion after "Reserve Bank" of "and the Registrar";

(b) by the insertion after paragraph (d) of the following paragraphs—

"(e) the categorisation of any activity on the part of a banking institution as an undesirable method of conducting business;

(f) the qualifications and disqualifications of directors and officers of banking institutions and controlling companies, and the criteria by which they are to be assessed as fit and proper persons to be directors or officers, as the case may be;

(g) the capital to be maintained by controlling companies;

(g1) standards of corporate governance to be observed by banking institutions and controlling companies;

(g2) returns and information to be provided to the Registrar and the Reserve Bank by banking institutions and controlling companies;

(g3) the business activities, other than those directly connected with the banking institution in respect of which they are registered, that may be carried on by controlling companies;

(g4) the regulation, control and licensing of persons who provide money transmission services and mobile banking services;

(g5) the licensing, control and regulation of credit reference bureaux, the period and terms and conditions of their licences and the suspension and cancellation of their licences;

(g6) the specification, notwithstanding any other law, of a tariff of remuneration, fees and charges to be payable to a curator, public auditor or accountant, legal practitioner or other independent contractor retained by the Reserve Bank for the discharge of any statutory function or for any purpose under this Act;".

39 Minor amendments to Cap. 24:20

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column.

40 Amendment of Cap. 22:15

(1) The Reserve Bank of Zimbabwe Act [*Chapter 22:15*] is amended—

(a) in section 2 ("Interpretation") by the repeal of the definition of "director" and the substitution of—

""director" means a member of the board including the Governor and Deputy Governors;";

(b) in section 7 ("Powers of Bank") in subsection (1) by the insertion after paragraph (r) of the following paragraph—

"(r1) establish companies and other entities for the purpose of—

(i) acquiring and settling non-performing loans of banking institutions; or

(ii) acquiring, restructuring and disposing of problem or failed banking institutions;

(iii) generally, exercising any function conferred on the Bank by or in terms of this Act;";

(c) by the insertion after Part IX of the following Part—

"PART IXA

SPECIAL ASSET MANAGEMENT COMPANIES

57A Establishment of special asset management companies

(1) In the exercise of its functions the Bank may establish any one or more companies or other entities, to be known as "special asset management companies", for the purpose of—

(a) acquiring, rescheduling, disposing of, holding, managing or otherwise settling non-performing loans of banking institutions; or

(b) on the direction of the Bank, managing, acquiring, restructuring and disposing of distressed or problem or failed banking institutions; or

(c) generally, performing such other functions related to the acts mentioned in paragraphs (a) and (b) or exercising any function conferred on the Bank by or in terms of this Act;

(2) Upon completion of the mandate for which it was established in terms of subsection (1), a special asset management company shall be wound up and the necessary account shall be rendered to the Bank.

57B Immunity of special asset management companies, etc.

The immunity of the Bank bestowed by section 63A applies also to any special asset management company, for which purpose references therein the Bank, the Board, the Governor and any employee of the Bank shall be read as references to the company, its board of directors, its chief executive or principal officer and any of its employees.

57C Powers of Investigation of special asset management companies

Section 47 of the Banking Act applies to a special asset management company in the pursuance of the mandate for which it was established in terms of section 57A (1), as if the company and its employees, are supervisors and inspectors referred to in that section of the Banking Act.

57D Powers of curatorship of special asset management companies

Section 55 of the Banking Act applies to a special asset management company in the pursuance of the mandate for which it was established in terms of section 57A (1), as if the company (and any of its employees discharging curatorship functions) is the curator referred to in that section of the Banking Act.

57E Special asset management companies exempt from certain duties, fees and charges

(1) No duty or fee in relation to any instrument, service or other matter shall be payable to the State by any special asset management company in respect of—

(a) any transfer to the company of property other than property acquired by the company for its own use or for the use of its employees; or

(b) any mortgage, hypothecation or pledge of property or cession thereof in favour of the company; or

(c) any document of security, pledge, act of suretyship, indemnity or guarantee by or in favour of the company.

(2) A special asset management company shall not be liable for the payment of any search or inspection fee in the Master's office or in any Deeds Registry or Companies Registry.";

(d) by the insertion after section 58 of the following section—

"58A Credit Registry

(1) In this section—

"credit information" has the meaning given to it in section 2 of the Banking Act [*Chapter 24:20*];

"Credit Registry" means a system established under subsection (2) to receive and supply credit information to financial institutions and other institutions;

"participating institution" means any institution or body required to become a participating institution in terms of subsection (2);

"utility body" means a body corporate, including a local authority and a statutory body, which supplies utility services such as electricity, or waste or water management.

(2) The Bank may establish a Credit Registry for the purpose of ensuring a sound credit information system in Zimbabwe, and may require any—

(a) financial or other institution offering credit, including leasing facilities and hire-purchase; or

(b) utility body;

to become a participating institution.

(3) A participating institution shall furnish the Credit Registry with credit information at such time and in such manner as the Bank may specify, for the purpose of—

(a) maintaining a database of—

(i) information on recipients of credit facilities and guarantors; and

(ii) such other information as may reasonably assist in ensuring the soundness of the credit information system;

(b) collecting, consolidating and collating trade, credit and financial information on recipients of credit facilities;

(c) disclosing the information to such institutions as the Bank may approve, or allowing those institutions access to the information.

(4) Subject to subsection (5), credit information collected by the Credit Registry shall be used for the purpose of meeting the objectives of the Registry and shall be kept confidential as between the Bank and participating institutions.

(5) Notwithstanding section 60 ("Preservation of secrecy") or any other enactment, the Bank may impart, on such terms and conditions as it thinks fit, information maintained in the Credit Registry to—

(a) such bodies as it considers appropriate for credit rating purposes; and

(b) any public sector agency or law enforcement agency, to enable the agency to discharge, or assist it in discharging, any of its functions; and

(c) such institutions and for such purposes as the Bank thinks appropriate, where the person to whom the information relates has given written consent for the information to be disclosed to the institution.

(6) Any duty of confidentiality imposed on any participating institution under any enactment shall not apply where the information is required to be transmitted to the Credit Registry in terms of this section.

(7) A utility body may require any of its customers to provide it with information which the utility body is required to provide to the Credit Registry in terms of this section.

(8) A participating institution processing an application for credit facilities may have recourse to information from the Credit Registry for the purpose, and shall inform the applicant that all available

information will be used for the processing of the application:

Provided that, where the applicant is not satisfied with the credit information obtained from the Credit Registry, he or she may consult the Registry and the Registry shall inform him or her of the nature of the information it supplied to the participating institution.

(9) If—

(a) an institution or utility body refuses or fails to become a participating institution; or

(b) a participating institution refrains from complying, or negligently fails to comply, with any requirement imposed under this section;

the Bank may—

(i) by directive, require the institution, utility body or participating institution to remedy the situation; or

(ii) impose on the institution, utility body or participating institution a penalty not exceeding the equivalent of a fine of level five for each day that the contravention has continued.".

(2) The wholly owned company of the Reserve Bank of Zimbabwe called the Zimbabwe Asset Management Corporation (Private) Limited, incorporated in terms of the Companies Act *[Chapter 24:03]* on the 15th July, 2014, shall be deemed to be a special asset management company established with effect from the date of its incorporation in terms of Part IXA of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*].

41 Repeal of Cap. 24:28

The Troubled Financial Institutions (Resolution) Act [*Chapter 24:28*] is repealed.

42 Amendment of Cap. 24:29

The Deposit Protection Corporation Act [*Chapter 24:29*] is amended—

(a) in section 2 ("Interpretation")—

(i) by the repeal of the definition of "examiner";

(ii) by the repeal of the definition of "prudential requirement" and the substitution of—

""prudential requirement" means a prudential requirement prescribed or fixed in terms of the Banking Act [*Chapter 24:20*];";

(iii) by the repeal of the definition of "troubled";

(b) in section 3 ("When contributory institution becomes financially distressed, troubled or insolvent") by the repeal of subsection (2);

(c) by the repeal of section 26 ("Prudential requirements");

(d) in section 35 ("Compensation payable to depositors on insolvency of contributory institution") by the insertion in subsection (1) of the following proviso—

"Provided that the Corporation shall wherever possible ensure the payment of such compensation within sixty days after the contributory institution became insolvent.";

(e) by the repeal of section 36 and the substitution of—

"36 Intervention by Reserve Bank and Corporation before insolvency of contributory institution

(1) Where it appears to the Reserve Bank or the Corporation that a contributory institution is financially distressed or is or may become insolvent, the Reserve Bank and the Corporation shall consult together on the most appropriate measures to take in regard to the institution.

(2) Notwithstanding any other provision of this Act, the Corporation may pay from the Fund all or part of the cost of measures taken by the Reserve Bank under any law to prevent the insolvency of a contributory institution, if it appears to the Corporation that such payment is likely to be less than the compensation payable to depositors in the event of the institution's insolvency.";

(f) in section 37 ("Curators and judicial managers to notify Corporation of insolvency of contributory institution") by the deletion of "curator or" wherever it occurs;

(g) in section 38 ("Corporation as curator or liquidator and power to appoint agents") by the deletion of "curator or" wherever it occurs;

(h) by the repeal of sections 47 and 48;

(i) by the repeal of section 52;

(j) in section 56 ("Hindering or obstructing examiner or other official") by the deletion of "an examiner or";

(k) in section 57 ("Preservation of secrecy") in subsection (1) by the repeal of paragraph (c);

(l) in section 58 ("Use of confidential information for personal gain") in subsection (1) by the repeal of paragraph (c).

43 Amendment of Act 1 of 2010

The Reserve Bank of Zimbabwe Amendment Act, 2010 (No. 1 of 2010) is amended by the repeal of section 19 and the Schedule.

44 Amendment of Act 2 of 2015

The Reserve Bank of Zimbabwe (Debt Assumption) 2015 (No. 2 of 2015) is amended by the repeal of section 6 and the substitution of—

"6 Application of Part III of Cap. 22:21

Part III of the Public Debt Management Act [*Chapter 22:21*] shall apply, with the necessary changes, in respect of any obligations assumed in terms of section 4 as if the obligation were a State loan borrowed in terms of that Act.".

45 Transitional provisions and savings

(1) In this section—

"fixed date" means the date of commencement of this Act.

(2) Any word or expression which is defined in the principal Act as amended by this Act shall bear the same meaning when used in this section.

(3) If, on the fixed date, any person holds more shares in a banking institution or controlling company than is permitted by section 15A or 15B of the principal Act, the banking institution or controlling company shall without delay notify the Registrar of that fact, providing the Registrar with such information about the shareholder's identity and address as the Registrar may reasonably require, and the Registrar may,

by written notice to the shareholder and the banking institution concerned, require the shareholder to divest himself or herself of all or any of the shares concerned.

(4) For so long as a shareholder of a banking institution or controlling company fails or refuses to comply with a request in terms of subsection (3), he or she shall not, either personally or by proxy, cast a vote attached to any of his or her shares in the banking institution or controlling company concerned, nor receive a dividend payable on any of those shares.

(5) The validity of any resolution adopted by the banking institution or controlling company concerned shall not be affected by a vote cast in contravention of subsection (4), if the resolution was adopted by the requisite majority of votes which were validly cast.

(6) A dividend referred to in subsection (4) shall accrue to the banking institution or controlling company concerned.

(7) Subject to section 73 ("Appeals") of the principal Act, a shareholder who has been required to divest himself or herself of any shares in a banking institution or controlling company in terms of subsection (3) and who fails without just cause to comply with the requirement within a reasonable period shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(8) Every banking institution and controlling company shall without delay take steps to ensure that its shares which were registered before the fixed date are registered in the names of their beneficial shareholders in accordance with section 15C of the principal Act, and if six months after the fixed date any such shares remain not so registered, section 15D(1) of the principal Act shall apply to them.

(9) Any—

(a) person who, immediately before the fixed date, held a significant interest in a controlling company;

(b) person, other than a public company, who immediately before the fixed date held a significant interest in a banking institution;

shall without delay, and in any event within three months after the fixed date, inform the Registrar, through the controlling company or banking institution concerned, of the nature and extent of the significant interest, providing the Registrar with such information in regard to it as the Registrar may reasonably require, and if the Registrar refuses to approve his or her holding of the significant interest shall without delay take all necessary steps to divest himself or herself of the interest.

(10) Any body corporate such as is referred to in section 15F(1)(b) of the principal Act which, immediately before the fixed date, exercised control over a registered banking institution in Zimbabwe shall be deemed to have been approved by the Registrar in terms of that section.

(11) Any public company which, immediately before the fixed date, exercised control over a registered banking institution shall without delay and in any event within three months after the fixed date, apply to the Registrar in terms of section 15G of the principal Act for registration as a controlling company.

(12) Any person, other than a public company, who immediately before the fixed date exercised control over a banking institution shall take all necessary steps to divest himself or herself. within three months after the fixed date, of the shares or other interests by which he or she exercised that control.

(13) If a person referred to in subsection (12) retains control over a banking institution three months after the fixed date—

(a) any act or decision whatsoever by which he or she exercises control over the banking institution shall be void;

(b) any vote cast by him or her, or by any of his or her associates or close relatives, at a meeting of shareholders of the banking institution shall be void;

(c) any dividend payable on his or her shares in the banking institution shall not be paid to him or her but shall accrue to the banking institution.

(14) Any person who, immediately before the fixed date, was the director of a banking institution and a director of between three and seven other companies may continue in office as a director of the banking institution until the end of his or her current term, notwithstanding that he or she holds those other directorships.

(15) Every banking institution which, immediately before the fixed date, did not have a compliance function, a risk and capital management committee, a compliance officer or an internal auditor shall, within three months after the fixed date—

(a) establish the committee or department referred to in section 28A of the principal Act; and

(b) appoint a risk and capital management committee in terms of section 28B of the principal Act; and

(c) appoint a compliance officer and an internal auditor and notify the Registrar of their names and prescribed particulars in terms of section 20 of the principal Act.

(16) Every person who, on the fixed date, is a director of a banking institution, shall make the disclosure required by section 20B of the principal Act within three months after the fixed date.

(17) Every person who, immediately before the fixed date, carried on business as a credit reference bureau shall, within three months after the fixed date, apply in terms of section 31C of the principal Act for a licence and, until the Registrar has determined the application, may continue to carry on that business without a licence.

(18) A banking institution or controlling company which maintains a special purpose vehicle formed before the fixed date shall, within two months after that date, apply to the Reserve Bank for permission in terms of section 32A of the principal Act as amended by this Act, and that section shall not apply to the special purpose vehicle pending the grant or refusal of such permission.

(19) Anything done or commenced under the Troubled Financial Institutions (Resolution) Act [*Chapter 24:28*] before its repeal by this Act which, immediately before the fixed date, had or was capable of having effect, shall continue to have or to be capable of having the same effect after that date as if it had been done or commenced under the appropriate provision of the principal Act.

SCHEDULE (Section 43)

MINOR AMENDMENTS TO BANKING ACT [*CHAPTER 24:20*]

Provision	*Extent of amendment*
Sections 2(1) (in the definition of "board"), 18(1a), (4) & (5), 19(1) & (2)(b), 20(3) & (4), 25(1) & (9), 47(1), (2) & (3), 48(1) & (2), 49(1), (2), (3) & (4), 50(2)(a) & (3), 51(1), 52(1)	By the insertion after "banking institution" wherever it occurs of "or controlling company".
Section 2(1) (in the definition of "Registrar")	By the deletion of "subsection (3) of that section" and the substitution of "subsection (2) of section 4A".
Sections 4(2), 19(2)(a), 46(1)(a), 81(2)(c)	By the insertion after "banking institutions" of "and controlling companies".
Section 18(1a)	By the repeal of the proviso.
Section 18(5)(a)	By the deletion of "institution's banking business" and the substitution of "business of the institution or company".
Sections 18(5)(b), 48(1)(f)	By the deletion of "banking".
Sections 20(1) and 36(1)	By the insertion after "banking institution" of "and controlling company".
Section 25(1)	By the deletion of "banking institution's issued share capital" and the substitution of "issued share capital of the banking institution or controlling company concerned".
Section 28(1)	By the repeal of the definition of "foreign banking institution".
Section 36(1)	By the deletion of "institution's operations and financial condition" and the substitution of "operations and financial condition of the banking institution or controlling company".
Section 36(3)	By the deletion of "accordance with such" and the substitution of "compliance with such requirements and".
Section 46(1)(b)	By the deletion of "or class of such institution" and the substitution of ", controlling company or class of banking institutions or controlling companies,".
Section 47(1)(a)	By the deletion of "institution's banking business" and the substitution of "business of the institution or company".
Section 47(1)(b)	By the deletion of "of the institution's"
Section 47(1)(c)	By the deletion of "banking business" and the substitution of "business".
Section 47(1)(d), (e) & (f)	By the deletion of "of the banking institution's".

Provision	*Extent of amendment*
Section 47(1)(f)	By the deletion of "institution's premises" and the substitution of "premises of the institution or company".
Section 47(1)(g)(i)	By the deletion of "institution's books, records, accounts or documents" and the substitution of "books, records, accounts or documents of the institution or company".
Section 47(1)(g)(ii)	By the deletion of "institution's management or activities" and the substitution of "management or activities of the institution or company".
Sections 48(1) & (2), 49(1)(c) & (d), 50(2)(b), 51(1)	By the insertion after "the institution" wherever it occurs of "or company".
Section 48(1)(g)	By the deletion of "institution's affairs" and the substitution of "affairs of the institution or company".
Section 48(1)(j)(i)	By the deletion of "institution's continued registration" and the substitution of "continued registration of the institution or company".
Section 48(1)(j)(ii)	By the deletion of "institution's registration" and the substitution of "registration of the institution or company".