THE BANKING AND FINANCIAL SERVICES BILL, 2017

MEMORANDUM

The objects of the Bill are to provide for-

- (a) a licensing system for the conduct of banking and financial business or provision of financial services;
- (b) the incorporation of standards, principles and concepts of corporate governance in institutional systems and structures of banks and financial institutions;
- (c) sound business practices and consumer protection mechanisms;
- (d) the regulation and supervision of banking and financial services;
- (e) repeal and replace the Banking and Financial Services Act, 1994; and
- (f) matters connected with, or incidental to, the foregoing.

A. Mwansa, Solicitor-General

119

N.A.B. 7, 2017 7th March, 2017

THE BANKING AND FINANCIAL SERVICES BILL, 2017

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY PROVISIONS

- 1. Short title and commencement
- 2. Interpretation
- 3. Application of Act
- 4. Relationship with other Acts

PART II

LICENSING OF FINANCIAL SERVICE PROVIDERS

- 5. Types of licences
- 6. Providing banking business, financial business or financial services without licence
- 7. Application for banking, financial business or financial institution licence
- 8. Grant of licence
- 9. Display of licence
- 10. Rejection of application for licence
- 11. Validity of licence
- 12. Authorised activities of banks
- 13. Transfer, pledge, assignment, encumbrance of licence
- 14. Variation of licence
- 15. Amendment of licence
- 16. Surrender of licence
- 17. Suspension or cancellation of licence
- 18. Loss or damage of licence
- 19. Opening branches, subsidiaries and other establishments
- 20. Representative office
- 21. Register of financial service providers
- 22. Publication of financial service providers
- 23. Appointment of Registrar and Deputy Registrars
- 24. Financial inclusion

N.A.B. 7, 2017

PART III

OWNERSHIP AND CONTROL OF FINANCIAL SERVICE PROVIDERS

- 25. Limit on voting control
- 26. Divestment of control
- 27. Ownership
- 28. Prohibition of ownership of shares by trusts
- 29. Corporate restructuring transactions
- 30. Requirements for corporate restructuring transaction
- 31. Effect of corporate restructuring transaction

PART IV

CORPORATE GOVERNANCE

- 32. Responsibilities of Directors
- 33. Board meetings
- 34. Qualifications of directors, chief executive officers, chief financial officers
- 35. Non-executive directors to be in majority
- 36. Reporting obligations of Board and directors
- 37. Conduct of directors, chief executive officers, chief financial officers and managers
- 38. Disclosure of interest
- 39. False statement and obstruction of examinations
- 40. Suspension or dismissal of directors and senior officers by Bank and removal of shareholders
- 41. Fit and proper requirements
- 42. Corporate governance

PART V

BUSINESS OPERATIONS

- 43. Principal administrative officer
- 44. Use and alteration of name
- 45. Business hours
- 46. Bank holiday
- 47. Records to be registered and maintained
- 48. Credit documentation
- 49. Manner of keeping records
- 50. Retention of records
- 51. Maintenance of records

N.A.B. 7, 2017

PART VI

PRUDENTIAL REGULATION AND SUPERVISION

- 52. Minimum capital requirements
- 53. Capital conservation buffer
- 54. Countercyclical capital buffer
- 55. Restriction on payment of dividends
- 56. Leverage ratio
- 57. Maintenance of liquidity
- 58. Constraints on contracts with related person
- 59. Examination of financial service providers
- 60. Submission of returns
- 61. Consolidated supervision
- 62. Affiliates and crossborder supervision
- 63. Unsafe and unsound practices
- 64. Supervisory actions
- 65. Financial service provider suffering large losses
- 66. Undercapitalised financial service providers
- 67. Significantly undercapitalised financial service providers
- 68. Corrective actions against financial businesses
- 69. Modification, cancellation and upholding of regulatory statement
- 70. Notice of taking possession
- 71. Powers and duties of Bank on taking possession
- 72. Statement of affairs of assets and liabilities on taking possession
- 73. Actions where financial service provider is solvent
- 74. Actions where financial service provider is insolvent
- 75. Application to Court for termination of possession
- 76. Effects of possession
- 77. Restructuring and reorganisation
- 78. Refusal of restructuring or reorganisation
- 79. Restriction on execution of judgment
- 80. Recovery of expenses

PART VII

RESTRICTIONS ON TRANSACTIONS OF FINANCIAL SERVICES PROVIDERS

- 81. Secured borrowing
- 82. Limitations on granting credit facilities
- 83. Restriction on trade
- 84. Restriction on equity investments
- 85. Restriction on lease or other interest in real property
- 86. Limits, restrictions and prohibition on financial business and alternative financial services
- 87. Exemption of alternative financial services

PART VIII

FINANCIAL STATEMENTS AND ACCOUNTABILITY

- 88. Annual financial statement
- 89. Presentation of annual financial statement to shareholders
- 90. Reserve for bad and doubtful debts
- 91. Approval of annual financial statements
- 92. Publication of annual financial statements
- 93. Appointment of external auditor
- 94. Responsibilities of external auditor
- 95. Information by external auditor to Bank
- 96. Disqualification of external auditor
- 97. Access to information and auditor's report
- 98. Termination of appointment of external auditor
- 99. Statement on resignation of external auditor
- 100. Termination of appointment of external auditor by financial service provider

PART IX

ANTI-COMPETITIVE ACTIVITIES AND CONSUMER PROTECTION

- 101. Collusive conduct
- 102. Collateral contracts
- 103. Coercive behaviour
- 104. Misconduct during debt collection
- 105. Determination of benchmark base rate
- 106. Disclosure of interest rates and charges
- 107. Increase in service charges

N.A.B. 7, 2017