

Banking (Deposit Protection) Regulations, 2003
Statutory Instrument 29 of 2003.
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IT is hereby notified that the Minister of Finance and Economic Development, with the approval of the Deposit Protection Board, in terms of section 81 of the Banking Act [Chapter 24:20], has made the following regulations:—

PART I PRELIMINARY

Title and date of commencement

1. (1) These regulations may be cited as the Banking (Deposit Protection) Regulations, 2003.

(2) These regulations shall come into operation on the 1st July, 2003.

[Published as a supplement to the Government Gazette dated the 17th January, 2003.]

Interpretation

2. (1) In these regulations—

“appointed member” means a member of the Board referred to in paragraph (c) of subsection (1) of section 67 of the Act;

“Board” means the Deposit Protection Board established by subsection (1) of section 67 of the Act;

“chairman”, in relation to the Board, means the Governor of the Reserve Bank;

“contribution” means a contribution payable to the Fund in terms of section 71 of the Act;

“contributory institution” means any institution which, in terms of the Act or any other enactment, is required to pay contributions to the Fund;

“deposit” means an amount of money, whether made up of Zimbabwean money or foreign currency or both, cheques or other negotiable or non-negotiable instruments, which a contributory institution accepts for credit to an account in its books or in the books of—

- (a) another contributory institution; or
- (b) a banking institution outside Zimbabwe;

“depositor”, subject to subsection (2), means a person who has made a deposit with a contributory institution;

“Fund” means the Deposit Protection Fund established by subsection (1) of section 66 of the Act;

“insolvent”, in relation to a contributory institution, means insolvent as described in subsection (2) of section 65 of the Act;

“judicial manager” includes a provisional judicial manager;

“liquidator” includes a provisional liquidator;

“member” means a member of the Board, including the Governor or a Deputy Governor of the Reserve Bank;

“protected deposit” means a deposit which—

- (a) is of a class which the Board, in terms of section 27, has determined should be protected; and
- (b) immediately before the insolvency of the contributory institution with which it was made, created a liability, whether present or future, on the part of the institution towards the depositor.

(2) Any reference to a depositor in these regulations includes the depositor’s trustee, executor or lawful representative, and any person to whom the depositor may have ceded his rights in the deposit concerned.

(3) Where a building society becomes a contributory institution as a result of a declaration by the Minister under subsection (3) of section 3 of the Act, any reference in these regulations to a provision of the Act which does not apply to that society by virtue of that declaration shall be construed as a reference to the nearest corresponding provision of the Building Societies Act [Chapter 24:02].

PART II

APPOINTED MEMBERS OF BOARD

Selection of appointed members

3. When submitting a list of names for appointment to the Board in terms of paragraph (c) of subsection (1) of section 67 of the Act, an organisation of contributory institutions shall ensure that no person whose name appears on the list is currently—

- (a) a director of a contributory institution; or
- (b) in the full-time employment of a contributory institution.

Terms of office of appointed members

4. When fixing the terms of office of appointed members in terms of subsection (3) of section 67 of the Act, the Governor of the Reserve Bank shall ensure where possible that at all times two of the appointed members have been in office for a year or more.

Remuneration and allowances of appointed members

5. The remuneration and allowances, if any, of appointed members shall be payable from the Fund.

PART III

FUNCTIONS AND PROCEDURE OF BOARD

Functions of Board

6. (1) In addition to the functions set out in section 68 of the Act, the Board shall be responsible for—

- (a) keeping the public informed of—
 - (i) the Board's role in contributing towards the stability of Zimbabwe's financial system; and
 - (ii) the rights of depositors in the event of a contributory institution becoming insolvent;
- and
- (b) analysing the information and returns submitted to it in terms of sections 34 to 37 and, if it has reason to suspect that a contributory institution is engaging in unsound business practices, communicating its suspicions to the Reserve Bank and the Registrar.

(2) The Board shall exercise its functions so as to achieve the following objectives—

- (a) protecting depositors, particularly small depositors; and
- (b) contributing towards the stability of Zimbabwe's financial system; and
- (c) enhancing competition between different sectors and institutions in Zimbabwe's financial system; and
- (d) promoting sound business practices for contributory institutions.

Meetings and procedure of Board

7. (1) The Board shall hold its first meeting on a date and place fixed by the chairman, and thereafter, subject to these regulations, shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet at least once a month.

(2) The chairman—

- (a) may convene a special meeting of the Board at any time; and
- (b) shall convene a special meeting of the Board on the written request of not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairman received the request.

(3) Written notice of a special meeting convened in terms of subsection (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subsection (2) other than—

- (a) such business as may be determined by the chairman, where he convened the meeting in terms of paragraph (a) of subsection (2); or
- (b) the business specified in the request for the meeting, where the chairman convened the meeting in terms of paragraph (b) of subsection (2).

(5) Meetings of the Board shall be presided over by the chairman or, if he is absent for any reason, by a Deputy Governor of the Reserve Bank nominated by him:

Provided that, if the chairman is absent from a meeting and has not nominated a Deputy Governor to preside, the members present may elect a Deputy Governor to chair the meeting.

(6) A majority of members shall form a quorum at any meeting of the Board.

(7) With the Board's approval, the chairman may invite any person to attend a meeting of the Board, where the chairman considers that the person has special knowledge or experience in any matter to be considered by the Board at that meeting.

(8) A person invited to attend a meeting of the Board in terms of subsection (7) may take part in the proceedings of the meeting while the Board is considering the matter for which he was invited, but he shall not have a vote on any question before the Board.

(9) Subject to subsection (11), anything authorised or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

(10) Subject to section 8, at all meetings of the Board each member present shall have one vote on any question before the Board:

Provided that—

(i) in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote;

(ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Board which relates to his vacation of office as a member.

(11) Any proposal circulated among all members and agreed to in writing by a majority of them shall have the same effect as a resolution passed by a duly constituted meeting of the Board and shall be incorporated into the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subsection shall not apply to the proposal.

Members to disclose certain connections and interests

8. (1) In this section—

“relative”, in relation to a member, means the member's spouse, child, parent, brother or sister.

(2) If—

(a) a member—

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his functions as a member; or

(iii) knows or has reason to believe that a relative of his—

A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his functions as a member;

or

(b) for any other reason, the private interests of a member come into conflict with his functions as a member;

the member shall forthwith disclose the fact to the Board.

(3) A member referred to in subsection (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any interest, property or right referred to in that subsection.

(4) Subsections (2) and (3) shall not apply to rights or interests of the Governor or Deputy Governors of the Reserve Bank, in so far as those rights or interests pertain to the activities of the Reserve Bank.

(5) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Committees of Board

9. (1) For the better exercise of its functions, the Board may establish one or more committees in which the Board may vest such of its functions as it thinks fit: Provided that the vesting of a function in a committee shall not prevent the Board itself from exercising that function, and the Board may amend or rescind any decision of the committee in the exercise of the function.

(2) The Board may appoint persons who—

- (a) are not members of the Board; or
- (b) are employed by a contributory institution;

to be members of any committee established in terms of subsection (1).

(3) The chairman of the Board or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Board.

(5) The Board shall ensure that, so far as possible, no member of a committee who is employed by a contributory institution has access to confidential information regarding his employer's competitors.

(6) Subject to this section, subsections (2) to (11) of section 7 and section 8 shall apply, *mutatis mutandis*, to committees and their members as they apply to the Board and its members.

Minutes of proceedings of Board and of committees

10. (1) The Board shall cause minutes of all proceedings of and decisions taken at any meeting of the Board or of a committee to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed, with the authority of the Board or the committee concerned, as the case may be, by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

Staff of Board

11. (1) Subject to any other law, the Board may employ, on such terms and conditions as it may fix, such persons as it considers necessary for proper exercise of its functions.

(2) Any remuneration, allowances and other benefits payable to persons referred to in subsection (1) shall be chargeable to the Fund.

Engaging of consultants

12. (1) The Board may engage persons otherwise than as employees, on such terms and conditions as the Board thinks appropriate, to perform services of a specialised, technical or professional nature for the Board.

(2) Any remuneration and allowances payable to persons engaged in terms of subsection (1) shall be chargeable to the Fund.

Assignment of employees of Reserve Bank to Board

13. Notwithstanding section 11, the Governor of the Reserve Bank may assign officers and employees of the Bank, on such terms and conditions as he and the Board may agree, to provide the Board with secretarial and administrative services and otherwise to assist the Board in the exercise of its functions.

Employees and consultants to disclose certain connections and interests

14. Section 8 shall apply, mutatis mutandis, to persons employed or engaged by the Board in terms of section 11 or 12, and to persons assigned to assist the Board in terms of section 13.

Indemnity for members, staff and agents of Board

15. The Board shall indemnify every member and every employee and agent of the Board against any liability he may incur for anything done bona fide in the exercise of his functions as a member, employee or agent, as the case may be:

Provided that no such indemnity shall extend to liability for intentional wrongdoing or deliberate breach of contract.

PART IV

ADMINISTRATION OF FUND

Holding and investment of moneys in Fund

16. (1) The Board shall cause one or more banking accounts to be opened, into which all money received on behalf of the Fund shall be paid.

(2) Any part of the Fund that is not immediately required for expenditure may be invested in whatever way the Board considers appropriate.

(3) The Board shall ensure that a schedule is kept at the Board's offices, showing such particulars of the Fund's current investments as, in the Board's opinion, will enable contributory institutions to assess the Fund's financial soundness, and the schedule shall be available for inspection at all reasonable times by officers and employees of contributory institutions.

Duty to give information for purposes of audit of Fund

17. Any member or employee or agent of the Board who—

(a) fails or refuses to provide the Comptroller and Auditor-General with any explanation or information required by him for the purpose of an audit in terms of section 70 of the Act; or

(b) hinders or obstructs the Comptroller and Auditor-General in the conduct of an audit in terms of that section;

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Fund to be charged with expenses of Board

18. Without derogation from section 5, subsection (2) of section 11 or subsection (2) of section 12, the expenses of the Board shall be chargeable to the Fund.

PART V CONTRIBUTIONS

Annual contributions

19. (1) Each year, every contributory institution shall submit to the Board a statement in accordance with subsection (2), setting out the type, number and value of the deposits held with the institution in Zimbabwe during each of the twelve months of the preceding year.

(2) The statement in terms of subsection (1) shall be—

- (a) in a form approved by the Board; and
- (b) signed by the institution's chief executive officer and chief accounting officer; and
- (c) submitted to the Board by the 15th January of the year concerned, or by such later date as the Board may allow.

(3) As soon as possible after receiving a statement from a contributory institution in terms of subsection (1), the Board shall serve on the institution a notice specifying the contribution the institution is to make in respect of the year concerned:

Provided that the Board may serve such a notice on an institution without having received a statement in terms of subsection (1), if the institution has not submitted the statement by the 15th January of the year concerned or by such subsequent date as the Board may have allowed.

(4) The annual contribution payable by each contributory institution in terms of subsection (3) shall be such amount as the Board may fix in respect of the institution concerned, having regard to such of the following factors as are appropriate in the circumstances—

- (a) the institution's deposit liabilities; and
- (b) the volume of deposit business which the Board expects the institution to conduct in the year concerned; and
- (c) the estimated expenditure from the Fund for the coming year, including any amounts payable by way of compensation.

(5) Within twenty-one days after being served with a notice in terms of subsection (3), a contributory institution shall pay the Board, for the credit of the Fund, the amount specified in the notice.

(6) If a contributory institution fails for any reason to pay its contribution in full within the twenty-one-day period specified in subsection (5), the institution shall be liable to pay the Fund a surcharge equal to one-half of one per centum of the amount unpaid for each day that it remains unpaid after the expiry of the period.

(7) Any contributory institution that objects to an assessment of its contribution in terms of this section shall, before lodging an appeal in terms of section 73 of the Act, notify the Board of the grounds of its objection and the Board may, within ten days after being so notified, amend the assessment accordingly.

(8) At the request of a contributory institution, the Board shall provide the institution with a written statement of the basis on which the institution's contribution was assessed in any year.

Annual contributions payable by new institutions

20. (1) Upon the registration of a contributory institution, the Board shall assess the contribution payable by it in respect of the remainder of the year, on the basis of—
- (a) the average contributions paid or payable by contributory institutions of the same class in respect of that year; and
 - (b) the volume of deposit business which the Board expects the institution to conduct in the remainder of that year; and
 - (c) the period in respect of which the contribution is payable:

Provided that the Board may waive a contribution if the Board considers that the institution is carrying on substantially the same business as that previously carried on by one or more institutions which are, or were, contributory institutions.

- (2) Subsections (3) to (8) of section 19 shall apply, mutatis mutandis, in relation to contributions levied in terms of subsection (1).

Supplementary contributions

21. (1) If at any time the amount standing to the credit of the Fund falls below the level which, in the Board's opinion, is necessary to meet the Fund's anticipated liabilities in the next twelve months, the Board may require all contributory institutions to pay supplementary contributions.

- (2) The supplementary contribution payable by each contributory institution in terms of subsection (1) shall be such percentage of the last annual contribution payable by the institution as the Board may determine.

- (3) Subsections (3) to (8) of section 19 shall apply, mutatis mutandis, in relation to supplementary contributions levied in terms of subsection (1).

Initial contributions

22. (1) To enable the Board to carry on its activities from its establishment until the payment of the first annual contributions, and to meet any anticipated expenses of the Fund, including payments of compensation, during that period, the Board may require all existing contributory institutions to pay initial contributions.

- (2) The initial contribution payable by each contributory institution in terms of subsection (1) shall be such amount as the Board may determine.

- (3) Subsections (3) to (8) of section 19 shall apply, mutatis mutandis, in relation to initial contributions levied in terms of subsection (1).

PART VI COMPENSATION

Curators, etc., to notify Board of deposits which will be protected in event of insolvency

23. As soon as it appears to a curator or judicial manager of a contributory institution that the institution will become insolvent, he shall send the Board a list showing, in relation to every deposit that is likely to be a protected deposit in the event of the institution's insolvency—

- (a) the name and address of the depositor; and
 - (b) the amount standing to the credit of the deposit when the list is prepared;
- and
- (c) the nature and extent of any liability, whether vested or contingent, which the depositor owes to the institution;

and the curator or judicial manager, as the case may be, shall provide the Board with whatever further information the Board may reasonably require in regard to such deposit or in regard to the financial affairs of the institution concerned.

Liquidator to notify Board of protected deposits

24. Within three months after a contributory institution becomes insolvent, the institution's liquidator shall send the Board a list showing, in relation to every protected deposit with the institution—

- (a) the name and address of the depositor; and
- (b) the amount standing to the credit of the deposit when the institution became insolvent; and
- (c) the nature and extent of any liability, whether vested or contingent, which the depositor owes to the institution.

and the liquidator shall provide the Board with whatever further information the Board may reasonably require to verify the amount and particulars of any such deposit and to ensure that the depositors concerned are entitled to compensation.

Depositors may apply for compensation

25. (1) Any person who believes that his deposit with an insolvent contributory institution is a protected deposit and that it has not been included on a list sent to the Board in terms of section 23 or 24 may apply to the Board in writing for compensation in terms of section 72 of the Act.

(2) An application in terms of subsection (1) shall specify—

- (a) the amount standing to the credit of the account immediately before the institution's insolvency; and
- (b) the nature and extent of any liability, whether vested or contingent, which the depositor owes to the institution; and
- (c) any payment the depositor may have received or is entitled to receive from any other source by way of—
 - (i) a refund of the whole or part of the deposit; or
 - (ii) compensation, in whole or in part, for the loss of the deposit;

and the applicant shall provide the Board with whatever further information the Board may reasonably require to verify the amount and particulars of the deposit and to ensure that the applicant is entitled to compensation.

(3) Any person who, for the purposes of an application in terms of subsection (1), makes a statement which he knows to be false or does not have reasonable grounds for believing to be true shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Payment or refusal of compensation

26. (1) Where the Board is satisfied that any person is entitled to compensation in terms of the Act, the Board shall pay that person from the Fund the amount to which he is entitled.

(2) The Board may require a depositor to provide such information as the Board may reasonably require for the purpose of—

- (a) verifying the amount and particulars of any deposit; or
- (b) ascertaining whether or not the depositor has any liability, whether vested or contingent, towards any contributory institution; or

- (c) ascertaining whether or not the depositor is entitled to compensation.
- (3) In the event of any uncertainty as to the amount of compensation payable to a person, the Board shall pay only such percentage of the amount claimed or alleged to be due as the Board considers appropriate in the circumstances.
- (4) The Board shall ensure that adequate records are kept of all payments made in terms of subsections (1) and (3) and of the persons to whom they are paid.
- (5) Where a protected deposit is jointly held, the Board shall divide the compensation payable under this section between the joint depositors in such shares as the Board considers appropriate in the light of the information before it:
- Provided that, if the Board reasonably anticipates a dispute over the share to be paid to any joint depositor, the Board may initiate interpleader proceedings in any competent court.

Extent to which deposits are protected

27. (1) The Board may fix from time to time the classes of deposits which are to be protected under the Act and the maximum amount payable by way of compensation in respect of any such class, having regard to—
- (a) the capacity of the Fund; and
 - (b) the nature of the deposits and the contributory institutions with which they are held.
- (2) The Board shall notify all contributory institutions without delay of the amounts it has fixed in terms of subsection (1) and of the classes of deposits to which those amounts apply.

Calculation of protected deposit

28. (1) For the purpose of calculating the amount of a protected deposit—
- (a) any liability of the depositor concerned towards the insolvent institution concerned, whether the liability is present or future, shall be deducted from the amount of the deposit; and
 - (b) if the depositor has two or more protected deposits of the same class with the same insolvent contributory institution, the amounts standing to the credit in those deposits shall be aggregated and the deposits shall be regarded as a single deposit.
- (2) Where a depositor has a contingent liability towards an insolvent contributory institution, the Board may withhold payment of any compensation from him until the happening or non-happening of the event on which the contingency depends.
- (3) Where a single deposit represents sums held by a trustee on behalf of two or more different beneficiaries, each of those sums shall be regarded as a separate deposit for the purpose of determining whether or not compensation is payable to any person in terms of the Act or these regulations.

Refusal of compensation in certain circumstances

29. (1) The Board may decline to compensate a depositor who, in the Board's opinion, had any responsibility for or may have profited directly or indirectly from circumstances leading up to the insolvency of the contributory institution concerned.
- (2) The Board may decline to compensate a person who, when required to provide any information in terms of section 25 or 26, fails or refuses to do so or provides information that is false or misleading in a material particular.

(3) Unless, in the Board's opinion, there are special circumstances, no compensation shall be payable in respect of a foreign currency account, that is to say a deposit denominated in foreign currency.

Board to notify liquidator of compensation paid

30. The Board shall without delay inform the liquidator of the insolvent contributory institution concerned, in writing, of all payments the Board has made by way of compensation in respect of protected deposits with the institution.

Effect of subrogation of Board

31. (1) The effect of a payment by the Board in terms of this Part is that the insolvent contributory institution concerned becomes liable to the Board for an amount equal to the Board's payment, in all respects as if that amount were a contractual debt incurred by the institution immediately before it became insolvent.

(2) No payment shall be made to a depositor by an insolvent contributory institution or its liquidator unless full satisfaction has been given to the Board for any amount which the Board has paid to the depositor.

(3) The liability of an insolvent contributory institution to a depositor shall be reduced by an amount equal to any payment which the Board has made to the depositor in terms of this Part.

PART VII GENERAL

Board to be consulted re registration of institutions

32. In addition to consulting the Reserve Bank in terms of section 8 of the Act, the Registrar shall notify the Board of any application for registration received in terms of that section and shall pay due regard to any comments the Board may make in regard to it.

Publicity for Scheme

33. Every contributory institution shall ensure that all its depositors are informed—

(a) of the extent to which their deposits are protected in terms of Part XII of the Act and these regulations; and

(b) where their deposits are protected, of the way in which they may receive compensation in the event of the institution becoming insolvent.

(2) Contributory institutions shall provide the information referred to in subsection (1) in a form and manner approved by the Board.

Information to be provided to Board

34. (1) Within ninety days after the end of its financial year, every contributory institution shall submit to the Board a copy of the audited statement of accounts, balance sheet and profit and loss account submitted to the Reserve Bank and the Registrar in terms of subsection (3) of section 38 of the Act.

(2) The Board may at any time require any contributory institution to submit such documents and information as the Board may specify to enable the Board to ascertain—

(a) the type, number and value of protected deposits held with the institution; and

(b) generally, the institution's financial condition; and the institution shall comply with any such requirement.

(3) A contributory institution that fails to comply with subsection (1) or a requirement in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven.

Further information re protected deposits

35. (1) At any time the Board may require the Reserve Bank to carry out an inspection of any contributory institution—

(a) to ascertain the type, number and value of protected deposits held by the institution; or

(b) to verify the accuracy of any information the institution may have provided, directly or indirectly, to the Board; or

(c) to determine the financial soundness of the institution:

Provided that the Board shall not require an inspection for the reason set out in this paragraph unless the Board has reason to suspect that the institution may become insolvent.

(2) The Reserve Bank shall comply with any requirement in terms of subsection (1).

(3) This section shall be construed as additional to, and not as limiting, section 34.

Reserve Bank and Registrar may provide Board with information

36. The Reserve Bank and the Registrar may provide the Board with whatever information the Board may request to enable the Board to ascertain the financial condition of any contributory institution.

Further reports to be made to Board

37. (1) Where an auditor of a contributory institution includes in his report any matter referred to in subsection (4) of section 43 of the Act, he shall send a copy of his report to the Board as well as to the Reserve Bank or the Registrar, as the case may be.

(2) The curator of a contributory institution shall send the Board a copy of every report he submits to the Reserve Bank in terms of the Act.

Rights of Board on insolvency of contributory institution

38. Upon a contributory institution becoming insolvent, the Board shall be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved, and a representative of the Board shall be entitled to attend any meeting of creditors of the institution and do anything that may be done by such a creditor.

Preservation of secrecy

39. (1) No member, employee or agent of the Board or any of its committees shall disclose any information which he has acquired in the performance of his functions under the Act or these regulations and which relates to the affairs of a contributory institution.

(2) Subsection (1) shall not apply to—

(a) any disclosure made by the person concerned in the performance of his functions under the Act or these regulations or when required to do so by a court or in terms of any other enactment; or

(b) the disclosure of any information that is generally known to members of the public or a substantial section of the public.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Use of confidential information for personal gain

40. (1) Subject to subsection (2), if any member, employee or agent of the Board or any of its committees makes use for personal gain of any information which he has acquired in the performance of his functions under the Act or these regulations and which relates to the affairs of a contributory institution, he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) It shall be a defence to a charge under subsection (1) for the person charged to show that the information which he used was generally known to members of the public or to a substantial section of the public.

Preference of claims on insolvency of contributory institution

41. (1) Upon the winding up of a contributory institution—

(a) the claims of the Reserve Bank, in respect of any fees and expenses incurred in—

(i) conducting an investigation into the institution in terms of section 49 of the Act; and

(ii) placing the institution under curatorship in terms of section 53 of the Act, including payment of the curator's fees and expenses; and

(iii) applying for the institution to be wound up or placed under judicial management or provisional judicial management;

shall be paid next after payment of the costs of winding up the contributory institution concerned;

(b) the claims of depositors in respect of protected deposits shall be paid next after payment of the Reserve Bank's claims described in paragraph (a).

(2) Where the Board has paid compensation to a depositor, any right which vests in the Board in terms of subsection (4) of section 72 of the Act shall be regarded, for the purpose of paragraph (b) of subsection (1), as a claim of the depositor concerned.

Transitional provision

42. (1) In this section—

“insolvent or troubled institution” means—

(a) an institution which is insolvent as described in terms of subsection (2) of section 65 of the Act; or

(b) an institution which is under the management of a curator in terms of Part X of the Act;

“institution” means a banking institution or building society.

(2) Notwithstanding any other provision of these regulations but subject to subsection

(3)—

(a) any institution which, on the date of commencement of these regulations, is an insolvent or troubled institution shall not be required to pay contributions in terms of Part V;

(b) no depositor shall be compensated from the Fund in respect of any loss he may have suffered as a result of the insolvency of any institution which, on the date of commencement of these regulations, is an insolvent or troubled institution.

(3) If, after the date of commencement of these regulations, an institution referred to in subsection (2) ceases to be an insolvent or troubled institution^{3/4}

(a) it shall thereupon become a contributory institution; and

(b) its depositor shall be entitled, subject to these regulations, to compensation from the Fund for any direct loss they suffer in respect of their protected deposits if the institution should subsequently become insolvent.