

RESERVE BANK OF ZIMBABWE AMENDMENT BILL, 2009

MEMORANDUM

This Bill will amend the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] principally to bring the powers of the Governor of the Reserve Bank under the control of the Bank's Board, to clarify the functions of the Bank, and to require the Bank to increase its reserves. In more detail the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

Section 6 of the Reserve Bank of Zimbabwe Act sets out the Bank's functions. This clause will amend subsection (1) of the section in the following respects:

- Paragraph (d) of the subsection gives the Bank the function of furthering the Government's economic policies. That is properly a function of the Government, not of a central bank, and this clause will repeal the paragraph.
- Paragraph (h) of the subsection empowers the Bank to represent Zimbabwe's interests at international meetings. This is a governmental function which should properly be carried out by the Ministry of Finance, so the paragraph will be amended to ensure that the Bank exercises the function subject to the Minister's directives.
- Similarly, paragraph (k) of the subsection empowers the Bank to undertake responsibilities in relation to Zimbabwe's membership at international organisations, which is a governmental function. The paragraph will be amended to ensure that the Bank complies with the Minister's directives when undertaking such responsibilities.

Clause 3

Section 7(1)(c) of the Reserve Bank of Zimbabwe Act, which empowers the Bank to grant loans, has been amended to re-direct all issues concerning loans and advancements to section 11. Section 7(1)(h) of the Reserve Bank of Zimbabwe Act provides for the Bank to be able to buy, sell or deal in precious metals. The effect of the proviso added to this provision is that such buying selling or dealing will be limited to strictly what is required to fulfil international obligations.

Section 7(1)(j) of the Reserve Bank of Zimbabwe Act allowed the Bank to open credits and issue guarantees, resulting in a huge debt overhang for the Government. This provision will be repealed.

Section 7(1) (n) of the Reserve Bank of Zimbabwe Act allowed the Bank to exercise borrowing powers with the Minister's consent as a principal and not as an agent of the State. Paragraph (a)(iv) of this clause inserts a proviso restricting the Bank to only borrow foreign currency on behalf of the State and not on its own behalf, in addition to requiring Parliament to be consulted if such borrowing affects the reserves that the Bank must maintain under section 49(2)(a) of the Act as substituted by this Bill. Paragraph (b) repeals subsections (2), (3), (4) and (5), which will be re-enacted in a new section 11 of the Act inserted by clause 5.

Clause 4

Section 8 of the Reserve Bank of Zimbabwe Act is amended in subsection (2) to prevent the Government from directing the Bank to engage in non-core functions, except as specifically required by the Minister in writing.

Clause 5

This clause substitutes section 11 by a new section dealing comprehensively with the lending powers of the Bank and loans to Bank employees.

Clause 6

Section 14 of the Reserve Bank of Zimbabwe Act is amended in the following respects:
Subsection (1) which stipulates the number of Deputy Governors of the Bank to be not more than four. It is felt that a maximum of four is undesirable, therefore it is amended to a maximum of two.
Subsection (3) gives the Governor of the Bank the power to nominate a Deputy Governor to act for him or her if he or she is temporarily absent or incapacitated, and gives the President power to appoint an Acting Governor if the Governor vacates his or her office. This clause will amend the section to empower the Governor to appoint an Acting Governor on a rotational basis from the two Deputy Governors.

Clause 7

Section 20 of the Reserve Bank of Zimbabwe Act empowers the Governor to delegate his or her functions to other employees of the Bank. This clause will amend the section to oblige the Governor to comply with directives from the Board when doing so.

Clause 8

Section 21 of the Reserve Bank of Zimbabwe Act establishes the Board of the Reserve Bank and its members. The amendment will name as members of the Board the Deputy Governor or both Deputy Governors, as the case may be, in line with the proposed maximum of two Deputy Governors. In addition a person employed by the Ministry of Finance appointed by the Minister will join the Board as a non-voting member, to ensure complementarities of monetary and fiscal policies. Finally, the maximum number of non-Executive Board directors is to be increased to nine.

Clause 9

Section 26, (1)(a) and (b) of the Reserve Bank of Zimbabwe Act state that the Board may determine monetary policy and set interest rates respectively. This clause will repeal both paragraphs from section 26 as it was felt they were better suited to be functions of the new Monetary Policy Committee established in clause 13, in accordance with regional and international best practices.

Clause 10

Section 27 is repealed and substituted by a new section that in addition to providing for the chairperson of the Board, provides also for the deputy chairperson of the Board, his or her appointment and contingency procedures when both are not available for the duty of chairing meetings.

Clause 11

Under this clause Board meetings will occur once a month, and minutes at all board meetings must be taken and a copy thereof furnished to the Minister.

Clause 12

Under this clause section 29 is amended by deletion of “the Board” and the substitution of “subject to section 29A, the Board”

Clause 13

Under this clause a new section 29A Audit and Oversight Committee is established as a committee of the Board.

Clause 14

Under this clause in section 31 of the Reserve Bank of Zimbabwe Act, the Bank’s capital stock is determined to be two million Zimbabwean dollars. The new clause provides for a capital stock of two million United States Dollars or its equivalent in other currencies.

Clause 15

This clause repeals section 33 of the principal Act (which dealt with the keeping of reserves by the Bank), the provisions of which are now incorporated in the new section 49 substituted by this Bill.

Clause 16

Under section 42A of the Reserve Bank of Zimbabwe Act, the Bank may issue Reserve Bank bearer cheques. This will be repealed as it was felt the use of such Bank bearer cheques was undesirable.

Clause 17

Under this clause, section 49 of the principal Act is repealed and substituted with a new section 49 which will deal with the issue of both domestic and international reserves. The assets which may make up the reserves are set out in section 49(1). The reserves consist of domestic and international reserves. The domestic reserves must be sufficient to match one hundred *per centum* of the banks liabilities to the public held in foreign currency accounts with local banks. The international reserves will be such as are necessary for the execution of the monetary and exchange rate policies of Zimbabwe and the prompt settlements of the country’s international obligations. Further, the procedures necessary to ensure the viability of such reserves are also included. In particular, with respect to the domestic reserves, the Minister may suspend the one hundred *per centum* requirement for a period not exceeding sixty days, and if he or she intends to extend such suspension the approval of the House of Assembly for every further sixty day suspension is required.

Clause 18

Under this clause section 63A is inserted highlighting the immunity of the State, the Minister, the Bank, the Board, the Governor, a Deputy Governor or any employee of the Bank for anything done in good faith and without negligence.

Clause 19 and Schedule

Under this clause, members of the Bank's Board will have to disclose their assets within one month of this Bill being promulgated as an Act. In addition, all the shares held by the Reserve Bank of Zimbabwe in any company incorporated in Zimbabwe in which it has a majority shareholding will be transferred to and vested in the State, except for the shares held by the Bank in those companies specified in the Schedule.

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 subject to subsection 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*]; and

- (a) it is made from the Bank's surplus funds; and
- (b) 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 subsection (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) in 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) 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.”.

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, and a person employed in the Ministry of Finance appointed by the Minister 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 days after each following 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 section 29A, 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 Committee

(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.

(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.”

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 in 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 the House of Assembly 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. 24:20

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, a Deputy Governor or any employee of the Bank for anything done in good faith and without negligence under the powers conferred by this Act.”.

19 Transitional provisions

(1) Subject to subsection (2) the Bank shall dispose of any shares held by it in any company incorporated in Zimbabwe in which it has a majority shareholding.”.

(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 the 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) 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, the Minister and President.

(5) 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.