

THE BANKING AND FINANCIAL INSTITUTIONS ACT, 2006

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No. 5 OF 2006

I ASSENT

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President

An Act to provide for comprehensive regulation of banks and financial institutions; to provide for regulation and supervision of activities of savings and credit co-operative societies and schemes with a view to maintaining the stability, safety and soundness of the financial system aimed at reduction of risk of loss to depositors; to provide for repeal of the Banking and Financial Institutions Act, (Cap.342) and to provide for other related matters.

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1.—(1) This Act may be cited as the Banking and Financial Institutions Act, 2006.

Short title
and com-
mence-
ment

(2) This Act shall come into operation on the date as the Minister may, by notice published in the *Gazette*, appoint.

2.—(1) This Act shall apply to Tanzania Mainland as well as to Tanzania Zanzibar.

Application

(2) The provisions of this Act shall apply to all banks and financial institutions, and where there is a conflict between this Act and any

provision of any law establishing a bank or financial institution, the provisions of this Act shall prevail.

(3) The Bank may, by notice published in the *Gazette*, order that the provisions of this Act or any part thereof shall, subject to such terms and conditions as the Bank may impose, apply to institutions involved in the business of financial intermediation but not in the business of banking.

(4) In exercising the power under subsection (3), the Bank shall regulate and supervise the activities of all savings and credit cooperative societies and schemes whose deposits have surpassed an amount equivalent to the minimum core capital for a micro-finance company.

(5) The savings and credit cooperative societies and schemes shall be regulated by the Bank in accordance with the regulations made in respect of micro-finance companies.

(6) For purposes of compliance with subsection (4), the Bank may source a public or private body and devise mechanism for the expeditious identification of such societies and schemes.

Interpre-
tation

- 3.** In this Act, unless the context requires otherwise -
- “affiliate” means a company that directly or indirectly controls, or is under common control with, a bank or financial institution;
 - “Bank” has the meaning ascribed to it by the Bank of Tanzania Act;
 - “bank” means an entity that is engaged in the banking business;
 - “banking business” means the business of receiving funds from the general public through the acceptance of deposits payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, and to use such funds, in whole or in part, for loans or investments for the account of and at the risk of the person doing such business;
 - “control” shall be presumed to exist when a person directly or indirectly
 - (a) owns, controls, or has the power to vote more than fifty percent of the voting shares of another person;
 - (b) controls in any manner the election of a majority of the directors of another person; or

- (c) has the power to exercise a controlling influence over the management or policies of another person;

“core capital” or “tier 1 capital” means permanent shareholders’ equity in the form of issued and fully paid ordinary shares, and perpetual non-cumulative preference shares, capital grants and disclosed reserves less year to date losses, goodwill organization, pre-operating expenses, prepaid expenses, deferred charges, leasehold rights and any other intangible assets;

“credit reference bureau” means an entity specialized in the collection and sale of credit performance information for individuals and companies;

“deposit” means a sum of money paid on terms which—

- (a) require it to be repaid, with or without interest or premium of any kind, and either on demand or at a time in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) is not referable to the provision of property or services or the giving of security, whether or not evidenced by any entry in a record of the person receiving the sum or by any receipt, certificate, note or other document, and references in this Act to money deposited and to the making of a deposit shall be construed accordingly;

“director” means any person by whatever title or designation known, carrying out or empowered to carry out functions in relation to the direction of a bank or financial institution which are substantially the same as those carried out by a member of board of directors of a company incorporated under the Companies Act and Companies Decree;

Cap.212

“disclosed reserves” include all reserves created or increased by appropriations of retained earnings (after deducting all expenses, provisions, taxation, and dividends) or other surplus such as share premiums, retained profit, general reserves and legal reserves, if such disclosed reserves are permanent and unencumbered and thus able to absorb losses;

“effective date” means the date on which this Act comes into operation;

“effective interest rate” means the true cost of funds for a borrower

from a bank or financial institution which may be higher, equal to or lower than the nominal interest rate depending on the method used to calculate the amount of interest due or accrued;

“entity” means corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of undertaking that is not specifically listed herein but that is commonly recognized as an entity; and, unless the context indicates to the contrary, includes any Government or government agency or instrumentality;

“financial institution” means an entity engaged in the business of banking, but limited as to size, locations served, or permitted activities, as prescribed by the Bank or required by the terms and conditions of its licence;

“financial intermediation” means the lending, investing or placement of funds or securities or both, received, acquired or obtained from the general public or from a well-defined group of persons by way of deposit, borrowing, contribution, premium or in a fiduciary capacity, either for the account of the person receiving such funds or securities or for the account of others;

“first class international bank” means an international bank that has a minimum long-term rating by internationally recognized rating agencies of “A” or above;

“Governor” has the meaning ascribed to it by the Bank of Tanzania Act;

“housing finance company” means a financial institution incorporated as a company limited by shares to undertake primarily a mortgage finance business with households in rural and urban areas of Tanzania Mainland and Tanzania Zanzibar;

“indexed interest rate” means a rate that is not fixed but varies in line with changes in the reference rate;

“individual” means a natural person;

“insolvency” means total liabilities of a bank or financial institution exceed its total assets, as determined by the Bank;

“micro-enterprise” means a small personal and family business that operates in the informal sector with no formal accounting or financial records and whose real assets, if any, can hardly be pledged or reasonably accepted as collateral;

“micro-finance company” means a financial institution incorporated as a company limited by shares formed to undertake banking business primarily with households, small holder farmers and micro-enterprises in rural or urban areas of Tanzania Mainland and Tanzania Zanzibar;

- “Minister” means except where otherwise specified, the Minister responsible for financial matters of the United Republic;
- “off balance sheet exposure” means all items not shown on the balance sheet but which constitute credit risk or other risks as determined by the Bank; and such items include guarantees, acceptances, performance bonds, letters of credit, interest and exchange rate related items, and other off balance sheet items deemed by the Bank to constitute risks;
- “officer” means the Chief Executive Officer of a bank or financial institution, official of lower rank down to the assistant head of a department or branch or their equivalent, and any member of a permanent committee or body (including the Regional Board) whose duties include function of management such as those ordinarily performed by regular officers and anyone whose duties as an officer are defined in the articles of association or who is generally known to be an officer of the institution either through announcement, representation, publication or communication made by the institution;
- “person” means an individual or an entity;
- “place of business” means a branch or office of a bank or a financial institution including a mobile office open to the public;
- “reference rate” means an average interest rate that is indicative of overall market conditions or that is appropriate to a particular line of business, calculated and published by the Bank on a periodic basis;
- “savings and credit cooperative society” or “savings and credit scheme” means a society or scheme established under the applicable law for cooperatives or other societies, whose principal objectives are to encourage thrift among its members and to create a source of credit for its members;
- “significant interest” means a holding of five per cent or more of the voting shares of a bank or financial institution;
- “small holder farmers” means farmers who undertake small scale farming without definite capital and whose real assets are not traditionally acceptable as collateral;
- “subsidiary” means a company that is owned or controlled by another company;
- “supplementary capital” or “Tier 2 capital” means general provisions which are held against future, presently unidentified losses and are freely available to meet losses which subsequently materialize, subordinated debts, cumulative and redeemable preferred stocks, and

any other form of capital as may be determined and announced from time to time by the Bank;

“total capital” means the sum of core capital and supplementary capital;

“total risk weighted assets and off-balance sheet exposures” means total assets and off-balance sheet exposures adjusted in relation to the risks of the different categories of assets and off-balance sheet exposures as may be prescribed by the Bank; and

“unsecured” in relation to advances or credit facilities means advances or credit facilities granted without security, or in the case of any advance or credit facility granted against security, any part of such advance or credit facility which at any given time exceeds the market value of the assets comprising the security given or which exceeds the valuation acceptable to the bank or financial institution whenever the bank or financial institution deems that no ascertainable market value exists for the said assets; and for the purposes of this definition, the Bank may prescribe the terms and conditions under which a third party guarantee may be considered as security.

PART II

LICENSING, REGULATION AND SUPERVISION TO VEST IN THE BANK

Licensing,
regulation
and super-
vision to
vest in
the Bank

4.—(1) Notwithstanding any provision of any other law, the power relating to the licensing, regulation and supervision of all banks and financial institutions in the United Republic that are subject to this Act is hereby vested in the Bank.

(2) Without prejudice to the generality of the power conferred on the Bank, the Bank shall have power to -

- (a) grant licences;
- (b) carry out inspections over the operations of all banks or financial institutions in accordance with the provisions of this Act;
- (c) require any bank or financial institution within such time as it may stipulate, to furnish any information or to comply with any order, directive or determination issued or made by the Bank pursuant to all the powers of the Bank conferred on it under this Act; and
- (d) require any bank or financial institution to provide periodical

written reports at such times and in such manner as may be prescribed by the Bank.

5. The primary objectives of supervision and regulation of banks and financial institutions by the Bank are to maintain the stability, safety and soundness of the financial system and to reduce the risk of loss to depositors.

Underlying objectives of the Act

PART III

LICENSING, OWNERSHIP AND STRUCTURE OF BANKS AND FINANCIAL INSTITUTIONS

6.—(1) A person may not engage in the banking business or otherwise accept deposits from the general public unless that person has a licence issued by the Bank in accordance with the provisions of this Part.

Prohibition on operating without a licence

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and on conviction shall be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) Any body corporate which contravenes the provisions of this section and every director and every officer who is in default thereof shall be guilty of an offence and on conviction shall be liable to a fine not exceeding twenty million shillings.

(4) Every director and every officer who is in default shall be liable to imprisonment for a term not exceeding five years unless such director or officer proves that the contravention occurred without his knowledge or consent; save that it shall be no defense for a director or officer to prove that the contravention occurred without his knowledge if, having regard to the duties of his office, he ought to have known the contravention.

7.—(1) The Bank may, upon application made in pursuance of the provisions of this Act, grant a licence to undertake the banking business to an entity formally established in accordance with the Companies Act, Companies Decree, Cooperative Societies Act, 1986 or the Cooperative Societies Act, 2003.

Power of the Bank to grant licence Cap.212 and Act No. 20 of 2003

(2) The licence shall permit a bank or financial institution to conduct banking business in the United Republic, subject to such terms and conditions as the Bank may require.

(3) The licence may permit the conduct of business outside the United Republic, subject to such terms and conditions as the Bank may prescribe, to ensure effective supervision, compliance with this Act and the requirements of law in such jurisdiction other than the United Republic.

Applica-
tion for a
licence

8.—(1) Every application for a licence shall be made in writing and shall include—

- (a) applicant's proposed memorandum and articles of association or other charter or instrument of formation required by applicable law;
- (b) a statement of the address of the head office, location of the principal and other places where it proposes to do business and, in the case of a mobile agency, the area to be served;
- (c) the name and address of every subscriber, shareholder, board directors, Chief Executive Officer and any officer directly reporting to the Chief Executive Officer;
- (d) information that may be prescribed by the Bank for purposes of assessing solvency and trustworthiness of each shareholder with a significant interest; and
- (e) such financial data, business plans and other documents and information as the Bank may require in order to conduct the investigation during review of the application.

(2) The application and every document submitted with an application shall be signed by the directors of the applicant together or by any officer legally authorized to do so.

Investiga-
tion and
review of
application

9.—(1) The Bank shall conduct an investigation to satisfy itself as to—

- (a) the completeness and validity of the documents submitted;
- (b) the solvency and trustworthiness of subscribers and shareholders;
- (c) the character and experience of the subscribers, shareholders,

board directors, Chief Executive Officer and any officer directly reporting to the Chief Executive Officer;

- (d) the adequacy of its capital structure;
- (e) the convenience and needs of the community it intends to serve;
- (f) the prospects for profitable operation; and
- (g) the ability of the applicant to comply with the requirements of this Act and to conduct business in a sound manner.

(2) In reviewing the application, the Bank may, in addition, take into account—

- (a) the extent to which the intended lending policies, procedures and internal controls of the applicant are designed to promote sound financing of economic activities in underserved communities;
- (b) the extent to which the intended training and employment programmes of the applicant are aimed at promoting professionalism in the financial sector; and
- (c) such other matters as the Bank may deem necessary and appropriate for carrying out the objectives of this Act.

10.—(1) Within ninety days following the receipt of an application or, where further information has been required, after receipt of such information, the Bank shall either grant the licence or reject it.

Grant or
denial of
a licence

(2) The Bank shall only grant a licence when it is satisfied that the applicant has met the licensing criteria under this Act and any other requirement specified by the Bank.

(3) The Bank may, in any case where it grants a licence, impose such terms and conditions as it may deem appropriate, including temporary or permanent restrictions regarding the total amount of credit accommodations or the engagement in any number of activities or operations.

(4) Whenever an application is rejected, the Bank shall provide the applicant a written explanation of the grounds upon which the rejection is based.

(5) An applicant whose application has been rejected may reapply, if the deficiencies that formed the basis for rejection of the initial application or subsequent review have been corrected or otherwise addressed.

11.—(1) The licence, once issued, shall remain in force unless suspended or revoked in accordance with the provisions of this Act.

Duration,
suspension
and
revoca-
tion of a
licence

- (2) The Bank may suspend the licence of a bank or financial institution if—
- (a) the Bank determines that a bank or financial institution has failed to meet any of the minimum capital requirements; or
 - (b) the Bank is of the opinion that the affairs of the bank or financial institution are being conducted in a manner that is detrimental to the interests of its depositors.
- (3) The Bank may revoke the licence of a bank or financial institution if such bank or financial institution—
- (a) voluntarily requests revocation;
 - (b) fails to commence operations within twelve months from the date the licence was granted unless such period is extended in writing by the Bank;
 - (c) fails to comply with prudential requirements;
 - (d) provided false or misleading information when applying for a licence;
 - (e) fails to comply with the terms and conditions of the licence or any remedial measures required under this Act;
 - (f) is engaged in a pattern of unsafe or unsound practices that threaten its financial condition or is detrimental to the interests of the depositors;

- (g) has refused to permit an inspection or to provide information required by the Bank or is otherwise in breach of any of the provisions of this Act or any regulations made thereunder;
- (h) ceases to do business in the United Republic;
- (i) has been seized by the Bank in accordance with this Act;
- (j) is insolvent as determined by the Bank; or
- (k) fails to pay an assessment made under section 67(5).

(4) The Bank shall suspend or revoke the licence that has been granted to a branch or subsidiary of a foreign bank or financial institution, if the licence of such foreign bank or financial institution granted by the supervisory authority at the home country has been suspended or revoked.

(5) When the licence has been revoked, the Bank shall—

- (a) immediately arrange for publication of a notice of revocation in the *Gazette*;
- (b) immediately publish a notice of revocation in newspapers of general circulation in the areas in the United Republic in which the main office of the relevant bank or financial institution is located, which notice shall appear at the earliest possible time and in any event not later than three days after the date of revocation; or
- (c) take any other steps necessary to inform the public of such revocation.

Persons
not
eligible to
take part
in the
manage-
ment and
boards of
banks or
financial
institutions

12.—(1) Any person who is a director or officer concerned with the management of a bank or financial institution shall cease to hold office if he—

- (a) is an adjudged bankrupt or suspends payments or compounds with his creditors;
- (b) is convicted of a felony or any offence involving fraud or dishonesty; or
- (c) has been removed from any office held, whether as a director or officer, at any other bank or financial institution, by the

Bank.

(2) No person who has been a director or who has been directly or indirectly concerned in the management of a bank or financial institution the licence of which has been revoked shall, without the approval of the Bank, act or continue to act as a director or be concerned directly or indirectly in the management of any bank or financial institution.

(3) Any person who contravenes the provisions of subsections (1) and (2) commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding three years or to both.

13.—(1) Unless licensed as a bank or financial institution under this Act, no person shall use the word “bank” or any of its derivatives in any language or any other word indicating the transaction of banking business, in the name, description or title under which such person is doing business in United Republic or make or continue to make any representation to such effect in any letter, paper, notice, advertisement or in any other manner whatsoever for the purpose of doing business in United Republic.

Restriction
on use of
the word
‘bank’

(2) Nothing in subsection (1) shall prevent a person from using the word “bank” or any of its derivatives in any language, when it is for purpose of organizing a company with the aim of making an application to the Bank for a grant of a licence provided that the Bank is notified of such an intention.

(3) Except with the prior written consent of the Bank, no bank or financial institution shall use, or refer to itself by a name other than that under which it is established.

(4) No bank or financial institution shall be or remain licensed under a name which so closely resembles the name of an existing institution as would be likely, in the opinion of the Bank, to mislead the public.

14.—(1) Micro-finance companies and housing finance companies shall utilize the acronyms M.F.C. and H.F.C. after their commercial names before the term “Limited”.

Design-
ation of
micro-
finance
companies
and
housing
finance
companies

(2) Banks may make use of acronyms M.F.C. and H.F.C. provided that their by-laws provide these activities as primary and the bank is subject to the credit limits for financial institutions prescribed under this

Restrictions
on owner-
ship of
banks and
financial
institutions

Act.

15.—(1) A person shall not own or control, directly or indirectly, a beneficial interest of more than twenty percent of the voting shares of any bank or financial institution, except as provided in this section.

(2) Any transfer of ownership or control of a beneficial interest in shares of a bank or financial institution that results in ownership or control of five percent or more of voting shares shall be void unless the Bank has granted prior approval of the transfer.

(3) In determining whether to approve a transfer under this section, the acceptability of the transferee shall be determined in the same manner and on the same basis as the determination of acceptability of shareholders for an application for a licence.

(4) A bank, financial institution or a holding company of a bank or financial institution, may acquire, directly or indirectly, a beneficial interest in shares of another bank or financial institution, or may establish its own bank or financial institution, without regard to the limit imposed in subsection (1), subject to approval of the Bank.

(5) The Bank shall prescribe criteria for review of such ownership or control, taking into account—

- (a) the ability of the Bank to effectively supervise the entities, both separately and on a consolidated basis;
- (b) the financial condition and ownership structure of the investing bank or financial institution;
- (c) any risks to the bank or financial institution in which the interest is acquired that could arise from such ownership or control; and
- (d) proven good track record as may be ascertained by a regulatory board under which the Bank or financial institution operated for at least ten years.

(6) Where the investing bank or financial institution is a foreign bank, financial institution or holding company, the Bank shall also satisfy itself

that—

- (a) supervision of such bank, financial institution or holding company by the supervisory authorities in its home country is effective and adequate, including the fit and proper criteria applied;
- (b) the bank or financial institution is in good standing and the home country supervisory authority has approved the investment;
- (c) the bank or financial institution is supervised by the home country supervisory authority on a consolidated basis; and
- (d) there are no obstacles to the receipt by the Bank of information regarding such bank or financial institution or holding company.

(7) Notwithstanding the ownership restrictions stipulated under subsection (1), the Bank may grant written approval to permit a body corporate to own up to sixty six per cent of the share capital of a microfinance or housing finance company, if the Bank determines that the body corporate has—

- (a) sufficient financial resources; and
- (b) sufficient experience in housing finance or lending to individuals, small enterprises or micro-enterprises.

(8) For purposes of this section, where two or more persons, each of whom beneficially owns or controls directly or indirectly shares in a bank or financial institution are acting in concert as determined by the Bank with respect to such ownership or control, they shall be treated as a single person and the limitation in this section shall be applied to the aggregate number of shares of the bank or financial institution held by such persons.

PART IV CAPITAL, RESERVES AND ACCOUNTS

16. Every bank or financial institution shall maintain unimpaired capital of at least equal to the minimum requirements specified except as

Compliance with capital requirements

Capital
require-
ments

otherwise specifically provided in this Part.

17.—(1) Every bank shall—

- (a) commence operations with and maintain at all times a minimum of core capital of not less than five billion shillings or such higher amount as the Bank may prescribe by order published in the *Gazette*;
- (b) at all times maintain core capital of not less than ten per cent of its total risk-weighted assets and off balance sheet exposure; and
- (c) at all times maintain total capital of not less than twelve per cent of its total risk weighted assets and off balance sheet exposure.

(2) For the purpose of encouraging provision of banking services to underserved communities whether rural or urban, the Bank may establish categories of financial institutions and prescribe capital requirements that may differ from the requirements of subsection (1), so long as the Bank determines that such capital requirements are reasonable, taking into account the objectives stated in section 5.

(3) Where the Bank determines that a bank or financial institution has insufficient capital necessary to shield against the risks, both on and off the balance sheet, arising from the business of that bank or financial institution, it shall direct such bank or financial institution to increase its capital above the requirements of this section and the regulations thereunder, to such level as the Bank may determine.

Transi-
tional
Provisions

18.—(1) This section shall apply to any bank that was in existence on 11th April, 2003 which, on that date, had capital of less than the amounts prescribed under section 17.

(2) Any bank to which subsection (1) applies shall be given a period of three years until 30th April, 2008 to increase its capital to the amount needed to fully comply with subsection (1) of section 17.

(3) Where the bank is unable to comply with the requirements of section 17 at the end of the period specified in subsection (2), the Bank may prescribe additional period of not more than two years within which

the bank shall increase its capital to the amount required.

(4) Where the bank is unable to comply with the requirements of subsection (2) or at the end of any additional period granted under subsection (3), the Bank shall require such bank to apply for a licence to operate as a financial institution.

(5) The Bank shall establish the procedures to carry out the purposes of this provision, covering such matters as the procedure under which the bank shall be re-licensed to reflect the change in the status under this section, the procedures for transfer of deposit accounts subject to withdrawal by cheque to one or more banks; and the procedure for the required change of name and any other matters arising from the change in the status.

(6) Where a bank fails to qualify for re-licensing as a financial institution its licence shall be revoked.

(7) During the period specified in subsection (2) and any extension granted under subsection (3), the bank shall continue to be subject to all other requirements of this Act, and the Bank may take any action with respect to such bank as is authorized by this Act.

(8) Where, during the three-year period and any further extension granted the bank's capital falls below the capital requirements that were in effect on date immediately before 11th April, 2003, that bank shall be treated as a bank whose capital is not in compliance with section 17.

19.—(1) No bank or financial institution shall at any time declare, credit, or pay any dividend or make any other transfer from profits if such payments or transfers result in such bank or financial institution failure to meet the requirements of section 17.

Restriction
on
dividends

(2) Where any bank or financial institution contravenes the provisions of this section, that bank or financial institution and any officer of a bank or financial institution who is in default commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings.

Computation of capital and financial ratios

20. In making the calculations necessary to ascertain that a bank or financial institution is complying with the requirements of section 17, provisions shall be made to the satisfaction of the Bank for the following items—

- (a) provisions for bad and doubtful debts, including bad debts which have yet to be written off;
- (b) operating and accumulated losses;
- (c) preliminary expenses, representing expenses relating to organization, extension or the purchase of business goodwill and including underwriting commission; and
- (d) such other items as the Bank may prescribe.

Liquid assets ratio

21.—(1) Subject to subsection (2) of this section, every bank or financial institution shall maintain liquid assets at levels prescribed by the Banks from time to time.

(2) The Bank may prescribe the methods of computing the ratio for liquid assets and may, if in the opinion of the Bank it is necessary or desirable to do so, vary the ratio prescribed under subsection (1) or prescribe different ratios for different kinds of deposits or other liabilities.

(3) Any variation of the ratio and any prescription of different ratios shall apply uniformly to all bank or financial institutions and shall take effect on the expiration of thirty days' notice to the bank or financial institutions.

(4) The Bank may impose on any bank or financial institution which fails to maintain the minimum ratio prescribed under this section, a penalty charge of not less than two percentage points at an annual rate above the interest rate prevailing in the most recent ninety-one day Treasury Bill auction on the amount of the deficiency, and the penalty charge may be recovered by deduction from any balance of, or moneys owing to the bank or financial institution concerned, or by suit as a civil debt.

- (5) In this section—
- (a) the "liquid assets" of a bank or financial institution means its cash in hand, balances with the Bank, unencumbered short-term securities issued or guaranteed by the Government of the United Republic and such other assets as the Bank may specify; and
 - (b) the "liabilities" of a bank or financial institution means its liabilities in the United Republic other than the paid-up capital reserves, the credit balance in any retained earnings accounts, advances taken from the Bank or such other liabilities as the Bank may exclude.

22.—(1) In order to establish an adequate accounting and financial reporting system, the Bank shall issue an accounting manual for mandatory use by all banks and financial institutions, including a chart of accounts, accounting principles and procedures, as well as standards for financial reporting and publishing, in line with international accounting standards.

Accounts
and
independ-
ent
audits

(2) The Board of Directors of every bank and financial institution shall ensure that proper books of accounts and other records are kept in relation to the operations of the bank or financial institution and shall prepare in respect of each financial year financial statements in accordance with international accounting standards and any other reports that the Bank shall prescribe.

(3) The financial statements shall be ready for submission to the auditors within two months of the close of the financial year of each bank or financial institution.

(4) Every bank or financial institution shall appoint annually an independent auditor approved by the Bank who shall undertake the annual audit of the bank or financial institution in accordance with international auditing standards.

(5) The auditor appointed under this section shall have the right to submit directly to the Bank such reports as it considers necessary to bring to the attention of the Bank for purposes of improving the operations of banks or financial institutions in the United Republic.

(6) No duty of an auditor or former auditor of a bank or financial institution shall be considered breached by reason of a communication in good faith to an officer or employee of the Bank, whether or not in response to a request, of any information or opinion on a matter to which this section applies and which is relevant to any function of the Bank under this Act.

(7) The preceding subsection shall apply to any matter of which the auditor becomes aware in his capacity as auditor and which relates to the business or affairs of the bank or financial institution or any of its affiliates or any director, controller, manager or relative of such person in relation to which the information is given.

(8) As soon as the accounts of a bank or financial institution have been audited, and in any case not later than three months after the close of the financial year, the Board of Directors shall send a copy of the financial statements to the Bank together with a copy of any report made by the auditor, including any letter to the management or other communication prepared in accordance with internationally accepted accounting standards.

(9) The Bank may arrange trilateral meetings with a bank or financial institution and its independent auditor from time to time, to discuss matters relevant to the Bank's supervisory responsibilities which have arisen in the course of the statutory audit of the bank or financial institution, including relevant aspects of the bank or financial institution's business, its accounting and control system and its annual accounts.

(10) All entries in the books and accounts of bank or financial institutions in the United Republic shall be in English or Kiswahili or in both languages.

(11) Where any bank or financial institution contravenes or fails to comply with any of the provisions of this section, the bank or financial institution concerned and every director and every officer who is in default shall on conviction be liable to a default fine as provided for under section 66.

23.—(1) The Board of Directors of every bank or financial institution shall approve proper policies and procedures, and adequate overall internal control systems, for monitoring and controlling the risks for each line of business and market served by such bank or financial institution, including credit, financial, market, operations, legal and any other risk affecting or likely to affect such bank or financial institution.

Internal
controls
and
internal
audits

(2) The Board of Directors shall ensure that the management effectively implements the policies, procedures and internal controls.

(3) Every bank or financial institution shall have an audit committee chaired by a non-executive member of the Board of Directors; and every bank or financial institution shall also have an internal auditor appointed by the Board, who shall report to the audit committee and who shall be responsible for verifying, among other duties which may be prescribed by the Board or the Bank, the correct and effective implementation of the internal control system and the timely identification and management of credit, financial, market, operations, legal and any other risk affecting or likely to affect such bank or financial institution.

(4) The Bank shall prescribe general provisions in cases where a bank or financial institution contravenes or fails to comply with any of the requirements of this section irrespective of convictions of directors or officers for any breach or default fines that may be imposed under section 66.

PART V ACTIVITIES AND INVESTMENTS

24.—(1) A licensed bank or financial institution may engage in any or all of the following activities, directly or through a separately incorporated subsidiary as determined by the Bank, subject to any limitation in the licence issued to such bank or financial institution—

Permissible
activities

- (a) acceptance of deposits;
- (b) lending;
- (c) financial leasing;

-
- (d) money transmission services;
 - (e) issuing and administering means of payment including but not limited to credit cards, travellers' cheques and bankers' drafts;
 - (f) guarantees and commitments;
 - (g) trading for own account or for account of customers in -
 - (i) money market instruments such as cheques, bills and certificates of deposit;
 - (ii) foreign exchange;
 - (iii) financial futures and options;
 - (iv) exchange and interest-rate instruments;
 - (v) transferable securities;
 - (h) advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
 - (i) money broking;
 - (j) portfolio management and advice;
 - (k) safekeeping and administration of securities;
 - (l) credit reference services;
 - (m) safe custody services;
 - (n) development financing
 - (o) mortgage financing; and
 - (p) other activities determined by the Bank to be customary banking practices or incidental to the banking business.
- (2) Through as separately incorporated subsidiary, a bank or financial institution may–
- (a) participate in securities issues and the provision of services related to such issues;

- (b) underwrite insurance;
- (c) issue payment cards; and
- (d) engage in any other activity related to banking business as approved by the Bank.

(3) Any such subsidiaries shall be subject to supervision under this Act to the same extent as the bank or financial institution, and the Bank may require any information otherwise required with respect to such bank or financial institution and its subsidiary to be reported separately for each entity and on a consolidated basis.

(4) With approval of the Bank, a bank or financial institution may engage in trade or other commercial operations that are temporarily necessary in the conduct of its business or in the course of the satisfaction of debts due to it.

(5) Without prejudice to preceding provisions of this section, the Governor may, by order published in the *Gazette*, authorize and add to the list of activities which banks or financial institutions may engage in directly or through a separate subsidiary.

25.—(1) Subject to subsection (2), no bank or financial institution shall, directly or indirectly, grant to a single person any accommodation so that the total value of such accommodations to or on behalf of such person is at any time more than twenty five per cent of the core capital of the bank or financial institution, or three per cent of core capital for a financial institution that is a micro-finance company.

Large
exposures

(2) The Bank may establish additional limits for unsecured, partially-secured and secured accommodations, so long as the total accommodations to a borrower do not exceed the limit of subsection (1).

(3) The Bank shall also establish an aggregate limit for large exposures and make any additional regulations that the Bank considers necessary or appropriate for purposes of this section.

(4) The Bank may grant exemption to the prescribed limits on accommodation to single person, if such accommodation is granted to, or guaranteed by the Government of United Republic or is secured against cash, near cash items or is guaranteed by a first class international bank or against securities issued by the Government or the Bank.

(5) In granting exemption under subsection (4), the Bank may impose such conditions and requirements as it deems necessary to carry out the purposes of this section.

(6) In applying the limits under this section, the amount of any equity investment in a person that has also obtained an accommodation shall be treated as an accommodation.

(7) Where the Bank determines that the interests of a group of two or more persons are so interrelated that they should be considered as a unit, then for the purposes of the limits under this section, the indebtedness of that group shall be combined and be deemed to be in respect of a single person.

(8) The Bank may, by regulation, define circumstances that shall require treatment of persons with interrelated interests as a unit, which may include but is not limited to persons who are directly or indirectly related through family relationships, common control or where substantial financial interdependence exists.

(9) Notwithstanding any such regulations, the Bank may, in any individual case, make a determination based on the facts and circumstances, that the interests of a group of two or more persons are so interrelated that they should be considered a unit.

(10) Where in any case, the combined indebtedness of the interrelated interests exceeds any limitations under this section, the bank or financial institution concerned shall be permitted to dispose of the excess of such indebtedness within such reasonable period as the Bank determines.

(11) For the purpose of this section, "accommodation" means a credit facility given by a bank or financial institution to or on behalf of any person which credit facility may include loans, advances, overdrafts, lease financing, acceptances, guarantees, letters of credit, performance bonds, foreign exchange contracts and any other form of direct or indirect financial obligation to a bank or financial institution as defined by the Bank, including any off-balance sheet credit facility.

26.—(1) No bank or financial institution shall grant any accommodation against the security of its own shares.

Connected
lending

(2) Without prejudice to subsection (1)—

(a) no bank or financial institution shall grant or permit to be granted outstanding accommodations to connected parties in excess of such limits as may be prescribed by the Bank; or

(b) any accommodations to connected parties shall be -

- (i) unanimously approved by the board of directors of the bank or financial institution;
- (ii) on the terms no more favourable than would be available to a borrower who is not a connected party;
- (iii) subject to all of the policies and procedures of the bank or financial institution for extensions of credit, including those relating to reviews of asset quality and adequacy of reserves for bad and doubtful debts.

(3) The Bank shall, by regulation, prescribe the relationships between the bank or financial institution that define the term "connected party," which term shall include directors, officers, significant shareholders, companies in which any of foregoing persons have a significant interest, family members of the foregoing persons, and affiliates of the bank or financial institution and where a connected party has inter-related interests with another person or persons shall be treated as a single connected party for purposes of this section.

(4) Notwithstanding any such regulations, the Bank may in any individual case, make a determination based on all the facts and circumstances, that a person is a connected party with respect to a bank or financial institution and that any accommodations to that person shall be subject to the limits of this section and the regulations thereunder.

(5) No bank or financial institution shall grant or permit to be outstanding to any officer or employee not covered by subsection (3), including any spouse or child of any officer or employee, advances which in aggregate amount for any one officer or employee, exceed the annual remuneration of such officer or employee.

Establishment, relocation and closure of banking units

27.—(1) Any bank or financial institution may upon application and with the approval of the Bank—

- (a) establish a banking unit whether in the United Republic or abroad; or
- (b) relocate or close down the business of an existing banking unit.

(2) In granting approval of an application to establish, relocate or close down the business of a banking unit under subsection (1), the Bank shall ensure that the bank or financial institution concerned has complied with all regulatory requirements.

(3) For the purpose of this section a "banking unit" means a branch, agency, representative office or any other office of the bank or financial institution.

Limitation on investment in companies engaged in activities not authorized

28.—(1) The Bank may authorize a bank or financial institution to acquire an equity interest in an entity that is engaged in activities not permitted for the bank or financial institution under this Act, subject to such limits as the Bank may prescribe.

(2) The limitation may include limiting an investment in an entity to a specified percentage of that entity's share capital, limiting an investment in an entity to a percentage of the core capital of the bank or financial institution making the investment, and limiting the aggregate amount of such investments that a bank or financial institution may hold.

(3) In determining whether to permit investments under this section, the Bank shall ensure that—

- (a) the investment does not expose the bank or financial institution to undue risks;
- (b) the investment shall not hinder effective supervision;
- (c) the bank or financial institution has adequate financial and organisational resources to monitor and control any risks arising from the investment; and

- (d) the bank or financial institution has internal controls, policies and procedures adequate to ensure that the entity is legally and operationally separate from such bank or financial institution.

29.—(1) No bank or financial institution shall purchase, acquire or lease fixed assets, except where it is necessary for the purpose of conducting its business as a bank or financial institution, including reasonable provision for anticipated future expansion and housing of its officers or employees.

Limitation on investment in fixed assets

(2) Where a bank or financial institution acquires or takes possession of property in which it holds a security interest as a result of the default of the person granting the security interest, the bank shall dispose of the property as soon as is practicable.

(3) The Bank shall prescribe limits under which a bank or financial institution shall invest in fixed assets.

30.—(1) No bank or financial institution shall, without prior written authorization of the Bank -

Bank to authorize voluntary mergers

- (a) effect any voluntary merger, consolidation or other reorganization of its business or affairs with another bank or financial institution;
- (b) transfer to any other institution the whole or any of its assets or liabilities in the United Republic;
- (c) effect a reduction of its paidup capital;
- (d) alter its name;
- (e) amend the instrument or charter under which it is organized or established.

(2) Notwithstanding the provisions of any other law, the Bank may in respect of any bank or financial institution advise the merger of that bank or financial institution with any other bank or financial institution, if the financial condition of the concerned bank or financial institution so requires.

(3) Any change in the by-laws or in any other significant governance matter shall require the approval of the Bank and be subject to the directive of the Bank for mandatory dissolution in case of repeated or continued non-compliance with or transgression of regulations made under this Act.

PART VI

SUPERVISION, COORDINATION AND CONTROL

Power to
conduct
examina-
tions of
banks and
financial
institutions

31.—(1) Notwithstanding any provision to the contrary contained in any written law, the Bank shall have power to access to any oral and documented information, including information in computers, books, minutes, accounts, cash, securities, documents, vouchers as well as any other things in the possession or custody or under the control of a bank or financial institution or its affiliate, which relate to the business of such bank or financial institution.

(2) The Bank may require a bank or a financial institution to produce for examination by a person or persons in the service of or authorized by the Bank any oral or documented information and any other things stipulated in subsection (1).

(3) No punishment, in any form, shall affect any person providing such information and material pursuant to subsection (2).

(4) Following conclusion of examination conducted pursuant to this section, the Bank shall make and forward a copy of the Bank's report on the examination to the Chairman of the Board of Directors of the bank or financial institution concerned and shall require the Chairman to submit the report at a meeting of the Board of Directors of the bank or financial institution concerned.

(5) The Bank shall require such bank or financial institution to provide satisfactory explanations regarding actions to be taken on the issues raised in the report.

(6) Any report produced by the Bank or special investigation pursuant to subsection (4) is confidential and therefore any director, officer, or employee of a bank or financial institution and any person who by reason

of his capacity or office has by any means access to a report produced by the Bank shall not while holding that office, being employed in or having a professional relationship with the bank or financial institution, as the case may be, or after the termination thereof, communicate the report or any part thereof to any person other than a director, an officer or an employee of a bank or financial institution except with prior written permission of the Bank.

(7) Every person who contravenes or fails to comply with the provisions of subsection (6) commits an offence and shall be liable on conviction to a default fine.

(8) Where in the opinion of the Bank an examination conducted pursuant to this section shows that the business of any bank or financial institution is being conducted in a manner detrimental to the interests of the bank or financial institution or the public interest, the Bank may—

- (a) require the bank or financial institution concerned forthwith to take such remedial measures as the Bank may direct, which in the opinion of the Bank are necessary or desirable in the circumstances; or
- (b) appoint a person who in the opinion of the Bank is competent to advise the bank or financial institution on the necessary remedial measures, and every advice given by such person shall have the same force and effect as a requirement of the Bank made under paragraph (a) of this subsection, and for the purposes of this section the advice shall be deemed to be a requirement of the Bank.

(9) Every bank or financial institution required or deemed to be required to take remedial measures under subsection (8) shall comply with every requirement affecting its business.

(10) Where any bank or financial institution fails to comply with any requirement of this section, the Bank may impose a penalty charge not exceeding ten million shillings for every day during which non-compliance continues and such charge may be recovered by deduction from any balance of, or moneys owing to, the bank or financial institution concerned or by suit as a civil debt.

(11) The "professional relationship" as used in subsection (6) includes a relationship between a bank or financial institution and its lawyers or auditors, and such other relationship with a bank or financial institution as the Bank may determine.

Submission
and
public-
cation of
information

32.—(1) Every bank or financial institution and any affiliate shall furnish to the Bank, at such time and in such manner as may be prescribed by the Bank, such information as the Bank may require for the proper discharge of its functions and responsibilities and the Bank may require such information to be provided on a consolidated basis.

(2) The Bank may publish in whole or in part, at such times as may be appropriate, information furnished pursuant to subsection (1) of this section, but no information shall be published which would disclose the financial affairs of any customer of a bank or financial institution unless a written consent of the customer has first been obtained by the Bank.

(3) The Bank may require every bank or financial institution to publish its financial statements and any other information to be prescribed by the Bank in newspapers of general circulation in the United Republic in such form and at such intervals as the Bank may prescribe.

(4) The Bank may impose on any bank or financial institution which fails to furnish information required under this section, a penalty charge of not exceeding ten million shillings per day for every day in which the failure continues and the penalty charge may be recovered by deduction from any balance of, or moneys owing to, the bank or financial institution concerned, or by suit as a civil debt.

(5) Where any bank or financial institution contravenes or fails to comply with any requirement of this section, the bank or financial institution concerned and every officer who is in default shall be liable on conviction to a default fine stipulated under section 66 of this Act.

Power of
the Bank
over
banks and
financial
institutions

33.—(1) The Bank may give to the Board of Directors of any bank or financial institution, directions of a general or specific character as to the exercise and performance of their functions and in relation to matters appearing to the Bank to affect operations or national interest, and the Board shall give effect to any such directions.

(2) Where, in the opinion of the Bank, a bank or financial institution is conducting its business in an unlawful, unsound manner or is otherwise in violation of any law or regulation, the Bank may, in addition to any other course of action open to it—

- (a) require such bank or financial institution to take such measures as it may consider necessary to rectify the situation;
- (b) appoint a person who, in the opinion of the Bank, has had the proper training and experience to advise the bank or financial institution on measures to be taken to rectify its situation, and shall fix his remuneration which shall be paid by the bank or financial institution;
- (c) prohibit the declaration or payment of dividends until such situation is corrected;
- (d) withhold approvals on establishment of new branches or other expansion of operations;
- (e) initiate a legally binding cease and desist order, of either temporary or indefinite duration, specifying that the bank or financial institution and its management either stop an unacceptable practice or take affirmative action to cure an undesirable condition;
- (f) initiate a legally binding removal or suspension order requiring any director or officer or other person or persons in the position of management of a bank or financial institution to cease participating in the affairs of the bank or financial institution on either a temporary or permanent basis; and
- (g) impose fines, consistent with the provision of this Act, on individual directors or officers for violations of this Act, regulations or previously issued orders from the Bank.

34.—(1) For purposes of ensuring timely action by the Bank to deal with a weakening bank or financial institution, the Bank may prescribe a prompt corrective action framework that specifies the actions to be taken

P r o m p t
c o r r e c t i v e
a c t i o n

and the actions that may be taken by the Bank as the capital level of the bank or financial institution declines.

(2) The actions taken pursuant to subsection (1) may include a requirement to develop and implement a capital restoration plan, restrictions on activities or investments, removal of directors and officers, seizure and any other action available to the Bank under this Act.

Power of
the Bank
with
respect to
affiliates
and cross
border
supervi-
sion

35.—(1) The Bank may exercise its authority with respect to any bank or financial institution or affiliate of a bank or financial institution whenever the Bank determines that it is necessary to implement supervision on a consolidated basis or to otherwise effectively supervise a bank or financial institution and the risks to which it is subjected to.

(2) To supervise organizations that operate both within the United Republic and in any other country, the Bank may enter into arrangements for sharing supervisory information on a reciprocal basis with the appropriate supervisory authorities within or outside the United Republic.

PART VII

THE DEPOSIT INSURANCE FUND

Deposit
Insurance
Fund

36.—(1) There shall continue to exist the Deposit Insurance Fund to be managed and controlled by the Deposit Insurance Board in its acronym DIB, into which shall be paid all contributions and other payments required by this Part to be paid into the Fund and out of which shall be made the payments required to be made out of the Fund.

(2) The Minister may, in consultation with the Bank and by notice in the *Gazette*, fix the size of the Fund sufficient to protect the interests of depositors to be made up by the contributions under section 38 and may authorize the DIB to borrow from the Bank or any other person such amount as it may require for temporary purposes of making up deficiency in the Fund pending collection of contributions.

(3) The Fund shall be made up by—

- (a) moneys contributed to the Fund by banks or financial institutions pursuant to the provisions of section 38;

- (b) income credited to the Fund under subsection (6);
- (c) money borrowed for purposes of the Fund under subsection (2); and
- (d) moneys received as subventions, grants, donation or from any other source as may be approved by the Board.

(4) The moneys constituting the Fund shall be placed in an account with the Bank to be invested in obligations of, or obligations guaranteed by, the United Republic and other obligations as determined by the DIB to be suitable investments taking into account the purposes of the Fund.

(5) Investments in obligations other than obligations of, or obligations guaranteed by, the United Republic may be made only pursuant to comprehensive investment policies and procedures adopted by the DIB to ensure that the investments are well managed and that the moneys in the Fund will be available to cover losses as needed.

(6) Any income from the investments shall be credited to the Fund.

(7) There shall be chargeable to the Fund the administrative expenses of the DIB, repayment of money borrowed including interest and other charges thereon by the Fund, and payments made in respect of protected deposits.

(8) The DIB shall be exempted from payment of any taxes, levies or duties in respect of its profits, transactions and operations.

37.—(1) There shall continue to exist the Deposit Insurance Board responsible for policy formulation in connection with the Fund and for the management and control of the Fund.

Deposit
Insurance
Board

(2) The DIB shall have perpetual succession and a common seal and shall have the power to acquire, own, possess and dispose of property, to contract, sue and to be sued in its own name.

- (3) The Board of DIB shall consist of –
- (a) the Governor of the Bank who shall be the Chairman;

- (b) the Permanent Secretary to the Treasury;
 - (c) the Principal Secretary to the Ministry responsible for finance of the Revolutionary Government of Zanzibar; and
 - (d) three other members appointed by the Minister at least one of whom shall hail from either side of the United Republic.
- (4) Each member appointed by the Minister shall be chosen from among persons of good standing and experience in business, professional or academic matters and shall be of suitable character and experience to carry out responsibilities of the DIB.
- (5) No person shall be appointed to the Board or continue to serve on the Board, if such person—
- (a) is a director, officer or employee of a bank or financial institution;
 - (b) is a member of National Assembly, the House of Representatives or a local government authority;
 - (c) is an office bearer of any of the political parties registered in the United Republic;
 - (d) owns or controls a significant interest in shares of a bank or financial institution; or
 - (e) is a person who is disqualified under section 12.
- (6) Each member of the Board shall disclose in writing to the DIB all accounts, loans or other material contracts or agreements between such member and an insured bank or financial institution.
- (7) A member appointed by the Minister shall hold office, unless he sooner dies, resigns, vacates or is removed from office for good cause, for a term of three years and shall be eligible for re-appointment for one additional term.
- (8) The Board shall meet as often as the business of DIB may require but not less than once in each quarter of a year.

(9) Notwithstanding the preceding provisions of this section, the DIB may provide for regular meetings for which no notice shall be necessary, and for special meetings to be convened at the written request of the Governor or any two other members, for which special meetings notice shall be required.

(10) A quorum at any meeting shall consist of three members including the Chairman.

(11) The Bank shall make available to DIB such facilities and the services of such officers as are necessary for the proper and efficient exercise of the functions of DIB.

(12) Except as otherwise provided by the provisions of this Part, the Board shall determine its own procedures.

38.—(1) Every bank or financial institution which is licensed to carry on banking business in the United Republic shall be a contributor to the Fund and shall pay into the Fund such annual amount and at such times, as DIB may determine.

Contributions to the Fund

(2) Where DIB is satisfied that a savings, credit society or scheme to which the Bank has extended the application of the provisions of this Act accept deposits of money from the public repayable on demand or after notice and employs such 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, such savings, credit society or scheme shall be a contributor to the Fund and the provisions of this Part shall apply *mutatis mutandis* to that savings or credit society or scheme.

(3) Nothing in this subsection shall be construed as rendering the savings or credit society or scheme to become a bank or financial institution for the purposes of this Act.

(4) DIB shall serve on a bank or financial institution a notice specifying the amount and the period which shall not be later than twenty one days after the date of service of the notice, within which the amount shall be paid into the Fund by the bank or financial institution.

(5) The amount of a contribution to the Fund under this section shall

not be less than one percent of the average of the bank, financial institution or as the case may be, savings, credit society or scheme total deposit liabilities during the period of twelve months prior to the date of the notice served under subsection (4) but the Minister may, after consultation with the DIB, and by order published in the *Gazette*, amend the minimum and maximum amounts of contributions prescribed by this subsection.

(6) A bank or financial institution which for any reason fails to pay contribution to the Fund within the period specified in a notice served pursuant to the provisions of subsection (4), shall be liable to pay to the Fund a penalty interest charge not exceeding one-half per cent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

Protection
of
deposits
and
payments
out of the
Fund

39.—(1) The amount being the aggregate credit balance of any accounts maintained by a customer at a bank or financial institution less any liability of the customer to the bank or financial institution shall, by order published in the *Gazette*, be a protected deposit to the extent determined by the Minister from time to time.

(2) A customer of a bank or financial institution may lodge a claim with DIB, in such form as DIB may approve, for payment to him out of the Fund of any protected deposit as determined pursuant to subsection (1), where—

- (a) the bank or financial institution has commenced a voluntary liquidation;
- (b) the Bank has initiated liquidation of a bank or financial institution; or
- (c) the Bank imposes a moratorium.

(3) The DIB may, before paying any claim lodged pursuant to subsection (2), require the claimant to furnish it with such documentary proof as may be proper to show that he is entitled to payment out of the Fund; and the DIB may decline to make any payment under this section to a person who, in the opinion of the DIB, had any responsibility for, or may have profited directly or indirectly from the circumstances leading up to the bank or financial institution becoming insolvent.

(4) The DIB may require a bank or financial institution to submit information in such form and frequency as may be required from time to time.

(5) Notwithstanding subsections (3) and (4), the DIB may request the Bank to carry out inspections under the authority of section 31 to ascertain the type, number and values of the protected deposits which, but for the insolvency would be payable by an insolvent bank or financial institution and information obtained following inspection shall, subject to section 31, be made available by the Bank to the DIB.

(6) Upon payment of protected deposit the Fund shall be entitled to receive from the bank or financial institution or liquidator, as the case may be, an amount equal to the insolvency payment paid by the Fund on account of its subrogation to the claims of any customer or depositor.

(7) For purposes of this Part, "deposit" does not include a sum paid by—

- (a) a licensed bank or financial institution or any other person in the course of carrying on a money-lending business;
- (b) one company to another at a time when the company are associated with each other or affiliated;
- (c) a person who, at the time when it is paid, is in a close family relation with the person receiving it; or
- (d) a person who, at the time it is paid, is a director, manager or a shareholder of the person receiving it.

(8) For the purposes of this section "customer" includes persons entitled to a deposit as trustees or persons holding any deposits jointly but does not include a bank or financial institution, a Government, government agency or instrumentality, an investment company or securities firm or any person who is a connected person referred to under section 26.

40.—(1) The DIB shall maintain a current list of all bank or financial institutions which contribute to the Fund and whose deposits are protected to the extent provided for under section 39.

Identifica-
tion of
institutions
whose
deposits
are
insured

(2) The DIB shall undertake to make the list available to the public and to provide such other information as is necessary or appropriate so that depositors can determine the extent of coverage under this Part for any deposit accounts maintained at a bank or financial institution.

(3) No bank or financial institution may indicate that its deposits are insured or use any reference to the Fund in its signage or business literature or otherwise, except as specifically permitted by the DIB.

Role of
Deposit
Insurance
Board as
Liquidator

41. Notwithstanding any other written law –

(a) where a bank or financial institution becomes insolvent, as determined by the Bank, the Bank may appoint the DIB to be a liquidator and the appointment shall have the same effect as the appointment of any other liquidator by the court and such liquidation shall proceed in accordance with the provisions of liquidation regulations made under this Act;

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(b) no other liquidator of a bank or financial institution shall be appointed under the provisions of the Companies Act and Companies Decree if the DIB has already been appointed as a liquidator, and no liquidator of a bank or financial institution shall be appointed in any event without the approval of the High Court;

(c) the High Court shall require the Bank to certify that the Bank does not intend to exercise its powers or may fail to exercise its powers within such period not exceeding three months as may be prescribed by the High Court; and

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(d) where a liquidator of a bank or financial institution has been appointed pursuant to the provisions of the Companies Act and Companies Decree the Bank may apply to the High Court for an order that the liquidator be removed and the DIB be appointed as liquidator in the first mentioned liquidator's place.

Annual
report of
Deposit
Insurance
Board
activities

42.—(1) The DIB shall, within three months after the close of each financial year, submit an annual report of its operations to the Minister.

(2) The financial year of the DIB shall be the same as the Bank's financial year.

PART VIII

SPECIAL DUTIES OF BANKS AND FINANCIAL INSTITUTIONS

43.—(1) It shall be unlawful for a director, officer or employee of a bank or financial institution who knows or in the proper performance of his duties, ought to know that the bank or financial institution is insolvent to receive or authorize the acceptance of a deposit while such bank or financial institution is insolvent.

Prohibition on taking deposits while insolvent

(2) The bank or financial institution which fails to comply with this section and every officer of such bank or financial institution who is in default shall be liable to a default fine.

44.—(1) Every bank or financial institution shall at all times exhibit the licence in a conspicuous position in the public part of its principal place of business and shall similarly exhibit copies of such licence in each of its banking units.

Exhibition of licenses

(2) The bank or financial institution which fails to comply with this section and every officer of such bank or financial institution who is in default shall be liable to a default fine.

45.—(1) Every bank or financial institution shall at all times exhibit a copy of its last audited financial statements including notes to the accounts, in a conspicuous position in the public part of its principal place of business and shall similarly exhibit copies of such financial statements in each of its banking units.

Exhibition of financial statements

(2) Every bank or financial institution shall at all times make available to the public a full set of the last audit report at its principal place of business and in all of its banking units.

(3) The bank or financial institution which fails to comply with this section, the bank or financial institution and every officer of such bank or financial institution who is in default shall be liable to a default fine.

46.—(1) Every bank or financial institution that holds any of the abandoned property enumerated in section 47 shall, at the end of each calendar year surrender such property to the Bank.

Bank to deal with abandoned property

(2) Upon surrender of abandoned property, the bank or financial institution shall be relieved of all liability to the value of the property for any claim in respect of such property.

(3) The Bank shall dispose of all abandoned property, surrendered to it in accordance with the provisions of the relevant law applicable in the United Republic.

(4) Any bank or financial institution which fails to deliver property presumed to be abandoned into the custody of the Bank commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings.

Abandoned
property

47.—(1) The following items held or owing by a bank or financial institution shall, unless dealt with as specified in subsection (2) be presumed to have been abandoned—

- (a) any general deposit including demand, savings or matured time deposit made in the United Republic with a bank or financial institution, together with any accrued interest or dividend but excluding any lawful charges;
- (b) any funds paid in the United Republic toward the purchase of shares or other interest in a bank or financial institution, together with any accrued interest or dividend excluding any lawful charges;
- (c) any sum payable on a cheque certified in the United Republic or written instruments issued in the United Republic to which a bank or financial institution is directly liable; and
- (d) any contents of a safe deposit box upon which the lease or rental period has expired and concerning which any bank or financial institution has sent a notice, by registered letter to the last known address of the lessee and to which notice the lessee has failed to respond within one year.

(2) All matters referred to under subsection (1) shall not be presumed to have been abandoned if, within fifteen years of the date of deposit, payment of funds or issuance of instruments, as the case may be, the owner has—

- (a) increased or decreased the amount of the deposit or funds or presented the passbook or other record for the crediting of interest or dividends in respect of the matters set forth in paragraphs (a) and (b);
- (b) corresponded in writing with the bank or financial institution concerning the matters; or
- (c) otherwise indicated an interest in the items as evidenced by a memorandum written by the bank or financial institution concerning the matters.

48.—(1) Every bank or financial institution shall observe, except as otherwise required by law, the practices and usages customary among bankers, and in particular, shall not divulge any information relating to its customers or their affairs except in circumstances in which, in accordance with the law or practices and usages customary among bankers, it is necessary or appropriate for the bank or financial institution to divulge such information.

Fidelity
and
secrecy

(2) Every director and every member of any committee, auditor, advisor, manager, officer, and employee of a bank or financial institution shall, before assuming his duties, make a written declaration of fidelity and secrecy, which shall be witnessed by the Chief Executive Officer or the Secretary of the bank or financial institution concerned.

(3) Except as otherwise required by law, nothing in this Act shall—

- (a) authorize an enquiry to be made into the affairs of any individual customer of a bank or financial institution;
- (b) prevent the Bank or financial institution from releasing information to credit reference bureau, in accordance with regulation issued by the Bank; or
- (c) prevent a licensed credit reference bureau from providing to any person upon a legitimate business request, a credit report in which case a copy may be given to the customer concerned in accordance with regulation issued by the Bank.

(4) The Bank shall not, unless lawfully required to do so by law, reveal to any person—

- (a) any information as to the affairs of any individual customer of a bank or financial institution obtained in the exercise of its regulatory and supervisory functions whether under this or any other law;
- (b) a record contained in or related to a report of examination or other confidential supervisory information prepared by, on behalf of, or for the use of the Bank or any other agency responsible for regulating or supervising banks or financial institutions; or
- (c) a record that contains trade secrets, commercial or financial information, furnished in confidence, that relates to the business, personal or financial affairs of any person, the release of which could cause competitive harm to such person.

(5) Notwithstanding subsection (4), the Bank may disclose any information to another agency responsible for regulating or supervising banks or financial institutions consequent upon information sharing agreement made pursuant to section 35 whether in the United Republic or abroad, so long as that information is needed and is to be used for supervisory purposes and that its confidentiality will be maintained.

(6) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding three years or to both.

Fair lending and collection practices

49.—(1) A borrower of a bank or financial institution shall be permitted to make partial or total prepayment on a loan or advance.

(2) Any penalty for prepayment shall be incorporated in the contract.

(3) Any term stipulated in a contract purporting to grant to any bank or financial institution authority to introduce unilateral modifications to interest rates or other loan conditions shall be null and void.

(4) A loan contract may establish an indexed interest rate designed to vary in line with a reference rate as published by the Bank.

PART IX
LIQUIDATION, SEIZURE AND REORGANIZATION

50.—(1) Any bank or financial institution may, with the approval of the Bank, voluntarily liquidate its operations in accordance with the provisions of its constitution and the provisions of this Part.

Voluntary
liquidation

(2) The Bank shall grant approval of a voluntary liquidation on such terms and conditions as it may determine where it appears that the bank or financial institution is solvent and has sufficient liquid assets to repay its depositors and creditors in full and without delay.

51.—(1) Where a bank or financial institution gets approval of the Bank in accordance with section 50, the bank or financial institution shall—

Duties of
a bank or
financial
institution
on
voluntary
liquidation

- (a) immediately cease all activities, except those which are incidental to the orderly realization, conservation and preservation of its assets and the settlement of its obligations;
- (b) immediately surrender licence to the Bank for revocation;
- (c) repay in full its depositors and creditors; and
- (d) wind up operations.

(2) When a bank or financial institution is in the process of voluntary liquidation, it shall be subject to supervision by the Bank in such manner as the Bank shall prescribe.

(3) In the event of voluntary liquidation—

- (a) liability of the shareholders for uncalled or unpaid subscriptions to the capital stock of the bank or financial institution concerned shall continue until all claims of creditors, including all contingent claims, shall have been discharged;
- (b) all creditors holding direct claims shall first be paid out of the assets of the bank or financial institutions concerned and then out of payments to the bank or financial institution concerned on uncalled or unpaid subscriptions;

- (c) before making any payments to depositors and other creditors holding direct claims, the Board of Directors of the bank or institution concerned shall, with the approval of the Bank, make such arrangements as are necessary, in the judgment of the Board, to ensure a *pro rata* distribution among holders of claims; and
- (d) contingent claims shall be treated as claims to the same extent as provided for under the Companies Act and companies Decree

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Notice of
voluntary
liquidation

52.—(1) Within fourteen days after receiving approval of the Bank for voluntary liquidation, a bank or financial institution shall provide notice of intention for voluntary liquidation to—

- (a) every depositor and other creditor of the bank or financial institution; and
- (b) any person otherwise entitled to any funds or property held by the bank or financial institution as a trustee, fiduciary, lessor of a safe-keeping facility or bailee.

(2) A notice for the purpose of subsection (1) shall set forth such information as the Bank may require and shall be provided within the time frame established by the Bank.

(3) The bank or financial institution shall provide the required notice by mailing a copy of the notice to the most recent address shown in its records for each customer or creditor of the bank or financial institution as described in subsection (1).

(4) A copy of the bank or financial institution's notice shall be kept displayed in a conspicuous place in the public part of each banking unit of the bank or financial institution, and the bank or financial institution shall publish it in the *Gazette* and in a newspaper of general circulation within the United Republic.

-Rights of
depositors
and
creditors

53.—(1) Approval of the Bank for voluntary winding up or dissolution of a bank or financial institution shall not prejudice the rights of a depositor or other creditor to payment in full of a claim nor the right of the owner of funds or other property held by the bank or financial institution to the return thereof.

(2) All lawful claims shall be paid promptly and all funds and other property held by the bank or financial institution shall be returned to their rightful owners within such minimum period as the Bank may in writing direct.

54.—(1) Where, in the opinion of the Bank, a bank or financial institution has discharged all the obligations referred to under section 51, the remainder of its property shall be distributed to its rightful owner or owners.

Distribu-
tion of
assets on
voluntary
liquida-
tion

(2) Distribution made pursuant to subsection (1) shall not be made before—

- (a) all claims of depositors and other creditors have been paid in full or, in the case of a disputed claim, the bank or financial institution has turned over to the Bank funds sufficient in the opinion of the Bank, to meet any liability that may be judicially determined; and
- (b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the Bank to be dealt with as unclaimed funds in accordance with this Act.

55.—(1) Where the Bank determines that the assets of a bank or financial institution which is under voluntary liquidation may not be sufficient for the full discharge of its obligations, the Bank shall take possession of the bank or financial institution concerned.

Seizure
during
voluntary
liquidation

(2) Where the Bank determines that completion of liquidation of the operations of a bank or financial institution is unduly delayed, may take possession of the bank or financial institution concerned.

(3) Where the Bank takes possession of a bank or financial institution, it shall take necessary measures leading to the compulsory liquidation of the bank or financial institution concerned in conformity with the provisions of this Act.

56.—(1) The Bank may take possession of any bank or financial institution if—

Seizure in
other
circums-
tances

- (a) the bank or financial institution refuses to comply with an order or directive of the Bank;

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and 21 of
2002

- (b) the bank or financial institution refuses to submit to or otherwise obstruct any inspection by the Bank;
- (c) the licence of the bank or financial institution has been revoked;
- (d) the bank or financial institution ceases to be an insured institution by the DIB;
- (e) the bank or financial institution has been adjudicated guilty of an offence under the Proceeds of Crime Act, or Prevention of Terrorism Act, 2002;
- (f) the Bank has not approved voluntary liquidation; or
- (g) in the opinion of the Bank—
 - (i) the capital of the bank or financial institution has fallen below the minimums required;
 - (ii) the bank or financial institution is insolvent; or
 - (iii) the bank or financial institution is conducting its business in violation of any law or regulation, or is engaging in any unsafe or unsound practice that is likely to cause insolvency or substantial dissipation of assets or serious prejudice to the interests of depositors or the Deposit Insurance Fund.

(2) The Bank shall take possession of any bank or financial institution that is undercapitalized, if, in the opinion of the Bank, the bank or financial institution—

- (a) has no reasonable prospect of becoming adequately capitalized;
- (b) has failed to become adequately capitalized when required to do so by the Bank;
- (c) has failed to submit a capital restoration plan acceptable to the Bank when required pursuant to section 34; or
- (d) has failed to materially implement a capital restoration plan accepted by the Bank.

(3) The Bank shall prescribe capital levels at which a bank or financial institution shall be adequately capitalized or undercapitalized for purposes of this section.

57.—(1) Where the Bank takes possession of any bank or financial institution in accordance with the provisions of this Act—

Consequences of seizure

- (a) any term, whether statutory, contractual or otherwise, on the expiration of which a claim or right of the relevant bank or financial institution would expire or be extinguished, shall be extended by six months from the date of seizure;
- (b) no attachment or lien, except a lien created by the Bank in carrying out authority of the Bank under this Act or the Bank of Tanzania Act, 2006 shall attach to any property or assets of the bank or financial institution concerned so long as possession by the Bank continues;
- (c) no action or proceeding may be commenced by creditors of the bank or financial institution under the provisions of the Companies Act, relating to impending or actual insolvency or under any other law regarding insolvency or bankruptcy;
- (d) any transfer of asset of the relevant bank or financial institution made after or in contemplation of its insolvency or the seizure with intent to effect a preference shall be voidable by the Bank; and
- (e) any attachment or lien except for a lien existing six months prior to the seizure of the relevant bank or financial institution may be vacated by the Bank.

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(2) The Bank shall have power to declare a moratorium on the payment by the bank or financial institution of its depositors and other creditors save that declaration of a moratorium shall—

- (a) be applied equally and without discrimination to all classes of creditors provided that the Bank may offset the deposits or other liabilities owed by the institution to any depositor or other creditor against any loans or other debts owed by that depositor or creditor to the institution;

- (b) suspend execution of attachments or liens;
- (c) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor or creditor of the institution; and
- (d) cease to apply upon the termination of the Bank's possession, whereupon the rights and obligations of the institution, its depositors and creditors shall, save to the extent provided in paragraphs (b) and (c), be the same as if there had been no declaration.

Power of
the Bank
upon
seizure

58.—(1) Upon entering into possession of a bank or financial institution, the Bank shall—

- (a) be vested with the full and exclusive power of management and control of the affairs of the relevant bank or financial institution including all rights, titles, powers, and privileges of the bank or financial institution, and of any shareholder, account holder, depositor, officer or director of such bank or financial institution with respect to that bank or financial institution and the assets of that bank or financial institution; and
 - (b) have title to the books, records, and assets of a bank or financial institution and their affiliates held by any previous statutory manager or other legal custodian of such bank or financial institution.
- (2) The Bank's powers shall include powers to—
- (a) continue or discontinue operations as a bank or financial institution, notwithstanding that its licence has been revoked;
 - (b) stop or limit the payment of its obligations;
 - (c) employ any necessary staff;
 - (d) discontinue employment of any staff of a bank or financial institution;
 - (e) execute any instrument in the name of the relevant bank or financial institution;

- (f) initiate, defend and conduct in its name any action or proceeding to which the bank or financial institution may be a party;
- (g) merge the bank or financial institution with another bank or financial institution;
- (h) transfer any asset or liability of the bank or financial institution, including assets and liabilities held in trust, without any approval, assignment or consent with respect to such transfer; and
- (i) reorganize or liquidate the bank or financial institution in accordance with the provisions of this Act.

59.—(1) The Bank shall, upon assuming the management, control and conduct of the affairs and business of a bank or financial institution, discharge its duties with diligence and in accordance with sound banking and financial principles and, in particular, with due regard to the interests of the bank or financial institution, its depositors and other creditors.

Manage-
ment by
the Bank

- (2) The Bank shall take action with a view to—
 - (a) tracing and preserving all the property and assets of the bank or financial institution;
 - (b) recovering all debts and other sums of money due to and owing to the bank or financial institution; and
 - (c) obtaining from any officers or employees of the bank or financial institution any documents, record, accounts, statements or information relating to its business.
- (3) As soon as possible after taking possession, the Bank shall—
 - (a) make an inventory of the assets and liabilities of the bank or financial institution and shall make a copy of such inventory available for examination by all interested parties; and
 - (b) evaluate the capital structure and management of the bank or financial institution and determine whether all or any part of the operations of the bank or financial institution are viable

and may continue, either in the bank or financial institution or through transfer to another bank or financial institution in accordance with the resolution plan established by the Bank.

- (4) Within ninety days after taking possession, the Bank shall—
 - (a) determine whether to restructure, reorganize or liquidate the bank or financial institution; and
 - (b) establish a plan of resolution based upon any combination of restructuring, reorganization or liquidation of the bank or financial institution that provides for expeditious resolution.
- (5) The Bank shall ensure that the resolution plan reflects the least costly method by ensuring that—
 - (a) the plan maximizes the net present value return from the sale or disposition of any assets;
 - (b) the plan minimizes the amount of any loss realized in the resolution; and
 - (c) the total cost of expenditures and obligations by the Bank and the Deposit Insurance Fund do not exceed the cost of liquidating the bank or financial institution and paying off all depositors to the extent provided for under this Act.
- (6) The resolution plan shall ensure adequate competition, fair and consistent treatment of offerors that seek to acquire assets of the bank or financial institution.
- (7) The Bank may disclose confidential information of the bank or financial institution to offerors subject to a confidentiality agreement after it has determined that the offeror has the interest and the resources to participate in a restructuring.
- (8) The shareholders of a seized bank or financial institution shall have no rights with respect to shares, except to the extent prescribed by the Bank where the bank or financial institution is not liquidated as a result of the seizure.

(9) In carrying out responsibilities under this section, the Bank may utilize the services of private persons if the Bank determines that doing so is the most practicable, efficient and cost effective.

60. The Bank may establish and own temporarily, a new bank or financial institution which may acquire part or all of the assets and liabilities of a bank or financial institution on the basis of the resolution plan.

Bridge
bank or
financial
institution

61.—(1) Where the resolution plan calls for liquidation of the bank or financial institution, then the liquidation shall proceed in terms of the provisions of section 41 and such regulations as the Governor may make.

Compul-
sory
liquidation

(2) Amounts realized under the resolution plan shall be used to pay claims, other than secured claims, to the extent of any security, in the following order of priority—

- (a) administrative expenses;
- (b) any deposit liability of the bank or financial institution;
- (c) any other general or senior liability of the bank or financial institution;
- (d) any obligation subordinated to depositors or general creditors;
and
- (e) any obligation to shareholders.

(3) The provisions of the Companies Act, and any other relevant applicable law shall apply only to the extent not inconsistent with this Part and any liquidation regulations, directives and circulars issued by the Governor.

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62. No proceedings commenced in court seeking a review of any action taken by the Bank pursuant to the provisions of this Part shall restrain the doing or nullify any action done or taken before an order of the court to the contrary was issued.

Judicial
review

PART X

REPRESENTATIVE OFFICES OF FOREIGN BANKS OR FINANCIAL INSTITUTIONS

Representative offices of foreign banks or financial institutions

63.—(1) Upon application made in writing, the Bank may, in writing and subject to such conditions as it may consider necessary, authorize a bank or financial institution incorporated outside the United Republic which does not propose to transact banking business in the United Republic, to establish representative office in the United Republic.

(2) The Bank may require a representative office to furnish to it, at such time and in such manner, such information as the Bank may require.

(3) Where a representative office is required to furnish information under subsection (2), it shall furnish that information and any supplemental material that may be required as a result of that information within the period specified in the direction or within such reasonable period as may be agreed upon.

(4) The Bank may at any time where it appears to it that a representative office is engaged in banking or financial business or that the affairs of a representative office are being conducted contrary to any condition in respect of which authority was granted pursuant to the provisions of subsection (1) or in a manner detrimental to banking business in the United Republic—

- (a) issue directions to the representative office to take such corrective action as the Bank considers to be necessary within such period as may be specified in the directives; or
- (b) order that the affairs of the representative office in the United Republic be wound up and the office be closed within such time as the Bank may direct, if such representative office fails to comply with directions of the Bank.

PART XI

MISCELLANEOUS PROVISIONS

Declaration of bank holidays

64.—(1) Where the Bank considers that it is in the public interest that banks or financial institutions or particular bank or institution or a particular banking unit should remain closed on a day which is not a public holiday it may, by notice in the *Gazette*, declare any day or days to be a bank

holiday for all banks and financial institutions or for a particular bank or financial institution or banking unit, as the case may be, and every bank and financial institution or that particular banking unit shall remain closed on that day.

(2) Where, upon application made by a bank or financial institution, the Bank is satisfied that it is necessary for that bank or financial institution or banking unit to remain closed on any day or days, it may authorize that bank or financial institution or banking unit, as the case may be, to be closed on that day or days subject to such terms and conditions as the Bank may prescribe.

(3) A bank holiday declared under subsection (1) may not be a public holiday and nothing in this section shall be deemed to affect the provisions of the Public Holidays Act.

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(4) Any reference in any written law to a bank holiday shall include any day declared under this section to be a bank holiday and any day which is a public holiday within the meaning of the Public Holidays Act.

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65.—(1) Where the Bank has reason to believe that any person is accepting deposits or otherwise doing banking business without being a bank or financial institution authorized under the provisions of this Act, the Bank may call for and examine the books, accounts, and records of such person in order to ascertain the legality of such operations.

Penalty
for doing
unautho-
rized
business

(2) Any person who refuses or fails to make available for examination such books, accounts and records after having been duly requested to do so by the Bank, commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings and, where the person is not a corporate body, to imprisonment for a term not exceeding five years.

(3) In addition to conviction made pursuant to subsection (2), the Bank may issue directive to repay any funds that such person has obtained in the course of unlawfully doing such business or receiving such money.

(4) Where any corporate body contravenes the provisions of this section, every director and officer thereof shall, unless he proves that the contravention occurred without his knowledge and consent, be liable

on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

66.—(1) Where by any provision of this Act it is provided that a bank or a financial institution and every director and officer who is in default shall be liable to default fine, the relevant bank or financial institution and every director or officer concerned shall, for every day during which the default or contravention continues, be liable on conviction to a fine not exceeding five million shillings.

Default
fines

(2) In any proceedings against a person alleged to be a director or officer who is in default, it shall be a good defence—

- (a) in the case of non-compliance with any provision of this Act, to prove that he had reasonable grounds to believe that a competent and reliable person was responsible for complying with the particular requirement and was in a position to discharge that responsibility; or
- (b) in the case of contravention of any provision of this Act, to prove that the contravention occurred without his knowledge and consent unless, having regard to the duties of his office, he ought to have known such contravention.

67.—(1) The Bank shall have powers to prescribe and impose civil penalties on any bank or financial institution or institution-related party which—

Civil
money
penalties

- (a) violates any provision of this Act or any regulation issued under this Act;
- (b) violates any directive or circular issued by the Bank under this Act; or
- (c) violates any condition imposed in writing in connection with the grant of any licence or any other request by the bank or financial institution.

(2) Any penalty imposed under this Part may be assessed and collected by the Bank by written notice.

(3) The Bank shall provide opportunity to be heard to a bank or financial institution or other person against whom any penalty is assessed if requested within twenty days after the issuance of the written notice.

(4) Where a hearing is not requested or after a hearing have taken place and the Bank does not revoke the assessment, the assessment shall constitute a final order.

(5) The Bank may revoke the banking licence of such bank or financial institution which fails to pay an assessment that had become final.

(6) For purposes of this section, "institution related party" means any director, officer, employee or controlling shareholder of a bank or financial institution.

Power of
Governor
on
waivers

68. The Governor may, where he considers it necessary waive compliance or penalty for non compliance of the provisions of this Act or regulations, direction or circular made or issued under this Act.

Immunity

69. Notwithstanding the provisions of any other law, no action or other proceedings shall lie or be instituted against any member of the Board of the Bank or any employee of the Bank for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise as are conferred by this Act.

Restrictions
on
employment

70. No member of the management of the Bank who exercises decision making authority with respect to the exercise of any supervisory authority regarding the Bank or financial institutions may hold any office, position or employment in any bank or financial institution while serving as member of management and during the two year period from the date when such a member ceases to be a member of management.

Regulations,
Directives,
and
circulars

71. The Governor may make regulations and issue directives and circulars for carrying out or giving effect to the purposes and provisions of this Act, which may include but are not limited to additional prudential guidelines or requirements not expressly mentioned in this Act.

Repeal
Cap. 342

72.—(1) The Banking and Financial Institutions Act, is hereby repealed.

(2) Notwithstanding subsection (1) any regulations or circulars

promulgated or adopted pursuant to the provisions of the Banking and Financial Institutions Act, shall remain in force and effect except to the extent such regulations are inconsistent with express provisions of this Act, until such time as they are revoked or cancelled.

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Passed in the National Assembly on the 5th April, 2006.

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Clerk of the National Assembly