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Act

No. 5 of 2011

I assent.

DR. BINGU WA MUTHARIKA

PRESIDENT

20th January, 2011

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of the long title to Cap. 44:02
3. Amendment of s. 2 of the principal Act
4. Amendment of s. 4 of the principal Act
5. Insertion of s. 4A into the principal Act
6. Replacement of s. 6 of the principal Act
7. Replacement of s. 7 of the principal Act
8. Replacement of s. 8 of the principal Act
9. Replacement of s. 9 of the principal Act
10. Insertion of s. 9A into the principal Act
11. Amendment of s. 11 of the principal Act
12. Insertion of ss. 11A and 11B into the principal Act
13. Replacement of s. 12 of the principal Act
14. Insertion of s. 12A into the principal Act
15. Amendment of s. 13 of the principal Act
16. Insertion of s. 13A into the principal Act
17. Amendment of s. 14 of the principal Act
18. Insertion of ss. 15A and 15B into the principal Act
19. Repeal of Part IX of the principal Act
20. Amendment of s. 54 of the principal Act
21. Replacement of s. 59 of the principal Act
22. Amendment of s. 60 of the principal Act

SECTION

23. Savings

24. Insertion of Schedules into the principal Act

An Act to amend the Reserve Bank of Malawi Act

ENACTED by the Parliament of Malawi as follows—

Short title and commencement

1. This Act may be cited as the Reserve Bank of Malawi (Amendment) Act, 2010, and shall come into operation on a date to be appointed by the Minister by notice published in the *Gazette*.

Amendment of the long title to Cap. 44:02

2. The Reserve Bank of Malawi Act (hereinafter referred to as the “principal Act”) is amended, in the long title, by deleting the words “to provide for the supervision of banks and financial institutions”.

Amendment of s. 2 of the principal Act

3. Section 2 of the principal Act is amended—

(a) by deleting the definition of the word “bank” and substituting therefor the following new definition—

Cap. 41:01

““bank” means a company licensed as a bank under the Banking Act”;

(b) by inserting, in correct alphabetical order, the following new definitions—

First Schedule

““Code of Conduct” means the code of conduct provided for under section 15B and set out in the First Schedule;

Act No. 26 of 2010

“controlling party” has the meaning assigned thereto in the Financial Services Act, 2010;”

Act No. 26 of 2010

“financial services law” has the meaning assigned thereto in the Financial Services Act, 2010;”;

(c) by deleting the definition of “Deputy Governor” and substituting therefor the following new definition—

“Deputy Governor” means a Deputy Governor of the Bank appointed under section 12;”;

(d) by deleting the definition of “director” and substituting therefor the following new definition—

“director”, in relation to the Bank, means a member of the Board and includes the Governor and the Deputy Governors;”;

(e) by deleting the definition of the words “financial institution” and substituting therefor the following new definition—

Act No. 26 of 2010

“financial institution” has the meaning assigned thereto in the Financial Services Act, 2010;”

(f) by deleting the definition of the words “other financial institution”.

4. Section 4 (1) of the principal Act is amended by deleting paragraph (h) and substituting therefor the following new paragraph—

Amendment
of s. 4 of the
principal Act

“(h) to support the regulation and supervision of financial institutions in accordance with financial services laws.”

5. The principal Act is amended by inserting immediately after section 4, the following new section as section 4A—

Insertion of
s. 4A into the
principal Act

“Independence of the Bank 4A.—(1) Except as provided by this Act, the Bank shall be independent and shall not be subject to direction by any person or authority.

(2) Any person who improperly seeks to influence the Bank, or a director or employee of the Bank, in the performance of its or his functions, commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and to imprisonment for four years.

(3) If, after consultation with the Governor, the Minister is of the opinion that—

(a) a policy being pursued by the Bank is not adequate for, or conducive to, the achievement of the objects of the Bank as set out in Part III, or in a financial services law; or

(b) it is in the national interest to do so,

the Minister may, by written direction, determine the policy to be adopted by the Bank.

(4) A direction under subsection (3) shall not relate to an individual financial institution.

(5) A direction under subsection (3) shall state that the Government accepts responsibility for the policy determined in the direction.

(6) The Bank shall give effect to the policy set out in a direction under subsection (3) while the direction remains in force.

(7) A direction under subsection (3) shall be published in the *Gazette* within seven days after it is given to the Bank.”

6. Section 6 of the principal Act is repealed and replaced by the following new section as section 6—

Replacement
of s. 6 of the
principal Act

"Board of
Directors

6.—(1) There shall be a Board of Directors of the Bank.

(2) The Board shall consist of the Governor, at least one but not more than three Deputy Governors, and at least four but not more than seven directors, who may include two of either—

- (a) the Secretary to the Treasury; and
- (b) the Secretary responsible for Economic Planning and Development; or
- (c) the Accountant General.

(3) The directors shall be appointed by the President for a term of three years and shall be eligible for re-appointment for one more term:

Provided that, with a view to ensuring continuity, appointments and re-appointments to the Board shall, wherever practicable, be made in such a way that at least one-half of the number of directors shall continue to serve on the Board.

(4) A person shall not be appointed a director unless the President is satisfied that the person is a fit and proper person to hold the office of a director and qualified for appointment by virtue of his knowledge of, or experience in, one or more of the following fields—

- (a) economics;
- (b) finance;
- (c) financial markets, financial products or financial services;
- (d) financial sector supervision and regulation;
- (e) law;
- (f) accounting; or
- (g) other fields relevant to central banking.

(5) Appointments and reappointments to the Board shall be made with a view to ensuring that at all times the Board has an appropriate range of relevant skills and experience.

(6) The Board shall be responsible for the administrative and management policies of the Bank, and shall oversee the operations, administration and management of the Bank and the exercise of the powers and functions of the Bank with a view to ensuring that the operations, administration and management of the Bank are being conducted in a proper, efficient and effective manner.

Second Schedule

(7) Without limiting the generality of subsection (6), the Board shall have powers as outlined in the Second Schedule.

Second Schedule

(8) The Minister may, on the recommendation of the Board, by order published in the *Gazette*, amend the Second Schedule.

(9) Every Director shall be entitled to such fees and allowances as the Board may, with the approval of the Minister, determine.”.

7. Section 7 of the principal Act is repealed and replaced with the following new section as section 7—

Replacement
of s. 7 of the
principal Act“Persons not
eligible for
appointment
as directors

7. The following persons shall not be eligible to be appointed as director—

(a) a member of Parliament;

(b) a financial institution, or a director, salaried official or employee of a financial institution;

(c) a controlling party of a financial institution;

(d) a person who provides or is engaged to provide, whether as a member of a firm or not, professional services to the Bank;

(e) a public officer, other than the public officer mentioned in section 6 (2);

(f) a person who is disqualified, whether in Malawi or elsewhere, from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(g) a person who at any time has been adjudged bankrupt by a competent court, whether in Malawi or elsewhere, or who, whether in Malawi or elsewhere, has made an arrangement or composition with, or has suspended payment to, his creditors;

(h) a person who has at any time been convicted, whether in Malawi or elsewhere, of theft, any offence involving an element of dishonesty, fraud, forgery, issuing of a forged document, or perjury or any similar offence; and;

(i) a person removed by a court of competent jurisdiction, whether in Malawi or elsewhere, from an office of trust on account of misconduct in the exercise of his duties in that office.”.

Replacement
of s. 8 of the
principal Act

8. Section 8 of the principal Act is repealed and replaced with the following new section as section 8—

Replacement
of s. 9 of the
principal Act

“Resignation of directors” 8. A director may resign his office by giving one month's notice in writing to the President.”

9. Section 9 of the principal Act is repealed and replaced as follows—

“Termination of appointment as director” 9.—(1) The appointment of a director shall immediately terminate if the director—

(a) becomes a member of Parliament;

(b) becomes a financial institution, or a director, salaried official or employee of a financial institution;

(c) provides or is engaged to provide, whether as a member of a firm or not, professional services to the Bank or a financial institution;

(d) is disqualified in Malawi from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(e) becomes a public officer, other than one mentioned in section 6 (2);

(f) is adjudged bankrupt by a competent court in Malawi;

(g) in Malawi, makes an arrangement or composition with, or suspends payment to, his creditors;

(h) is convicted in Malawi of an offence of a kind referred to in section 7 (h); or

(i) is removed from office in Malawi as mentioned in section 7 (i).

(2) The President may terminate an appointment of a director on the ground that the director—

(a) has ceased to be fit and proper to be a director;

(b) is suffering from a mental or physical condition such that he cannot properly carry out the duties of the office;

(c) has failed, without leave of the Board, to attend more than three consecutive meetings of the Board of which he has had notice;

(d) is a controlling party of a financial institution;

- (e) has been disqualified, outside Malawi, from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;
- (f) has been adjudged bankrupt by a competent court outside Malawi;
- (g) while outside Malawi, has made an arrangement or composition with, or has suspended payment to, his creditors;
- (h) has been convicted outside Malawi of an offence of a kind referred to in section 7 (h);
- (i) has been removed from office outside Malawi as mentioned in section 7 (i);
- (j) has failed to comply with the Code of Conduct in a material particular;
- (k) is incompetent; or
- (l) is in breach of this Act or any other financial services law.”

10. The principal Act is amended by inserting, immediately after section 9, the following new section as section 9A—

Insertion of
s. 9A into the
principal Act

“Procedure
for removal
of a director

9A.—(1) Where the President has information that a director should be removed from office on any of the grounds listed in section 9 (2), the President shall appoint a committee to inquire into the information and furnish its findings to the President.

(2) The committee appointed under subsection (1) shall consist of—

- (a) a person, who has sufficient knowledge of the law, who shall be the chairperson of the committee; and
- (b) two other persons of good character, high integrity and with at least ten years experience in the field of economics or finance.

(3) Where the committee, on the basis of its findings, advises the President that the director concerned ought to be removed from office, the President shall terminate the appointment of that director.

(4) At the time of appointing the committee, the President may, where the director concerned is the Governor or Deputy Governor, send him on leave, and in the case of any other director, suspend him from office as director.”

Provided that the Minister may give his express approval to the Governor or a Deputy Governor to hold a particular office or employment.

(6) The provisions of section 9 and section 9A shall apply *mutatis mutandis* to the termination of appointment, and procedure for removal of, the Governor or a Deputy Governor.”

Insertion of s. 12A into the principal Act

14. The principal Act is amended by inserting, immediately after section 12, the following new section as section 12A—

“Qualifications for appointment

12A.—(1) A person shall not be appointed Governor unless the President is satisfied that the person is a fit and proper person to hold the office of Governor and qualified for the appointment by virtue of his or her knowledge of, or experience in, the fields of economics and finance.

(2) A person shall not be appointed Deputy Governor unless the President is satisfied that the person is a fit and proper person to hold the office of Governor or Deputy Governor qualified for the appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields—

- (a) economics;
- (b) finance;
- (c) financial markets, financial products or financial services;
- (d) financial sector supervision and regulation;
- (e) law;
- (f) accounting; or
- (g) other fields relevant to central banking.”

Amendment of s. 13 of the principal Act

15. Section 13 of the principal Act is amended by deleting subsections (3) and (4) and substituting therefor the following new subsections as subsections (3) and (4)—

“(3) The Deputy Governors shall perform such duties as the Governor may direct and, in the event of the absence or a vacancy in the office of the Governor, a Deputy Governor designated by the Governor shall perform the duties of the Governor and shall have and may exercise the powers and perform the functions of the Governor.

(4) In the event of the temporary absence of both the Governor and the Deputy Governors, the Governor shall designate in writing a senior official of the Bank to perform the duties of Governor.”

16. The principal Act is amended by inserting, immediately after section 13, the following new section as section 13A—

Insertion of s. 13A into the principal Act

~~"Resignation of the Governor or a Deputy Governor may resign his office by giving three months' notice in writing to the President."~~

17. Section 14 of the principal Act is amended by—

Amendment of s. 14 of the principal Act

(a) deleting from paragraph (3) (a), the word "shall" and substituting therefor the word "may"; and

(b) deleting from paragraph (3) (b), the words "for the Governor and Deputy Governor" and substituting therefor the words "for the Governor, Deputy Governors and their dependants".

18. The principal Act is amended by inserting, immediately after section 15, the following new sections as sections 15A and 15B—

Insertion of ss. 15A and 15B into the principal Act

~~"Protection of officers~~

15A.—(1) None of the following shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted to be done by it or him in the exercise or purported exercise of its or his powers, functions and duties—

(a) the Bank;

(b) a director or employee of the Bank;

(c) an examiner or investigator appointed by the Registrar under the Financial Services Act, 2010.

(2) Subsection (1) shall not apply if it is established that the act or omission was done in bad faith.

~~Act No. 26 of 2010~~

~~Code of Conduct First Schedule~~

15B.—(1) There shall be a Code of Conduct as set out in the First Schedule, which shall apply to the directors and employees of the Bank.

(2) The Board may review the Code of Conduct at any time, but shall do so at least once a year.

~~First Schedule~~

(3) The Minister shall, on the recommendation of the Board after review of the Code of Conduct, by order published in the *Gazette*, amend the First Schedule.

(4) The Code of Conduct shall be consistent with this Act, and other financial services laws, and shall make provision for at least the following matters—

(a) use and disclosure of information by directors and employees of the Bank;

(b) reducing or eliminating improper influence on the Bank and on directors and employees of the Bank in carrying out their functions under financial services laws;

(c) trading in and ownership of securities or other financial instruments by directors and employees of the Bank;

(d) conflicts of interest; and

(e) receiving, keeping, holding and reporting gifts of any description by directors and employees of the Bank.

(5) A director or employee of the Bank shall not contravene the Code of Conduct.

(6) Contravention of the Code of Conduct shall not of itself amount to an offence, but, without limiting any other law, an employee of the Bank who contravenes the Code of Conduct commits a breach of his or her contract of service with the Bank.”

Repeal of
Part IX of the
principal Act

Amendment
of s. 54 of the
principal Act

Replacement
of s. 59 of the
principal Act

19. Part IX of the principal Act is repealed.

20. Section 54 (2) of the principal Act is amended, in the proviso to paragraph (a), by inserting the word “Kwacha” immediately after the words “one million”.

21. Section 59 of the principal Act is repealed and replaced with the following new section as section 59—

“Secrecy

Act No. 26 of
2010

59.—(1) In this section—

“individual information” means information relating to the affairs of the Bank or another person, including a financial institution;

“officer” means a person who is or has been—

(a) a director or employee of the Bank;

(b) a person engaged by the Bank to provide services to it; or

(c) an examiner or investigator appointed under the Financial Services Act, 2010;

“protected information” means each of the following—

(a) individual information; or

(b) information that would have a commercial value if disclosed otherwise than in accordance with this Act or any other financial services law.

(2) An officer shall not disclose to any person orally or in writing, any protected information that the officer has acquired in the performance of his duties or functions as an officer.

(3) Subsection (2) shall not prevent—

(a) disclosure of a summary or collection of information of a kind referred to in paragraph (b) of the definition of the words “protected information” in subsection (1) that is prepared so that information relating to any particular person cannot be found out from it;

(b) disclosure of the name of a licensed financial institution;

(c) disclosure of the addresses at which licensed financial institutions carry on business;

(d) disclosure of any other information reasonably necessary to enable members of the public to contact financial institutions; or

(e) disclosure of information to the Commissioner of Taxes.

(4) It shall be a defence to a prosecution for an offence under subsection (2) that—

(a) the disclosure was for the purposes and in the course of the exercise of the officer's duties or the performance of the officer's functions under a financial services law;

(b) the disclosure was made to or with the consent of the person concerned;

(c) the disclosure was made in accordance with a lawful requirement of a court of competent jurisdiction;

(d) the disclosure was authorized by a financial services law;

(e) the disclosure was required by another law; or

(f) the disclosure was authorized by regulations made for the purposes of this section.

(5) An officer who discloses information of a kind mentioned in subsection (2) may, at the time of the disclosure, impose conditions to be complied with in relation to the information.

(6) In addition to any disciplinary action that may be taken, any person who contravenes this section or fails to comply with a condition imposed under subsection

(5) shall be guilty of an offence and shall, on conviction, be liable to a fine of K1,000,000 and to imprisonment for four years.”.

Amendment
of s. 60 of the
principal Act

22. Section 60 of the principal Act is amended by deleting the word “bank” in the first line, and substituting therefor the word “Bank”.

Savings

23. Any person who, on the commencement of this Act, holds the office of the Governor, Deputy Governor or a director of the Bank shall continue to hold that office, subject to the principal Act as amended by this Act.

Insertion of
Schedules
into the
principal Act

24. The principal Act is amended, by inserting, at the end thereof, the following Schedules as First Schedule and Second Schedule—

“FIRST SCHEDULE

(ss. 2 and 15B)

CODE OF CONDUCT FOR THE DIRECTORS AND EMPLOYEES OF THE BANK

1. *Principal Standards of Conduct*

The directors and employees of the Bank shall be honest, objective, independent and impartial in the execution of their responsibilities, and shall subscribe to the highest standards of professional ethics, diligence, good faith and integrity. They shall avoid any action, or inaction, which in any way may impair the Bank’s capacity to carry out its duties, or compromise its public standing and reputation.

2. *Conflict of Interest*

In the performance of their duties, the directors and the employees shall avoid any situation that may give rise to a conflict of interest. No discrepancies shall be allowed to exist between a director or an employee official responsibilities and any kind of personal or external interests which could jeopardise his impartiality and integrity in performing his responsibilities. The directors and employees shall not accept any gifts or favours that may have the appearance of influencing the performance of any of their functions or duties.

3. *Declaration of Interests*

To assist in the fulfilment of obligations in relation to conflicts of interests, directors and employees shall declare any situations where they have private or personal interest which may influence or appear to influence the impartial and objective performance of their duties.

4. *Immunity from Personal Liability*

Directors or employees shall not be personally liable for any civil or criminal proceedings, arrest, imprisonment or damages for anything done in the discharge of their duties, unless it is established that it was done in bad faith.

5. Compliance

The directors and employees shall strictly comply with this Code of Conduct. Deviation from the standards of this Code shall be deemed to be misconduct and shall be dealt with as misconduct, and the director or employee shall be disciplined in accordance with the provisions of the Act. Any investigation into a suspected or possible contravention of this Code shall be kept confidential.

6. Independence

Directors and employees shall be independent from any political influence in the performance of their duties and functions under this Act, and shall not act as delegates or representatives of any interest groups or industry in the discharge of their duties.

7. Confidentiality

Directors and employees are required to maintain strict confidentiality of the information acquired from the Bank in the performance of their duties and shall not divulge any such confidential information. Directors or employees shall not use such confidential information for purposes of carrying out direct or indirect private financial transactions.

8. Continuance of Duties

To avoid any situations of conflict of interest, the directors and employees shall maintain the confidentiality requirement for a period of one year from the date they cease to be directors or employees of the Bank.

SECOND SCHEDULE

(s. 6)

ADDITIONAL POWERS AND DUTIES OF THE BOARD

The Board shall—

- (a) monitor implementation of monetary policy in order to ensure compliance with this Act;
- (b) approve all determinations, guidelines and instructions of general application that are to be issued by the Bank;
- (c) approve all annual reports and recommendations that the Bank is required to make to the Minister or to Parliament;
- (d) establish and monitor the implementation of financial sector development policy;
- (e) establish appropriate supervisory and regulatory structures and regimes for all sectors of the financial services industry in order to meet the objectives of the financial services law;
- (f) establish and monitor the implementation of financial sector stability and soundness policies;
- (g) approve policies and directives relating to the supervision and regulation of the financial sector;

- (h) determine the policies applicable to the administration and operations of the Bank;
- (i) determine the organization structure of the Bank;
- (j) establish and close subsidiaries, branch offices and agencies of the Bank;
- (k) determine the terms and conditions of service of directors;
- (l) approve the terms and conditions of employment of the Bank's agents and correspondents;
- (m) propose increases in the authorised capital of the Bank, to establish special reserve on the books of the Bank, to determine the net income of the Bank and to determine what amount of such net income shall be transferred to any reserve;
- (n) approve the Bank's budget;
- (o) determine the accounting policies of the Bank and to approve the annual reports and financial statements of the Bank;
- (p) determine and ensure the establishment of an effective risk management structure; and
- (q) ensure good corporate governance of the Bank.”

Passed in Parliament this ninth day of December, two thousand and ten.

M. M. KATOPOLA
Clerk of Parliament