

**THE BANKING AND FINANCIAL SERVICES
(AMENDMENT) BILL, 2020**

MEMORANDUM

The object of this Bill is to amend the Banking and Financial Services Act so as to—

- (a) provide for the repayment of funds collected by an unlicensed person;
- (b) revise the jurisdiction of the tribunal;
- (c) revise the priority of payment to depositors; and
- (d) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

A BILL

ENTITLED

An Act to amend the Banking and Financial Services Act.

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Banking and Financial Services (Amendment) Act, 2020, and shall be read as one with the Banking and Financial Services Act, 2017, in this Act referred to as the principal Act.

Short title

Act No. 7 of 2017

2. Section 2 of the principal Act is amended by the deletion of the definition of “insolvency” and the substitution therefor of the following:

Amendment of Section 2

10 “insolvency” means a situation where a financial service provider —

(a) is unable to pay a debt when it falls due;

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

(c) has regulatory capital which is at zero or lower.

15 3. (1) The principal Act is amended by the repeal of section 6 and the substitution therefor of the following:

Repeal and replacement of section 6

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

Providing banking business, financial business or financial services without licence

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

(3) A person, without a banking licence, financial institution licence or a financial business licence, shall not collect funds by purporting to conduct a banking business, financial service or financial business.

N.A.B. 7, 2020

(4) A person who contravenes subsections (1), (2) and (3) 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.

(5) Where a person obtains funds under subsection (3), that person shall, in addition to the penalty imposed under subsection (4), repay the funds in accordance with the Bank's directives and within the period determined by the Bank.

(6) Where funds repayable under subsection (5) remain unpaid at the end of the period determined by the Bank for repayment, the funds payable shall be recoverable by the Bank and kept in trust for the person lawfully entitled to the funds.

Amendment
of section 21

4. Section 21 of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:

(2) The Register shall be open for public inspection during normal operating hours of the Bank.

(3) The Bank may maintain a Register in an electronic form or any other form determined by the Bank.

Repeal and
replacement
of heading

5. The principal Act is amended by the repeal of the heading immediately after section 51 and the substitution therefor of the following:

REGULATORY AND SUPERVISORY POWER OF BANK

Insertion of
section 62A

6. The principal Act is amended by the insertion of the following new section immediately after section 62:

Anti-money
laundering
and counter
financing of
terrorism
supervision

62A. The Bank may exercise its authority over a financial service provider where the Bank considers that it is necessary to implement supervision for the purposes of the prevention and combating of money laundering and financing of terrorism or proliferation or any other serious offence.

Repeal of
section 72

7. The principal Act is amended by the repeal of section 72.

Repeal and
replacement
of section 73

8. The principal Act is amended by the repeal of section 73 and the substitution therefor of the following:

Possession of
financial
service
provider by
Bank

73. (1) The Bank shall, where the Bank takes possession of a financial service provider—

(a) restructure or re-organise the financial service provider;

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

N.A.B. 7, 2020

- (c) close the financial service provider;
- (d) transfer all or part of the business of the financial service provider to a bridge bank;
- (e) initiate a purchase and assumption transaction;
- 5 (f) dispose of some of the assets of the financial service provider; or
- (g) take an action that the Bank considers necessary to enable the Bank carry out its functions in accordance with this Act.
- 10 (2) Where the Bank decides to close a financial service provider under subsection (1) (c), the closure may take effect—
- (a) by an order of the Bank placing the financial service provider under liquidation; or
- 15 (b) in the case of a financial business, by cancelling the financial business licence and recommending to an appropriate authority the placing of the financial business into liquidation.
- (3) Despite subsection (1), the Bank shall, on taking possession of a financial service provider, prepare a statement of affairs showing the financial position of the financial service provider.
- 20
- 9.** The principal Act is amended by the repeal of section 74. Repeal of section 74
- 10.** The principal Act is amended by the repeal of section 75 and the substitution therefor of the following: Repeal and replacement of section 75
- 75.** (1) A financial service provider or an interested person acting on the financial service provider's behalf may, within twenty-one days after the date on which the Bank takes possession of the financial service provider, petition the Minister to establish a tribunal to enquire into the the decision of the Bank to take possession of the financial service provider. Petition to Minister against possession
- 30
- 11.** Section 82 of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following: Amendment of section 82
- 35 (2) Except as may be prescribed under subsection (1), the total value of a grant, credit facility and guarantee specified in subsection (1) shall not exceed twenty-five percent of the regulatory capital.

Amendment of section 132 Act No. 9 of 2017	10.	Section 132 of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following: (1) Despite the Corporate Insolvency Act, 2017, or any other written law, in any compulsory windingup or dissolution of a financial service provider, the following shall be paid in 5 priority to all other debts in the order set: (a) expenses incurred in the process of compulsory winding up or dissolution; (b) depositors whose deposit claims— (i) are covered by a deposit protection scheme; 10 and (ii) not covered by a deposit protection scheme; (c) taxes and rates dues; (d) wages and salaries of employees of the financial service provider, excluding executive employees, 15 senior management and other categories of staff that the Bank may determine, for a period of three months; (e) charges and assessments due to the Bank; or (f) other claims against the financial service provider in 20 an order of priority that the Court may determine on application by the Bank.
Amendment of section 137	11.	Section 137(3) of the principal Act is amended by the deletion of the words “or set aside by a tribunal on appeal or by the Court”. 25
Amendment of section 140	12.	Section 140 of the principal Act is amendment by the deletion of subsection (1) and the substitution therefor of the following: (1) A tribunal shall hear and determine an appeal on its merits, within thirty days of being convened, taking into account this Act 30 and any other relevant written law.
Repeal and replacement of section 141	13.	The principal Act is amended by the repeal of section 141 and the substitution therefor of the following:
Decision of Tribunal	141.	(1) A tribunal may order compensation against the Bank where the tribunal finds the Bank to have acted contrary to this 35 Act or any other written law on the matter before the tribunal. (2) An appeal against a decision of a tribunal, on a point of law, shall lie to the Court of Appeal.

14. Section 160 (1) of the principal Act is amended by the deletion of paragraph (b) and the substitution therefor of the following: Amendment
of section
160

- 5 **(b)** funds paid toward the purchase of a share or other interest
 in a security, issued by a financial service provider not
 listed or quoted on an exchange regulated under the
 Securities Act, 2016, and any interest or dividend relating Act No. 41 of
2016
10 thereto, excluding any charge that may lawfully be
 withheld, in respect of which the owner has not, within
 the last ten years—
- (i) increased or decreased the amount of the funds
 or deposit;
 - (ii) corresponded, in writing, with the bank or financial
 institution; or
 - 15 (iii) otherwise indicated an interest in the funds as
 evidenced by a memorandum in the records of
 the financial service provider; and.
-