

CHAPTER 342

THE BANKING AND FINANCIAL INSTITUTIONS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title.
2. Application.
3. Interpretation.

PART II

LICENSING OF BANKS AND FINANCIAL INSTITUTIONS

4. Prohibition on doing banking business, etc.
5. Power of the Bank to grant licences.

6. Licensed banks and financial institutions authorised to carry on banking business.
7. Application for a licence.
8. Duration of licence.
9. Revocation of licence.
10. Appeals.
11. Transitional provisions.

PART III

CAPITAL, RESERVES AND ACCOUNTS

12. Minimum capital requirements.
13. Minimum capital.
14. Impairment of capital prohibited.
15. Computation of capital and financial ratios.
16. Accounts and audit.

PART IV

SUPERVISION, REGULATION, CO-ORDINATION AND CONTROL

17. Supervision to vest in the Bank.
18. Power of Bank over banks and financial institutions.
19. Establishment of branches.
20. Transfer of ownership.
21. Power of Bank to give general directives.
22. Bank to authorise voluntary merger, etc.

PART V

ESTABLISHMENT OF THE DEPOSIT INSURANCE FUND

23. Establishment of the Fund.
24. Deposit Insurance Board.
25. Contributors and contributions to the Fund.
26. Protection of deposits and payments out of the Fund.
27. Role of Board where bank or financial institution is insolvent.
28. Power of Board to lend.

29. Annual report of the Board's activities.

PART VI

SPECIAL DUTIES OF BANKS AND FINANCIAL INSTITUTIONS

30. Exhibition of licences.
31. Exhibition of balance sheet.
32. Publication of balance sheet.
33. Statements to be furnished by banks.
34. Bank to deal with abandoned property.
35. Abandoned property.
36. Fidelity and secrecy.

PART VII

RESTRICTIONS ON BANKS AND FINANCIAL INSTITUTIONS

37. Prohibited operations.
38. Persons not eligible to take part in management of banks or financial institutions.

39. Restriction on use of the word "bank", etc.

PART VIII

SEIZURE, RE-ORGANIZATION AND LIQUIDATION OF OPERATIONS

40. Voluntary liquidation.
41. Seizure pending compulsory liquidation.
42. Seizure in other circumstances.
43. Consequences of seizure.
44. Management by Bank upon seizure.
45. Compulsory liquidation.
46. Reorganisation by order of Court.

PART IX

REPRESENTATIVE OFFICES OF FOREIGN BANKS AND FINANCIAL INSTITUTIONS

47. Representative offices of foreign banks and financial institutions.

PART X

MISCELLANEOUS PROVISIONS

- 48. Declaration of bank holidays.
- 49. Penalty for doing unauthorised business.
- 50. Default fines.
- 51. Regulations and rules of court.
- 52. [Amendments.]
- 53. [Repeal of R.L. Cap. 430.]

SCHEDULE

CHAPTER 342

THE BANKING AND FINANCIAL INSTITUTIONS ACT

An Act to consolidate the law relating to business of banking, to harmonise the operations of all financial institutions in Tanzania, to foster sound banking activities, to regulate credit operations and to provide for related matters.

[18th October, 1991]

[G.N. No. 4 of 1992]

Acts Nos.

12 of 1991

10 of 1993

10 of 1994

18 of 1995

G.N. No. 591 of 1998

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh342s1]1. Short title

This Act may be cited as the Banking and Financial Institutions Act.

[PCh342s2]2. Application Act No. 18 of 1995 Sch.

(1) This Act shall extend to Tanzania Zanzibar as well as to Mainland Tanzania and shall bind the United Republic.

(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 over those of that law.

(3) The Bank may, with the approval of the Minister and 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 it may impose, apply to institutions involved in the business of financial intermediation.

(4) For the avoidance of doubt, it is hereby declared that no duty to which an auditor or former auditor of a bank or financial institution may be subject, shall be deemed to be breached by reason only of his communication in good faith to the Bank or any officer of the Bank whether or not in response to a request made by either of them, 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 or the Bank of Tanzania Act *.

(5) In relation to an auditor of a bank or financial institution this section shall apply to any matter of which he 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.

(6) In exercising the power under subsection (3), the Bank may, if it deems appropriate so to do, order that the provisions of this Act or any part thereof, shall apply either to all or to any class of savings or credit societies or schemes.

(7) In this section, "savings or credit society" or "scheme" means a society or, as the case may be, a scheme whose principal objects are to encourage thrift among its members and to create a source of credit for its members at a fair and reasonable rate of interest.

[PCh342s3]3. Interpretation G.N. No. 591 of 1998

In this Act unless the context requires otherwise—

"the Bank" means the Bank of Tanzania established under the Bank of Tanzania Act *;

"bank" means a financial institution authorised to receive money on current account subject to withdrawal by cheque;

"banking business" means—

(i) the business of receiving funds from the general public through the acceptance of money 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, or other securities, and the use of those funds either in whole or in part for loans or investments for the account and at the risk of the person doing that business; and

(ii) any other activity recognised as customary banking practice which a financial institution engaging in the activities described in paragraph (i) may be additionally authorised to do by the Bank;

"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 *;

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

"financial institution" means any person authorised by or under this Act to engage in banking business not involving the receipt of money on current account subject to withdrawal by cheque;

"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 or the person receiving such funds or securities or for the account of others;

"Governor" means the Governor of the Bank of Tanzania, appointed in accordance with the provision of section 7(2) of the Bank of Tanzania Act *;

"Minister" means the Minister responsible for finance;

"place of business" means a branch or office of a bank or a financial institution including a mobile office open to the public;

"prescribed" means prescribed by regulations made in accordance with the provisions of this Act;

"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 approved by the Bank whenever the Bank 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 OF BANKS AND FINANCIAL INSTITUTIONS (ss 4-11)

[PCh342s4]4. Prohibition on doing banking business, etc.

(1) No person other than a bank shall receive money on current account subject to withdrawal by cheque.

(2) With effect from the effective date, no institution may carry on banking business unless it has a licence issued in that behalf by the Bank.

(3) Any person who contravenes the provisions of this section commits an offence and on conviction is liable to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

(4) Any body corporate which contravenes the provisions of this section and every director and every officer who is in default commits an offence and on conviction is liable to a fine of not less than one million shillings and in addition every director and every officer who is in default shall be liable to imprisonment for a term of not less than five years unless such director or officer proves that the contravention occurred without his knowledge or consent; save that it shall be no defence 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 of the contravention.

[PCh342s5]5. Power of the Bank to grant licences

(1) Subject to subsection (2) and to section 12, the Bank may, upon application being made by any person intending to undertake banking business, grant the said person a licence to carry on banking business in the United Republic.

(2) In exercising its licensing powers under subsection (1) in relation to any applicant intending to carry on banking business in Tanzania Zanzibar, the Bank shall, through the Minister, consult with the Minister responsible for finance in the Revolutionary Government of Zanzibar.

(3) The Bank shall, in considering any application for a licence take into account, in addition to any other things, the factors specified in section 7 and other provisions of this Act.

[PCh342s6]6. Licensed banks and financial institutions authorised to carry on banking business

Upon the grant of a licence by the Bank in accordance with the provisions of section 4, the relevant bank or financial institution shall be authorised to carry on banking business.

[PCh342s7]7. Application for a licence

(1) Every application for a licence under this Act shall be in writing and shall include—

(a) five authenticated copies of the law or other statutory instrument by or under which the applicant is established;

(b) a statement of the address of its head office, and the name and address of every director and of its principal officer;

(c) any financial data which the Bank may require;

(d) full particulars of the business it proposes to do;

(e) the location of the principal and other places of business in Tanzania where it proposes to do business, and in the case of a mobile agency, the area to be served; and

(f) any other information as the Bank may from time to time prescribe.

(2) The application and every document submitted in accordance with subsection (1) of this section shall be signed by the directors of the applicant, or by any principal officer legally authorised to do so.

(3) In considering an application for a licence under subsection (1), the Bank shall–

(a) conduct such investigation as it may deem necessary to ascertain the validity of the documents submitted, the financial status and history of the applicant, the character and experience of its management, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the operations it intends to carry on and the earning prospects afforded by the area to be served;

(b) take into account the extent to which the intended lending policies of the applicant are designed to promote the financing of economic activities in the rural sector, and the extent to which the intended training and employment programs of the applicant are aimed at promoting professionalism in the financial sector;

(c) take into account any other considerations which the Bank may deem appropriate.

(4) Within ninety days after the receipt of an application under subsection (1) of this section, or where further information has been required, after the receipt of the information, the

Bank may grant a licence to the applicant or, where the application has been rejected, furnish the applicant with the grounds upon which the rejection is based.

(5) The Bank may, in any case where it grants a licence impose any terms and conditions which it may deem appropriate.

[PCh342s8]8. Duration of licence

The licence issued under section 7 shall remain in force until revoked; but the Bank may suspend a licence granted under section 7 where a licensed bank or financial institution fails to fulfil any of the minimum requirements set forth in section 13 or where the Bank is of the opinion that the affairs of that institution are being conducted in a manner detrimental to the interests of the depositors or the national interest.

[PCh342s9]9. Revocation of licence

(1) The Bank may revoke the licence granted to any person if that person—

(a) fails to commence operations within a period of twelve months from the date on which the licence was granted unless that period is extended in writing by the Bank;

(b) fails to comply with the terms and conditions of the licence or any remedial measures relating to an inspection of the affairs required by the Bank in accordance with section 59 of the Bank of Tanzania Act *;

(c) is carrying on its business in a manner detrimental to the interests of the depositors or has insufficient assets to cover its total liabilities or is in breach of any of the provisions of this Act; or

(d) ceases to do business in Tanzania.

(2) Before any licence is revoked the Bank shall give the relevant bank or financial institution notice of its intention to revoke the licence and shall afford it a reasonable opportunity to show cause why the licence should not be revoked.

(3) When any licence has been revoked, the Bank shall after the expiry of the time period set out in section 10 publish a notice of revocation in the Gazette and in a newspaper of general circulation in the areas in Tanzania in which the main office of the relevant bank or financial institution is located and take any other steps necessary to inform the public of such revocation.

[PCh342s10]10. Appeals

(1) Within thirty days of receipt of notice of the grounds of rejection by the Bank to license a bank or financial institution under section 4, or of its decision to suspend or revoke the same, the applicant may appeal to the Minister whose decision shall be final and not subject to any review.

(2) There shall be established an Appeals Advisory Committee consisting of three persons to be appointed by the Minister, one of whom shall be an experienced legally qualified person, which shall discharge functions ascribed to it by or under this Act. The Minister shall appoint one of the members to be Chairman of the Committee.

(3) Before deciding any appeal brought to him under this section, the Minister shall provide for the applicant to be given an opportunity to appear before and be heard by the Appeals Advisory Committee appointed under subsection (2), and if the applicant avails himself of the opportunity the Appeals Advisory Committee shall give the Bank and any other person it may deem fit an opportunity to also appear before and be heard by the Committee on the same occasion.

(4) The Appeals Advisory Committee may take evidence and examine witnesses upon oath or affirmation, which oath or affirmation the Committee is hereby empowered to administer through its chairman, and shall at the conclusion of the proceedings submit the record of the evidence together with its recommendations to the Minister who shall then make a decision on the matter.

[PCh342s11]11. Transitional provisions

(1) Notwithstanding the provisions of section 6, every bank or financial institution which was, immediately before the effective date, duly authorised by or under any law for the time being in force to carry on banking business in Tanzania and which intends to continue to carry on that business, shall, upon furnishing to the Bank any information which the Bank may require within any time which the Bank may determine, be entitled to continue to operate as such, for a provisional period of twenty four months from the effective date, or any longer period which the Bank may determine.

(2) Every bank and every financial institution operating pursuant to the provisional status provided under subsection (1) shall be subject to the provisions of this Act; save that during the

provisional period of twenty four months or any longer period, which the Bank may determine the provisions of section 12 and section 13 shall not apply to the bank or financial institution concerned.

PART III

CAPITAL, RESERVES AND ACCOUNTS (ss 12-16)

[PCh342s12]12. Minimum capital requirements Act No. 10 of 1993 s. 12

(1) Every Bank and every other financial institution shall maintain unimpaired capital at least equal to the minimum requirements specified in section 13.

(2) In this Part, for the purposes of determining capital requirements—

"core capital" means permanent shareholders equity in the form of issued and fully paid in shares of common stock plus all disclosed reserves, less goodwill or any other intangible assets;

"disclosed reserves" includes all reserves created or increased through share premiums, premiums, retained profits (after deducting all expenses, provision for taxation and dividends), and general reserves, if such disclosed reserves are permanent and unencumbered and thus able to absorb losses;

"off balance sheet exposure" means all items not shown on the balance sheet but which constitute credit risk or the equivalent of credit risk as determined by the Bank. Such risk include guarantees, acceptances, performance bonds, letters of credit, interest and exchange rate related items, and other off balance sheet items deemed to constitute credit risk by the Bank;

"supplementary capital" means general provisions which are held against future, presently unidentified losses and are freely available to meet losses, which subsequently materialise, and any other form of capital as may be determined and announced from time to time by the Bank;

"total assets" means the amount required to be submitted under such heading in each monthly balance sheet submitted to the Bank;

"total risk weighted assets" means total assets as adjusted in relating to the riskiness of the different categories of assets as may be prescribed by the Bank;

"total capital" means the sum of core capital and supplementary capital.

[PCh342s13]13. Minimum capital Acts Nos. 10 of 1993 s. 13; 10 of 1994 Sch.

(1) Every bank shall—

(a) commence operations with a minimum core capital of not less than one billion (1,000,000,000) shillings or such higher amount as the Minister may, by order published in the Gazette, prescribe, and shall maintain this minimum amount at all times. This minimum amount of core capital may be reduced by the Bank in order to promote the establishment of regional unit banks and for this purpose, the initial core capital of regional unit banks:

Provided that no such bank shall establish a branch or any unit in a region if its core capital is less than the minimum core capital required to be maintained by financial institutions established in that region;

(b) at all times maintain core capital at not less than six per centum (6%) of its total risk weighted assets and off balance sheet exposure;

(c) at all times maintain total at not less than eight per centum (8%) of its total risk weighted assets and off balance sheet exposure.

(2) Every financial institution shall—

(a) commence operations with a minimum core capital of not less than five hundred million shillings (500,000,000) or such higher amount as the Minister may, prescribe, and shall maintain this minimum amount at all times. This minimum amount of core capital may be reduced by the Bank in order to promote the establishment of regional based financial institutions and for this purpose, the Bank shall prescribe the minimum amount of the initial core capital of regional based financial institutions:

Provided that no such financial institutions shall establish a branch or any deposit-taking unit in a region if its core capital is less than the minimum core capital required to be maintained by financial institutions established in that region;

(b) at all times maintain core capital at not less than eight per centum (8%) of its total risk weighted assets and off balance sheet exposure.

(3) Notwithstanding subsections (1) and (2) no one individual or body corporate owned or controlled directly or indirectly, or otherwise have a beneficial interest in, more than twenty percent of the share capital of any bank or financial institution.

For the purpose of this subsection the term "individual" shall include any member of his family and a person shall be deemed to be a member of the family if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, step-father, step-mother, step-child and adopted child of the individual concerned and in the case of an adopted child his adopter or adopters.

[PCh342s14]14. Impairment of capital prohibited

(1) No bank or financial institution shall at any time declare, credit, or pay any dividend or make any other transfer from profits if the payments or transfers result in that bank or financial institution not meeting the requirements of section 13.

(2) If any bank or financial institution contravenes the provisions of this section, the 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 of not less than one million (1,000,000) shillings, and where the convict is not a corporate body, in addition thereto imprisonment for a term of not less than seven years.

[PCh342s15]15. Computation of capital and financial ratios

In making the calculations necessary to ascertain that a bank or financial institution is complying with the requirements of Section 13, provisions shall be made to the satisfaction of the Bank for the following items—

(a) provisions for bad and doubtful debts (to be calculated at least once in each calendar year and approved by the Bank before annual accounts are finalised), including bad debts not yet written off;

- (b) operating and accumulated losses;
- (c) preliminary expenses, representing expenses relating to organisation, extension or the purchase of business goodwill, and including underwriting commission;
- (d) any other items as the Bank may prescribe.

[PCh342s16]16. Accounts and audit Act No. 18 of 1995 Sch.

(1) The Board of Directors of every bank or 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 of the bank or financial institution a statement of accounts in the form which the Bank shall prescribe. The statement of account must be ready for submission to the Auditors within two months of the close of the financial year of each bank or financial institution.

(2) Except where the law or other instrument by or under which a bank or other financial institution provides to the contrary or differently, every bank and every financial institution shall appoint annually an independent Auditor approved by the Bank. The Auditor appointed under this section shall have the right to submit directly to the Bank any reports which it considers necessary to bring to the attention of the Bank for purposes of improving the operations of banks and financial institutions in Tanzania.

(3) Every bank and every financial institution shall prepare and submit quarterly to the Bank within one month of the end of the quarter to which the statement relates, a summary

statement of its financial position duly certified by Auditors of the bank or financial institution concerned:

Provided that the Bank may upon application by a bank or financial institution concerned and for reasonable cause in writing authorise a bank or financial institution to publish an unaudited statement of accounts within a specified time in a newspaper which, in the opinion of the Bank, is capable of reaching a great part of the public, in lieu of the summary statement duly certified by Auditors.

(4) 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 statement of accounts to the Bank together with a copy of any report made by the auditor.

(5) The Bank may arrange trilateral meetings with a bank or financial institution and its 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's or financial institution's business, its accounting and control system and its annual accounts.

(6) All entries in the books and accounts of banks and financial institutions in Tanzania shall be in English or Kiswahili or in both languages.

(7) If 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

one of its officers who is in default commits an offence and on conviction by a court of law shall be liable to a default fine under section 50.

PART IV

SUPERVISION, REGULATION, CO-ORDINATION AND CONTROL (ss 17-22)

[PCh342s17]17. Supervision to vest in the Bank Act No. 18 of 1995 Sch.

(1) Notwithstanding any provision of any other law, the power relating to the supervision, bank control and regulation of all banks and financial institutions in the United Republic is hereby vested in the Bank which, for the purposes of this Act and without prejudice to the generality of the power conferred by the foregoing, shall have power to—

(a) carry out inspections over the operations of all banks and financial institutions in accordance with the provisions of section 59 of the Bank of Tanzania Act *;

(b) require any bank or financial institution within the time which 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 or the Bank of Tanzania Act;

(c) require any bank or financial institution to provide periodical written reports at the times and in the manner which may be prescribed by the Bank.

(2) If any bank or financial institution contravenes or fails to comply with any requirement under paragraph (c) of subsection (1) of this section, the bank or financial institution

concerned and every one of its officers who is in default shall be liable on conviction to a default fine under section 50 of this Act.

[PCh342s18]18. Power of the Bank over banks and financial institutions G.N. No. 591 of 1998

If in the opinion of the Bank, an examination as authorised under section 59 of the Bank of Tanzania Act * and section 17 of this Act shows that a bank or financial institution is conducting its business in an unlawful or unsound manner or that it is otherwise in an unsound condition, the Bank may in addition to any other course of action open to it—

(a) require that institution to take any measures which 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 and/or payment of dividends until that 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 a 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;

(g) impose fines, consistent with the provision of this Act, on individual members of management for violations of this Act, regulations, or previously issued orders from the Bank.

[PCh342s19]19. Establishment of branches

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

(a) establish a branch whether in Tanzania or abroad;

(b) close down the business of an existing branch and move it to another place.

(2) If approval of an application by a bank or financial institution under subsection (1)(a) is rejected, the Bank shall provide the reason for the rejection, and if the applicant is nevertheless aggrieved he may appeal to the Minister against the decision of the Bank, and the appeal shall be dealt with by the Minister in the same manner as appeals under section 10 are dealt with.

(3) In granting approval of an application to close down the business of an existing branch under paragraph (b) of subsection (1) of this section the Bank shall ensure that the bank or financial institution concerned has complied with all regulatory requirements.

[PCh342s20]20. Transfer of ownership

Any transfer of ownership in a bank or financial institution representing 5 percent (5%) or more of its capital stock must obtain prior approval of the Bank.

[PCh342s21]21. Power of the Bank to give general directives

(1) The Bank may, after consultation with the Minister, 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 by the said board of their functions and in relation to matters appearing to the Bank to affect their operations or national interest, and the said Boards shall give effect to those directions.

(2) Where the Bank intends to exercise its functions under subsection (1) in relation to a bank carrying on business in Tanzania Zanzibar, the Minister shall before responding to the Bank consult with the Minister responsible for finance in the Revolutionary Government of Zanzibar.

[PCh342s22]22. Bank to authorise voluntary merger, etc.

(1) No bank or financial institution shall, without the prior written authorisation of the Bank—

(a) effect any voluntary merger, consolidation or other reorganisation 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 Tanzania;

(c) effect a reduction of its paid-up capital;

- (d) alter its name;
- (e) amend the instrument or charter under which it is organised 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.

PART V

ESTABLISHMENT OF THE DEPOSIT INSURANCE FUND (ss 23-29)

[PCh342s23]23. Establishment of the Fund

(1) There shall be established a Fund called a Deposit Insurance Fund which shall be managed and controlled by a Deposit Insurance Board (hereinafter referred to as the "Board") into which shall be paid at 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 by this Part to be made out of the Fund.

(2) The Minister may, from time to time 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 25 and may authorise the Board to borrow from the Bank or any other person any amount which it may require for temporary purposes of making up deficiency in the Fund pending collection contributions.

(3) The Fund shall consist of—

(a) moneys contributed to the Fund by licensed banks and licensed financial institutions under section 26;

(b) income credited to the Fund under subsection (4);

(c) money borrowed for purposes of the Fund under subsection (2).

(4) The moneys constituting the Fund shall be placed in an account with the Bank to be invested, in the manner which the Board shall deem appropriate, and any income from the investment shall be credited to the Fund.

(5) There shall be chargeable to the Fund the administrative expenses of the Board, repayment of money borrowed by the Fund and payments made in respect of protected deposits.

[PCh342s24]24. Deposit Insurance Board

(1) There shall be a Board to be called the Deposit Insurance Board responsible for policy formulation in connection with the Fund and for the management and control of the Fund.

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

(3) The Board shall consist of—

(a) the Governor of the Bank who shall be the Chairman; and

(b) the Permanent Secretary to the Treasury;

(c) the Principal Secretary to the Ministry of Finance of the Revolutionary Government of Zanzibar; and

(d) three other members to be appointed by the Minister.

(4) Subject to the provisions of this Part, the Board shall determine its own procedure.

(5) The Bank shall make available to the Board any facilities and the services of the officers who are necessary for the proper and efficient exercise of the functions of the Board.

[PCh342s25]25. Contributors and contributions to the Fund

(1) Every bank and every financial institution which is licensed to carry on banking business in Tanzania shall be a contributor to the Fund and shall pay into the Fund an annual amount, at such times, which the Board may determine.

(2) Where the Board is satisfied that a savings or 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 those deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting the deposits, 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; but nothing in this subsection shall be construed as rendering that savings or credit society or scheme a bank or financial institution for the purposes of this Act.

(3) The Board 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.

(4) The amount of a contribution to the Fund under this section shall not be less than one percent of the average of the bank's or financial institution total deposit liabilities during the period of twelve months prior to the date of the notice served under subsection (2) but the Minister may after consultation with the Board by order, amend the minimum and maximum amounts of contributions prescribed by this subsection.

(5) A bank or financial institution which for any reason fails to pay its contribution to the Fund within the period specified in a notice issued under subsection (2) shall be liable to pay to the Fund a penalty interest charge not exceeding one-half percent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

(6) If it appears to the Fund that the affairs of a bank or financial institution are being conducted in a manner detrimental to its own interests or to the interests of the depositors, the Fund may increase the contributions of that bank or financial institution beyond the maximum set out under subsection (4) or terminate the protection of the deposits of such bank or financial institution.

[PCh342s26]26. Protection of deposits and payments out of Fund

(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 be a protected deposit to the extent determined by the Minister from time to time by order published in the Gazette.

(2) A customer of a bank or financial institution may upon the bank or financial institution becoming insolvent, lodge a claim with the Board in any form which the Board may approve for payment to him out of the Fund of any protected deposit which he would but for the insolvency have been paid had he demanded payment from the insolvent bank or financial institution.

(3) The Board may, before paying any claim lodged under subsection (2), require the claimant to furnish it with any documentary proof which may be proper to show that he is entitled to payment out of the Fund; and the Board may decline to make any payment under this section to a person who, in the opinion of the Board, 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) Notwithstanding subsection (3), the Board may require the bank to carry out inspections under section 19 and 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 pursuant to the inspection shall, subject to section 19, be made available by the Bank to the Board.

(5) Upon payment of a protected deposit the Fund shall be entitled to receive from the bank, 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.

(6) A bank or financial institution shall become insolvent for the purposes of this Part if—

(a) it commits an act of bankruptcy under section 3 of the Bankruptcy Act * or the relevant law applicable in Tanzania Zanzibar; or

(b) a winding-up order is made against it, or a resolution for creditors' voluntary winding up is passed, under the Companies Act * or the relevant law applicable in Tanzania Zanzibar; or

(c) it is unable to pay sums due and payable to its depositors or the value of the bank's or financial institution's assets is less than the amount of its liabilities.

(7) For the purposes of this section "customer" includes persons entitled to a deposit as trustees or persons holding any deposits jointly.

[PCh342s27]27. Role of Board where bank or financial institution is insolvent Act No. 18 of 1995 Sch.

Notwithstanding any other written law—

(a) where a bank or financial institution becomes insolvent, the Bank may appoint the Board to be a liquidator of the bank or financial institution and the appointment shall have the same effect as the appointment of a liquidator by the court under the provisions of the Companies Act *;

(b) no other liquidator of a bank or financial institution shall be appointed under the provisions of the Companies Act * if the Board 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 which shall not grant such approval unless the Bank certifies 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;

(c) where a liquidator of a bank or financial institution has been appointed the Bank may, at any time, apply to the High Court for an order that the liquidator be removed and the Board be appointed as liquidator in the first mentioned liquidators place.

[PCh342s28]28. Power of Board to lend

If the Board considers it desirable to reduce risk or avert threatened loss to the Fund, the Board may on any terms and conditions which it may prescribe lend, place a deposit with, issue a guarantee, or purchase the assets of a bank or financial institution.

[PCh342s29]29. Annual report of the Board's activities

(1) The Board 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 Board shall be the same as the Bank's financial year.

PART VI

SPECIAL DUTIES OF BANKS AND FINANCIAL INSTITUTIONS (ss 30-36)

[PCh342s30]30. Exhibition of licences

(1) Every bank and financial institution shall at all times exhibit the licence granted to it under this Act in a conspicuous position in the public part of its principal place of business in Tanzania and shall similarly exhibit copies of that licence in each of its branches in Tanzania.

(2) If any bank or financial institution fails to comply with this section the Bank or financial institution and every officer of the bank or financial institution who is in default shall be liable to a default fine.

[PCh342s31]31. Exhibition of balance sheet

(1) Every bank or financial institution shall at all times exhibit a copy of its last audited balance sheet in conspicuous position in the public part of its principal place of business in Tanzania and shall similarly exhibit copies of the balance sheet in each of its branch offices in Tanzania.

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

[PCh342s32]32. Publication of balance sheet

(1) Every bank or financial institution shall at least once in every year publish copies of its last audited balance sheet in any newspapers which the Bank may, by order published in the

Gazette, direct; save that no bank or financial institution shall be required to publish the copies in more than two newspapers in any year.

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

[PCh342s33]33. Statements to be furnished by banks

Every bank and every financial institution shall furnish to the Bank within 14 days after the end of every quarter a statement in a prescribed form giving an analysis of advances and bills discounted at the last day of that quarter.

[PCh342s34]34. Bank to deal with abandoned property

(1) Every bank or financial institution holding any of the items enumerated in section 35 shall report the holding once every year to the Bank and thereafter pay or deliver to the Bank all abandoned property listed as the Bank shall specify.

(2) Upon paying or delivering abandoned property into the custody of the Bank, the relevant bank or financial institution shall be relieved of all liability to the value of the property for any claim in respect of it.

(3) The Bank shall dispose of all abandoned property, paid or delivered to it under this section, in accordance with the provisions of the law applicable in Tanzania.

(4) Any bank or financial institution which fails to file the report or to pay or deliver property presumed to be abandoned into the custody of the Bank in accordance with this section,

commits an offence and upon conviction by a court of law shall be liable to a fine which is not less than one hundred thousand shillings.

[PCh342s35]35. Abandoned property

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

(a) any general deposit (demand, savings or matured time deposit) made in Tanzania with a bank or financial institution, together with any accrued interest or dividend but excluding any lawful charges;

(b) any funds paid in Tanzania toward the purchase of shares or other interest in a bank or financial institution, together with any accrued interest or dividend but excluding any lawful charges;

(c) any sum payable on a cheque certified in Tanzania or written instruments issued in Tanzania on which a bank or financial institution is directly liable;

(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) The items enumerated in paragraphs (a), (b) and (c) of subsection (1) of this section, shall not be presumed to have been abandoned if the owner has, within fifteen years of the date of deposit, payment of funds or issuance of instruments, as the case may be—

(a) increased or decreased the amount of the deposit or funds or presented the pass-book or other record for the crediting of interest or dividends in respect of the items set forth in paragraphs (a) and (b) of subsection (1);

(b) corresponded in writing with the bank or financial institution concerning the items;

(c) otherwise indicated an interest in the items as evidenced by a memorandum written by the bank or financial institution concerning the items.

[PCh342s36]36. Fidelity and secrecy

(1) Every bank or financial institution shall observe except as otherwise required by law, the practices and usages customary among bankers, and, in particular, it 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 the information.

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

(3) Except as otherwise required by law, nothing in this Act shall authorise an enquiry to be made into the affairs of any individual customer of a bank or financial institution:

Provided that nothing in this section shall prevent a bank or financial institution from providing to any person upon a legitimate business request a general credit rating, a summary of which shall, upon request, be provided to the customer concerned.

(4) The Bank shall not, unless lawfully required to do so by a competent court of law, reveal to any person 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 jurisdiction whether under this or any other law.

(5) Every person who contravenes the provisions of this section commits an offence and on conviction is liable to a fine not less than two hundred thousand shillings or imprisonment for a term of not less than five years.

PART VII

RESTRICTIONS ON BANKS AND FINANCIAL INSTITUTIONS (ss 37-39)

[PCh342s37]37. Prohibited operations G.N. No. 591 of 1998

(1) It shall be unlawful for any bank or financial institution to receive any deposit while insolvent, or for a director, officer or employee who knows or in the proper performance of his duties ought to know of the insolvency to receive or to authorise the acceptance of the deposit.

(2)(a) Subject to paragraph (b), no bank or financial institution shall, without the prior written approval of the Bank, directly or indirectly, grant to any person, any accommodation so that the total value of the accommodation to or on behalf of that person—

(i) if less than fully secured in accordance with paragraph (ii) is at any time more than ten percent of the core capital of the bank or financial institution; or

(ii) if granted against security, the type and value of the security having been ascertained to be acceptable to the Bank and the value of which is at least 25 percent more than the obligations secured thereby,

is at any time more than 25 percent of the core capital of the bank or financial institution.

(b) The limitation in paragraph (a) shall not apply in respect of the foregoing transactions if the transactions represent accommodations to, or guaranteed by the Government of Tanzania.

(c) For the purpose of paragraphs (a) and (b)–

"accommodation" means a credit facility given by a bank or financial institution to or on behalf of any person. Credit facility includes 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;

"core capital" means capital as defined in section 12(2).

(d) If 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 paragraph (a), the total indebtedness of that group shall be combined and be deemed to be in respect of a single person:

Provided that where the Bank makes a determination that the combined indebtedness exceeds the limitation provided in paragraph (a), the bank or financial institution concerned shall be permitted to dispose of the excess of that indebtedness within any reasonable period which the Bank shall determine.

(3) No bank or financial institution shall—

- (a) grant any advance against the security of its own shares;
- (b) grant or permit to be outstanding unsecured advances unless the advances have been unanimously approved by all of its directors and have been notified in advance to the Bank—
 - (i) to the directors, whether such advances, are obtained by them jointly or severally;
 - (ii) to any other person in which it or any one or more of the directors has any personal interest as a director, partner, manager, agent, member or otherwise;
- (c) grant or permit to be outstanding to its officers or employees (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 that officer or employee;
- (d) engage in trade or other commercial operations except insofar as may be temporarily necessary in the conduct of its business or in the course of the satisfaction of debts due to it;

(e) purchase, acquire or lease immovable property except as may be 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:

Provided that—

(i) the provisions of paragraph (e) shall not apply to financial institutions carrying on insurance business or the business of mortgage financing;

(ii) in respect of any immovable property held or leased by a bank or financial institution prior to the commencement of this Act for purposes other than those referred to herein, the bank or financial institution shall be allowed a period of five years in which to comply with this paragraph; and

(iii) a bank or financial institution may secure a debt on any immovable property or other property and in default of repayment may acquire that property for resale as soon as possible thereafter.

(4) If any bank or financial institution contravenes or fails to comply with any provision of this section, the bank or financial institution concerned and every one of its directors and officers who is in default shall be liable on conviction to a default fine under section 50 of this Act.

[PCh342s38]38. Persons not eligible to take part in management of banks or financial institutions

(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 is—

- (a) an adjudged bankrupt or suspends payments or compounds with his creditors;
- (b) convicted of a felony or any offence involving fraud or dishonesty.

(2) No person who has been a director of, 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 acting in contravention of this section commits an offence and shall be liable on conviction to imprisonment for a term not less than two years or to a fine not less than two hundred thousand shillings or to both the fine and imprisonment.

[PCh342s39]39. Restriction on use of the word "bank", etc.

(1) No person shall without the consent of the Bank 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 that person is doing business in Tanzania or make or continue to make any representation to that effect in any letter, paper, notice, advertisement or in any other manner whatsoever for the purpose of doing business in Tanzania.

(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 the purpose of organising a company with the aim of making an application to the Bank for a grant of a licence under section 7 of this Act.

(3) Except with the prior written consent of the Bank no bank or financial institution shall—

(a) use, or refer to itself, by a name other than that under which it is established;

(b) 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.

PART VIII

SEIZURE, RE-ORGANIZATION AND LIQUIDATION OF OPERATIONS (ss 40-46)

[PCh342s40]40. Voluntary liquidation

(1) Any bank or financial institution may, with the approval of the Bank voluntarily liquidate its operation in accordance with the provisions of its constitution.

(2) Subject to the provisions of subsection 1 of this section, the bank or financial institution shall, forthwith cease all activities, except those incidental to the orderly realisation, conservation and preservation of its assets and the settlement of its obligations.

(3) In the event of voluntary liquidation of the operation under this section—

(a) the liability of the shareholders for uncalled 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 unpaid or callable subscriptions;

(c) before making any payments to creditors holding direct claims, the Board of Directors of the bank or institution concerned shall, with the approval of the Bank make any arrangements which are necessary, in the judgment of the Board, to ensure a pro rata distribution among holders of claims and those contingent claims that are likely to be reduced to judgment in a court of law.

[PCh342s41]41. Seizure pending compulsory liquidation

If the Bank is satisfied that the assets of a bank or financial institution which is under voluntary liquidation in terms of the provisions of section 41 will not be sufficient for the full discharge of its obligations or that completion of the liquidation of its operations is unduly delayed, the Bank may, if it deems it fit take possession of the bank or financial institution concerned and take proceedings leading to its compulsory liquidation in conformity with the provisions of this Act.

[PCh342s42]42. Seizure in other circumstances

The Bank may, with the approval of the Minister take possession of any bank or financial institution—

- (a) whose minimum required capital is impaired or whose condition is otherwise unsound;
- (b) whose business is being conducted in an unlawful or imprudent manner or contrary to public interest;
- (c) when the continuation of its activities is detrimental to interests of its depositors;
- (d) that refuses to submit itself to or otherwise obstructs any inspection by the Bank under the provisions of section 48 of the Bank of Tanzania Act *; or
- (e) whose licence has been revoked in accordance with section 9 of this Act.

[PCh342s43]43. Consequences of seizure

Where the Bank takes possession of any bank or financial institution under this Part—

- (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) any attachment or lien except a lien existing six months prior to the seizure of the relevant bank or financial institution shall be vacated and no attachment or lien except a lien created by the Bank in the application of the provisions of this Part, shall attach to any property

or assets of the bank or financial institution concerned so long as possession by the Bank continues;

(c) any transfer or any 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 void.

[PCh342s44]44. Management by Bank upon seizure Act No. 18 of 1995 Sch.

(1) Upon entering into possession of a bank or financial institution, the Bank shall be vested with the full and exclusive power of management and control of the affairs of the relevant bank or financial institution, including the power to continue or discontinue its operations as a bank or financial institution (notwithstanding that its licence has been revoked), to stop or limit the payment of its obligations, to employ any necessary staff, to execute any instrument in the name of the relevant bank or financial institution, to initiate, defend and conduct in its name any action or proceeding to which the bank or financial institution may be a party, and to reorganise or liquidate the bank or financial institution in accordance with the provisions of this Act.

(2) As soon as possible after taking possession the Bank shall make an inventory of the assets of the bank or financial institution concerned and copies of that inventory shall be available for examination by all interested parties at such place and during such times as the Bank shall specify.

[PCh342s45]45. Compulsory liquidation Act No. 18 of 1995 Sch.

Compulsory liquidation and compulsory reorganisation of any bank or financial institution taken possession of by the Bank under this Part shall proceed in terms of the provisions of section 27 and such regulations as the Governor may make.

[PCh342s46]46. Reorganisation by order of Court Act No. 18 of 1995 Sch.

(1) If the Bank decides to reorganise the affairs of any bank or financial institution, the Bank shall, after granting a hearing to all interested parties, make and send a copy of the reorganisation plan to all depositors and other creditors who do not receive full payment of their claims under the reorganisation plan.

(2) Notwithstanding any other provisions of this Act or any other law, the reorganisation plan under this action shall—

- (a) be made equitably as regards all classes of depositors, creditors and shareholders;
- (b) provide for bringing in new funds so as to establish adequate ratios between—
 - (i) capital and deposits; and
 - (ii) liquid assets and deposits; and
- (c) provide for the removal of any director, officer or employees responsible for the circumstances which led to the seizure of the bank or financial institution concerned.

PART IX

REPRESENTATIVE OFFICES OF FOREIGN BANKS AND FINANCIAL INSTITUTIONS (s
47)

[PCh342s47]47. Representative offices of foreign banks and financial institutions

(1) The Bank may, in writing and subject to such conditions as it may consider necessary, authorise a bank or a financial institution incorporated outside Tanzania which does not propose to transact banking business in Tanzania but which proposes and applies in writing to the Bank to establish representative office in Tanzania, to open an office in a place in Tanzania approved by the Bank.

(2) The Bank may require a representative office to furnish to it, at such time and in such manner as the Bank may direct, 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 the information within the period specified in the direction or within such reasonable period thereafter as may be agreed.

(4) The Bank may at any time, if 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 of authority granted under subsection (1) or in a manner detrimental to banking business in Tanzania, 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 directions; and, if the representative office fails to comply with such directions, the Bank may order that the affairs of the representative office in Tanzania be wound up and the office be closed within such time as the Bank may direct.

PART X

MISCELLANEOUS PROVISIONS (ss 48-53)

[PCh342s48]48. Declaration of bank holidays

(1) Where the Minister considers that it is in the public interest that banks or a particular bank, or a particular branch of bank should remain closed on a day which is not a public holiday, he may by notice in the Gazette declare any day or days to be a bank holiday for all banks or for a particular bank or for that particular branch as the case may be, and every licensed bank, or that particular branch as the case may be, shall remain closed on that day.

(2) No bank shall do any business with the public on any day declared to be a bank holiday under subsection (1) of this section.

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

(4) Any reference in any law for the time being in force in Tanzania 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 *.

[PCh342s49]49. Penalty for doing unauthorised business

(1) Whenever the Bank has reason to believe that any person is—

(i) doing banking business without being a financial institution authorised under the provisions of this Act to do such business; or

(ii) is receiving money on current account subject to withdrawal by cheque without being a bank,

the Bank may call for and examine the books, accounts, and records of such person in order to ascertain whether such is the case.

(2) Any person—

(a) who is found to be in violation of (i) or (ii) under subsection (1); or

(b) 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 under subsection (1),

is guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings and, where the accused person is not a corporate body, to imprisonment for a term of not less than five years. In addition, any such person shall, in accordance with such directives as the Bank may give, repay any funds that he has obtained in the course of unlawfully doing such business or receiving such money.

(3) 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 guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment; save that it shall not be a defence for any 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 of the contravention.

[PCh342s50]50. Default fines

(1) When by any provision of this Act it is provided that a bank or a financial institution and every director and officer thereof who is in default shall be liable to a 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 by a court of law to a fine not less than one thousand shillings.

(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;

(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 this office, he ought to have known of the contravention.

[PCh342s51]51. Regulations and rules of court

(1) The Minister may make regulations for carrying out or giving effect to the purposes and provisions of this Act.

(2) The Chief Justice may make rules of court for regulating proceedings arising under this Act, and the rules shall apply in all courts throughout the United Republic.

[PCh342s52]52. Amendments

[Amendments.]

[PCh342s53]53. Repeal of R.L. Cap. 430

[Repeal of the Banking Ordinance.]

SCHEDULE

[Omitted: Amendment of laws.]