

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)

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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 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 banking institution 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 banking institution 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 banking institution’s management or policies;

“bank” means a commercial bank or an accepting house;

“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, means the board referred to in section eighteen;

- “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;
- “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;
- “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;
- “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;
- “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]
- “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;
- “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” means a banking institution—
- (a) that limits any credit facility to any single borrower to a maximum of five *per centum* of its capital base; and
 - (b) whose business mainly consists of the provision of credit to either or both of the following—
 - (i) small or medium enterprises as defined in the Twenty- Ninth Schedule to the Income Tax Act [*Chapter 23:06*];
 - (ii) individuals whose monthly income is below the poverty datum line or whose monthly income does not exceed five times the poverty datum line;
- [Definition inserted by Act 3 of 2009]
- “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;

“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]

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

“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 (3) of that section;

“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*];

“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.

(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.

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];

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 46 of the Reserve Bank of Zimbabwe Act [Chapter 22:15].

(2) The Registrar shall be responsible for registering banking institutions and cancelling their registration, and performing such other functions as are conferred or imposed upon him or her by or in terms of this Act or any other enactment.

(3) Subject to the directions of the Registrar, the other officers referred to in subsection (1) shall perform such of the Registrar's functions as the Registrar may assign to them.

[Section substituted by Act 16 of 2004]

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) The Minister may, by regulations made in terms of section 81, specify that any of the provisions of this Act shall not apply to microfinance banks, or apply any of those provisions subject to such modifications as the Minister shall prescribe.

[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) the business of a microfinance bank.

[Paragraph inserted by Act 3 of 2009]

(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 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.

(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 shall provide the Minister with such information regarding the application as the Minister may reasonably require.

[Subsection inserted by section 4 of Act 1 of 2005]

(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 company; and
- (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 are fit and proper persons to be directors of a banking institution; and

[Paragraph inserted by Act 16 of 2004]

- (c) the persons who will be the applicant's chief executive officer, chief accounting officer and such other officers as may be prescribed—

- (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;

and

- (d) the applicant's business plan and structural organisation are appropriate for the class of banking business which the applicant wishes to conduct; and

- (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

- (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.

9 Terms and conditions of registration

Registration shall be subject to such terms and conditions as may be prescribed or as the Registrar may reasonably determine.

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 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
- (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.

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*] or the Balance of Payments Reporting Act [*Chapter 22:16*] that is applicable to it; or

[Paragraph amended by Act 4 of 2008]

- (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

- (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
 - (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
 - (b) after the consultation, notify, in writing, the banking institution concerned;
- 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.]

- (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 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, are adequate to ensure compliance with this Act; and
- (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 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:

Provided that this subsection shall not apply to a person who was a director of a banking institution immediately before the 8th October, 2004, until his or her current term as a director comes to an end.

[Subsection inserted by Act 16 of 2004]

(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) Any person who knowingly contravenes subsection (1a) 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 inserted by Act 16 of 2004]

(2) Not more than two-fifths of the total membership of the board of any banking institution shall be officers of the institution.

(3) The chairman of the board of a banking institution shall not be an officer of the institution.

(4) The quorum at any meeting of the board of a banking institution 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.

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

- (a) formulating policies relating to the institution's banking business; and
- (b) supervising all banking activities engaged in by the institution.

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 if—

- (a) he is a director of more than seven other companies registered in Zimbabwe; or
- (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 or perjury 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.
- (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 from prescribing further disqualifications, not inconsistent with this Act, upon the appointment of directors to its board.

20 Principal administrative office and principal officers of banking institution

(1) Every banking institution shall maintain a principal administrative office in Zimbabwe and shall appoint in Zimbabwe a chief executive officer, a chief accounting officer and such other officers as may be prescribed, and no person shall be appointed to hold two or more such posts at the same time.

(2) Every banking institution shall notify the Registrar of the situation of its principal administrative office and the names of its officers referred to in subsection (1).

(3) A banking institution shall not—

- (a) change the situation of its principal administrative office in Zimbabwe; or
- (b) appoint a new chief executive officer or a new chief accounting officer;

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

(4) Any banking institution 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]

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 has given his written consent to the alteration.

(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.

(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 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).

(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.

(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 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.

26 Acquisition of significant interest in banking institution

(1) In this section—

“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 equals or exceeds such percentage as may be prescribed.

(2) No person shall knowingly acquire or obtain a significant interest in a banking institution unless the Registrar has given his written approval of the acquisition.

(3) No banking institution shall permit any one person to acquire or obtain a significant interest in it unless the Registrar has given his written approval of the acquisition.

(3a) Before approving the acquisition of a significant interest in a banking institution, the Registrar shall, through the Governor, consult the Minister and shall provide the Minister with such information regarding the proposed acquisition as the Minister may reasonably require.

[Subsection inserted by section 6 of Act 6 of 2005]

(4) Any contract, arrangement or transaction whatsoever which, if implemented or effected, would result in a contravention of subsection (2) or (3) shall be void.

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

(6) 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 he had the knowledge referred to in that subsection.

(7) 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 decision, notify the applicant, in writing, of his decision and of the reasons for it.

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

“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]

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) Notwithstanding section 41 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] and the Exchange Control Act [*Chapter 22:05*], the Minister may for the purposes of subsection (1) prescribe that the minimum capital of banking institutions be maintained in any specified foreign currency denominated under the Exchange Control (General) Order, 1996, published in Statutory Instrument 110 of 1996, or any other enactment substituted for the same.

[Subsection amended by section 16 of Act 5 of 2011. The amendment erroneously referred to subsection (2) instead of to (1a)]

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

[Subsection inserted by Act 3 of 2009]

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;
 - (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.

PART VI

RESTRICTIONS ON CERTAIN TRANSACTIONS BY BANKING INSTITUTIONS

32 Banking institution not to buy or make loans against own shares

- (1) No banking institution shall—
- (a) purchase its own shares or shares in any other institution through which it conducts banking business; or
 - (b) make any loan or advance on the security of such shares.
- (2) Any banking institution that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten.

[Subsection amended by Act 22 of 2001]

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”, in relation to any person, means —

- (a) that person's spouse, brother, sister, half-brother, half-sister, parent, grandparent, child or grandchild; or
- (b) the brother, sister, half-brother, half-sister, parent, grandparent, child or grandchild of that person's spouse;

“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 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);

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.

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 institution's operations and financial condition.

(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 accounts 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 accordance with such accounting standards, as may be prescribed.

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 to determine whether the banking institution has complied with this Act.

(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 Display of certain information where banking business is conducted

(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 subsection (1) of section *thirty-eight*; 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 *thirty-eight*; and

(c) such other information as may be prescribed.

(2) The Minister may at any time, if he is satisfied that it is in the public interest to do so, direct that subsection (1) shall be suspended until such time as, in his opinion, the public interest permits the lifting of the suspension.

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) The chairman of an audit committee shall not be an executive director, an officer or an employee of the banking institution concerned.

(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.

(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 and associates of banking institutions to ensure that they comply with this Act; and

[Paragraph amended by Act 16 of 2004]

- (b) conducting investigations into any particular banking institution or class of such institutions, 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;

- (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.

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 or class of such institution and exercising any other function conferred or imposed on inspectors by or in terms of this Act.

(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, 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 institution's banking business are being kept;
- (b) require any officer, employee or agent of the banking institution to produce any of the institution's 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 banking 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 of the banking institution's moneys, securities, books, records, accounts or documents;
- (e) examine and make extracts from and copies of any of the banking institution's securities, books, records, accounts or documents;
- (f) remove any of the banking institution's securities, books, records, accounts or documents from the institution's premises, 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 institution's books, records, accounts or documents;
 - (ii) to provide the supervisor with such information concerning the institution's management or activities as the supervisor may reasonably require.

(2) The powers of entry and search conferred by subsection (1) shall not be exercised except with the consent of the banking institution 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.

(3) The powers conferred by subsection (1) may be exercised, subject to subsection (2), in relation to any associate of a banking institution 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.

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 concerned in terms of subsection (2), the Reserve Bank is satisfied that a banking institution 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 to appoint a person who, in the Reserve Bank's opinion, is qualified to advise the institution on the proper conduct of its business;
- (c) issue a written instruction to the institution 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 to suspend or remove any of its directors, officers or employees from his duties;
- (f) direct the institution to suspend all or any of its banking business;
- (g) appoint a supervisor to monitor the institution's affairs;
- (h) convene a meeting of the shareholders or other owners of the institution to discuss the remedial measures to be taken;
- (i) subject to Part X, place the institution under the management of a curator;
- (j) recommend to the Registrar—
 - (i) the imposition of any term or condition on the institution's continued registration, or the deletion of any such term or condition; or
 - (ii) the cancellation of the institution's registration.

(2) Before taking any action in terms of subsection (1), the Reserve Bank shall inform the banking institution 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 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.

49 Investigation into banking institution

- (1) If—
- (a) a banking institution 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 any of its officers, employees or agents has failed to comply with any provision of this Act; or
 - (d) the auditor of any banking institution has informed the institution or the Reserve Bank of an irregularity that requires correction and the institution 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
 - (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 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 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 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 ap-

ply, *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 which was the subject of the investigation; and
- (b) invite the institution to make representations on the conclusions and recommendations set out in the summary.

(3) A banking institution 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.

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 concerned in terms of subsection (3) of that section, the Reserve Bank is satisfied that the institution 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.

52 Expenses of investigation

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

(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.

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 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.

(2) Before issuing a direction in terms of subsection (1) the Reserve Bank shall consult the Minister and 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]

(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
(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 monies 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.
- (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.

57 Special provisions relating to winding up or judicial management of banking institution

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

- (a) the Reserve Bank shall have the right to apply to the High Court for —
 - (i) the winding up of any banking institution; or
 - (ii) an order placing any banking institution under judicial management or provisional judicial management in terms of the Companies Act [*Chapter 24:03*];

and the Reserve Bank shall have the right to oppose any such application made by any other person;

- (b) no person other than a person recommended by the Reserve Bank shall be appointed as provisional liquidator, provisional judicial manager, liquidator or judicial manager of a banking institution;
- (c) the claims of—
 - (i) depositors; and
 - (ii) the Reserve Bank, in respect of any fees and expenses incurred in the exercise of its functions in terms of this Act;

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

(2) During the voluntary winding-up of a banking institution the liquidator shall furnish the Reserve Bank with every return or statement which the institution concerned would have been obliged to furnish to the Reserve Bank in terms of Part VII were the institution not being wound up.

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
- (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.

PART XII

DEPOSIT PROTECTION SCHEME

65 Interpretation in Part XII

(1) In this Part—

“appointed member” means a member of the Board referred to in paragraph (c) of subsection (1) of section *sixty-seven*;

“Board” means the Deposit Protection Board established by subsection (1) of section *sixty-seven*;

“contribution” means a contribution payable to the Fund in terms of section *seventy-one*;

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

“depositor”, in relation to a contributory institution, means a person who has made a deposit with that institution;

“Fund” means the Deposit Protection Fund established by subsection (1) of section *sixty-six*;

“protected deposit” means a deposit which—

(a) is of such class as may be prescribed; and

(b) immediately before the insolvency of the contributory institution with which it was made, created a liability, whether present or future, on the part of the institution towards the depositor.

(2) A contributory institution becomes insolvent for the purposes of this Part on—

(a) the making of an order by the High Court; or

(b) the passing of a special resolution;

in terms of Part V of the Companies Act [*Chapter 24:03*] for the winding up of the institution.

66 Deposit Protection Fund

(1) There is hereby established a fund, to be known as the Deposit Protection Fund, which shall be vested in and administered by the Deposit Protection Board in accordance with this Part.

(2) The Fund shall consist of—

(a) all contributions; and

(b) income from the investments of the Fund; and

(c) any moneys borrowed on behalf of the Fund in terms of paragraph (c) of subsection (2) of section *sixty-eight*; and

(d) any moneys received by the Fund under any insurance effected on behalf of the Fund in terms of paragraph (a) of subsection (2) of section *sixty-eight*; and

(e) any other moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

(3) The object of the Fund shall be, subject to this Part, to compensate depositors for losses incurred by them in the event of the insolvency of a contributory institution.

67 Deposit Protection Board

(1) There is hereby established a board, to be known as the Deposit Protection Board, consisting of—

(a) the Governor of the Reserve Bank, who shall be the chairman; and

(b) the two Deputy Governors of the Reserve Bank; and

(c) three persons appointed by the Governor of the Reserve Bank from a list of not fewer than six names submitted by an organisation which, in the Governor’s opinion, represents the majority of contributory institutions:

Provided that, if there is no such organisation or if the organisation does not submit such a list within a reasonable time after the Governor has called upon it to do so, he may appoint such persons, being directors of contributory institutions, as he considers will represent contributory institutions generally.

(2) The Board shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies may by law perform.

(3) The appointed members of the Board shall be appointed for such period and subject to such terms and conditions as the Governor of the Reserve Bank may fix for such members generally.

(4) The Governor of the Reserve Bank may require an appointed member of the Board to vacate his office if the member—

(a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or

(b) has failed to comply with any term or condition of his office fixed in terms of subsection (3); or

(c) has ceased to be a director of a contributory institution; or

(d) is mentally or physically incapable of efficiently performing his duties as a member.

(5) On the death of, or vacation of office by, an appointed member, the Governor of the Reserve Bank shall appoint a person to fill the vacancy.

(6) The procedure of the Board, including the quorum at meetings, shall be as prescribed or, in relation to any matter that is not prescribed, as may be fixed by the Board.

(7) The validity of any act or decision of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of a member.

68 Functions of Board

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

- (a) administering the Fund; and
- (b) levying contributions from contributory institutions; and
- (c) paying compensation to depositors in the event of the insolvency of a contributory institution.

(2) Subject to this Act, in the exercise of its functions, the Board may—

- (a) enter into any contract of insurance for the purpose of indemnifying the Fund against the making of compensation payments to depositors;
- (b) invest any moneys of the Fund that are not immediately required for the purposes of the Fund;
- (c) borrow moneys for the purposes of the Fund, and charge any of the Fund's investments as security for any such loan;
- (d) exercise, in relation to the Fund, any power conferred upon a trustee by the common law.

69 Financial year of Fund

The financial year of the Fund shall be the period of twelve months ending on the 31st December each year.

70 Books of account and audit of Fund

(1) The Board shall ensure that proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Fund.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him by section 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Fund were public moneys.

(3) The audited accounts of the Fund shall be open for inspection by officers and employees of contributory institutions at all reasonable times at the offices of the Reserve Bank.

71 Contributions to Fund

(1) Every registered banking institution shall to be liable to pay contributions to the Fund.

(2) The amount of contributions payable to the Fund in terms of subsection (1), and the times and manner of their payment, shall be as prescribed.

(3) Any contributory institution which, without lawful excuse, fails or refuses to pay any contribution which is payable by it shall be guilty of an offence and liable to a fine not exceeding five times the amount of the contribution.

(4) The court convicting a contributory institution of an offence in terms of subsection (3) may, on the application of the prosecutor and in addition to any penalty it may impose, give summary judgment against the institution in favour of the Board for the amount of the contribution which the institution has been convicted of failing or refusing to pay.

(5) A contribution and any interest or surcharge connected therewith shall be a debt due to the Fund, and the Board may recover it from the contributory institution concerned by proceedings in a court of competent jurisdiction.

72 Payment of compensation to depositors in event of insolvency of contributory institution

(1) Subject to this Act, if a contributory institution becomes insolvent as provided in subsection (2) of section *sixty-five*, the Board shall as soon as practicable compensate depositors for any direct loss they may have suffered through the institution's insolvency in respect of their protected deposits with that institution.

(2) The amount of compensation payable to any one depositor in terms of subsection (1) shall not exceed such amount as may be prescribed.

(3) Subject to such terms and conditions as may be prescribed, the Board may reduce the compensation paid to any depositor in order to take into account any amount paid to the depositor—

- (a) by the liquidator of the contributory institution concerned, from the institution's assets; or
- (b) by any other person, by way of compensation for the loss of his protected deposit.

(4) Upon the payment of compensation in terms of subsection (1) to any depositor, the Board shall be subrogated, up to the amount of the compensation, to any rights and remedies in respect of the protected deposit concerned that may be vested in or available to the depositor.

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 subsection (4) or (5) of section *eight*; or
 - (b) any term or condition attached to the registration of an institution in terms of subsection (3) of section *eight*, or a refusal by the Registrar to specify a term or condition in a registration certificate; or
 - (c) any amendment of a banking institution's registration in terms of subsection (1) of section *thirteen* or a refusal by the Registrar to amend a banking institution's registration in terms of that section; or
 - (d) a proposal by the Registrar to cancel a banking institution's registration in terms of section *fourteen*; or
 - (e) a refusal by the Registrar to cancel a banking institution's registration in terms of subsection (4) of section *fourteen*; or
 - (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
 - (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) an assessment of any contribution payable by contributory institution to the Deposit Protection Fund in terms of section *seventy-one*; or
 - (n) the amount assessed as payable to him by way of compensation in terms of section *seventy-two*; or
 - (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 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.

(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.

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 twelve months thereafter, the Reserve Bank and the Registrar shall submit to the Minister a report on banking business in Zimbabwe during that year.

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

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;
- (d) the issue of directions by the Reserve Bank to banking institutions in respect of any matter relating to their banking business;
- (e) the functions and procedure of the Deposit Protection Board established in terms of section *sixty-seven*;
- (f) all matters relating to the payment of contributions to the Deposit Protection Fund established in terms of section *sixty-six*, including—
 - (i) the calculation of contributions; and
 - (ii) the imposition of interest and additionally, or alternatively, a surcharge if a contribution is not paid within the time prescribed; and

- (iii) the records to be kept and the returns and information to be furnished to the Deposit Protection Board established in terms of section *sixty-seven*; and
- (iv) the payment of additional or special contributions, where these are necessary to preserve the financial viability of the Fund;
- (g) the control and regulation of microfinance banks.
[Paragraph inserted by Act 3 of 2009 and numbered (g) instead of (k) in error. – Law Reviser]
- (g) all matters relating to compensation payable in terms of Part XII in respect of protected deposits, including—
 - (i) the limitation of amounts payable by way of compensation; and
 - (ii) the making of applications for compensation; and
 - (iii) the payment of compensation in respect of protected deposits that were made jointly or by trustees; and
 - (iv) the recouping from the estates of the insolvent contributory institutions concerned of amounts paid by way of compensation;
- (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 (f) of subsection (2), except with the approval of the Deposit Protection Board established by section *sixty-seven*.

(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 con-

tinue 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.