MALAWI GOVERNMENT

(Published 20th May, 2022)

Act

No. 10 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
12th May, 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I–PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II–THE DEPOSIT INSURANCE CORPORATION

3. Establishment of the Deposit Insurance Corporation
4. Composition
5. Persons not eligible for appointment as members of the Board
6. Termination of appointment and filling of vacancies
7. Tenure of office
8. Conduct of business and affairs of the Board and allowances
9. Powers of the Board
10. Functions of the Corporation
11. Powers of the Corporation
12. Arrangement with other agencies
13. Director General
14. Staff of the Corporation
15. Annual report

PART III–CAPITAL AND FUNDS OF THE CORPORATION

16. Capital of the Corporation
17. Source of funds of the Corporation
18. Deposit insurance fund
19. General Reserve Fund
20. Investment
21. Expenditure
22. Accounts and audit

SECTION

PART IV–DEPOSIT INSURANCE SCHEME

23. Establishment and membership
24. Uninsured deposits
25. Assessment of premium rates
26. Special contribution
27. Payment of dividend while in default of obligation
28. Prohibition of set off
29. Determination of insured amount
30. Payment of claims to clients
31. Power to withhold payment to clients' claims
32. Limitation of payment claims

PART V–SUPERVISION OF THE INSURED INSTITUTION

33. Examiners
34. Submission of returns
35. Penalties for willful failure to submit information
36. Obligation of failing insured institution
37. Report of special examination and corrective actions required of insured institutions

PART VI–TERMINATION OF INSURED STATUS

38. Grounds for termination of insured status
39. Procedure before termination of insured status
40. Termination of insured status and consequences

PART VII–RESOLUTION OF FAILING INSURED INSTITUTIONS

41. Financial assistance
42. Management and resolution
43. Bridge institution
44. Appointment of the Corporation as liquidator
45. Powers of the liquidator
46. Appointment of agents
47. Limitation Act not applicable

PART VIII–OFFENCES

48. Prohibition against insuring funds by person other than the Corporation
49. Liability of directors and officers of insured institutions
50. Administrative penalties

PART IX–MISCELLANEOUS

51. Advertisement of insured status

SECTION

52. Exemption from Insurance Act
53. Guarantee of borrowing by the Reserve Bank
54. Exchange of information
55. Obligations of an external auditor
56. Confidentiality
57. Protection from liability
58. Regulations
59. Transition

An Act to establish the Deposit Insurance Corporation and to provide for its powers, functions, management, operation and matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Deposit Insurance Corporation Act, 2022, and shall come into operation on a date to be appointed by the Minister, by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

"applicable deposit liabilities" means total deposit liabilities in books of a bank or other deposit taking financial institutions less uninsured deposits;

Cap. 44:01

"asset management company" means a company created for the purpose of acquiring assets of a failing or failed insured institution;

"bank" has the meaning ascribed to that term in the Banking Act;

"bank rate" means the bank rate of the Reserve Bank of Malawi;

"Board" means the Board of Directors of the Corporation constituted under section 4;

"bridge institution" means financial institution created by the Corporation in accordance with section 43;

"client" means—

(*a*) a depositor in a bank or any other financial institution;

(*b*) a person who invest funds in a financial institution other than as a shareholder;

(*c*) a policy holder under an insurance policy; and

(*d*) any other person as the corporation may determine.

"close relation" has the meaning ascribed to that term under Cap. 44:05 Financial Services Act;

"controlling party" has the meaning ascribed to that term under Cap. 44:05 Financial Services Act;

"Corporation" means the Deposit Insurance Corporation established under section 3;

"deposit" means monies lodged by depositor with an insured institution, whether repayable on demand, upon expiry of a given period of time, or on a fixed date, or at a time, or in circumstances agreed by, or, on behalf of the depositor making the lodgment and the insured institution receiving it;

"deposit insurance fund" means a fund created under section 18;

"Director General" means the Director General of the Corporation appointed under section 13;

"excess uninsured amounts" means funds of insured clients above the insured amounts;

"failed insured institution" means an insured institution whose licence has been revoked;

"failing insured institution" means an insured institution whose capital, solvency or liquidity is below the minimum prescribed by the Registrar;

"funds" means–

(*a*) deposits in a bank or any other financial institution;

(*b*) money managed by a financial institution on behalf of an investor;

(*c*) premiums paid under an insurance policy;

(*d*) pension contributions and;

(*e*) any other type of funds as the corporation may determine.

"General Reserve Fund" means the General Reserve Fund established by the Corporation under section 19 for purposes of absorbing operating losses of the Corporation or meeting the deficiency of deposit insurance funds when called upon to make payments to insured clients.

"insider deposit" means a deposit of director and shareholder of a bank or other deposit taking financial institution but does not include a deposit of SACCO member;

"insured amount" means the maximum amount of money payable by the Corporation to an insured client in the event of the failure of the insured institution;

"insured deposit" means a deposit or a part of the deposit the repayment of which is insured by the Corporation under the Act;

"insured institution" means a licensed bank or any other institution of the deposit insurance scheme and whose funds are insured in accordance with the provisions of this Act;

"liquidator" means the Corporation or such other persons appointed by the Corporation to act as a liquidator;

"liquidation dividend" means a payment made by the Corporation to the creditors of the failed insured institution;

"politically exposed person" has the meaning ascribed to that term under the Financial Crimes Act; Cap. 7:07

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act; Cap. 44:05

"related party" has the meaning ascribed to that term under the Banking Act; Cap. 44:01

"Reserve Bank" means the Reserve Bank of Malawi established under the Reserve Bank of Malawi Act; Cap. 44:02

"SACCO" has the meaning ascribed to that term under Financial Cooperatives Act; Cap. 46:10

"significant interest" means shares of an aggregate value of not less than ten per cent of the total shareholding, whether held directly by a person or indirectly through another person or a company in which the person has shareholding;

"supervisory authority" means the Corporation, the Registrar and any other government body charged with the responsibility of regulating or supervising banks and other financial institutions;

"transferred funds" means funds of a failed insured institution assumed by another insured institution in accordance with section 30 (6); and

"uninsured deposit" means a deposit listed under section 24.

PART II—THE DEPOSIT INSURANCE CORPORATION

Establishment of the Deposit Insurance Corporation

3. There is hereby established a Corporation to be known as the Deposit Insurance Corporation which shall be–

(*a*) a body corporate with perpetual succession and a common seal; and

(*b*) capable of doing all other things and acts which may lawfully be done or performed by a body corporate.

Composition

4.–(1) There shall be a Board of the Corporation which shall be responsible for the management and control of the affairs of the Corporation.

(2) The Board shall consist of–

(*a*) five members, appointed by the Minister, on recommendation by the Registrar, by virtue of their expertise and experience in matters relating to financial sector regulation, banking, finance, insurance, commerce, law, accountancy, economics or risk management;

(*b*) the Secretary to the Treasury or his duly designated representative as an *ex officio* member; and

(*c*) the Governor of the Reserve Bank of Malawi or his duly designated representative as an *ex officio* member.

(3) Members of the Board other than *ex officio* shall, at their first meeting following their appointment, elect out of their number a chairperson and vice chairperson, and the persons so elected shall hold such office until the end of the term.

(4) A member of the Board shall, within one month of appointment, declare in writing to the Board, significant interests and liabilities, as well as those of a related party or close relation which he is aware of, in any insured institution in Malawi.

(5) The Minister shall publish in the *Gazette* names of all members of the Board as first constituted and every change in the membership thereof.

Persons not eligible for appointment as members of the Board

5. The following persons shall not be eligible for appointment as of the Board–

(*a*) a politically exposed person;

(*b*) a public servant, other than those specified under section 4(2) (*b*) and (*c*);

(*c*) a controlling party of a financial institution;

(*d*) a director, officer or employee of a financial institution;

(*e*) a minor or a person under legal disability;

(*f*) a person answering criminal charges or is a defendant in a civil case for a loss suffered by a licensed financial institution in Malawi or outside Malawi;

(*g*) a person who has a non-performing credit facility or whose related party has a non performing credit facility with a licensed financial institution;

(*h*) a person who provides or is engaged to provide professional services to the Corporation, whether as an individual of a firm;

(*i*) a person who is disqualified, whether in Malaŵi or outside Malaŵi, from acting as a director or official of a body corporate under any written law;

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

(*k*) a person who has at any time been convicted and sentenced for an offence under any written law to a term of imprisonment without the option of a fine whether in Malaŵi or outside Malaŵi; and

(*l*) a person removed by a court of competent jurisdiction, whether in Malaŵi or outside Malaŵi, from an office of trust.

Termination of appointment and filling of vacancies

6.–(1) The Minister may terminate the appointment of a member of the Board where the member becomes ineligible for the position in accordance with section 5.

(2) In addition to the provisions of subsection (1), the Minister may remove a member from the office on the ground that the member–

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

(*b*) has failed, without the permission of the Board, to attend three consecutive meetings of the Board of which he has had notice;

(*c*) conducted himself in a manner that brings his position as a member of the Board into disrepute; and

(*d*) is in breach of the provisions of this Act.

(3) A member of the Board may resign by giving a written notice of thirty days to the Minister.

(4) Where a vacancy occurs in the membership of the Board, the Minister shall, within thirty days appoint a person to fill the vacancy in accordance with section 4 (2) (*a*):

Provided that no person may be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

Tenure of office

7.–(1) A member of the Board shall hold office for a term of three years and shall be eligible for reappointment for one more term:

(2) The Minister shall, in appointing a subsequent Board, have regards to the need for continuity of the Board so that at least half of the immediate past members appointed under section 4 (two) (*a*) shall be retained.

(3) The Governor of the Reserve Bank, the Secretary to the Treasury and the Director General of the Corporation shall, whenever the Board is dissolved, constitute an Executive Management Committee to perform the functions of the Board until a new Board is constituted.

Conduct of business and affairs of the Board and allowances

8.–(1) Subject to this Act, the Board shall regulate its own procedure for the conduct of its business.

(2) At least four members constituting the Board shall form a quorum.

(3) The Board shall meet at least once every three months.

(4) The Board shall pay its members such allowances or fees as it may determine and approved by the Minister.

Powers of the Board

9. The Board shall–

(*a*) make rules and guidelines under this Act for carrying on the business of the Corporation;

(*b*) approve internal operating budgets and procedures of the Corporation;

(*c*) approve borrowing from the Reserve Bank of such monies, as the Board may consider appropriate, for the proper discharge of its functions under this Act;

(*d*) review the scope of uninsured funds;

(*e*) review insured amounts; and

(*f*) exercise any other powers necessary to achieve the objects of this Act.

Functions of the Corporation

10. The Corporation shall have the following functions–

(*a*) provide insurance cover for funds of insured institutions operating in Malaŵi in accordance with this Act in order to foster confidence in the financial system;

(*b*) provide financial assistance to insured institutions, in case of imminent or actual financial difficulties, particularly where suspension of payments is threatened, to avoid damage to public confidence in the financial system;

(*c*) make payments to clients of a failed insured institution up to the maximum amount prescribed in this Act;

(*d*) supervise failing insured institutions subject to permission from the Registrar;

(*e*) manage and apply deposit insurance funds in accordance with this Act;

(*f*) recommend to the Registrar for closure a failing insured institution if in the opinion of the Corporation its continued operation will jeopardize the interests of clients;

(*g*) perform the functions of a liquidator or statutory manager where appointment by the Registrar;

(*h*) issue such securities as the Board may approve which shall be guaranteed by the Government or the Reserve Bank;

(*i*) aid in portfolio transfers;

(*j*) formulate investment policies of the Corporation and oversee the Corporation's investments; and

(*k*) perform or do such other functions as may be conferred on it by this Act or any other written law or do such other things as are reasonably incidental to the exercise of the powers and performance of the functions of the Corporation in accordance with this Act.

Powers of the Corporation

11. The Corporation shall have power to—

(*a*) levy premiums or contributions for the deposit insurance fund on each category of insured institutions in accordance with this Act;

(*b*) liquidate failing insured institutions upon appointment by the Registrar;

(*c*) supervise failing institutions subject to permission from the Registrar;

(*d*) assume, with the prior permission of the Registrar, the management of a failing insured institution;

(*e*) with the approval of the Registrar, recommend the removal from office of any officer or director of an insured institution which has violated this Act, rules and regulations made under this Act or has engaged in an unsound practice that may lead to dissipation of assets or financial loss to the insured institution; and

(*f*) do or perform any act necessary to or directed towards the furtherance of its objectives and functions.

Arrangement with other agencies

12.–(1) The Corporation shall, consult and may enter into arrangements with other Supervisory Authorities and deposit insurance agencies outside the country in carrying out its functions under the Act.

(2) Without prejudice to the generality of the foregoing, the arrangements made under subsection (1), arrangements may make provision with respect to–

(*a*) the exchange of information between the Corporation and the Supervisory Authorities or deposit insurance agencies;

(*b*) consultation between the Corporation and the Supervisory Authorities or deposit insurance agencies; and

(*c*) contingency planning between the Corporation and the Supervisory Authorities or deposit insurance agencies.

Director General

13.–(1) The Board shall appoint a Director General of the Corporation through an open strenuous and competitive process who shall be responsible for the day to day management of the Corporation.

(2) The Director General shall be answerable to the Board.

(3) A person shall qualify for appointment as a Director General if the person has at least–

(*a*) a masters degree in banking, law, finance, accounting, economics or insurance; and

(*b*) ten years' experience at management level in a financial supervisory authority or financial institution.

(4) In the event of a vacancy in the office of the Director General, the Board shall advertise the vacant position in at least two newspapers of wide circulation in Malawi.

(5) The best candidate for the position shall undergo security vetting and clearance.

(6) Where there is no successful candidate during the interviews, the Board shall re-advertise the position.

(7) A person appointed as the Director General shall not, while holding that office, hold any other office or be a director in any financial institution without the prior approval of the Board.

(8) The Director General shall declare in writing to the Board, within thirty days of his appointment, his personal assets and significant interests as well as those of a related party or close relation.

(9) The Director General shall hold office for a period of five years and may, subject to satisfactory performance be eligible for reappointment for one more term of five years.

(10) The Director General shall hold office on such terms and conditions as may be determined by the Board.

Staff of the Corporation

14.–(1) The Board shall appoint officers and staff for the proper and efficient conduct of the business and functions of the Corporation on terms and conditions as the Board may determine.

(2) The Board may, in writing, delegate to the Director General, the appointment and discipline of junior officers of the Corporation as specified in the directions.

(3) The Director General shall report to the Board every appointment made pursuant to subsection (2) at the subsequent meeting of the Board.

Annual report

15.–(1) The Director General shall, within six months after the end of each financial year, prepare a report which shall–

(*a*) be in a form as the Board may direct; and

(*b*) relate to activities of the Corporation during the immediately preceding financial year.

(2) The Board shall submit a copy of the report to the Minister who shall lay the report in Parliament.

PART III–CAPITAL AND FUNDS OF THE CORPORATION

Capital of the Corporation

16.–(1) The capital of the Corporation shall be subscribed by and paid up at par, in a proportion of sixty per cent and forty per cent by the Reserve Bank and Government, respectively.

(2) The Board may increase the paid up capital of the Corporation, by an amount as the Board may determine, in consultation with the Reserve Bank and the Minister.

(3) The Board shall cause the increase in paid up capital under subsection (2) to be published in the *Gazette*.

(4) The shareholders shall, subject to the Board's recommendation, inject additional capital, where the Corporation incurs losses or its capital is considered inadequate for the size of the business of the Corporation.

Source of funds of the Corporation

17.–(1) The sources of funds of the Corporation shall comprise of–

(*a*) capital contribution from shareholders;

(*b*) assessed premiums paid by insured institutions in accordance with this Act;

(*c*) income earned or arising from investments of the Corporation;

(*d*) monies borrowed from any source with the approval of the Board provided that the monies shall not be borrowed from an insured institution;

(*e*) monies from any other source as may be approved by the Board; and

(*f*) such penalties, fees, grants, monies or assets as may accrue to, or vest in the Corporation in the course of the exercise of its powers or the performance of its functions under the Act.

(2) The Corporation may, with the approval of the Board, borrow from the Reserve Bank sums of money as it may require for purposes of carrying out its objectives and mandate.

(3) The Reserve Bank, in consultation with the Minister, shall determine the terms and conditions of the sums of money advanced to the Corporation under subsection (2).

Deposit insurance funds

18.–(1) The Corporation shall establish separate deposit insurance funds for each category of insured institutions in which all assessed premiums and contributions paid shall be credited.

(2) The Corporation shall ensure that the deposit insurance funds are available to meet payments to insured clients for all categories of insured institutions.

General Reserve Fund

19.–(1) The Corporation shall establish a General Reserve Fund.

(2) The Corporation shall at the close of each financial year transfer the annual net operational surplus to the General Reserve Fund.

(3) The Corporation shall not use the General Reserve Fund for any purpose other than absorbing operating losses of the Corporation or meeting the deficiency of deposit insurance funds when called upon to make payments to insured clients.

Investment

20.–(1) The Corporation shall invest monies, not immediately required, in Government Securities or other securities as the Board may determine.

(2) The Corporation shall credit the income from the money invested under subsection (1) to the income account of the Corporation.

Expenditure

21.–(1) There shall be chargeable to the Corporation –

(*a*) all refunds of excess assessment of premiums;

(*b*) interest on funds borrowed by the Corporation;

(*c*) payment to an insured institution which assumes the funds of another insured institution;

(*d*) payment to clients when the licence of an insured institution is revoked; and

(*e*) all expenses incurred on behalf of the Corporation:

Provided that all administrative expenses shall be met from the income of the Corporation.

(2) The administrative expenses of the Corporation shall comprise–

(*a*) operational or administrative expenses of the Corporation, including all staff related costs, depreciation of assets, and other provisions approved by the Board;

(*b*) legal, professional, and consultation fees;

(*c*) costs relating to the fulfillment of the Corporation's statutory duties relating to supervision, resolution, negotiation, restructuring, administration, liquidation and all tasks ancillary thereto; and

(*d*) costs relating to any other activity that the Corporation may be authorized to carry out by the Board.

Accounts and audit

22.–(1) The Director General of the Corporation shall submit to the Board for approval not later than 30th September of each year, an estimate of the Corporation's projected financial statements for the succeeding year.

(2) The Board shall approve the projected financial statements of the Corporation before 31st December of each year.

(3) The Corporation shall–

(*a*) keep proper accounts in respect of each financial year; and

(*b*) keep proper records in relation to those accounts.

(4) The financial year of the Corporation shall run from 1st January to 31st December.

(5) The Board shall cause the accounts of the Corporation to be audited within three months after the end of the financial year, by an external auditor appointed by the Board on terms and conditions as the Board may determine.

(6) The Board shall publish the audited financial statements of the Corporation in at least two newspapers of wide circulation and on the website of the Corporation.

Establishment and membership

23.–(1) There is hereby established a Deposit Insurance Scheme which shall be administered by the Corporation.

(2) A licensed bank shall be a member of the deposit insurance scheme and shall insure its deposits with the Corporation in accordance with section 59.

(3) A bank licensed after the coming into force of this Act shall, within twelve months, insure its deposits with the Corporation.

(4) The Board may, by notice published in the *Gazette,* prescribe other categories of financial institutions required to be members of the Deposit Insurance Scheme and the period within which to comply with the provisions of this Act.

(5) A financial institution that is a member of the Deposit Insurance Scheme by virtue of subsection (4) shall insure its deposits with the Corporation.

(6) The Registrar shall inform the Corporation of any newly licensed institution eligible for membership of the Deposit Insurance Scheme.

(7) The Registrar may, by written notice, revoke a licence granted under the Financial Services Act of any institution that contravenes subsections (2), (3) or (5).

Cap. 44:05

Uninsured deposits

24.–(1) The Corporation shall insure deposits of a licensed bank or a deposit taking financial institution up to the insured limits, as prescribed in this Act, with the exception of the following uninsured deposits–

(*a*) insider deposits;

(*b*) inter-bank deposits;

(*c*) Government deposits;

(*d*) deposits which serve as collateral for a loan over which the insured institution holds a lien; or

(*e*) such other deposits as may be specified by the Corporation.

(2) The Corporation shall cover foreign currency denominated accounts up to the insured limits as prescribed in this Act, provided that the insured amounts shall be paid in local currency equivalent.

Assessment of premium rates

25.–(1) A licensed bank shall pay a base premium as prescribed by the Corporation by a notice published in the *Gazette*.

(2) A licensed bank shall pay a risk-based premium, in addition to the premium payable under subsection (1), as follows–

(*a*) a bank whose core capital ratio is less than ten per cent shall pay a premium rate of 0.15 per cent of the applicable deposit liabilities standing in its books as at 31st December of the preceding year;

(*b*) a bank whose core capital ratio is ten per cent and above but not more than twelve per cent shall pay a premium rate of 0.05 per cent of the applicable deposit liabilities standing in its books as at 31st December of the preceding year;

(*c*) a bank whose core capital ratio is above twelve per cent but not more than fifteen per cent shall pay a premium rate of 0.04 per cent of the applicable deposit liabilities standing in its books as at 31st December of the preceding year; and

(*d*) a bank whose core capital ratio is above fifteen per cent shall pay a premium rate of 0.02 per cent of the applicable deposit liabilities standing in its books as at 31st December of the preceding year.

(3) Other institutions prescribed by the Board under section 23 shall pay premium at a rate as the Board may determine for their respective category.

(4) The premium shall be paid in the following manner–

(*a*) the amount of funds for which premium is to be levied on shall be based on audited financial statements of the insured institution;

(*b*) the audited financial statements in paragraph (*a*) shall be forwarded to the Corporation on, or before, 31st March annually;

(*c*) the annual premium shall be payable not later than 30th April through direct debit of each insured institution's main account at the Reserve Bank;

(*d*) in the case of insured institutions that do not maintain an account at the Reserve Bank, the premium shall be paid through a bank certified cheque or electronic funds transfer payable to the Corporation; and

(*e*) any premium payable by an insured institution remaining unpaid after 30th April, shall accrue interest at the ruling Bank Rate or any rate as may be determined by the Board.

(5) Notwithstanding the provisions of this section, and subject to the approval of the Board, the Corporation may vary the premium

amount, the risk based premium rate or the basis of assessment of the premium payable to the Corporation by insured institution:

Provided that the Corporation shall give a notice of not less than twenty-one days to an insured institution prior to the variation.

(6) An insured institution shall not charge the premiums payable under this section to clients in any form.

(7) An insured institution that fails to comply with the provisions of this section shall be liable to an administrative penalty.

Special contribution

26. An insured institution that is a member of a Deposit Insurance Fund established under section 18 may, where funds for the category of insured institutions to which it belongs are not suffient to implement the objectives of this Act be required to:

(*a*) pay a special contribution out of its profits before tax, a sum equal to its annual premium; or

(*b*) on written agreement with a Corporation, pay a sum not exceeding 200 percent of the annual premium payable by the insured institution in addition to the premium paid under section 25 on such terms and conditions as the corporation may determine.

Payment of dividends while in default of obligation

27.–(1) An insured institution shall not pay any dividend while it remains in default in the payment of any premium obligation due or special contribution due to the Corporation.

(2) A director or officer of an insured institution who contravenes subsection (1) commits an offence and is liable to an administrative penalty and a fine of five per cent of the total dividend paid.

Prohibition of set off

28. An insured institution shall not reduce, adjust or withhold premium due to the Corporation on the basis of any set off or claim that the insured institution may have against the Corporation.

Determination of insured amounts

29.–(1) The Corporation shall, at the beginning of each financial year by notice published in the *Gazette* prescribe amounts to be paid to clients of a failed insured institution.

(2) The Corporation shall, for purposes of subsection (1), treat all accounts held by a client of failed insured institution as a single client account.

(3) The payment of the insured amount as provided for under this section shall be without prejudice to the liquidation dividends to be paid to the client once the assets of the failed insured institution have been realized.

(4) For purposes of this section, "account" means deposit account, insurance policy and a claim.

Payment of claims to clients

30.–(1) Where the licence of an insured institution is revoked, the Corporation shall immediately inform the public about the failure, the coverage provided, the timeframe and conditions under which the Corporation shall make payments to clients of the failed institution.

(2) The Corporation may, within thirty days of the revocation of the licence, appoint another insured institution to assume the insured client funds of the failed insured institution where the Corporation considers it necessary to do so in the interest of the clients or the public.

(3) Where the Corporation is liable to make payment in accordance with this section, it shall at its discretion require proof of a claim from each client of the failed insured institution.

(4) Where the Corporation is not satisfied with the validity of a claim for an insured amount, the Corporation shall reject the claim.

(5) A client who is not satisfied with the decision of the Corporation under subsection (4), may apply to the High court for judicial review of the decision.

(6) The Corporation shall, make payment of the insured amounts within forty-five days from the date of the revocation of the licence.

(7) The Corporation shall make payments under subsection (6) through–

(*a*) cash;

(*b*) negotiable instrument; or

(*c*) making available to each client, transferred funds, to a new insured institution in an amount equal to the insured amount of such client.

(8) All rights of the clients against the failed insured institution shall, upon payment of claims of clients as provided in subsection (7), be subrogated to the Corporation to the extent of the payment.

(9) The subrogation under subsection (8) shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of the failed institution and recoveries on account of liabilities of shareholders as would have been payable to the client for any uninsured portion of his deposit.

(10) The Corporation shall exercise its powers as insurer to pay out insured clients of the failed institution independent of its mandate as liquidator of the failed institution.

Power to withhold payment of client's claims

31 -(1) The Corporation shall, where it has reasonable belief that–

(*a*) insured or excess insured amounts were obtained through, or being used in connection with, or held in furtherance of criminal activities; or

(*b*) a client had connived with the officials of the failed insured institution, or had been a party to, or had knowingly benefited from the circumstances which gave rise to the failure of an insured institution,

withhold payment of insured or excess insured amount until final determination by the Corporation rejecting or accepting the payment.

(2) The Corporation shall make the determination in subsection (1) within forty-five days.

(3) The Corporation shall be discharged from any obligations which it has under this Act to a client of an insured institution upon payment of insured funds to the client.

(4) The Corporation and another insured institution shall be discharged from liability upon payment of funds held under section 30 (6) to any client by the other insured institution to the same extent that payment to the client by the failed insured institution would have discharged the failed insured institution.

Limitations of payment claims

32.–(1) The Corporation shall give a notice of at least one month to pay to a client of a failed insured institution by–

(*a*) mailing the notice to his last known address appearing in the records of the failed insured institution;

(*b*) publishing a general notice in the *Gazette* and in at least two newspapers of wide circulation in Malawi; and

(*c*) causing an announcement to be made through at least two electronic media houses with national coverage.

(2) The notice in subsection (1) shall include the date and venue at which the Corporation shall make payments to the client.

(3) The client of the failed insured institution who fails to claim his insured amount from the Corporation or his transferred funds from a new insured institution within seven years after publication of the notice in subsection (1), shall forfeit the insured amount and all his rights against the failed insured institution, its shareholders and the receivership estate.

(4) The client or any person shall not commence court proceedings against the Corporation in respect of the obligation of the Corporation to make any payment in relation to any funds held by the client in the

failed insured institution after the expiry of the period stipulated in subsection (3).

PART V—SUPERVISION OF INSTITUTIONS

Examiners

33.—(1) The Corporation shall, subject to the approval of the Registrar, appoint examiners who shall—

(*a*) have similar powers of an examiner appointed by the Registrar under the Financial Services Act, the Banking Act or any other relevant financial services law; and

Cap. 44:05
Cap. 44:01

(*b*) have access to any account, return or information with respect to any failed or failing insured institution which is in the possession of the Registrar.

(2) Examiners appointed under subsection (1) shall exercise their powers only with respect to failed or failing insured institutions.

Submission of returns

34.—(1) An insured institution shall submit to the Corporation returns and information as may be required from time to time within the period prescribed by the Corporation.

(2) An insured institution which fails to comply with subsection (1) commits an offence and shall be liable to administrative penalties prescribed under this Act.

(3) The Corporation may, require a person who has access to information relating to, or concerning a matter affecting the interest of a client of insured institution to furnish the information to the Corporation within a period as the Corporation may determine.

(4) A person required to supply information under subsection (3) who -

(*a*) fails to supply the information; or

(*b*) supplies information which he knows to be false,

commits an offence and is liable to an administrative penalties prescribed under this Act.

Penalties for willful failure to submit information, etc

35.—(1) An insured institution, that—

(*a*) willfully refuses to produce any book, account, document or any other information;

(*b*) negligently, willfully or with intent to defraud gives information which is false in any material particular; or

(*c*) refuses to grant access to examiners to its premises, books of accounts, or any hardware or software utilized in its business,

commits an offence and shall, on conviction, be liable to a fine of K10,000,000.00.

(2) Where an insured institution commits an offence under subsection (1), a director, employee or agent of the insured institution responsible for commission of an offence, commits the same offence and shall, on conviction be liable to the same penalty unless it is established that the director, employee or agent took reasonable precaution and exercised due diligence to avoid the commission of the offence.

Obligation of a failing insured institution

36. (1) An insured institution shall inform the Corporation where it—

(*a*) considers itself likely to become unable to meet its obligations; or

(*b*) is about to suspend payments.

(2) Where the Corporation is of the opinion that an insured institution -

(*a*) is carrying on business in any manner detrimental to the interest of its clients or creditors;

(*b*) has insufficient assets to cover its liabilities; or

(*c*) is contravening the provisions of this Act,

the Corporation may, with prior approval of the Registrar, appoint a person to conduct a special examination or investigation of the books and affairs of an insured institution.

(3) An insured institution which contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine of K10,000,000.00.

Report of special examination and corrective actions required of insured institution

37.—(1) The Corporation shall, where examination of an insured institution discloses that—

(*a*) the insured institution or its director, officer or employee have engaged, are engaging or are about to engage in unsafe or unsound practice in the conduct the business of the institution;

(*b*) the insured institution has violated or is violating any a provision of any law; or

(*c*) the violation in paragraph (*b*) may lead to insolvency, illiquidity or dissipation of the assets of the insured institution,

submit the report of the examination to management of the insured institution with a recommended remedial measures to be implemented within a prescribed timeframe.

(2) Where an insured institution fails to implement the remedial measures within the prescribed timeframe, the Corporation may extend the time by a period not exceeding 30 days.

(3) The Corporation may, where the insured institution fails to implement the remedial measures after an extension of time under subsection (2), impose administrative penalties.

PART VI—TERMINATION OF INSURED STATUS

Grounds for termination of insured status

38.—(1) The Corporation shall terminate the insured status of an insured institution where it appears to the Corporation that an insured institution or its shareholders, directors or officers have committed a serious violation of their obligations under this Act or any other financial services law or have continued to conduct the business of the insured institution—

(*a*) in an unsound manner; or

(*b*) in a manner that permits any of the officers or agents of the insured institution to violate any provisions of any law.

(2) For the purposes of this section, an insured institution shall be deemed to be in serious violation of this Act or any other financial services law where it—

(*a*) violates the Registrar's directives on liquidity, solvency or capital adequacy;

(*b*) contravenes, the provisions of any applicable financial services law or any directive made thereunder;

(*c*) submits incomplete or incorrect financial statements to the Corporation;

(*d*) is in default of payment of its annual premium or special contribution to the Corporation as provided under this Act;

(*e*) fails to submit returns to the Corporation or does not submit upon request, any other information for the proper discharge of the function of the Corporation; and

(*f*) contravenes this Act.

Procedure before termination of insured status

39.—(1) The Corporation shall, before terminating the insured status of an insured institution, consider and apply corrective measures in accordance with this Act or as may be prescribed through directives.

(2) Where the insured institution fails within a reasonable time to take the necessary corrective actions, the Corporation shall—

(*a*) give to the institution a written notice of its intention to terminate the insured status of the institution; and

(9) The bridge institution may terminate its operation before the period prescribed under subsection (7) where--

(*a*) there is a merger or consolidation of the bridge institution with an insured institution that is not a bridge institution;

(*b*) the majority of the equity of the bridge institution is sold to any person other than the Corporation or another bridge institution;

(*c*) substantial share of the assets and liabilities of the bridge institution are assumed by an insured institution other than another bridge institution; or

(*d*) the bridge institution has been dissolved by the Corporation.

(10) The Corporation shall, upon appointment by the Registrar, act as liquidator of a bridge institution.

(11) Following the merger, consolidation, sale of the equity, assumption of the funds or acquisition of the assets of the bridge institution under paragraphs (*a*), (*b*) and (*c*) of subsection (9), the resulting entity shall for all purposes be an insured institution.

Appointment of the Corporation as liquidator

44.–(1) Where the Registrar revokes a licence of an insured institution, he may appoint the Corporation to act as a liquidator of the failed insured institution.

(2) An insured institution on voluntary liquidation may appoint the Corporation as liquidator.

Cap. 44:05

(3) The Corporation shall, in winding up a failed insured institution, comply with the Financial Services Act and any other applicable law.

Powers of the liquidator

45.–(1) The liquidator shall cause a notice, requiring clients of the institution under liquidation to forward their claims to the liquidator, to be published–

(*a*) in the *Gazette*;

(*b*) in at least two newspapers of wide circulation; and

(*c*) on at least two electronic media houses of national coverage.

(2) The liquidator shall have power to--

(*a*) realize the assets of the failed insured institution;

(*b*) enforce the individual liability of the shareholders, directors and officers of the failed institution; and

(*c*) wind-up the affairs of the failed institution.

(3) Where the liquidator is an institution other than the Corporation, the liquidator shall pay to the Corporation such portion of the amount realized from the liquidation as the Corporation shall be entitled to receive on account of its subrogation to the claims of clients and shall pay to clients and other creditors the net amount available for distribution to them.

(4) The liquidator may pay liquidation dividends on proved claims at any time after the expiration of the period in advertisement made pursuant to subsection (1) and any liability shall not be attached to the Corporation by reason of any payment or for failure to pay a dividend to a claimant whose claim is not proved.

Appointment of agent

46.- (1) The Corporation may, when acting as liquidator of a failed insured institution, appoint an agent to assist in the performance of its duties.

(2) The Corporation shall fix and pay fees, compensation and expenses of liquidation and administration from the realized assets of the failed insured institution.

Limitation Act not applicable Cap. 6:02

47. Sections 4, 6, 17, 18 and 20 of the Limitation Act shall not apply to any debt owed to a failing or a failed insured institution under liquidation.

PART VIII—OFFENCES

Prohibition against insuring funds by person other than the Corporation

48.- (1) Notwithstanding any provision contained in any other law, a person, other than the Corporation, shall not insure funds or guarantee payments to clients of insured institutions operating in Malawi.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable-

(*a*) in the case of a natural person, to a fine of K50,000,000.00 and imprisonment for twenty-five years; and

(*b*) in the case of a body corporate to a fine of K100,000,000.00.

(3) On application by the Corporation, the court may, in addition to penalties in subsection (2), order the convicted person to compensate any person who suffered loss as a result of the actions of the convicted person.

Liability of directors and officers of insured institutions

49.—(1) Unless otherwise specified by this Act, a director, an officer or employee of an insured institution who fails to take any reasonable steps to—

(*a*) ensure compliance with this Act; and

(*b*) ensure the authenticity of any statement submitted pursuant to the provisions of this Act,

commits an offence and shall, on conviction, be liable to a fine of K10,000,000.00 and imprisonment for five years.

(2) An insured institution that pays a fine on behalf of employee, officer or director or reimburses the fine paid by an employee, officer or director commits an offence and shall, on conviction, be liable to a fine of K50,000,000.00 and forfeiture of the amount paid or reimbursed.

Administrative penalties

50.–(1) The Corporation, may impose the following administrative penalties–

(*a*) direction to the insured institution, its directors, officers or employees; and

(*b*) monetary penalties as prescribed in regulations or directives made under this Act.

(2) Monetary penalties imposed under subsection (1) (*b*) shall be payable within twenty-one days from the date of demand notice.

(3) An insured institution or any person who fails to comply with an administrative penalty commits an offence and shall, on conviction, be liable to–

(*a*) in the case of a natural person, a fine of K10,000,000.00 and imprisonment for five years; and

(*b*) in the case of a body corporate to a fine of K50,000,000.00.

PART IX–MISCELLANEOUS

Advertisement of insured status

51.–(1) An insured institution may advertise its insured status.

(2) An insured institution which places false advertisement relating to insured status commits an offence and shall, on conviction, be liable to a fine of K10,000,000.00.

(3) A director or employee responsible for the commission of the offence under subsection (2), shall, on conviction, be liable to a fine of K5,000,000.00 and to imprisonment for five years.

Exemption from Insurance Act Cap. 47:01

52. The Insurance Act shall not apply to the Corporation.

Guarantee of borrowing by the Reserve Bank

53. The Reserve Bank may guarantee the redemption and the repayment of any debt raised by the Corporation in a manner and upon terms as the Reserve Bank may consider appropriate.

Exchange of information

54.–(1) The Registrar shall, on request by the Corporation, provide a copy of Registrar's examination report of an insured institution to the Corporation.

(2) The Corporation shall submit to the Registrar a copy of the Corporation's examination report of an insured institution and any other information relevant to Registrar's supervisory function.

(3) The Registrar shall, upon request, make available to the Corporation, relevant information of a licensed insured institution under the supervision of the Registrar.

Obligations of an external auditor

55.–(1) An auditor of an insured institution shall advise the Corporation on–

(*a*) any adverse development such as possibility of imminent insolvency of the insured institution;

(*b*) an occurrence which has led or may lead to a material diminishing of the insured institution's net assets;

(*c*) any significant weakness in the accounting and other records or the internal control system of the insured institution;

(*d*) any misleading financial information reported by insured institution to the Corporation;

(*e*) suspicion of fraud or misappropriation committed or intended to be committed by a director, manager or employee of the insured institution; and

(*f*) the incompetence of a director or manager in the conduct of the business of the insured institution.

(2) An auditor of an insured institution who acts in contravention of or wilfully or negligently fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine of K50,000,000.00 and imprisonment for twenty-five years.

Confidentiality

56.–(1) A director, officer or agent of the Corporation shall not disclose information relating to the business of the Corporation or an insured institution acquired in the performance of his duties except in the course of duty, under a court order or any written law.

(2) A director, officer or agent of the Corporation who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of K10,000,000.00 and imprisonment for five years.

Protection from liability

57.–(1) The Corporation, a director, officer, employee or agent shall not be liable for any act or omission done in the course of duty under this Act unless it is proven that the Corporation, director, officer, employee or agent was negligent.

(2) Notwithstanding subsection (1), the Corporation shall indemnify a director, employee or agent against any legal proceedings for any act or omission done in the discharge of their duties under this Act.

(3) An action shall not lie against an insured institution, officer, employee or agent of the insured institution in relation to provision of information submitted in good faith by the insured institution to the Corporation.

Regulations

58. The Minister may make regulations, to give effect to the provisions of this Act.

Transition

59. All licensed banks shall, within sixty days after the commencement of this Act, insure their deposits and pay premium to the Corporation on a *pro-rata* basis.

Passed in Parliament this eighteenth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament