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H.B. 7, 2010  
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**DEPOSIT PROTECTION CORPORATION BILL, 2010**

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MEMORANDUM

When banks, building societies and other financial institutions become insolvent or collapse, for whatever reason, the effects are felt not only within the financial system but more widely by ordinary members of the public who stand to lose money they have deposited with the failed institutions. To lessen the impact of bank failures on the general public, a fund known as the Deposit Protection Fund has been established under the Banking Act [*Chapter 24:20*], to which financial institutions must contribute and out of which compensation is paid to people who have deposited money with failed institutions. The fund is administered by a board of trustees known as the Deposit Protection Board.

The purpose of this Bill is to replace the Deposit Protection Board with a new statutory body to be called the Deposit Protection Corporation, which will be largely independent of the Reserve Bank. The Corporation's functions will be similar to those of the existing Board, but more extensive: the Corporation will have power to obtain information from financial institutions that will allow it to detect early signs of difficulties within the financial system; the Corporation will also be given power to administer failed or failing institutions and, where possible, restore them to financial health.

In more detail, the individual provisions of the Bill are as follows:

*Part I: Preliminary*

Clause 1 sets out the Bill's short title, while clause 2 will define terms that are used throughout the Bill. The definitions themselves are self-explanatory.

Clause 3 will define when financial institutions that contribute to the Deposit Protection Fund are to be regarded as financially distressed, troubled or insolvent for the purposes of the Bill. A financially distressed institution will be one which has failed to meet the Corporation's standards for the capital, conduct and management of financial institutions; a troubled institution will be one which has been declared troubled by the Reserve Bank in terms of the Troubled Financial Institutions (Resolution) Act; and an insolvent institution will be one which is to be wound up under the Companies Act or is otherwise to be dissolved, or which is no longer entitled to carry on business in Zimbabwe.

## *Part II: Deposit Protection Corporation*

This Part will establish the Deposit Protection Corporation and will deal with its functions and powers. Under clause 4 the Corporation will be established as a corporate body with all the powers that such bodies may legally exercise; in particular it will have the powers listed in the Second Schedule (see clause 8).

The Corporation's functions and objectives are set out in clause 5. Its main function will be to establish and administer an insurance scheme to protect depositors (i.e. people who deposit money with financial institutions) and in furtherance of that function it will be required to administer the Deposit Protection Fund, monitor financial institutions that contribute to the Fund and manage the affairs of financial institutions that are placed under curatorship in terms of the Banking Act. It will also have the functions of helping the Minister and the Reserve Bank to ensure sound banking practices and fair competition amongst banks, and to publicise the deposit protection scheme. The objectives at which the Corporation must aim will be to protect depositors, to contribute to stability in the financial system and to enhance competition in that system, while protecting the Deposit Protection Fund against loss. In the exercise of its functions, the Corporation will be enjoined to be fair, accountable and open.

The Corporation will be run by a board of directors established under clause 6 and consisting of one representative each from the Ministry of Finance and the Reserve Bank, four representatives of financial institutions that contribute to the Fund, and the Corporation's Chief Executive Officer. The directors, apart from the Chief Executive Officer, will all be appointed by the Minister. Part I of the First Schedule to the Bill will regulate the way in which directors are appointed (the Minister will seek nominations from the bodies that are to be represented on the Board); the First Schedule will also deal with directors' qualifications, terms of office (three years, up to a total of 12 years) and conditions of service.

In terms of clause 9, the Board of Directors will be able to authorise people to conclude contracts on behalf of the Corporation.

Clause 10 will give the Minister of Finance power to issue policy directives to the Board of Directors; the Minister will have to consult the Board before doing so, and any directives that are given will have to be detailed in the Corporation's annual report.

Clause 11 will allow the Board of Directors and its committees to operate even if there are vacancies in their membership, while clause 12 will exempt the Corporation, together with its directors and employees and agents, from liability for things done by them in good faith and without negligence.

## *Part III: Deposit Protection Fund*

This Part will establish a Deposit Protection Fund out of which compensation will be paid to depositors who would otherwise lose their money through the failure of a bank. Although the Part will establish a new fund, it will in effect be a continuation of the existing fund established under the Banking Act: see clause 65.

Clause 13 will establish the Fund and define its object, which will be to compensate depositors. The Corporation will be the Fund's trustee: see clause 13(2). The money in the Fund will come from contributions paid by financial institutions and from investments,

borrowings and advances, and appropriations by Parliament: see clause 14. In addition, under clause 65 the money in the existing fund will be transferred to the new fund.

In administering the Fund, the Corporation will be able to exercise all the common-law powers of trustees, and will be able to delegate its administrative duties to its Chief Executive Officer and other members of its staff (clause 15). Money in the Fund that is not invested will be held in one or more bank accounts, and financial institutions that contribute to the Fund will have a right to inspect schedules of the Fund's investments (clause 16). The Corporation will be obliged to review the adequacy of the Fund annually and make any necessary adjustments to contributions in the light of the reviews: clause 16(4). The Fund's financial year will coincide with the calendar year (see clause 17).

In terms of clause 18 the Corporation will have to keep proper accounts in relation to the Fund, and will have to supply the Minister with an annual statement of accounts; these statements will be available for inspection by financial institutions that contribute to the Fund. The Fund's accounts will be audited annually by auditors approved by the Comptroller and Auditor-General (clause 19), though the Treasury may require the Comptroller and Auditor-General himself to audit the accounts under the Public Finance Management Act (clause 19(7)). In carrying out their audit, the auditors will have extensive information-gathering powers: clause 20. In addition to these external auditors, the Corporation will have to appoint a member of its staff as an internal auditor under clause 21, with the functions of monitoring the Corporation's financial administration and procedures, and assessing the cost-effectiveness of its projects.

All the Corporation's expenses, including the remuneration of its directors and staff, will be paid from the Fund: clause 22.

#### *Part IV: Contributory Institutions*

Generally, all banks and building societies will be required to contribute to the Deposit Protection Fund when they are registered under the Banking Act or the Building Societies Act: clause 23(1), though the Corporation will have power to exempt them from this requirement if it is inappropriate for their depositors to be protected by the Fund (clause 23(2)). The Corporation will also be able to prevent banks and building societies from contributing if the Corporation considers they will not be able to comply with the Corporation's prescribed standards of financial security (clause 23(3)), though the Corporation will have to inform any such bank or building society of its reasons for doing so and will have to publish a notice in the *Gazette* informing the public that the bank or building society concerned is not covered by the deposit protection scheme (clause 23(3) & (4)). Once the Corporation is satisfied that such a bank or building society is in compliance with the prescribed financial standards, the Corporation will have power under clause 24 to require the bank or society to contribute to the Fund. Under clause 25, the Corporation will be able to extend the deposit scheme to cover financial organisations other than banks and building societies, though before doing so it will have to obtain the Minister's approval and consult the organisations concerned.

Clause 26 will empower the Corporation to set standards to be observed by contributory institutions (i.e. financial institutions that contribute to the Fund) in regard to the way in which they conduct their banking business.

Under clause 27 the Corporation will be able to revoke a contributory institution's status as such if the institution fails to comply with the Corporation's standards and is likely to prejudice the Deposit Protection Fund and other contributory institutions. The effect of such action will be to remove the institution concerned from the deposit protection scheme. The Corporation will also be able to suspend an institution temporarily from the scheme: see clause 27(6). Before acting under the clause the Corporation will generally have to give the institution concerned an opportunity to make representations: (see clause 27(3) and (7)) and the Corporation's decision to take action will be appealable under clause 53.

*Part V: Payment of Contributions*

All financial institutions that are covered by the deposit protection scheme will be obliged to pay contributions to the Deposit Protection Fund under this Part: see clause 28. The amount of the contributions payable by an institution will be assessed by the Corporation under clause 29, taking into account the institution's liabilities to depositors, the potential liabilities of the Fund and the level of protection afforded to depositors by the Fund. So far as it is practicable to do so, when fixing contributions, the Corporation will have to apply the same criteria to all institutions of the same class: clause 29(4). Institutions which fail to pay their contributions, or which delay in paying them, will be liable to a surcharge: clause 29(6). Contributions payable by new institutions will be assessed under clause 30. If the money in the Deposit Protection Fund falls below a level that the Corporation considers is safe, the Corporation will have power under clause 31 to levy supplementary contributions from contributory institutions.

Financial institutions that fail to pay contributions under this Part will be liable to criminal prosecution under clause 32, and while an institution is in default with its contributions it will be prohibited from paying dividends to its members: see clause 34.

*Part VI: Compensation*

This Part deals with the compensation payable from the Deposit Protection Fund to people who have deposited money with failed financial institutions that are covered by the deposit protection scheme.

Generally, the Corporation will be obliged to compensate depositors for direct loss they have suffered through the insolvency of a contributory institution: see clause 35.

A curator or judicial manager of a contributory institution that is likely to become insolvent will have to send the Corporation a list giving details of the deposits that are protected by the scheme: clause 36. Similarly, if a contributory institution is already in liquidation, the liquidator will have to give the Corporation a list showing all the protected deposits with that institution: clause 37. If a depositor believes that his or her deposit has not been included on such a list, he or she will be able to apply directly to the Corporation for compensation under the scheme: clause 38.

The Corporation will be required under clause 39 to pay compensation to depositors as soon as reasonably practicable; if there is any doubt about the amount due to a particular depositor, the Corporation will be able to make a part-payment pending determination of the full liability. The amount of compensation payable to depositors will be fixed by the Corporation or prescribed in regulations under clause 40, according to the Fund's capacity to pay and the nature of the deposits and institutions concerned; and in calculating the amount payable to any

particular depositor the Corporation will have to take into account the factors set out in clauses 41 and 42. If a depositor has a contingent liability towards an insolvent financial institution (i.e. if the nature or extent of the depositor's liability is not immediately apparent) the Corporation will be entitled to delay paying compensation to the depositor until the nature and extent of the liability has been finalised (clause 43(1)); and if the depositor has already been compensated from another source the Corporation will be entitled to reduce the compensation payable from the Fund accordingly (clause 43(2)). If a depositor was in any way responsible for the insolvency of the institution concerned, or if he or she has deliberately misled the Corporation or refused to provide it with information when requested, the Corporation may likewise withhold compensation (clause 43(3) & (4)).

Whenever the Corporation compensates a depositor it must notify the liquidator of the insolvent financial institution concerned (clause 44) and the Corporation will become entitled to any dividend or other compensation that the depositor might receive from the institution, up to the amount which the Corporation has paid the depositor (clause 45).

*Part VII: Monitoring and Curatorship of Contributory Institutions*

Under clause 46 the Corporation will appoint examiners to monitor and supervise financial institutions that participate in the deposit protection scheme. The examiners will have power to enter the premises of financial institutions and inspect their records, but this power will normally have to be exercised with the consent of the institutions concerned unless there are grounds to believe that an offence is being committed (clause 48). To assist the Corporation in its monitoring function, every authority that registers financial institutions (e.g. the Registrar of Banking Institutions) and every authority that supervises such institutions (i.e. the Reserve Bank) must provide the Corporation with whatever information it needs to ascertain the financial condition of the institutions concerned: see clause 49.

If the Corporation finds that a financial institution has not complied with its prescribed standards, it may, under clause 50, warn the institution or direct it to take remedial action, or recommend that it be placed under curatorship; or it may revoke the institution's participation in the deposit protection scheme. Before doing so, however, the Corporation will have to consult the relevant supervisory agency (i.e. the Reserve Bank) and, except in an emergency, give the institution concerned an opportunity to make representations in the matter. The Corporation will also have power under clause 51 to direct the supervisory agency to conduct a special examination into the affairs of the institution concerned.

Auditors of financial institutions that participate in the deposit protection scheme will be obliged under clause 52 to notify the Corporation of any irregularities or illegal conduct they encounter in the course of their audits.

The Corporation's powers under this Part will be supplemented by those under the Banking Act, as amended by clause 64. If financial institutions are placed under curatorship under that Act, the Corporation will appoint the curator, and the Corporation will have to be consulted whenever the question arises as to whether an institution's registration should be cancelled or suspended or whenever any disciplinary or remedial action is taken against an institution.

*Part VIII: General*

This Part deals with miscellaneous matters.

Under clause 53, decisions of the Corporation will be subject to an appeal to the Minister of Finance, and there will be a further appeal against the Minister's decision to the Administrative Court.

The making of false statements and the fraudulent destruction of documents will be a criminal offence under clause 54, and clause 55 will make it an offence to hinder or obstruct officers, employees and agents of the Corporation in the exercise of their functions under the Bill.

Clause 56 will require officers, employees and agents of the Corporation to respect the confidentiality of information they receive about financial institutions and depositors in the course of their duties under the Bill. Clause 57 will reinforce this by making it a criminal offence for officers, employees and agents to use such information for their personal gain.

Clause 58 will enjoin mutual co-operation between the Corporation and all registering and supervisory authorities, except in regard to the disclosure of confidential information.

Clause 59 will simplify the proof of certain facts through documentary evidence.

In terms of clause 60, all financial institutions that participate in the deposit protection scheme will have to keep their depositors informed of the extent of protection afforded by the scheme and of their rights under the scheme.

If a financial institution that participates in the scheme goes insolvent, the Corporation will be entitled to receive all official notices and documents that the institution's creditors receive, and will be entitled to attend meetings of creditors of the institution: clause 61. The Corporation's claims against the institution will be given preference over those of other creditors, as will the claims of the institution's depositors: clause 62.

Clause 63 will give the Corporation power to make rules for various matters, including those set out in subclause (2) of the clause. The rules will have to be approved by the Minister.

Clause 64 will amend the Banking Act in the following main respects:

- requiring the Corporation to be consulted before banking institutions are registered or de-registered or are placed under curatorship;
- requiring banking institutions to keep the Corporation informed about the state of their business;
- requiring the Reserve Bank's supervisors to co-operate with officials of the Corporation;

Clause 65 will deal with the transition between the existing Deposit Protection Board and the Corporation established by the Bill. Members of the existing Board will hold office as directors of the Corporation for six months until new directors have been appointed in terms of the Bill. The money in the existing fund will be transferred to the Deposit Protection Fund established by the Bill. Any regulations which the Minister of Finance may have made under the Banking Act in regard to the deposit protection scheme will be deemed to have been rules made by the Corporation under the Bill, and all financial institutions that were contributing to the existing fund will continue to be contributory institutions under the Bill; this will not, however, apply to troubled or insolvent institutions or to those under curatorship.

*First Schedule: Provisions relating to directors and to procedure and staff of Corporation*

This Schedule will set out provisions relating to the appointment, tenure and conditions of service of directors of the Corporation. It will also deal with the convening of meetings of the Corporation's Board of Directors, the procedure to be followed at those meetings, the establishment of committees by the Board of Directors, and the keeping of minutes of their meetings. Finally, it will regulate the appointment of a chief executive officer and other staff of the Corporation and the fixing of their conditions of employment.

*Second Schedule: Ancillary Powers of Corporation*

This Schedule will give the Corporation additional powers for carrying out its functions; the powers will include the acquisition of property, both movable and immovable, the conclusion of contracts, the provision of services and the charging of fees.

# DEPOSIT PROTECTION CORPORATION BILL, 2010

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FIRST SCHEDULE: Provisions Relating to Directors, and to Procedure and Staff of Corporation.

SECOND SCHEDULE: Ancillary Powers of Corporation.

PRESENTED BY THE MINISTER OF FINANCE

# BILL

To establish a Deposit Protection Corporation and to provide for its management, functions and powers; to establish a Deposit Protection Fund for the compensation of depositors in the event of financial institutions becoming insolvent, and to provide for the administration and application of the Fund; to amend the Banking Act [*Chapter 24:20*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Deposit Protection Corporation Act [*Chapter 24:29*].

#### 2 Interpretation

In this Act—

“appropriate registering agency”, in relation to—

- (a) a banking institution, means the Registrar of Banking Institutions referred to in section 4(1) of the Banking Act [*Chapter 24:20*];
- (b) a building society, means the Registrar of Building Societies appointed in terms of section 5 of the Building Societies Act [*Chapter 24:02*];
- (c) a contributory institution, other than a banking institution or a building society, which is required to be registered under any enactment, means the person who is responsible for registering that institution under the enactment concerned;

“appropriate supervisory agency”, in relation to—

- (a) a banking institution or financial institution to which Part IX of the Banking Act [*Chapter 24:20*] applies, means the Reserve Bank;
- (b) a contributory institution other than an institution referred to in paragraph (a), means a person or authority with power under any enactment to monitor, supervise or investigate the institution concerned;

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

“Board of Directors” means the Corporation’s Board of Directors established by section 6;

“Chief Executive Officer” means the Chief Executive Officer of the Corporation appointed in terms of paragraph 13 of the First Schedule;

“contribution” means a contribution payable to the Fund in terms of Part V;

“contributory institution” means a banking institution, building society or other organisation which is a contributory institution in terms of Part IV and whose status as such has not been suspended or revoked in terms of section 27;

“Corporation”—

- (a) means the Deposit Protection Corporation established by section 4; and
- (b) in relation to anything done or to be done by the Corporation, means the Deposit Protection Corporation referred to in paragraph (a), acting through its Board of Directors or through an employee in terms of this Act;

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

“depositor”, in relation to a contributory institution, means—

- (a) a person who has made a deposit with that institution; or
- (b) the trustee, executor, liquidator or other lawful representative of a depositor referred to in paragraph (a); or
- (c) a person to whom a depositor referred to in paragraph (a) or (b) has ceded his or her rights in the deposit concerned;

“director” means a member of the Board of Directors;

“examiner” means a person appointed as an examiner in terms of section 46(1) or as a supervisor in terms of the Banking Act [*Chapter 24:20*];

“financially distressed”, in relation to a contributory institution, means financially distressed as described in section 3;

“Fund” means the Deposit Protection Fund established by section 13;

“insolvent”, in relation to a contributory institution, means insolvent as described in section 3;

“judicial manager” includes a provisional judicial manager and, in relation to a contributory institution that is not a company, any person whose functions are similar to those of a judicial manager or provisional manager of a company;

“liquidator” includes a provisional liquidator and, in relation to a contributory institution that is not a company, any person whose functions are similar to those of a liquidator or provisional liquidator of a company;

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

“protected deposit” means a deposit which—

- (a) is of a class prescribed for the purposes of section 40; and
- (b) immediately before the insolvency of the contributory institution with which it was made, created a liability, whether present or future, on the part of the institution towards the depositor;

“prudential requirement” means a requirement referred to in section 26;

“Reserve Bank” means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:15*];

“statutory body” means any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President or a Minister or by any other statutory body;

“troubled”, in relation to a contributory institution, means troubled as described in section 3.

### **3 When contributory institution becomes financially distressed, troubled or insolvent**

(1) A contributory institution is financially distressed for the purposes of this Act if the institution—

- (a) has failed to comply with any prudential requirement applicable to it; or
- (b) is unable to meet its obligations towards depositors or is likely, in the near future, to be unable to meet those obligations;

or in such other circumstances as may be prescribed.

(2) A contributory institution is troubled for the purposes of this Act if it has been declared to be a troubled financial institution in terms of section 6 of the Troubled Financial Institutions (Resolution) Act [*Chapter 24:28*].

(3) A contributory institution becomes insolvent for the purposes of this Act—

- (a) in the case of a company or a building society, upon the making of an order by the High Court or the passing of a special resolution in terms of Part V of the Companies Act [*Chapter 24:03*] for the winding up of the company or building society, as the case may be; or
- (b) in the case of any other organisation, upon the happening of an event which is certain to lead to the organisation’s dissolution; or
- (c) in the case of any contributory institution, if, through the cancellation of its registration or any other cause, it ceases to be entitled to conduct banking business in Zimbabwe; or
- (d) in such other circumstances as may be prescribed.

(4) For the avoidance of doubt it is declared that a contributory institution may become financially distressed or insolvent for the purposes of this Act even if its assets exceed its liabilities.

## PART II

## DEPOSIT PROTECTION CORPORATION

**4 Establishment of Deposit Protection Corporation**

There is hereby established a body corporate to be known as the Deposit Protection Corporation, which shall be capable of suing and being sued in its own name and, subject to this Act, of doing everything that bodies corporate can do by law.

**5 Functions and objectives of Corporation**

(1) Subject to this Act, the Corporation's function shall be to establish and administer a deposit insurance scheme for the protection of depositors against the risk of loss, and to that end—

- (a) to administer the Fund; and
- (b) to levy contributions from contributory institutions; and
- (c) to pay compensation to depositors in the event of the insolvency of a contributory institution; and
- (d) to monitor the business and activities of contributory institutions to ensure minimal exposure to the Fund; and
- (e) to assist the Minister and the Reserve Bank in the formulation and implementation of fiscal and monetary policy so as to ensure sound banking practices and fair competition among banks in Zimbabwe; and
- (f) to keep the public informed of—
  - (i) the Corporation's role in contributing towards the stability of Zimbabwe's financial system; and
  - (ii) the rights of depositors in the event of a contributory institution becoming insolvent;

and

- (g) to exercise any other function conferred or imposed on the Corporation in terms of this Act or any other enactment.

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

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

(3) The Corporation shall ensure that, so far as possible, decisions taken and other things done by itself and its committees, employees and agents in the exercise of its functions are fair, accountable and open, and in particular shall ensure that—

- (a) anyone likely to be affected by any such decision or conduct is consulted before the decision is taken or the thing is done; and

(b) anyone affected by any such decision or conduct is provided promptly with the reasons for it if he or she requests them:

Provided that the Corporation need not consult persons likely to be affected by any such decision or conduct if, in the Corporation's opinion, consultation would unduly delay the proposed decision or conduct or would render it nugatory or would otherwise defeat its purpose.

## **6 Board of Directors**

(1) Subject to this Act, the operations of the Corporation shall be controlled by a Board of Directors consisting of—

- (a) one director to represent the Ministry for which the Minister is responsible; and
- (b) one director to represent the Reserve Bank; and
- (c) four directors to represent contributory institutions; and
- (d) the Chief Executive Officer.

(2) The directors referred to in subsection (1)(a), (b) and (c) shall be appointed by the Minister in accordance with the First Schedule.

## **7 Provisions relating to directors, and to procedure and staff of Corporation**

(1) Part I of the First Schedule shall apply in regard to the appointment, tenure and conditions of service of directors.

(2) Part II of the First Schedule shall apply in regard to the conduct of the Corporation's business.

(3) Part III of the First Schedule shall apply in regard to appointment and conditions of service of the Corporation's staff.

## **8 Ancillary powers of Corporation**

(1) In the exercise of its functions, the Corporation shall have power, subject to this Act, to do or cause to be done, either by itself or through its agents, all or any of the things set out in the Second Schedule, either absolutely or conditionally and either by itself or jointly with others.

(2) Subsection (1) shall not be construed as derogating from the powers given to the Corporation by section 4.

## **9 Execution of contracts and instruments by Corporation**

Any agreement, contract or instrument approved by the Board of Directors may be entered into or executed on the Corporation's behalf by any person whom the Board has generally or specially authorised to do so.

## **10 Policy directions to Corporation**

(1) The Minister may give the Board of Directors general directions as to the policy the Corporation is to observe in the exercise of its functions under this Act.

(2) Before giving the Board of Directors a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and shall give the Board a reasonable opportunity to give its views on the proposal.

(3) The Board of Directors shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) Where any direction has been given to it in terms of subsection (1), the Board of Directors shall ensure that the direction and any views the Board has expressed on it in terms of subsection (2) are set out in the Corporation's annual report.

(5) Except as provided in subsection (1), in the lawful exercise of its functions the Corporation shall not be subject to the direction or control of any other person or authority.

### **11 Validity of decisions and acts of Corporation and committees**

No decision made or act done by or under the authority of the Corporation or any of its committees shall be invalid solely because—

- (a) there were one or more vacancies on the Board of Directors or the committee, as the case may be; or
- (b) an unqualified person acted as a director or member of the committee, as the case may be;

when the decision was taken or the act was done or authorised.

### **12 Exemption from liability of Corporation and its directors and agents**

No liability shall attach to—

- (a) the Corporation; or
- (b) any director or member of a committee of the Board of Directors; or
- (c) any employee or agent of the Corporation;

in respect of loss or damage sustained by any person as a result of the *bona fide* exercise of any function conferred or imposed on the person concerned by or under this Act:

Provided that this section shall not be construed as preventing anyone from recovering damages or compensation for loss or damage that was caused by negligence or breach of contract.

## **PART III**

### **DEPOSIT PROTECTION FUND**

### **13 Establishment and object of Deposit Protection Fund**

- (1) There is hereby established a fund, to be known as the Deposit Protection Fund.
- (2) The Fund shall be vested in the Corporation and, subject to this Act, shall be administered by the Corporation as trustee.
- (3) The object of the Fund shall be to compensate depositors in accordance with this Act for losses incurred by them in the event of the insolvency of a contributory institution.

### **14 Composition of Fund**

The Fund shall consist of—

- (a) all contributions; and
- (b) income from investments made by the Corporation; and
- (c) any money borrowed by the Corporation on behalf of the Fund; and
- (d) any money received by the Fund under any contract of insurance effected by the Corporation; and

- (e) money appropriated for the purpose by Act of Parliament as a grant or advance to the Fund; and
- (f) money advanced to the Fund by the Reserve Bank; and
- (g) any other money that may vest in or accrue to it, whether in terms of this Act or otherwise.

### **15 Administration of Fund**

For the purpose of administering the Fund, the Corporation may exercise any power conferred upon a trustee by the common law and, without derogation from Part III of the First Schedule, may delegate its powers of administration to its Chief Executive Officer and other members of its staff.

### **16 Holding and investment of Fund**

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

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

(3) The Corporation shall keep a schedule at its offices showing particulars of the Fund's current investments in sufficient detail to enable contributory institutions to assess the Fund's financial soundness, and the Corporation shall ensure that the schedule is available for inspection at all reasonable times by officers and employees of contributory institutions.

(4) At least once a year the Board of Directors shall review the size of the Fund and the manner in which the money held in the Fund is invested, taking into account the Fund's current and potential liabilities, and in the light of that review the Board shall—

- (a) make any necessary adjustments in the holding of the Fund; and
- (b) assess the contributions to be paid by contributory institutions; and
- (c) determine whether or not supplementary contributions should be paid by contributory institutions.

### **17 Financial year of Fund**

The financial year of the Fund shall be the period of twelve months ending on the 31st December each year or on such other date as may be prescribed.

### **18 Accounts of Fund and statement of accounts**

(1) The Corporation shall ensure that proper accounts and other records are kept in relation to all the transactions of the Fund, including such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the Corporation shall cause a statement of accounts to be prepared for the Fund in respect of that financial year or in respect of such other period as the Minister may direct, and shall cause the statement to be submitted to the Minister.

(3) The Corporation shall keep at its offices a copy of each statement prepared in terms of subsection (2), and shall ensure that it is available for inspection at all reasonable times by officers and employees of contributory institutions.

## 19 Audit of Fund's accounts

(1) With the approval of the Comptroller and Auditor General, the Corporation shall appoint as auditors one or more persons who are registered as public auditors under the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The Fund's accounts shall be examined at least once a year by the auditors appointed in terms of subsection (1).

(3) The auditors shall make a report to the Corporation on the statement of accounts prepared in terms of section 18(2), and in their report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the financial state of the Fund.

(4) In addition, the Minister may require the Corporation to obtain from the auditors such other reports, statements or explanations as the Minister considers expedient in connection with the activities, funds and property of the Corporation or the Fund, and the Corporation shall forthwith comply with any such requirement.

(5) If, in the opinion of the auditors

(a) they have not obtained any information or explanation they require; or

(b) any accounts or records relating to any accounts have not been properly kept by the Corporation; or

(c) the Corporation has not complied with any provision of this Part;

the auditors shall include in their report made in terms of subsection (3) or (4), as the case may be, a statement to that effect.

(6) The Corporation shall keep at its offices a copy of each report prepared by its auditors in terms of subsections (3) and (4), and shall ensure that it is available for inspection at all reasonable times by officers and employees of contributory institutions.

(7) If in terms of the Public Finance Management Act [*Chapter 22:19*] the Fund's accounts are required to be audited by the Comptroller and Auditor-General, any reference in this section to auditors appointed in terms of subsection (1) shall be construed as a reference to the Comptroller and Auditor-General.

## 20 Powers of auditors

(1) An auditor referred to in section 19 may at all reasonable times require any director, employee or agent of the Corporation—

(a) to produce to the auditor any of the Corporation's accounts and any other record relating to its accounts; and

(b) to provide any explanation or information relating to the Corporation's accounts or records or relating to any of the Corporation's activities;

if, in the auditor's opinion, production of the accounts or record or provision of the explanation or information, as the case may be, is necessary for the purpose of his or her audit.

(2) Any director, employee or agent of the Corporation who, without just cause—

(a) fails to comply with a requirement in terms of subsection (1); or

(b) hinders or obstructs an auditor referred to in section 19;

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

## 21 Internal auditor

The Corporation shall appoint an internal auditor, and section 80 of the Public Finance Management Act [*Chapter 22:19*] shall apply in relation to the internal auditor's functions as if the Corporation were a Ministry and the Chief Executive Officer were the Corporation's accounting officer.

## 22 Fund to be charged with expenses of Corporation

Without derogation from paragraph 7 or paragraph 15(2) of paragraph 15 of the First Schedule, the expenses of the Corporation shall be chargeable to the Fund.

## PART IV

### CONTRIBUTORY INSTITUTIONS

## 23 Banks and building societies to be contributory institutions on registration

- (1) Subject to this Act, every—
  - (a) banking institution that is required to be registered under the Banking Act [*Chapter 24:20*]; and
  - (b) building society that is required to be registered under the Building Societies Act [*Chapter 24: 21*];

shall become a contributory institution upon its registration under that Act.

(2) The Corporation may make rules under section 63 declaring that banking institutions or building societies of a specified class shall not become contributory institutions upon their registration if, in the Corporation's opinion, the nature of the banking business conducted by members of that class renders it unnecessary or undesirable for their depositors to be afforded protection under this Act.

(3) If, in the Corporation's opinion, a banking institution or building society referred to in subsection (1) will not comply with all or any of the applicable prudential requirements on its registration, the Corporation may send a notice in writing to the institution or society concerned, declaring that it shall not become a contributory institution on its registration:

Provided that the Corporation shall without delay inform the institution or society, in writing, of its reasons for forming that opinion and, where appropriate, of any measures that the institution or society may take in order to comply with the prudential requirements concerned.

(4) As soon as possible after sending a notice to a banking institution or building society in terms of subsection (3), the Corporation shall publish a notice in the *Gazette* stating that the institution or society concerned will not or, as the case may be, did not become a contributory institution on its registration.

## 24 Bank or building society becoming contributory institution after registration

(1) Where the Corporation is satisfied that a banking institution or building society which did not become a contributory institution on its registration in terms of section 23(3) complies with all applicable prudential requirements, the Corporation shall send a notice in writing to the institution or society concerned declaring it to be a contributory institution from the date of the notice or such later date as the Corporation may specify therein, and the institution or society shall be a contributory institution with effect from that date.

(2) As soon as possible after sending a notice to a banking institution or building society in terms of subsection (2), the Corporation shall publish a notice in the *Gazette* stating that the institution or society concerned has or will, as the case may be, become a contributory institution.

## **25 Declaration of certain organisations to be contributory institutions**

With the Minister's approval, the Corporation may by statutory instrument declare that any organisation other than a banking institution or building society referred to in section 23(1) shall be a contributory institution, if—

- (a) the organisation carries on any form of banking business in Zimbabwe; and
- (b) in the Corporation's opinion, the organisation's depositors require protection under this Act; and
- (c) the organisation complies with the appropriate prudential requirements:

Provided that—

- (i) before making such a declaration the Corporation shall consult the organisation and give it a reasonable opportunity to make representations in regard to the proposed declaration;
- (ii) the Corporation shall not make such a declaration in respect of an organisation that is a statutory body except with the approval of the Minister responsible for administering the Act by or under which the statutory body was established.

## **26 Prudential requirements**

(1) The Corporation in consultation with the appropriate registering or supervisory authority may, in addition to the prescribed regulatory or supervisory authority requirements, request the contributory institutions to observe its requirements in regard to, any other matter which may affect the institutions' ability to repay their depositors.

Provided the regulatory or supervisory authority has been consulted on these requirements.

## **27 Revocation or suspension of contributory institution's status**

(1) Subject to this section, if a contributory institution has failed to comply with any prudential requirement and the Corporation is satisfied that—

- (a) the institution will be unable to comply with the requirement within a reasonable period; and
- (b) the Fund and the interests of contributory institutions generally will be unduly prejudiced if the institution remains a contributory institution;

the Corporation may, by notice in writing to the institution concerned, revoke the institution's status as a contributory institution.

(2) In deciding whether or not to revoke an institution's status in terms of subsection (1), the Corporation shall try to achieve an equitable balance between the interests of—

- (a) the institution's depositors, in particular its protected depositors; and
- (b) the Fund; and
- (c) other contributory institutions and their depositors.

(3) Before revoking a contributory institution's status in terms of subsection (1), the Corporation shall inform the institution, in writing, that it is considering doing so and of its reasons for considering such action, and shall afford the institution a reasonable opportunity to make representations in the matter:

Provided that, if the Corporation believes on reasonable grounds that it is not possible so to notify the institution at its registered or main office, the Corporation shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the institution's registered or main office is situated, stating that its status as a contributory institution will be revoked unless the institution lodges an appeal in terms of section 53 within seven days from the date of publication of the notice in the *Gazette*.

(4) The Corporation shall not revoke a contributory institution's status in terms of subsection (1)—

(a) until—

(i) the period within which an appeal may be lodged in terms of section 53 has elapsed; or

(ii) the thirty-day period referred to in the proviso to subsection (3) has elapsed, where a notice was published in terms of that proviso;

(b) if an appeal is lodged in terms of section 53, until it has been notified that the Minister and, where a further appeal is lodged in terms of that section, the Administrative Court has upheld the Corporation's decision.

(5) The Corporation may revoke a contributory institution's status if the institution so requests and the Corporation is satisfied that revocation will be in the best interests of the institution's creditors, depositors and members, and that it will not unduly prejudice the Fund:

Provided that, if the Corporation refuses to revoke an institution's status in terms of this subsection, within ten days after reaching that decision the Corporation shall notify the institution, in writing, of the decision and of the reasons for it.

(6) If the Corporation believes on reasonable grounds that a contributory institution has failed to comply with any prudential requirement and that—

(a) it will be necessary for the Corporation to consider revoking the institution's status in terms of subsection (1); and

(b) irreparable prejudice may be caused to the Fund and other contributory institutions if the institution continues as a contributory institution pending a decision on the revocation of its status;

the Corporation may, by notice in writing to the institution concerned, suspend the institution's status as a contributory institution pending a decision by the Corporation on the revocation of its status in terms of subsection (1):

Provided that no such suspension shall last for longer than three months.

(7) As soon as possible after revoking or suspending a contributory institution's status in terms of this section, the Corporation shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the institution conducts business in Zimbabwe, stating that the institution's status has been revoked or suspended, as the case may be.

## PART V

## PAYMENT OF CONTRIBUTIONS

**28 Liability to pay contributions**

Subject to this Act, every contributory institution, including a contributory institution that is under judicial management or curatorship in terms of the Banking Act [*Chapter 24:20*], shall pay contributions to the Fund.

**29 Contributions**

(1) At such intervals as may be prescribed, every contributory institution shall submit to the Corporation a statement in accordance with this section, setting out—

- (a) the type, number and value of the deposits held with the institution in Zimbabwe during each month since the last such statement was submitted; and
- (b) such further information as may be prescribed.

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

- (a) in a form approved by the Corporation; and
- (b) signed by the institution's chief executive officer and chief accounting officer; and
- (c) submitted to the Corporation by such date as may be prescribed or as the Corporation may direct.

(3) As soon as possible after receiving a statement from a contributory institution, the Corporation shall serve on the institution a notice specifying the contribution the institution is to make in respect of the period covered by the statement:

Provided that, if an institution has not submitted a statement by the date referred to in subsection (2)(c), the Corporation may serve such a notice on the institution in relation to the period that should have been covered by the statement.

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

- (a) the institution's deposit liabilities; and
- (b) the volume of deposit business which the Corporation expects the institution to conduct in the period concerned; and
- (c) the future estimated expenditure from the Fund, including any amounts payable by way of compensation; and
- (d) the level of protection which the Corporation wishes to afford to depositors through the Fund;

and, so far as it is practicable to do so, the Corporation shall apply the same criteria when fixing the contributions payable by all contributory institutions of the same class.

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

(6) If a contributory institution fails for any reason to pay its contribution in full within the twenty-one-day period specified in subsection (5), the institution shall be liable to pay the Fund a surcharge of the prescribed amount.

(7) At the request of a contributory institution, the Corporation shall provide the institution with a written statement of the basis on which the institution's contribution has been assessed in any period.

### **30 Contributions payable by new institutions**

(1) Upon the registration of a contributory institution, the Corporation shall assess the contribution payable by it in respect of its first year of business, on the basis of—

- (a) the average contributions paid or payable by contributory institutions of the same class in respect of that year; and
- (b) the volume of deposit business which the Corporation expects the institution to conduct in that year; and
- (c) the period in respect of which the contribution is payable:

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

(2) Section 29(3) to (7) shall apply, with any necessary changes, in relation to contributions levied in terms of subsection (1).

### **31 Supplementary contributions**

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

(2) The supplementary contribution shall be such percentage of the last annual contribution payable by the institution concerned as the Corporation may determine.

(3) Section 29(3) to (7) shall apply, with any necessary changes, in relation to supplementary contributions.

### **32 Penalty for failure to pay contributions**

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

(2) The court convicting a contributory institution of an offence in terms of subsection (1) may, on the application of the prosecutor and in addition to any penalty it may impose, give summary judgment against the institution in favour of the Corporation for the amount of the contribution which the institution has been convicted of failing or refusing to pay.

### **33 Contributions, surcharges and interest to be debts due to Fund**

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

### **34 Prohibition against payment of dividends while contribution unpaid**

(1) No contributory institution shall pay a dividend, or an amount in the nature of a dividend, to a shareholder or member whilst it is in default over the payment of any contribution that has become due, or any surcharge or interest connected therewith.

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

(3) Any payment made by a contributory institution in contravention of subsection (1) shall be void.

## PART VI

### COMPENSATION

### **35 Compensation payable to depositors on insolvency of contributory institution**

Subject to this Act, if a contributory institution becomes insolvent, the Corporation shall as soon as practicable compensate depositors for any direct loss they may have suffered through the institution's insolvency in respect of their protected deposits with that institution.

### **36 Curators and judicial managers to notify Corporation of deposits which will be protected in event of insolvency**

(1) Subject to subsection (2), as soon as it appears to a curator or judicial manager of a contributory institution that the institution will become insolvent, he or she shall send the Corporation a list showing, in relation to every deposit that is likely to be a protected deposit in the event of the institution's insolvency—

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

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

(2) The Corporation may exempt a curator or judicial manager from all or any of the requirements of subsection (1), if the Corporation is satisfied that the insolvency of the contributory institution concerned will cause no direct loss to the institution's depositors in respect of their protected deposits with the institution.

(3) The Reserve Bank shall, make an *ex parte* application to the High Court to appoint a curator or liquidator of a failed insured bank.

(4) The curator or liquidator appointed in terms of subsection (3) may, engage an agent or agents to assist him or her in the performance of his or her duties, and all fees, compensation and expenses of liquidation and administration thereof shall be fixed and paid by the curator or liquidator from the realised assets of the failed bank.

### **37 Liquidator to notify Corporation of protected deposits**

(1) Subject to subsection (2), within fourteen days after a contributory institution becomes insolvent, the institution's liquidator shall send the Corporation a list showing, in relation to every protected deposit with the institution—

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

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

(2) The Corporation may exempt a liquidator from all or any of the requirements of subsection (1), if the Corporation is satisfied that the insolvency of the contributory institution concerned will cause no direct loss to the institution's depositors in respect of their protected deposits with the institution.

### **38 Depositors may apply for compensation**

(1) Any person who believes that his or her deposit with an insolvent contributory institution is a protected deposit and that it has not been included on a list sent to the Corporation in terms of section 36 or 37 may apply to the Corporation in writing for compensation in terms of this Part.

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

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

### **39 Payment of compensation**

(1) Where it is satisfied that any person is entitled to compensation in terms of the Act, the Corporation shall, as soon as reasonably practicable, pay that person from the Fund the amount to which he or she is entitled.

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

- (a) verifying the amount and particulars of any deposit; or

- (b) ascertaining whether or not the depositor has any liability, whether vested or contingent, towards any contributory institution; or
- (c) ascertaining whether or not the depositor is entitled to compensation.

(3) In the event of any uncertainty as to the amount of compensation payable to a person, the Corporation shall pay the person only such percentage of the amount claimed or alleged to be due as the Corporation considers appropriate in the circumstances, pending a determination of the actual amount payable.

(4) The Corporation shall ensure that adequate records are kept of all payments made in terms of subsections (1) and (3) and of the persons to whom they are paid.

#### **40 Extent to which deposits are protected**

(1) The classes of deposits which are to be protected under this Act and the maximum amount payable by way of compensation in respect of any such class shall be as prescribed or as may be fixed by the Corporation from time to time, having regard to—

- (a) the capacity of the Fund; and
- (b) the nature of the deposits and the contributory institutions with which they are held.

(2) Where the Corporation has fixed, rather than prescribed, classes of deposits and maximum amounts in terms of subsection (1), it shall notify all contributory institutions without delay of the classes and amounts so fixed

#### **41 Calculation of amount of protected deposit**

(1) For the purpose of calculating the amount of a protected deposit—

- (a) any liability of the depositor concerned towards the insolvent institution concerned, whether the liability is present or future, shall be deducted from the amount of the deposit; and
- (b) if the depositor has two or more protected deposits of the same class with the same insolvent contributory institution, the amounts standing to the credit in those deposits shall be aggregated and the deposits shall be regarded as a single deposit.

(2) Where a single deposit represents sums held by a trustee on behalf of two or more different beneficiaries, each of those sums shall be regarded as a separate deposit for the purpose of determining whether or not compensation is payable to any person under this Act.

#### **42 Jointly-held deposits**

Where a protected deposit is jointly held, the Corporation shall divide the compensation payable under this section between the joint depositors in such shares as the Corporation considers appropriate in the light of the information before it:

Provided that, if the Corporation reasonably anticipates a dispute over the share to be paid to any joint depositor, the Corporation may initiate interpleader proceedings in any competent court for the purpose of determining the dispute.

### 43 Postponement, reduction or refusal of compensation in certain cases

(1) Where a depositor has a contingent liability towards an insolvent contributory institution, the Corporation may withhold payment of any compensation from him or her until the happening or non-happening of the event on which the contingency depends.

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

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

(3) The Corporation may decline to compensate a depositor who, in the Corporation's opinion, had any responsibility for or may have profited directly or indirectly from circumstances leading to the insolvency of the contributory institution concerned:

Provided that a person who acted as a professional adviser to the contributory institution shall not be regarded as responsible for the circumstances leading to the contributory institution's insolvency, solely on account of advice given *bona fide* by him or her in a professional capacity.

(4) The Corporation may decline to compensate a person who, when required to provide any information in terms of section 38 or 39, fails or refuses to do so or provides information that is false or misleading in a material particular.

### 44 Corporation to notify liquidator of compensation paid

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

### 45 Subrogation of Corporation

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

(2) Without derogation from subsection (1), the effect of a payment by the Corporation to a depositor in terms of this Part shall be that—

- (a) the insolvent contributory institution concerned shall become liable to the Corporation for an amount equal to the Corporation's payment, in all respects as if the Corporation rather than the depositor had deposited that amount with the institution before it became insolvent; and
- (b) the liability of the insolvent contributory institution to the depositor shall be reduced by an amount equal to the Corporation's payment.

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

## PART VII

## MONITORING AND CURATORSHIP OF CONTRIBUTORY INSTITUTIONS

**46 Examiners**

(1) The Corporation may appoint one or more of its employees or agents as examiners for the purpose of monitoring and supervising contributory institutions and exercising any other function conferred or imposed on examiners by or in terms of this Act.

(2) A person who is a supervisor under the Banking Act [*Chapter 24:20*] shall be an examiner for the purposes of this Act.

(3) The Corporation shall provide every examiner appointed under subsection (1) with a document identifying him or her as an examiner, and he or she shall produce it on request by any interested person.

**47 Powers of examiners**

(1) For the purposes of monitoring and supervising any contributory institution, an examiner may, subject to subsection (2)—

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

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

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

(2) The powers of entry and search conferred by subsection (1) shall not be exercised except with the consent of the contributory institution or person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them

for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

#### **48 Information to be provided to Corporation by contributory institutions**

(1) Within ninety days after the end of its financial year, every contributory institution shall submit to the Corporation a copy of its audited statement of accounts, balance sheet and profit and loss account.

(2) Whenever a contributory institution has reasonable grounds to believe that, within the next three months—

(a) it will be unable to meet its obligations towards its depositors; or

(b) it will suspend payment of its debts to any of its creditors;

the contributory institution shall forthwith inform the Corporation of that fact.

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

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

(b) generally, the institution's financial condition;

and the institution shall comply with any such requirement.

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

#### **49 Appropriate registering and supervisory agencies to provide Corporation with information**

Every appropriate registering agency and appropriate supervisory agency shall provide the Corporation, on request, with whatever information the Corporation may require to ascertain the financial condition of any contributory institution for which the agency concerned is responsible for registering or supervising.

#### **50 Action that Corporation may take where contributory institution is found not to have complied with prudential requirement**

(1) Subject to this section, if the Corporation is satisfied that a contributory institution has failed to comply with any prudential requirement, the Corporation, in consultation with the appropriate supervisory agency, may do any one or more of the following—

(a) issue a warning to the institution;

(b) issue a written direction to the institution to undertake remedial action specified in the instruction;

(c) recommend that the appropriate supervisory agency conduct an investigation into the contributory institution;

(d) recommend that the appropriate supervisory agency place the institution under curatorship;

(e) revoke the institution's status as a contributory institution.

(2) Before taking any action in terms of subsection (1), the Corporation shall inform the contributory institution concerned, in writing, of—

- (a) the prudential requirement which the institution is believed to have contravened and, in substance, the Corporation's grounds for that belief; and
- (b) the action the Corporation proposes to take in respect of the alleged contravention;

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

Provided that, where the Corporation considers that immediate action is necessary to prevent irreparable harm to the Fund and additionally, or alternatively the institution's depositors, the Corporation may take such action before affording the contributory institution an opportunity to make representations in terms of this subsection.

### **51 Special examinations**

Where the Corporation has reason to believe that a contributory institution—

- (a) is carrying on business in a manner detrimental to the interests of its depositors and creditors; or
- (b) may be financially distressed or insolvent; or
- (c) has provided the Corporation with false or misleading information under this Act;

the Corporation may conduct or request the appropriate supervisory authority to conduct a special examination into the affairs of the contributory institution concerned, and the appropriate regulatory authority shall, subject to subsection (2) and any other enactment, comply with the request.

(2) A special examination shall be conducted in such a way as not to alert the contributory institution concerned, or its depositors or creditors, to the nature and purpose of the examination.

### **52 Duties of auditors of contributory institutions**

(1) An auditor of a contributory institution shall be responsible for communicating to the Corporation any evidence he or she may have that an irregularity or illegal act has or may have been committed by—

- (a) any director of the contributory institution; or
- (b) any person, if there is a reasonable possibility that the irregularity or illegal act may significantly damage the contributory institution's financial stability or contribute to a loss of any of its money or assets.

(2) An auditor shall comply with his or her obligations under subsection (1) notwithstanding any duty of confidentiality to the contrary, and shall not be held liable in any proceedings arising out of his or her compliance with any such obligation unless it is proved that he or she acted in bad faith

## **PART VIII**

### **GENERAL**

### **53 Appeals**

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

- (a) a decision of the Corporation in terms of section 23(3) that a banking institution or building society should not become a contributory institution on its registration; or
- (b) a decision by the Corporation in terms of section 25 that an organisation other than a banking institution or building society should be declared a contributory institution; or
- (c) a proposal by the Corporation to revoke a contributory institution's status in terms of section 27; or
- (d) a refusal by the Corporation to accede to a contributory institution's request to revoke its status in terms of section 27(5); or
- (e) an assessment of a contribution, or any surcharge or interest in connection with a contribution; or
- (f) a refusal by a liquidator to put his or her name on a list in terms of section 37; or
- (g) a refusal to pay compensation in terms of Part VI; or
- (f) an assessment of compensation, or a postponement of the payment of compensation, in terms of Part VI; or
- (g) any action taken by the Corporation in terms of section 50 or
- (h) any provision of a direction issued in terms of section 50; or
- (i) any other decision, proposal or action in terms of this Act that may be prescribed;

may appeal to the Minister against the decision, proposal or action concerned.

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed and shall be lodged with the Minister seven days after the appellant was notified of the decision, proposal or action appealed against.

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

Provided that the Minister shall ensure that the appellant and the Corporation are given an adequate opportunity to make representations in the matter.

(4) The Minister shall ensure that the appellant and the Corporation are notified promptly of any decision reached by him or her on an appeal.

(5) Any person who is aggrieved by a decision of the Minister on an appeal may appeal against that decision to the Administrative Court within the time and in the manner prescribed in rules of court.

(6) In an appeal in terms of subsection (5), the Administrative Court may confirm, vary or set aside the decision, proposal or action appealed against and give any other order, whether as to costs or otherwise, that the court considers just.

(7) The lodging of an appeal against any provision of a direction issued in terms of section 50 shall not have the effect of suspending the direction pending the determination of the appeal, but the Minister or the Administrative Court, as the case may be, shall ensure that all necessary steps are taken to determine the appeal as quickly as possible.

#### **54 False statements, etc.**

(1) Any person who, in or in connection with any application or return prepared or submitted for the purposes of this Act, makes a statement or provides information that is false in

a material particular, knowing the statement or information to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence.

(2) Any person who, for the purposes of this Act, publishes, issues or signs a document which contains a statement that is false in a material particular shall be guilty of an offence if—

- (a) when he or she published, issued or signed the document, he or she knew that the statement was false or did not have reasonable grounds for believing it to be true; or
- (b) having subsequently become aware that the statement was false, he or she failed to take all reasonable steps to correct the document or to replace it with a correct document.

(3) Any person who, for the purpose of avoiding the payment of any contribution that is due or inducing the making of any payment that is not due—

- (a) destroys, mutilates, alters or falsifies any book, paper or security belonging to or relating to a contributory institution; or
- (b) makes, or is a party to the making of, a false or misleading entry in any register, book of account or other document belonging to or relating to a contributory institution;

shall be guilty of an offence.

(4) A person who is guilty of an offence in terms of subsection (1), (2) or (3) shall be liable—

- (a) in the case of an individual, to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (b) in the case of a body corporate, to a fine not exceeding level ten.

## **55 Hindering or obstructing examiner or other official**

Any person who, without just cause, knowingly hinders or obstructs an examiner or a director, employee or agent of the Corporation in the exercise of his or her functions under this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

## **56 Preservation of secrecy**

- (1) Subject to subsections (2) and (3), no—
- (a) director, employee or agent of the Corporation; or
  - (b) member of a committee of the Corporation; or
  - (c) examiner;

shall disclose any information which he or she has acquired in the performance of his or her functions under this Act and which relates to the affairs of a contributory institution or depositor.

- (2) Subsection (1) shall not apply to—
- (a) any disclosure made by the person concerned in the performance of his her functions under this Act or when required to do so by a court or in terms of any other enactment; or
  - (b) the disclosure of information that is generally known to members of the public or a substantial section of the public; or

- (c) the reporting, to an appropriate authority, of any criminal conduct which the person concerned reasonably suspects may have been committed by a contributory institution or depositor or by any employee or agent thereof or in connection with the Fund; or
- (d) the disclosure of statistical data which do not reveal confidential information concerning any particular contributory institution or other person.

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

### **57 Use of confidential information for personal gain**

- (1) Subject to subsection (2), if any—
- (a) director, employee or agent of the Corporation; or
  - (b) member of a committee of the Corporation; or
  - (c) examiner;

for personal gain makes use of any information which he or she has acquired in the performance of his or her functions under this Act and which relates to the affairs of a particular contributory institution or depositor, he or she shall be guilty of an offence and liable to—

- (i) a fine not exceeding level twelve or double the amount of his or her gain, whichever is the greater; or
- (ii) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

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

### **58 Co-operation between Corporation and registering and supervisory authorities**

(1) In the exercise of its functions under this Act, the Corporation shall co-operate wherever possible with all appropriate registering authorities and appropriate supervisory authorities, and shall promptly provide them with whatever information is reasonably necessary for the proper exercise of their statutory functions.

(2) Every appropriate regulatory authority and appropriate supervisory authority shall co-operate wherever possible with the Corporation, and shall promptly provide the Corporation with whatever information is reasonably necessary for the proper exercise of its functions under this Act, including—

- (a) comments by the authority concerned on returns and reports submitted by contributory institutions; and
- (c) contraventions of any law committed or suspected to have been committed by contributory institutions or by persons acting on behalf of such institutions.

(3) Subsections (1) and (2) shall apply notwithstanding any provision of any law relating to the confidentiality or secrecy of information provided to the Corporation or an appropriate registering authority or an appropriate supervisory authority.

## 59 Evidence

A document purporting to be signed by or on behalf of the Corporation and stating—

- (a) whether or not any organisation is a contributory institution; or
- (b) the amount of any contribution, surcharge and additionally, or alternatively, interest assessed as payable by a contributory institution in terms of Part V; or
- (c) whether or not the Corporation has received a contribution from a contributory institution and, if it has, the amount of the contribution; or
- (d) the compensation, if any, paid or payable to a person in terms of Part VI; or
- (e) the terms of any direction or instruction issued or assessment or decision made by the Corporation in terms of this Act;

shall be admissible in any proceedings in any court on its production by any person, and shall be *prima facie* proof of the facts stated in it.

## 60 Publicity for Scheme

- (1) Every contributory institution shall ensure that all its depositors are informed—
  - (a) of the extent to which their deposits are protected under this Act; and
  - (b) where their deposits are protected, of how they may receive compensation in the event of the institution becoming insolvent.
- (2) Contributory institutions shall provide the information referred to in subsection (1) in a form and manner approved by the Corporation.

## 61 Rights of Corporation on insolvency of contributory institution

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

## 62 Preference of claims on insolvency of contributory institution

- (1) Upon the winding up or dissolution of a contributory institution—
  - (a) the claims of the Corporation and the appropriate supervisory authority, in respect of any fees and expenses incurred in—
    - (i) conducting any investigation into the institution, whether in terms of this Act or any other enactment; and
    - (ii) placing the institution under curatorship, whether in terms of this Act or any other enactment, and paying the curator's fees and expenses; and
    - (iii) applying for the institution to be wound up or dissolved or placed under any form of judicial management;

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

- (b) the claims of depositors in respect of protected deposits shall be paid next after payment of the appropriate supervisory authority's claims described in paragraph (a).

(2) Where the Corporation has paid compensation to a depositor, any right which vests in the Corporation in terms of section 45(1) shall be regarded, for the purpose of subsection (1)(b), as a claim of the depositor concerned.

### 63 Rules

(1) Subject to subsection (3), the Corporation may make rules prescribing anything which by this Act is required or permitted to be prescribed or which, in the Corporation's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Rules made in terms of subsection (1) may provide for—

- (a) the exemption of any contributory institution or class thereof from all or any of the provisions of this Act;
- (b) all matters relating to the payment of contributions to the Fund, including the imposition of interest on unpaid contributions;
- (c) all matters relating to compensation, including the circumstances in which the Corporation may refuse compensation to any depositor;
- (d) the records to be kept and the returns and information to be furnished to the Corporation;
- (e) the imposition of penalties on contributory institutions that fail to comply with prudential requirements;
- (f) fees and charges for anything done or provided in terms of this Act;
- (g) the issuing of directions and orders to give effect to the rules;

(3) Rules shall not have effect until they have been approved by the Minister and published in the *Gazette*.

### 64 Amendment of Cap. 24:20

The Banking Act [*Chapter 24:20*] is amended—

(a) in section 2 (“interpretation”) by the insertion of the following definition—

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

(b) in section 8 (“Registration of banking institutions”)—

- (i) by the insertion after “Minister” where it occurs for the first and second times of “and the Deposit Protection Corporation”;
- (ii) by the deletion of “the Minister” where it occurs for the third time and the substitution of “they”;

(c) in section 9 by the insertion after “Registrar” of “, after consultation with the Deposit Protection Corporation,”;

(d) in section 13 in subsection (1)—

- (i) by the insertion after “Registrar” where it occurs for the first time of “, after consultation with the Deposit Protection Corporation,”;
- (ii) by the insertion after paragraph (d) of the following paragraph—

“(d1) if the Deposit Protection Corporation recommends an amendment in terms of the Deposit Protection Act [*Chapter 24:29*]; or”;

- (e) in section 14—
- (i) in subsection (1)—
- A. in paragraph (b) by the deletion of “or the Balance of Payments Reporting Act [*Chapter 24:16*]” and the substitution of “, the Balance of Payment Reporting Act [*Chapter 24:16*] or the Deposit Protection Act [*Chapter 24:29*]”;
- B. by the insertion after paragraph (n) of the following paragraph—
- “(n1)the Deposit Protection Corporation recommends that the institution’s registration be cancelled in terms of the Deposit Protection Act [*Chapter 24:29*]; or”;
- (ii) in subsection (2) by the insertion in paragraph (b) after “Minister” of “and the Deposit Protection Corporation”;
- (f) in section 24 (“Alteration of constitution or rules of conduct by banking institution”) (1) by the insertion after “Registrar” of “,after consultation with the Deposit Protection Corporation,”;
- (g) in section 25 (“Amalgamations and transfers of business”) (5) by the insertion after “received” of “and any views expressed by the Deposit Protection Corporation”;
- (h) in section 37 (“Records and transactions”) (1) by the insertion after “Registrar” of “, the Reserve Bank and the Deposit Protection Corporation”;
- (i) in section 47 (“Powers of supervisors”)by the insertion after subsection (3) of the following subsection—
- “(4) Wherever appropriate, supervisors shall exercise their powers under this section in co-operation and conjunction with examiners appointed by the Deposit Protection Corporation in terms of the Deposit Protection Act [*Chapter 24:29*].”;
- (j) in section 48 (“Action that may be taken by the Reserve Bank where banking institution is found to have contravened condition of registration, etc.”) (1) of the following proviso—
- “Provided that the Reserve Bank shall not—
- (a) place the institution under the management of a curator, judicial manager or liquidator without consulting the Deposit Protection Corporation;
- (b) take any other action under this subsection, apart from issuing a warning under paragraph (a), until it has consulted the Deposit Protection Corporation.”;
- (k) in section 53 (“Placing of banking institution under curatorship”)(1) by the deletion of the deletion of “the Reserve Bank may issue” and the substitution of “the Reserve Bank, after consulting the Deposit Protection Corporation, may issue”;
- (l) in section 57 (Special Provisions relating to winding up or judicial management of banking institutions”)(1)—
- (i) by the repeal of paragraph (b) and the substitution of—
- “(b) the Reserve Bank shall appoint the Deposit Protection Corporation as the provisional liquidator, provisional judicial manager, liquidator or judicial manager of a banking institution”;

- (ii) in paragraph (c) by the repeal of subparagraph (ii) and the substitution of—
  - “(ii) the Reserve Bank and the Deposit Protection Corporation, in respect of any fees and expenses incurred in the exercise of their functions under this Act or any other enactment;”;
- (m) by the repeal of Part XII;
- (n) in section 73 (“Appeal”) (1) by the repeal of paragraphs (m) and (n);
- (o) by the insertion after section 78 of the following section—

#### **78A Co-operation between Registrar, Reserve Bank and Deposit Protection Corporation**

“In the exercise of their functions under this Act, the Registrar and the Reserve Bank shall wherever possible co-operate with each other and with the Deposit Protection Corporation, and shall promptly provide each other and the Deposit Protection Corporation with whatever information is reasonably necessary for the proper exercise of their respective functions under this Act and the Deposit Protection Act [*Chapter 24:29*].”;

- (p) in section 81 (“Regulations”)—
  - (i) in subsection (2) by the repeal of paragraphs (e), (f) and (g);
  - (ii) in subsection (5) by the repeal of paragraph (b).

#### **65 Transitional provisions**

- (1) In this section—
  - “appointed date” means the date of commencement of this Act;
  - “former Board” means the Deposit Protection Board established by section 67 of the Banking Act [*Chapter 24:20*];
  - “former Fund” means the Deposit Protection Fund established by section 66 of the Banking Act [*Chapter 24:20*].
- (1) For six months after the appointed date or until the Minister re-appoints or replaces him or her as a director in terms of this Act, whichever occurs the sooner—
  - (a) a Deputy Governor of the Reserve Bank designated by the Governor of the Reserve Bank shall be a director of the Corporation as if he or she had been appointed in terms of paragraph (a) of section 6(a):
  - (a) every person who, immediately before the appointed date, is an employee or held office as a director of the former Board in terms of section 67(1)(c) of the Banking Act [*Chapter 24:20*] shall be a director of the Corporation as if he or she had been appointed in terms of section 6(c).
- (2) All the assets, rights and liabilities of the former Fund which were in existence immediately before the appointed date shall vest by succession in the Fund without the need for any form of transfer or cession.
- (3) Any decision or act of the former Board, or of any employee or agent of the former Board, which had or was capable of having effect immediately before the appointed date shall continue to have or be capable of having, as the case may be, the same effect as if it were a decision or act of the Corporation or of any employee or agent of the Corporation.

(4) Any regulations which were made in terms of section 81 of the Banking Act [*Chapter 24:20*] and which, immediately before the appointed date, applied to the former Board or the former Fund or to the payment of contributions or compensation under Part XII of that Act shall continue in force as if they were rules made by the Corporation in terms of section *sixty-three*, and may be amended or repealed accordingly.

(5) Every banking institution or building society which, immediately before the appointed date, was a contributory institution for the purposes of Part XII of the Banking Act [*Chapter 24:20*] shall continue to be a contributory institution under this Act:

Provided that a banking institution or building society which, on the appointed date, is—

- (a) troubled in terms of the Troubled Financial Institutions (Resolution) Act [*Chapter 24:28*]; or
- (b) under curatorship in terms of the Banking Act [*Chapter 24:20*]; or
- (c) insolvent;

shall not become a contributory institution until the Corporation, by written notice to the financial institution or building society concerned, directs that it shall become one.

(6) Any amount paid, decision taken or other thing that was done or commenced in terms of Part XII of the Banking Act [*Chapter 24:20*] or the regulations referred to in subsection (4) and which had or was capable of acquiring legal effect immediately before the appointed date shall continue to have or to be capable of acquiring, as the case may be, the same effect as if it had been paid, taken, done or commenced, as the case may be, in terms of the equivalent provision of this Act.

## **FIRST SCHEDULE (Sections 6, 7, 15 and 22)**

### PROVISIONS RELATING TO DIRECTORS, AND TO PROCEDURE AND STAFF OF CORPORATION

#### ARRANGEMENT OF PARAGRAPHS

#### PART I

##### BOARD OF DIRECTORS

##### *Paragraph*

1. Appointment of directors.
2. Disqualifications for appointment as director.
3. Vacation of office by director.
4. Suspension of director.
5. Filling of vacancies on Board of Directors.
6. Chairperson and deputy chairperson of Board of Directors.
7. Terms of office and conditions of service of directors.

#### PART II

##### PROCEDURE OF BOARD OF DIRECTORS

8. Meetings and procedure of Board of Directors.
9. Directors to disclose certain connections and interests.

10. Committees of Board of Directors.
11. Minutes of proceedings of Board of Directors and of committees.
12. Reports of Corporation.

### PART III

#### STAFF OF CORPORATION

13. Chief Executive Officer.
14. Other staff of Corporation.
15. Conditions of service of Corporation's staff.
16. Engaging of consultants.
17. Assignment of employees of Reserve Bank to Corporation.
18. Employees and consultants to disclose certain connections and interests.

### PART I

#### BOARD OF DIRECTORS

##### *Appointment of directors*

1. (1) For the purpose of appointing the director referred to in section 6(1)(b) the Minister shall—

- (a) invite the Governor of the Reserve Bank to submit the names of at least two persons qualified for appointment to the Board of Directors;
- (b) within one month after being invited to do so in terms of subparagraph (a), the Governor of the Reserve Bank shall submit to the Minister at least two names of qualified persons to represent the Bank on the Board of Directors;
- (c) without delay appoint as a director one of the persons named by the Governor of the Reserve Bank in terms of subparagraph (b).

(2) For the purpose of appointing the directors referred to in section (6)(1)(c), or filling any vacancy that arises among them the Minister shall—

- (a) call upon an organisation which, in his or her opinion, represents contributory institutions or any class of such institutions to submit a list of persons qualified for appointment to the Board of Directors;
- (b) within two months after being invited to do so in terms of subparagraph (a), the organisation concerned shall submit to the Minister a list of qualified persons to represent contributory institutions on the Board of Directors, the list containing the names of at least twice the number of persons as there are vacancies to be filled among the directors concerned;
- (c) without delay appoint the appropriate number of directors from the persons named in the list submitted in terms of subparagraph (b):

Provided that, where different classes of contributory institutions are represented by different organisations, the Minister shall approach whichever of those organisations is

appropriate to ensure that, so far as is practicable, all the classes of contributory institutions are equitably represented on the Board of Directors.

(3) If for any reason the Governor of the Reserve Bank or an organisation referred to in subparagraph (2) fails to submit a list of names when invited to do so in terms of this paragraph, the Minister may appoint such persons as he or she considers appropriate to represent the Reserve Bank or the contributory institutions concerned, as the case may be.

(4) The Minister shall ensure that, so far as is practicable, the Board of Directors comprises persons who will be able to represent the interests of all the different classes of contributory institutions and the interests of their contributors.

*Disqualifications for appointment as director*

2.(1) A person shall not be qualified to be appointed or hold office as a director if—

- (a) he or she is neither a citizen of Zimbabwe nor ordinarily resident in Zimbabwe; or
- (b) he or she, or his or her spouse—

- (i) is a director of a contributory institution; or
- (ii) is in the full-time employment of a contributory institution; or
- (iii) holds such a percentage of the share capital of a contributory institution or of the voting rights of members of a contributory institution as would constitute a significant interest in the institution for the purposes of section 26 of the Banking Act [*Chapter 24:20*];

or

- (c) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (d) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (e) within the period of five years immediately preceding his or her proposed appointment, he or she has been sentenced—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

to a term of imprisonment of not less than six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon; or

- (f) he or she has been convicted—
  - (i) in Zimbabwe, of an offence involving dishonesty; or
  - (ii) outside Zimbabwe, in respect of any conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty;

and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended.

(2) A person who is—

- (a) a Senator or member of the House of Assembly; or

- (b) a member of two or more other statutory bodies;
- (c) in the full-time employment of the State or the Corporation;

shall not be qualified to be appointed or to hold office as a director:

Provided that a person who is employed by the Reserve Bank or in the Public Service may be appointed as a director referred to in Section (6)(1)(a) or (b).

(3) For the purposes of subparagraph (b) of subparagraph (2)(b), a person who is appointed to a council, board or other authority which is a local authority or statutory body or which is responsible for the administration of the affairs of a local authority or statutory body shall be regarded as a member of that local authority or statutory body.

(4) Any person who, knowing that he or she is disqualified in terms of this paragraph to hold office as a director—

- (a) attends any meeting of the Board of Directors as a director; or
- (b) performs any other act as a director;

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

#### *Vacation of office by director*

3.(1)The office of a director shall become vacant—

- (a) one month after he or she gives notice in writing to the Minister that he or she intends to resign that office, or after the expiry of such other period of notice as the director and the Minister may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine—
  - (i) in Zimbabwe, in respect of any offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

or

- (c) if he or she becomes disqualified in terms of paragraph 2(1)(a), (b), (c), (d) or (f) of subparagraph (2) of that paragraph (2), to hold office as a director; or
  - (d) if he or she is required in terms of subparagraph (2) or (3) to vacate his or her office as a director.
- (2) The Minister may require a director to vacate his or her office if—
- (a) the director has been guilty of conduct which renders him or her unsuitable to continue to hold office as a director; or
  - (b) the director has failed to comply with any condition of his or her office fixed in terms of paragraph 7; or
  - (c) the director is mentally or physically incapable of efficiently performing his or her duties as a director; or
  - (d) the director contravenes paragraph 9; or
  - (e) the director or his or her spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is inconsistent with his or her duties as a director.

(3) The Minister, on the recommendation of the Corporation, may require a director to vacate his or her office if the Minister is satisfied that the director has been absent without the consent of the chairperson of the Board of Directors from three consecutive meetings of the Corporation, of which the director has been given at least seven days' notice, and that there was no just cause for the director's absence.

*Suspension of director*

4.(1)The Minister—

- (a) may suspend from office a director against whom criminal proceedings are instituted for an offence involving dishonesty; and
- (b) may suspend a director from office if there are reasonable grounds to believe that the director's office has become vacant in terms of paragraph 3(c)(1) but the director has not relinquished office; and
- (c) shall suspend from office a director who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended;

pending determination of the question whether the director is to vacate his or her office.

(2) A director who is suspended in terms of subparagraph (1) shall not carry out any duties or be entitled to any remuneration or allowances as a director during the suspension.

*Filling of vacancies on Board of Directors*

5. Within three months after a director's death or vacation of office, the Minister shall appoint a person, subject to section 6 and this Part, to fill the vacancy.

*Chairperson of Board of Directors*

6.(1)The Minister shall appoint one of the directors to be chairperson of the Board of Directors.

(2) The chairperson of the Board of Directors shall hold office as such for a period of three years unless he or she resigns as chairperson or ceases to be a director, and at the expiry of his or her term of office as such shall be eligible for reappointment.

(3) Whenever a vacancy occurs in the office of chairperson of the Board of Directors, the Minister shall without delay appoint a new chairperson.

(4) Subject to any restrictions or conditions imposed by the Board of Directors, the chairperson of the Board of Directors may, in cases of urgency or emergency, take whatever action or decision he or she thinks appropriate on the Board's behalf:

Provided that he or she shall report to the Board at its next meeting on any action or decision taken in terms of this subparagraph, and the Board may confirm, vary or revoke the action or decision concerned.

*Terms of office and conditions of service of directors*

7.(1)Subject to this Part, a director shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his or her appointment:

Provided that the Minister shall ensure that so far as possible there are always at least two directors who have held office for three years or more.

(2) On the expiry of the period for which a director has been appointed, he or she shall continue to hold office until he or she has been re-appointed or a successor has been appointed:

Provided that a director shall not continue to hold office in terms of this subparagraph for more than six months.

(3) A person who ceases to be a director shall be eligible for re-appointment:

Provided that no director shall serve for more than twelve years, whether continuously or in two or more separate periods of office.

(4) Directors shall be paid—

(a) such remuneration, if any, as the Board of Directors may fix; and

(b) such allowances, if any, as the Board of Directors may fix to meet any reasonable expenses they may incur in connection with the Corporation's business.

(5) The remuneration and allowances payable to directors in terms of subparagraph (4) shall be paid from the Fund.

## PART II

### PROCEDURE OF BOARD OF DIRECTORS

#### *Meetings and procedure of Board of Directors*

8.(1)The Board of Directors shall hold its first meeting on a date and at a place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet at least once every three months.

(2) The chairperson of the Board of Directors—

(a) may convene a special meeting of the Board at any time; and

(b) shall convene a special meeting of the Board on the written request of not fewer than two directors, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

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

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

(a) such business as may be determined by the chairperson of the Board of Directors, where he or she convened the meeting in terms of subparagraph (2)(a); or

(b) the business specified in the request for the meeting, where the chairperson of the Board of Directors convened the meeting in terms of subparagraph (2)(b).

(5) The chairperson of the Board of Directors shall preside at all meetings of the Board:

Provided that, if the chairperson is absent from any meeting of the Board, the directors present may elect one of their number to preside at that meeting as chairperson.

(6) Three directors shall form a quorum at any meeting of the Board of Directors.

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

(8) Subject to paragraph 7, at all meetings of the Board of Directors each director present shall have one vote on any question before the Board:

Provided that—

- (i) in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote;
- (ii) no director shall take part in the consideration or discussion of, or vote on, any question which relates to his or her vacation of office as a director.

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

*Directors to disclose certain connections and interests*

9. (1) In this paragraph—

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

(2) If—

(a) a director—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board of Directors; or
- (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the director’s private interests coming or appearing to come into conflict with his or her functions as a director; or
- (iii) knows or has reason to believe that any of his or her relatives—

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

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

or

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

the director shall forthwith disclose the fact to the Board.

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

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

#### *Committees of Board of Directors*

10.(1) For the better exercise of its functions, the Board of Directors may establish one or more committees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Board from itself exercising that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) The Board of Directors may appoint persons who—

(a) are not directors; or

(b) are employed by the State or a contributory institution;

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

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

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

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

(6) Subject to this paragraph, of paragraph 8(2) to (9) and paragraph 9 shall apply, with any necessary changes, to committees and their members as they apply to the Board of Directors and to directors.

#### *Minutes of proceedings of Board of Directors and of committees*

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

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

#### *Reports of Corporation*

12.(1) As soon as possible after the end of each financial year, the Board of Directors shall provide the Minister with a report on the Corporation's activities during that year.

(2) In addition to its annual report referred to in subparagraph (1), the Board of Directors shall provide the Minister with such reports on the Corporation's activities as the Minister may from time to time require.

## PART III

## STAFF OF CORPORATION

*Chief Executive Officer*

13(1) Subject to this Act, the Board of Directors shall appoint a Chief Executive Officer, who shall be responsible, subject to the Board's control, for administering the Corporation's affairs, staff and property and for performing any other functions that may be conferred or imposed upon him or her by or under this Act or that the Board may assign to him or her.

(2) The appointment of the Chief Executive Officer shall terminate if he or she would be required in terms of paragraph 3(1)(b) or(c) to vacate his or her office had that paragraph, and subparagraphs 2(1) and (2) applied to him or her.

(3) An assignment of functions in terms of subparagraph (1)—

- (a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board of Directors may determine;
- (b) may be revoked by the Board of Directors at any time;
- (c) shall not preclude the Board of Directors itself from exercising the functions.

*Other staff of Corporation*

14. Subject to any other law, the Corporation may employ such persons as the Board of Directors considers necessary for proper exercise of the Corporation's functions, and may promote, suspend or discharge any such employee.

*Conditions of service of Corporation's staff*

15.(1) Subject to any other law, the Board of Directors may fix the terms and conditions of service of persons employed in terms of paragraphs 13 and 14 and, in that regard may—

- (a) pay them such remuneration and allowances, grant them such leave of absence and make them such gifts and bonuses and the like as it thinks fit;
- (b) provide pecuniary benefits on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose may effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for them and their dependants any or all the pecuniary benefits to which this subparagraph relates;
- (c) purchase, take in exchange, hire or otherwise acquire land or dwellings for their use or occupation;
- (d) construct buildings and other improvements for their use or occupation on land which it has purchased, taken in exchange, hired or otherwise acquired;
- (e) sell or let land or dwellings to them for residential purposes;
- (f) make or guarantee loans to them or their spouses for—
  - (i) the purchase of dwellings or land for residential purposes; or
  - (ii) the construction or improvement of dwellings;
- (g) make or guarantee loans to them for the purpose of purchasing vehicles, tools or other equipment to be used by them in carrying out their duties.

(2) Any remuneration, allowances, pensions and other benefits to which persons referred to in subparagraph (1) are entitled shall be chargeable to the Fund.

*Engaging of consultants*

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

(2) Any remuneration to which persons engaged in terms of subparagraph (1) are entitled shall be chargeable to the Fund.

*Employees and consultants to disclose certain connections and interests*

18. Paragraph 9 shall apply, with any necessary changes, to persons employed or engaged by the Corporation in terms of paragraphs 14, 15 and 16, and to persons assigned to assist the Corporation in terms of paragraph 17.

**SECOND SCHEDULE (Section 8)**

ANCILLARY POWERS OF CORPORATION

1. To acquire premises necessary or convenient for the exercise of its functions and, for that purpose, to buy, take in exchange, hire or otherwise acquire immovable property and interests in and rights over such property.

2. To buy, take in exchange, hire or otherwise acquire movable property.

3. To maintain, alter and improve any of its property.

4. To mortgage or pledge any of its assets and to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets which are not required for the exercise of its functions, for such consideration as the Board of Directors may determine.

5. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments.

6. To insure against losses, damages, risks and liabilities which it may incur.

7. To borrow moneys for the purposes of the Fund, and to charge any of the Fund's investments as security for any such loan.

8. To make contracts and enter into suretyships or give guarantees, and to modify or rescind such contracts or rescind such suretyships or guarantees.

9. To enter into, renew, cancel or abandon arrangements with any person or authority to act as the Corporation's agent in any place, whether inside or outside Zimbabwe.

10. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees.

11. To provide such services as it considers it can properly provide, and to charge for those services such fees as it may determine from time to time.

12. Generally, to do anything that is calculated to facilitate or is incidental or conducive to the performance of its functions under this Act or any other enactment.