THE BANKING AND FINANCIAL SERVICES BILL, 2025

MEMORANDUM

The objects of this Bill are to—

(a) provide for the regulation and supervision of financial service providers;

(b) provide for ownership and control of financial service providers;

(c) provide for the incorporation of standards, principles and concepts of environmental, social and corporate governance in systems and structures of financial service providers;

(d) provide for the resolution powers of the Bank in relation to a failed bank or financial institution;

(e) provide for innovative and inclusive financial services;

(f) provide for financial reporting and accountability of financial service providers;

(g) provide for market conduct and financial consumer protection mechanisms;

(h) provide for the winding-up process for financial service providers;

(i) provide for monitoring compliance with anti-money laundering and countering of terrorism financing and proliferation financing among financial service providers;

(j) provide for the enforceability of close-out netting of transactions;

(k) repeal and replace the Banking and Financial Services Act, Cap. 387;

(l) repeal the Money-lenders Act, Cap. 398; and

(m) provide for matters connected with, or incidental to, the foregoing.

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M. D. KABESHA,
Attorney-General

N.A.B 36, 2025
17th November, 2025

THE BANKING AND FINANCIAL SERVICES BILL, 2025

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A BILL

ENTITLED

An Act to provide for the regulation and supervision of financial service providers; provide for ownership and control of financial service providers; provide for the incorporation of standards, principles and concepts of environmental, social and corporate governance in systems and structures of financial service providers; provide for the resolution powers of the Bank in relation to a failed bank or financial institution; provide for innovative and inclusive financial services; provide for financial reporting and accountability of financial service providers; provide for market conduct and financial consumer protection mechanisms; provide for the winding-up process for financial service providers; provide for monitoring compliance with anti-money laundering and countering of terrorism financing and proliferation financing among financial service providers; provide for the enforceability of close-out netting of transactions; repeal and replace the Banking and Financial Services Act, Cap. 387; repeal the Money-lenders Act, Cap. 398; and to provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia. Enactment

PART I

Preliminary Provisions

1. This Act may be cited as the Banking and Financial Services Act, 2025, and shall come into operation on the date appointed by the Minister by statutory instrument. Short title and Commencement

Interpretation

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

"advance" means—

(a) any direct or indirect payment of money, a loan or an extension of credit made by a financial service provider to a person or common enterprise—

(i) on the basis of an obligation of that person or common enterprise to repay the money, loan or extension of credit; or

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

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

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

"affiliate" in relation to a person, means a—

(a) person that directly or indirectly controls, is controlled by, or is under common control with, that person;

(b) person that has significant influence over that person;

(c) person over whom that person has significant influence;

(d) subsidiary or holding company of that person; or

(e) person that is related to that person through ownership, control or management;

"alternative financial services" means financial services or financial products based on ethical or religious principles, or channels that are outside conventional methods of conducting banking business or providing a financial service;

"articles of association" has the meaning assigned to the words in the Companies Act;

"associated person" in relation to a financial service provider means—

Cap. 388

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

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

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

(d) persons that are in a partnership;

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

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

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

(f) a spouse, parent, child, brother, sister of a person, or of the person's spouse's parent, child, brother or sister; and the words "associate and association" shall be construed accordingly;

"back-stop funding" means a financial arrangement where alternative sources of funding are provided by the Government in case the primary source of funding of a failed institution is unable to satisfy the current funding requirements;

"bail-in" means a bail-in referred to under section 139 and 142;

"bank" means a company licensed to conduct banking business in accordance with this Act;

"Bank" means the Bank of Zambia established under the Constitution; Cap. 1

"bank or financial institution in resolution" means a bank or financial institution that is placed in resolution by the Bank under section 132;

"banking business" means the business of receiving deposits, paying and collecting cheques, making of advances to

customers, providing financial services and any other business as the Bank may determine for the purposes of this Act;

"banking group" in relation to a financial service provider includes—

(a) a holding company;

(b) a bank, financial institution or financial business;

(c) a subsidiary; and

(d) an affiliate or associate within or outside the Republic;

"banking licence" means a licence granted to conduct banking business under section 13;

"banking service" means activities authorised by the Bank under a banking licence;

"beneficial interest" means a right to interests or benefits that a person or entity may derive from a financial instrument or arrangement, regardless of whether the person is a legal owner;

"beneficial owner" means a natural person who—

(a) ultimately owns or controls a financial service provider;

(b) ultimately owns or controls a person on whose behalf a transaction is being conducted by a financial service provider;

(c) exercises ultimate effective control over a financial service provider; or

(d) directly or indirectly, through a contract, arrangement, understanding, relationship or any other manner, ultimately owns, controls or has substantial interest in, or receives economic benefit from, a financial service provider;

"board" means the governing body of a financial service provider;

"body corporate" has the meaning assigned to the words in the Companies Act; Cap. 388

"borrower" means a person who, directly or indirectly, becomes indebted to a financial service provider, and includes a guarantee made for the repayment of an amount owed by another person;

"branch" means premises, other than the principal administrative office, at which a financial service provider conducts business within or outside the Republic;

"branchless banking service" means the provision of a banking service or financial service without a branch, and includes the use of an agent;

"bridge institution" means an entity established by the Bank under section 141;

"capital adequacy" means the minimum capital determined by the Bank in form of money or assets invested or available for investment sufficient for the sustainability of the financial service provider;

"capital conservation buffer" means the capital that a bank or financial institution is required to hold, in addition to minimum capital requirements as determined, to be drawn-down when losses are incurred by a bank or financial institution during a period of stress;

"capital distribution" means a payment made by a bank or financial institution from the capital and profit of the bank or financial institution, and includes—

(a) dividends on common shares;

(b) discretionary payments;

(c) share repurchases; and

(d) bonuses to employees;

"chief executive officer" means a person appointed by a financial service provider who is responsible, under the direction of the board, for the management and conduct of the business of a financial service provider;

"chief financial officer" means a person appointed by a financial service provider who is responsible for the financial management and maintenance of accounts and related records of a financial service provider;

"close-out netting" means the operation of an agreement between two persons that—

(a) may be commenced by notice given by one person to the other person on the occurrence of—

(i) an event of default with respect to the other party;

(ii) a termination event; or

(iii) circumstances that arise automatically as specified in the agreement; and

(b) has the following effect:

(i) the termination, liquidation or acceleration of any present payment, future payment or delivery right or obligation arising under, or in connection with one or more qualified financial contracts to which a netting agreement applies;

(ii) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each right and obligation or group of rights and obligations terminated, liquidated or accelerated under subparagraph (i) and the conversion of each value into a single currency; and

(iii) the determination of the net balance of the values calculated under subparagraph (ii), whether by operation of set-off or otherwise, giving rise to the obligation of one person to pay an amount equal to the net balance to the other person;

"company" has the meaning assigned to the word in the Companies Act; Cap. 388

"computer" has the meaning assigned to the word in the Cyber Security Act, 2025; Act No. 3 of 2025

"computer system" has the meaning assigned to the words in the Cyber Security Act, 2025; Act No. 3 of 2025

"common enterprise" means—

(a) two or more persons constituting a single risk arising from the direct, or indirect control, of one of those persons over the other persons; or

(b) two or more persons having no relationship of control over one another, but who constitute a single risk as a result of being interconnected to the extent that if one of the persons experiences a financial

problem, the other, or all of the, persons would in the opinion of the Bank encounter repayment difficulties;

"common equity tier one capital" means a form of a capital instrument that has the capacity to absorb loss and includes the sum of—

(a) paid-up common shares issued by a financial service provider;

(b) share premium, resulting from the issue of common shares;

(c) retained earnings;

(d) accumulated comprehensive income and other disclosed reserves;

(e) common shares issued by consolidated subsidiaries of the financial service provider and held by a third party that meets the criteria determined by the Bank, for inclusion in common equity tier one capital;

(f) regulatory adjustments, applied in the calculation of common equity tier one capital, as determined by the Bank; and

(g) any other capital instrument that enhances loss absorption capacity of a bank or financial institution or any changes to the capital instruments referred to under paragraphs *(a)* to *(e)* as may be determined by the Bank;

"community banking" means the provision of a banking business or financial service to an individual, a micro, small and medium enterprise or household within a limited geographical area;

"concerted practice" has the meaning assigned to the words in the Competition and Consumer Protection Act; Cap. 417

"consolidated supervision" means a group-wide approach by the Bank to supervise a financial service provider that belongs to a banking group taking into account the risks of that banking group;

"consumer" means a person who accesses or uses, has accessed or used or intends to access or use, a financial service or financial product and is—

(a) a natural person;

(b) a group of natural persons, including a partnership, club, charity, trust or other unincorporated body; or

(c) an incorporated body categorised as a micro, small and medium enterprise;

"contingent convertible instrument" means a debt instrument that converts to equity on the occurrence of a specific trigger;

"control" means a relationship where a person, alone or acting jointly with other persons—

(a) owns more than twenty-five percent of the issued share capital of the financial service provider;

(b) is entitled to cast a majority of the votes that may be cast at a general meeting of the financial service provider, or has the ability to control the casting of a majority of those votes, either directly or through a controlled entity of that person;

(c) is able to appoint or to veto the appointment of a majority of the directors of the financial service provider;

(d) is a holding company and the financial service provider is a subsidiary of that company;

(e) in the case of a trust, has the ability to—

(i) control the majority of the votes of the trustees;

(ii) appoint the majority of the trustees; or

(iii) appoint, or change, the majority of the beneficiaries of the trust; or

(f) has the ability to significantly influence the management, policies, strategies, governance and financial affairs of the financial service provider in a manner comparable to a person who, in ordinary commercial practice, can exercise control as referred to under paragraph *(a)* to *(e)*;

"corporate restructuring transaction" means a merger, take-over, amalgamation, reconstruction or acquisition where an entity, directly, or indirectly, sells, disposes, transfers,

acquires or establishes control over the whole or part of the business of a financial service provider or where two or more financial service providers or another entity agree to adopt arrangements for common ownership or control over the whole or part of the business of a financial service provider, and includes arrangements by an entity outside the Republic which affect a financial service provider within the Republic;

"counter cyclical capital buffer" means an amount of capital determined by the Bank to be maintained by a bank or financial institution where there is excessive build-up of credit or other factors that are likely to lead to systemic risk;

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

"credit reference bureau" means a credit reporting agency licensed by the Bank in accordance with the Credit Reporting Act; Cap. 411

"Credit Registry" has the meaning assigned to the words in the Credit Reporting Act; Cap. 411

"credit report" has the meaning assigned to the words in the Credit Reporting Act; Cap. 411

"credit reporting system" means infrastructure used for a credit report under the Credit Reporting Act; Cap. 411

"customer" means a person who accesses or uses, has accessed or used or intends to access or use, a financial service or financial product;

"deposit" means—

(a) an amount of money received by a bank or financial institution in the ordinary course of business that—

(i) the bank or financial institution may convert into assets at its own risk; or

(ii) is repayable on demand or at a specified or unspecified date, or on terms agreed to, by, or on behalf of, the person making the payments; and

(b) other obligations of a bank or financial institution as the Bank may determine;

"Deputy Registrar" means a person appointed as Deputy Registrar under section;

"director" has the meaning assigned to the word in the Companies Act; Cap. 388

"distressed institution" means a bank or financial institution whose liquidity or solvency is impaired or may become impaired and includes any of the following:

(a) is under-capitalised or has liquidity shortfalls;

(b) failure to meet regulatory requirements;

(c) weak corporate governance, risk management or internal controls;

(d) significant weaknesses in implementing measures relating to anti-money laundering or countering of terrorism financing and proliferation financing; or

(e) rapid deterioration in asset quality or earnings;

"eligible contract" means a financial agreement and includes a derivative contract, securities financing transaction, foreign exchange contract, collateral arrangement or any other financing contract determined by the Bank that qualifies for treatment in close-out netting under insolvency or resolution;

"equity interest in a person" means, in relation to a—

(a) company, shares issued by the company, which entitle the registered holder or bearer of the shares to the profits of the company; or

(b) partnership, association or other body of persons acting jointly, any right to share in the profits of that partnership, association or other body of persons acting jointly;

"equity interest in a property or undertaking" means an ownership interest, and includes a right to share in the profits of the operation or proceeds of disposal of the property or undertaking;

"executive director" means, in relation to a financial service provider, a director who is involved in the day-to-day management of a financial service provider or that financial service provider's affiliate, subsidiary or associate;

"failed institution" means a bank or financial institution that is no longer viable or likely to no longer be viable and has no reasonable prospects, with reference to timing and other relevant circumstances, of returning to viability on grounds of being—

(a) significantly under-capitalised;

(b) insolvent or likely to be insolvent; or

(c) unable to meet the bank or financial institution's financial obligations as they fall due, whether or not the bank or financial institution is solvent;

"financial business" means a person, as the Bank may determine, that conducts a financial service, except a financial service for the acceptance of deposits;

"financial business licence" means a licence granted by the Bank under section 13;

"financial inclusion" means access to, and informed usage of, a broad range of quality and affordable financial services and financial products that meet the needs of individuals and businesses in a fair, simple, responsible and sustainable manner;

"financial institution" means a company, other than a bank or financial business, licensed to provide a financial service;

"financial institution licence" means a licence granted by the Bank under section 13;

"financial product" means a facility through which, or through the acquisition of which, a person makes a financial investment, manages financial risk or makes non-cash payments;

"financial service" includes—

(a) commercial or customer financing services;

(b) brokering;

(c) factoring, with or without recourse;

(d) finance leasing;

(e) financing of commercial transactions, including forfaiting;

(f) issuance and administration of credit cards or debit cards;

(g) issuance of guarantees, performance bonds or letters of credit, except guarantees or performance bonds issued by insurance companies;

(h) issuance and administration of payment, credit or debit cards and, in collaboration with third party service providers determined by the Bank, operate payment systems, credit card and debit card systems;

(i) provision of secured or unsecured advances or credit facilities;

(j) dealing in securities;

(k) payment of a cheque or any other demand order drawn or issued by a customer and payable from deposits held by that customer;

(l) purchase and sale of foreign exchange;

(m) acceptance of deposits;

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

(o) micro-financing;

(p) development financing;

(q) housing finance; and

(r) any other service that the Bank may designate, except a service relating to the underwriting, marketing or administration of contracts of insurance or re-insurance;

"financial service provider" means a bank, financial institution or financial business;

"financial system" has the meaning assigned to the words in the Bank of Zambia Act, 2022;

Act No. 5 of 2022

"fit and proper person" means a person who is suitable for a specific responsibility assessed in relation to fit and proper requirements determined by the Bank;

"fit and proper requirements" means the criteria determined by the Bank under section 51;

"foreign company" has the meaning assigned to the words in the Companies Act;

Cap. 388

"foreign financial service provider" means a financial service provider that is not incorporated in the Republic;

"holding company" has the meaning assigned to the words in the Companies Act; Cap. 388

"home supervisor" in relation to a financial service provider, means a competent authority responsible for supervising a financial service provider or banking group on a consolidated basis;

"independent non-executive director" means a non-executive director who is not under any undue influence that would impede that director's exercise of objective judgement;

"insider" means a—

(a) senior officer, director or shareholder of a financial service provider or an associate of the senior officer, director or shareholder;

(b) person who participates, or has the authority to participate, in functions relating to policy making of a financial service provider, whether or not that person is employed by the financial service provider;

(c) financial service provider in which a person referred to under paragraph *(a)* or *(b)* owns shares, directly or indirectly, alone or with one or more other persons specified in those paragraphs; or

(d) company in which a financial service provider owns shares;

"insolvency" means a situation where a financial service provider has—

(a) stopped paying debts in the ordinary course of business or is failing to pay debts when they fall due;

(b) assets that are insufficient to meet liabilities; or

(c) regulatory capital which is at zero or lower;

"insured deposit" means a deposit insured up to a coverage limit determined by a relevant authority responsible for deposit insurance;

"key fact statement" means a standardised disclosure document designed to provide borrowers with clear, concise and transparent information on the terms and conditions of a credit facility;

"legally disqualified" means the absence of legal capacity as provided for under section 4 of the Mental Health Act; Cap. 305

"law enforcement agency" has the meaning assigned to the words in the Financial Intelligence Centre Act; Cap. 384

"licence" means a licence specified under section 9;

"licensee" means a person issued with a licence under this Act;

"linked financial service" means a product sold or service offered as a mandatory addition to the provision of a banking service or financial service;

"loss bearing hierarchy" means the order in which creditors absorb losses in relation to a financial service provider placed in liquidation;

"manager" means an officer of a financial service provider who is in a position to control, direct or influence decision making in a matter relating to a banking business or financial service provided by that financial service provider;

"market conduct" means the manner by which a financial service provider—

(a) designs and delivers the financial service provider's financial products or financial services; and

(b) manages the financial service provider's relationships with its consumers and the public;

"master agreement" means a contract that governs current and future transactions between two parties in a specific financial relationship or commercial relationship used in derivatives, securities lending, repurchase agreements and foreign exchange markets;

"minimum capital requirements" means the minimum capital requirements determined by the Bank under section 59;

"minimum paid-up capital" means the amount of money required to be paid-up for common shares issued by a financial service provider as determined by the Bank;

"money circulation scheme" means a plan, arrangement, agreement or understanding, between two or more persons that involves the pooling and distribution of funds by recruitment of subscribers, and which, for its continuous existence and realisation of its benefits, substantially depends on the incremental recruitment of subscribers;

"money laundering" has the meaning assigned to the words in the Prohibition and Prevention of Money Laundering Act; Cap. 99

"netting" means the off-setting of exposures between a financial service provider and another party into a single exposure in a settlement system;

"new entity" means a financial service provider formed by a corporate restructuring transaction;

"nominee shareholder" has the meaning assigned to the word "nominee" in the Companies Act; Cap. 388

"non-executive director" in relation to a financial service provider, means a director who is not involved in the day-to-day management of a financial service provider, or the management of that financial service provider's affiliate, subsidiary or associate;

"non-performing loan" means a credit facility in respect of which payment of the principal or interest is in arrears for more than ninety days or a longer period as the Bank may determine;

"old entity" means a financial service provider existing prior to a corporate restructuring transaction;

"open finance" means a financial innovation that facilitates the sharing of customer data, with the consent of the customer from one regulated entity to another regulated entity or a third party authorised by the Bank;

"ordinary course of business" means the usual regular, and customary activities that a financial service provider undertakes as part of its normal operations consistent with past practices, industry norms and legal expectations;

"Patents and Companies Registration Agency" means the Patents and Companies Registration Agency continued in existence under the Patents and Companies Registration Agency Act, 2020; Act No. 4 of 2020

"payment system" has the meaning assigned to the words in the National Payment System Act, 2025;

Act No. of 2025

"port of entry" has the meaning assigned to the words in the Immigration Control Act, 2025;

Act No. of 2025

"primary capital" means the sum of the—

(c) common equity tier one capital; and

(d) additional tier one capital, as determined by the Bank;

"principal administrative office" means the office where the overall administration of the affairs of a financial service provider is conducted, other than a branch;

"professional advisor" means a third party appointed to render expert advice to, or perform specific functions for, a bank or financial institution;

"proliferation financing" has the meaning assigned to the words in the Anti-Terrorism and Non-Proliferation Act;

Cap. 128

"purchase and assumption transaction" means a resolution option in which a healthy bank or financial institution or a group of investors assume part, or all, of the obligations and purchase part, or all, of the assets of a bank or financial institution in resolution;

"register" means the register of financial service providers kept and maintained by the Bank under section 27;

"Registrar" means a person appointed as Registrar under section 7;

"Registrar of Companies" means a person appointed as Registrar under the Patents and Companies Registration Agency Act, 2020;

Act No. 4 of 2020

"Registrar of Lands and Deeds" means a person appointed as Registrar under the Lands and Deeds Registry Act;

Cap. 185

"regulatory capital" means the sum of the—

(a) primary capital; and

(b) secondary capital, as determined by the Bank;

"regulatory statement" means rules, directives, guidelines, orders, circulars or bulletins issued by the Bank for the effective implementation of this Act;

"related party" in relation to a financial service provider means—

(a) a person with significant shareholding, or is a beneficial owner, in a financial service provider or a financial service provider that has significant shareholding or has beneficial interest;

(b) a director or senior officer of a financial service provider;

(c) a director or senior officer of a corporate that controls the financial service provider;

(d) a director or senior officer of a corporate which the financial service provider controls;

(e) a person that can exert significant influence on the directors or senior management of the financial service provider;

(f) an entity that is controlled by a person referred to under paragraphs *(a)* to *(e)*;

(g) a person who has, or class of persons who have, been designated by the Bank as associated persons as a result of past or present interest in, or relationship with, the financial service provider which may affect the judgement of a financial service provider in respect of a transaction; or

(h) the spouse, parent, child, brother or sister of a person referred to under paragraphs *(a)* to *(g)* or of the person's spouse's parent, child, brother or sister;

"repealed Acts" means the Banking and Financial Services Act, Cap. 387 and the Money-lenders Act, Cap. 398 repealed under section 214;

"representative office" means an office in the Republic incorporated or registered by or representing a foreign financial service provider;

"resolution" means the process by which the Bank manages the failure, or likely failure, of a bank or financial institution in a manner that safeguards—

(a) financial stability;

(b) critical functions performed by the bank or financial institution; or

(c) the interests of depositors of the bank or financial institution.

"resolution manager" means a person appointed as resolution manager under section 135;

"resolution option" means a resolution option specified under section 139;

"senior officer" means a chief executive officer, chief financial officer or manager of a financial service provider;

"settlement system" has the meaning assigned to the words in the National Payment System Act, 2025;

Act No. of 2025

"shell bank" means an entity that does not have a physical presence in the country in which the entity is incorporated and licensed and which is unaffiliated with a regulated banking group that is subject to consolidated supervision;

"significant shareholding" means a direct or indirect shareholding or beneficial interest of ten percent or more of the share capital of a financial service provider or a shareholding or any other beneficial interest that makes it possible to exercise significant influence, alone or jointly, over the financial service provider, and the words "significant shareholder" shall be construed accordingly;

"significantly undercapitalised" in relation to a bank or financial institution means minimum capital of less than fifty percent of minimum capital requirements as the Bank may determine;

"solo basis" means the financial position of a financial service provider as a stand-alone entity;

"subsidiary" has the meaning assigned to the word in the Companies Act;

Cap 388

"supervisory intensity" means the degree and frequency of oversight applied by the Bank to a financial service provider based on the financial service provider's risk profile;

"systemically important bank or financial institution" means a bank or financial institution designated by the Bank as a systemically important bank or financial institution under section 62;

"terrorism financing" has the meaning assigned to the words in the Anti-Terrorism and Non-Proliferation Act; Cap. 128

"tribunal" means an ad hoc tribunal constituted under section 179;

"trust" has the meaning assigned to the word in the Land (Perpetual Succession) Act, 2025; Act No. of 2025

"under-capitalised" in relation to a bank or financial institution means a financial service provider whose capital does not comply with capital adequacy requirements determined, in rules, by the Bank, but is not significantly undercapitalised;

"unsafe and unsound practice" means—

(a) conducting the affairs of a financial service provider in a manner that is detrimental to the stability of the financial sector or the interests of depositors and creditors, including-

(i) accumulating a high volume of non-performing loans;

(ii) making secured loans based on inadequate or inappropriate collateral;

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

(iv) maintaining minimum capital below a determined level;

(v) advancing loans to a borrower without regard to responsible finance as provided under this Act;

(vi) maintaining inadequate liquidity; or

(vii) weaknesses in corporate governance, risk management and internal controls;

(b) conduct that is prejudicial to the interests of the financial service provider;

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

(d) any other practice that the Bank may determine as unsafe and unsound practice;

"virtual banking service or financial service" means the conduct of a banking business or provision of a financial service through an electronic platform and conducted or provided without physical interaction between the financial service provider and a customer;

"voting shares" means a class of shares of a financial service provider that gives a shareholder the right to vote on a resolution at a meeting of the financial service provider;

"vulnerable consumer" means a consumer, who, as a result of socio-demographic characteristics, behavioural characteristics, personal situations or market environment—

(a) is at risk of experiencing negative outcomes in the market;

(b) has limited ability to maximise the well-being of the consumer;

(c) has difficulty in obtaining or assimilating information;

(d) is impaired from choosing or accessing a suitable banking service or financial service; or

(e) is susceptible to unfair marketing practices;

"warehouse" means the temporary holding or accumulation of shares by an intermediary, nominee or related party, often with the intention of transferring control or ownership of the shares at a later stage; and

"Zambia Institute of Chartered Accountants" means the Zambia Institute of Chartered Accountants established under the Accountants Act.

Cap. 390

Application of Act

3. This Act applies to financial service providers based on the principle of proportionality as the Bank may determine.

PART II

ADMINISTRATION OF ACT

Administration of Act

4. The Bank shall be responsible for the administration of the provisions of this Act.

Functions of Bank
Cap. 1
Act No. 5 of 2022

5. Subject to the Constitution and the Bank of Zambia Act, 2022, the Bank shall regulate and supervise financial service providers for purposes of primarily maintaining the safety and soundness of financial service providers and the stability of the financial system.

Delegation of functions

6. (1) The Bank may, on terms and conditions that the Bank may determine, delegate any of the Bank's functions under this Act to an agent.

(2) A delegation made under subsection (1) shall not prevent the Bank from performing the functions so delegated.

Appointment of Registrar and Deputy Registrar

7. (1) The Bank shall appoint, in writing, suitably qualified persons who are officers of the Bank, as Registrar and Deputy Registrar on terms and conditions as the Bank may determine.

(2) The Registrar shall be responsible for—

(a) the issuance, suspension and cancellation of a licence of a financial service provider under this Act;

(b) varying, amending or restricting a licence under this Act;

(c) enforcing terms and conditions of a licence issued under this Act;

(d) maintaining and administering a register of financial service providers under section 27(1);

(e) authorisation of corporate restructuring transactions;

(f) approving the appointment of senior management, directors and shareholders of a financial service provider;

(g) taking possession and resolution of financial service providers under the direction of the Bank; and

(h) any other functions as may be delegated by the Bank.

(3) The Registrar may, subject to the other provisions of this Act and to the general and special direction of the Bank, delegate, in writing, any of the Registrar's functions to the Deputy Registrar.

PART III
Licensing of Financial Service Providers

Power to determine licensing criteria for financial service provider Act No. 5 of 2022

8. The Bank shall determine the licensing criteria under this Act for purposes of regulation and supervision of financial service providers in accordance with the Bank of Zambia Act, 2022.

Types of licences

9. The following licences shall be issued by the Bank under this Act:

(a) a banking licence, authorising a licensee to conduct a banking business;

(b) a financial business licence, authorising a licensee to conduct a financial business;

(c) a financial institution licence, authorising a licensee to provide a determined financial service;

(d) a community banking licence, authorising a licensee to provide a community banking service;

(e) an alternative financial service licence, authorising a licensee to provide an alternative financial service;

(f) a licence to provide a virtual financial service or banking service; and

(g) any other licence the Bank may determine.

Prohibition of conducting banking business or providing financial service without licence

10. (1) A person shall not conduct a banking business or provide a financial service without a licence issued under this Act.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding three million penalty units or to imprisonment for a term not exceeding thirty years, or to both.

(3) A person who contravenes subsection (1) shall, in addition to the penalty specified in subsection (2) and where that person obtains funds from the public, repay the funds in a manner that the Bank may determine.

(4) The funds referred to under subsection (3) shall, where the funds remain unpaid at the end of the period determined by the Bank for repayment, be recoverable by the Bank and kept in trust for a person lawfully entitled to the funds.

(5) A person referred to under subsection (4), may claim the funds kept in trust by the Bank within a period of six years from the date the funds are recovered by the Bank.

(6) A claim shall not be made in respect of funds recovered by the Bank on the expiration of the period specified under subsection (5) after which the funds shall be forfeited to the State.

Name clearance

11. (1) A person who intends to apply for a licence under this Act, shall apply to the Bank for approval of the proposed name in a manner and form as may be determined by the Bank.

(2) The Bank shall, within ten days of receipt of an application under subsection (1), approve or reject the application.

(3) The Bank may approve a proposed name where the proposed name—

(a) suggests that the applicant shall be conducting a banking business or providing a financial service;

(b) is not identical to, or does not resemble, a name of an existing financial service provider in a way that the proposed name may deceive or mislead the public; and

(c) is not considered inappropriate by the Bank.

(4) The Bank shall, where the Bank rejects a proposed name under subsection (2), inform the applicant, in writing, stating the reasons for the rejection.

(5) A proposed name approved by the Bank under subsection (3) shall be subject to clearance and approval under the Companies Act. Cap. 388

Application for licence to conduct banking business or provide financial service

12. (1) A person who intends to conduct a banking business or provide a financial service and whose proposed name has been approved by the Bank under section 11, shall apply to the Bank for a licence in a determined manner and form on payment of a determined fee.

(2) An application for a licence under subsection (1) shall be accompanied by the following:

(a) certified copies of the certificate of incorporation, articles of association or other constitutive documents of the applicant;

(b) policies on governance, risk management, internal controls, financial crimes management and outsourcing;

(c) physical and postal addresses of the applicant's principal administrative office;

(d) permanent residential addresses of the directors and senior officers of the applicant;

(e) names and permanent residential addresses of each shareholder of a class or series of shares issued by the applicant;

(f) location of each branch proposed to be opened by the applicant, and in the case of a mobile office or community banking, the area proposed to be served by the applicant;

(g) detailed business plan including financial projections of the applicant;

(h) amount and evidence of source of regulatory capital of the applicant;

(i) names of the applicant's associates and affiliates and the nature of the relationship;

(j) names, nationality and residence of the beneficial owners of the applicant;

(k) a resolution by shareholders and board resolution requiring the applicant to make an application for a licence to the Bank;

(l) consent of a regulatory authority where the applicant is a foreign company; and

(m) any other requirements as the Bank may determine based on the principle of proportionality.

(3) The application shall be considered complete only after the Bank gives written notice to the applicant that the application is complete, after which the application shall be determined by the Bank within one hundred and twenty days.

(4) An applicant may withdraw an application for a licence by notice, in writing, to the Bank at any time before the Bank makes a decision on the application.

(5) The Bank may, at any time, on receipt of an application for a licence but before determining the application, direct the applicant to provide the Bank with additional information as the Bank considers necessary to enable the Bank determine the application.

(6) The Bank may, where the applicant fails to provide the additional information referred to under subsection (5) within a period determined by the Bank, reject the application.

(7) The Bank shall, in determining an application for a licence made under subsection (1), consider the following requirements:

(a) sources and adequacy of the capital and the ability of shareholders to provide ongoing capital support, where required;

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

(c) transparency and adequacy of the legal, operational, managerial, governance and ownership structures;

(d) fit and proper requirements of the directors, significant shareholders, beneficial owners, founders or persons proposed to be responsible for the management of the applicant;

(e) in the case of a mobile office or community banking, convenience and needs of the community intended to be served by an applicant;

(f) prospects for a viable operation of the applicant; and

(g) any other requirements that the Bank may determine.

Grant of application for licence

13. (1) The Bank shall, where the Bank is satisfied that an applicant meets the requirements of this Act, grant a licence to the applicant to conduct a banking business or provide a financial service.

(2) Subject to section 12, the Bank may grant a licence under this Act to a foreign company if the—

(a) foreign company is a financial service provider in the country where the foreign company's principal place of business is located;

(b) Bank determines that the foreign financial service provider is subject to adequate consolidated supervision by a foreign competent authority in the country of incorporation; and

(c) Bank obtains consent from the home supervisor of the foreign financial service provider.

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

(a) contain terms and conditions that the Bank may determine;

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

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

Rejection of application for licence

14. (1) The Bank shall reject an application for a licence where—

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

(b) an application is made by an applicant who previously held a licence that was cancelled by the Bank;

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

(d) the proposed legal, managerial, operational and ownership structures of the applicant are determined by the Bank to be inadequate and may hinder effective supervision on a solo basis, consolidated basis or the implementation of corrective measures; or

(e) an applicant is determined by the Bank to be a shell bank.

(2) Where the Bank rejects an application for a licence under subsection (1), the Bank shall inform the applicant of the decision, in writing, within seven days of the decision, stating the reasons for the rejection.

Validity of licence

15. A licence issued under this Act shall remain valid unless surrendered by a licensee, or suspended or cancelled by the Bank.

Display of licence

16. A licensee shall display a licence issued under this Act in a conspicuous place at the licensee's principal administrative office and at every other premises where the licensee carries on business or electronic media as the Bank may determine.

Transfer, pledge, assignment or encumbrance of licence

17. A licence granted under this Act shall not be transferred, pledged, assigned or encumbered in any manner.

Variation of licence

18. (1) The Bank may, on its own motion or on the application of a licensee in a determined manner and form by the Bank, vary the terms and conditions of a licence.

(2) The Bank shall, where the Bank intends to vary the terms and conditions of a licence on its own motion, give notice, in writing, to the licensee of the Bank's intention to vary the terms and conditions of the licence in a manner as may be specified in the notice.

(3) The licensee may, within thirty days of receipt of a notice referred to under subsection (2), make written submissions to the Bank on the proposed variation to the terms and conditions of a licence.

(4) The Bank shall, in determining whether to vary the terms and conditions of a licence, consider the requirements specified under section 12.

(5) The Bank shall, where the Bank varies the terms and conditions of a licence under this section, notify the licensee of the variation, in writing, and state the date on which the variation shall take effect.

(6) The Bank shall not pay compensation to a licensee for variation to the terms and conditions of a licence under this section.

Amendment of licence

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

(a) the name of the licensee has changed;

(b) the address of the principal administrative office of the licensee has changed; or

(c) there are other changes that, in the opinion of the Bank, require an amendment.

(2) The Bank shall, before amending a licence under subsection (1), publish a notice to the public in the *Gazette* and in a daily newspaper of general circulation in the Republic or other electronic media as the Bank may determine.

(3) A person may object to an amendment to a licence, in writing, within fourteen days of the date of publication of the notice referred to under subsection (2).

(4) A person who objects to an amendment to a licence under subsection (3) may submit to the Bank written submissions and evidence in support of the objection.

(5) The Bank shall, where a person objects to an amendment to a licence under this section, consider the objection as determined in a regulatory statement.

(6) The Bank shall, where there is no objection to an amendment to a licence under this section, amend a licence within thirty days from the date of publication of the notice referred to under subsection (2).

Surrender of licence

20. (1) A licensee shall, where the licensee intends to surrender a licence issued under this Act, notify the Bank, in writing, of the licensee's intention to surrender the licence.

(2) A licensee shall only surrender a licence under subsection (1) where the—

(a) Bank is satisfied that the liabilities of the licensee are, or shall be, satisfied; and

(b) requirements of the Companies Act, or the Corporate Insolvency Act, where applicable, have been, or shall be, complied with.

Cap. 431

(3) Where a licence has been surrendered in accordance with this section, section 21(7), (8) and (9), shall apply with the necessary modifications.

Suspension or cancellation of licence

21. (1) Subject to this Act or any other written law, the Bank may suspend or cancel a licence where a licensee—

(a) obtained the licence by fraud, false information or misrepresentation;

(b) breaches a term or condition of the licence;

(c) contravenes this Act or any other written law;

(d) effects a corporate restructuring transaction without the prior written approval of the Bank;

(e) fails to comply with a decision, rule or regulatory statement made by the Bank in accordance with this Act;

(f) fails to commence the licensed activity to which the licence was granted within twelve months from the date of grant of the licence;

(g) enters into receivership, liquidation or takes an action for voluntary winding- up or dissolution;

(h) enters into a scheme or arrangement other than a corporate restructuring transaction;

(i) ceases to conduct the banking business or provide the financial service to which the licence was granted;

(j) is the subject of an order made by a court for compulsory winding-up or dissolution; or

(k) engages in unsafe and unsound practice.

(2) The Bank shall, before suspending or cancelling a licence in accordance with subsection (1), notify the licensee, in writing, of the Bank's intention to suspend or cancel the licence and shall—

(a) give reasons for the intended suspension or cancellation; and

(b) require the licensee to show cause, within a period of thirty days, why the licence should not be suspended or cancelled.

(3) Subsection (2) shall not apply to a licensee who is authorised by the Bank to take deposits.

(4) The Bank shall, in making the Bank's decision on the suspension or cancellation of a licence, consider the submission made by the licensee under subsection (2)*(b)*.

(5) The Bank may, before cancelling a licence, suspend a licence for a specified period and on terms and conditions that the Bank may determine.

(6) The Bank may suspend or cancel a licence if the licensee, after being notified under subsection (2), fails to show cause and does not take any remedial measures, to the satisfaction of the Bank, within the period specified in that subsection.

(7) The Bank shall not suspend or cancel a licence if the licensee takes remedial measures to the satisfaction of the Bank within the period referred to in subsection (2).

(8) The Bank shall, where a licence has been suspended under this section, determine the terms and conditions of the suspension, including the following:

(a) the licensee shall cease to be entitled to the rights and benefits granted by the licence and this Act; and

(b) the suspension of the licence shall not relieve the licensee of the licensee's obligations that the licensee incurred or assumed during the validity of the licence.

(9) A licensee shall, where a licence is cancelled—

(a) cease, with effect from the date of the cancellation, to be entitled to the rights and benefits granted by the licence and this Act;

(b) cease, with effect from the date of the cancellation, to conduct the business or provide a financial service for which the licence was granted;

(c) surrender the licence to the Bank; and

(d) take down the licence displayed in every place of business of the licensee or electronic media as the Bank may determine.

(10) The Bank shall, where the Bank suspends or cancels a licence in accordance with this section within fourteen days, publish the suspension or cancellation in the *Gazette* and a daily newspaper of general circulation in the Republic or other electronic media as the Bank may determine.

(11) A licensee whose licence is cancelled shall not enter into a new contract, renew or vary a contract relating to the conduct of a banking business or provision of a financial service.

Duplicate licence

22. (1) A licensee whose licence is lost, defaced or damaged shall apply to the Bank for a duplicate licence in a determined manner and form on payment of a fee determined by the Bank.

(2) The Bank shall, where an application made under subsection (1) meets the requirements of this Act, issue a duplicate licence.

Moratorium

23. (1) The Bank may place a moratorium on the issuance of a licence where the Bank determines that placing the moratorium is necessary in the public interest or to preserve the stability or integrity of the financial system.

(2) The Bank shall determine the processes for placing a moratorium on the issuance of a licence under subsection (1).

Prohibition for opening or closing of service centre, branch, subsidiary, etc.

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

(2) A financial service provider who contravenes subsection (1) is liable to pay an administrative penalty not exceeding four hundred thousand penalty units.

Application to open or close service centre, branch, subsidiary

25. (1) A financial service provider that intends to open or close a service centre, branch, subsidiary or other establishment shall apply to the Bank for approval on payment of a fee as determined by the Bank.

(2) Where the financial service provider referred to under subsection (1) is a bank or financial institution, the bank or financial institution shall notify the Bank of its intention to open or close a service centre, branch, subsidiary or other establishment sixty days before the opening or closure.

(3) Where the financial service provider referred to under subsection (1) is a financial business, the financial business shall notify the Bank of its intention to open or close a service centre, branch, subsidiary or other establishment thirty days before the opening or closure.

(4) The Bank shall, on receipt of a notification under subsections (2) and (3), grant approval to open or close a service centre, branch, subsidiary or other establishment.

Representative office

26. (1) The Bank shall issue a licence under this Act to a representative office.

(2) The Bank shall determine the licensing and regulatory requirements for a representative office under this Act.

Register of financial service providers

27. (1) The Bank shall keep and maintain a register of financial service providers in which shall be entered the—

(a) names, addresses and other particulars of financial service providers under this Act; and

(b) names and particulars of financial service providers whose licences are surrendered, suspended or cancelled under this Act.

(2) A register referred to under subsection (1) shall be open for inspection by members of the public during Bank working hours.

(3) Despite subsection (2), a register referred to under subsection (1) may be accessed by members of the public electronically.

Publication of financial service providers

28. The Registrar shall publish, annually, in the *Gazette*—

(a) the licences issued to, and the names of, financial service providers under this Act; and

(b) a list of licences suspended or cancelled in accordance with this Act.

PART IV

Ownership and Control of Financial Service Providers

Prohibition of acquiring shares, beneficial interest, becoming beneficial owner, etc. without approval

29. (1) A person shall not acquire shares, acquire beneficial interest, become a beneficial owner or transfer to another person any shares or other form of ownership or control in a financial service provider without the prior written approval of the Bank.

(2) A person who contravenes subsection (1) is liable to pay an administrative penalty not exceeding one million penalty units.

(3) A person who contravenes subsection (1) shall, in addition to the penalty specified in subsection (2), forfeit any rights relating to voting or payment of dividends and the acquisition of the shares shall be null and void.

Application for approval to acquire shares, beneficial interest, become beneficial owner, etc.

30. (1) A person who intends to acquire shares, acquire beneficial interest, become a beneficial owner or transfer to another person any shares or other form of ownership or control in a financial service provider shall apply to the Bank for approval in a manner and form determined by the Bank.

(2) The Bank shall, on receipt of an application under subsection (1), direct the applicant to submit, within fourteen days from the date of the application, information that the Bank may determine for purposes of vetting the application.

(3) The Bank shall, within sixty days of receipt of an application under subsection (1), grant or reject the application.

(4) The Bank shall, where an applicant meets the requirements for approval under this Act, grant approval to the applicant.

(5) The Bank may, where the Bank grants approval under subsection (3), impose prudential conditions as the Bank may determine.

(6) The Bank shall, where the Bank rejects an application under subsection (3), inform the applicant, in writing, stating the reasons for the rejection.

(7) Despite subsections (1) to (6), a person may acquire shares or become a beneficial owner through a stock exchange by obtaining approval from the Bank, as the Bank may determine, where that person cumulatively acquires ten percent or more of the shares or beneficial interest in a financial service provider.

(8) A person who contravenes subsection (7) is liable to the penalty specified under section 29(2) and (3).

Ownership of shares in financial service provider by nominee shareholder

31. A person may become a nominee shareholder in a financial service provider only if the beneficial owner is identifiable, verifiable and complies with this Act.

Notification of adverse information on shareholder or party with controlling interest

32. A financial service provider shall notify the Bank where that financial service provider becomes aware of any adverse information relating to a shareholder or party with controlling interest which may affect the fit and proper requirements of the shareholder or party with controlling interest.

Charge, use of shares as collateral or encumbrance by beneficial owner

33. A beneficial owner of a financial service provider shall not charge, use as collateral or encumber shares held by that beneficial owner in the financial service provider.

Limit on voting control

34. (1) A person and that person's associates shall not, without prior written approval of the Bank—

(a) acquire a beneficial interest in the voting shares of a bank or financial institution; or

(b) enter into a voting arrangement or other agreement that would enable that person or another person to control more than twenty-five percent of the total votes cast at a meeting of a bank or financial institution.

(2) Subsection (1) shall not apply—

(a) where the Government intends to establish or acquire shares in a financial service provider; or

(b) to a company that has more than fifty-one percent of the company's shares publicly traded on a securities exchange as the Bank may determine, whether within, or outside, the Republic.

(3) Associated persons shall be regarded as a single person for purposes of determining the aggregate number of shares held by the associated persons in a bank or financial institution.

(4) The Bank may direct a financial service provider to suspend a shareholder's right to vote or receive dividends for any portion of the shares that are in excess of the limit of voting control specified under subsection (1).

(5) A financial service provider shall, where the financial service provider is directed by the Bank under subsection (4), submit, within thirty days of the direction by the Bank, a plan to dispose of any portion of the shares that are in excess of the limit of voting control to reduce a shareholder's voting control to the limit specified under this Act.

(6) The Bank may direct a financial service provider to implement or vary the plan submitted under subsection (5).

(7) A beneficial owner shall exercise the beneficial owner's voting rights only on shares that are entered, in the name of the beneficial owner, on the share register of a bank or financial institution.

(8) Subject to the other provisions of this Act, this section does not prevent a person from acquiring voting shares in a financial service provider for the purposes of implementing a corporate restructuring transaction in accordance with this Act.

(9) A person that contravenes this section is liable to pay an administrative penalty not exceeding one million penalty units.

Voting control limits for financial business

35. The Bank may determine voting control limits for a financial business.

Restriction on ownership of shares by trusts

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

Prohibition of effecting corporate restructuring transaction without approval

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

(2) A financial service provider that contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding ten percent of that financial service provider's annual turnover or five hundred thousand penalty units, whichever is higher.

Application for approval to effect corporate restructuring transaction

38. (1) Subject to section 37, a financial service provider may effect a corporate restructuring transaction with another company that is not a financial service provider, if the corporate restructuring transaction is in furtherance of the business of the financial service provider.

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

(3) A financial service provider may effect a corporate restructuring transaction with another financial service provider or another company where the corporate restructuring transaction involves the sale, transfer, disposal, acquisition or establishment of control, directly or indirectly, in whole or in part of the business of the financial service provider.

39. (1) A financial service provider that intends to effect a corporate restructuring transaction shall apply to the Bank for approval in a manner and form determined by the Bank.

(2) An application referred to under subsection (1) shall be accompanied by the following information and documents:

(a) the name of each financial service provider or company involved in the proposed corporate restructuring transaction;

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

(c) financial and legal due diligence;

(d) share purchase agreement and any financing agreement related to the corporate restructuring transaction;

(e) consent from the home supervisor;

(f) audited financial statements for the preceding financial year;

(g) business plan including projected financial statements;

(h) a labour transition plan for employees of the entities involved in the corporate restructuring transaction;

(i) an information communication technology integration plan detailing the systems to be integrated and decommissioned and the rationale for the information communication technology integration plan;

(j) a detailed plan for regulatory consolidation with appropriate timelines to achieve consolidated reporting; and

(k) a plan for transitional governance arrangements for the parties to a corporate restructuring transaction prior to the issuance of the amalgamation certificate under the Companies Act; and Cap. 388

(l) any other information and documents as the Bank may determine.

(3) The Bank shall, in determining an application for approval to effect a corporate restructuring transaction under subsection (1), consider the—

(a) capital adequacy of each financial service provider or a company for purposes of the proposed corporate restructuring transaction;

(b) general financial condition, resources and history of each financial service provider or a company;

(c) fit and proper requirements of the beneficial owners, shareholders, directors and senior management of the new entity;

(d) prospects of profitability of the new entity's operation, if the corporate restructuring transaction is approved;

(e) probable effect of the corporate restructuring transaction on competition in the financial sector;

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(f) requirements of the Competition and Consumer Protection Act;

(g) financial integrity of the parties involved;

(h) adequacy and transparency of the legal, financial, operational, managerial, governance and ownership structures of the new entity; and

(i) impact of a proposed transfer or assumption of assets, rights, liabilities or obligations on the financial soundness and operational continuity of a financial service provider and the purchaser of the assets, rights, liabilities or obligations.

(4) The Bank shall, within one hundred and twenty days of receipt of a duly completed application as the Bank may determine, approve or reject the application.

(5) The Bank shall, where the Bank is satisfied that the financial service provider has met the requirements of this Act, approve the application and specify the date on which the proposed corporate restructuring transaction shall take effect.

(6) The approval of the Bank under subsection (5) shall, where a corporate restructuring transaction results in a merger or amalgamation, be subject to the issuance of an amalgamation certificate by the Patents and Companies Registration Agency or other legal requirements under the Companies Act.

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(7) The Bank shall, where the Bank rejects an application under subsection (4), inform the applicant, in writing, within seven days of the decision, stating the reasons for the rejection.

Effect of corporate restructuring transaction

40. (1) Where a corporate restructuring transaction takes effect in accordance with this Act—

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

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

(c) the new entity shall have the same rights and be subject to the same obligations as were, immediately before the transaction took effect, binding on the old entity or,

in the case of a transfer of assets and liabilities, the same rights and obligations as were applicable to the old entity with respect to the assets and liabilities so transferred;

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

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

(2) Following a corporate restructuring transaction, any assets, rights, liabilities and obligations of the old entity are considered to be transferred to the new entity in respect of which transfer a written law provides for registration, the new entity shall make an application, in writing, to the appropriate registration authority for registration of the transfer.

(3) Following a corporate restructuring transaction involving the sale, transfer, disposal, acquisition or establishment of control, directly or indirectly, of the whole or part of the business of a financial service provider, any assets, rights, liabilities and obligations of the transferor are considered to be transferred to the purchaser.

(4) Subject to subsection (2), the Registrar of Companies and the Registrar of Lands and Deeds shall make endorsements and alterations in the respective registers, for purposes of recording any transfer of property or rights and liabilities in the property arising from the corporate restructuring transaction where the Registrar of Companies and the Registrar of Lands and Deeds are satisfied that the—

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

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

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

PART V
CORPORATE GOVERNANCE

Responsibilities of directors

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41. (1) Subject to the Companies Act and this Act, a board shall be responsible for overseeing and controlling the affairs of a financial service provider.

(2) The functions of a board are to—

(a) formulate and ensure the implementation of policies of a financial service provider in accordance with this Act;

(b) ensure that sound corporate governance practices are integrated in the business operations of a financial service provider;

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

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

(e) constitute committees of the board;

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

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

(h) obtain approval from the Bank for any proposed amendments to the articles of association of the financial service provider;

(i) ensure that persons proposed for appointment as shareholders, directors or senior officers are fit and proper persons;

(j) report to the Bank on matters that may adversely affect the suitability of shareholders, directors and senior officers; and

(k) comply with requirements for anti-money laundering and countering terrorism financing and proliferation financing.

Board meetings initiated by Bank

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42. (1) Despite the provisions of this Act, the Companies Act, or the articles of association of a financial service provider, the Bank may, where the Bank considers necessary to safeguard the

stability and integrity of the financial system, the interests of the financial service provider or its customers, direct a board to convene a meeting within three days of the direction.

(2) The Bank may appoint an observer to a meeting of a board convened in accordance with this section.

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

(a) the quorum for the meeting shall be three directors or one third of the total number of directors, whichever is higher;

(b) decisions shall be taken by a simple majority of the directors present; and

(c) any decision taken in accordance with paragraph (b) shall be binding on a financial service provider.

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

Qualifications for appointment as director or senior officer

43. (1) A financial service provider shall obtain prior written approval of the Bank before appointing a director or senior officer as may be determined by the Bank.

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(2) Despite the Companies Act, or any other written law, a person is not qualified for appointment as a director or senior officer of a financial service provider if that person—

(a) is not a fit and proper person to hold the relevant office in accordance with this Act;

(b) is below the age of twenty-one years;

(c) has been adjudged bankrupt by a court or has made an arrangement or composition with that person's creditors, within, or outside, the Republic;

(d) has been convicted of an offence involving fraud or dishonesty;

(e) is legally disqualified;

(f) has been suspended or removed from office under this Act or any other written law;

(g) is subject of a disciplinary process, criminal proceeding, in relation to fraud, dishonesty or gross negligence, an investigation by a law enforcement agency or a warrant of arrest;

(h) has been a shareholder, director, or senior officer of a company that has—

(i) been declared insolvent; or

(ii) gone into liquidation or has entered into a composition or any other arrangement with creditors within or outside the Republic;

(i) has been removed by a court, within or outside the Republic, from an office of trust on grounds of misconduct or breach of that trust; or

(j) is an expatriate who does not meet additional requirements for appointment as director or senior officer as the Bank may determine.

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

(4) A person shall not be eligible for re-appointment to a board of the same financial service provider after serving the full period of the term.

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

(6) A bank or financial institution shall have a framework for dealing with cases where a shareholder, director or senior officer is being investigated by a law enforcement agency or has a warrant of arrest or is subject of a disciplinary process for fraud, dishonesty or gross negligence or is subject of criminal proceedings.

(7) A person who contravenes this section is liable to pay an administrative penalty not exceeding one million penalty units.

Independent non-executive directors to be in majority

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

(2) For purposes of this Act, a person who is a full-time salaried employee of a banking group shall not qualify for appointment as a non-executive director of the financial service provider.

Composition of board of financial business Cap. 388

45. Despite the Companies Act, a board of a financial business shall, as a minimum, consist of three members.

Balance of skills, diversity and expertise of director

46. (1) A board shall consist of directors with a balance of skills, diversity and expertise and collectively possess the relevant qualifications in relation to the size, complexity and risk profile of the financial service provider.

(2) The Bank may, where a financial service provider does not comply with the requirements under subsection (1), direct the financial service provider to reconstitute a board.

Reporting obligations of board and directors

47. (1) A board or each director individually shall immediately report in writing to the Bank if the board or director has, reason to believe that the financial service provider—

(a) may not be able to conduct the financial service provider's business as a going concern;

(b) appears to be, or is likely to be, unable to meet all or any of the financial service provider's obligations as they fall due; and

(c) does not, or may not, be able to meet the financial service provider's capital requirements under this Act.

(2) A board or each director individually shall report to the Bank on money laundering, terrorism financing and proliferation financing in accordance with any other written law.

(3) The Bank may, where a board or director fails, omits or neglects to report to the Bank under subsection (2), suspend or dissolve a board or suspend or remove a director.

(4) A person who contravenes subsection (1) is liable to pay an administrative penalty not exceeding four hundred thousand penalty units.

Conduct of director or senior officer

48. (1) A director or senior officer of a financial service provider shall, in exercising the powers and discharging the duties of office, ensure compliance with this Act.

(2) A director or senior officer of a financial service provider shall cease to be a director or senior officer for the same reasons for the disqualification of appointment as a director or senior officer referred to under section 43(2), except where a bank or financial institution has a framework for dealing with cases of a stakeholder, director or senior office in accordance with section 43(6).

(3) A person who contravenes subsection (1) is liable to pay an administrative penalty not exceeding one million penalty units.

Disclosure of interest

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

(2) Subject to subsection (1), a director or senior officer of a financial service provider shall disclose, in writing, to the financial service provider, the nature and extent of the relationship where the director or senior officer—

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

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

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

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

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

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

(a) set aside the contract on terms and conditions as a court may determine; or

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

(7) For purposes of this section—

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

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

(8) A director or senior officer who contravenes this section is liable to pay an administrative penalty not exceeding two hundred thousand penalty units.

Suspension or dismissal of director or senior officer by Bank and removal of shareholders

50. (1) The Bank may, in writing, direct the suspension from office for a period not exceeding six months, a director or senior officer who fails to take reasonable steps to ensure compliance by the financial service provider with the requirements of this Act or any other relevant written law.

(2) The Bank may, at any time before the expiry of the period specified under subsection (1)—

(a) extend the suspension from office, of the director or senior officer for a period that the Bank may determine; or

(b) dismiss or reinstate the director or senior officer.

(3) A person shall cease to be a shareholder in a financial service provider where the Bank determines that the shareholder is not a fit and proper person to continue holding shares in the financial service provider.

(4) The Bank shall, where the Bank determines that a shareholder is not a fit and proper person under subsection (3), direct a financial service provider to—

(a) offer the shares held by that shareholder to existing shareholders on a right-of-first-refusal basis, in proportion to their shareholding, and at a consideration to be agreed by the shareholders;

(b) offer the shares held by that shareholder to a person who is not a shareholder in the financial service provider where existing shareholders are unable to take up the shares; and

(c) not warehouse the shares held by that shareholder.

(5) Where a financial service provider is unable to dispose of the shares held by a shareholder in accordance with subsection (4), the shareholder shall not—

(*a)* attend any meetings of the financial service provider and its board;

(b) be represented, or have authority to appoint a representative, on a board; and

(c) be paid a dividend.

(6) A person intending to acquire shares referred under subsection (4) *(b)* shall seek prior written approval of the Bank as the Bank may determine.

(7) A director or senior officer who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Fit and proper requirements for shareholder, director or senior officer

51. (1) The Bank shall determine fit and proper requirements for a shareholder, director or senior officer of a financial service provider.

(2) The fit and proper requirements referred to under subsection (1) shall include requirements relating to—

(a) qualifications, skills and experience in financial operations relevant to the activities of a financial service provider;

(b) probity, personal integrity and reputation;

(c) competency and capability;

(d) financial integrity;

(e) availability and time commitment to responsibilities;

(f) potential for conflict of interest; and

(g) criminal record and professional conduct.

(3) The Bank may direct the removal of a shareholder, director or senior officer if the Bank considers that the shareholder, director or senior officer is not a fit and proper person.

Corporate governance standards and practices

52. (1) The Bank may issue a regulatory statement setting the minimum corporate governance standards and practices for financial service providers.

(2) A board shall develop a corporate governance charter in accordance with the provisions of a regulatory statement issued by the Bank under subsection (1).

Environmental, social and governance practices

53. (1) A financial service provider shall develop and implement policies to integrate environmental, social and governance practices in the financial service provider's operations.

(2) The Bank may direct, by regulatory statement, a financial service provider to enhance the financial service provider's risk management systems in relation to environmental, social and governance practices.

(3) A financial service provider shall disclose and report to the Bank on environmental, social and governance matters as determined by the Bank.

PART VI

Business Operations of Financial Service Providers

Principal administrative office

54. A financial service provider shall establish and maintain a principal administrative office in the Republic and inform the Bank, in writing, of the physical address of the principal administrative office.

Change of physical address of principal administration office

55. (1) A financial service provider shall not change the physical address of the financial service provider's principal administrative office without the prior written approval of the Bank.

(2) A financial service provider that intends to change the physical address of the financial service provider's principal administrative office shall apply for approval to the Bank, at least sixty days before the proposed change, in a determined manner and form.

(3) The Bank shall, on receipt of an application under subsection (2), approve or reject the application.

(4) The Bank shall, where an applicant meets the requirements under this Act, approve the application.

(5) The Bank shall, where the Bank rejects an application under subsection (3), inform the applicant, within seven days of making the decision, in writing, stating the reasons for the rejection.

Use and alteration of name

56. (1) A financial service provider shall use the name endorsed on the licence issued to that financial service provider under this Act—

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

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

(2) A financial service provider shall not change the name endorsed on the licence issued to that financial service provider under this Act without the prior written approval of the Bank.

(3) The Bank shall issue a regulatory statement providing for the processes and procedures for use or change of a name endorsed on the licence issued to a financial service provider under this Act.

(4) A financial service provider who contravenes this section is liable to pay an administrative penalty not exceeding one million penalty units.

(5) The Bank may, in addition to the penalty referred to under subsection (4), direct a financial service provider to cease using the name subject of the contravention.

Business hours

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

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

Bank holiday

58. (1) The Minister may, on recommendation of the Bank, declare, by statutory instrument, a day, or part of a day, as a bank holiday.

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

(3) In this section, "bank holiday" means a day on which a bank or financial institution, except a branch of a bank or financial institution located at a port of entry, is not open for business to the public, whether or not that day is a public holiday.

PART VII

Prudential Regulation and Supervision

Minimum capital requirements

59. (1) The Bank shall determine the minimum paid-up capital and minimum regulatory capital requirements for a financial service provider.

(2) A financial service provider shall compute the financial service provider's regulatory capital in a manner determined by the Bank, in rules.

(3) A financial service provider shall commence operations with the minimum paid-up capital determined by the Bank under subsection (1).

(4) Despite subsection (3), the Bank may direct a financial service provider to commence operations and maintain a higher paid-up capital based on the risk profile of the financial service provider.

(5) A financial service provider shall maintain minimum common equity tier one capital, primary capital and regulatory capital or ratios related to capital as the Bank may determine.

(6) Despite subsection (5), the Bank may direct a bank or financial institution to maintain common equity tier one capital, primary capital and regulatory capital or ratios related to capital, in excess of the determined capital or ratios under subsection (5), where a bank or financial institution—

(a) has been operating for less than three years;

(b) has been having, or is expected to have, losses resulting in capital deficiencies;

(c) has significant exposure to risk, including credit risk, concentration risk, market risk, cyber risk or operational risk;

(d) has serious weaknesses in the quality of assets or earnings of the bank or financial institution;

(e) is growing rapidly, internally or through acquisitions;

(f) may be adversely affected by the activities or conditions of a holding company, subsidiary or associates of the bank or financial institution;

(g) has deficiencies in ownership or management, shareholding structure, composition of board, directors or senior officers or risk management policies and procedures; or

(h) is exposed to any other factors that may have an adverse impact on the financial condition of the bank or financial institution as the Bank may determine.

(7) A financial service provider shall not issue a share in the financial service provider's capital or other security, other than a bonus share or a share in lieu of dividend or other determined security, unless the financial service provider receives the full value of the share or other security in local currency.

Capital conservation buffer

60. (1) A bank or financial institution shall build up a capital conservation buffer in the form of common equity tier one capital as determined by the Bank.

(2) The Bank may determine different capital conservation buffer requirements for a bank or financial institution under this Act.

Counter-cyclical capital buffer

61. (1) The Bank may direct a bank or financial institution to maintain a counter-cyclical capital buffer in form of common equity tier one capital.

(2) The Bank may adjust a counter-cyclical capital buffer for a bank or financial institution and announce the adjustment stating that the counter-cyclical capital buffer has been—

(a) increased;

(b) maintained; or

(c) decreased.

(3) Where the Bank announces—

(a) an increase in the counter-cyclical capital buffer under subsection (2)*(a),* a bank or financial institution shall increase the counter-cyclical capital buffer within a time determined by the Bank; or

(*b)* a decrease in the counter-cyclical capital buffer under subsection (2)*(c)*, the decrease shall take effect immediately.

Designation of bank or financial institution as systemically important

62. (1) The Bank may designate a bank or financial institution as systemically important based on the systemic significance of the bank or financial institution.

(2) The Bank shall determine the designation of a bank or financial institution as systemically important under subsection (1).

Systemically important capital buffer

63. (1) The Bank may direct a bank or financial institution designated as systemically important under section 62 to maintain a systemically important capital buffer as the Bank may determine.

(2) The systemically important capital buffer referred to under subsection (1) shall be in form of common equity tier one capitalas determined by the Bank.

Prohibition of payment of dividend by bank or financial institution without approval

64. (1) A bank or financial institution that has declared a dividend shall not pay that dividend without the prior written approval of the Bank.

(2) A bank or financial institution that contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding ten percent of that financial service provider's annual turnover or five hundred thousand penalty units, whichever is higher.

Application for approval to pay dividend by bank or financial institution

65. (1) A bank or financial institution that intends to pay a dividend shall apply to the Bank for approval to pay that dividend.

(2) The Bank shall, in determining an application referred to under subsection (1), consider the impact on the capital adequacy, capital buffers and the risk profile of the applicant and—

(a) approve the amount proposed to be paid as a dividend;

(b) approve a reduced amount of the dividend to be paid; or

(c) reject the application and inform the applicant, in writing, stating the reasons for the rejection.

Capital distribution constraints Cap. 388

66. Despite the Companies Act, capital distribution constraints as the Bank may determine shall apply where a bank or financial institution intends to declare and make a capital distribution that results in the failure of the bank or financial institution to provide for, or maintain, the determined capital buffers.

Leverage ratio

67. (1) A bank or financial institution shall maintain a leverage ratio as determined by the Bank.

(2) Despite subsection (1), the Bank may direct a bank or financial institution to maintain a higher leverage ratio based on systemic risk or the risk profile of the bank or financial institution.

Loan to deposit ratio

68. The Bank may direct a bank or financial institution to maintain a minimum loan to deposit ratio as determined by the Bank.

Loan to value of assets ratio and loan to income ratio

69. A bank or financial institution shall not grant credit if granting that credit results in the bank or financial institution breaching the loan to value of assets ratio or loan to income ratio determined by the Bank.

Revision of risk weights

70. The Bank may adjust risk weights applicable to exposures for a bank or financial institution based on threats and vulnerabilities assessed by the Bank in the financial system.

Liquidity coverage ratio and net stable funding ratio

71. A bank or financial institution shall maintain a liquidity coverage ratio and net stable funding ratio in a manner determined by the Bank.

Maintenance of liquidity

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

(2) A bank or financial institution shall—

(a) hold liquid assets in accordance with the thresholds determined by the Bank; or

(b) not increase its outstanding loans, overdrafts or investments where the thresholds referred to under paragraph (a) are breached by the bank or financial institution.

(3) The Bank may direct a bank or financial institution to provide information on the bank or financial institution's liquidity position to the Bank.

(4) A bank or financial institution that contravenes this section is liable to pay an administrative penalty on the amount of deficiency, at a rate of two or more percentage points above the annual interest rate prevailing in the most recent ninety-one-day treasury bill auction.

Additional liquidity

73. The Bank may direct a bank or financial institution to provide additional liquidity in a manner as may be determined by the Bank.

Constraints on contracts with associated person, insider or related party

74. (1) A bank or financial institution shall not enter into a contract or transaction with an associated person, insider or related party where the contract or transaction—

(a) confers an undue benefit on the associated person, insider or related party to the detriment of the bank or financial institution;

(b) is not conducted at arm's length or is on terms less favourable to the bank or financial institution than the terms available to an unrelated party under similar circumstances;

(c) is not disclosed to, and approved by, a board of the bank or financial institution;

(d) is prohibited under any written law, or poses a material risk to the financial soundness, governance, or reputation of the bank or financial institution;

(e) is not properly documented or disclosed in accordance with the regulatory or internal governance requirements determined by the Bank;

(f) is not in the best interest of the bank or financial institution;

(g) exceeds prudential limits on exposure to insiders, associates or related parties; or

(h) falls within a category of a prohibited related party transaction determined by the Bank.

(2) The Bank shall direct a financial service provider to collateralise or deduct related party exposures from regulatory capital as may be determined by the Bank.

(3) For purposes of this section, a related party transaction means a transaction in which two or more persons, by virtue of association, benefit severally or jointly from funds or services arising from a transaction involving any one of them and a financial service provider and includes—

(a) on-balance sheet and off-balance sheet credit exposures;

(b) dealings such as service contracts;

(c) asset purchases and sales;

(d) construction contracts and lease agreements;

(e) derivative transactions;

(f) borrowings; and

(g) write-offs.

(4) A person who contravenes this section is liable to pay an administrative penalty not exceeding one million penalty units.

Submission of information and returns

75. (1) A bank or financial institution shall submit to the Bank, in the form and within a period determined by the Bank—

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

(b) a statement showing income and expenditure;

(c) the amount of the regulatory capital and reserve funds;

(d) the amount of the bank or financial institution's liabilities to the public relative to the amount of the bank or financial institution's regulatory capital and reserve funds referred to under paragraph (b);

(e) a statement, as the Bank may determine, showing performing loans, non-performing loans and restructured loans, including the terms of the restructuring; and

(f) other statements or information relating to the bank or financial institution's operations, financial condition and resources as may be determined by the Bank.

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

(3) The Bank may direct a financial service provider to develop and submit a recovery plan, in a manner and form as determined by the Bank, for purposes of demonstrating measures which the financial service provider shall take in the event of distress.

Consolidated supervision

Cap. 384
Cap. 128

76. (1) The Bank shall, for purposes of the safety and soundness of a financial service provider, interest of depositors or to determine whether this Act, the Financial Intelligence Centre Act or the Anti-Terrorism and Non-Proliferation Act are being complied with, direct, in writing, an affiliate, associate, holding company or subsidiary or a person that controls the financial service provider, to submit to the Bank or the Bank's agent information or documents as may be necessary, including financial statements and other financial records of that affiliate, associate, holding company or subsidiary or person in control, within a period specified in the direction.

(2) The Bank shall, for the purposes of conducting consolidated supervision under this Act, direct, in writing, an affiliate, associate, holding company or subsidiary or a person who controls a financial service provider, to provide the Bank or the Bank's agent information or documents as may be necessary, including financial statements and other financial records of that affiliate, associate, holding company or subsidiary or person in control within a period specified in the direction.

(3) The Bank may appoint a suitably qualified person, at the cost of a financial service provider, to conduct an examination of the operations and affairs of an affiliate, associate, holding company or subsidiary or a person who controls a financial service provider, for purposes of determining whether the operations and affairs of the affiliate, associate, holding company, subsidiary or person in control constitute unsafe and unsound practice or are detrimental to the safety and soundness of the financial service provider.

(4) The Bank may, by regulatory statement, specify processes and procedures for consolidated supervision under this Act.

(5) A person who fails, refuses, omits or neglects to submit information referred to under subsection (1) or (2), commits an offence and is liable to pay an administrative penalty not exceeding two hundred thousand penalty units for each day that the contravention continues.

Affiliates and cross border supervision and resolution

77. (1) The Bank may exercise the Bank's supervisory authority over an affiliate of a financial service provider where the Bank determines that it is necessary to—

(a) implement supervision on a consolidated basis; or

(b) effectively supervise the financial service provider.

(2) The Bank may, for purposes of ensuring effective supervision, crisis management and resolution of a financial service provider that is part of a banking group or has cross border operations, enter into an arrangement for sharing information, on a reciprocal basis, with both domestic and foreign competent authorities.

(3) The information referred to under subsection (2) shall be kept confidential.

(4) An arrangement for sharing information referred to under subsection (2) shall include sharing of information on anti-money laundering, countering of terrorism financing and proliferation financing.

(5) The Bank may establish a crisis management group for purposes of coordination with relevant institutions on matters relating to crisis management and resolution.

Unsafe and unsound practice

78. (1) The Bank may determine an act or conduct that constitutes unsafe and unsound practice under this Act.

(2) The Bank may, where the Bank considers that a financial service provider is committing an act or conduct that is unsafe and unsound, direct the financial service provider or its board to establish—

(a) a plan of action to counteract the unsafe and unsound practice within a period that the Bank may determine; and

(*b)* or maintain safe and sound practices in the conduct of the business of the financial service provider within a period that the Bank may determine.

(3) The Bank may apply any of the supervisory actions referred to under section 79 where a financial service provider fails or neglects to establish a plan referred to under subsection (2) (*a)*.

(4) A direction given by the Bank under this section—

(a) shall be given by notice, in writing, to the financial service provider or any other person as the Bank may determine;

(b) shall take effect immediately and remain in effect in accordance with the terms and conditions of the direction unless discontinued on appeal; and

(c) may be varied or revoked, by notice, in writing, to the financial service provider or any other person.

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

Supervisory action

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

(a) the financial service provider fails to comply with this Act, a rule or regulatory statement issued under this Act or any other relevant written law;

(b) the Bank determines that a financial service provider is committing an act or a conduct that is an unsafe or unsound practice;

(c) the financial service provider refuses to permit an examination or obstructs an examination from being conducted in accordance with this Act;

(d) the Bank determines that a bank or financial institution is a distressed institution; or

(e) an examination conducted in accordance with this Act shows that the financial service provider conducts a banking business or provides a financial service in contravention of a relevant written law.

(2) In addition to any other action that the Bank may take under this Act, supervisory action that the Bank may take under subsection (1) includes—

(a) directing, in writing, a financial service provider to take remedial action to comply with a regulatory statement issued in accordance with this Act;

(b) directing a board or senior officer to execute an agreement for purposes of complying with a regulatory statement issued in accordance with paragraph *(a)*;

(c) conducting, or appointing an agent to conduct, an examination of a financial service provider to determine the financial condition of the financial service provider at the cost of the financial service provider;

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

(i) stop an unsafe and unsound practice;

(ii) limit a financial service provider's lending or borrowing;

(iii) stop a declaration or payment of dividends; or

(iv) stop any other activity of a financial service provider as the Bank may determine;

(e) directing a financial service provider to—

(i) refrain from adopting or pursuing a specific course of action;

(ii) restrict the scope of the business of the financial service provider in a particular manner; or

(iii) refrain from entering into a transaction or class of transactions;

(f) imposing a limitation on soliciting, acceptance of deposits, payment of interest on deposits, granting of credit, making of investments or declaration and payment of dividends;

(g) directing the suspension or removal from office of a director, senior officer or any other employee of a financial service provider;

(h) appointing, at the cost of a financial service provider, a person who, in the consideration of the Bank, is suitably qualified and competent to advise and assist the financial service provider, generally or for the purposes of complying with a direction or regulatory statement issued under this Act;

(i) appointing, at the cost of a financial service provider, a person who, in the consideration of the Bank, is suitably qualified and competent to manage the affairs of the financial service provider for a period that the Bank may determine;

(j) directing a person referred to in paragraphs (h) and (i) to report to the Bank during intervals as the Bank may direct;

(k) imposing an administrative penalty on a financial service provider, a director or senior officer of the financial

service provider, as the Bank may consider appropriate under the circumstances;

(l) increasing supervisory intensity as the Bank may determine;

(m) directing a financial service provider to reconstitute its board within a period that the Bank may specify;

(n) directing a board or senior officer to provide a written explanation stating the causes of any adverse position and the measures to be taken by the financial service provider to rectify, or avert recurrence of, the adverse position;

(o) ordering the financial service provider to submit to the Bank, within thirty days of the order, a capital restoration plan to restore the financial service provider to determined capital adequacy levels;

(p) in the case where a financial service provider is under-capitalised, directing that financial service provider to increase its capital to determined levels within ninety days of submission of the capital restoration plan referred to under paragraph (o);

(q) prohibiting a financial service provider from awarding bonuses or increments in the salaries, emoluments or other benefits to directors and senior officers of the financial service provider;

(r) prohibiting capital expenditure without prior approval of the Bank;

(s) restricting or varying the financial service provider's licence; or

(t) suspending or cancelling the financial service provider's licence.

(3) A direction given to a financial service provider or person under this section shall be in writing and may be varied or revoked.

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

PART VIII

RESTRICTIONS ON TRANSACTIONS OF FINANCIAL SERVICE PROVIDERS

Secured borrowing

80. (1) A bank or financial institution shall not—

(a) create, grant or permit a mortgage, charge, lien or other form of security interest over its assets, except where the mortgage, charge, lien or other security interest is created, granted or permitted in —

(i) the ordinary course of business of the bank or financial institution and is expressly subordinated to the claims of depositors in the event of resolution or insolvency; or

(ii) favour of the Bank for purposes of securing advances made by the Bank to the bank or financial institution in accordance with the Bank of Zambia Act, 2022;

Act No. 5 of 2022

(b) acquire an asset that is subject of a mortgage, charge, lien or other security interest, except for purposes of satisfying a debt or liability owed to the bank or financial institution; or

(c) pledge collateral in exchange for a deposit in the ordinary course of business, except for interbank transactions or where the bank or financial institution is accessing an advance from the Bank.

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

Cap. 431

(3) Despite the Corporate Insolvency Act, or any other written law, a person shall not initiate a receivership proceeding or any other process which may lead to the disruption of the ordinary course of business of a bank or financial institution.

Limitations on granting credit facilities

81. (1) The Bank shall determine, in a regulatory statement limits on—

(a) large exposures by a financial service provider;

(b) granting credit facilities or guarantees by a bank or financial institution to associated persons, insiders, related parties; and

(c) any other limits the Bank may determine.

(2) A bank or financial institution shall not, directly or indirectly, grant a credit facility against the bank or financial institution's shares or the shares of its affiliates as security.

(3) A bank or financial institution that contravenes subsections (1) or (2) is liable to pay an administrative penalty not exceeding one million penalty units.

Restriction on trade

82. A financial service provider shall not, directly or indirectly, without the prior written approval of the Bank and on terms and conditions as the Bank may determine, engage in a trade or business for which the financial service provider is not licensed, except where the financial service provider is engaging in the trade or conducting the business necessary for a period not exceeding twelve months or a longer period as the Bank may determine, for purposes of securing a debt due to the financial service provider.

Restriction on equity investments

83. (1) A bank or financial institution shall not, directly or indirectly, without the prior written approval of the Bank and on terms and conditions as the Bank may determine, acquire, or invest in, equity in a commercial, agricultural, industrial or other business undertaking, except where the acquisition or investment is necessary for securing or satisfying a debt or other liability payable to the bank or financial institution.

(2) The Bank shall determine the criteria for evaluating proposals on the acquisitions and investments referred to in subsection (1).

(3) A bank or financial institution that acquires equity under subsection (1) shall dispose the equity within a period of two years.

(4) Despite subsection (3), the Bank may, on application, in writing, by a bank or financial institution, extend the period specified under subsection (3).

(5) The Bank may impose prudential conditions on a bank or financial institution referred to under subsection (1).

(6) A bank or financial institution shall not—

(a) invest in an equity interest in a person, property or undertaking in an amount exceeding fifteen percent of the total of all equity interests in the person, property or undertaking;

(b) acquire an equity interest in a person, property or undertaking where the value of the bank or financial institution's equity exceeds fifteen percent of its primary capital; or

(c) acquire an equity interest in a person, property or undertaking in which a related party has an interest that exceeds ten percent of the bank or financial institution's primary capital.

(7) A bank or financial institution shall notify the Bank where the bank or financial institution acquires, or invests in, equity interest which is less than the thresholds specified under subsection (6).

(8) Where a bank or financial institution invests in equity interest of a person, property or undertaking, the aggregate of the investments shall not exceed fifteen percent of the bank or financial institution's primary capital.

(9) A bank or financial institution that acquires or invests in equity interest of the bank or financial institution's subsidiary or proposed subsidiary shall not require approval of the Bank where the—

(a) equity interest in the subsidiary or proposed subsidiary is less than fifty one percent of the total equity interest in the subsidiary or proposed subsidiary; or

(b) aggregate of the acquisition or investment by the bank or financial institution is less than fifteen percent of its primary capital.

(10) Despite subsection (9)*(a)*, the Bank may approve the holding of more than fifty-one percent equity interest in a subsidiary on terms and conditions as the Bank may determine.

(11) Subsection (6)*(a)* does not apply where a bank or financial institution—

(a) acquires equity interest for purposes of realising any part of collateral in a credit transaction; and

(b) disposes of equity interest, in excess of the limits specified under this section, within two years following the acquisition or a longer period as the Bank may determine.

Restriction on lease or other interest in real property

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

(a) conducting business, making provision for future expansion or providing housing for the bank or financial institution's employees; or

(b) securing or satisfying a debt or other liability of the bank or financial institution which debt shall be disposed within two years or a longer period as the Bank may determine.

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

(a) purchase, lease or acquire an interest in real property; or

(b) enter into a lease agreement or other arrangement in respect of personal property of the bank or financial institution in consideration of rent or other instalment payments.

(3) A financial service provider shall not enter into a lease agreement with an associated person, insider or related party where the terms and conditions of the lease agreement are less favourable to the financial service provider than the terms and conditions obtaining in the market.

(4) Nothing in this section shall prevent a bank or financial institution from lending and taking title to personal property for the purposes of satisfying a debt or obligation to a bank or financial institution, if the lease or other arrangement is disposed of within two years or a longer period as the Bank may determine.

Dealings with shell bank

85. A bank or financial institution shall not enter into, or continue, a correspondent banking relationship with a shell bank or deal with a respondent institution that permits the respondent institution's accounts to be used by the shell bank.

Limits and restrictions on financial business and financial service provider offering alternative financial service

86. (1) Subject to this Part, the Bank may impose, vary or amend limits and restrictions applicable to a—

(a) financial business; or

(b) financial service provider offering an alternative financial service.

(2) Despite subsection (1)*(a)*, the Bank may determine limits and impose restrictions on a financial business based on categories of financial businesses as the Bank may determine.

Exemption of alternative financial services

87. The Bank may, on application, in writing, by a financial service provider offering an alternative financial service, exempt the financial service provider from the application of any of the provisions under this Part.

PART IX

Financial Statements and Accountability

Annual financial statements

88. (1) A board shall keep and maintain proper books of accounts and other records relating to the operations of the financial service provider.

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

(3) A financial service provider shall, not later than twenty-one days before the date of an annual general meeting, submit to each shareholder and to the Bank a copy of the financial service provider's audited financial statements for the preceding financial year.

(4) A board shall, not more than three months after the end of the financial year, submit a copy of a financial service provider's audited financial statements to the Bank, accompanied by a report made by an external auditor, a management letter or other information prepared in accordance with international accounting standards referred to under subsection (2).

(5) The Bank shall, on receipt of the information referred to under subsection (4), direct that a meeting is held by the Bank with a financial service provider and the external auditor referred to under subsection (4).

(6) Where a financial service provider fails to comply with subsection (3), an annual general meeting shall not be held until the financial service provider complies with that subsection.

Presentation of annual financial statement to shareholders Cap. 388

89. (1) Subject to the Companies Act, a board shall present to the shareholders, at an annual general meeting, statements, reports and information including—

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

(i) common enterprise and related party transactions;

(ii) risk management processes and practices;

(iii) disclosed directors' interests; and

(iv) the existence of prohibited borrowings or lendings;

(b) an audited report of a financial service provider's financial statements for the financial year;

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

(i) the subsidiary's name and address of the principal administrative office; and

(ii) the aggregate book value or percentage of voting shares of the shares of subsidiaries, in which a financial service provider has beneficial interest; and

(d) any other information that the Bank may determine.

(2) The statements, reports and information referred to under subsection (1), shall be true and a fair representation of the financial performance and condition of a financial service provider at the end of the financial year.

Reserve for bad and doubtful debts

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

Approval of annual financial statements

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

(2) The audited annual financial statements referred to under subsection (1), shall be signed by at least two directors.

Publication of financial statements

92. (1) A financial service provider shall publish the financial service provider's quarterly financial statements and audited annual financial statements in a daily newspaper of general circulation in the Republic or electronic media as the Bank may determine.

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

(3) A financial service provider shall display in a conspicuous place in every branch of the financial service provider, a copy of the financial service provider's quarterly financial statements and audited annual financial statements.

Appointment of external auditor

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

(2) An external auditor appointed under subsection (1) shall be a member of the Zambia Institute of Chartered Accountants and meet terms and conditions as the Bank may determine.

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

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

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

Disqualification for appointment as external auditor

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

(a) a director, senior officer or other employee of the financial service provider or an associated person or affiliate of the financial service provider;

(b) a body corporate; or

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

Responsibilities of external auditor

95. (1) An external auditor appointed under section 93 shall be responsible for—

(a) auditing financial statements of a financial service provider;

(b) submitting, on completion of an audit under paragraph (a), a report to the shareholders of the financial service provider; and

(c) expressing an opinion, in accordance with the standards recognised by the Zambia Institute of Chartered Accountants, on the—

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

(ii) compliance of the financial service provider with this Act or any other relevant written law.

(2) An external auditor shall report a finding to the Bank, within fourteen days of the finding, where the external auditor in the course of carrying out the external auditor's responsibilities specified under subsection (1), determines that a financial service provider—

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

(b) has contravened a requirement of this Act, rule, guideline or regulatory statement issued under this Act or a condition imposed by the financial service provider's licence.

Duties of external auditor

96. An external auditor shall, in the performance of the external auditor's functions under this Act –

(a) be independent;

(b) not have a conflict of interest;

(c) have integrity;

(d) exercise objectivity;

(e) have knowledge and skill; and

(f) exercise professional judgment and skepticism.

Information by external auditor to Bank

97. (1) The Bank may, by notice to an external auditor, whether current or past, of a financial service provider, direct the external auditor to submit information on the financial service provider, a subsidiary, associate or an affiliate of the financial service provider.

(2) An external auditor referred to under subsection (1) shall not —

(a) fail, refuse or neglect to submit information; or

(b) submit false or misleading information.

(3) An external auditor who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

(4) Despite subsection (3), an external auditor shall not be liable to civil, criminal or disciplinary proceedings for communicating, in good faith, to the Bank information or an opinion under this Act or any other relevant written law.

Access to information and auditor's report

98. (1) A financial service provider shall grant an external auditor access to all books, accounts and records, whether kept electronically or otherwise, of a financial service provider.

(2) A financial service provider, its directors, senior officers and agents shall provide the external auditor with information and explanations as the external auditor shall require to perform the duties and responsibilities as provided in this Act and any other relevant written law.

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

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

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

(i) is fully, fairly and properly drawn up;

(ii) exhibits a true and fair statement of the financial service provider's financial condition; and

(iii) requires an explanation or information from a board, senior officer or agent of the financial service provider or a satisfactory response has been received;

(c) state whether in the external auditor's opinion the financial service provider has complied with this Act and any other relevant written law; and

(d) state the transactions or conditions that have come to the attention of the auditor affecting the well-being of the financial service provider that, in the opinion of the external auditor, are not satisfactory and require rectification including—

(i) any transaction of the financial service provider that has come to the attention of the external auditor and which, in the opinion of the external

auditor, has not been within the powers of the financial service provider or which was contrary to this Act or any other relevant written law; and

(ii) a non-performing loan that is outstanding, has been restructured or the terms of repayment have been extended, if the principal amount of the loan is five percent or more of the regulatory capital of the financial service provider.

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

Termination of appointment of external auditor

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

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

(3) Where a financial service provider fails to comply with subsection (2), the Bank shall direct that financial service provider to appoint the external auditor.

Statement on resignation of external auditor

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

Termination of appointment of external auditor by financial service provider

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

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

PART X

FINANCIAL CONSUMER PROTECTION AND MARKET CONDUCT

Regulation and supervision on financial consumer protection and market conduct

102. The Bank shall regulate and supervise financial service providers on matters relating to financial consumer protection and market conduct.

Anti-competitive practices Cap. 417

103. Subject to the Competition and Consumer Protection Act, and for purposes of this Part, a financial service provider that enters into an agreement, makes a decision or engages in a concerted practice which has an objective or effect of preventing, restricting or distorting competition to an appreciable extent shall be considered to have engaged in anti-competitive practices.

Prohibition of anti-competitive practices

104. (1) A financial service provider shall not engage in the following anti-competitive practices:

(a) engage in an unfair or deceptive act or practice;

(b) create unreasonable barriers that unfairly limit a consumer's access to a banking service or financial service; or

(c) enter into an agreement or arrangement with respect to the—

(i) rate of interest to be applied on a deposit;

(ii) rate of interest or charge on a credit facility;

(iii) a charge for the provision of a banking service or financial service;

(iv) provision of, or refusal to provide, a banking service or financial service to a consumer;

(v) division of markets by allocating consumers; or

(vi) provision of any other services by a financial service provider in a manner that restricts competition in the financial sector.

(2) Subsection (1)*(c)* does not apply to an agreement or arrangement—

(a) for the provision of a banking service or financial service by a financial service provider to another financial service provider;

(b) for the provision of a syndicated banking service or financial service to a person by two or more financial service providers;

(c) for the underwriting or distribution of security among financial service providers; or

(d) between financial service providers for the exchange of—

(i) statistics or audit information;

(ii) development and use of systems, forms, methods, procedures and standards;

(iii) use of common facilities; or

(iv) joint research and development.

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

Collateral contracts

105. (1) A financial service provider shall not compel a consumer to enter into a contract for another service with the financial service provider or another person as a condition for accessing a banking service or financial service from that financial service provider.

(2) Despite subsection (1), a financial service provider may restrict the choice of a consumer as regards an insurance company or other service provider if the financial service provider provides the consumer with a list of insurance companies or other service providers to select from for linked financial products or financial services.

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

Coercive behaviour

106. A financial service provider shall not engage in coercive behaviour that compels the consumer to make decisions that are not in the best interests of the consumer.

Misconduct during debt collection

107. A financial service provider or a person acting on behalf of a financial service provider shall not, when collecting a debt—

(a) harass, oppress or abuse a consumer or any other person; or

(b) use deceptive conduct or false or misleading representation.

Prohibition of barriers to switch

108. A financial service provider shall not provide for a contract term or condition or engage in conduct that imposes barriers for a consumer to switch from that financial service provider or banking service or financial service to another financial service provider or banking service or financial service.

Fair treatment of consumers and charter

109. (1) The Bank may determine minimum standards and practices for fair treatment of consumers in the provision of banking and financial services.

(2) A financial service provider shall develop a charter for fair treatment of consumers and avail a copy to a consumer.

Disclosure of interest rates and charges

110. (1) A financial service provider shall, at the time of opening an account for a consumer, disclose as the Bank may determine, to the consumer, information relating to interest and charges.

(2) A financial service provider that grants credit to a consumer shall, before granting the credit, disclose as the Bank may determine, the cost of the credit to the consumer.

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

Prohibition of introducing new charge or increasing existing charge for consumers

111. (1) A financial service provider shall not introduce a new charge or increase an existing charge for consumers, without the prior written approval of the Bank.

(2) A financial service provider that contravenes subsection (1) is liable to pay an administrative penalty not exceeding five hundred thousand penalty units.

Application for introducing new charge or increasing existing charge for consumers

112. (1) A financial service provider that intends to introduce a new charge or increase an existing charge for consumers shall apply to the Bank for approval in a manner and form determined by the Bank.

(2) The Bank shall, within fourteen days of receipt of an application under subsection (1), approve or reject the application.

(3) The Bank shall, where a financial service provider meets the requirements for approval as may be determined, grant approval to the financial service provider to introduce a new charge or increase an existing charge for consumers.

(4) The Bank shall, where the Bank rejects an application under subsection (2), inform the applicant, in writing, stating the reasons for the rejection.

Publication of fees, rates, terms and conditions

113. (1) The Bank may direct a financial service provider to publish the financial service provider's fees, rates and terms and conditions relating to the provision of a banking service or financial service.

(2) The Bank may publish the fees, rates and terms and conditions referred to under subsection (1).

Responsible finance

114. (1) A financial service provider shall ensure that—

(a) a banking service or financial service provided by the financial service provider meets the needs of a consumer of the banking service or financial service of that financial service provider;

(b) the consumer understands the implications of accessing a banking service or financial service of that financial service provider;

(c) the consumer is accorded an opportunity to make an independent assessment of the implications referred to under paragraph *(b)*; and

(d) the consumer has the capacity to meet obligations that arise from accessing a banking service or financial service of that financial service provider.

(2) A financial service provider referred to under subsection (1) shall develop a criteria for responsible finance.

(3) The criteria referred to under subsection (2) shall have written procedures for—

(a) determining whether a particular banking service or financial service is suitable and affordable for a consumer of the financial service provider;

(b) determining whether the banking service or financial service allows a consumer to meet the consumer's obligations with a low probability of over-indebtedness or hardship; and

(c) assessing whether there is a prospect that the banking service or financial service shall provide value to the consumer.

(4) A financial service provider that contravenes this section commits an offence and is liable to pay an administrative penalty not exceeding four hundred thousand penalty units.

Right to rescind contract

115. (1) A financial service provider shall provide a consumer the right to terminate, by notice in writing, a contract relating to the provision of a banking service or financial service within a reasonable period after the date on which the contract is executed or a period determined by the Bank.

(2) Where a contract is terminated under this section, a financial service provider shall refund the consumer, within a reasonable time after the delivery of the notice referred to under subsection (1), the money which that consumer paid under the contract and the financial service provider—

(a) shall cancel any automatic payment plans and give notice of termination to a credit reporting system; and

(b) may only require payment from the consumer of a fee for purposes of compensating the financial service provider for any costs incurred.

Unfair contract or unfair contract term

116. (1) For the purposes of this section, a contract or contract term is unfair if—

(a) the contract or contract term has not been individually negotiated by a consumer; and

(b) contrary to good faith, the contract or contract term causes a significant imbalance in the rights and obligations of a consumer and a financial service provider, to the detriment of the consumer.

(2) An unfair term in a contract between a financial service provider and a consumer shall not be binding on the consumer.

(3) A contract term for a banking service or financial service shall not be lawful or enforceable if the contract term deprives a consumer—

(a) of a right to claim against the financial service provider;

(b) from receiving information relating to a banking service or financial service accessed by that consumer;

(c) of the right to have a complaint lodged by the consumer with a financial service provider to be resolved by that financial service provider;

(d) of the right to have information relating to the consumer to be kept confidential by a financial service provider, except as otherwise provided in this Act; or

(e) from cancelling the use of a banking service or financial service.

Prepayment of credit transactions

117. (1) A borrower may, prior to the expiry of a credit repayment period, pre-pay the credit facility in whole or in part without charge, if the —

(a) financial service provider shall only recover pro-rated costs incurred on the credit facility;

(b) Bank determines that a credit transaction is eligible for pre-payment; and

(c) credit facility is not secured by a mortgage.

(2) A financial service provider that contravenes subsection (1) is liable to pay an administrative penalty not exceeding five hundred thousand penalty units.

Prohibition against penal interest

118. (1) A financial service provider shall not impose, on a borrower, a charge or penalty which arises from the borrower's failure to repay a credit facility in accordance with the contract governing the loan, except —

(a) interest on an overdue payment on the credit facility;

(b) legal costs incurred by the financial service provider in collecting, or attempting to collect, a payment on the credit facility; or

(c) costs incurred in protecting or realising the security on the credit facility.

(2) A financial service provider that contravenes subsection (1) is liable to an administrative penalty not exceeding five hundred thousand penalty units.

(3) In addition to the penalty specified under subsection (2), the Bank may direct a financial service provider to—

(a) reimburse any interest paid by the borrower in contravention of this section; or

(b) account and disgorge profits obtained, or losses avoided by the financial service provider, as a result of a contravention of this section.

Recoverable amounts on non-performing loan

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

(a) the outstanding principal amount of the credit facility at the time the credit facility becomes non-performing;

(b) any interest in arrears due to the financial service provider in accordance with a credit facility agreement if the interest does not exceed the principal amount referred to in paragraph *(a)*; and

(c) expenses incurred by the financial service provider in the recovery of amounts owed by the borrower.

(2) This section does not apply to interest awarded by a court and accruing after the award by the court.

Disclosure of information

120. (1) A financial service provider shall, where the financial service provider discloses information, to the public, relating to a banking service or financial service provided by that financial service provider —

(a) use clear, concise and simple language;

(b) adjust the method or manner of disclosure of the information to meet specific needs of consumers;

(c) provide true, accurate and relevant information;

(d) provide a key fact statement as the Bank may determine; and

(e) make disclosures in a consistent manner to facilitate comparison between similar banking services or financial services.

(2) A financial service provider shall, prior to providing a banking service or financial service to a consumer, disclose, in writing, the cost of the banking service or financial service to the consumer.

(3) A bank or financial institution shall, at the time of opening an account for a consumer, provide a consumer with a written statement of the—

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

(b) interest, if any, to be paid to the consumer by the bank or financial institution; and

(c) manner in which the bank or financial institution shall inform the consumer of any changes in charges or interest.

(4) A financial service provider shall take necessary steps to ensure that a consumer is made aware of, and understands, the grounds for denial of a banking service or financial service.

Control of advertisements

121. (1) The Bank may issue a regulatory statement relating to the publication, form and content of advertisements by a financial service provider.

(2) A regulatory statement referred to under subsection (1) may—

(a) prohibit the publication of an advertisement of any description, whether by reference to the contents of the advertisement or to the persons by whom the advertisement is published;

(b) provide for matters to be, or not to be, included in an advertisement;

(c) provide for exemptions from provisions under this Act; and

(d) provide for offences and penalties for breach of a requirement under the regulatory statement.

(3) The Bank may give directions, as the Bank considers necessary, to a financial service provider who has published or caused to be published an advertisement that the Bank reasonably believes—

(a) does not comply with a requirement under a regulatory statement made under this section; or

(b) is false or misleading.

(4) A direction referred to under subsection (3), may require—

(a) a person to modify an advertisement in whole, or in, part; or

(b) the publication of an advertisement to cease.

(5) This section shall not affect any remedies available to a person who has been aggrieved by a financial service provider who published or caused to be published an advertisement in contravention of a regulatory statement issued by the Bank under this section.

(6) A person who contravenes this section is liable to pay an administrative penalty not exceeding two hundred thousand penalty units.

Data protection and disclosure of information Act No. 3 of 2021
Cap. 384

122. Subject to the Data Protection Act, 2021, and the Financial Intelligence Centre Act, a financial service provider shall maintain the confidentiality of information obtained in the provision of a financial service to a consumer and shall not disclose any information except—

(a) with the express consent of a consumer;

(b) in compliance with a court order;

(c) where disclosure of the information is in the interest of the financial service provider;

(d) where the information requested is consumer identification data required by another financial service provider for the purposes of conducting due diligence;

(e) in accordance with any other written law; or

(f) where the Bank, in the performance of the Bank's functions as provided in this Act, requests or directs.

Open finance

123. Despite section 122, a financial service provider shall facilitate the sharing of consumer data for purposes of open finance.

Complaints procedure for consumers

124. (1) A financial service provider shall—

(a) establish procedures for handling complaints against the financial service provider;

(b) designate a senior officer or other employee as a consumer service officer who shall be responsible for implementing and administering the procedures referred to in paragraph *(a)*;

(c) make available, through electronic media or other media to which the public has access, procedures for handling complaints;

(d) display a copy of the procedures for handling complaints in a conspicuous place in each branch of the financial service provider; and

(e) establish and maintain a record containing information on the details of the complaints received, handled and disposed of by the financial service provider.

(2) The Bank may determine the manner and form of procedures for handling complaints against financial service providers under this Act.

Consumer protection and market conduct returns

125. A financial service provider shall submit to the Bank periodic consumer protection and market conduct returns as the Bank may determine.

Monitoring of market

126. The Bank may conduct examinations, mystery shopping or market monitoring of a financial service provider for purposes of ensuring compliance with this Part.

Arrangement or assistance for vulnerable consumer

127. A financial service provider shall ensure that a vulnerable consumer is provided with arrangements or assistance as the Bank may determine for purposes of facilitating the vulnerable consumer's access to a banking service or financial service.

Financial ombudsperson for financial service providers

128. The Bank may designate or appoint a suitably qualified person as a financial ombudsperson for purposes of determining matters relating to consumer protection in the provision of a banking service or financial service.

Actions by Bank on contravention of Part

129. The Bank may, in addition to the provisions under section 79, take the following actions where a financial service provider contravenes this Part:

(a) publish the names of offenders;

(b) impose administrative penalties;

(c) require the financial service provider to refund excess charges;

(d) require the financial service provider to compensate a consumer;

(e) require the financial service provider to correct erroneous data, information or statements;

(f) restrict the financial service provider from collecting fees or charges in connection with a specific banking service or financial service; or

(g) refer the matter to relevant authorities for prosecution.

PART X
RESOLUTION

Bank as resolution authority

130. The Bank shall be the resolution authority for a bank or financial institution under this Act.

Functions of Bank as resolution authority

131. The Bank shall, as the resolution authority as specified under section 130—

(a) promote and contribute to financial system stability;

(b) ensure the continued performance of critical functions of a bank or financial institution;

(c) maintain public confidence and market confidence;

(d) minimise loss to public funds;

(e) minimise disruption to the financial system; and

(f) protect depositors.

Placing bank or financial institution in resolution

132. The Bank may place a bank or financial institution in resolution where the Bank determines that the bank or financial institution is a failed institution.

Power to take possession

133. The Bank may, where the Bank places a bank or financial institution in resolution under section 132, take possession of the bank or financial institution.

Notice of resolution

134. (1) The Bank shall, where the Bank places a bank or financial institution in resolution under section 132, display a notice, at each branch of the bank or financial institution stating that the Bank has placed that bank or financial institution in resolution and specify the date, hour and minute at which the resolution takes effect.

(2) The Bank shall, where the Bank places a bank or financial institution in resolution on account of the bank or financial institution being insolvent, transmit a copy of the notice to a court.

(3) Subject to any other relevant written law, the Bank shall inform the relevant authority responsible for deposit insurance where the Bank places a bank or financial institution in resolution.

Appointment of resolution manager

135. The Bank shall, where the Bank places a bank or financial institution in resolution under section 132, appoint a resolution manager who shall manage the resolution as the Bank may determine.

Petition to Minister to constitute Tribunal

136. A bank or financial institution or an interested person acting on behalf of the bank or financial institution in resolution may, within twenty-one days after the date on which the Bank places the bank or financial institution in resolution, petition the Minister to constitute a tribunal in accordance with Part XIV to inquire into the decision of the Bank to place that bank or financial institution in resolution.

Powers and duties of Bank on resolution

137. (1) The Bank shall, on placing a bank or financial institution in resolution, be vested with full and exclusive powers of management and control of the bank or financial institution and have the power to—

(a) suspend or terminate the interest of a shareholder of the bank or financial institution and refer the determination of the value of the interest of the shareholder to a court;

(b) dissolve a board of the bank or financial institution;

(c) continue or discontinue operations of the bank or financial institution;

(d) borrow money and use the assets of the bank or financial institution as security;

(e) suspend the payment of any of the bank or financial institution's obligations, including interest;

(f) execute an instrument or agreement or commence an action or legal proceeding in the name of the bank or financial institution;

(g) direct a director, senior officer or shareholder of the bank or financial institution to pay any liability incurred in the ordinary course of business or on unpaid shares of the bank or financial institution;

(h) employ, retain, reinstate or terminate the employment of a senior officer or any other employee or professional advisor of the bank or financial institution; and

(i) take any other appropriate action as the Bank may determine.

(2) The Bank may, where the Bank terminates the employment of an employee, other than a senior officer, under subsection (1)*(h)*, pay from funds of the failed institution, three months wages in lieu of notice.

(3) The Bank may suspend for a period that the Bank may determine, the exercise of an early termination right by a party to a contract with a bank or financial institution in resolution subject to the following:

(a) the suspension of the exercise of the early termination right shall only apply where the early termination right arises as a result of the Bank placing the bank or financial institution in resolution;

(b) an early termination right of a party to a contract with a bank or financial institution shall not be affected where a default occurs—

(i) before the Bank suspends the early termination right and is not related to the exercise of a resolution power by the Bank; or

(ii) after the period of the suspension lapses and is not related to the exercise of a resolution power by the Bank;

(c) the suspension referred to under paragraph *(a)* shall be effective for a period that the Bank may determine at the time of the suspension;

(d) in the case where the contract is an eligible contract, the Bank shall transfer the eligible contract with a particular party, to another entity, without selecting to transfer individual contracts with that party and subject to the same netting agreement;

(e) the entity referred to under paragraph *(d)* shall assume the rights and obligations of the bank or financial institution in resolution from which the eligible contract was transferred;

(f) the early termination right of the party shall not be affected in the case of a subsequent default by the entity referred to under paragraph *(d)*, following the transfer of an eligible contract to the entity;

(g) the party may exercise the right to close-out immediately against the bank or financial institution in resolution when the period of the suspension lapses or where the Bank informs the party that the contract shall not be transferred; and

(h) where the period of suspension lapses, a party may exercise an early termination right for a contract that is not transferred by the Bank to an entity referred to under paragraph *(d)*.

Statement of affairs

138. The Bank shall prepare a statement of affairs as the Bank may determine for a bank or financial institution in resolution.

Resolution options

139. (1) The Bank shall take any of the following resolution options for a bank or financial institution in resolution:

(a) restructure or re-organise the bank or financial institution;

(b) sell the bank or financial institution;

(c) wind-up the bank or financial institution;

(d) transfer all, or part, of the business of the bank or financial institution to a bridge institution;

(e) initiate a purchase and assumption transaction;

(f) initiate a bail-in;

(g) dispose of all, or some, of the assets of the bank or financial institution; or

(h) take any action that the Bank considers necessary.

(2) The Bank may, where necessary, establish a special purpose vehicle to facilitate the implementation of the resolution options referred to under subsection (1).

(3) Where the Bank winds-up a bank or financial institution under subsection (1)*(c)*, the winding-up of the bank or financial institution shall take effect by the Bank placing that bank or financial institution under liquidation.

(4) Subject to any other relevant written law and for purposes of facilitating a resolution of a bank or financial institution, a relevant authority responsible for deposit insurance may fund a resolution option involving the transfer of deposits held by the bank or financial institution.

(5) Despite any other relevant written law, the Bank shall not be required to notify or obtain the approval of creditors, shareholders or other parties before implementing a resolution option.

Restructuring or reorganisation

140. The Bank may, where the Bank commences a restructuring or reorganisation of a bank or financial institution under section 139(1)*(a)*, manage or appoint an agent to manage the restructuring or reorganisation of the bank or financial institution.

Establishment and winding-up of bridge institution

141. (1) The Bank may establish, as a resolution option under section 139(1)*(d)*, a bridge institution which shall be owned by the Government for the purposes of transferring all, or part, of the business of a bank or financial institution in resolution.

(2) A bridge institution referred to under subsection (1) shall be temporary and controlled by the Bank as the resolution authority under this Act.

(3) The Bank may, where the Bank controls a bridge institution under subsection (2)—

(a) sell the bridge institution to a third party; or

(b) wind-up the bridge institution where all, or substantially all, of the bridge institution's assets, rights and liabilities are transferred by the Bank to a third party.

(4) The Bank may exempt a bridge institution from requirements under this Act.

Bail-in

142. The Bank may, for the purposes of effecting a bail-in as a resolution option under section 139(1)*(f)*, without consent—

(a) write-down, in whole or in part, in accordance with section 163 to the extent necessary to absorb incurred or anticipated losses—

(i) equity instruments or other instruments of ownership issued by a bank or financial institution in resolution; or

(ii) creditor claims of a bank or financial institution in resolution;

(b) convert, in whole or in part, into equity or other instruments of ownership in accordance with section 163, creditor claims of a bank or financial institution in resolution; or

(c) convert or write-down a contingent convertible instrument or contractual bail-in instrument which conversion or write-down provisions—

(i) have not been triggered prior to the commencement of resolution; and

(ii) treat the resulting instruments of the conversion or write-down in accordance with paragraph (a) or *(b)*.

Back-stop funding for resolution

143. (1) The Government may, on the recommendation of the Bank, provide back-stop funding for the resolution of a bank or financial institution in resolution for the preservation of financial system stability.

(2) The backstop funding provided under subsection (1) shall be recoverable from—

(a) the sale of the assets of a bank or financial institution in liquidation following a resolution; or

(b) ex-post levies as the Bank may determine, in consultation with the Minister, on a bank or financial institution.

(3) Backstop funding shall only be provided where shareholders and subordinated debt holders of a failed institution have absorbed the losses of the failed institution.

Creditor safeguards

144. (1) The Bank shall consider a claim of a creditor or shareholder of a bank or financial institution after the Bank applies losses in accordance with the loss bearing hierarchy when effecting a resolution option.

(2) The Bank shall treat a claim of a creditor or shareholder of a bank or financial institution equally as the creditor or shareholder would be treated in a liquidation.

(3) Despite subsection (2), the Bank may treat a claim of a creditor or shareholder of a bank or financial institution differently where the Bank considers it necessary to effect an orderly resolution of the bank or financial institution in resolution.

(4) The Bank shall take steps to determine that a creditor does not incur greater losses than the creditor would have incurred if the bank or financial institution had been placed in liquidation.

(5) The Bank may obtain an independent valuation for purposes of determining the losses referred to under subsection (4).

(6) Where the Bank determines under subsection (4) that a creditor has received less than the creditor would have received in liquidation, the creditor shall be entitled to recover the shortfall which shall form a claim in the liquidation of the residual assets of the bank or financial institution.

(7) Where the Bank effects a resolution option under subsection (1), a resolution option taken by the Bank shall not be rendered invalid or unlawful only on the ground that the action of the Bank to effect a resolution option results in a reduction in the value of a claim of a creditor of a bank or financial institution in resolution.

Impediments in orderly resolution of bank or financial institution

145. (1) The Bank shall determine whether an impediment exists in effecting the orderly resolution of a bank or financial institution prior to the Bank placing the bank or financial institution in resolution.

(2) Where the Bank determines that an impediment exists to the orderly resolution under subsection (1), the Bank may direct the bank or financial institution to take specific measures to remove the impediment within a period specified by the Bank.

Effects of resolution

146. (1) Where the Bank places a bank or financial institution in resolution under this Act—

(a) a term relating to the expiration of a claim or right of the bank or financial institution shall be extended by six months or a longer period as the Bank may determine from the date of that expiration despite the provisions of any other relevant written law relating to extension of time;

(b) the Bank may net-off the deposits of a customer of the bank or financial institution who is indebted to that bank or financial institution or has an outstanding credit facility in accordance with criteria determined by the Bank;

(c) an attachment or lien, except for an attachment or lien in existence eighteen months prior to the Bank placing the bank or financial institution, shall be vacated;

(d) an attachment or lien shall not attach to an asset of the bank or financial institution during the period that the resolution continues, except where that attachment or lien is created—

(i) by the Bank as lender of last resort; or

(ii) in favour of a payment system, settlement system or settlement in netting or gross settlement arrangement;

(e) a payment or transfer of an asset of the bank or financial institution made with an intention to effect a preference of a recipient of the payment or transfer of an asset over the other creditors of a bank or financial institution or at less than the appraised book value, shall be void, if made within a period of twelve months or a longer period as may be determined by the Bank, prior to the Bank placing the bank or financial institution in resolution;

(f) a gratuitous transfer of an asset of the bank or financial institution made within twelve months or a longer period as may be determined by the Bank, prior to the Bank placing the bank or financial institution in resolution shall be void and the asset shall be surrendered to the Bank; and

(g) any lending to a director, senior officer, or other employee of the bank or financial institution, or an associated person of that director, senior officer, or other employee of the bank or financial institution on preferential terms, or without adequate security, made within six months or a longer period as may be determined by the Bank, prior to the Bank placing the bank or financial institution in resolution shall be cancelled and that director, senior officer or other employee of the bank or financial institution or associated person shall immediately repay the money advanced and interest accrued on the lending, at the prevailing rate at the time of resolution, to the bank or financial institution.

(2) Despite subsection (1)*(e)*, a payment or transfer of an asset of a bank or financial institution in resolution shall not be void where the—

(a) payment or transfer is made to a creditor in the ordinary course of business to discharge in whole, or in part, a debt or other liability of the bank or financial institution to that creditor; or

(b) transfer of an asset in exchange for consideration which is equal to the fair market value of the asset transferred.

(3) A deposit which is subject to restriction, seizure, a freezing notice or garnishee order shall continue to be subject to the restriction, seizure, freezing notice or garnishee order until the restriction, seizure, freezing notice or garnishee order is removed or lifted by a relevant authority or on expiry.

Restriction on execution of judgement against assets of bank or financial institution in resolution

147. (1) A writ of execution, attachment, garnishee order or other similar process shall not be issued or made by a creditor against the assets of a bank or financial institution in resolution.

(2) A creditor referred to under subsection (1) shall not be entitled to retain the benefit of the execution, attachment or similar process, unless the creditor completed the execution, attachment or similar process, at least eighteen months prior to the Bank placing a bank or financial institution in resolution.

Recovery of expenses

148. The Bank may recover the necessary and reasonable expenses, costs and charges incurred by the Bank in the application of this Part from the funds of a bank or financial institution in resolution.

PART XI

INSOLVENCY, DISSOLUTION AND LIQUIDATION OF FINANCIAL SERVICE PROVIDERS

Grounds for liquidation

149. (1) The Bank may place a bank or financial institution under liquidation where a—

(a) bank or financial institution has been determined by the Bank to be no longer viable and has no prospects of recovery;

(b) bank or financial institution is not systemically important, and the bank or financial institution's failure would not give rise to a material risk to financial stability, the continuity of critical financial market infrastructures, or public confidence in the financial system;

(c) bank or financial institution's business model, operational structure, or financial condition renders the bank or financial institution unsuitable for resolution under this Act, and liquidation is considered to be the most appropriate method to protect depositors and creditors;

(d) bank or financial institution's licence has been cancelled by the Bank in accordance with this Act;

(e) bank or financial institution has been placed in resolution, and the Bank determines that-

(i) the resolution options under this Act are not sufficient to bring the bank or financial institution to recovery;

(ii) recapitalisation is not practical; and

(iii) the continued operation of the bank or financial institution would result in further erosion of value of the bank or financial institution or increased systemic risk.

(2) The Bank shall, in exercising the Bank's functions in relation to liquidation of a bank or financial institution under this Act—

(a) conduct the liquidation in a timely and orderly manner;

(b) preserve the value of the assets of the bank or financial institution, so far as is reasonably practicable;

(c) protect depositors of the bank or financial institution;

(d) safeguard the assets of the bank or financial institution's customers; and

(e) minimise disruption to the stability and effective operation of the financial system.

(3) Despite any other relevant written law, the initiation of liquidation proceedings against a banking group or holding company domiciled outside the Republic shall not be considered as a sufficient ground for the commencement of liquidation proceedings against a bank or financial institution belonging to that banking group, a subsidiary of that holding company, an associate or affiliate of the banking group or holding company which is licensed in the Republic.

(4) Subject to any other relevant written law, the Bank shall inform the relevant authority responsible for deposit insurance where the Bank places a bank or financial institution in liquidation under this section.

Restrictions of bank or financial institution Cap. 431

150. (1) Despite the Corporate Insolvency Act, or any other relevant written law, a bank or financial institution referred to under section 149 shall not —

(a) receive deposits;

(b) enter into a new contract; or

(c) continue to conduct a banking business or provide a financial service, except to the extent necessary or incidental to the orderly realisation, conservation and preservation of the assets of the bank or financial institution.

(2) A transaction with a depositor or a creditor and a settlement in a netting or gross settlement arrangement in accordance with a settlement system approved by the Bank, or provided for in any other relevant written law, shall not be proscribed under subsection (1) if the transaction or settlement took place prior to—

(a) a resolution by a board to liquidate the bank or financial institution; or

(b) the appointment of a liquidator or the placing into resolution of the bank or financial institution by the Bank.

(3) A director, senior officer or an employee of a bank or financial institution who has knowledge or, in the performance of the director, senior officer or employee's functions, is reasonably expected to have knowledge, of the insolvency of the bank or financial institution and who causes or permits any act to be done contrary to this section, commits an offence and is liable, to pay an administrative penalty not exceeding five hundred thousand penalty units.

Restriction of action by third parties Cap. 431

151. Despite the Corporate Insolvency Act, or any other relevant written law, a person shall not commence insolvency proceedings against a bank or financial institution, except where the insolvency proceedings are commenced by a bank or financial institution in accordance with this Part.

Resolution to voluntarily wind-up financial service provider Cap. 431

152. (1) Despite the Corporate Insolvency Act, or any other relevant written law, a financial service provider that intends to voluntarily wind-up shall seek prior written approval of the Bank.

(2) A financial service provider referred to under subsection (1), shall submit to the Bank—

(a) a certified copy of the board resolution to voluntarily wind-up; and

(b) an audited declaration of solvency by the directors, with a statement of affairs attached, of the financial service provider showing the—

(i) assets and total amount expected to be realised from the assets on winding-up;

(ii) liabilities of the financial service provider; and

(iii) expenses of the winding-up of the financial service provider, estimated up to the latest practicable date prior to the passing of a board resolution for voluntary winding-up.

(3) The Bank shall, on terms and conditions that the Bank may determine, approve an intention for voluntary winding-up of a financial service provider referred to under subsection (1) if the Bank is satisfied that the financial service provider is solvent and has sufficient liquid assets to settle the obligations of that financial service provider.

(4) The Bank shall, where the Bank approves an intention for voluntary winding-up under subsection (3), inform a financial service provider, in writing, of the decision.

(5) A board shall, on receipt of a decision made under subsection (4), pass a resolution for voluntary winding-up of a financial service provider in accordance with the Companies Act, and record the date, hour and minute of the passing of the resolution. Cap. 388

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

Duties of financial service provider on voluntary winding-up

153. Where a financial service provider receives approval from the Bank for voluntary winding-up under section 152, the financial service provider shall—

(a) surrender the licence of the financial service provider to the Bank, within seven days of receipt of the approval and—

(i) cease to conduct business; and

(ii) engage in activities necessary to effect the orderly winding-up of the financial service provider in accordance with the Corporate Insolvency Act, and this Act; and

Cap. 431

(b) repay in full the depositors and creditors of the financial service provider.

Notice of voluntary winding-up

154. (1) A financial service provider shall, where a financial service provider receives approval for voluntary winding-up under section 152, within fourteen days, notify, in writing, of the winding-up to a—

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

(b) person entitled to funds or property held by the financial service provider as a trustee, fiduciary, lessor of a safe custody facility or bailee.

(2) A notice referred to under subsection (1) shall—

(a) contain information as the Bank may determine;

(b) be displayed in a conspicuous place in each branch of the financial service provider; and

(c) be published in the *Gazette* and in a daily newspaper of general circulation in the Republic or electronic media as the Bank may determine.

Rights of depositors or creditors to payments, funds and other property

155. (1) An approval by the Bank for the voluntary winding-up of a financial service provider under section 152, shall not prejudice the right of a depositor or creditor to payment in full, or to the return of funds or property held, by that financial service provider.

(2) A financial service provider shall pay funds and property referred to under subsection (1) within a period that the Bank may determine.

Distribution of assets on voluntary winding-up

Cap. 431

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

(2) A distribution referred to under subsection (1) shall not be made before—

(a) the claims of depositors or creditors are paid in full;

(b) in the case of a disputed claim, the financial service provider has reserved sufficient funds to meet any liability that is awaiting determination by a court; and

(c) uncollected funds payable to a depositor or creditor, have been reserved to be considered as unclaimed funds in accordance with this Act.

Powers of Bank where assets are insufficient, or completion unduly delayed

157. The Bank may take possession of a financial service provider that is undergoing voluntary winding-up where the Bank determines that the—

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

(b) process of winding-up is delayed.

Powers of Bank in compulsory winding-up Cap. 431

158. (1) Despite the Corporate Insolvency Act or any other relevant written law, the Bank may direct the compulsory winding-up of a financial service provider as a resolution option under section 139 and shall record the date, hour and minute that the direction shall take effect.

(2) The Bank shall, within seven days of making a direction in accordance with subsection (1), notify, in writing, a director, shareholder, depositor, creditor and any other interested party of the direction.

(3) A director, shareholder, depositor, creditor and any other interested party notified under subsection (2) may, within thirty days of being notified, file an appeal to a court, against the direction made by the Bank under subsection (1), stating the grounds of the appeal.

Powers of Bank as liquidator

159. (1) The Bank shall, in effecting a compulsory winding-up of a financial service provider, have the power to—

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

(b) continue the business of the financial service provider only for purposes of winding-up of the financial service provider.

(2) Despite the Corporate Insolvency Act, and any other relevant written law, the Bank shall, after a decision to compulsorily wind-up a financial service provider—

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

(b) cause to be made available at each branch of the financial service provider for collection by a depositor, creditor and bailor of —

(i) property held by the financial service provider; and

(ii) a customer statement of the nature and amount showing a claim in the financial service provider's records, and of the availability for collection of the customer statement at their respective branches of the financial service provider.

(3) The Bank shall cause to be published in the *Gazette,* in a daily newspaper of general circulation in the Republic or electronic media as the Bank may determine, a notice informing a depositor, creditor and bailor of the availability for collection of a customer statement referred to under subsection (2)*(b)*(ii).

(4) A customer statement referred to under subsection (2)*(b)*(ii) shall specify that a—

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

(b) customer or bailor shall be required to withdraw their property within sixty days from the date of a customer statement being made available.

(5) Any property held in safe custody, on the premises of the financial service provider, that has not been withdrawn before the date specified in the customer statement shall be taken into possession by the Bank in a manner determined by the Bank.

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

(7) The Bank shall, in exercising the Bank's powers in liquidation under this Act, appoint a liquidation manager of a financial service provider whose terms of reference shall be determined by the Bank.

Immunity of Bank against depositor, creditor or bailor claims Cap. 431

160. Despite the Corporate Insolvency Act, or any other relevant written law, nothing in this Part shall be taken to impute liability on the Bank or place an obligation on the Bank to meet the claims of a depositor, creditor or bailor of a financial service provider that has been compulsorily wound-up by the Bank.

Limitation on filing of claims

161. The Bank shall, within six months after the last day for filing a claim in accordance with section 159(4)*(a)* —

(a) defer payment of a claim that is out of time;

(b) determine the amount, if any, owing to each known depositor or creditor and the priority of creditors referred to under section 163;

(c) file into court, a liquidation schedule showing the steps that the Bank proposes to take in winding-up a financial service provider;

(d) reject a claim that is determined to be invalid and notify, in a determined manner and form, each person whose claim has been rejected in full or in part; and

(e) publish once a week for three consecutive weeks, in the *Gazette,* a daily newspaper of general circulation in the Republic or other electronic media as the Bank may determine, a notice of the date and place where the liquidation schedule is available for inspection, and the date, not earlier than thirty days after the date of the third publication of the notice, on which the Bank shall file the liquidation schedule into court.

Objection to liquidation schedule

162. (1) A depositor, creditor or shareholder of a financial service provider or any other interested party may, within twenty days after the filing of a liquidation schedule referred to under section 161, file with the court an objection to a step proposed in the liquidation schedule.

(2) A court may, at the conclusion of hearing of an objection to under subsection (1)—

(a) grant the objection;

(b) order that a liquidation schedule be modified by the Bank; or

(c) set aside the objection.

(3) The Bank may, after filing a liquidation schedule referred to under section 161, settle, as the Bank may determine, an undisputed claim or a claim that has been allowed for settlement by a court.

(4) The Bank shall only settle a claim referred to under subsection (3) if a reserve account is established by the Bank in accordance with section 164.

Priority of creditors Cap. 431

163. (1) Despite the Corporate Insolvency Act, or any other relevant written law, where the Bank compulsorily winds-up a financial service provider, the following claims shall be settled in priority to any other claims:

(a) expenses incurred in the process of resolution or compulsory winding-up of the financial service provider;

(b) claims due to the Bank under lender of last resort and facilities funded by the Bank;

(c) insured deposits or claims of insured deposits in respect of—

(i) reimbursement of the insured deposits; or

(ii) funding a resolution under section 139 (5);

(d) deposit liabilities not covered by the relevant authority responsible for deposit insurance;

(e) taxes, rates due and statutory obligations;

(f) charges and assessments due to the Bank;

(g) creditors; and

(h) shareholders.

(2) Despite subsection (1), the Bank may subordinate claims due to the Bank under the lender of last resort and facilities funded by the Bank to the claims of insured deposits and other deposit liabilities not covered by the relevant authority responsible for deposit insurance.

(3) After the Bank settles the claims referred to under subsection (1), any remaining claims not submitted within the period specified under section 159(4) shall be settled by the Bank, in the order of priority of their submission.

(4) Where the funds available for settlement of the claims referred to under subsections (1) and (3) are insufficient for settlement in full, the claims shall abate in equal proportions and for the purposes of this section each claim specified under subsection (1) shall constitute a separate class of claims, and the claims specified under subsection (2) shall constitute another separate class of claims.

(5) A claim shall not receive preferential treatment over other claims of a financial service provider unless that treatment is in accordance with the priority of creditors ranking under subsection (1).

(6) Despite subsection (1), for purposes of a bail-in under this Act, the write-down or conversion by the Bank shall be in reverse order of the priority of creditors, except where a bail-in does not apply to any claim referred to under subsection (1).

Reserve account for wound-up financial service provider Cap. 431

164. Despite the Corporate Insolvency Act, or any other relevant written law, the Bank shall, where the Bank compulsorily winds-up a financial service provider, establish a reserve account for purposes of settling the following claims against the financial service provider:

(a) present or future claims;

(b) certain or contingent claims;

(c) any customer accounts which are subject of legal proceedings and seized prior to the financial service provider being wound-up; or

(d) any other claim that the Bank may determine.

Debt restructuring or write-off for wound-up financial service provider

165. The Bank may determine the requirements for debt restructuring or debt write-off for a financial service provider compulsorily wound-up.

Final distribution in compulsory winding-up

166. The assets remaining after all claims have been settled in a compulsory winding-up of a financial service provider shall be distributed among the shareholders of the financial service provider.

Undistributed funds

167. Any undistributed funds remaining after a final distribution referred to under section 166, shall be held by the Bank and subsequently managed in accordance with this Act.

Power of Bank in relation to insolvent financial business

168. (1) Despite this Part, the Bank may take possession of a financial business where the Bank determines that the financial business is engaging in conduct which is in contravention of this Act.

(2) Where the Bank winds-up a financial business, the winding-up shall take effect by the Bank—

(a) cancelling the licence of the financial business; and

(b) recommending, to an appropriate authority, the placing of the financial business in liquidation.

Termination of liquidation process

169. The Bank shall determine the termination of a liquidation process of a financial service provider under this Act.

PART XII

ANTI-MONEY LAUNDERING AND COUNTERING TERRORISM FINANCING AND PROLIFERATION FINANCING

Anti-money laundering and countering terrorism financing and proliferation financing supervision

170. (1) The Bank shall adopt a risk-based approach to supervise financial service providers for purposes of monitoring and ensuring compliance with money laundering and countering of terrorism financing and proliferation financing or any other serious offence.

(2) The Bank shall apply consolidated supervision for monitoring compliance by financial service providers with anti-money laundering and countering terrorism financing and proliferation financing measures subject to core principles on effective banking supervision, where applicable.

(3) The Bank shall determine the frequency and intensity of on-site and off-site supervision for a financial service provider for anti-money laundering and countering of financing of terrorism and proliferation on the basis of the—

(a) money laundering, terrorism financing or proliferation financing risks and the policies, internal controls and procedures associated with the financial service provider, as identified by the Bank's assessment of the risk profile of the financial service provider or banking group;

(b) money laundering or terrorism financing risks present in the country; and

(c) characteristics of the financial service provider or its banking group, in particular the diversity and number of financial service providers and the degree of discretion allowed to them under the risk-based approach.

(4) The Bank shall review the assessment of the money laundering, terrorism financing or proliferation financing risk profile of a financial service provider, including the risks of non-compliance, periodically and when there are major events or developments in the management and operations of the financial service provider or its banking group.

(5) A financial service provider shall identify and assess the money laundering risk, terrorism financing risk or proliferation financing risk prior to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new products and pre-existing products.

Anti-money laundering and countering financing of terrorism supervision sanctions Cap. 384 Cap. 128

171. Where a financial service provider is determined to be non-compliant with preventive measures relating to money laundering, terrorism financing and proliferation financing, sanctions under the Financial Intelligence Centre Act, and the Anti-Terrorism and Non-Proliferation Act, shall apply.

PART XIII

Reporting Obligations

Records to be kept and maintained

172. (1) A financial service provider shall keep and maintain records which shall contain—

(a) the articles of association and amendments to the articles of association of the financial service provider;

(b) a register of shareholders of the financial service provider containing adequate, accurate and up-to-date information on the shareholders and the number of shares registered in the name of each shareholder;

(c) a register of beneficial owners of the financial service provider containing adequate, accurate and up-to-date information on the beneficial owners;

(d) the minutes of meetings and resolutions of shareholders of the financial service provider;

(e) the minutes of meetings and resolutions of a board;

(f) the business correspondence, with supporting accounting records, showing the state of the financial service provider's business affairs and transactions and the financial position of the financial service provider;

(g) records, for each customer of the financial service provider, showing particulars of transactions with, or on an account of, the customer and the balance owing to, or owed by, the customer on a daily basis;

(h) information relating to the legal ownership of customer accounts; and

(i) any other records required to be kept and maintained as may be determined by the Bank.

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

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

(a) director of a financial service provider; or

(b) shareholder or creditor of a financial service provider or a personal representative of the shareholder or creditor.

(4) Despite subsection (3)*(b)*, the records referred to under subsection (1)*(c)*, *(d)* and *(g)* shall not be open for inspection by a shareholder or creditor or a personal representative of the shareholder or creditor.

Credit documentation

173. (1) A financial service provider shall keep and maintain, at the principal administrative office, credit documentation and other information relating to the business of the financial service provider with consumers and other persons, as the Bank may determine.

(2) In this section, "credit documentation" means documents relating to a contract entered into by a financial service provider with another person for the provision of an advance and includes the following documents:

(a) acknowledged correspondence to a borrower on any variations made to the terms and conditions of a loan including, interest rate and loan tenure;

(b) account statements showing the current indebtedness to the financial service provider of a borrower and where the debt is guaranteed, the details of a guarantor;

(c) proof of collateral over which the financial service provider has a mortgage or charge as security for the settlement of a credit facility;

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

(e) key fact statement;

(f) documents evidencing the assessment and approval of a credit facility by the financial service provider;

(g) information submitted to the Credit Registry, a credit reference bureau and information for verification of indebtedness; and

(h) documentation relating to credit portfolio monitoring and management.

Manner of keeping records

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

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

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

(c) capable of conversion, where the register or record is kept in one form, to any other readable and retrievable form.

Retention of records

175. (1) A financial service provider shall retain a register or record for a period of not less than ten years after a business relationship has ended, or after the date of an occasional transaction.

(2) The Bank may require a financial service provider to retain a record for a longer period than the period specified under subsection (1) where the record relates to—

(a) an on-going legal proceeding;

(b) an on-going criminal investigation;

(c) a dispute with a customer; or

(d) a matter of public interest.

Maintenance of records

176. (1) A financial service provider shall ensure that arrangements for retention of records are designed to protect data, records and materials from deliberate or accidental changes, manipulations or deletions for purposes of preserving the integrity of the data, records and materials throughout the retention period referred to under section 175.

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

(a) prevent loss or unauthorised destruction;

(b) prevent falsification of entries;

(c) facilitate the detection and correction of inaccuracies; and

(d) prevent the use or access of information by an unauthorised person.

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

(4) A person shall not—

(a) destroy, alter, mutilate or falsify a book, document, valuable security or account, which belongs to a financial service provider or customer, or any entry in the book, document, or account, or be party to any such act;

(b) make or be party to the making of a false entry in a book, document or account;

(c) omit, or be party to an omission of, an entry from a book, document or account; or

(d) destroy records relating to dormant accounts or accounts on which there are unresolved disputes.

(5) A person who contravenes subsection (4) commits an offence and is liable to pay an administrative penalty not exceeding four hundred thousand penalty units.

PART XIV

APPEALS

Reasons for decisions and right to be heard

177. (1) The Bank shall, where the Bank makes a decision under this Act, by notice in writing—

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

(b) invite the person referred to under paragraph *(a)* to make a written representation within a time specified in the notice.

(2) The Bank may, on receipt of a written representation referred to under subsection (1)*(b)*, reaffirm, revoke or vary its decision and notify the person accordingly.

Right of appeal

178. A person aggrieved by a decision of the Bank may, within fourteen days of receipt of the decision, notify the Bank and the Minister, in writing, of the person's intention to appeal to a tribunal, stating the nature of the grievance and the grounds of the appeal.

Constitution of tribunal

179. (1) The Minister shall, within thirty days of receipt of a notification referred to under section 178, constitute an *ad hoc* tribunal consisting of the following members appointed by the Minister:

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

(b) two other members with knowledge and experience in the matter under consideration.

(2) The members referred to under subsection (1) shall be appointed on terms and conditions as may be specified in their letters of appointment.

(3) A tribunal constituted under subsection (1) shall—

(a) afford an appellant the right to appear in person or be represented by a legal practitioner or an agent; and

(b) hear and determine an appeal on the merits of the appeal, within sixty days of being constituted, in accordance with this Act.

(4) The Chief Justice may, by statutory instrument, make rules for the procedure to be followed and the rules of evidence to be observed in proceedings before a tribunal.

Decisions of tribunal

180. (1) A tribunal shall not set aside a decision of the Bank made under this Act.

(2) A decision of the Bank made under this Act shall remain in force unless set aside by a court.

(3) Despite subsections (1) and (2), a tribunal may order compensation against the Bank where the tribunal finds the Bank to have made a decision on the matter before the tribunal in contravention of this Act or any other relevant written law.

(4) An appeal against a decision of a tribunal shall lie to the Court of Appeal.

PART XV

EXAMINATIONS AND INVESTIGATIONS

Examination of financial service providers

181. (1) The Bank may conduct an examination of a financial service provider to determine whether the financial service provider is—

(a) in a sound financial condition;

(b) managing inherent risks relating to the operations of the financial service provider;

(c) treating consumers fairly and engaging in sound market conduct;

(d) complying with the requirements of the Financial Intelligence Centre Act, Prohibition and Prevention of Money Laundering Act and Anti-Terrorism and Non-Proliferation Act, to prevent money laundering, terrorism financing and proliferation financing; Cap. 384 Cap. 99 Cap. 128

(e) complying with environmental, social and governance requirements; or

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

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

(a) oral and documented information including information kept and maintained in computers, books, minutes, accounts and vouchers;

(b) cash and securities;

(c) any other thing in the possession, custody or under the control of a financial service provider or its affiliate;

(d) corporate governance, internal controls and risk management practices;

(e) consumer protection and market conduct practices; or

(f) information or activities on anti-money laundering and countering of terrorism financing and proliferation financing.

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

(a) chairperson of the board to submit the report to a meeting of the board; and

(b) financial service provider to submit to the Bank, in writing, actions to be taken on findings of the report.

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

(5) The Bank may, where the Bank determines that an examination conducted in accordance with this section shows that the business of a financial service provider is conducted in a manner detrimental to the interests of the financial service provider, depositors, customers, shareholders or the stability and integrity of the financial system—

(a) direct the financial service provider to take remedial measures as the Bank may determine; or

(b) appoint a person, at the cost of the financial service provider, who is competent to advise the financial service provider on the remedial measures to be taken under paragraph *(a)*.

Obstruction of examination

182. (1) A person commits an offence if that person—

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

*(b) o*bstructs or attempts to obstruct—

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

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(ii) an examination of the financial service provider by a person duly authorised by the Bank to conduct an examination under this Act;

(c) refuses to give information or assistance which is required for purposes of an examination under this Act;

(d) impersonates an employee or agent of the Bank; or

(e) falsely represents oneself to be an employee or agent of the Bank or acting under the instructions of an employee or agent of the Bank.

(2) A person convicted of an offence under subsection (1) is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Investigations

183. (1) The Bank may, on its own motion or acting on a complaint lodged by a person, conduct an investigation where the Bank has reasonable grounds to believe that there is, or is likely to be, a contravention of a provision of this Act, with a warrant —

(a) enter and search premises on which a banking business or financial service is conducted;

(b) access and examine a book, record, statement, document, computer or computer system;

(c) seize or make a copy of a book, record, statement or document;

(d) examine, verify or seize money or a negotiable instrument found on the premises;

(e) question a person who is found on the premises or an auditor, director, shareholder or associate conducting business on the premises, in connection with the conduct of the business on the premises;

(f) direct that the premises of the business or anything on those premises, be secured and left undisturbed as long as is necessary to search the premises for a book, record, statement, document or item under paragraph *(b)*;

(g) require from a person referred to under paragraph *(e)*, an explanation in relation to an entry in a book, record, statement or document;

(h) take extracts from, or make copies of, a book, account, system or record that is on the premises that has a bearing on an investigation;

(i) remove from the premises any equipment, commodity or product;

(j) close-down the premises of the business; or

(k) make inquires that may be necessary to ascertain whether the provisions of this Act or any other relevant written law on which an investigation is based, have been complied with.

(2) The Bank may, by notice in writing to a person who is in control or has custody of a book, record, statement, document, computer or computer system to produce the book, record, statement, document, computer or computer system to the Bank at a place, on the date and at the time specified in the notice.

(3) The Bank shall, where the Bank removes anything from any premises—

(a) issue a receipt for anything removed to the owner or the person in control of the premises; and

(b) return anything removed as soon as practicable after the thing removed has served the purpose for which it was removed.

(4) A person who, in good faith, provides information to the Bank which information facilitates an examination or investigation under this Act, shall be indemnified against a claim or sanction that arises as a consequence of providing the information.

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

PART XVI
General Provisions

Regulation of lending interest rates

184. The Bank may regulate lending interest rates that a financial service provider shall charge consumers under this Act, as determined by the Bank.

Netting of claims Cap. 431

185. (1) Despite the Corporate Insolvency Act, or any other relevant written law, where the Bank cancels a licence of a financial service provider, places a bank or financial institution in resolution or appoints a liquidator for a financial service provider, a provision contained in a written netting agreement to which the financial service provider is a party or a netting rule or practice applicable to the financial service provider is binding on the financial service provider, a resolution manager or liquidator in respect of—

(a) a payment or settlement initiated to another financial service provider prior to the cancellation of a licence or appointment of a resolution manager or liquidator and that payment or settlement—

(i) is subject to clearing or netting rules;

(ii) may result in a payment or settlement obligation to be discharged on or after the date of the cancellation of a licence, or appointment of a resolution manager or liquidator; or

(iii) the discharge of which was overdue on the date of cancellation of the licence, or appointment of a resolution manager or liquidator;

(b) a payment obligation or settlement obligation—

(i) which has been determined through netting prior to the cancellation of a licence, appointment of a resolution manager or liquidator;

(ii) which is discharged on or after the date of the cancellation of a licence, appointment of a resolution manager or liquidator; or

(iii) the discharge of which was overdue on the date of cancellation of a licence, appointment of a resolution manager or liquidator.

(2) Despite the Corporate Insolvency Act, an asset of a financial service provider which that financial service provider, prior to the cancellation of a licence, or appointment of a resolution manager or liquidator pledged— Cap. 431

(a) to the Bank, another financial service provider or any person as security for a loan in respect of the financial service provider's settlement obligation, may be utilised by the financial service provider only for the purposes of discharging that settlement obligation; or

(b) under a written agreement as security in respect of the financial service provider's payment obligation may be, utilised by the financial service provider only for the purposes of discharging that payment obligation.

Enforceability of close-out netting agreements

186. (1) This section shall apply to an eligible contract entered into between a financial service provider and another party.

(2) Subject to section 137(3), a close-out netting agreement shall be enforceable—

(a) in accordance with the terms of an agreement;

(b) against an insolvent party; or

(c) against a guarantor or other person providing collateral or security for an obligation of an insolvent party referred to under paragraph *(b)*.

(3) The Bank shall issue a regulatory statement on the enforceability of a master agreement in relation to close-out netting and maintenance of recognised master agreements.

Financial inclusion

187. (1) The Bank may authorise financial products and financial services for purposes of promoting financial inclusion.

(2) The Bank may issue a regulatory statement for purposes of promoting access to banking and financial services targeting the financially excluded population.

(3) A financial service provider may, with written authorisation of the Bank, collaborate with financial institutions and persons for purposes of providing financial services.

(4) A financial service provider shall develop financial education programmes, as the Bank may determine, which shall be furnished to consumers of the financial service provider, specifically the consumers targeted by initiatives for financial inclusion.

Authorised activities of banks

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

(a) deal as a principal or an agent in the currency of the Republic, and subject to this Act, in the currency of any other country, foreign exchange transactions, gold, silver, platinum, bullion or coins;

(b) provide money transfer or transmission services from a customer's account;

(c) act as a trustee, executor or administrator of an estate or in any fiduciary capacity for any person;

(d) act as a financial agent for any person;

(e) provide safekeeping and custodial services;

(f) provide merchant banking services, including the arrangement and underwriting of shares, trade financing, corporate financing and provision of financial advice;

(g) deal as a principal or agent for its customers in financial derivatives;

(h) provide a branchless banking service; or

(i) any other authorised activity as the Bank may determine.

(2) Despite sub-section (1), a bank engaged in any of the authorised activities specified under that subsection shall comply with other relevant written laws.

Access to documents Act No. 24 of 2023

189. (1) Subject to the Access to Information Act, 2023, a person may, on request to the Bank, review, or make copies of, any document lodged with the Bank under this Act.

(2) The Bank may reject, in whole or in part, a request referred to under subsection (1) where the Bank determines that the—

(a) document contains confidential information;

(b) document contains information that has a real commercial value to a person who would be seriously and unreasonably prejudiced if the document is reviewed or copied;

(c) document contains personal information about a person and it is in the public interest that the information should remain confidential; or

(d) intended purpose for the request is unlawful or contravenes this Act.

(3) The Bank may issue a regulatory statement on the procedure, terms and conditions and applicable fees for making a request under subsection (1).

Offences committed partly in and partly out of Republic

190. (1) Where this Act provides that a person commits an offence where the person does a particular act, the offence is considered to have been committed, even where the act is done partly outside the Republic.

(2) Where this Act provides that a person commits an offence where the person does two or more particular acts, the offence is considered to have been committed, even if some of those acts are done outside the Republic.

Use of word "bank"

191. A person, other than a bank, shall not, without the written approval of the Bank, use the word "bank", or any of the cognate words in any language, or any other word or symbol indicating the transaction of banking business, in the person's name or in any prospectus, advertisement or statement of any kind published or made to describe the person's business in the Republic.

Restriction on use of name of financial service provider

192. (1) Subject to subsection (4), a person carrying on a business shall not use a name which indicates or may reasonably be understood to indicate, whether in English or other language, that the business is being conducted, or a service is being provided, by a financial service provider.

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

(a) holds a licence issued under this Act; or

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

(3) Subsection (1) does not apply to—

(a) a company or other entity incorporated or established outside the Republic, and which has no permanent place of business in the Republic for the purposes of soliciting business or advertising the company's or entity's business in the Republic;

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

(c) a person licensed as a financial service provider; or

(d) any other person as the Minister may, by statutory instrument, exempt.

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

(5) The Bank shall, where a company or the name of a business is currently registered in a manner that contravenes subsection (1), notify a relevant authority responsible for the registration of the company or business name to direct the person or company to alter or modify the name for purposes of complying with this section.

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

Validity of certain acts by financial service provider

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

Power to summon officer, director or shareholder

194. (1) The Bank may, where the Bank considers that an officer, a director or shareholder, past or present, of a financial service provider, has any information relating to the operations of the financial service provider which the Bank considers necessary for the performance of the Bank's supervisory functions under this Act, summon, in writing, that officer, director or shareholder.

(2) An officer, a director or shareholder referred to under subsection (1) commits an offence if that officer, director or shareholder—

(a) fails, without reasonable excuse, to appear before the Bank and provide information;

(b) withholds information; or

(c) provides information which is false in any material particular.

(3) An officer, a director or shareholder convicted of an offence under subsection (2) is liable to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both.

Submission of information and documents to Bank

195. (1) The Bank may direct a financial service provider, an affiliate, associate, holding company or subsidiary or a person that controls that financial service provider, affiliate, associate, holding company or subsidiary, or any other person to furnish any information or data which the Bank may require in the performance of its functions.

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

(3) A person who contravenes subsection (1) commits an offence and is liable to pay an administrative penalty not exceeding four hundred thousand penalty units.

Protection of persons providing information under Act Cap. 102

196. Subject to the Public Interest Disclosure (Protection of Whistleblowers) Act, an action or other proceeding shall not lie against any person who, in good faith, furnishes a document or provides information to the Bank or an agent of the Bank in accordance with this Act or any regulations, rules or regulatory statement made in accordance with this Act.

Authorisation to provide alternative financial service

197. (1) Despite any provision under this Act, the Bank may authorise a financial service provider to provide an alternative financial service.

(2) The Bank may issue a regulatory statement relating to authorisation to provide an alternative financial service under subsection (1).

Publication of information

198. (1) The Bank may publish, in whole or in part, information or data furnished to the Bank under this Act where the Bank considers it necessary or appropriate to publish the information or data.

(2) Despite subsection (1), the Bank shall not publish personal information relating to a customer of a financial service provider, unless lawfully required to do so under this Act or any other relevant written law.

Extension of period to furnish document or information

199. The Bank may, on request by a financial service provider or an interested person, extend a period within which a financial service provider shall furnish a document or information to the Bank under this Act.

False document

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

Money circulation schemes

201. (1) A person shall not—

(a) conduct, or participate in, a money circulation scheme; or

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

(2) The Bank may, as the supervisory authority of financial service providers under this Act, conduct an investigation of a money circulation scheme for purposes of determining whether the money circulation scheme is licensed under this Act.

(3) Where the Bank, after conducting an investigation referred to under subsection (2) determines that a money circulation scheme is not licensed under this Act—

(a) a person who participates in that money circulation scheme shall not be compensated or refunded by the Bank any money which that person paid to the money circulation scheme; and

(b) the Bank shall apply to a court to forfeit to the State the money paid by a person referred to under paragraph *(a)*.

(4) A person who contravenes subsection (1) is liable to pay an administrative penalty not exceeding three million penalty units.

Utilisation of collateral for settlement of certain obligations of financial service provider

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

(2) The Bank shall issue a certificate certifying that the collateral or any part of the collateral referred to under subsection (1) has been utilised for the purposes specified in that subsection.

(3) The certificate referred to under subsection (2) shall be *prima facie* evidence of the matters stated in the certificate.

(4) Where a financial service provider referred to under subsection (1) is wound-up or placed in liquidation in accordance with this Act, the balance of the collateral, after the collateral has been utilised in accordance with that subsection, shall be dealt with in accordance with Part XI.

Special reserve account, insurance and commitment

203. A financial service provider shall—

(a) maintain a special reserve account, with an amount that a board considers adequate, which shall be reserved exclusively for making good any loss resulting from the negligence or dishonesty of a director, senior officer or other employee of the financial service provider;

(b) insure itself against loss, to an amount that a board considers adequate; or

(c) undertake a commitment that the Bank may consider acceptable for the purpose of this section.

Unclaimed funds and personal property

204. (1) This section applies to—

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

(i) increased or decreased the amount of the demand, savings or matured time deposit, or presented identification documents with evidence of a deposit crediting the interest;

(ii) corresponded in writing with a bank or financial institution which holds the demand, savings or matured time deposit; or

(iii) shown an interest in the demand, savings or matured time deposit as evidenced by a memorandum on file with a bank or financial institution holding the demand, savings or matured time deposit;

(b) funds paid towards the purchase of shares or other interest in security, issued by a financial service provider that is not listed or quoted on a stock exchange regulated under the Securities Act, and any interest or dividend relating to the shares or other interest in security, excluding any charge that may lawfully be withheld, in respect of which an owner of the shares or other interest in security has not, within the last ten years— Cap. 354

(i) increased or decreased the amount of funds paid towards the purchase of shares or other interest in security;

(ii) corresponded, in writing, with the financial service provider that issued the shares or other interest in security; or

(iii) shown an interest in the funds paid towards the purchase of shares or other interest in security as evidenced by a memorandum in the records of the financial service provider; and

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

(2) A financial service provider shall send a notice, in writing, to an owner referred to under subsection (1) through electronic media as the Bank may determine or registered post, to the last known address of the owner in accordance with the records of the financial service provider.

(3) The funds or personal property referred to under subsection (1), shall be considered to be abandoned on the expiration of the period specified in that subsection, if an owner of the funds or personal property fails to respond to a notice referred to under subsection (2).

(4) A financial service provider holding funds or personal property considered abandoned under this section shall—

(a) report to the Bank on the amount and nature of the funds or personal property, in a form and at periods as may be determined by the Bank; and

(b) pay funds or surrender the property to the Bank on expiration of the period specified under subsection (1).

(5) A financial service provider shall retain records and inventory of funds paid or personal property surrendered in accordance with subsection (4).

(6) A person whose funds have been paid, or property has been surrendered, to the Bank under this section may claim the funds or property from the Bank within a period of six years from the date of receipt of the funds or property by the Bank.

(7) An action or claim shall not be made in respect of funds or personal property paid or surrendered to the Bank under this section on the expiration of the period specified in subsection (6) after which the funds or personal property shall be forfeited to the State.

Industry reports

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

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

Continuing acts or offences

206. A person commits a separate offence for each day on which a failure or refusal continues and is liable to an administrative penalty as the Bank may determine where—

(a) an act is required to be done within a particular period or before a particular time and the obligation to do the act continues after the period has ended or the time has passed; or

(b) the failure or refusal to comply with the provision is an offence and that failure or refusal continues.

Offences by principal officers of body corporate or unincorporated body

207. Where an offence under this Act is committed by a body corporate or unincorporate body, with the knowledge, consent or connivance of the director, manager, shareholder or partner of the body corporate or unincorporate body, that director, manager, shareholder or partner commits the same offence as the body corporate or unincorporate body and is liable, on conviction, to the penalty specified for that offence under this Act.

General penalty

208. A person who commits an offence under this Act for which no penalty is provided is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Administrative penalty

209. (1) The Bank may impose an administrative penalty for a failure to comply with a provision of this Act which is not an offence.

(2) An administrative penalty shall not exceed the amount, determined by the Bank, for each day during which the failure continues.

(3) An administrative penalty shall be paid to the Bank within a period determined by the Bank.

(4) The Bank may, where a person fails to pay an administrative penalty within the stipulated time under subsection (3), by way of civil action in a competent court, recover the amount for the administrative penalty from that person as an amount due and owing to the Bank.

Immunity

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

Exemption

211. The Bank may, on terms and conditions as the Bank may determine, exempt a financial service provider or any other person from the provisions of this Act and provide for variation or revocation of that exemption.

Regulatory statements

212. (1) The Bank may, by notice in the *Gazette,* issue regulatory statements necessary for the better carrying out or giving effect to the provisions of this Act.

(2) Despite the generality of subsection (1), regulatory statements may provide for—

(a) the conduct of business by financial service providers and their representatives;

(b) matters relating to the licensing of financial service providers under this Act;

(c) the class of persons in relation to whom, and the manner and circumstances in which, financial service providers may conduct banking business or provide a financial service;

(d) the correction of errors in a register or record kept in accordance with this Act;

(e) particulars to be recorded for the purposes of this Act in relation to accounts of financial service providers;

(f) the lodgment of auditor's reports and the information to be contained in the auditor's reports;

(g) the operating hours for financial service providers;

(h) the lodgment by financial service providers of annual financial statements;

(i) exemptions of financial service providers from the provisions of this Act or any rule made in accordance with this Act;

(j) administrative penalties to be imposed by the Bank;

(k) the type of business or service that the Bank considers as constituting a banking business or financial service;

(l) maintenance of the confidentiality of information relating to customers of financial service providers;

(m) open finance;

(n) information and the matters to be displayed on business stationery of financial service providers;

(o) insurance by financial service providers against negligence, loss or default;

(p) the practice and conduct of share registers and other registers that are to be kept by financial service providers in accordance with this Act;

(q) the making of annual returns or other regulatory returns to the Bank by financial service providers;

(r) mandatory disclosures and registration of interests in financial service providers;

(s) fit and proper requirements;

(t) the process of transferring property, rights and liabilities of a bank or financial institution in resolution to a bridge institution through a property transfer instrument;

(u) matters related to the establishment and operations of a bridge institution;

(v) anti-money laundering and countering terrorism financing and proliferation financing by financial service providers;

(w) financial consumer protection and market conduct and the issuance of financial consumer protection and market conduct standards;

(x) pre-payment of credit by a borrower of a financial service provider;

(y) product-specific disclosure requirements for any category of a banking business or financial service;

(z) terms and conditions for the designation, appointment, and functions of a financial ombudsperson;

(aa) the issuance, contents and form of a prospectus, financial statements, an annual report and other documents required under this Act;

(bb) requirements for the display and use of unique numbers allocated by the Bank for licences issued under this Act;

(cc) requirements for transactions, including requirements prohibiting or restricting a financial service provider from commencing or conducting a banking business or providing a financial service;

(dd) the formulation and publication of codes of conduct for financial service providers and their agents, officers and employees;

(ee) requirements for financial service providers to make reports to the Bank, regularly or on the occurrence of specified events or circumstances;

(ff) requirements for contents, publication and dissemination of reports to the Bank by—

(i) financial service providers; and

(ii) officers and former officers of financial service providers;

(gg) prudential rules, including rules as to capital adequacy, assets and other resources for financial service providers;

(hh) disclosures to be made by financial service providers;

(ii) keeping of books and records by financial service providers;

(jj) transfer of business, contracts or other engagements of a financial service provider on insolvency or winding up;

(kk) the criteria for declaration of financial service providers as publicly traded companies;

(ll) the determination of fees or charges payable in respect of any matter arising under, provided for in, or authorised by, this Act;

(mm) the forms for applications, licences, approvals, registers, notices, orders and other documents required for the purposes of this Act;

(nn) the procedure for the service of notices, orders and documents as specified in this Act and the times at which the notices, orders and documents shall be considered to have been served;

(oo) the information to be furnished in returns and other documents submitted to the Bank or made for the purposes of this Act;

(pp) the circumstances under which personal data of consumers can be shared between financial service providers and third-parties authorised by the Bank;

(qq) the procedure for objections for purposes of this Act, and the making, consideration, hearing and determination of objections;

(rr) the segregation and safe custody of money or other property of customers of financial service providers;

(ss) the scope and objectives of the Bank's resolution powers;

(tt) any saving or transitional provisions the Bank considers necessary or convenient to be made in consequence of the enactment of this Act;

(uu) the removal of shareholders who are not fit and proper persons;

(vv) lending interest rates that a financial service provider shall charge consumers; and

(ww) the determination by the Bank of a systemically important bank or financial institution.

Regulations

213. The Minister may, on the recommendation of the Bank, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Repeal of Acts and savings and transitional provisions Cap. 387 Cap. 398

214. (1) The Banking and Financial Services Act and the Money-lenders Act are repealed.

(2) Despite subsection (1), a licence issued under the repealed Acts shall continue to be valid until expiry, cancellation or surrender as if the licence was issued under this Act.

(3) An application for a licence pending under the repealed Acts shall, on commencement of this Act, be issued in accordance with this Act.

(4) A right or benefit accruing, or liability incurred, under the repealed Acts, shall continue as if accrued or incurred under this Act.

(5) An order, notice or directive made or given and in force under the repealed Acts shall, unless inconsistent to this Act, continue in force until revoked in a manner specified in this Act.