

CHAPTER 24:20

BANKING ACT

Act 9/1999, 22/2001 (s. 4), 12/2002, 4/2004, 16/2004, 1/2005, 6/2005, 3/2009 (s. 54), 5/2011 (s. 16),
7/2011 (s. 65), 3/2013(s. 62), 7/2014, 11/2014 (s. 31), 12/2015, 1/2018 (s. 45).

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SCHEDULE

Amendment of Acts.

AN ACT to provide for the registration, supervision and regulation of persons conducting banking business and financial activities in Zimbabwe; to establish a deposit protection scheme to protect depositors in the event of the insolvency of a contributory institution; to repeal the Banking Act [Chapter 24:01]; to amend various Acts; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 1st August, 2000.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Banking Act [Chapter 24:20].

2 Interpretation

(1) In this Act—

“accepting house” means a banking institution that conducts banking business in Zimbabwe and whose business consists mainly in the granting of acceptance facilities;

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

- (a) its subsidiary, as defined in section 143 of the Companies Act [Chapter 24:03]; or
- (b) any company of which the body corporate is the single largest shareholder; or
- (c) its holding company, as defined in section 143 of the Companies Act [Chapter 24:03]; or
- (d) where the body corporate is itself a subsidiary of a holding company, as defined in section 143 of the Companies Act [Chapter 24:03], any other such subsidiary of the same holding company; or
- (e) any person who has power, directly or indirectly, to control the body corporate’s management or policies;

[Definition substituted by Act 12 of 2015]

“bank”

[Definition repealed by Act 12 of 2015]

“banking activity” means any activity referred to in subsection (1) of section seven;

“banking business” means the business of accepting deposits withdrawable or repayable on demand or after a fixed period or after notice and the employment of those deposits, in whole or in part, by lending or any other means for the account and at the risk of the person accepting the deposits;

“banking institution” means a company that is registered or required to be registered in terms of this Act to conduct any class of banking business in Zimbabwe;

“board”, in relation to a banking institution or controlling company, means the board referred to in section eighteen;

[Definition amended by Act 12 of 2015]

“chief accounting officer”, in relation to a banking institution, means a person who is responsible, under the direct authority of the institution’s chief executive officer, for—

- (a) preparing and maintaining the institution’s books of account and other financial records; and
- (b) ensuring that the institution has systems of internal financial control that comply with this Act and any other enactment;

“chief executive officer”, in relation to a banking institution, means a person who is responsible, under the direct authority of the institution’s board, for conducting the institution’s banking business;

“close relative”, in relation to any person, means—

- (a) a spouse;
- (b) a child, step-child, parent or step-parent;
- (c) the spouse of any of the persons mentioned in paragraph (b);

[Definition inserted by Act 12 of 2015]

“commercial bank” means a banking institution that conducts banking business in Zimbabwe and whose business mainly consists of the acceptance of deposits withdrawable by cheque or otherwise;

“company” means a company incorporated or registered under any enactment;

“credit” means—

- (a) any commitment to disburse a sum of money in exchange for a right to repayment of the amount disbursed and to the payment of interest or other charges on such amount; or

- (b) any extension of the due date of a debt; or
 - (c) any guarantee issued; or
 - (d) any commitment to acquire a debt security or other right to payment of a sum of money;
- “compliance officer” means the compliance officer of a banking institution or controlling company referred to in section 20(2);

[Definition inserted by Act 12 of 2015]

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

[Definition inserted by Act 12 of 2015]

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

- (a) where the person is an individual, information about—
 - (i) his or her identity, including his or her full name, nationality, domicile, date of birth, place of residence, previous places of residence and marital status; and
 - (ii) the name and other identity particulars of his or her spouse; and
 - (iii) his or her place of employment and previous places of employment;
- (b) where the person is an association, whether corporate or unincorporated, information about—
 - (i) the person’s establishment or incorporation, including the head office or principal place of business of the person; and
 - (ii) the members of the person’s board of directors or management committee; and
 - (iii) the person’s employees and agents;
- (c) in all cases, information about—
 - (i) the person’s paying habits, outstanding debt obligations, assets and credit history; and
 - (ii) the person’s business or occupation, and the persons with whom the person does business; and
 - (iii) the person’s finances and financial statements; and
 - (iv) the person’s compliance with any enactment regulating his or her business or occupation; and
 - (v) taxes paid or payable by the person; and
 - (vi) any pending prosecution for a criminal offence, or previous conviction for a criminal offence, and other information relevant to the person’s financial integrity;

[Definition inserted by Act 12 of 2015]

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

[Definition inserted by Act 12 of 2015]

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

[Definition inserted by Act 12 of 2015]

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

[Definition inserted by Act 12 of 2015]

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

“curator” means a person under whom the management of a banking institution has been placed by virtue of a direction issued in terms of section *fifty-three*;

“debt security” means—

- (a) a negotiable instrument acknowledging a debt; or
- (b) a negotiable instrument which entitles the holder to acquire, by subscription or exchange, a negotiable instrument described in paragraph (a);

“deposit” means an amount of money, whether made up of Zimbabwean or foreign currency or both, cheques or other negotiable or non-negotiable instruments, which a banking institution accepts for credit to an account in its books or in those of another banking institution inside or outside Zimbabwe;

“Deposit Protection Corporation” means the Deposit Protection Corporation established by section 4 of the Deposit Protection Corporation Act [*Chapter 24:29*];

[Definition inserted by Act 7 of 2011]

“director” means an individual who occupies the position of director or alternate director of a company, by whatever title he may be called, and includes a member of a local board of a company whose head office is situated outside Zimbabwe;

“discount house” means a banking institution that conducts banking business in Zimbabwe and whose business mainly consists of the discounting of bills;

“finance house” means a banking institution that conducts banking business in Zimbabwe and whose business consists mainly in hire-purchase financing, financial leasing or factoring;

“financial year”, in relation to a banking institution, means each period at the end of which the balance of the institution’s accounts is struck, whether that period is a year or not;

“financial institution” means any of the following entities—

- (a) a banking institution; or
- (b) a building society registered in terms of the Building Societies Act [Chapter 24:04]; or
- (c) an insurer registered in terms of the Insurance Act [Chapter 24:07]; or
- (d) a fund registered in terms of the Pension and Provident Funds Act [Chapter 24:09]; or
- (e) the Small and Medium Enterprises Development Corporation established by the Small and Medium Enterprises Act [Chapter 24:12]; or
- (f) the Infrastructure Development Bank of Zimbabwe established by the Infrastructure Development Bank of Zimbabwe Act [Chapter 24:14]; or
- (g) a trustee or manager of a collective investment scheme registered in terms of the Collective Investment Schemes Act [Chapter 24:19]; or
- (h) the People’s Own Savings Bank of Zimbabwe established by the People’s Own Savings Bank of Zimbabwe Act [Chapter 24:22]; or
- (i) the company exercising the functions of the Corporation in terms of the Agricultural Finance Act [Chapter 18:02]; or
- (j) the Reserve Bank; or
- (k) the National Social Security Authority established by the National Social Security Authority Act [Chapter 17:04]; or
- (l) the Sovereign Wealth Fund of Zimbabwe established by the Sovereign Wealth Fund of Zimbabwe Act [Chapter 22:04] (No. 7 of 2014); or
- (m) such other institution as may be prescribed;

[Definition inserted by Act 12 of 2015]

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

[Definition inserted by Act 12 of 2015]

“Governor” means the Governor of the Reserve Bank of Zimbabwe appointed in terms of the section 14 of the Reserve Bank of Zimbabwe Act [Chapter 22:15].

[Definition inserted by section 2 of Act 1 of 2005]

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

[Definition inserted by Act 12 of 2015]

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

[Definition inserted by Act 12 of 2015]

“insider”, in relation to a banking institution, means any employee, officer, director or principal shareholder of the institution, and includes any related interest of such insider;

[Definition inserted by section 16 of Act 5 of 2011]

“inspector” means a person appointed as an inspector in terms of paragraph (b) of subsection (1) of section forty-six;

“liabilities to the public”, in relation to a banking institution, means all claims, including contingent claims, against the institution which are payable on demand or at a future date;

“microfinance bank”

[Definition repealed by Act 3 of 2013]

“minimum capital” means capital representing a permanent commitment of funds by the shareholders of the banking institution (net of any loans and advances given to an insider and borrowed capital) which is available to meet losses incurred without imposing a fixed unavoidable charge on the institution’s earnings, and includes such of the following elements as are available to the institution after making any required deductions—

- (a) issued and fully paid up ordinary shares or common stock;
- (b) paid up non-cumulative irredeemable preference shares;
- (c) reserves consisting of—
 - (i) non-repayable share premiums;

- (ii) disclosed reserves created by a charge to net income in the financial year immediately preceding the current one;
- (iii) published retained earnings for the current year, including interim earnings, where these have been verified by external auditors; and
- (iv) such other elements as may be prescribed from time to time;

[Definition inserted by section 16 of act 5 of 2011]

“Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“mobile banking” means an arrangement that allows a customer of—

- (a) a banking institution; or
- (b) a licensee under the Postal and Telecommunications Act [*Chapter 12: 05*]; or
- (c) any other operator of a wireless communication system;

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

[Definition inserted by Act 12 of 2015]

“officer”, in relation to a banking institution, means a person who is in the full-time employment of the institution and who is responsible for managing the whole or any part of the institution’s banking business;

“poverty datum line” means the estimated minimum level of income needed by a family of four to secure the necessities of life, as issued from time to time by the Zimbabwe National Statistics Agency established under the Census and Statistics Act [*Chapter 10:29*] (No. 1 of 2007);

[Definition inserted by Act 3 of 2009]

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

[Definition inserted by Act 12 of 2015]

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

- (a) five *per centum*; or
 - (b) such other percentage as may be prescribed for the purpose of any provision of this Act;
- of the shares or voting stock of the banking institution or controlling company;

[Definition inserted by Act 12 of 2015]

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

[Definition inserted by Act 12 of 2015]

“registered”, in relation to a banking institution or controlling company, means registered in terms of this Act;

[Definition amended by Act 12 of 2015]

“Registrar” means the Registrar of Banking Institutions referred to in subsection (1) of section *four* or any person performing his functions in terms of subsection (2) of section 4A;

[Definition amended by Act 12 of 2015]

“registration certificate” means a registration certificate issued in terms of section *ten*;

“Reserve Bank”, subject to section *seventy-nine*, means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:10*];

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

- (a) the owning or securitising of a particular set of loans, assets or other investments, and distributing the risk to investors;
- (b) the marketing of financially engineered products;
- (c) avoiding tax;
- (d) as a vehicle for structuring financial transactions that can have a material effect on the banking institution or controlling company in such a way that they do not appear on the institution’s or company’s balance sheet;
- (e) any specific or temporary purpose whatsoever;

[Definition inserted by Act 12 of 2015]

“supervisor” means a person appointed as a supervisor in terms of paragraph (a) of subsection (1) of section *forty-six*.

(2) Without prejudice to the generality of the words “undesirable methods of conducting business”, a banking institution shall, for the purposes of this Act, be deemed to be adopting undesirable methods of conducting business if—

- (a) the banking institution holds shares in a company which controls the banking institution; or
- (b) any of its banking accounts with other banking institutions are not held in its own name; or
- (c) any of its assets in Zimbabwe, other than banking accounts or assets which have been hypothecated to secure actual or potential liabilities or such other assets as the Registrar may approve, are not held in its own name; or
- (d) its accounts and statements include as an asset any sum representing bad debts or any capitalised expenses not represented by tangible assets, including preliminary expenses and organisation expenses; or
- (e) dividends are paid before any items referred to in paragraph (d) and any losses incurred have been completely written off out of profits.
- (f) the banking institution fails to pay any deposit on demand by the depositor or, in the case of a term deposit, on due date; or

[Paragraph inserted by Act 12 of 2015]

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

[Paragraph inserted by Act 12 of 2015]

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

[Paragraph inserted by Act 12 of 2015]

(3) For the purposes of this Act, a person shall be deemed to be accepting deposits if, as a regular feature of his business, he accepts or solicits deposits from the general public, whether or not such deposits are accepted or solicited in exchange for debt securities, and notwithstanding that—

- (a) the deposits are limited to fixed amounts; or
- (b) certificates or other instruments, whether transferable or non-transferable, are issued in respect of the deposits, providing for the repayment of the deposits and additionally, or alternatively, for the payment of interest.

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

- (a) does not hold such number of shares in the institution or company as would require the Registrar’s permission in terms of section 15A or would constitute a significant interest in terms of section 15B(1); and
- (b) is not an officer or employee of the institution or company, and has not been such an officer or employee for the preceding three years; and
- (c) on his or her appointment, has not been a director of the institution or company for the preceding two years; and
- (d) is not a director, officer or employee of any company in a group of companies of which the institution or controlling company is a member; and
- (e) is not a professional advisor of the institution or company; and
- (f)

[Paragraph repealed by Act 1 of 2018]

- (g) does not have and has not had any contractual or business relationship, direct or indirect, with the institution or company which might reasonably be regarded as likely to impair his or her independence as a director; and
- (h) does not receive and has not received any remuneration from the institution or company apart from a director’s fee; and
- (i) does not represent (whether as a nominee or in a professional or other capacity) a shareholder of the institution or company; and
- (j) is not a member of a pension scheme run by the institution or company; and
- (k) is not a close relative of any director, officer or adviser of the institution or company; and
- (l) does not represent a shareholder of the institution or company; and
- (m) generally, has no relationship with the institution or company or with its directors, staff, business associates or customers, which might reasonably be regarded as compromising his or her independence.

[Subsection inserted by Act 12 of 2015]

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

acceptable to a court as proof of the service thereof) agreed beforehand by the sender and the recipient of the communication.

[Subsection inserted by Act 12 of 2015]

3 Application of Act

(1) Subject to subsection (3), this Act shall not apply to—

- (a) the Post Office Savings Bank operating under the Post Office Savings Bank Act [Chapter 24:10]; or
- (b) a body corporate established or constituted, or re-established or reconstituted, directly by any enactment; or
- (c) a building society registered in terms of the Building Societies Act [Chapter 24:02]; or
- (d) a co-operative society registered in terms of the Co-operative Societies Act [Chapter 24:05] or a co-operative company registered in terms of the Companies Act [Chapter 24:03], to the extent that the society or company has been exempted in terms of subsection (2) and complies with the terms and conditions of the exemption.

(2) The Minister may, by written notice to the society or company concerned, exempt any co-operative society registered in terms of the Co-operative Societies Act [Chapter 24:05] or co-operative company registered in terms of the Companies Act [Chapter 24:03] from all or any of the provisions of this Act, and may impose conditions upon any such exemption.

(3) The Minister may, by notice in the *Gazette*, direct that all or any of the provisions of this Act shall apply, with such modifications and subject to such terms and conditions as he may specify in the notice, to—

- (a) all building societies or any particular building society established in terms of the Building Societies Act [Chapter 24:02]; or
- (b) the Post Office Savings Bank operating under the Post Office Savings Bank Act [Chapter 24:10];
- (c) all asset managers or any particular asset manager registered in terms of the Asset Management Act [Chapter 24:26];
- (d) all unit trust schemes or any particular unit trust scheme registered in terms of the Collective Investment Schemes Act [Chapter 24:19];
- (e) all moneylenders or any particular moneylender registered in terms of the Moneylending and Rates of Interest Act [Chapter 14:14];
- (f) the Small and Medium Enterprises Development Corporation (“SMEDCO”) established by section 3 Small Enterprises Development Corporation Act [Chapter 24:12];
[Paragraph inserted by Act 7 of 2014]
- (g) the Infrastructural Development Bank of Zimbabwe (“IDBZ”) established by the Infrastructural Development Bank of Zimbabwe Act [Chapter 24:14].
[Paragraph inserted by Act 11 of 2014]

and the provisions concerned shall apply accordingly, notwithstanding anything to the contrary in the Building Societies Act [Chapter 24:02] or the Post Office Savings Bank Act [Chapter 24:10].

(4) The Minister may at any time amend or revoke an exemption in terms of subsection (2) or a direction in terms of subsection (3) or any term or condition thereof:

Provided that he shall not revoke an exemption, otherwise than at the request of the society or company concerned, unless he has notified the society or company of his intention to do so and has given the society or company a reasonable opportunity to make representations in the matter.

PART II

ADMINISTRATION

4 Registrar of Banking Institutions and other officers

(1) There shall be a Registrar of Banking Institutions and such other officers as may be necessary for the proper administration of this Act, who shall be employees of the Reserve Bank appointed in terms of section 59 of the Reserve Bank of Zimbabwe Act [Chapter 22:15].

[Subsection amended by Act 3 of 2013]

(2)

[Subsection repealed by Act 12 of 2015]

(3)

[Subsection repealed by Act 12 of 2015]

4A Functions of Registrar and other officers

(1) The Registrar shall be responsible for—

- (a) registering banking institutions and cancelling their registration in terms of this Act; and
- (b) performing any other functions that are conferred or imposed upon him or her by or in terms of this Act or any other enactment.

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

[Section inserted by Act 12 of 2015]

4B Exercise of functions by Registrar

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

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

- (a) give the person due and clear notice of the nature of the decision the Registrar is to make and of the factors the Registrar is likely to take into consideration when making it; and
- (b) subject to section 76, allow the person reasonable access to the information available to the Registrar in regard to the matter under consideration; and
- (c) give the person a reasonable opportunity to make representations in the matter; and
- (d) take into account any representations that the person may make in the matter;

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

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

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

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

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

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

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

[Section inserted by Act 12 of 2015]

4C Adoption of prudential standards of bank supervision

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

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

[Section inserted by Act 12 of 2015]

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

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

- (a) the Chief Registrar of Companies referred to in section 5 of the Companies Act [*Chapter 24:03*]; and
- (b) the Commissioner of Insurance, Pension and Provident Funds appointed in terms of section 19 of the Insurance and Pensions Commission Act [*Chapter 24:21*] (No. 7 of 2000); and
- (c) the Registrar of Collective Investment Schemes referred to in section 4 of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997); and
- (d) the Director of the Bank Use Promotion and Suppression of Money Laundering Unit appointed in terms of section 3 of the Bank Use Promotion Act [*Chapter 24:24*] (No. 2 of 2004); and
- (e) the Chief Executive Officer of the Securities Commission established by section 3 of the Securities Act [*Chapter 24:25*] (No. 17 of 2004); and
- (f) the Registrar of Asset Managers referred to in section 4 of the Asset Management Act [*Chapter 24:26*] (No. 16 of 2004); and
- (g) the Chief Executive Officer of the Deposit Protection Corporation.

(2) Notwithstanding section 76, the Registrar and the Reserve Bank may provide the persons referred to in subsection (1) with information concerning banking institutions and controlling companies generally, or concern-

ing any particular banking institution or controlling company, where the information is likely to assist those persons in the exercise of their functions or promote the co-ordinated regulation of the financial sector in Zimbabwe.

[Section inserted by Act 12 of 2015]

PART III

REGISTRATION OF BANKING INSTITUTIONS

5 Banking business and banking activities not to be conducted except by registered banking institutions

(1) No person, other than a registered banking institution, shall conduct banking business in Zimbabwe.

(2) No registered banking institution shall—

(a) conduct any class of banking business unless it is registered in that class; or

(b) subject to subsection (2) of section *seven*, engage in any banking activity that is not specified in its registration certificate.

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

[Subsection amended by Act 22 of 2001]

(5)

[Subsection repealed by Act 3 of 2013].

[Subsection inserted by Act 3 of 2009 and numbered (5) instead of (4) in error. – Law Reviser

6 Classes of banking business

(1) The classes of banking business in which a banking institution may be registered are—

(a) the business of a commercial bank; or

(b) the business of an accepting house; or

(c) the business of a discount house; or

(d) the business of a finance house; or

(e)

[Paragraph repealed by Act 3 of 2013]]

(2) No banking institution shall be registered in more than one class of banking business:

Provided that this subsection shall not be construed as limiting the number or nature of the banking activities that may be specified in its registration certificate.

7 Banking activities

(1) The banking activities that may be specified in a registration certificate are—

(a) receiving deposits;

(b) extending credit, including—

(i) consumer and mortgage credit; and

(ii) factoring, with or without recourse; and

(iii) the financing of commercial transactions; and

(iv) the recovery, by foreclosure or other means, of amounts so extended; and

(v) forfeiting, that is to say, the medium-term discounting without recourse of bills, notes and other documents evidencing an exporter's claims on the person to whom the exports are sent;

(c) buying and selling instruments, whether for the account of the banking institution concerned or for the account of its customers, including the underwriting of—

(i) money market instruments including cheques, bills of exchange and certificates of deposit; and

(ii) futures, options and other financial derivatives relating to debt securities or interest rates; and

(iii) exchange and interest rate instruments; and

(iv) debt securities and equity;

(d) providing money transmission services;

(e) subject to the Exchange Control Act [*Chapter 22:05*], buying and selling foreign currencies, including forward and option-type contracts for the future sale of foreign currencies;

(f) issuing and administering means of payment, including credit cards, travellers' cheques and bankers' drafts;

(g) money broking;

(h) the safekeeping and administration of valuables, including securities;

(i) providing services as a portfolio manager or adviser or as a financial agent or consultant;

(j) financial leasing;

(k) entering into or taking cession of hire-purchase contracts in accordance with the Hire-Purchase Act [*Chapter 14:09*];

(l) buying and selling shares on behalf of customers;

- (m) providing credit reference services;
- (n) such other activities as may be prescribed.

(2) Where a banking institution was engaging in any activity immediately before the activity is prescribed for the purposes of paragraph (n) of subsection (1) as a banking activity, the banking institution may continue to engage in that activity without seeking an amendment of its registration certificate:

Provided that this subsection shall not be construed as preventing the Registrar from amending the certificate in terms of section *thirteen* in order to prohibit the banking institution from engaging in that activity.

8 Registration of banking institutions

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

- (a) a certified copy of the applicant's memorandum of association or other constitution, together with its articles of association or other rules for the conduct of its business; and
 - (b) the names and details of the qualifications and experience of—
 - (i) the applicant's directors; and
 - (ii) the applicant's chief executive officer and chief accounting officer, by whatever title they are called; and
 - (iii) such of the applicant's other officers as may be prescribed;
- and

[Paragraph substituted by Act 16 of 2004]

- (c) details of the applicant's authorized and paid-up share capital; and
- (d) details of the applicant's business plan and structural organisation; and
- (e) the name, address and such other particulars as may be prescribed of each person who holds five *per centum* or more of the applicant's voting stock; and
- (f) the prescribed fee; and
- (g) such other information and documents as may be prescribed or as the Registrar may reasonably require.

[Subsection amended by Act 12 of 2015]

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

[Subsection inserted by section 4 of Act 1 of 2005 and amended by Act 7 of 2011]

(3) Subject to subsections (4) and (5), if on consideration of an application in terms of subsection (1) the Registrar is satisfied that—

- (a) the applicant is a public company; and

[Paragraph amended by Act 12 of 2015]

- (b) the applicant has, or on registration will have, sufficient capital to conduct the type of banking business which the applicant wishes to conduct; and

[Paragraph substituted by Act 16 of 2004]

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

[Paragraph substituted by Act 12 of 2015]

- (b2) where the applicant is a subsidiary, the directors, principal officers and principal shareholders of the applicant's controlling company are fit and proper persons to be directors, principal officers or shareholders, as the case may be, of the controlling company of a banking institution; and

[Paragraph inserted by Act 12 of 2015]

- (c) the persons who will be the applicant's principal officers—

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

- (ii) have sufficient qualifications and experience for the management of the class of banking business the applicant intends to conduct;

[Paragraph amended by Act 12 of 2015]

and

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

[Paragraph substituted by Act 12 of 2015]

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

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

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

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

[Paragraph inserted by Act 12 of 2015]

and

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

[Paragraph inserted by Act 12 of 2015]

- (e) the applicant will conduct its business in a prudent manner; and
- (f) the documents and information submitted with the application do not disclose that undesirable methods of conducting business are being, or are likely to be, adopted by the applicant; and
- (g) the name under which the applicant intends to conduct banking business—
 - (i) is not undesirable or unsuitable for the class of banking business that the applicant intends to conduct; or
 - (ii) is not likely to mislead the public in regard to the true nature of the applicant's business; or
 - (iii) is not so similar to the name of another banking institution as to be likely to cause confusion, unless that other banking institution—
 - A. is being, or is about to be, wound up or dissolved; or
 - B. has ceased, or is about to cease, conducting any banking business in Zimbabwe; and consents, in writing, to the applicant using the name in question;

and

- (h) the class of banking business in which the applicant seeks registration is appropriate for the type of banking business the applicant wishes to conduct; and
 - (i) the applicant complies with such other requirements as may be prescribed; and
 - (j) generally, the applicant will comply with such of the provisions of this Act as are applicable to it;
- the Registrar shall register the applicant in that class of banking business.

[Subsection amended by Act 16 of 2004]

(4) The Registrar shall not register an applicant whose head office is situated outside Zimbabwe unless he is satisfied that—

- (a) the applicant is authorized to conduct banking business in the country where its head office is situated and does carry on banking business in that country; and

[Paragraph amended by Act 12 of 2015]

- (b) the applicant has been authorized by the regulatory authority of the country where its head office is situated to extend its banking business to Zimbabwe; and
- (c) the applicant's banking business in Zimbabwe will be supervised, in conjunction with its banking business elsewhere, by the regulatory authority of the country where its head office is situated.

(5) Subject to section *seventy-three*, if on consideration of an application in terms of subsection (1) the Registrar—

- (a) is not satisfied as to any matter referred to in paragraphs (a) to (j) of subsection (3); or
- (b) considers that it would not be in the public interest to register the applicant in the class of banking business for which the application is made;

he shall refuse to register the applicant concerned:

Provided that—

- (i) before refusing to register an applicant on the ground referred to in paragraph (a), he shall notify the applicant, in writing, that he proposes to refuse the application and of his reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;
- (ii) within ten days after deciding to refuse to register an applicant on any ground, he shall notify the applicant, in writing, of his decision and of the reasons for it.

(6) The period between the Registrar's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which he notifies the applicant of his decision or proposed decision in terms of subsection (3) or (5), as the case may be, shall not exceed six months unless the applicant consents to an extension of the period.

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

[Subsection inserted by Act 12 of 2015]

9 Terms and conditions of registration

Registration shall be subject to such terms and conditions as may be prescribed or as the Registrar, after consultation with the Deposit Protection Corporation, may reasonably determine.

[Subsection amended by Act 7 of 2011]

10 Registration certificates

Upon registering a banking institution in terms of section *eight*, the Registrar shall issue the institution with a registration certificate, which shall be in the form prescribed and shall specify—

- (a) the name of the registered banking institution; and
- (b) the class of banking business which the banking institution is authorized to conduct; and
- (c) the banking activities in which the banking institution is authorized to engage; and
- (d) any other terms and conditions subject to which the banking institution is registered.

11 Register of banking institutions

(1) The Registrar shall maintain, or cause to be maintained, a register of banking institutions in which shall be recorded, in relation to each registered institution—

- (a) the name of the institution; and
- (b) the class of banking business which the institution is authorized to conduct; and
- (c) the banking activities in which the institution is authorized to engage; and
- (d) any terms and conditions subject to which the institution is registered; and
- (e) any amendment, cancellation or suspension of the institution's registration.

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

12 Annual fee payable by registered banking institutions

(1) Every registered banking institution shall pay the Registrar each year a fee of the prescribed amount.

(2) The annual fee referred to in subsection (1) shall be paid by such date and in such manner as may be prescribed.

13 Amendment of registration

(1) Subject to this section, the Registrar, after consultation with the Deposit Protection Corporation, may at any time amend a banking institution's registration or any term or condition of its registration—

- (a) to correct any error; or
- (b) if the institution requests the amendment; or
- (c) if the Registrar considers the amendment necessary to reflect the true nature of the banking business which the institution is conducting; or
- (d) if the Reserve Bank recommends an amendment in terms of paragraph (j) of subsection (1) of section *forty-eight* or in terms of section *fifty-one*; or
- (d1) if the Deposit Protection Corporation recommends an amendment in terms of the Deposit Protection Corporation Act [*Chapter 24:29*]; or

[Paragraph inserted by Act 7 of 2011]
- (e) if for any other reason the Registrar considers the amendment necessary or desirable in the public interest.

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

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

13A Notification of application

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

[Section inserted by Act 12 of 2015]

14 Cancellation of registration

(1) Subject to subsections (2) and (3), the Registrar may, by notice in writing to the banking institution concerned, cancel a banking institution's registration if he has reasonable grounds for believing that—

- (a) the registration was obtained in error or through fraud or the misrepresentation of a material fact by the institution; or
- (b) the institution has contravened any provision of this Act or any provision of the Reserve Bank of Zimbabwe Act [*Chapter 22:10*], the Balance of Payments Reporting Act [*Chapter 22:16*] or the Deposit Protection Corporation Act [*Chapter 24:29*] that is applicable to it; or

[Paragraph amended by Act 4 of 2004 and Act 7 of 2011]

- (c) the institution misrepresents the facilities which it offers to the public; or

- (d) the institution is engaging in banking business in which, in the Registrar's opinion, it is not registered and has refused, after notice in writing from the Registrar, to apply for registration anew or for an amendment of any term or condition of its registration to reflect the true nature of its banking business; or
 - (e) the institution is engaging in any banking activity that is not specified in its registration certificate; or
 - (f) the institution is engaging in undesirable methods of conducting business; or
 - (f1) the institution has knowingly or recklessly permitted its facilities to be used for the purposes of money-laundering or the financing of terrorism as described in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013); or
[Paragraph inserted by Act 12 of 2015]
 - (g) the institution has refused to pay a monetary penalty imposed in terms of subsection (1) of section *forty-eight*; or
 - (h) the institution has ceased to conduct the class of banking business in which it was registered; or
 - (i) the institution has not conducted any banking business within twelve months from the date of its registration; or
 - (j) the institution can no longer maintain net assets which, together with other financial resources available to it, are of an amount and nature sufficient to safeguard its creditors; or
 - (k) the institution can no longer maintain the prescribed minimum amounts of capital and reserves; or
 - (l) the institution can no longer provide adequate security for the assets entrusted to it; or
 - (m) the institution has not complied with any instruction, requirement or condition imposed by the Registrar in terms of this Act; or
 - (n) the Reserve Bank recommends that the institution's registration be cancelled in terms of paragraph (j) of subsection (1) of section *forty-eight* or in terms of section *fifty-one*; or
 - (n1) the Deposit Protection Corporation recommends that the institution's registration be cancelled in terms of the Deposit Protection Corporation Act [*Chapter 24:29*]; or
[Paragraph inserted by Act 7 of 2011]
 - (o) the institution has been convicted of an offence under section 4 of the Immovable Property (Prevention of Discrimination) Act [*Chapter 10:12*] and an appeal against the conviction has not been noted or, if noted, has been abandoned or dismissed; or
 - (p) where the institution's head office is situated outside Zimbabwe —
 - (i) its authority to conduct banking business is revoked or not renewed in the country where its head office is situated; or
 - (ii) it has failed to ensure that its offices and branches in Zimbabwe maintain the minimum capital referred to in subsection (1) of section *twenty-nine*;
[Subparagraph amended by section 16 of Act 5 of 2011]
- or
- (q) where the institution is a subsidiary of another banking institution —
 - (i) the parent banking institution has ceased to be registered under this Act; and
 - (ii) it is in the public interest that the institution's registration should be cancelled.
- (2) Before cancelling a banking institution's registration in terms of subsection (1), the Registrar shall—
- (a) through the Governor, consult the Minister and the Deposit Protection Corporation; and
 - (b) after the consultation, notify, in writing, the banking institution and the Deposit Protection Corporation concerned;

[Paragraph amended by Act 12 of 2015]

that he proposes to cancel the institution's registration and of his reasons for proposing to do so:

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

[Subsection substituted by section 5 of Act 1 of 2005 and amended by Act 7 of 2011]

- (3) The Registrar shall not cancel a banking institution's registration in terms of subsection (1)—
- (a) until—
 - (i) the period within which an appeal may be lodged in terms of section *seventy-three* has elapsed; or
 - (ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso;
 unless the banking institution concerned has consented to its cancellation;
 - (b) if an appeal is lodged in terms of section *seventy-three*, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, the Registrar is notified that his decision has been upheld.

(4) The Registrar may cancel a banking institution's registration if the holder so requests and the Registrar is satisfied that cancellation will be in the best interests of the institution's creditors, depositors and members:

Provided that, if the Registrar refuses to cancel an institution's registration in terms of this subsection, he shall, within ten days after reaching his decision, notify the institution, in writing, of his decision and of the reasons for it.

15 Registration and cancellation of registration to be notified in Gazette and in newspaper

Whenever the Registrar registers a banking institution or cancels its registration in terms of this Part, he shall cause notice thereof to be published in the *Gazette* and in one or more issues of a newspaper circulating in the area in which the institution intends to conduct its banking business or, as the case may be, has been carrying on its banking business.

PART IIIA

SHAREHOLDING AND CONTROL OF BANKING INSTITUTIONS

[Part IIIA (section 15A – 15K inserted by Act 12 of 2015)]

15A Limitation on shareholding in banking institutions and controlling companies

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

- (a) no individual shall hold shares in a banking institution or a controlling company if the shares exceed twenty-five *per centum* of the total nominal value or the total voting rights of all the issued shares of the banking institution or controlling company;
- (b) no body corporate, other than—
 - (i) a financial institution; or
 - (ii) a registered controlling company; or
 - (iii) a body corporate approved in terms of section 15F(1)(b).

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

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

- (a) the shareholding will not be contrary to—
 - (i) the public interest; or
 - (ii) the interests of the banking institution concerned or its depositors or of the controlling company concerned, as the case may be;

and

- (b) where the shareholder is—
 - (i) an individual, he or she is a fit and proper person to hold shares in a banking institution or controlling company, as the case may be;
 - (ii) a body corporate, the persons who control the body corporate are fit and proper persons to control a shareholder in a banking institution or a controlling company, as the case may be.

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

(4) If, on application being made, the Registrar refuses to give permission in terms of subsection (2), the Registrar shall, within ten days after reaching his or her decision, notify the applicant, in writing, of the decision and of the reasons for it.

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

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

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

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

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

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

(1) In this section—

“significant interest” means a percentage of—

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

(2) No—

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

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

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

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

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

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

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

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

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

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

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

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

and

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

15C Nominee shareholding

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

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

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

- (a) a manager or trustee of a collective investment scheme registered in terms of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997); or
- (b) an executor of a deceased estate, a trustee of an insolvent estate or the liquidator of a company in liquidation; or
- (c) a curator or guardian of a person under a disability; or
- (d) a holder of a licence issued in terms of Part V of the Securities and Exchange Act [*Chapter 24:25*] (No. 17 of 2004); or
- (e) a central securities depository established in terms of Part IX of the Securities and Exchange Act [*Chapter 24:25*] (No. 17 of 2004); or
- (f) such other persons as may be prescribed.

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

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

15D Effect of shareholding in contravention of this Part

- (1) Where a share in a banking institution or controlling company—
 - (a) is held by a person in contravention of section 15A or 15B; or
 - (b) has been allotted, issued or transferred to a person, or registered in a person's name, in contravention of section 15C(1);

then—

- (c) no person shall, either personally or by proxy, cast a vote attached to the share nor shall any person receive a dividend payable on the share; and
- (d) the Registrar may, subject to this section, require the person to divest himself or herself of the share.

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

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

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

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

- (a) the shareholder; and
- (b) the person from whom he or she acquired the share, if that person is readily identifiable; and
- (c) the banking institution or controlling company concerned;

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

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

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

15E Divestment of shares to prevent undue influence by shareholder

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

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

(3) Subject to section 73, a shareholder who has been required to divest himself or herself of any shares in terms of subsection (1) and who fails without just cause to comply with the requirement within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (a) below, shall —

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

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

and

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

15F Restriction on right to control banking institution

(1) No person other than—

(a) a registered financial institution; or

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

(c) a registered controlling company;

may exercise control over a registered banking institution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

15G Registration of controlling companies

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

- (a) a certified copy of the applicant's memorandum of association and articles of association; and
- (b) the names and details of the qualifications and experience of the applicant's directors and principal officers; and
- (c) details of the applicant's authorised and issued share capital; and
- (d) the name, address and such other particulars as may be prescribed of each person who holds five *per centum* or more of the applicant's voting stock; and
- (e) the prescribed fee; and
- (f) such other information and documents as may be prescribed or as the Registrar may reasonably require.

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

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

- (a) the applicant is a public company; and
- (b) the applicant's memorandum and articles of association contain no provision that is inconsistent with this Act or that is undesirable in so far as it concerns banking institutions; and
- (c) the applicant's directors and principal officers—
 - (i) as far as can be reasonably ascertained, are fit and proper persons to hold the offices concerned; and
 - (ii) have sufficient qualifications and experience to manage the affairs of the applicant in its capacity as a controlling company;

and

- (d) every person who holds five *per centum* or more of the applicant's voting stock is, so far as can be reasonably ascertained, a fit and proper person to be a member of a controlling company; and
- (e) the applicant is in a financially sound condition; and
- (f) generally, the applicant will comply with such of the provisions of this Act as are applicable to it;

the Registrar shall register the applicant as a controlling company.

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

- (a) is not satisfied as to any matter referred to in paragraphs (a) to (f) of subsection (3); or
- (b) considers that it would not be in the public interest to register the applicant as a controlling company;

he or she shall refuse to register the applicant concerned:

Provided that—

- (i) before refusing to register an applicant, the Registrar shall notify the applicant, in writing, that he or she proposes to refuse the application and of the reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;
- (ii) within ten days after deciding to refuse to register an applicant, the Registrar shall notify the applicant, in writing, of the decision and of the reasons for it.

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

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

15H Register of controlling companies

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

- (a) its name; and
- (b) its registered office, that is to say, its address for service of notices, legal process and other official communications; and
- (c) the banking institution which it controls; and
- (d) any terms and conditions subject to which it is registered; and
- (e) any amendment or cancellation of its registration.

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

15I Amendment of registration of controlling company

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

- (a) to correct an error; or
- (b) if the company requests the amendment; or
- (c) if for any other reason the Registrar considers the amendment necessary or desirable in the public interest.

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

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

15J Cancellation of registration of controlling company

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

- (a) the company requests the cancellation; or
- (b) the Registrar has reasonable grounds for believing that—
 - (i) the registration was obtained in error or through fraud or the misrepresentation of a material fact by the company; or
 - (ii) the company has contravened any provision of this Act that is applicable to it; or
 - (iii) the company has failed to establish control over the banking institution in respect of which it is registered; or
 - (iv) the company no longer exercises control over the banking institution in respect of which it is registered; or
 - (v) any person who exercises substantial control over the company, whether as director or shareholder, is not a fit and proper person to exercise such control.

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

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

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

- (a) until—
 - (i) the period within which an appeal may be lodged in terms of section 73 has elapsed; or
 - (ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso;
 unless the company concerned has consented to the cancellation;
- (b) if an appeal is lodged in terms of section 73, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, the Registrar is notified that his or her decision has been upheld.

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

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

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

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

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

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

shall—

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

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

and

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

(i) a fine not exceeding level ten; and

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

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

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

[Part IIIA (section 15A – 15K inserted by Act 12 of 2015)]

PART IV

CONDUCT OF BUSINESS BY BANKING INSTITUTIONS

16 Commencement of banking business

(1) No banking institution shall commence banking business after registration until it has satisfied the Reserve Bank that—

(a) its management systems and procedures, including its risk management systems, its corporate governance framework and its systems for the detection and prevention of money-laundering and the financing of terrorism, are adequate to ensure compliance with this Act; and

[Paragraph amended by Act 12 of 2015]

(b) the persons who are entrusted with overseeing and operating the systems and procedures referred to in paragraph (a) are competent to do so;

and the Reserve Bank has authorized the institution, in writing, to commence banking business.

(2) A banking institution that commences banking business without the authority required by subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten.

[Subsection amended by Act 22 of 2001]

17 Conduct of banking and other business

Subject to this Act, every banking institution shall conduct its banking business and other operations in accordance with sound administrative and accounting practices and procedures, adhering to proper risk-management policies, and shall comply with the terms and conditions of its registration and with any directions given to it by the Reserve Bank or the Registrar in terms of this Act.

18 Board of banking institution

(1) The operations of every banking institution or controlling company shall be directed by a board consisting, subject to this section and section *nineteen*, of not fewer than five directors.

(1a) No person shall exercise any of the function of a director of a banking institution following his or her appointment or re-appointment as a director of the institution, unless his or her appointment or re-appointment, as the case may be, has been approved by the Registrar.

[Subsection inserted by Act 16 of 2004 and proviso repealed by Act 12 of 2015]

(1b) An application for approval under subsection (1a) shall be made in writing to the Registrar and shall provide such information as may be prescribed or as the Registrar may reasonably require.

[Subsection inserted by Act 16 of 2004]

(1c) The Registrar shall without delay consider every application made to him or her under subsection (1b), and within two weeks after receiving it shall notify the applicant, in writing—

- (a) of his or decision on the application; and
- (b) if he or she refuses to approve the appointment of the person concerned, of his or her reasons for so refusing;

unless the applicant consents to an extension of the two-week period.

[Subsection inserted by Act 16 of 2004]

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

- (a) is disqualified for appointment in terms of section 19 of this Act or section 173 of the Companies Act [*Chapter 24:03*] or in terms of the memorandum and articles of association or constitution of the banking institution concerned; or
- (b) has knowingly been involved, whether in Zimbabwe or elsewhere, in money-laundering or financing of terrorism as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013); or
- (c) is otherwise not a fit and proper person to be a director of a banking institution or controlling company, as the case may be.

[Subsection substituted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

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

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

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

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

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

- (a) contravenes subsection (1a); or
- (b) fails, through its chief financial officer, to comply with subsection (1f); or
- (c) dismisses or in any other way penalises the chief financial officer or any principal officer for furnishing the information required under subsection (1f); or

shall—

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

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

and

- (e) if the institution or company continues to be in default after the period specified in paragraph (d), be guilty of an offence and liable on conviction to—
- (i) a fine not exceeding level ten; and
 - (ii) a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution or company.

[Subsection inserted by Act 12 of 2015]

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

[Subsection substituted by Act 12 of 2015]

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

[Subsection substituted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

(4) The quorum at any meeting of the board of a banking institution or controlling company shall be three-fifths of the total membership of the board:

Provided that officers of the banking institution shall not form a majority of any such quorum.

[Subsection amended by Act 12 of 2015]

(5) Without derogation from subsection (1), the board of a banking institution or controlling company shall be responsible for—

- (a) formulating policies relating to the business of the institution or company; and
- (b) supervising all activities engaged in by the institution.

[Subsection amended by Act 12 of 2015]

19 Disqualification for appointment to board of banking institution

(1) No person shall be appointed, or hold office, as a director of a banking institution or controlling company if—

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

[Paragraph substituted by Act 12 of 2015]

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

[Paragraph inserted by Act 12 of 2015]

- (b) he is a director of another banking institution which carries on business in Zimbabwe in competition with the first-mentioned banking institution; or

- (c) under the law of any country—

- (i) he has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
- (ii) he has made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
- (iii) he has been convicted of theft, fraud, forgery, uttering a forged document, perjury, money-laundering or the financing of terrorism or any other offence, by whatever name called, that is similar to any of those offences; or
- (iv) he has been convicted of any offence and sentenced to a term of imprisonment exceeding six months, imposed otherwise than as an alternative to or in default of payment of a fine, and has not received a free pardon.

[Subparagraph amended by Act 12 of 2015]

(2) Subsection (1) shall not be construed as—

- (a) limiting section 173 of the Companies Act [*Chapter 24:03*] in its application to banking institutions; or
- (b) preventing the memorandum of association or other constitution of a banking institution or controlling company from prescribing further disqualifications, not inconsistent with this Act, upon the appointment of directors to its board.

[Subsection amended by Act 12 of 2015]

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

[Subsection substituted by Act 1 of 2018]

20 Principal administrative office and principal officers of banking institution

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

[Subsection substituted by Act 12 of 2015]

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

- (a) a chief executive officer; and
- (b) a chief accounting officer; and
- (c) a compliance officer; and
- (d) an internal auditor; and
- (e) a company secretary; and
- (f) such other officers as may be prescribed.

[Subsection substituted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015 and amended by Act 1 of 2018]

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

- (a) appoint a person to hold simultaneously two or more of the offices referred to in subsection (2) except on a temporary or acting basis (and in that event for not more than six months continuously); or
- (b) without the written permission of the Registrar, appoint a person to an office referred to in subsection (2) if he or she holds that or any other such office in a company which is part of a group of companies of which the banking institution or controlling company concerned is a member (except on a temporary or acting basis).

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

(3) A banking institution or controlling company shall not—

- (a) change the situation of its principal administrative office in Zimbabwe; or
- (b) appoint a new person to an office referred to in subsection (2);

unless it has given not less than twenty-one days' prior written notice to the Registrar of the change or appointment.

[Subsection amended by Act 12 of 2015]

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

(4) Any banking institution or controlling company that contravenes this section shall be guilty of an offence and liable to a fine not exceeding level six.

[Subsection amended by Act 22 of 2001]

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

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

- (a) act *bona fide* for the benefit of the institution or company and for the benefit of its depositors and shareholders; and
- (b) avoid any conflict between his or her personal interests and the interests of the institution or company and its depositors and shareholders; and
- (c) possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar appointment and carrying out similar functions as those that he or she carries out; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) thereafter to set off against any amount paid to depositors by the Deposit Protection Corporation or any governmental body, as part or full compensation for the losses suffered by depositors as a result of the banking institution concerned being unable to repay their deposits; and

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

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

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

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

[Section inserted by Act 12 of 2015]

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

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

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

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

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

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

(b) contravenes subsection (2); or

shall—

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

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

and

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

(i) a fine not exceeding level fourteen; and

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

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

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

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

[Section inserted by Act 12 of 2015]

21 Banking institution to display its name and fact that it is registered

(1) Every registered banking institution—

(a) shall display conspicuously, in easily legible letters and in the English language, at the entrance to every place in Zimbabwe where the institution conducts banking business; and

(b) shall display, in easily legible letters and in the English language, on every letter, advertisement or other communication published or issued by or on behalf of the institution;

its name and a statement of the fact that it is registered as a commercial bank, an accepting house, a discount house or a finance house, as the case may be.

(2) Any banking institution that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five.

[Subsection amended by Act 22 of 2001]

22 Change of name of banking institution

(1) No banking institution shall, without the written consent of the Registrar, alter its name as specified in its registration certificate.

(2) No banking institution shall, for the purposes of its banking business, use or refer to itself by—

(a) a name other than the name specified in its registration certificate; or

(b) an abbreviation of the name specified in its registration certificate, unless the abbreviation has been approved by the Registrar.

(3) Notwithstanding subsection (2), a banking institution may, with the written consent of the Registrar, use or refer to itself by—

(a) the name of a business or undertaking with which it has been amalgamated or which it has absorbed; or

(b) its previous name, where it has changed its name;

in conjunction with the name specified in its registration certificate.

(4) If, on application being made, the Registrar refuses to consent to a change of name or the use of a name or abbreviation in terms of this section, he shall, within ten days after reaching his decision, notify the banking institution concerned, in writing, of his decision and of the reasons for it.

(5) Any banking institution that contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level five.

[Subsection amended by Act 22 of 2001]

(6) Whenever a banking institution has altered its name with the Registrar's consent in terms of subsection (1), the Registrar shall cause notice of the alteration to be published, at the institution's expense, in the *Gazette* and in one or more issues of a newspaper circulating in the area in which the institution carries on its banking business.

23 Certain titles and descriptions reserved for use by registered banking institutions

(1) Subject to subsections (2) and (3), except with the consent of the Registrar and in accordance with such conditions as he may impose, no person, other than a registered banking institution, shall use in the description or title under which he carries on business in Zimbabwe—

(a) the word “acceptance”, “acceptances”, “accepting”, “bank”, “banker”, “banking”, “discount”, “saving” or “savings”; or

(b) any other word that may be prescribed;

or a literal translation of any of those words, or any combination of letters in which any of those words appear.

(2) Where, immediately before a word is prescribed for the purposes of paragraph (b) of subsection (1), any person was using that word in the description or title under which he carried on business in Zimbabwe, he may continue to use that word in his description or title.

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

(a) the African Development Bank referred to in the African Development Bank (Membership of Zimbabwe) Act [*Chapter 22:01*]; or

(b) the International Bank for Reconstruction and Development referred to in the International Financial Organizations Act [*Chapter 22:09*].

(4) If, on application being made, the Registrar refuses to consent in terms of this section to a person's use of a word, the Registrar shall, within ten days after reaching his decision, notify the applicant, in writing, of his decision and of the reasons for it.

(5) 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.

[Subsection amended by Act 22 of 2001]

24 Alteration of constitution or rules of conduct by banking institution

(1) No banking institution whose head office is situated in Zimbabwe shall alter its memorandum of association or other constitution or its articles of association or other rules for the conduct of its business unless the Registrar, after consultation with the Deposit Protection Corporation, has given his written consent to the alteration.

[Subsection amended by Act 7 of 2011]

(2) The Registrar shall refuse to consent to any alteration referred to in subsection (1) if, in his opinion, the alteration conflicts with any provision of this Act.

(3) If, on application being made, the Registrar refuses to consent to an alteration referred to in subsection (1), he shall, within ten days after reaching his decision, notify the applicant, in writing, of his decision and of the reasons for it.

(4) A banking institution whose head office is situated outside Zimbabwe shall notify the Registrar of any alteration to its memorandum of association or other constitution or its articles of association or other rules for the conduct of its business within sixty days of such alteration.

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

[Subsection inserted by Act 12 of 2015]

(5) Any banking institution that contravenes subsection (1) or (4) shall be guilty of an offence and liable to a fine not exceeding level five.

[Subsection amended by Act 22 of 2001]

25 Amalgamations and transfers of business

(1) Except with the approval of the Minister in terms of subsection (5), no banking institution or controlling company shall—

(a) amalgamate with any other person; or

(b) transfer its banking business or any other business or any part thereof to any other banking institution; or

(c) take transfer from another banking institution of the whole or part of any banking business or other business;

where the value of the assets or business amalgamated, assumed or transferred, as the case may be, will exceed five *per centum* of the value of the banking institution's issued share capital:

Provided that this subsection shall not apply to an amalgamation or transfer referred to in subsection (9).

[Subsection amended by Act 12 of 2015]

(2) An application for the Minister's approval of an amalgamation or transfer referred to in subsection (1) shall be made to the Registrar and shall be accompanied by—

- (a) a statement of the nature of the amalgamation or transfer; and
- (b) a copy of the proposed agreement under which the amalgamation or transfer is to be effected.

(3) An agreement referred to in paragraph (b) of subsection (2) may provide, among other things, for—

- (a) the transfer of any licence, permit, registration, consent, approval or authority issued or given under any other enactment;
- (b) the substitution of—
 - (i) curators, executors, administrators, trustees or liquidators or any other persons in any other capacity appointed in terms of any enactment or any will, agreement or deed or any other document whatsoever;
 - (ii) any other persons for any purposes of or incidental to or connected with any business affected by the amalgamation or transfer.

(4) The Registrar shall cause notice of any application received by him in terms of subsection (2) to be published at the applicant's expense in the *Gazette* and in one or more newspapers circulating in Zimbabwe, and in such notice the Registrar shall —

- (a) make such provision for the publication or inspection of the documents submitted with the application as the Minister considers desirable; and
- (b) call for objections or representations to be made in regard to the application within such period as may be specified in the notice, which period shall be not less than twenty-one days from the date on which the notice was published in the *Gazette*.

(5) After the expiry of the period referred to in subsection (4) the Minister shall consider the application, together with any objections or representations received, and if he is of the opinion that the amalgamation or transfer would not be detrimental to the public interest, he shall approve it subject to such conditions as he thinks fit.

[Subsection amended by Act 7 of 2011 and Act 12 of 2015]

(6) When an amalgamation or transfer referred to in subsection (1) has been approved by the Minister in terms of subsection (5), the Minister shall cause a notice to be published at the applicant's expense in the *Gazette* and in one or more newspapers circulating in Zimbabwe—

- (a) stating that the amalgamation or transfer has been approved; and
- (b) unless the Minister is of the opinion that it is against the public interest to do so, setting out the terms of the agreement effecting the amalgamation or transfer.

(7) On and after the date of the publication of the notice referred to in subsection (6) —

- (a) no transfer or assumption of any business or part thereof, or of any rights and obligations in terms of, the agreement concerned shall be set aside or declared invalid by any court on the grounds that the customers or other persons with whom a party to that agreement had entered into business relations had not consented thereto;
- (b) any provision in the agreement concerned for the transfer of any licence, permit, registration, consent, approval or authority issued or given under any other enactment shall be valid, notwithstanding the fact that the provisions of that enactment have not been complied with;
- (c) the substitution of any person referred to in paragraph (b) of subsection (3) shall be valid, notwithstanding the fact that the provisions of any other law have not been complied with.

(8) Notwithstanding anything to the contrary contained in any enactment, the Minister may, by statutory instrument—

- (a) direct the Master of the High Court, the Chief Registrar of Companies, the Registrar of Deeds or any other official of the State or of any authority specified in the statutory instrument to make such endorsements on or alterations in his register or other records or on any document or to issue such certificates, deeds or other documents as may be specified in the statutory instrument for the purpose of recording and giving effect to an amalgamation or transfer approved by him in terms of subsection (5); and
- (b) authorise the waiver of the payment, in whole or in part, of any transfer fee, stamp duty, registration fee, licence fee or other charge arising out of or in connection with an amalgamation or transfer approved by him in terms of subsection (5).

(9) If a banking institution or controlling company whose head office is situated outside Zimbabwe —

- (a) amalgamates with any other person without affecting the banking business or any other business in Zimbabwe of any party to the amalgamation; or

- (b) transfers its banking business or any other business or any part thereof to any other person without affecting any business conducted in Zimbabwe by a party to the transfer; or
- (c) takes transfer of any banking business or any other business or any part thereof from another person without affecting any business conducted in Zimbabwe by a party to the transfer;

the banking institution shall—

- (i) notify the Registrar, in writing, of the amalgamation or transfer; and
- (ii) if so required by the Registrar, submit to him a statement of the nature of the amalgamation or transfer and a copy of the agreement, if any, under which the amalgamation or transfer was effected.

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

26 Closing and establishment of branches in Zimbabwe by banking institutions

(1) In this section—

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

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

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

- (a) the banking activities engaged in by the banking institution; and
- (b) the financial condition of the banking institution; and
- (c) the volume of business expected to be generated by the branch;

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

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

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

- (a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution remains in default, not exceeding a period of one hundred and eighty-one days; and
- (b) if the institution continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to—
 - (i) a fine not exceeding level fourteen; and
 - (ii) a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution.

[Section substituted by Act 12 of 2015]

27 Establishment of branches, etc., outside Zimbabwe by banking institutions

(1) Except with the written approval of the Registrar, no banking institution whose head office is situated in Zimbabwe shall establish a subsidiary, branch or agency outside Zimbabwe for the purpose of conducting banking business outside Zimbabwe.

(2) An application for the Registrar’s approval in terms of subsection (1) shall be made in the prescribed form and manner and shall be accompanied by—

- (a) the prescribed fee, if any; and
- (b) such documents and information as may be prescribed or as the Registrar may reasonably require.

(3) The Registrar shall grant his approval of an application in terms of subsection (2) if he is satisfied that the subsidiary, branch or agency concerned will be properly managed and will not lead to any contravention of this Act, and if he is not so satisfied he shall, subject to section *seventy-three*, refuse the application:

Provided that, before deciding to refuse an application he shall notify the applicant, in writing, that he proposes to refuse it and of his reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter.

(4) Any banking institution that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven.

[Subsection amended by Act 22 of 2001]

28 Representative offices of foreign banking institutions

(1) In this section—
“foreign banking institution”

[Definition repealed by At 12 of 2015]

“representative office” means premises in Zimbabwe from which any person conducts business, or holds himself out as ready to conduct business, as a representative of a foreign banking institution.

(2) Except with the approval of the Registrar, no person shall —

- (a) establish a representative office; or
- (b) conduct any business from a representative office.

(3) An application for the Registrar’s approval in terms of subsection (2) shall be made in the prescribed form and manner and shall be accompanied by—

- (a) a certificate from the regulatory authority of the country in which the foreign banking institution’s head office is situated, to the effect that the foreign banking institution is authorized to conduct banking business in that country; and
- (b) the prescribed fee, if any; and
- (c) such other documents and information as may be prescribed or as the Registrar may reasonably require.

(4) The Registrar shall grant his approval of an application in terms of subsection (3) if he is satisfied that the representative office concerned will be managed in accordance with this Act, and if he is not so satisfied he shall, subject to section *seventy-three*, refuse the application:

Provided that, before deciding to refuse an application he shall notify the applicant, in writing, that he proposes to refuse it and of his reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter.

(5) After the establishment of a representative office in accordance with the Registrar’s approval under this section, the person who manages or controls the office shall notify the Registrar, in writing, of —

- (a) any change in the name of the foreign banking institution; or
- (b) any change in the chief representative in Zimbabwe of the foreign banking institution; or
- (c) any change in the address of the representative office; or
- (d) the closure of the representative office;

as soon as it occurs.

(6) No person shall conduct any banking business in or from a representative office.

(7) Any person who contravenes subsection (2) or (6) 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.

[Subsection amended by Act 22 of 2001]

28A Corporate governance

(1) Every banking institution controlling company shall establish and maintain adequate and effective procedures of corporate governance consistent with such prudential standards as may be prescribed and with the nature, complexity and risks inherent in the activities and business of the banking institution or controlling company concerned.

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

- (a) commitment by the principal officers of the banking institution or controlling company to adhere to corporate behaviour that is universally recognised and accepted as correct and proper; and
- (b) accountability on the part of the board and principal officers of the banking institution or controlling company towards shareholders; and
- (c) a balance between the interests of shareholders and other persons who may be affected by the conduct of the board and principal officers of the banking institution or controlling company; and
- (d) the establishment and maintenance of mechanisms and procedures to minimise or avoid potential conflicts of interests between the business interests of the banking institution or controlling company and the personal interests of its directors and principal officers; and
- (e) responsible conduct by the directors and principal officers of the banking institution or controlling company; and
- (f) the achievement of the maximum level of efficiency and profitability of the banking institution or controlling company within an acceptable risk profile; and
- (g) the timely, accurate and meaningful disclosure of matters that are material to the business of the banking institution or controlling company or the interests of its shareholders and other interested persons; and
- (h) retention by the board of control over the strategic and business direction of the banking institution or controlling company, whilst enabling its principal officers to manage its business and activities; and

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

[Section inserted by Act 12 of 2015]

28B Compliance function

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

- (a) identify, assess, monitor and advise the board on compliance risk; and
 (b) advise the board on ways to comply with all applicable laws, codes of conduct and standards of good practice, and assist the board in complying with them.

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

[Section inserted by Act 12 of 2015]

28C Risk committee

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

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

- (a) to evaluate the adequacy and efficiency of the risk policies, procedures, practices and controls applied within the institution or company in the day-to-day management of its business; and
 (b) to identify and assess the risks to which the institution or company is exposed; and
 (c) to develop risk mitigation strategies to ensure that the institution or company manages optimally the risks to which it is exposed; and
 (d) to ensure that institution or company undertakes a formal risk assessment at least annually; and
 (e) to identify and regularly monitor all key risks and key performance indicators to ensure that the institution or company maintains at a high level its decision-making capability and the accuracy of its reporting; and
 (f) to facilitate and promote communication, through reporting structures, regarding the matters referred to in paragraph (a) and any other related matter, between the board and the officers and employees of the institution or company; and
 (g) where the institution or company is a member of a group of companies, to co-ordinate the monitoring of risk management on a group basis; and
 (h) to establish and implement a process of internal controls and reviews to ensure the efficacy of the overall risk and capital management process; and
 (i) to establish and implement policies and procedures designed to ensure that the institution or company identifies, measures, and reports all material risks; and
 (j) to establish and implement a process that relates capital to the level of risk; and
 (k) to perform such other functions as may be prescribed.

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

[Section inserted by Act 12 of 2015]

PART IVA

CONSUMER PROTECTION

[Part IVA 9sections 28D – 28G inserted by Act 12 of 2015]

28D Publication of certain information by banking institutions

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

- (a) a copy, in a form approved by the Registrar, of the latest statement it submitted to the Registrar in terms of section 38(1); and
 (b) a copy, in a form approved by the Registrar, of the latest statement or balance sheet and profit and loss account it submitted to the Registrar in terms of subsection (2) or (3), as the case may be, of section 38; and
 (c) a notice in a form approved by the Reserve Bank that is clearly visible to the public setting out its interest rates on deposits and loans, and indicating the terms and conditions under which it accepts deposits and makes loans; and
 (d) such other information as may be prescribed.

(2) At least once every six months, a banking institution shall cause to be published in a newspaper circulating in each area in which the institution carries on banking business, a notice setting out the interest rates offered

by the institution on deposits and loans, and the terms and conditions under which it accepts deposits and makes loans.

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

28E Disclosure of certain information to customers of banking institutions

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

- (a) all its charges for maintaining the account and allowing the person access to the funds in the account; and
- (b) the interest it will pay on the funds in the account, and the interest the person will have to pay on any overdraft; and
- (c) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d).

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

- (a) disclose to the borrower, in writing—
 - (i) the interest charged and the manner in which it is to be calculated; and
 - (ii) any applicable fee or other charge and the manner in which it is to be calculated; and
 - (iii) every term or condition applicable to the credit, clearly identifying the obligations of the borrower; and
 - (iv) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d);
 and
- (b) during the period of the credit agreement, send or make available to the borrower and the guarantor, if any, a statement of account in written or electronic form, not later than the end of the month following each six-month period, showing—
 - (i) the amounts outstanding, as principal and interest, at the beginning and at the end of the six-month period; and
 - (ii) the payments received, as principal and interest, during the six-month period; and
 - (iii) the annual rate of interest applicable during the six-month period; and
 - (iv) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d).

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

- (a) his or her rights and obligations in respect of—
 - (i) the credit limit authorised under the card and the amount of indebtedness outstanding at any time; and
 - (ii) the period for which each statement is issued; and
 - (iii) any charges and interest costs for which the person becomes responsible by accepting and using the card; and
 - (iv) the minimum amount in respect of the balance outstanding that must be paid at the end of each statement period; and
 - (v) the maximum amount of the cardholder's liability for unauthorised use of the card if it is lost or stolen;
 and
- (b) the cost of borrowing in respect of any loan obtained through the use of the card, the exchange rate applied and the manner in which it is calculated and, in the event that the required instalment is not paid on due date, particulars of the charges and penalties to be paid by the cardholder; and
- (c) the amount of any fee or charge for which the cardholder is responsible for accepting or using the card and the manner in which the fee or charge is calculated; and
- (d) such other particulars as may be prescribed or as the Registrar may specify in a direction referred to in section 81(2)(d).

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

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

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

28F Customer complaints procedures

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

- (a) display a notice in the public portion of each of its branches and premises where it conducts banking business, explaining the procedures and the manner in which complaints are to be made and dealt with; and
- (b) designate an employee in each of its branches and premises where it conducts banking business as a customer service officer responsible for receiving and dealing with complaints from its customers and members of the public.

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

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

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

- (a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution remains in default, not exceeding a period of one hundred and eighty-one days; and
- (b) if the institution continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to—
 - (i) a fine not exceeding level fourteen; and
 - (ii) a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution.

PART V

FINANCIAL REQUIREMENTS

29 Minimum capital of banking institutions

[Heading amended by section 16 of Act 5 of 2011]

(1) Every banking institution whose head office is situated in Zimbabwe shall have and maintain in Zimbabwe such minimum capital as may be prescribed.

[Subsection amended by section 16 of Act 5 of 2011]

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

[Subsection substituted by Act 12 of 2015]

(2) Any banking institution that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten.

30 Minimum reserves to be maintained with Reserve Bank

(1) Every banking institution shall maintain against its liabilities to the public in Zimbabwe, as shown in the last preceding statement furnished to the Reserve Bank in terms of subsection (1) of section *thirty-eight*, a minimum reserve balance with the Reserve Bank at such rate as the Reserve Bank may, from time to time, determine in respect of the various classes of liabilities to the public of the banking institution concerned.

(2) Where the Reserve Bank proposes to alter the rate referred to in subsection (1) in respect of any banking institution, it shall give the banking institution concerned reasonable notice of the date from which the new rate will become effective.

(3) Notwithstanding subsection (1), the Reserve Bank may require banking institutions to increase the reserve balance maintained with it in terms of that subsection at such rate as the Reserve Bank may determine, and every banking institution shall comply with any such requirement:

Provided that the Reserve Bank may fix different rates in respect of different banking institutions.

(4) Every banking institution shall at all times maintain assets, other than claims, situate in Zimbabwe, and assets consisting of claims payable in Zimbabwe dollars, of an aggregate value of not less than the sum of—

- (a) the amount of its liabilities to the public which are payable in Zimbabwean dollars; and
- (b) the paid-up share capital and unencumbered reserve funds which it is required to maintain in terms of this Act.

(5) The liabilities of a banking institution which are payable in Zimbabwean dollars shall, as against all other liabilities, be a prior charge on the assets which it is required to maintain in terms of subsection (4).

(6) The Reserve Bank may exempt any banking institution from the requirements of subsection (4), to such extent, for such period and on such other conditions as the Reserve Bank may determine.

(7) Any banking institution that contravenes subsection (1), (3) or (4) shall be guilty of an offence and liable to a fine not exceeding level ten.

[Subsection amended by Act 22 of 2001]

31 Prescription of further financial requirements

(1) Subject to this Act, the Minister may, in regulations made under section *eighty-one*, prescribe requirements to be complied with by all banking institutions in regard to their assets, liabilities, credits, deposits and, generally, the conduct of their financial affairs.

(2) Regulations referred to in subsection (1) may provide for —

- (a) the ratios and exposures to be maintained by banking institutions, in regard to their assets, off-balance-sheet items and other categories of their capital base;
- (b) the aggregate amount of credits that banking institutions may have committed or outstanding at any time;
- (c) the maturity profile of assets and liabilities of banking institutions;
- (d) the minimum aggregate liquid resources to be maintained by banking institutions in relation to the value of their assets or their total liabilities to the public;
- (e) the maximum aggregate amount of credits and investments, or specific categories thereof, that may be made by banking institutions;

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

[Paragraph inserted by Act 12 of 2015]

- (f) the classification and evaluation of assets of banking institutions, and provision to be made on the basis of such classification;
- (g) prohibiting or restricting the accounting of non-performing loans as income;
- (h) prohibiting, restricting or regulating —
 - (i) the types or forms of credits and investments that may be made by banking institutions;
 - (ii) the matching by banking institutions of maturity and interest in respect of assets and liabilities;
 - (iii) the maintaining by banking institutions of unhedged positions in foreign currencies, precious metals or precious stones;
- (i) terms and conditions applicable to any type or form of financing extended or received by banking institutions, including deposits and contingent liabilities.

(3) Any banking institution that contravenes regulations referred to in subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten.

31A Credit rating of banking institutions

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

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

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

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

[Section inserted by Act 12 of 2015]

31B Credit reference bureaux to be licensed

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

- (a) carry on the business of providing credit reference services; or
- (b) hold himself or herself out as a credit reference bureau.

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

[Section inserted by Act 12 of 2015]

31C Issue of credit reference bureau licences

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

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

- (a) such information and documents as the Registrar may reasonably require for determining the application; and
- (b) the prescribed fee.

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

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

[Section inserted by Act 12 of 2015]

PART VI

RESTRICTIONS ON CERTAIN TRANSACTIONS BY BANKING INSTITUTIONS

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

(1) Except with the prior written approval of the Registrar, no banking or controlling company shall—

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

[Subsection substituted by Act 1 of 2018]

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

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

- (a) be liable for a civil penalty of fifty United States dollars (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the institution, company or person remains in default, not exceeding a period of one hundred and eighty-one days; and
- (b) if the institution, company or person continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction—
 - (i) in the case of a banking institution or controlling company
 - A. to a fine not exceeding level ten; and
 - B. to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution.
 - (ii) in the case of an individual other than a director or member referred to in subparagraph (i)B, to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section substituted by Act 12 of 2015]

32A Special purpose vehicles

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

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

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

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

[Subsection inserted by Act 12 of 2015]

33 Restriction on payment of dividends, etc., by banking institutions

A banking institution shall not pay a dividend or other income to its shareholders unless it has made adequate provision against losses on loans and has taken adequate steps to ensure compliance with Part V.

34 Banking institution not to engage in non-banking business without permission

(1) In this section—

“approved banking business”, in relation to a banking institution, means—

- (a) any banking activity specified in the institution’s registration certificate; or
- (b) where the institution conducts business on behalf of someone else, any banking business which is conducted on behalf of that other person and which is of a type approved by the Registrar.

(2) Subject to subsection (4), no banking institution shall—

- (a) engage on its own account in; or
- (b) hold shares in a company which engages in;

any business or activity other than approved banking business without the approval of the Registrar and on such terms and conditions as the Registrar may determine:

Provided that a banking institution may hold shares—

- (a) which result from an arrangement under which a loan owed to it by a company is converted into equity; or
- (b) under any other arrangement entered into for the purpose of recovering any debt due to the banking institution.

(3) If, on application being made, the Registrar refuses to grant his approval for the purposes of subsection (2), he shall, within ten days after reaching his decision, notify the banking institution concerned, in writing, of his decision and of the reasons for it.

(4) A banking institution may hold shares as a normal incident of any underwriting business carried on by it: Provided that the institution shall forthwith notify the Registrar of any shares so held.

(5) Any banking institution that contravenes subsection (2) or the proviso to subsection (4) shall be guilty of an offence and liable to a fine not exceeding level ten.

[Subsection amended by Act 22 of 2001]

35 Restriction on extending of credit to officers, employees and certain shareholders and their relatives.

(1) In this section —
“relative”

[Definition repealed by Act 12 of 2015]

“significant interest” means a percentage of—

- (a) the share capital of a banking institution; or
 - (b) the voting rights of members of a banking institution;
- which exceeds such percentage as may be prescribed.

(2) No banking institution shall knowingly extend credit to or for the benefit of—

- (a) any of its principal officers or directors; or
- (b) any person who holds a significant interest in the banking institution; or
- (c) any relative of a person referred to in paragraph (a) or (b);

[Paragraph amended by Act 12 of 2015]

[Paragraph amended by Act 12 of 2015]

on terms and conditions that are more favourable than those on which the institution, applying criteria normally applied in the banking industry, would extend credit to other persons of the same financial standing:

Provided that this subsection shall not prevent a banking institution from extending credit to one of its employees, where such credit is extended as part of the employee’s conditions of service and is available to other employees.

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

- (a) the transaction has been approved by the board of the banking institution (without the participation of any director or principal officer to whom the credit is sought to be extended in the decision to approve the extension of the credit); and
- (b) the credit does not exceed ten *per centum* of the paid-up equity capital of the banking institution; and
- (c) the credit is covered by one hundred *per centum* collateral; and
- (d) the credit is deducted from the paid-up equity capital of the banking institution.

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

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

- (a) the board of the banking institution; or
- (b) the Registrar;

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

[Subsection inserted by Act 12 of 2015]

(7) Subject to section 73—

- (a) a banking institution which contravenes subsection (2), (3) or (4);
- (b) any director, shareholder or principal officer of a banking institution (whether on his or her own behalf or on behalf of any of his or her close relatives or associates) who —
 - (i) receives any credit from the banking institution of which he or she is the director, shareholder or principal officer while knowing or not having a reasonable belief that the conditions for the extension of that credit in terms of subsection (3) have or have not been fully complied with (as the case may be); or
 - (ii) fails, within the stipulated period, to repay fully together with interest (at the concerned banking institution’s prevailing lending rate) any credit under a contract or arrangement voided by the Registrar under subsection (6);

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

- (c) if the institution, director, shareholder or principal officer (as the case may be) continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction—
 - (i) in the case of a banking institution—
 - A. to a fine not exceeding level ten; and
 - B. to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment in the case of every director or member of the board or governing body of the institution;
 - (ii) in the case of a director, shareholder or principal officer, to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

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

- (a) meeting the costs incurred by the Reserve Bank in obtaining the civil forfeiture order and the costs of any other proceedings instituted to establish a claim to the property or an interest in the property; and
- (b) repaying to the banking institution concerned the credit that was extended in contravention of subsection (2), (3) or (4), together with interest at the banking institution’s prevailing lending rate; and
- (c) any amount remaining after application of the amounts referred to in paragraphs (a) and (b) shall form part of the Recovered Assets Fund established by section 96 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013).

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

PART VII

ACCOUNTS, STATEMENTS AND OTHER RECORDS

36 Accounts and annual financial statement

(1) Every banking institution shall—

- (a) keep proper accounts and other records relating thereto; and
- (b) at the end of each financial year, prepare a financial statement;

reflecting, in accordance with sound accounting practices, the operations and financial condition of the banking institution or controlling company.

[Subsection amended by Act 12 of 2015]

(2) Without derogation from the provisions of Part IV of the Companies Act [*Chapter 24:03*] dealing with group accounts, where a banking institution conducts banking business through more than one branch, the ac-

counts and financial statement referred to in subsection (1) shall be kept and prepared in a consolidated form to cover all the branches.

(3) Subject to subsection (2), the accounts, records and statement referred to in subsection (1) shall be kept and prepared in such form and detail, and in compliance with such requirements and accounting standards, as may be prescribed.

[Subsection amended by Act 12 of 2015]

37 Records of transactions

(1) Without derogation from section *thirty-six* or from subsection (2), every banking institution shall maintain within Zimbabwe such records as are necessary —

- (a) to reveal clearly and correctly the state of its business affairs and financial condition; and
- (b) to explain its transactions so as to enable the Registrar, the Reserve Bank and the Deposit Protection Corporation to determine whether the banking institution has complied with this Act.

[Subsection amended by Act 7 of 2011]

(2) Subject to subsections (3) and (4), every banking institution shall keep proper records of all transactions relating to its banking activities, and shall preserve them for such period as may be prescribed.

(3) Records kept in terms of subsection (2) shall include the following documents, where appropriate—

- (a) every application and every contract pertaining to the transaction concerned, including credit, guarantee and collateral agreements; and
- (b) any documents, including financial records of any person, on which the banking institution relied in approving or entering into the transaction concerned; and
- (c) a written record of the decision of the banking institution approving the transaction; and
- (d) such other documents as may be prescribed.

(4) Records and documents referred to in subsections (1) and (2) may be kept in their original form or in such other medium or form as may be prescribed.

(5) This section shall not be construed as limiting the application of any other enactment providing for the keeping and preservation of records or documents.

38 Statements and other documents to be submitted to Reserve Bank and Registrar

(1) At such times as may be prescribed, every banking institution shall submit to the Registrar a statement in such form as may be prescribed, reflecting the institution's operations and financial condition.

(2) Within ninety days after the end of its financial year, every banking institution whose head office is situated in Zimbabwe shall submit to the Registrar a copy of the financial statement prepared in terms of paragraph (b) of subsection (1) of section *thirty-six* and certified by the institution's auditor appointed in terms of subsection (1) of section *forty-one*.

(3) Within ninety days after the end of its financial year, every banking institution whose head office is situated outside Zimbabwe shall submit to the Registrar—

- (a) a statement, in a form acceptable to the Registrar, of—
 - (i) its assets and liabilities; and
 - (ii) its profit and loss;

in respect of its business in Zimbabwe, which statement shall be certified by the institution's auditor appointed in terms of subsection (1) of section *forty-one*; and

- (b) a copy of its balance sheet and profit and loss account in respect of its entire business, certified by an auditor who carries on his profession as such independently of the banking institution concerned.

(4) At such times as the Registrar may direct, every banking institution whose head office is situated in Zimbabwe shall submit to the Registrar a statement in such form as the Registrar may direct, giving such information as the Registrar may direct in regard to the institution's offices and branches outside Zimbabwe.

(5) If required to do so by the Registrar for the purpose of ensuring proper compliance with this Act, a banking institution shall supply the Registrar with any document or information whatsoever relating to the institution's business or transactions.

39

[Section repealed by Act 12 of 2015]

PART VIII

AUDIT COMMITTEES, AUDITORS AND AUDIT

40 Audit committees

(1) The board of every banking institution shall appoint an audit committee consisting of—

- (a) a chairman, who shall be a member of the board; and
- (b) at least two other persons, who need not be members of the board.

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

[Subsection substituted by Act 12 of 2015]

(3) The functions of an audit committee shall be—

- (a) to establish appropriate accounting procedures and accounting controls in respect of the banking institution's banking business; and
- (b) to ensure compliance with the procedures established in terms of paragraph (a); and
- (c) to assist the banking institution's board to evaluate the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied in the day-to-day management of the institution's banking business; and
- (d) to introduce such measures as, in the audit committee's opinion, may enhance the objectivity of financial statements and reports prepared with reference to the banking institution's banking business; and
- (e) to select a suitably-qualified person for appointment as the auditor of the banking institution; and
- (f) to appoint the banking institution's internal auditor and to oversee the discharge of the internal audit function.

[Paragraph inserted by Act 12 of 2015]

(4) An audit committee shall meet as often as may be necessary to carry out its functions.

(5) Decisions of an audit committee shall be decided by a majority vote of the members present:

Provided that no member shall abstain from any vote to be taken.

(6) Subject to this section, the procedure to be adopted by an audit committee shall be as prescribed or, in relation to any matter that is not prescribed, as may be fixed by the board of the banking institution concerned.

41 Appointment of auditor

(1) Subject to this section and section *forty-two*, every banking institution shall appoint as its auditor in Zimbabwe a person who is —

- (a) registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; and
- (b) selected for appointment by the audit committee of the banking institution; and
- (c) approved by the Registrar.

(2)

(3) If the Registrar refuses to grant his approval for the appointment of an auditor in terms of subsection (1), he shall, within ten days after reaching his decision, notify the banking institution concerned, in writing, of his decision and of the reasons for it.

(4) Except with the approval of the Registrar, a banking institution shall not appoint the same person or partnership as its auditor in Zimbabwe for a continuous period of more than five years in any eight-year period.

42 Disqualifications from appointment as auditor

(1) A person shall not be qualified for appointment as an auditor of a banking institution in terms of section *forty-one* if he is—

- (a) a director of the banking institution or of any body corporate which controls or is controlled by the banking institution; or
- (b) an officer or employee of the banking institution or of any associate of the banking institution; or
- (c) a partner or employee of a person referred to in paragraph (a) or (b); or
- (d) an employer of a person referred to in paragraph (a); or
- (e) a body corporate; or
- (f) a person who by himself, or his partner or his employee, regularly performs the duties of secretary or bookkeeper to the banking institution or to any associate of the banking institution.

(2) Any reference in subsection (1) to "officer" and "employee" shall not be construed as applying to an auditor.

(3) Any person who acts as an auditor of a banking institution when he knows or ought to have known that he was disqualified under subsection (1) from doing so shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

43 Responsibilities of auditor

(1) A person appointed as auditor of a banking institution in terms of section *forty-one* shall be responsible for—

- (a) subject to this Part, auditing the institution's accounts and reporting on its balance sheet and profit and loss account in terms of the Companies Act [*Chapter 24:03*]; and
- (b) planning and carrying out audit procedures designed to detect irregularities and illegal acts in the conduct of the institution's business; and

- (c) communicating to the institution's audit committee any evidence he may have that irregularities or illegal acts have been committed in the course of the institution's business, whether or not they may have led to material misstatements in the institution's accounts or records; and
- (d) communicating to the Reserve Bank any evidence he may have that irregularities or illegal acts have been committed by—
 - (i) any director of the institution; or
 - (ii) any person, if there is a reasonable possibility that they may significantly damage the institution's financial stability.

(2) When auditing an institution's accounts in terms of subsection (1), an auditor shall—

- (a) take due care to ensure objectivity; and
- (b) apply such auditing standards as the Reserve Bank may direct.

(3) In every report referred to in paragraph (a) of subsection (1), the auditor shall state whether the accounts of the banking institution concerned are drawn up in accordance with the provisions of the Companies Act [Chapter 24:03] applicable to a banking institution.

(4) Without derogation from subsection (3), in his report referred to in paragraph (a) of subsection (1) an auditor shall record—

- (a) any irregularity or illegal act which he has ascertained, or which he suspects, has occurred in relation to the banking institution's banking business; and
- (b) any act which has contributed to a loss of any of the banking institution's moneys or assets; and
- (c) any other matter which, in the auditor's opinion, requires rectification or attention by the banking institution; and
- (d) any recommendations for improving the banking institution's financial administration of its banking business.

(5) Where an auditor of a banking institution includes in his report any matter referred to in subsection (4) he shall forthwith send a copy of the report to the Reserve Bank.

(6) In addition to the report referred to in paragraph (a) of subsection (1), an auditor shall submit such reports to the Registrar as the Registrar may direct.

(7) The Registrar or a supervisor shall—

- (a) have a right of access at all reasonable times to the working papers and other documents of an auditor of a banking institution; and
- (b) be entitled to require an auditor of a banking institution to provide such information and explanations as the Registrar, the Reserve Bank or the supervisor, as the case may be, may reasonably require;

for the purpose of monitoring and supervising the banking institution concerned.

(8) The auditor of a banking institution shall comply with his obligations under this section—

- (a) to submit reports or to include information in reports; and
- (b) to permit access to his working papers and other documents; and
- (c) to provide information;

notwithstanding any duty of confidentiality to the contrary, and he shall not be held liable in any proceedings arising out of his compliance with any such obligation unless it is proved that he acted in bad faith.

44 Powers of auditor

(1) Every auditor of a banking institution shall—

- (a) have a right of access at all reasonable times to such of the institution's books, accounts, vouchers and securities; and
- (b) be entitled to require such information and explanations from any director, officer, employee or agent of the institution;

as, in his opinion, he requires in order to perform his duties as an auditor.

(2) Any person who fails without just cause—

- (a) to permit an auditor the access referred to in paragraph (a) of subsection (1); or
- (b) to comply with a requirement in terms of paragraph (b) of subsection (1);

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.

[Subsection amended by Act 22 of 2001]

PART IX

SUPERVISION AND INVESTIGATION OF BANKING INSTITUTIONS

45 Responsibilities of Reserve Bank

(1) Subject to this Act, the Reserve Bank shall be responsible for—

- (a) continuously monitoring and supervising banking institutions, controlling companies and associates of banking institutions and controlling companies to ensure that they comply with this Act; and
[Paragraph amended by Act 16 of 2004 and Act 12 of 2015]
- (b) conducting investigations into any particular banking institution or controlling company or class of such institutions or companies, where the Reserve Bank considers such an investigation necessary for the purpose of preventing, investigating or detecting a contravention of this Act or any other law;
[Paragraph amended by Act 12 of 2015]
- (c)
[Paragraph repealed by Act 16 of 2004]

(2) The Reserve Bank's function of monitoring and supervising banking institutions and other companies may be exercised through all or any of the following methods—

- (a) the analysis of documents and information supplied to it in terms of section *thirty-eight*;
- (b) the inspection of documents and the obtaining of information at the premises of the banking institutions concerned, and the analysis of such documents and information;
- (c) any other lawful means the Reserve Bank thinks appropriate.

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

[Subsection inserted by Act 12 of 2015]

46 Appointment of supervisors and inspectors

- (1) The Reserve Bank may appoint—
 - (a) one or more of its officers or employees as supervisors for the purpose of monitoring and supervising banking institutions and exercising any other function conferred or imposed on supervisors by or in terms of this Act; and
 - (b) subject to the Public Service Act [*Chapter 16:04*], one or more persons as inspectors for the purpose of conducting an investigation into any banking institution, controlling company or class of banking institutions or controlling companies, and exercising any other function conferred or imposed on inspectors by or in terms of this Act.

[Subsection amended by Act 12 of 2015]

(2) The Reserve Bank may appoint an officer or employee to be both a supervisor and an inspector in terms of subsection (1).

(3) The Reserve Bank shall provide every supervisor and inspector with a document identifying him as a supervisor or inspector, as the case may be, and he shall produce it on request by any interested person.

47 Powers of supervisors

(1) For the purposes of monitoring and supervising any banking institution or controlling company, a supervisor may, subject to subsection (2)—

- (a) at any time during normal office hours, without previous notice, enter any premises of the banking institution or any premises in which it is believed on reasonable grounds that securities, books, records, accounts or documents pertaining to the business of the institution or company are being kept;
- (b) require any officer, employee or agent of the banking institution to produce any securities, books, records, accounts or documents;
- (c) search any premises referred to in paragraph (a) for any moneys, securities, books, records, accounts or documents pertaining to the business conducted by the banking institution;
- (d) open or cause to be opened any strong-room, safe or other container in which it is suspected, on reasonable grounds, that there are any moneys, securities, books, records, accounts or documents;
- (e) examine and make extracts from and copies of any securities, books, records, accounts or documents;
- (f) remove any securities, books, records, accounts or documents from the premises of the institution or company, for so long as may be necessary for the purpose of examining them or making extracts from or copies of them:

Provided that the supervisor shall give a full receipt for any such securities, books, records, accounts or document so removed;

- (g) require any officer, employee or agent of the banking institution—
 - (i) to explain any entry in the books, records, accounts or documents of the institution or company;
 - (ii) to provide the supervisor with such information concerning the institution's management or activities as the supervisor may reasonably require.

[Subsection amended by Act 12 of 2015]

(2) The powers of entry and search conferred by subsection (1) shall not be exercised except with the consent of the banking institution or controlling company or person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

[Subsection amended by Act 12 of 2015]

(3) The powers conferred by subsection (1) may be exercised, subject to subsection (2), in relation to any associate of a banking institution or controlling company if the supervisor believes, on reasonable grounds, that the exercise of the powers is necessary for the purpose of monitoring and supervising the activities of the banking institution.

[Subsection amended by Act 12 of 2015]

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

[Subsection substituted by Act 12 of 2015]

48 Action that may be taken by Reserve Bank where banking institution found to have contravened Act or condition of registration, etc

(1) If, following a report by a supervisor and, where appropriate, after considering any representations made by the institution or company concerned in terms of subsection (2), the Reserve Bank is satisfied that a banking institution or controlling company has contravened any term or condition of its registration or any provision of this Act or any direction, requirement or order made under this Act, the Reserve Bank may, subject to this section, do any one or more of the following—

- (a) issue a warning to the institution;
 - (b) require the institution or company to appoint a person who, in the Reserve Bank's opinion, is qualified to advise the institution or company on the proper conduct of its business;
 - (c) issue a written instruction to the institution or company to undertake remedial action specified in the instruction;
 - (d) impose a monetary penalty not exceeding the equivalent of a fine of level ten a day for each day that the contravention has continued;
- [Paragraph amended by Act 22 of 2001]
- (e) instruct the institution or company to suspend or remove any of its directors, officers or employees from his duties;
 - (f) direct the institution or company to suspend all or any of its banking business;
 - (g) appoint a supervisor to monitor the affairs of the institution or company;
 - (h) convene a meeting of the shareholders or other owners of the institution or company to discuss the remedial measures to be taken;
 - (i) subject to Part X, place the institution or company under the management of a curator;
 - (j) recommend to the Registrar—
 - (i) the imposition of any term or condition on the continued registration of the institution or company, or the deletion of any such term or condition; or
 - (ii) the cancellation of the registration of the institution or company.

[Subsection amended by Act 12 of 2015]

(2) Before taking any action in terms of subsection (1), the Reserve Bank shall inform the banking institution or controlling company concerned, in writing, of—

- (a) the contravention of which it is believed to be guilty and, in substance, the grounds for that belief; and
- (b) the action the Reserve Bank proposes to take in respect of the alleged contravention;

and shall afford the institution or company an adequate opportunity to make representations in the matter:

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

[Subsection amended by Act 12 of 2015]

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

- (a) requiring the banking institution concerned to develop and implement a capital restoration plan; and
- (b) restricting the activities or investments of the banking institution concerned; and
- (c) taking control of any assets of the banking institution concerned or prohibiting or restricting the disposal or use of any such assets; and
- (d) any other action referred to in subsection (1).

[Subsection inserted by Act 12 of 2015]

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

[Subsection inserted by Act 12 of 2015]

49 Investigation into banking institution

(1) If—

- (a) a banking institution or controlling company has failed to furnish the Reserve Bank with any statement, document or information required under any provision of this Act within the period specified by or in terms of that provision, and has not furnished that statement, document or information within a period of thirty days, commencing on the date on which the Reserve Bank has reminded it, in writing, of its failure; or
 - (b) a banking institution has furnished incorrect or incomplete information to the Reserve Bank and has not furnished correct or complete information within a period of thirty days, commencing on the date on which the Reserve Bank has called upon it to correct or complete the information; or
 - (c) any statement, document or information furnished by a banking institution to the Reserve Bank shows that the institution or company or any of its officers, employees or agents has failed to comply with any provision of this Act; or
- [Paragraph amended by Act 12 of 2015]
- (d) the auditor of any banking institution has informed the institution or company or the Reserve Bank of an irregularity that requires correction and the institution or company has not corrected the irregularity within a period of thirty days, commencing on the date on which the Reserve Bank or a supervisor has called upon the institution, in writing, to correct it; or
- [Paragraph amended by Act 12 of 2015]
- (e) the Reserve Bank has reasonable grounds for believing that a banking institution or any person connected with a banking institution has committed an offence under this Act, other than an offence arising out of conduct referred to in paragraph (a) or (b); or
 - (f) the Reserve Bank has reasonable grounds for believing that the rights of any class of depositors with a banking institution are being prejudiced; or
 - (g) the Reserve Bank has reason to believe that any person has or had any interest, direct or indirect, in a banking institution or its business in contravention of this Act; or
 - (h) a banking institution or any of its officers, employees or agents has prevented a supervisor from exercising any of his powers in terms of section *forty-seven* or in terms of section 9 of the Balance of Payments Reporting Act [*Chapter 22:16*];
- [Paragraph amended by Act 4 of 2004]

and the Reserve Bank considers that an investigation is necessary for the purpose of preventing, investigating or detecting a contravention of this Act or any other law, the Reserve Bank may direct an inspector to conduct an investigation into the banking institution concerned or any aspect of its management or activities.

(2) It shall not be necessary for the Reserve Bank to afford the banking institution or controlling company concerned an opportunity to make representations before it directs an inspector to conduct an investigation in terms of subsection (1).

(3) For the purposes of an investigation in terms of subsection (1), an inspector may exercise any of the powers of a supervisor set out in subsection (1) of section *forty-seven* and, in addition, may—

- (a) seize any securities, books, records, accounts or documents of the banking institution or controlling company concerned which in his opinion may afford evidence of an offence or irregularity:
 - Provided that—
 - (i) the inspector shall issue a full receipt for any securities, books, records, accounts or documents so seized;
 - (ii) any securities, books, records, accounts or documents so seized shall be retained only for so long as may be necessary for the purposes of the investigation;
- (b) examine, whether under oath or otherwise, any person who is or was a director, officer, employee, agent, auditor, legal adviser, valuator, debtor, creditor, policy-holder, shareholder or partner of the banking institution concerned:
 - Provided that—
 - (i) any person so examined shall be entitled to have his legal practitioner present at the examination;
 - (ii) no person shall be required to answer any question which he would not be required to answer if he were a witness in a civil or criminal case before a court;
- (c) require any person referred to in paragraph (b) to produce any security, book, record, account or document of the banking institution concerned to which he has access, or to give any information at his disposal relating to the management or affairs of the banking institution:
 - Provided that no such person shall be required to produce any thing or to answer any question which he would not be required to produce or answer, as the case may be, if he were a witness in a civil or criminal case before a court.

(4) A banking institution or controlling company whose securities, books, records, accounts or documents have been seized under this section shall be entitled, through its authorized representative, to examine, make entries in and make extracts from them during office hours under such supervision as an inspector may determine.

(5) In conducting an investigation in terms of subsection (1), an inspector shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of this section and to any person summoned to give or giving evidence at that investigation.

(6) Any person who, without just cause, hinders or obstructs an investigator in the exercise of his functions under this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

50 Procedure on completion of investigation

(1) On completion of an investigation in term of section *forty-nine*, an inspector shall forward his report thereon to the Reserve Bank.

(2) On receipt of a report in terms of subsection (1), the Reserve Bank shall—

- (a) send a summary of the conclusions reached in the report, and any recommendations made therein, to the banking institution or controlling company which was the subject of the investigation; and
- (b) invite the institution or company to make representations on the conclusions and recommendations set out in the summary.

(3) A banking institution or controlling company to which a summary of conclusions and recommendations has been sent in terms of subsection (2) may, within thirty days, submit to the Reserve Bank representations on any of the conclusions or recommendations.

[Section amended by Act 12 of 2015]

51 Action by Reserve Bank following investigation

(1) If, after considering an inspector's report sent to it in terms of subsection (1) of section *fifty*, together with any representations made by the banking institution or controlling company concerned in terms of subsection (3) of that section, the Reserve Bank is satisfied that the institution or company has contravened any term or condition of its registration or any provision of this Act or any direction, requirement or order made under this Act, the Reserve Bank may, subject to subsection (2), take any action referred to in subsection (1) of section *forty-eight*.

(2) Before taking any action referred to in subsection (1), the Reserve Bank shall—

- (a) inform the banking institution concerned, in writing, of the action it proposes to take; and
- (b) afford the banking institution concerned an adequate opportunity to make representations in the matter:

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

[Section amended by Act 12 of 2015]

52 Expenses of investigation

(1) The Reserve Bank may recover from a banking institution or controlling company which has been investigated in terms of this Part all the expenses necessarily incurred in connection with the investigation.

[Section amended by Act 12 of 2015]

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

52A Problem banking institutions

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

- (a) to protect and enhance the stability of the financial system; and
- (b) to protect and enhance public confidence in the banking system; and
- (c) to protect depositors; and
- (d) where applicable, to protect public funds.

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

- (a) it can no longer maintain the prescribed minimum amounts of capital and reserves, or is otherwise in an unsound financial condition; or
- (b) it can no longer maintain net assets which, together with other financial resources available to it, are of an amount and nature sufficient to safeguard its creditors;
- (c) it can no longer provide adequate security for the assets entrusted to it; or

- (d) it is facing liquidity problems, or its prudential liquidity ratios are below the prescribed regulatory minimum; or
 - (e) it has failed to put in place and implement a sound corporate governance framework and risk management framework, or it is in breach of good corporate governance requirements or its operations exhibit poor risk management; or
 - (f) it is carrying out non-permissible activities or employing undesirable methods in carrying on its business; or
 - (g) it has not complied with any instruction, requirement or condition imposed by the Registrar in terms of this Act; or
 - (h) it is not being operated or is not conducting its activities in the best interests of its depositors;
- the Reserve Bank may, subject to this section, formulate and implement a plan of resolution in relation to the banking institution (hereinafter called a “bank resolution plan”) involving any of the following measures—
- (i) the merging of the problem banking institution with another banking institution;
 - (j) the acquisition of the problem banking institution by another banking institution;
 - (k) the acquisition by or transfer to a third party of any asset or liability of the problem banking institution, including any asset held in trust;
 - (l) the establishment of a bridging banking institution to acquire part or all of the assets and liabilities of the problem banking institution;
 - (m) the taking of control of the problem banking institution by a curator with powers to establish and institute a timely plan of resolution;
 - (n) the winding up of the problem banking institution;
 - (o) the taking of any action necessary to give effect to the plan of resolution, including the sale or closure of any branch, agency or other office of the problem banking institution and, subject to any other law, the dismissal of any of its officers or employees.
- (3) If the Reserve Bank makes a determination in terms of subsection (1) in relation to a banking institution it has identified as a problem banking institution under subsection (2), it shall, after affording the banking institution an adequate opportunity to make representations in the matter—
- (a) serve on a principal officer of such banking institution at its registered office—
 - (i) a notice (hereinafter called a “problem bank notice”) announcing that the banking institution has been declared a problem banking institution; and
 - (ii) the bank resolution plan that the Reserve Bank shall be implementing or cause to be implemented in terms of the Act;
- and
- (b) publish the problem bank notice in the *Gazette*:

Provided that, where the Reserve Bank considers that immediate action is necessary to prevent irreparable harm to the banking institution or its depositors, creditors, members or employees, the Reserve Bank may take such action before affording the banking institution an opportunity to make representations in terms of this subsection.
- (4) In formulating a bank resolution plan, the Reserve Bank shall—
- (a) have regard to the public interest; and
 - (b) ensure that any measures authorised by or taken under the plan are proportionate to the harm they are intended to remedy; and
 - (c) ensure that where any property or interest or right in property is to be acquired under the plan (other than shares and assets of the problem banking institution)—
 - (i) reasonable notice is given to everyone whose interest or rights will be affected by the acquisition; and
 - (ii) fair and adequate compensation is paid within a reasonable time after the acquisition; and
 - (iii) if the acquisition is contested, an application is made to a court of competent jurisdiction for an order authorising or confirming the acquisition; and
 - (iv) the property, interest or right is returned or not acquired if the court, on an application referred to in subparagraph (iii), does not authorise or confirm the acquisition;
- and
- (d) ensure that all bidders or offerors seeking to acquire assets of the problem banking institution are treated equally and fairly; and
 - (e) ensure that, so far as practicable, any person who acquires assets of the problem banking institution acquires an equivalent value of its liabilities.
- (5) The Reserve Bank or its agents may disclose confidential information concerning a problem banking institution, subject to a confidentiality agreement, to a bidder or offeror who proposes to acquire the institution or any of its assets or liabilities under a bank resolution plan.

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

- (a) preserve the capital, assets and liquidity of the banking institution concerned; and
- (b) protect the interests of depositors and other creditors of the banking institution concerned.

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

- (a) restricting the activities of the banking institution concerned; and
- (b) removing or replacing all or any of the directors of the banking institution concerned; and
- (c) prohibiting or restricting the disposal of any assets of the banking institution concerned; and
- (d) any action referred to in section 48(3).

[Section inserted by Act 12 of 2015]

52B Confirmation of problem bank notice

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

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

- (i) notifying them of the intention of the Reserve Bank to make such an application not earlier than fourteen days from the date of publication of the notice in the *Gazette*; and
- (ii) informing them of their right to oppose the application; and
- (iii) containing particulars of where the documentation in support of the application referred to in paragraphs (a) and (b) of subsection (2) may be collected by any party interested in the application, shall be deemed to constitute sufficient service of the notice of the application upon any such party.

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

- (a) a copy of the problem bank notice relating to the banking institution which is the subject of the application; and
- (b) a statement of the reasons why it appeared to the Reserve Bank that any one or more of the circumstances referred to paragraph (a) to (h) of section 52A(2) were present in relation to the banking institution; and
- (c) a statement of the affairs of the banking institution indicating the extent of its assets and liabilities; and
- (d) proof that a principal officer of the banking institution had been served with the problem bank notice under section 52A(2)(p).

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

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

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

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

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

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

[Section inserted by Act 12 of 2015]

52C Implementation of bank resolution plan

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

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

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

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

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

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

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

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

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

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

[Section inserted by Act 12 of 2015]

PART X

CURATORSHIP AND WINDING UP OF BANKING INSTITUTIONS

53 Placing of banking institution under curatorship

(1) Where—

- (a) the Reserve Bank considers that a banking institution is in an unsound financial condition and is not operating in accordance with sound administrative and accounting practices and procedures, adhering to proper risk-management policies; or
- (b) a banking institution has failed to comply with the minimum financial requirements prescribed in terms of this Act and the Reserve Bank considers that it is unlikely to comply with them unless it is placed in curatorship;

the Reserve Bank, after consulting the Minister and the Deposit Protection Corporation, may issue a written direction to the institution placing the institution under the management of a curator for such period, whether definite or indefinite, as in the Reserve Bank’s opinion will permit the institution’s financial condition to be remedied or resolved.

[Subsection amended by Act 7 of 2011 and Act 12 of 2015]

(2) Before issuing a direction in terms of subsection (1) the Reserve Bank shall inform the banking institution concerned of its intention to do so and its reasons for forming that intention, and shall afford the institution a reasonable opportunity to make representations in the matter:

Provided that the Reserve Bank need not comply with this subsection if—

- (a) in the Reserve Bank’s opinion, to do so would permit the banking institution concerned or any other person to dispose of any of the institution’s assets or take any other action that would prejudice the institution’s creditors or depositors; or
- (b) the appointment of a curator was recommended by an investigator in his report sent to the Reserve Bank in terms of section *fifty*.

[Subsection as amended by section 7 of Act 1 of 2005 and Act 12 of 2015]

(3) A direction issued in terms of subsection (1) shall state—

- (a) the reasons for the appointment of a curator; and
- (b) the name of the curator; and
- (b1) the security to be furnished by the curator for the proper performance of his or her duties; and

[[Paragraph inserted by Act 12 of 2015]

- (c) the powers set out in section *fifty-five* that may be exercised by the curator; and
- (d) the period during which the banking institution concerned will be managed by the curator; and
- (e) where appropriate, any freezing of funds in terms of section *fifty-six*.

(4) As soon as possible after issuing a direction in terms of subsection (1) the Reserve Bank shall cause it to be published in the *Gazette* and in one or more issues of a newspaper circulating in the area in which the banking institution concerned conducts banking business.

(5) The Reserve Bank may at any time amend a direction issued in terms of subsection (1), and subsections (2) and (4) shall apply, *mutatis mutandis*, in relation to any such amendment.

54 Effect of placing banking institution under curatorship

(1) The issue of a direction in terms of section *fifty-three* shall have the effect of suspending the powers of every director, officer and shareholder of the banking institution concerned, except to the extent that the curator may permit them to exercise their powers.

(2) With effect from the date on which a direction under section *fifty-three* was issued—

- (a) all legal proceedings and the execution of all writs, summonses and other legal process against the banking institution concerned shall be stayed and not be instituted or proceeded with unless the High Court has granted leave; and
- (b) the operation of set-off in respect of any amount owing by a creditor to the banking institution concerned shall be suspended.

55 Duties and powers of curator

(1) Subject to the direction under which he was appointed and to any subsequent directions given to him by the Reserve Bank, a curator shall —

- (a) take over and assume the management of the banking institution concerned; and
- (b) manage the banking institution concerned in such manner as he considers prudent and most likely to promote the interests of the institution and creditors of the institution; and
- (c) ensure proper compliance by the banking institution concerned with the provisions of this Act; and
- (d) ensure that proper accounting records are kept and proper annual financial statements are prepared in relation to the operations of the banking institution concerned; and
- (e) prepare reports for the Reserve Bank showing the assets and liabilities of the banking institution concerned and its debts and obligations, verified by the auditor of the institution, and all such information as may be necessary to enable the Reserve Bank to become fully acquainted with the institution's financial position; and
- (f) examine the affairs and transactions of the banking institution concerned before it was placed under curatorship in order to ascertain whether any past or present director, officer or employee of the institution —
 - (i) has contravened or appears to have contravened any provision of this Act; or
 - (ii) has committed or appears to have committed any offence; or
 - (iii) is or appears to be personally liable to pay damages or compensation to the institution or is personally liable for any of the institution's liabilities;

and, within three months after the institution was placed under curatorship, shall submit to the Reserve Bank a report containing full particulars of any such contravention, offence or liability; and

- (g) one year after the banking institution was placed under curatorship and thereafter at six-monthly intervals, report to the Reserve Bank, in writing, as to whether or not, in his opinion, it is in the interests of the institution's creditors and depositors that the institution should remain under curatorship:

Provided that, if at any time he is of the opinion that continued curatorship will not enable the banking institution to become a successful concern, he shall advise the Reserve Bank accordingly.

(2) A curator shall have the following powers, to the extent that he is authorized to exercise them in terms of the direction under which he was appointed—

- (a) to suspend or reduce, as from the date on which the banking institution concerned was placed under curatorship or any subsequent date, the right of the institution's creditors to claim or receive interest on any money owing to them by the institution;
- (b) to make payments, whether in respect of capital or interest, to any creditor of the banking institution concerned at such time, in such order and in such manner as he thinks fit;
- (c) to cancel any agreement between the banking institution concerned and any other party to advance moneys due after the date on which the institution was placed under curatorship or to extend any existing credit facility after that date, if in his opinion—
 - (i) such advance or any loan under such facility would not be adequately secured or would not be repayable on satisfactory terms; or
 - (ii) the institution lacks the necessary funds to meet its obligations under any such agreement; or

- (iii) it would not otherwise be in the interests of the institution to abide by the agreement;
- (d) to convene from time to time, in such manner as he thinks fit, a meeting of creditors of the banking institution concerned for the purpose of establishing the nature and extent of the institution's indebtedness to them and consulting them on decisions taken by him in the course of managing the institution's affairs, to the extent that the creditors' interests may be affected by those decisions;
- (e) to negotiate with any individual creditor of the banking institution concerned with a view to a final settlement of the creditor's affairs with the institution;
- (f) to make and carry out, in the course of his management of the banking institution concerned, any decision which in terms of the Companies Act [*Chapter 24:03*] would have been required to be made by way of a special resolution contemplated in section 135 of that Act;
- (g) to cancel any lease of movable or immovable property entered into by the banking institution concerned before it was placed under curatorship:

Provided that, notwithstanding subsection (2) of section *fifty-four*, a claim for damages in respect of such a cancellation may be instituted against the institution after the expiry of one year from the date of the cancellation or after such shorter period as the High Court may permit;

- (h) to dispose, by public auction, tender or individual negotiation, of any asset of the banking institution concerned, including —
 - (i) any advance or any loan under a facility contemplated in paragraph (c); and
 - (ii) any asset for the disposal of which an approval contemplated in section 228 of the Companies Act [*Chapter 24:03*] would have been a prerequisite;
- (i) to cancel any guarantee issued by the banking institution concerned before the date on which it was placed under curatorship, other than a guarantee that the institution is required to make good within a period of thirty days after that date:

Provided that, notwithstanding subsection (2) of section *fifty-four*, a claim for damages in respect of such a cancellation may be instituted against the institution after the expiry of one year from the date of the cancellation or after such shorter period as the High Court may permit;

- (j) generally, to take any action necessary for the administration or operation of the banking institution concerned, including the sale or closure of any branch, agency, or other office of the institution and, subject to any other law, the dismissal of any of its officers or employees.

(3) A curator shall record the nature of, and the reasons for, each act performed by him in the course of his curatorship, and such records shall be examined as part of the normal audit of the records of the banking institution concerned.

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

[Subsection inserted by Act 12 of 2015]

(4) Any person who is aggrieved by any decision or action taken by a curator may appeal against it to the Reserve Bank.

(5) An appeal in terms of subsection (4) shall be made in such manner and within such period as may be prescribed.

56 Freezing of deposits and investments of banking institution under curatorship

(1) If, when issuing a direction in terms of section *fifty-three* placing a banking institution under curatorship, the Reserve Bank considers such a course necessary in order to—

- (a) preserve the financial standing of the institution; or
- (b) prevent an uncontrolled withdrawal or removal of funds or assets from the institution;

the Reserve Bank may, in the direction, declare that for a period not exceeding one year all or any of the amounts deposited with or invested in the institution are frozen.

(2) Subject to subsection (4), whenever he considers such a course necessary in order to—

- (a) preserve the financial standing of the institution concerned; or
- (b) prevent an uncontrolled withdrawal or removal of funds or assets from the institution concerned;

a curator may freeze, for a period not exceeding one year, all or any of the amounts deposited with or invested in the banking institution of which he is the curator.

(3) A curator shall consult the Reserve Bank before freezing any amounts in terms of subsection (2).

(4) As soon as possible after freezing any amount in terms of subsection (2), the curator shall cause notice of his action to be published in the *Gazette* and in such newspaper or newspapers as he considers will bring his action to the notice of the depositors and investors concerned.

(5) Notwithstanding any other law, where any amounts have been frozen in terms of subsection (1) or (2), and for so long as the amounts remain frozen, no person shall be entitled—

- (a) to withdraw or remove any such amount from the banking institution concerned; or
- (b) to set off any such amount against any amount he owes the banking institution concerned; or
- (c) to pledge or hypothecate any such amount;

except to an extent permitted by the curator.

56A Expenses of curatorship

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

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

[Section inserted by Act 12 of 2015]

57 Winding up of banking institutions

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

- (a) pursuant to a plan of resolution in terms of section 52A; or
- (b) following cancellation of the institution's registration in terms of this Act; or
- (c) where the institution has been placed under curatorship, on the recommendation of the curator; or
- (d) on any ground on which a company may be compulsorily wound up in terms of the Companies Act [Chapter 24:03];

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

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

- (a) no person shall apply to a court for the winding up of a banking institution; or
- (b) no banking institution shall pass a resolution for its voluntary winding up or dissolution;

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

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

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

- (a) by written notice, inform the banking institution concerned of the terms of the order and the reasons for making it; and
- (b) cause a notice embodying the order to be published in the *Gazette* and in one or more newspapers circulating in the area in which the banking institution concerned carries on business; and
- (c) in the notice referred to in paragraph (b), invite any director, shareholder, depositor or other creditor of the institution who objects to its winding up to apply to the High Court, within such reasonable period as may be specified in the notice, for the order to be set aside.

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

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

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

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

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

(8) The claims of—

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

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

[Section substituted by Act 12 of 2015]

PART XI

ADDITIONAL POWERS OF RESERVE BANK AND REGISTRAR

58 Deposit of approved securities by banking institution against cancellation of registration

(1) In this section—

“approved securities” means cash or negotiable instruments issued by the State or such debt securities as may be approved by the Reserve Bank.

(2) The Reserve Bank may require a banking institution which—

(a) is being, or is about to be, investigated in terms of Part IX; or

(b) has been notified by the Registrar in terms of subsection (2) of section *fourteen* that the Registrar proposes to cancel its registration;

to deposit with the Reserve Bank such approved securities as the Reserve Bank considers sufficient to meet the institution’s liabilities to the public.

(3) The Reserve Bank may realise any approved securities deposited in terms of subsection (2) to meet the liabilities to the public of an institution whose registration is cancelled.

(4) If the registration of a banking institution which has deposited approved securities in terms of subsection (2) is not cancelled, the Reserve Bank shall cause the approved securities to be returned to the institution at such time as the Reserve Bank considers appropriate, having regard to the institution’s financial position:

Provided that the approved securities shall be returned without undue delay.

(5) When the Reserve Bank is satisfied that the liabilities to the public of a banking institution whose registration has been cancelled have been met, it shall cause the return to that institution of such of the approved securities deposited by such institution in terms of subsection (2) as have not been realised to meet those liabilities.

59 Loans by Reserve Bank to banking institutions

(1) The Reserve Bank may grant, to any banking institution which holds an account with it, loans that are secured by any of the following assets—

(a) assets specified in subsection (1) of section 49 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*]; or

or

(b) other securities issued or guaranteed by, and payable within, Zimbabwe, denominated in Zimbabwean currency and forming part of a public issue; or

(c) warehouse receipts and documents of title issued in respect of staple commodities or other goods duly insured against risk of loss or damage; or

(d) deposits with the Reserve Bank or with a depository acceptable to the Reserve Bank of any assets which the Reserve Bank is permitted to buy or sell or deal in under the Reserve Bank of Zimbabwe Act [*Chapter 22:15*].

(2) A loan may be granted in terms of subsection (1) on such terms and conditions as the Reserve Bank may determine and for a period not exceeding three months:

Provided that such a loan may be renewed or extended for further periods not exceeding three months at a time.

(4) Loans granted to a banking institution in terms of subsection (1) shall be made only at the banking institution’s head office in Zimbabwe.

60 Extension of time-limits

If a banking institution or other person is required to comply within a specified or prescribed period with any direction or requirement of the Registrar in terms of this Act, the Registrar may extend the period at the request of the banking institution or person concerned.

61 Translations of documents, etc., may be demanded

Where any person, for the purposes of this Act, submits any statement, document or other information to the Reserve Bank or the Registrar in a language other than the English language, the Reserve Bank or the Registrar, as the case may be, may direct him to provide, at his own expense, a translation of the statement, document or information, and until the person concerned complies with the direction the statement, document or information shall be deemed not to have been submitted for the purposes of this Act.

62 Powers of Reserve Bank and Registrar where unregistered person is suspected of conducting banking business

(1) If the Registrar has reason to suspect that a person who is not registered is conducting any banking business, it may direct that person, by written notice, to supply, within a period stated in the notice, any document or information concerning the person’s business or activities.

(2) Any person who fails to comply to the best of his ability with a notice in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection amended by Act 22 of 2001]

(3) Where the Registrar suspects, on reasonable grounds, that a person who is not registered is conducting any banking business, the Registrar may direct a supervisor to examine that person's business in order to ascertain whether or not the suspicion is well-founded.

(4) For the purpose of an examination in terms of subsection (3), a supervisor may exercise any of the powers conferred on him by section *forty-seven*.

(5) Any person who, without just cause, hinders or obstructs a supervisor in the conduct of an examination in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding one thousand dollars.

(6) Nothing in this section shall be construed as limiting the power of a police officer to investigate any offence in terms of this Act.

63 Order prohibiting anticipated or actual contraventions of certain provisions of this Act

(1) If the Reserve Bank or the Registrar has reason to suspect that —

- (a) any person has conducted, is conducting or is likely to conduct any banking business in contravention of subsection (1) of section *five*; or
- (b) a banking institution has engaged in, is engaging in or is likely to engage in any banking activity in contravention of subsection (2) of section *five*; or
- (c) any person has contravened, is contravening or is likely to contravene section *twenty-two* or *twenty-three*;

the Reserve Bank or the Registrar, as the case may be, may apply to the High Court for an order—

- (i) in the case of a past or continuing contravention, prohibiting its repetition or continuation, as the case may be, and additionally, or alternatively, prohibiting the person concerned from disposing of or otherwise dealing with any of his assets while the contravention is being investigated;
- (ii) in the case of an anticipated contravention, prohibiting it.

(2) On an application in terms of subsection (1) the High Court may make such order as in its opinion will ensure proper compliance with this Act.

(3) The making of an application in terms of subsection (1) shall not affect the liability of the person in respect of whom the application is made from prosecution for any contravention of this Act.

64 Reserve Bank and Registrar may supply statistics

For the purposes of the Census and Statistics Act [*Chapter 10:05*], the Reserve Bank and the Registrar may supply the Director of Census and Statistics with statistics relating to banking business and banking activities in Zimbabwe, but no such statistics shall reveal confidential information concerning any particular banking institution or other person.

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

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

(2) If a person to whom the Registrar has made a request in terms of subsection (1) fails or refuses to provide the requested information or provides the Registrar with information which is materially inaccurate, misleading or incomplete, the Registrar may determine that he or she is not a fit and proper person to hold the shares or occupy the post or office concerned.

[Section inserted by Act 12 of 2015]

PART XII

DEPOSIT PROTECTION SCHEME

66 - 72

Part XII (sections 65 – 72 repealed by Act 7 of 2011)

PART XIII

GENERAL

73 Appeals

(1) Subject to this section, any person who is aggrieved by—

- (a) a decision of the Registrar not to register an applicant in terms of section 8 or 15G; or

[Paragraph amended by Act 12 of 2015]

- (b) any term or condition attached to the registration of a banking institution or controlling company in terms of section 8 or 15G, or a refusal by the Registrar to specify a term or condition in a registration certificate; or
[Paragraph amended by Act 12 of 2015]
- (c) any amendment of the registration of a banking institution or controlling company in terms of section 14 or 15I, or a refusal by the Registrar to make such an amendment; or
[Paragraph substituted by Act 12 of 2015]
- (d) a proposal by the Registrar to cancel the registration of a banking institution or controlling company in terms of section 14 or 15J; or
[Paragraph substituted by Act 12 of 2015]
- (e) a refusal by the Registrar to cancel the registration of a banking institution or controlling company at the request of the institution or company in terms of section 14 or 15J; or
[Paragraph substituted by Act 12 of 2015]
- (e1) a refusal by the Registrar to give permission for a person—
- (i) to hold more shares in a banking institution or controlling company than is specified in section 15A; or
 - (ii) to acquire a significant interest in a banking institution or controlling company in terms of section 15B; or
[Paragraph inserted by Act 12 of 2015]
- (e2) a requirement by the Registrar in terms of section 15D or 15E that a person should divest himself or herself or any share in a banking institution or controlling company; or
[Paragraph inserted by Act 12 of 2015]
- (e3) a determination by the Registrar in terms of section 15F(5) whether or not a person exercises control over a banking institution; or
[Paragraph inserted by Act 12 of 2015]
- (e4) a refusal by the Registrar to approve the appointment or re-appointment of a director of a banking institution or controlling company in terms of section 18 or
[Paragraph inserted by Act 12 of 2015]
- (e5) a withdrawal by the Registrar of his or her approval of the appointment or re-appointment of a director of a banking institution or controlling company in terms of section 18; or
[Paragraph inserted by Act 12 of 2015]
- (e6) a decision of the Registrar not to register an applicant as a controlling company in terms of section 15G; or
[Paragraph inserted by Act 12 of 2015]
- (e7) any term or condition attached to the registration of a company as a controlling company in terms of section 15G; or
- (e8) any amendment of a controlling company's registration in terms of section 15I or a refusal by the Registrar to amend a controlling company's registration in terms of that section; or
[Paragraph inserted by Act 12 of 2015]
- (e9) a proposal by the Registrar to cancel a controlling company's registration in terms of section 15J, or a refusal by the Registrar to cancel its registration in terms of that section; or
[Paragraph inserted by Act 12 of 2015]
- (f) a refusal by the Registrar to give consent or approval in terms of section *twenty-two, twenty-three, twenty-four, twenty-six, thirty-four or forty-one*; or
- (f1) a direction by the Registrar in terms of section 26 not to establish a branch; or";
[Paragraph inserted by Act 12 of 2015]
- (g) any action taken by the Reserve Bank in terms of section *forty-eight or fifty-one*; or
- (h) a decision by the Reserve Bank in terms of section *fifty-two* to recover expenses of an investigation from a banking institution; or
- (i) the placing of a banking institution under curatorship in terms of section *fifty-three* or any provision of a direction issued in terms of that section; or
- (j) a decision of the Reserve Bank on an appeal in terms of subsection (4) of section *fifty-five*; or
- (k) the freezing of any amounts in terms of section *fifty-six*; or
- (l) a requirement in terms of subsection (2) of section *fifty-eight* that a banking institution deposit approved securities with the Reserve Bank; or
- (m)
[Paragraph repealed by Act 7 of 2011]
- (n)
[Paragraph repealed by Act 7 of 2011]
- (o) such other decision, proposal or action in terms of this Act as may be prescribed;
 may appeal to the Minister against the decision, proposal or action concerned.

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed and shall be lodged with the Minister—

- (a) within thirty days after the appellant was notified of the decision, proposal or action appealed against; or
- (b) where a notice was published in terms of the proviso to subsection (2) of section *fourteen*, within thirty days after the publication of the notice.

(3) In an appeal in terms of subsection (1), the Minister may conduct or cause to be conducted such inquiry into the matter as he thinks appropriate and may confirm, vary or set aside the decision, proposal or action appealed against:

Provided that—

- (i) the Minister shall ensure that the appellant and the Registrar or Reserve Bank, as the case may be, are given an adequate opportunity to make representations in the matter.
- (ii) the Minister shall determine the appeal—
 - A. within fourteen days, in the case of an appeal against a direction by the Registrar in terms of section 26;
 - B. ninety days, in the case of any other appeal.

[Proviso (ii) inserted by Act 12 of 2015]

(4) The Minister shall ensure that the appellant and the Registrar or Reserve Bank, as the case may be, are notified of any decision reached by him in terms of subsection (3).

(5) Any person who is aggrieved by a decision of the Minister on an appeal in terms of subsection (1) may appeal against his decision to the Administrative Court within the time and in the manner prescribed in rules of court.

(6) In an appeal in terms of subsection (5), the Administrative Court may confirm, vary or set aside the decision, proposal or action appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.

(7) The lodging of an appeal against the placing of a banking institution under curatorship in terms of section *fifty-three* or any provision of a direction issued in terms of that section shall not have the effect of suspending the curatorship or the direction, as the case may be, pending the determination of the appeal, but the Minister or the Administrative Court, as the case may be, shall ensure that all necessary steps are taken to determine the appeal as quickly as possible.

74 Requirements for documents submitted to Registrar or Reserve Bank

(1) Subject to subsection (2), a banking institution shall be regarded as having failed to comply with a provision of this Act requiring it to submit to the Registrar and additionally, or alternatively, the Reserve Bank a document or copies of a document prepared by it, unless—

- (a) where the form of the document has not been prescribed—
 - (i) the document is signed by the institution's chief executive officer and chief accounting officer or by such other persons as are required by any provision of this Act to sign or certify it; and
 - (ii) the document is accompanied by two copies;
- (b) where the form of the document has been prescribed—
 - (i) the document is signed by the person specified in the form; and
 - (ii) the document is accompanied by two copies.

(2) The Registrar or the Reserve Bank, as the case may be, may permit a lesser number of copies than the number specified in paragraph (a) or (b) of subsection (1) to be submitted with any document referred to in that subsection, or may permit no copies of such a document to be submitted.

75 False statements, etc.

(1) Any person who, in any document required by or for the purposes of this Act, makes a statement that is false in a material particular, knowing the statement to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence.

(2) Any person who, with intent to defraud or deceive—

- (a) destroys, mutilates, alters or falsifies any book, paper or security belonging to or relating to a banking institution; or
- (b) makes, or is a party to the making of, a false or misleading entry in any register, book of account or other document belonging to or relating to a banking institution;

shall be guilty of an offence.

(3) A person who is guilty of an offence in terms of subsection (1) or (2) shall be liable—

- (a) in the case of an individual, to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (b) in the case of a body corporate, to a fine not exceeding level ten.

[Subsection amended by Act 22 of 2001]

76 Preservation of secrecy

- (1) None of the following persons, namely—
- (a) the Registrar or any officer referred to in section *four*;
 - (b) any officer or employee of the Reserve Bank;
 - (c) any supervisor or inspector;
 - (d) any curator;
 - (e) any auditor of a banking institution;
 - (f) any employee or agent of a person specified in paragraph (a), (b), (c), (d) or (e);

shall disclose any information which he has acquired in the performance of his functions under this Act and which relates to the affairs of a banking institution.

(2) Except with the permission of the Reserve Bank, no banking institution or employee or agent of a banking institution shall disclose any information provided to it by the Reserve Bank in the performance of its functions under this Act.

- (3) Subsections (1) and (2) shall not apply to—
- (a) any disclosure made by the person concerned in the performance of his functions under this Act or when required to do so by a court or in terms of any other enactment; or
 - (b) the supplying of statistics in terms of section *sixty-four*; or
 - (c) the disclosure of any information that is generally known to members of the public or a substantial section of the public; or
 - (d) a disclosure of such information in such circumstances as may be prescribed.

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

[Subsection amended by Act 22 of 2001]

77 Use of confidential information for personal gain

- (1) Subject to subsection (2), if—
- (a) the Registrar or any officer referred to in section *four*; or
 - (b) any officer or employee of the Reserve Bank; or
 - (c) any supervisor or inspector; or
 - (d) any curator; or
 - (e) any auditor of a banking institution; or
 - (f) any employee or agent of a person specified in paragraph (a), (b), (c), (d) or (e);

for his personal gain makes use of any information which he has acquired in the performance of his functions under this Act and which relates to the affairs of a banking institution, he shall be guilty of an offence and liable to—

- (i) a fine not exceeding level ten or double the amount of his gain, whichever is the greater; or
- (ii) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

(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.

77A Issuance of civil penalty orders

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

- (a) a fixed civil penalty for a specified completed and irremediable infringement, for which—
 - (i) the penalty shall not exceed a fixed penalty of level ten or the penalty prescribed by or under this Act, as the case may be; and
 - (ii) the penalty for each day (beginning on the day after the issuance of the civil penalty order) during which the infringer fails to pay the civil penalty, shall not exceed a penalty of level three (twenty United States dollars) per day for a maximum period of one hundred and eight (180) days;

and

- (b) a fixed civil penalty for a specified completed but remediable infringement—
 - (i) for which the prescribed penalty shall not exceed a fixed penalty of level five (one hundred United States dollars) or the penalty prescribed by or under this Act, as the case may be; and

- (ii) which must be suspended conditionally upon the infringer taking the remedial action specified in the civil penalty order within the time specified in that order; and
 - (iii) which (upon the civil penalty becoming operative because of non-compliance with the requested remedial action) may provide for the prescribed penalty for each day (beginning on the day after the last day on which the infringer should have effected the remedial action) during which the infringer fails to pay the civil penalty referred to in subparagraph(i), which shall not exceed a penalty of level two (ten United States dollars) per day for a maximum period of one hundred and eight (180) days;
- and
- (c) a fixed civil penalty for a continuing infringement—
 - (i) for which the prescribed penalty shall not exceed a penalty of level one (five United States dollars) for each day during which the infringement continues (or the penalty prescribed by or under this Act, as the case may be), not exceeding a maximum period of one hundred and eight (180) days; and
 - (ii) which must be suspended conditionally upon the infringer immediately (that is say, on the day the civil penalty order is issued) ceasing the infringement;
- and
- (d) a fixed civil penalty for a specified continuing infringement where the time for compliance is of the essence—
 - (i) for which the prescribed penalty shall not exceed a fixed penalty of level ten (six hundred United States dollars) or the penalty prescribed by or under this Act, as the case may be; and
 - (ii) which must be suspended conditionally upon the infringer taking the remedial action specified in the civil penalty order within the time specified in that order; and
 - (iii) which (upon the civil penalty becoming operative because of non-compliance with the requested remedial action) may provide for the prescribed penalty for each day (beginning on the day after the last day on which the infringer should have effected the remedial action) during which the infringer fails to pay the civil penalty referred to in subparagraph (i), which shall not exceed a penalty of level two (ten United States dollars) per day for a maximum period of one hundred and eight (180) days;

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

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

[Section inserted by Act 12 of 2015]

78 Annual reports of Reserve Bank and Registrar

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

- (a) summarise significant action taken by the Reserve Bank and the Registrar under this Act during the year in question; and
- (b) contain any recommendations the Reserve Bank and the Registrar may wish to make regarding the financial soundness of the financial sector and its further development.

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

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

[Section substituted by Act 12 of 2015]

78A Exemption from liability of Registrar and other persons

No liability shall attach to—

- (a) the Registrar or any person acting with the authority or under the direction of the Registrar; or
- (b) the Governor or any officer, employee or agent of the Reserve Bank; or
- (c) any curator or person acting with the authority or under the direction of a curator;

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

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

[Section substituted by Act 12 of 2015]

79 Exercise of functions by Reserve Bank

- (1) Any function of the Reserve Bank under this Act may be exercised on behalf of the Bank—
- (a) by the Governor of the Reserve Bank; or
 - (b) subject to the directions of the Governor, by a Deputy Governor of the Reserve Bank specified by the Governor with the approval of the board of directors of the Reserve Bank.

(2) The Governor and Deputy Governor of the Reserve Bank referred to in subsection (1) shall exercise the functions referred to in that subsection in accordance with any general directions of policy that the board of directors of the Reserve Bank may give them.

(3) This section shall not be construed as limiting the Reserve Bank's power under any other law to delegate its functions under this Act to any of its officers or employees.

80 Evidence and presumptions

- (1) Any document purporting to be certified—
- (a) by the Registrar, as a document lodged with or furnished to or issued by the Registrar in terms of this Act; or
 - (b) by the Reserve Bank, as a document lodged with or furnished to or issued by the Reserve Bank in terms of this Act;

or purporting to be a copy of such a document shall be *prima facie* presumed to be such a document or copy, as the case may be, and shall be admissible in evidence in any court on its production by any person.

- (2) A document purporting to be signed by the Registrar and—
- (a) stating that any person is or is not registered under this Act; or
 - (b) setting out the terms and conditions of any banking institution's registration; or
 - (c) stating whether or not any banking institution's registration has been cancelled;

shall be admissible in any proceedings in any court on its production by any person, and shall be *prima facie* proof of the facts stated therein.

81 Regulations

(1) Subject to subsection (4), the Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Regulations in terms of subsection (1) may provide for—
- (a) the notification by banking institutions to their customers of the terms and conditions under which they will accept deposits and credits;
 - (b) the disclosure by banking institutions of information concerning transactions, deposits and funds held or dealt with by them, where such information is required for the purposes of—
 - (i) detecting, investigating or preventing an offence, whether under Zimbabwean law or the law of any other country; or
 - (ii) recovering the proceeds of any offence referred to in subparagraph (i); or
 - (iii) complying with any obligation of Zimbabwe under an international convention, treaty or agreement;
 - (c) the preservation of records by banking institutions and controlling companies;

[Paragraph amended by Act 12 of 2015]
 - (d) the issue of directions by the Reserve Bank and the Registrar to banking institutions in respect of any matter relating to their banking business;

[Paragraph amended by Act 12 of 2015]
 - (e) the categorisation of any activity on the part of a banking institution as an undesirable method of conducting business;

[Paragraph inserted by Act 12 of 2015]
 - (f) the qualifications and disqualifications of directors and officers of banking institutions and controlling companies, and the criteria by which they are to be assessed as fit and proper persons to be directors or officers, as the case may be;

[Paragraph inserted by Act 12 of 2015]
 - (g) the capital to be maintained by controlling companies;

[Paragraph inserted by Act 12 of 2015]
 - (g1) standards of corporate governance to be observed by banking institutions and controlling companies;

[Paragraph inserted by Act 12 of 2015]
 - (g2) returns and information to be provided to the Registrar and the Reserve Bank by banking institutions and controlling companies;

[Paragraph inserted by Act 12 of 2015]
 - (g3) the business activities, other than those directly connected with the banking institution in respect of which they are registered, that may be carried on by controlling companies;

[Paragraph inserted by Act 12 of 2015]

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

[Paragraph inserted by Act 12 of 2015]

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

[Paragraph inserted by Act 12 of 2015]

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

[Paragraph inserted by Act 12 of 2015]

(h) fees and charges for anything done or provided in terms of this Act;

(i) the prohibition or control of pyramid schemes;

(j) the control and regulation of savings schemes.

(3) In subsection (2)—

“pyramid scheme” means any scheme or arrangement whatsoever which has either or both the following characteristics—

(a) participants are invited or required—

(i) to pay an amount of money to the scheme or the scheme’s manager and to one or more other participants; and

(ii) to recruit further participants to the scheme;

in the expectation or hope of receiving similar payments from those further participants in the future;

(b) participants are invited or required to pay an amount of money to the scheme or to the scheme’s manager in the expectation or hope of receiving a dividend, harvest, return or profit, by whatever name called, which is paid, wholly or mainly, from amounts paid by subsequent participants;

“savings scheme” means any scheme or arrangement whereby participants contribute money, whether through regular payments or otherwise, and share in any profits or income from their joint contributions.

(4) Regulations in terms of subsection (1) may provide penalties for contraventions thereof:

Provided that no such penalty shall exceed a fine of level seven or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

(5) The Minister shall not make regulations for the matters referred to in—

(a) section *twenty-nine* or *thirty-one* or subsection (3) of section *thirty-six*, except with the approval of the Reserve Bank; or

(b)

[Paragraph repealed by Act 7 of 2011]

(6) Any regulations in terms of subsection (1) which have the effect of imposing additional requirements or obligations upon banking institutions shall afford existing institutions a reasonable time within which to comply with the regulations.

82 Amendment of Acts

The Act specified in each Part of the Schedule is amended to the extent set out in that Part.

83 Repeal of Cap. 24:01, transitional provisions and savings

(1) In this section—

“repealed Act” means the Banking Act [*Chapter 24:01*].

(2) Subject to this section, the Banking Act [*Chapter 24:01*] is repealed.

(3) Any person who, immediately before the date of commencement of Part III of this Act, was registered in any class of banking business in terms of Part II of the repealed Act shall be deemed to have been registered in the same class of business in terms of Part III:

Provided that a person registered in the business of a financial institution shall be deemed to have been registered in the business of a finance house.

(4) As soon as possible after the date of commencement of Part III of this Act, the Registrar shall issue each person referred to in subsection (3) with a registration certificate in terms of section *ten*.

(5) Any statutory instrument, notice, application, approval, permission or other thing which was lawfully made, given, issued, done or commenced in terms of the repealed Act and which, immediately before the date of commencement of any equivalent provision of this Act, had or was capable of acquiring legal effect, shall continue to have, or be capable of acquiring, as the case may be, the same effect as if it had been made, given, issued, done or commenced, as the case may be, under the equivalent provision, if any, of this Act.

(6) Until different provision is made in regulations referred to in sections *twenty-nine* and *thirty-one*, sections 19 to 25 of the repealed Act shall continue in force, *mutatis mutandis*, in relation to the financial requirements of banking institutions.

(7) The person who, immediately before the date of commencement of Part II of this Act, held the office of Registrar of Banks and Financial Institutions shall be deemed to have been appointed Registrar for the purposes of this Act.