THE BANKING AND FINANCIAL SERVICES (AMENDMENT) BILL, 2020

MEMORANDUM

The object of this Bill is to amend the Banking and Financial Services Act so as to—

(a) provide for the repayment of funds collected by an unlicensed person;

(b) revise the jurisdiction of the tribunal;

(c) revise the priority of payment to depositors; and

(d) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

N.A.B. 7, 2020
27th July, 2020

A BILL

ENTITLED

An Act to amend the Banking and Financial Services Act.

Enactment

ENACTED by the Parliament of Zambia.

Short title

Act No. 7 of 2017

1. This Act may be cited as the Banking and Financial Services (Amendment) Act, 2020, and shall be read as one with the Banking and Financial Services Act, 2017, in this Act referred to as the principal Act.

Amendment of Section 2

2. Section 2 of the principal Act is amended by the deletion of the definition of "insolvency" and the substitution therefor of the following:

"insolvency" means a situation where a financial service provider —

(a) is unable to pay a debt when it falls due;

(b) has assets that are insufficient to meet liabilities; or

(c) has regulatory capital which is at zero or lower.

Repeal and replacement of section 6

3. (1) The principal Act is amended by the repeal of section 6 and the substitution therefor of the following:

Providing banking business, financial business or financial services without licence

6. (1) A company shall not conduct a banking business without a banking licence.

(2) A body corporate shall not conduct a financial business without a financial business licence, or provide a financial service without a financial institution licence.

(3) A person, without a banking licence, financial institution licence or a financial business licence, shall not collect funds by purporting to conduct a banking business, financial service or financial business.

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(4) A person who contravenes subsections (1), (2) and (3) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(5) Where a person obtains funds under subsection (3), that person shall, in addition to the penalty imposed under subsection (4), repay the funds in accordance with the Bank's directives and within the period determined by the Bank.

(6) Where funds repayable under subsection (5) remain unpaid at the end of the period determined by the Bank for repayment, the funds payable shall be recoverable by the Bank and kept in trust for the person lawfully entitled to the funds.

Amendment of section 21

4. Section 21 of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:

(2) The Register shall be open for public inspection during normal operating hours of the Bank.

(3) The Bank may maintain a Register in an electronic form or any other form determined by the Bank.

Repeal and replacement of heading

5. The principal Act is amended by the repeal of the heading immediately after section 51 and the substitution therefor of the following:

REGULATORY AND SUPERVISORY POWER OF BANK

Insertion of section 62A

6. The principal Act is amended by the insertion of the following new section immediately after section 62:

Anti-money laundering and counter financing of terrorism supervision

62A. The Bank may exercise its authority over a financial service provider where the Bank considers that it is necessary to implement supervision for the purposes of the prevention and combating of money laundering and financing of terrorism or proliferation or any other serious offence.

Repeal of section 72

7. The principal Act is amended by the repeal of section 72.

Repeal and replacement of section 73

8. The principal Act is amended by the repeal of section 73 and the substitution therefor of the following:

Possession of financial service provider by Bank

73. (1) The Bank shall, where the Bank takes possession of a financial service provider—

(a) restructure or re-organise the financial service provider;

(b) sell the financial service provider as a going concern;