BANKING ACT

(Enacted by the Parliament of Malawi on 29TH DECEMBER, 1989)

PART - PRELIMINARY

1. This Act may be cited as the Banking Act and the Minister may, upon the recommendation of the Reserve Bank, appoint different dates-

(a) for the coming into operation of different parts, divisions or sections of this Act; or

(b) for the coming into operation of this Act in respect of different classes of banking business.

2 (1)

"bank" means a person who conducts banking business in Malawi, including the acceptance of funds withdrawable by cheque or transferable by other means;

"banking business" means the business of receiving funds from the public by accepting demand, time and savings deposits or by borrowing from the public or other banks, and of employing such funds, in whole or in part, by granting loans, advances and credit facilities and by investing or by any other means at the risk of the person conducting such business;

"**capital base**" includes paid up capital and unimpaired reserves;

"**close relation**" means spouse, brother, sister, parent, child, child of the spouse and the spouse of any of these;

"" means any company incorporated or registered as such under any law having force or effect in Malawi, and includes a co-operative society or a building society where such society conducts banking business;

"**control**", in relation to a company, means-

(a) the power to appoint or remove, without the consent orconcurrence of any other person, all or the majority of the directors;

(b)the power to prevent any director from being appointed without the consent of the person having such power

"**credit facility**" includes financing by means of factoring, leasing, hire purchase, accepting of trade and other bills, discounting of such bills and notes, the opening or confirming of documentary credit, the issue of other letters of standby, credit, guarantee or surety, the undertaking to pay on account of another person, and such other similar undertakings as may be prescribed from time to time;

"**deposit**" means money entrusted to a bank or financial institution and accepted by it for credit to a depositor's account without putting up security to the depositor;

"**executive officer**" means an officer at the most senior level of the management of a bank or financial institution (whether or not he is a director) who effectively manages that bank or financial institution;

“financial institution" means a person whose regular business consists of the granting of loans, advances and credit facilities, and investing funds by other means, and whose business is financed by own or borrowed funds or with funds not acquired by accepting or soliciting deposits from the public, and includes pension funds, insurance companies, investment funds and investment companies;

"**group of related debtors**" means a group of debtor companies or enterprises operating under common control of an individual or of a group of related individuals, or of a corporate body acting as a holding company;

"**liabilities to the public**" in relation to a bank or financial institution, means all claims against such bank or financial institution payable on demand or at a determinable future date;

“official receiver" means the official receiver appointed under the Bankruptcy Act or, if there is no such official receiver, a person, appointed for the purpose by the Minister;

"Reserve Bank" means the Reserve Bank of Malawi established under the Reserve Bank of Malawi Act, 1989;

"'**reserves**", in relation to a bank or financial institution, means all funds which have been built up out of earnings, premiums on shares, profits from the realization of assets and increase of the value of assets upon revaluation of such assets, and which have been set aside as a general or special reserve and are available for meeting the liabilities of the bank or financial institutions;

"**saving deposit**” means deposit of money, the withdraws of which is subject to certain regulations and for which a predetermined interest will be paid in accordance with regulations applicable in respect of a category of savings deposits;

"**unsecured**", in relation to loans, advances or credit facilities, means loans, advances or credit facilities made without collateral, guarantee or other personal security, or if made against a collateral, guarantee or other personal security, such part of the loan, advance or credit facility which at any time exceeds the market value of the collateral or the amount recoverable from the guarantor or surety, as the case may be.

(2) For the purpose of this Act, a person shall be deemed to be accepting deposits of money if he accepts from the general public deposits of money as a regular feature of his business, or if he solicits such deposits, irrespective of the terms and conditions under which such deposits are accepted or solicited and whether or not certificates or other instruments are issued in respect of any such deposit

Provided that-

(a) the acceptance of money against the issue of debentures, bonds, certificates, notes or other instruments, offered to the public and repayable in not less than twelve months ;and

(b) the acceptance of insurance premiums by an insurer, shall not be deemed to constitute acceptance of deposits of money for the purposes of this Act.

PART II LICENSING OF BANKS AND FINANCIAL INSTITUTIONS

3 (1) No person shall conduct banking business in Malawi or only otherwise indicate to the public that he is conducting or is about to conduct banking business, unless he has been licensed under this Act as a bank or financial institution on banking

(2) No person other than a company shall be licensed under this Act, except by special permission granted by the Minister on the recommendation of the Reserve Bank.

4 (1) The reserve Bank shall keep a register of banks and financial institutions and such register shall consist of a separate part for each class of banking business.

(2) The Reserve Bank shall publish in the Gazette-

(a) the entry of a bank or financial institution, or the cancellation of any entry, in the register;

(b) a copy of the register as at 3lst December of the preceding year .

5-(1) An application for a licence to conduct banking businessshall be made to the Minister through the Reserve Bank in theprescribed form and shall be accompanied with such documents as may be prescribed by the Reserve Bank.

(2) For the purpose of considering an application for a licence, the Reserve Bank may require an applicant to submit such additional information and documents as it may deem necessary.

6.-(1) In considering an application for a licence the Reserve Bank shall conduct an investigation to ascertain-

(a) the validity and accuracy of the documents and information submitted therewith;

(b) the financial condition and history of the applicant;

(c) the reputation of the executive officers of the applicant and their competence and expertise to conduct the proposed business;

(d) the capacity of the applicant;

(i) to maintain an adequate capital base at all times;

(ii) to comply with the provisions of this Act and of any other Act relevant to its business;

(e) the adequacy of the capital base, and earning prospects resulting from the intended operation;

(f) the nature and scope of the proposed operation;

(g) the needs and convenience of the community or sector to be served;

(h) the structure of its organization;

(i) the interests of depositors and creditors of the applicant;

(j) the interest of the national economy and the public interest;

(k) other matters that may be deemed essential by the Reserve Bank.

(2) After having considered an application as required under subsection (1), the Reserve Bank shall forward the application to the minister with recommendations .

7-(1) The Minister upon the recommendation of the Reserve Bank may subject to such conditions as he may deem necessary to impose, grant a licence to a bank or a financial institution to conduct banking business or may refuse to grant a licence.

(2) The decision to grant or, refuse a licence shall be communicated to the applicant in writing by the Reserve Bank within ninety days after receipt of the application or, where further ; information has been required, after receipt of the last of such further information.

8 (1) A licence shall not be granted unless-

(a) the case of a bank-

(i) the bank will effectively be managed by at least two persons as executive officers; and

(ii) its paid up capital is at least two million Kwacha (K2,000,000);

(b) in the case of a financial institution, its paid up capital is at least two hundred and fifty thousand Kwacha (K250,000)

(2) The Minister may, on the recommendation of the Reserve Bank, grant exemption from the minimum requirements specified in subsection (I) where such exemption is required in the public interest or in the interest of the national economy or in the special circumstances of the case.

9.-(1) A licence granted under this Act shall indicate-

(a)the name of the licensee;

(b)the class or classes of banking business that the licensee is authorized to conduct;

(c)the place or places at which the licensee is authorized to conduct such business.

(2) A bank or financial institution shall not engage in any business other than the business designated in its licence.

10.-(1) The Minister, upon the recommendation of the Reserve Bank, may revoke a licence, if the licensee-

(a) supplied false information in its application;

(b) fails to commence its business within a period of twelve months following the granting of the licence ;

(c) ceases to conduct business for which the licence has been granted;

(d)fails to comply with any condition of the licence

(e)fails to comply with any provision of this Act and of any other Act relevant to its business.

(2) The Minister may at any time revoke a licence upon the request of a licensee and if the Reserve Bank so recommends.

(3) A decision to revoke a licence shall be communicated in writing to the licensee by the Reserve Bank.

11. Where a licence has been revoked in accordance with section 10, the Reserve Bank-

(a) shall give directives to the bank or financial institution concerned with respect to-

(i) the disposal of its assets in a manner to be specified in the

directives;

(ii) its entering into any transaction or class of transactions specified in the directives; and

(iii) the soliciting or accepting of deposits by such bank or financial

institution; or

(b) require the bank or financial institution concerned to take certain steps or pursue a particular course of action.

12. (1) Where the Reserve Bank has reason to believe that a person is conducting banking business without a valid licence issued under this Act, it may call for and inspect, or cause to be inspected, all books, minutes, accounts, records, and require such information as it deems fit in order to ascertain whether such person is conducting banking business; and any person in possession of or holding such books, minutes, accounts, records, and other documents shall submit them for inspection.

(2) A person who, having been requested by the Reserve Bank to do so refuses to make available for inspection any books minutes, accounts, records and other documents referred to under subsection (1) , shall be guilty of an offence and liable to a fine of five thousand Kwacha and imprisonment for two years.

13- (1) Where any person conducts banking business without a valid licence issued under this Act, and such person holds money or other assets obtained by such business whilst not licensed to do so, the Reserve Bank, with the approval of the Minister, shall make an application to the High Court for directions with respect to the disposition of such money and assets.

(2) The provisions of subsection (1) shall be in addition to and not in derogation of any criminal liability of such person in accordance with this Act or any other written law.

PART III - PRUDENTIAL SUPERVISION

Division I – Scope of Prudential Supervision

14- (1) The Reserve Bank shall supervise the banks and financial institutions specified in the Schedule and such supervision shall aim to protect the interest of present and

potential depositors and creditors, with regard to solvency, liquidity and profitability of such institutions and or financial institution.

(2) The minister may from time to time upon the recommendation of the Reserve Bank and by order published in the Gazette, amend the schedule by adding thereto or deleting therefrom the name of any bank or Financial institution.

Division II- Obligations of Banks and Financial Institutions

15- (1) Every bank and financial institution licensed under this Act shall relate the capital base for the conduct of its business.

(2) The Reserve Bank shall prescribe capital ratios which shall relate the capital base of a bank or financial institution to its assets and other risk bearing commitments.

(3) Every bank and financial institution shall ensure that its provisions for bad and doubtful debts are adequate at all times.

16. For the purpose of ensuring that banks and financial institutions comply with the requirements of section 15, the Reserve Bank may issue directives as to-

(a) valuation of assets;

(b) depreciation of assets;

(c)provision for bad and doubtful debts;

(d)provision for contingent losses and litigation;

(e)provision for tax payable; amortization of goodwill; such other items as may be prescribed.

17 (1) Subject to subsection (2), no bank or financial institution shall pay any cash dividend on its shares where its capital of requirements under section 15 have not been met.

(2) Where the Reserve Bank deems it appropriate, it may, upon request by a bank or financial institution, grant such bank or; financial institution dispensation from the requirement of subsection (1).

18 (1) Every bank and financial institution shall periodically submit to the Reserve Bank statements of assets and liabilities, returns including such information, as the Reserve Bank may, from time to time, determine.

(2) The format of the statements required under subsection (1) and the periods within which they must be submitted shall be determined by the Reserve Bank, and may vary for different classes of banks and financial institutions.

(3) The Reserve Bank may require a bank or financial institution to submit a report of its auditor regarding the statements referred to in subsection (1)

19 (1) Every bank and financial institution shall, within six months after the close of its financial year, submit to the Reserve Bank a copy of its balance sheet and profit and loss account in the format prescribed by the Reserve Bank together with the report of its independent auditor appointed in accordance with section 20.

(2) A copy of the balance sheet and profit and loss account submitted under subsection (1) shall be published as the Reserve Bank may direct.

20 (1) Prior to the beginning of its financial year, every bank and financial institution shall appoint an independent auditor, and such appointment shall be subject to the approval of the Reserve Bank

(2) If a bank or financial institution fails to appoint an auditor in accordance with the provisions of subsection (1), the Reserve Bank may appoint an independent auditor whose remuneration shall be paid by the bank or financial institution concerned.

(3) An auditor appointed under this section shall have the right of access at all reasonable times to the books, minutes, accounts, records and any documents and shall be entitled to require from the officers of the bank or financial institution such information and explanations as he may deem necessary for the proper performance of his duties.

(4) Every bank and financial institution shall give the auditor upon appointment permission in writing to provide the Reserve Bank on demand with any information which may be reasonably required for the proper performance of its duties under this Act; but so, however, that the Reserve Bank shall give the bank or financial institution concerned reasonable opportunity to be present when the auditor furnishes such information or to respond to his written submissions, as the case may be.

21 (1) Every bank or financial institution shall keep in Malawi such records, books of account and information as necessary to exhibit clearly and correctly the state of its business and to explain its transactions and financial position, and to enable the Reserve Bank to determine whether it has complied with the provisions of this Act..

(2) The records, books of account and information referred to, in subsection (1) shall be preserved for a period of at least seven years as from the date of the last entry therein.

22 (1) The Reserve Bank may periodically or at its discretion examine or cause to be examined by inspection the business of any bank or financial institution in order to determine whether it is in a sound financial condition and complies with the requirements of this Act or any other Act relevant to its banking business.

(2) Inspectors appointed by the Reserve Bank for the purpose of subsection (1) may at any time investigate the business or any part of the business of a bank or financial institution.

(3) Any bank or financial institution being examined shall co-operate with an inspector duly authorized by the Reserve Bank, shall produce such records, minutes, books, accounts and documents, and supply all such information, as may be reasonably requested within such time as the inspector may specify.

(4) Any major findings of the inspection shall be communicated to the bank or financial institution concerned by the Reserve Bank.

Division III-Structural Matters and Limitations

23. A company licensed under this Act to conduct any class of banking business shall not-

(a) purchase shares in its own business or make loans or advances against such shares as collateral; and

(b) hold shares in a company by which it is controlled.

24. Except with the prior approval of the Reserve Bank, a company licensed under this Act to conduct a banking business shall not-

(a) engage on its own account in wholesale or retail trade, including import and export trade, except in so far as may be necessary in the course of the satisfaction of debts due to it;

(b) purchase, acquire or hold immoveable property other than for the purpose of conducting its business or providing housing or amenities for its staff:

Provided that such company may secure a debt on any immoveable property and in default of repayment, may acquire such property for resale as soon as possible thereafter.

25. A bank or financial institution shall obtain prior written approval of the Reserve Bank for the following matters-

(a) appointment of executive officers;

(b) change in the articles of association;

(c) reduction if its capital base by repayment of capital or distribution of reserves ;

(d) opening and closing of branches and static or mobile agencies ;

(e) opening of establishments abroad ;

(f) takeover of assets or liabilities of other banks or financial institutions;

(g) participation in any other company to an extent in excess of ten per cent of the paid up capital of such company;

(h)financial restructuring ;

(i)liquidation;

(j) arrangement or agreement-

(i) for the sale or disposal of its shares or business ;

(ii) affecting voting power, management or other matters which will result in a change in the control or management of the company; and

(k) amalgamation or merger between the bank or financial institution and any other corporation wherein the whole or a considerable part of the business or property of the bank or a financial institution will be transferred to that other corporation.

26. The Reserve Bank may issue directives pertaining to solvency, liquidity and sound operating practices of banks and directives financial institutions, and such directives may vary for different classes of banking business.

27 (1) Without prejudice to the generality of the powers of Reserve Bank to issue directives under section 26, such directives may regulate-

(a)the minimum liquidity requirements as a percentage or percentage of liabilities to the public;

(b) the minimum capital requirements as a percentage or percentages of a class or classes of assets and risk bearing commitments;

(c) the minimum and maximum ratios to be maintained between certain classes of assets and liabilities; and such ratios may also include commitments to provide loans, advances and credit facilities

(2) The definition and composition of liquidity, capital, certain classes of assets and liabilities and risk bearing commitments, as well as the method of their computation, shall be determined by Reserve Bank.

28. The Reserve Bank may also issue directives under section 26 to prohibit restrict or subject to conditions

(a)certain classes of loans, advances, credit facilities, investments and risk bearing commitments or such facilities in excess of a given limit.

(b) uncovered positions in foreign currency or such positions in excess of a given limit;

(c) any other transactions affecting the solvency or liquidity of a bank or financial institution.

29 (1) The Reserve Bank may determine that any proposal by a bank or financial institution to grant a loan, advance or credit facility to any shareholder, director, officer or employee officer and of the bank or financial institution concerned shall be unanimously approved by its board of directors; and the Reserve Bank may monitor such loans, advances and credit, facilities and make representations it may deem appropriate.

(2) For the purpose of this section shareholder if an individual "director" "officer" or "employee" includes-

(a) the close relations of such person;

(b) any firm or company in which such person is interested as a partner, director, manager or guarantor;

(c)any company in which such person has a material interest;

(d) any individual for whom such person is a guarantor;

(3) Any loans, advance or credit facility granted by a bank or financial institution to any of its officers or employees in excess of two years remuneration of such officer or employee shall require unanimous approval of the board of directors of the bank or financial institution concerned.

30 (1) Without prejudice to the generality of the powers of the Reserve Bank to issue directives under section 26, no bank or financial institution shall without prior permission of the Reserve Bank-

(a) grant or permit to be outstanding any loan, advance or credit facility in excess of 25 per cent of its capital base to and debtor or group of related debtors:Provided that this limit shall not apply to any credit facility granted in respect of exports from Malawi;

(b) have investments in land, buildings and other immoveable property in aggregate in excess of the sum of its capital and reserves;

(c) own, to an aggregate value exceeding 25 per cent of the sum of its capital and reserve, shares in the capital of any company, firm or enterprise.

(2) The Minister may, upon the recommendation of the Reserve Bank, by order published in the Gazette, and having due regard to the nature of business customarily carried on by certain financial institutions, exempt any financial institution or any class of financial institutions from all or any of the requirements of section 30

PART IV - REMEDIAL MEASURES

31.-(1) If it is found upon inspection under section 22 that a bank or financial institution is conducting its business in an unlawful or unsound manner, or that its solvency or liquidity are endangered, the Reserve Bank, in addition to any other course of Bank action open to it under this Act or any other written law, may-

(a) require such bank or financial institution to take such measures as the Reserve Bank deems necessary to rectify the situation

(b) with the approval of the Minister,. add conditions to the licence granted to the bank or financial institution;

(c)remove from office any of its executive officers.

(d) appoint a person who, in the opinion of the Reserve Bank, has the proper training and experience to advise the bank or financial institution concerned on the necessary remedial measures, and shall determine his remuneration to be paid by the institution concerned, and the advice of a person so appointed shall have the force and effect of a directive issued by the Reserve Bank.

(2) Prior to taking any measures under subsection (1) (b), (c) and (d), the Reserve Bank shall-

(a) give the bank or financial institution notice in writing regarding the intended measure;

(b) give the institution concerned an opportunity to present its views;

(c) consult with the Minister.

(3) The Minister may, on the recommendation of the Reserve Bank, revoke any licence issued under this Act.

32 (1) Where the Reserve Bank is satisfied or has reasonable cause to believe in respect of a bank or financial institution that

(a)its capital base is seriously affected and does not meet the requirements prescribed under sections 26 and 27;

(b) the continuation of its activities is not in the best interest of its depositors; or

(c) it has refused or refuses to permit an inspection to be made of its business in accordance with section 22 or has otherwise obstructed such inspection, the Reserve Bank may petition the High Court to sanction one or some of the following procedures as may be recommended by theReserve Bank-

(i) a compromise or arrangement between the bank or financial institution and its creditors under section 198 of the Companies Act;

(ii) a reconstruction of amalgamation of the bank or financial institution under section 200 of the Companies Act;

(iii) the winding-up of the bank or financial institution;

(iv) the appointment of the Reserve Bank as liquidator of the bank or financial institution.

(2) In case of winding-up under subsection (1) (iii), the Reserve Bank shall make such recommendations to the High Court as it deems fit in order to maintain the proper working of the national financial system, on the one hand, and to protect the depositors of the bank or financial institution, on the other.

(3) In the case of appointment of the Reserve Bank as liquidator of a bank or financial institution under subsection (1), the Reserve Bank shall have full and exclusive powers to manage and control the bank or financial institution in liquidation, including powers to-

(a) temporarily continue its operations;

(b)stop or limit the payment of its obligations;

(c) employ any necessary officers and employees;

(d) execute any instrument in the name of the bank or financial institution; and

(e) initiate, defend and conduct in the name of the bank or financial institution any action or proceedings to which it may be a party.

(4) Prior to taking any measure under subsection (1), the Reserve Bank shall consult with the Minister.

PART V - WINDING-UP

33. Subject to the provisions of this Part, the provisions of the Companies Act relating to the winding-up of Companies (Part XII of that Act) shall be applicable to licensed banks and financial institutions, which are companies within the meaning of that Act: Provided that the provisions of the Companies Act, specially applicable to a Creditor's voluntary winding-up (sections 253,254,255,256,257,258,264 and 265 of that Act) shall not apply to banks and financial institutions.

34. Before any winding-up of a bank or financial institution, whether voluntary or by a court, may be commenced, 14 days prior notice in writing shall be given to the Reserve Bank, which may-

(a) take such action as is provided for under section 32;

(b) in the case of a voluntary winding-up, permit the winding-up to proceed on such terms and conditions as the Reserve Bank may determine; or

(c) in the case of a winding-up by the court, permit the petition to proceed, in which case the Reserve Bank shall be entitled to appear before the court at the hearing of the petition and make representations.

35. For the purpose of any winding-up and notwithstanding anything to the contrary contained in sections 204 to 305, inclusive of the Companies Act or in the Bankruptcy Act, any entry in the books, accounts or records of a bank or financial institution relating to deposits shall be prima facie evidence of the claims of the depositors.

36. Notwithstanding the provisions of sections 260 and 287 (10) of the Companies Act and section 35 of the Bankruptcy Act, in the winding-up of a bank or financial institution unable to pay its debts, any balance of the free residue after making provision for the payment of the secured and otherwise preferred claims, shall be applied in payment of the remaining claims in the following order-

(a)deposits and interest accrued thereto up to an amount not exceeding one thousand Kwacha per depositor;

(b)other deposits with accrued Interest;

(c) other claims.

37 (1) Any sums of money remaining unclaimed after the winding-up of a bank or financial institution shall be deposited in the Bankruptcy Estates Account at the prescribed bank or with the Accountant General as if they were unclaimed and undistributed fund sunder the Bankruptcy Act, and section 134 of that Act shall apply accordingly.

(2) Any other property held by a bank or financial institution as a trustee, fiduciary, lessor of a safe deposit box or bailee, which has not been returned to its rightful owner in the course of the winding-up of such institution, shall, together with the inventories

pertaining thereto, be placed in the custody of the Reserve Bank, and if unclaimed after a period of not less than two years shall be disposed of not less than two years, shall be disposed of such manner as may be prescribed.

PART VI - MONETARY SUPERVISION

38

(1) The Reserve Bank, performing the duties conferred upon it in sections 30,33,36 and 48 of the Reserve Bank Act, may, with a view to the protection of the external value of the national currency, the monetary equilibrium, and other economic objectives, issue and amend general directives and regulations to banks and financial institutions, regarding the following matters-

(a) liquidity reserve requirements to be met in the form of deposits with the Reserve Bank;

(b) minimum liquidity requirements as a percentage of liabilities to the public , to be maintained at all times;

(c) ceilings for loans and advances outstanding, for such specific periods as the Reserve Bank may determine from time to time;

(d) restrictions and conditions for specific categories of loans, guarantees and other commitments of banks and financial institutions;

(e) foreign assets and foreign liabilities of banks and financial institutions;

(f) interest rates, charges, commissions and other conditions to be observed by banks and financial institutions in relation to their customers.

(2) Directive under subsection (1) may be different for different classes of banking business.

(3) The Reserve Bank may grant full or partial dispensation from a directive under subsection (1) to one or more institutions in special cases or under special circumstances.

(4) Directives under subsection (1) shall be published in the Gazette.

(5) The Reserve Bank may require any bank or financial institution to furnish such information as the Reserve Bank may deem necessary to satisfy itself that the directive, referred to in subsection (1), have been complied with.

39 (1) If a bank or financial institution has not complied with a general directive issued under section 38, the Reserve Bank may order such bank or financial institution to maintain an interest free penalty deposit with it, the size of which shall be commensurate with the amount of non-compliance.

(2) For the purposes of subsection (1), “amount of non- compliance , in relation to a prescribed amount , means any excess over a set maximum or any shortfall under a set minimum as the case may be.

PART VII - ABANDONED PROPERTY

40-

(1) The following items held by a bank shall be presumed to have been abandoned

(a) any deposit, including interest, in respect of which the depositor has not for seven years after the last deposit transaction in his account increased or decreased the amount of the deposit or presented the passbook or other record for the crediting of interest, or corresponded with the bank concerning such deposit; and other property deposited with the bank including the contents of any safe deposit box upon which the lease or rental period has expired and in respect of which the owner thereof has not for seven years following such expiry, corresponded with such bank or in any other manner indicated an interest

(2)Any bank holding items presumed to have been abandoned under subsection (1) shall report such holdings to the Reserve Bank and thereafter-

(a) in the case of any money deposits, pay such deposits into the Bankruptcy Estates Account at the prescribed bank or with the Accountant General as if they were unclaimed or undistributed funds under the Bankruptcy Act, and section 134of that Act shall apply accordingly;

(b) in the case of any other property, deliver such property to the Reserve Bank, together with the name and last-known address of the the owner thereof.

(3) Upon paying abandoned deposits to the official receiver and delivery of other abandoned property to the Reserve Bank, a bank shall be relieved of all liability for any claim in respect thereof to the extent of the value of such deposits or other property.

(4) Any person claiming to be entitled to any abandoned property and proving evidence of such entitlement to the satisfaction of a competent court shall have the abandoned property returned to him by the Reserve Bank.

PART VIII - FIDUCIARY OPERATIONS

41

(1) No person licensed as a bank or financial institution under this Act shall. directly or indirectly, engage in regular and recurrent business of fiduciary nature without a permit granted by the Reserve Bank under subsection (2).

(2) The Reserve Bank may, by special permit, authorize a bank or financial institution to act as trustee, executor, administrator, registrar or custodian of stocks and bonds, guardian of estates, assignee, receiver, committee of estates for infants or for absent or incompetent individuals, or for lunatics or in any similar fiduciary capacity.

(3) A bank or financial institution desiring to exercise fiduciary powers under this section shall file an application in that behalf with the Reserve Bank in such form as the Reserve Bank may specify, which form shall set forth the particulars required of applicants.

(4) The Minister may, on the recommendation of the Reserve Bank, by regulation set out conditions of permits granted under subsection (2) concerning-

(i) the scope of trust business that may be undertaken;

(ii) the adequacy of the holder's capital;

(iii) the fiduciary records to be kept and the information to be provided therein;

(iv) the separation of fiduciary assets from the holder's other assets;

(v) the obligation of the board of a holder, to review the assets held in fiduciary accounts, and to have such accounts audited on a yearly basis; and

(vi) the way in which funds held in fiduciary capacity may be invested and property held In such capacity may be sold.

PART IX - MISCELLANEOUS

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42. In all transactions connected with the opening of, deposit into or withdrawal from an account with a bank, whenever the depositor is unable to sign his name, his thumb impression may be affixed in the presence of an officer of the bank, and if so affixed shall have the same force and effect as if it were the depositor signature.

43

(1) Save with the consent of the Reserve Bank, which may impose such conditions as it thinks fit, no person, other than a bank or financial institution, shall use in the description or title under which such person is conducting its business in Malawi the word "banker", "banking", "saving", "deposit", "credit", or literal translation of such words or any combination of letters in which such words appear.

43

(1) Save with the consent of the Reserve Bank, which may impose such conditions as it thinks fit, no person, other than a bank or financial institution, shall use in the description or title under which such person is conducting its business in Malawi the word "banker", "banking", "saving", "deposit", "credit", or literal translation of such words or any combination of letters in which such words appear.

(2) A person who contravenes subsection (1) commits an offence and shall be liable to a fine of Kl,000.

44. No person, other than a bank or financial institution shall advertise that he performs financial services in Malawi normally rendered by banks and financial institutions.

45

(1) Without prejudice to any provision of the memorandum of association, constitution, articles of association or other rules conduct of the business concerned , which is not

inconsistent with the provisions of this section, no person shall be appointed or remain a director of a company registered in a class of banking business-

(a)if he has, under an enactment in force in Malawi or elsewhere-

(i) been adjudged or otherwise declared insolvent or bankrupt and has been by law discharged from insolvency or bankruptcy; and

(ii)made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside;

(b) if he is convicted of an offence involving dishonesty or fraud.

(2) No person who was a director or executive officer of a bank or a financial institution which was wound up shall act or continue to act as a director or executive officer of a bank or financial institution without the approval of the Reserve Bank

(3) Any person acting in contravention of this section shall be guilty of an offence and shall be liable to a fine of K5,000 and to imprisonment for one year

46. A bank or financial institution which contravenes any provision of section 3, 18, 19,20,21,22,23,24, 25 or 41 or any of the directives issued by the Reserve Bank pursuant to section 8, 11, 15,16,17,18,26,27,28,29,30, 31,38 or 41 of this Act, shall be guilty of an offence and liable to a fine of K5,000 and KI0,000 , for any subsequent offence of the same nature.

47. (1) Any executive officer of a bank or financial institution who-

(a) fails to take all reasonable steps to secure compliance by the bank or financial institution with this Act or any directive issued by the Reserve Bank under this Act; or

(b) fails to take all reasonable steps to ensure the accuracy, completeness and correctness of any statement submitted under this Act; or

(c) fails to supply any information required under this Act; or

(d) obstructs or endeavours to obstruct an inspection by an officer or other person duly appointed by the Reserve Bank, shall be guilty of an offence and liable to a fine of *K10,000* and to imprisonment for two years.

48. Any director, manager, officer or employee of a bank or financial institution who solicits or receives, consents or agrees to and others receive any gift, commission, money, property or object of value for his own personal benefit or that of any of his close relations for permitting or procuring any loan, advance or credit facility from the bank or financial institution shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

49. Any director, manager, officer or employee of a bank or financia1 institution who makes or permits to be made any transaction including the opening of an account

(a) without taking all reasonable steps to establish the true identity of the person concerned in the transaction;

(a)when he doubts or has reason to doubt the authenticity of documents and the truth of written or oral statements material to the transaction; or

(b)when he knows or has reason to suspect that any of the funds involved in the transaction have been obtained by any party as the direct or indirect result of an activity that is illegal c inside or outside Malawi, shall be guilty of an offence and liable to a fine of KI0,000 and imprisonment for two years.

50. Except when in the performance of his duties or the exercise of his functions, or when required to do so by any court or under any law, neither any inspector appointed under section 12 or 22 nor any person appointed as advisor under section 31 (1) (d) nor any director, manager, officer or employee of the Reserve Bank, shall disclose any information relating to the business of any bank or financial institution which he has acquired in the performance of his duties or the exercise of his functions.

51. Notwithstanding section 50 the Reserve Bank may publish in whole or in part in such form and at such time as it may deem fit, any information or data furnished or collected under this Act:

Provided that no information or data which might disclose the particulars of a bank or financial institution or a customer of such bank or financial institution, shall be published unless the consent of such bank, financial institution or customer, as the case may be, has been obtained.

52. Neither the Reserve Bank nor any of its director, managers, officers or employees, nor any other person appointed as advisor under section 31 (1) (d) shall be subject to any action or to claims any person or to liability to any person in respect of anything done in good faith in pursuance, or in execution, of any power conferred upon the Reserve Bank under this Act or under the Reserve Bank of Malawi Act,

53. The cost of supervision of banks and financial institutions related to the implementation of this Act or regulations made under this Act may recovered by the Reserve Bank from such banks and financla1 institutions in accordance with Reserve Bank directives issued under this Act and approved by the Minister or in accordance with regulations made under this Act.

54. The Reserve Bank shall every year present a report to the Minister on the administration and implementation of this Act.

55.

(1) A person who contravenes any provision of this Act shall be guilty of an offence.

(2) A person who is guilty of an offence under this Act for which no other penalty is specified shall be liable to a fine of K2,000 and to imprisonment for one year.

56. The Minister may, upon the recommendation of the Reserve Bank, make regulations for the better carrying out of the objectives of the Act and for its better administration.

57. Any matter required to be prescribed under this Act may be prescribed by directives issued by the Reserve Bank under this Act or by regulations made by the Minister under section 56.

58. The Minister may, on the recommendation of the Reserve Bank and by Order published in the Gazette declare that this Act shall not apply to the banking business of any .financial institutions.

59. The Banking Act is hereby repealed.

SCHEDULE

BANKS AND FINANCIAL INSTITUTIONS SUBJECT TO PRUDENTIAL SUPERVISION

Commercial Bank of Malawi Limited

Leasing and Finance Company of Malawi Limited

Mercantile Credit Limited

National Bank of Malawi

Banking (Non-Application of the Act) Order

SUBSIDIARY LEGISLATION
BANKING (NON-APPLICATION OF THE ACT) ORDER) under s. 58

1. This Order may be cited as the Banking (Non-Application of the Act) Order.

2. The Banking Act, 1989 shall not apply to the banking business of the financ1a1 institutions named in the Schedule hereto .

(para.2) SCHEDULE

Commonwealth Development Corporation Indefund