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SUBMISSION

on

REVIEW OF THE BANKING AND FINANCIAL SERVICES (AMENDMENT) BILL (N.A.B No. 7 of 2020)

made to the

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

by

The Zambia Institute for Policy Analysis and Research

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1 Introduction

In Zambia, the power to licence, supervise and regulate financial service providers lies with the Bank of Zambia (BOZ). These powers are defined under two sets of legislation, namely: the Bank of Zambia Act, Chapter 360 of the Laws of Zambia; and the Banking and Financial Services Act (BFSA), Chapter 387 of the Laws of Zambia. These sets of legislation outline the functions, responsibilities and mandate of BOZ. In this review, the proposed Banking and Financial Services (Amendment) Bill, 2020 is meant to amend the principle Banking and Financial Services Act, 2017.

By regulating the activities of banks and financial institutions, the Bank of Zambia promotes the safe, sound and efficient operations and development of the financial system in the country. For its part, the BFSA has an overall objective of creating a comprehensive and robust regulatory and supervisory framework for conducting financial service business in Zambia. The BFSA supports the BOZ Act by strengthening the legal and regulatory framework of licensing, supervising and regulating financial service providers in Zambia. In particular, the present proposed Amendment Bill aims to tighten the requirements around the provision of banking and financial services, and the regulation and possession of erring financial service providers by BOZ, including avenues of recourse for financial service providers.

This memorandum is presented in response to a request by the Committee on National Economy, Trade and Labour Matters to the Zambia Institute for Policy Analysis and Research (ZIPAR). The note presents the objectives of the Bill, delves into the strengths and ramifications of some of the proposed amendments to the Banking and Financial Services Act, and finally concludes.

2 Objectives of the Proposed Bill

The object of the Banking and Financial Services (Amendment) Bill, 2020 is to amend the Banking and Financial Services Act No. 7 of 2017 so as to:

(a) provide for the repayment of funds collected by an unlicensed person;

(b) revise the jurisdiction of the tribunal;

(c) revise the priority of payment to depositors; and

(d) provide for matters connected with, or incidental to, the foregoing.

3 Meeting the Objectives: Strengths & Ramifications of Proposed Amendments

As outlined above, the Banking and Financial Services (Amendment) Bill 2020 aims to achieve three main objectives. What follows is a discussion of the strengths and ramifications of the various amendments proposed in the Amendment Bill as they relate to each of these objectives. There will also be a discussion on a selection of proposed amendments that do not directly relate to any of these objectives, but whose strengths and ramifications are particularly noteworthy. A complete exposition of all the amendments proposed in the Amendment Bill, and the relevant comments and observations on each of these, is presented in Annex 1.

3.1 Provide for the repayment of funds collected by an unlicensed person

The first objective of the Banking and Financial Services (Amendment) Bill to provide for the repayment of funds collected by an unlicenced person is addressed in the repeal and replace amendment of Section 6 (1) of the principal Act. In particular, the amendment adds three subsections to Section 6 that relate to a person who "without a banking licence, financial institution licence or a financial business licence, shall not collect funds by purporting to conduct a banking business, financial service or financial business".

The amendment goes beyond the provisions of the principle Act to include those collecting funds by purporting to conduct a banking business, financial service or financial business in Section 6(3). Sub-sections (4), (5) and (6) then make provision for the repayment of funds collected by an unlicenced person. This addition will serve to protect members of the public who fall victim to such unscrupulous operations by not only holding the offender liable on conviction to a fine and/or imprisonment, but also making them repay the funds that they collected illegally. Further, where funds are unpaid at the end of a predetermined period of repayment, these funds shall be recoverable by the Bank and "kept in trust for the person lawfully entitled to the funds".

However, sub-section 6(6) is unclear about how unpaid funds shall be recoverable by the Bank. While this level of detail is likely relegated to other supporting documents and guidelines to the Act, it is important that the modalities of such an operation are thought out in order to avoid undue complications and cost in enforcement. Further, it is unclear how "the person lawfully entitled to the funds" will then gain access to these funds. This clause can therefore be better elaborated, including a clearer definition of "the person lawfully entitled to the funds".

Finally, as regards the wording of the amendment, we suggest that, in sub-section (4), rather than "A person who contravenes subsections (1), (2) and (3)" this should read "A person who contravenes subsections (1), (2), (3) or any combination of these" to ensure that would-be offenders cannot use the loophole of exclusion.

3.2 Revise the jurisdiction of the tribunal

3.2.1 Power of enquiry moves from Court to Tribunal

The second objective of the Banking and Financial Services (Amendment) Bill, 2020 is to revise the jurisdiction of the tribunal. The first amendment to the principle Act in relation to the tribunal pertains to the setting up of a tribunal in relation to a decision by the Bank to take possession of a financial service provider in Section 75. In this regard, the power to make an enquiry into the decision of the Bank is moved away from the Court to a tribunal. According to the amendment, this may be done when the interested party petitions "the Minister to establish a tribunal to enquire into the decision of the Bank to take possession of the financial service provider." However, the amendment creates the risk of unnecessary politicisation of the appeal process. For example, should the Minister[1] decline the request to establish a tribunal, it is unclear what further recourse is available to the financial service provider.

[1] Throughout the principle Act, and in the Amendment Bill, at no point is the "Minister" referred to in the Act defined. For completeness and to avoid ambiguity, we advise that this be defined somewhere in the Act, perhaps in definitions, in terms such as "Minister in charge of Finance".

Furthermore, in the event that the Bank's taking possession of the financial service provider is in any way malicious, leaving the decision to the discretion of the Minister somewhat disadvantages the aggrieved financial service provider. In order to maintain neutrality, we recommend that the process of setting up a tribunal, and/or the determination of whether the course of action undertaken by the Bank is justified, remain a matter that is handled technically by the Court.

The appeals tribunal is meant to protect the right of individuals or firms to appeal decisions made by the Bank in relation to them. One positive aspect of setting up a tribunal over using court processes is that the tribunal may determine its own procedures, it is not bound by the rules of evidence, and it may inform itself of any matter in such manner as it sees fit. The rules of evidence, encompass the rules and legal principles that govern the proof of facts in a legal proceeding and do not apply for most administrative tribunals.

Further, the right to appeal against the decision of the Bank is also an important mechanism for holding the Bank to account on its decisions, and ensures that the Bank continues to be conscientious in its decision-making processes. In Section 140(1), the Amended Bill adds the stipulation that the tribunal shall hear and determine an appeal on its merits, "within thirty days of being convened". This is important and it prevents cases and appeals from dragging, which has the potential to create some level of anxiety in the financial market.

3.2.2 Compensation against the Bank introduced, power to reverse decisions taken away

Section 141 (1) of the Bill introduces compensation against the Bank where the tribunal finds the Bank to have acted contrary to the principle Act or any written law on the matter. This provision places a level of onus on the Bank to ensure that it uses its regulatory power caution, making the Bank much more accountable for its decisions. The Amended Bill is nonetheless not clear, in situations where the Bank acted contrary to the principle Act or any other written law. Where the Bank is found to have acted contrary to the law, it is unclear what happens to the original decision made by the Bank and whether it will be overturned. In particular, in reading this with amended Section 137(3), neither a tribunal nor a court can overturn the decision of the Bank. It is therefore necessary to clarify or explicitly state what happens with the decision of the Bank when this is found to be contrary to the law.

3.3 Revise the priority of payment to depositors

The third objective of the Amendment Bill to revise the priority of payment to depositors is dealt with in the broader delete and substitute amendment of Section 132 (1). The amendment addresses the case in which "any compulsory winding-up or dissolution of a financial service provider the following shall be paid in priority to all other debts in the order set". In particular, sub-section 132(1)(b) which pertains to depositors has been augmented to introduce ranking based on whether a depositor is or is not covered by a deposit protection scheme.

In sub-section 132(1)(b), to the best of our knowledge, the Deposit Insurance Bill has not yet been passed into law. This therefore raises the question of who this distinction is being made for in terms of payment of deposits. While there is the possibility of such a deposit protection scheme being provided by private insurance, if this is the case, it is unclear. As such, it is important that the text of the Amendment Bill reflects the situation as it stands on the ground. And where provision for a deposit protection scheme already exists, clear reference should be made to the relevant legislation.

Furthermore, in the event that legislation that provides for a deposit protection scheme exists or is introduced, it is unclear what the merit of ranking depositors with and without deposit insurance cover when these two groups are essentially on equal footing. Where deposit insurance cover exists, all

depositors in a financial service provider are covered by this scheme, up to a certain threshold, as the scheme is applied at the level of the institution, not to individual depositors. As such, as soon as the financial service provider is declared insolvent, the deposit insurance for all depositors to that institution comes into effect to ensure that no single depositor loses all of their deposits, up to a certain threshold.

3.4 Matters connected with, or incidental to, the foregoing

In addition to amendments to meet the three main objectives of the Banking and Financial Services (Amendment) Bill 2020, we make note of an additional two amendments that are auxiliary to meeting these objectives. Comment on all other amendments not discussed here is made in Annex 1.

3.4.1 Anti-money laundering and terrorism

The addition of Section 62A introduces rules against anti-money laundering and financing of terrorism such that "the Bank may exercise its authority over a financial service provider where the Bank considers that it is necessary to implement supervision for the purposes of the prevention and combating of money laundering and financing of terrorism or proliferation or any other serious offence". This addition is particularly noteworthy as it is an elevation of the matter from the provision made in the principal Act in Section 168 allowing the Bank to "make rules for or with respect to any matter" by statutory instrument. Further, this provision allows for the Bank to step in and supervise a financial institution engaging in any form of suspicious activity, without having to rely on other rules or justification such as those provided under Section 64(1) of the principle Act for the Bank to take supervisory action under certain conditions. To augment the Section, we recommend the inclusion of a clear reference to the relevant anti-money laundering and terrorist financing legislation for additional clarity.

3.4.2 Register of financial service providers

Section 21(2) which speaks to the availability for inspection of the register of financial service providers is amended to add the option of maintaining the register in an electronic or any other form determined by the Bank. This is a welcome addition as it indicates a progression with the times and technologies. Further to this, we make two more observations and suggestions. Firstly, if the register is electronic, and available online, this should be made accessible at all times. Failure to this, it may be impractical for members of the public that are not close to an office of the Bank to inspect the register as and when needed. Secondly, a clearer requirement to maintain an up-to-date register online would contribute to reducing information asymmetries and would support the Bank's transparency record.

4 Conclusion

The proposed Banking and Financial Services (Amendment) Bill 2020 offers valuable amendments to the principle Banking and Financial Services Act No.7 of 2017. These amendments adequately achieve the three objectives of the Amendment Bill to (a) provide for the repayment of funds collected by an unlicensed person; (b) revise the jurisdiction of the tribunal; (c) revise the priority of payment to depositors. In the preceding discussion, this memorandum discussed the merits and ramifications of each of the amendments introduced to achieve these objectives, providing recommendations where necessary for areas of improvement. Further comment on all other amendments not discussed above is made in Annex 1.

5 Annex

Banking and Financial Services Act No.7 of 2017	**Banking and Financial Services (Amendment) Bill 2020**	**Comments/Observations**
"insolvency" means a situation where a financial service provider — *(a)* is unable to pay debts as they fall due; *(b)* has assets that are insufficient to meet liabilities; or *(c)* has regulatory capital which is below the prescribed minimum;	"insolvency" means a situation where a financial service provider — *(a)* is unable to pay a debt when it falls due; *(b)* has assets that are insufficient to meet liabilities; or *(c)* has regulatory capital which is at zero or lower.	[DELETE AND SUBSTITUTE] ° (a) clarifies that insolvency occurs when any single debt is defaulted upon. ° (c) changes the categorisation of a financial service provider as being insolvent from a situation in which its regulatory capital is below the prescribed minimum, to when this regulatory capital is at or below zero. This allows a financial service provider to continue to be considered solvent, even when it is in breach of the regulatory capital prescribed minimum. However, such a breach of the prescribed minimum will trigger sub-section 64(1)(c)(iii) of the principle Act which allows the Bank to take supervisory action against the financial service provider in that instance, and therefore this amendment does not pose a risk to the broader financial system.
6. (1) A company shall not conduct a banking business without a banking licence. (2) A body corporate shall not conduct a financial business without a financial business licence, or provide a financial service without a financial institution licence. (3) A person that contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units	**6.** (1) A company shall not conduct a banking business without a banking licence. (2) A body corporate shall not conduct a financial business without a financial business licence, or provide a financial service without a financial institution licence. (3) A person, without a banking licence, financial institution licence or a financial business licence, shall not collect funds by purporting to conduct a	[REPEAL AND REPLACE] ° The amendment goes beyond the provisions of the principle Act to include those collecting funds by purporting to conduct a banking business, financial service or financial business in Section 6(3). Sub-sections (4), (5) and (6) then make provision for the repayment of funds collected by an

or to imprisonment for a term not exceeding four years, or to both.	banking business, financial service or financial business. (4) A person who contravenes subsections (1), (2) and (3) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both. (5) Where a person obtains funds under subsection (3), that person shall, in addition to the penalty imposed under subsection (4), repay the funds in accordance with the Bank's directives and within the period determined by the Bank. (6) Where funds repayable under subsection (5) remain unpaid at the end of the period determined by the Bank for repayment, the funds payable shall be recoverable by the Bank and kept in trust for the person lawfully entitled to the funds.	unlicenced person. This addition will serve to protect members of the public who fall victim to such unscrupulous operations. However, sub-section (6) is unclear about how unpaid funds shall be recoverable by the Bank. Further, it is unclear how "the person lawfully entitled to the funds" will then gain access to these funds. This clause can therefore be better elaborated, including a clearer definition of "the person lawfully entitled to the funds". ° In sub-section (4), rather than "A person who contravenes subsections (1), (2) **and** (3)" it should read "A person who contravenes subsections (1), (2), (3) **or any combination of these**" to ensure that would-be offenders cannot use the loophole of exclusion. ° Moreover, the use of the word "person" may be read in a narrow manner and therefore clearer language should be used to distinguish between legal and natural persons and the corresponding penalties that apply to each. For example, the liability of natural persons in controlling positions at unlicenced financial institutions should be duly addressed.
21. (2) The Register shall be open for public inspection at normal banking hours as prescribed.	**21.** (2) The Register shall be open for public inspection during normal operating hours of the Bank. (3) The Bank may maintain a Register in an electronic form or any other form determined by the Bank.	[DELETE AND SUBSTITUTE] ° If the register is electronic, and available online, this should be made accessible at all times. Failure to this, it may be impractical for members of the public that are not close to an office of the Bank to inspect the register

		as and when needed. ° Further, a clearer requirement to maintain an up-to-date register online would contribute to reducing information asymmetries and would support the Bank's transparency record.
PART VI PRUDENTIAL REGULATION AND SUPERVISION	PART VI REGULATORY AND SUPERVISORY POWER OF BANK	[DELETE AND SUBSTITUTE]
[ADDITION]	62A. The Bank may exercise its authority over a financial service provider where the Bank considers that it is necessary to implement supervision for the purposes of the prevention and combating of money laundering and financing of terrorism or proliferation or any other serious offence.	[INSERTION OF NEW SECTION] ° The addition of Section 62A introduces rules against anti-money laundering and serves as an elevation of the matter from the provision made in the principal Act in Section 168. ° Further, this provision allows for the Bank to step in and supervise a financial institution engaging in any form of suspicious activity, without having to rely on other rules or justification such as those provided under Section 64(1) of the principle Act. ° To augment the Section, we recommend the addition of a clear reference to the relevant anti-money laundering and terrorist financing legislation for additional clarity.
72. The Bank shall, on taking possession of a financial service provider, prepare a statement of affairs of the assets and liabilities of the financial service provider, within ninety days from the effective date of taking possession, in order to determine whether the financial service provider is solvent or insolvent.	[REPEAL]	[REPEAL] ° The repeal of Section 72 allows for a more holistic coverage of matters relating to the preparation of a statement of affairs after the Bank has taken possession of a financial service provider in Section 73.

73. Where a statement of affairs of the assets and liabilities of a financial service provider, made in accordance with section 72 shows the financial service provider is solvent, the Bank shall— *(a)* restructure or reorganise the financial service provider; *(b)* sell the financial service provider as a going concern; *(c)* close the financial service provider; *(d)* transfer all or part of the business of the financial service provider to a bridge bank; *(e)* initiate a purchase and assumption transaction; *(f)* dispose of some of the assets of the financial service provider; or *(g)* take an action that the Bank considers necessary to enable the Bank carry out its functions in accordance with this Act.	**73.** (1) The Bank shall, where the Bank takes possession of a financial service provider— *(a)* restructure or re-organise the financial service provider; *(b)* sell the financial service provider as a going concern; *(c)* close the financial service provider; *(d)* transfer all or part of the business of the financial service provider to a bridge bank; *(e)* initiate a purchase and assumption transaction; *(f)* dispose of some of the assets of the financial service provider; or *(g)* take an action that the Bank considers necessary to enable the Bank carry out its functions in accordance with this Act. (2) Where the Bank decides to close a financial service provider under subsection (1) (c), the closure may take effect— *(a)* by an order of the Bank placing the financial service provider under liquidation; or *(b)* in the case of a financial business, by cancelling the financial business licence and recommending to an appropriate authority the placing of the financial business into liquidation. (3) Despite subsection (1), the Bank shall, on taking possession of a financial service provider, prepare a statement of affairs showing the financial position of the financial service provider.	[REPEAL AND REPLACE] ° Amended Section 73 combines Sections 72, 73, and 74 of the principle Act into one, thus streamlining the presentation. Now, regardless of whether a financial service provider is solvent or insolvent, the Bank has much the same options for actions it can take as was presented in the principle Act. In particular, the provision of 73(1)(c) allow the Bank to handle the case of an insolvent entity by closing the financial service provider and following the provisions of 73(2). ° Amendment Section 73(3), for all intents and purposes replaces, replaces the repealed Section 72. However, the merit of removing the aspect of setting a timeframe is unclear. We propose this be reintroduced to remove any uncertainty around the matter. ° A more precise terminology and definition for "bridge bank" in sub-section 73(1)(d) should be found. For example, "Bridge Institution" would capture both bank and non-bank financial institutions. And with respect to the definition of the same, it might be useful to incorporate a scenario of joint ownership by one or more public bodies.
74. (1) Where a statement of affairs of the assets and liabilities, made in accordance with section 72, shows that the financial service provider is insolvent, the Bank shall take the following actions:	[REPEAL]	[REPEAL] ° The repeal of Section 74 appears to create a lacuna as to what happens in cases where a statement of affairs showing the financial

(a) place the financial service provider under compulsory liquidation; *(b)* exercise any of the powers in section 73; or *(c)* with respect to a financial business, revoke the financial business licence and recommend to the appropriate authority to place the financial business, into liquidation. (2) Despite the provisions of subsection (1), where a financial service provider is systemically important, the Bank in consultation with the Minister, may place the institution under temporary public control.		position of the financial service provider as prepared in Section 73(3) finds the financial service provider to be insolvent. However, this is adequately dealt with under Section 73.
75. A financial service provider or any interested person acting on its behalf may, within twenty-one days after the date on which the Bank takes possession of the financial service provider, institute proceedings in Court to require the Bank to show cause why the possession of the financial service provider should not be terminated.	**75.** (1) A financial service provider or an interested person acting on the financial service provider's behalf may, within twenty-one days after the date on which the Bank takes possession of the financial service provider, <u>petition the Minister to establish a tribunal to enquire into the the decision of the Bank to take possession of the financial service provider.</u>	[REPEAL AND REPLACE] ° The amendment grants a financial service provider an opportunity to appeal the decision made by the Bank through appealing to the Minister to establish a tribunal. The tribunal may therefore determine its own procedures, is not bound by the rules of evidence, and may inform itself of any matter in such manner as it sees fit. ° However, the amendment creates the risk of unnecessary politicisation of the appeal process. For example, should the Minister decline the request to establish a tribunal, it is unclear what further recourse is available to the financial service provider. ° Furthermore, in the event that the Bank's taking possession of the financial service provider is in any way malicious, leaving the decision to the discretion of the Minister somewhat disadvantages the aggrieved

		financial service provider. ° In order to maintain neutrality, we recommend that the process of setting up a tribunal, and/or the determination of whether the course of action undertaken by the Bank is justified, remain a matter that is handled technically by the Court. ° In terms of editing: there is no need for "(1)" as there are no subsequent subsections in this Section. And the second "the" in Section 75(1) line 30 should be deleted.
82. (2) The total value of grants, credit facilities and guarantees, specified in subsection (1), shall not exceed twenty-five percent of the regulatory capital.	**82.** (2) Except as may be prescribed under subsection (1), the total value of a grant, credit facility and guarantee specified in subsection (1) shall not exceed twenty-five percent of the regulatory capital.	[DELETE AND SUBSTITUTE]
132. (1) Despite the Corporate Insolvency Act, 2017, or any other written law, in any compulsory winding-up or dissolution of a financial service provider the following shall be paid in priority to all other debts in the order set: *(a)* expenses incurred in the process of compulsory winding- up or dissolution; *(b)* depositors; *(c)* taxes and rates due; *(d)* wages and salaries of employees of the financial service provider for a period of three months; *(e)* charges and assessments due to the Bank; or *(f)* other claims against the financial service provider in such order of priority as the Court may determine on application by the Bank.	**132.** (1) Despite the Corporate Insolvency Act, 2017, or any other written law, in any compulsory winding up or dissolution of a financial service provider, the following shall be paid in priority to all other debts in the order set: *(a)* expenses incurred in the process of compulsory winding up or dissolution; *(b)* depositors whose deposit claims— (i) are covered by a deposit protection scheme; and (ii) not covered by a deposit protection scheme; *(c)* taxes and rates dues; *(d)* wages and salaries of employees of the financial service provider, excluding executive employees, senior management and other categories of staff that the Bank may determine, for a period of three months;	[DELETE AND SUBSTITUTE] ° In sub-section 132(1)(b), to the best of our knowledge, the Deposit Insurance Bill has not yet been passed into law. This therefore raises the question of who this distinction is being made for in terms of payment of deposits. While there is the possibility of such a deposit protection scheme being provided by private insurance, if this is the case, it is unclear. As such, it is important that the text of the Amendment Bill reflects the situation as it stands on the ground. ° Further, in the event that legislation that provides for a deposit protection scheme exists or is introduced, it is unclear what the

	(e) charges and assessments due to the Bank; or *(f)* other claims against the financial service provider in an order of priority that the Court may determine on application by the Bank.	merit of ranking depositors with and without deposit insurance cover when these two groups are essentially on equal footing given that, up to a certain threshold, as soon as the financial service provider is declared insolvent, all depositors are covered by the scheme. ° Sub-section 132(1)(d) creates a certain level of accountability on the executive and management of the financial service provider to work to ensure that the organisation remains solvent as they should be abreast of happenings in the organisations. Further, it protects the remaining employees from missing out on payment of their dues given that executive and management staff likely account for a considerable portion of the organisations wage bill.
137. (3) A decision of the Bank, made in accordance with subsection (1), shall remain in force unless reversed by the Bank or set aside by a tribunal on appeal or by the Court.	**137.** (3) A decision of the Bank, made in accordance with subsection (1), shall remain in force unless reversed by the Bank ~~or set aside by a tribunal on appeal or by the Court~~.	[AMENDED] ° The amendment of sub-section 137(3) appears to create a lacuna in the case where the decision of the Bank should be subject to reversal. This amendment offers complete power to the Bank, thus disadvantaging the financial service provider in the event that the decision made by the Bank is in any way malicious. ° In reading this amendment with the amendment to Section 141, even after compensation is ordered against the Bank, there is no provision for the reversal of the Bank's decision, save at the discretion of the

		Bank itself.
140. (1) A tribunal shall determine an appeal on its merits, taking into account this Act and any other relevant written law.	**140.** (1) A tribunal shall hear and determine an appeal on its merits, within thirty days of being convened, taking into account this Act and any other relevant written law.	[DELETE AND SUBSTITUTE] ° The Amended Bill stipulates clearly, the time period permissible for the tribunal to act on appeals. This is important as it prevents cases and appeals from dragging, which has the potential to create some level of anxiety in the financial market.
141. (1) A tribunal may confirm, vary or quash the decision of the Bank on the matter before the tribunal. (2) A decision of a tribunal, except on a point of law, is final and binding on the parties to the appeal. (3) An appeal against a decision of a tribunal shall lie to the Court.	**141.** (1) A tribunal may order compensation against the Bank where the tribunal finds the Bank to have acted contrary to this Act or any other written law on the matter before the tribunal. (2) An appeal against a decision of a tribunal, on a point of law, shall lie to the Court of Appeal.	[REPEAL AND REPLACE] ° The amended Bill in section 141(1) introduces compensation against the Bank where the tribunal finds the Bank to have acted contrary to this Act or any written law on the matter. This provision places a level of onus on the Bank to ensure that it uses its regulatory power with caution. ° However, where the Bank is found to have acted contrary to this or any other written law, it is unclear what happens to the original decision made by the Bank and whether it will be overturned. In particular, in reading this repeal and replace with amended Section 137(3), neither a tribunal or court can overturn the decision of the Bank.

160 (1) *(b)* funds paid toward the purchase of a share or other interest in a security issued by a financial service provider and any interest or dividends relating thereto, excluding any charges that may lawfully be withheld, in respect of which the owner has not, within the last ten years— (i) increased or decreased the amount of the funds or deposit; (ii) corresponded in writing with the bank or financial institution; or (iii) otherwise indicated an interest in the funds as evidenced by a memorandum in the records of the financial service provider; and	**160** (1) *(b)* funds paid toward the purchase of a share or other interest in a security, issued by a financial service provider not listed or quoted on an exchange regulated under the Securities Act, 2016, and any interest or dividend relating thereto, excluding any charge that may lawfully be withheld, in respect of which the owner has not, within the last ten years— (i) increased or decreased the amount of the funds or deposit; (ii) corresponded, in writing, with the bank or financial institution; or (iii) otherwise indicated an interest in the funds as evidenced by a memorandum in the records of the financial service provider; and.	[DELETE AND SUBSTITUTE]
ASPECTS NOT INCLUDED IN THE AMENDMENT BILL		
138. A person aggrieved by a decision of the Bank may, within seven days of receipt of the decision, notify the Bank and the Minister, in the prescribed manner and form, of the person's intention to appeal to the tribunal against the decision.		° It is unclear what the "prescribed manner and form" is and by whom this is prescribed.
		° Throughout the principle Act, and in the Amendment Bill, at no point is the "Minister" referred to in the Act defined. For completeness and to avoid ambiguity, we advise that this be defined somewhere in the Act, perhaps in definitions, in terms such as "Minister in charge of Finance"