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H.B. 7A, 2009 [as transmitted to the Senate after being passed, with amendments, by the House of Assembly]

This document reflects the text of the Bill as passed by the House of Assembly on Wednesday 18th November 2009. It shows all the amendments made by the House during the Committee Stage of the Bill, following consultations between the Minister of Finance and ZANU-PF legislators.

Deletions are indicated by red strikethrough font - ~~deletion~~.
and insertions by blue bold and underlined font - **insertion**.

Clauses affected by the amendments are: 5, 6, 8, 11, 13, 18 and 19.

PRESENTED BY THE MINISTER OF FINANCE

BILL

To amend the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Reserve Bank of Zimbabwe Amendment Act, 2009.

2 Amendment of section 6 of Cap. 22:15

Section 6 (“Functions of Bank”) of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (hereinafter called “the principal Act”) is amended in subsection (1)—

- (a) by the repeal of paragraph (d);
- (b) in paragraph (h) by the insertion, after “appropriate” of “and subject to any written directions given to it by the Minister”;
- (c) in paragraph (k) by the deletion of “to undertake” and the substitution of “subject to any written directions given to it by the Minister, to undertake”.

3 Amendment of section 7 of Cap. 22:15

Section 7 (“Powers of Bank”) of the principal Act is amended in—

(a) subsection (1) —

(i) by the repeal of paragraph (c) and substitution of the following —

“(c) grant loans and advancements in accordance with section 11;”;

(ii) by the insertion of the following proviso to paragraph (h) —

“Provided that the Bank shall buy, sell or deal in precious metals only to the extent strictly necessary for fulfilling its international obligations in terms of this Act or any other enactment.”; and

(iii) by the repeal of paragraph (j); and

(iv) by the insertion of the following proviso to paragraph (n)—

“Provided that —

(i) the Bank shall only borrow foreign currency on behalf of the State and not on its own behalf;

(ii) if such borrowing affects the reserve requirements of section 49(2)(a), section 49(3)(a) shall apply to the suspension of the reserve requirements.”;

(b) by the repeal of subsections (2), (3), (4) and (5).

4 Amendment of section 8 of Cap. 22:15

Section 8 (“Bank’s relations with State”) of the principal Act is amended in subsection (2) by the insertion after “State” where it occurs for the third time of “through the Minister in writing”.

5. New section substituted for section 11 of Cap 22:15

Section 11 of the principal Act is repealed and the following is substituted—

“11 Lending powers of Bank and loans to Bank employees

(1) The Bank shall not—

(a) lend or advance moneys to, or directly buy, discount or re-discount bills, notes or other obligations from, the State or any fund established by the State so that the amount outstanding at any time exceeds the equivalent of twenty *per centum* of the previous year’s ordinary revenues of the State; or

(b) lend or advance money to the State or any fund established by the State unless—

(i) the money is denominated in Zimbabwe currency or, subject to section 44A, any other currency there referred to; and

(ii) the loan or advance is either—

A. repayable within twelve months after the end of the financial year in which it was made; or

B. convertible at the end of the financial year in which it was made into negotiable bearer securities issued by the State and delivered to the Bank;

or

(c) subject to paragraphs (a) and (b), lend or advance money to any statutory body unless the loan or advance—

(i) has been approved by the Minister; and

(ii) is repayable within twelve months from the date on which it was made; and

(iii) if not repaid within the period referred to in subparagraph (ii), is convertible into negotiable bearer securities issued by the State and delivered to the Bank.

(2) Nothing in subsection (1) shall prevent the Bank from—

(a) purchasing or selling in a secondary market securities issued by the State on its own account in excess of the maximum amount referred to in subsection (1)(a) in pursuance of the monetary policy of Zimbabwe; or

(b) investing moneys forming part of its staff and pension funds.

(3) Any amount payable by the State under any security referred to in subsection (1)(c)(iii) shall be paid from the Consolidated Revenue Fund, which is hereby appropriated to the purpose.

(4) For the purposes of subsection (2)(a), “ordinary revenues of the State” does not include amounts accruing to the State through loans, grants or any other form of financial assistance.

(5) The Bank may, on such terms and conditions as it may determine, act as lender of last resort for banking institutions, by granting to them or for their benefit, for periods not exceeding three months—

(a) loans other than those authorised by section 59 of the Banking Act [*Chapter 24:20*]; and

(b) contingent commitments.

(6) Every loan or contingent commitment referred to in subsection (5) shall be secured by any of the assets specified in section 59 of the Banking Act [*Chapter 24:20*], unless the Bank decides that an unsecured loan or contingent commitment is justifiable because of exceptional circumstances:

Provided that no such loan or contingent commitment shall be made by the Bank unless it is a loan or commitment made in terms of the National Payment Systems Act [*Chapter 24:23*].

~~Provided that no such loan or contingent commitment shall be made by the Bank unless—~~

~~—— (a) in the opinion of the Bank, such loan or contingent commitment is necessitated by the liquidity requirements of the banking institutions concerned and by the public interest; and~~

~~—— (b) it is limited to intraday and overnight liquidity support for payment systems established under the National Payments Systems Act [*Chapter 24:23*]; and~~

~~—— (c) it is made from the Bank's surplus funds; and~~

~~—— (d) the Minister has agreed thereto in writing.~~

(7) The Bank may extend the period referred to in subsection (5) on such terms and conditions as the Bank may determine, including terms and conditions specifying the measures to be taken by the banking institution concerned to meet its liquidity requirements.

(8) Subject to subsection (9), the bank shall not knowingly extend any loan or advance to or for the benefit of any insider or any relative of such insider.

(9) The Bank may extend any loan or advance to an officer of the Bank as part of the benefits or remuneration of the officer under the officer's contract of employment:

Provided that—

(a) no such loans or advances may be given for purposes other than those for which loans or advances are generally or customarily extended to officers and employees of banking institutions in Zimbabwe; and

(b) the magnitude of such loans or advances shall be reasonably commensurate with similar loans or advances offered to officers and employees of banking institutions in Zimbabwe generally, and unless otherwise permitted by the Board such loans and advances shall not include any cash loans or advances.

(10) For the purposes of subsections (8)—

“insider”, in relation to the Bank, means any employee, officer, director or principal shareholder of the Bank, and includes any related interest of such insider;

“principal shareholder” means any person who owns or controls more than twenty *per centum* of the shares or voting stock of the Bank;

“related interest”, in relation to an individual, means any company, co-operative, private business corporation, syndicate or association of persons which the individual controls or in which the individual has the largest single interest.”.

6 Amendment of section 14 of Cap. 22:15

Section 14 (“Governor and Deputy Governors”) of the principal Act is amended in—

(a) subsection (1) by the deletion of “four” and the substitution of “two”; and

(b) subsection (3)—

(i) paragraph (a) by the deletion of “nominated by the Governor” and the substitution of “nominated by the Board”;

(ii) by the repeal of paragraph (b) and the substitution of—

“(b) a vacancy in the office of the Governor, his or her functions shall be performed on an acting or temporary basis, by the Deputy Governor or, as the case may be, a Deputy Governor appointed by the Governor on a rotational basis ~~the Board after consultation with the Minister~~.”.

7 Amendment of section 20 of Cap. 22:15

Section 20 (“Delegation of Governor’s functions”) of the principal Act is amended by the insertion after “this Act” where it occurs for the first time of “and any directions that the Board may give him or her”.

8 Amendment of section 21 of Cap. 22:15

Section 21 (“Board of the Reserve Bank”) (2) of the principal Act is amended by the deletion of “every Deputy Governor and not fewer than five or more than seven directors.” and

the substitution of “the Deputy Governor or both Deputy Governors, as the case may be, a person employed in the Ministry of Finance appointed by the Minister ~~and the Permanent Secretary for Finance~~ as a non-voting member and not fewer than five or more than nine directors.”.

9 Amendment of section 26 of Cap. 22:15

Section 26 (“Functions of Board”) (1) of the principal Act is amended by the repeal of paragraphs (a) and (b).

10 New section substituted for section 27 of Cap. 22:15

Section 27 of the principal Act is repealed and the following is substituted—

“27 Chairperson, Deputy Chairperson of Board

(1) The Governor shall be chairperson of the Board.

(2) The deputy chairperson of the Board shall be chosen by the President, after consultation with the Minister, from among the non-executive Board members.

(3) If for any reason the chairperson is not present at any meeting of the Board, the deputy chairperson shall preside as chairperson at that meeting.

(4) If for any reason the chairperson and the deputy chairperson are both not present at any meeting of the Board, the members present shall elect one of their number to preside as chairperson at the meeting.”.

11 Amendment of section 28 of Cap. 22:15

Section 28 (“Procedure at meetings of Board”) is amended by the insertion after subsection (3) of the following subsections—

“(4) The board shall meet not less frequently than once in every calendar month.

(5) There shall be minutes taken of all proceedings at every meeting of the Board, which shall be submitted to the Minister as soon as practicable and in any case no later than seven ~~fourteen~~ days after each following ~~such~~ meeting.”.

12 Amendment of section 29 of Cap. 22:15

Section 29 (“Committees of board”) (1) of the principal Act is amended by the deletion of “The Board” and the substitution of “Subject to sections 29A and 29C, the Board”.

13 New sections inserted in Cap. 22:15

The principal Act is amended by the insertion after section 29 of the following sections—

“29A Audit and Oversight Committee¹

(1) There shall be a committee of the Board called the Audit and Oversight Committee, chaired by the Deputy Chairman of the Board and consisting of a person employed in the Ministry of Finance and three other non-executive members of the Board, who shall be appointed by the Minister.

(2) The Audit and Oversight Committee shall meet at least twice in each financial year and as often as may be necessary.

¹ The new section 29A amalgamates the Bill’s original 29A and 29C. The most significant difference is in the composition of the Committee.

(3) The functions of the Audit and Oversight Committee shall be—

- (a) review the operations of the Bank to ensure that they are conducted in compliance with the Act and in accordance with best corporate practice; and
- (b) to establish appropriate accounting procedures and accounting controls in respect of the conduct of the Bank; and
- (c) to ensure compliance with the procedures established in terms of paragraph (a); and
- (d) to assist the Board to evaluate the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied in the day to day management of the Bank; and
- (e) to introduce such measures as, in its opinion, may enhance the objectivity reports prepared with reference to the Bank; and
- (f) to recommend to the Board the appointment of a suitably qualified person as the auditor of the Bank.

(4) The Audit and Oversight Committee shall embody its deliberations, resolutions or recommendations in a report to the Minister and the Board.

(5) Decisions of the Audit and Oversight Committee shall be decided by a majority vote of the members present:

Provided that no member shall abstain from any vote to be taken.

(6) Subject to this section, the procedure to be adopted by the Audit and Oversight Committee shall be fixed by the Board.”.

~~“29A Audit Committee~~

~~(1) There shall be a committee of the Board called the Audit Committee, consisting of the of the following members—~~

- ~~———— (a) the deputy chairperson of the Board who shall be the chairperson of the committee; and~~
- ~~———— (b) at least two other persons who shall not be members of the Board and appointed by the Minister.~~

~~(2) The functions of an audit committee shall be—~~

- ~~———— (a) to establish appropriate accounting procedures and accounting controls in respect of the conduct of the Bank; and~~
- ~~———— (b) to ensure compliance with the procedures established in terms of paragraph (a); and~~
- ~~———— (c) to assist the Board to evaluate the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied in the day to day management of the Bank; and~~
- ~~———— (d) to introduce such measures as, in its opinion, may enhance the objectivity reports prepared with reference to the Bank; and~~
- ~~———— (e) to recommend to the Board the appointment of a suitably qualified person as the auditor of the Bank.~~

~~(3) The audit committee shall embody its deliberations, resolutions or recommendations in a report for consideration by the committee referred to in section 29C.~~

~~(4) The audit committee shall meet as often as may be necessary to carry out its functions.~~

~~(5) Decisions of the Audit Committee shall be decided by a majority vote of the members present:~~

~~Provided that no member shall abstain from any vote to be taken.~~

~~(6) Subject to this section, the procedure to be adopted by the Audit Committee shall be fixed by the Board.~~

29B Monetary Policy Committee

(1) There shall be a Monetary Policy Committee independent of the Board consisting of the Governor as chairperson, the Deputy Governor or Deputy Governors, as the case may be, the deputy chairperson of the Board, and not less than five or more than seven other persons appointed by the President after consultation with the Minister.

(2) The members of the Monetary Policy Committee appointed under subsection (1) must have knowledge, experience or expertise in matters relating to finance, banking and fiscal or monetary policy.

(3) The Monetary Policy Committee's functions are—

- (a) to determine the monetary policy of Zimbabwe, including the setting of limits on open market operations by the Bank; and
- (b) to ensure price stability as defined by the Government's inflation target set out in the National Budget; and
- (c) to determine interest rates for the economy in line with the Government's economic policies and targets for growth and employment; and
- (d) to perform such other functions related to monetary policy as the Minister may prescribe by regulations.

(4) The Committee shall submit its findings to the Board for information purposes only.

~~29C Oversight of Bank's operations~~

~~There shall be a committee of the Board chaired by the Permanent Secretary for Finance and consisting of all the members of the Board, which shall meet twice in each financial year and which shall—~~

- ~~—(a) consider the audit committee's report in terms of section 29A(3), if any; and~~
- ~~—(b) review the operations of the Bank to ensure that they are conducted in compliance with the Act and in accordance with best corporate practice."~~

14 Amendment of section 31 of Cap. 22:15

Section 31 of the principal Act is repealed and the following is substituted—

"31 Capital of Bank

The Bank's capital stock shall be in the amount of two million United States dollars or its equivalent in other currencies, all of which shall be issued to the State."

15 Repeal of section 33 of Cap. 22:15

Section 33 of the principal Act is repealed.

16 Repeal of section 42A of Cap 22:15

Section 42A of the principal Act is repealed.

17 New section substituted for section 49 of Cap. 22:15

Section 49 of the principal Act is repealed and the following is substituted—

“49 Reserves against domestic and international obligations

(1) The Bank shall establish and maintain reserves which shall consist of all or any of the following assets—

- (a) gold or foreign assets convertible into gold; or
- (b) foreign exchange in the form of notes and coins or account balances held by the Bank abroad in foreign currencies; or
- (c) any other internationally recognised reserve assets; or
- (d) bills of exchange and promissory notes, payable in foreign currencies; or
- (e) securities that have been issued or guaranteed, and net entitlements of the Bank under loan agreements, forward purchase and repurchase agreements, swap agreements, options and other agreements that have been concluded with or guaranteed by foreign states, foreign central banks or international financial organisations, and that are denominated and provide for payment in foreign currencies.

(2) The Bank shall, maintain sufficient reserves—

- (a) to cover one hundred *per centum* of its liabilities to the public, held in foreign currency accounts in any banking institution; and
- (b) that in its opinion will be adequate for the execution of the monetary and exchange rate policies of Zimbabwe and the prompt settlements of the country’s international obligations.

(3) In relation to the reserves kept for the purpose of—

- (a) subsection (2)(a), the Minister may suspend, for a period not exceeding sixty days, the reserve requirements there mentioned, and may extend such period for further periods not exceeding sixty days each, but no such suspension shall continue for a period longer than six months unless Parliament by resolution approves of such continuation; and
- (b) subsection (2)(b), if the reserves there mentioned have declined or, in the opinion of the Bank, are in danger of declining to such an extent as to jeopardise the execution of the monetary or exchange rate policies of Zimbabwe or the prompt settlement of the country’s international obligations, the Bank shall submit to the Minister—
 - (i) a report on the reserve position specifying the causes which have led or may lead to such a decline, together with such recommendations as it considers necessary to remedy the situation; and

- (ii) such further reports and recommendations as the Bank considers advisable until such time as, in its opinion, the situation has been remedied.

(4) The Bank shall, not later than seven days after the end of each quarter, submit a quarterly statement of the state of the Bank's reserves kept for the purpose of subsection (2)(b) to the Minister, and the Minister shall table such statement before the House of Assembly on any one of fourteen sitting days that the House of Assembly sits after the Minister receives such statement.

(5) The Bank shall establish such reserves, in addition to those specified in subsections (1) and (2), as the Minister may from time to time direct in writing.”.

18 New section inserted after section 63 of Cap. 22:15

With effect from the 13th August, 1999, the principal Act is amended by the insertion of the following section after section 63—

“63A Immunity of Bank, etc

No claim shall lie against the State, the Minister, the Bank, the Board, the Governor or any employee of the Bank for anything done in good faith and without negligence under the powers conferred by this Act.”.

~~18 New section substituted for section 62 of Cap. 22:15~~

~~Section 62 of the principal Act, is repealed and the following is substituted—~~

~~“62 Powers of Minister~~

~~(1) If at any time it appears to the Minister that the Bank has failed to comply with any provision of this Act, he may, by notice in writing, require the Board to make good or remedy the default within a specified time, and the Board shall forthwith take all such steps as are necessary to ensure due compliance with any such provision.~~

~~(2) Subject to subsection (3), the Minister may give the Board such directions of a general character as to the policy it is to observe in the exercise of its functions, as appear to the Minister to be requisite in the national interest.~~

~~(3) Where the Minister considers that it may be desirable to give any direction in terms of subsection (2), he or she shall inform the Board, in writing, of his or her proposal and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal especially with respect to—~~

- ~~— (a) whether the direction is consistent with any of the provisions of this Act;~~
- ~~— (b) the possible implications, if any, on the finances and other resources of the Bank.~~

~~(4) The Board shall, with all due expedition, comply with any direction given to it in terms of subsection (2).”.~~

19 Transitional provisions

(1) Subject to section (2), the Bank shall dispose of any shares held by it in any company incorporated in Zimbabwe in which it has a majority shareholding. ~~Subject to subsection (2), all the shares held by the Reserve Bank of Zimbabwe in any company incorporated in Zimbabwe in which it has a majority shareholding are hereby transferred to and vested in the State, and the shares shall be held on behalf of the State, notwithstanding anything~~

~~contained in the memorandum and articles of association of the company in question, by the head of the Ministry to whom the company in question is assigned.~~

(2) Subsection (1) does not apply to the companies specified in the Schedule.

(3) No shares or any assets of a company referred to in (1) shall be sold by the Bank except with t

he leave of the Minister responsible for finance, and where such leave is given, the Bank shall first apply the proceeds thereof to meeting on a *pro rata* basis any liability of the Bank towards banking institutions arising from the deficiency, if any, that, on the date of commencement of this Act, is found to exist between—

(a) the total minimum reserve balances deposited by banking institutions on or before that date with the Bank in compliance with section 30 of the Banking Act [Chapter 24:20]; and

(b) the total minimum reserve balances referred to in paragraph (a) that are actually held by the Bank on that date.

(4) ~~(3)~~ Not later than one month after the date of commencement of this Act, every member of the Board shall make a full disclosure in writing of the matters referred to in section 25(1) of the principal Act to the Board, Minister and President.

(5) ~~(4)~~ Any word or expression to which a meaning has been assigned in the principal Act shall bear the same meaning when used in this section.

SCHEDULE (Section 19(2))

COMPANIES WHOSE SHARES ARE TO BE RETAINED BY THE RESERVE BANK OF ZIMBABWE

1. Fidelity Printers and Refiners (Private) Limited,
 2. Aurex (Private) Limited.
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