

**UNIVERSITY OF THE WESTERN CAPE**  
**FACULTY OF LAW**

**CONSUMER PROTECTION: EFFICIENT AND EFFECTIVE BANK REGULATION IN  
ZIMBABWE**

A minithesis submitted in partial fulfilment of the requirements for the degree of Master of Law in International Trade, Business and Investment Law in the Department of Law, University of the Western Cape.

Name: Melissa Chinyangarara Kaseke  
Date submitted for examination: January 2018  
Name of supervisor: Professor Vivienne Lawack



## DECLARATION

I, Melissa Chinyangarara Kaseke, declare that this work is original. It has never been presented as a scholarly document to any other University or institution. In the instances where the works of other writers have been used, references have been duly given. In this respect, I declare this work to be authentically mine. I hereby present this mini-thesis in partial fulfilment of the requirements for the award of the LL.M Degree.

Student Name: Melissa Chinyangarara Kaseke

Signed



Date 29 January 2018

Supervisor: Prof. Vivienne Lawack

Signature:



Date: 29 January 2017

**KEY WORDS**

Zimbabwe, silo, financial consumer, consumer protection, consumer confidence, bank regulation, prudential regulation, market conduct regulation, deposit protection, bank failure, enforcement of laws,



## Table of Contents

<b>CHAPTER 1</b>	6
<b>INTRODUCTION</b>	6
1.1 INTRODUCTION	Error! Bookmark not defined.
1.2 STATEMENT OF RESEARCH PROBLEM	8
1.3 SIGNIFICANCE OF THE PROBLEM	10
1.4 RESEARCH OBJECTIVES AND QUESTIONS	11
1.5 RESEARCH METHODOLOGY	11
1.6 CHAPTER OUTLINE	11
1.6.1 Chapter One	11
1.6.2 Chapter two	11
1.6.3 Chapter three	12
1.6.4 Chapter four	12
1.6.5 Chapter five	12
<b>CHAPTER 2</b>	13
<b>CONSUMER PROTECTION IN THE ZIMBABWEAN BANKING SECTOR</b>	13
2.1 INTRODUCTION	13
2.2 CONSUMER PROTECTION AND THE FINANCIAL CONSUMER	14
2.3 RATIONALE OF CONSUMER PROTECTION	17
2.4 OBJECTIVES OF CONSUMER PROTECTION	21
2.5 REGULATION OF CONSUMER PROTECTION IN ZIMBABWE BANK SECTOR	22
2.6 CONCLUSION	31
<b>CHAPTER 3</b>	33
<b>BANK REGULATION IN ZIMBABWE</b>	33
3.1 INTRODUCTION	33
3.2 FINANCIAL REGULATION IN ZIMBABWE	33
3.3 BANKS AND THE ECONOMY	35
3.3.1 Definition of a bank in the Zimbabwean context	35
3.3.2 Importance of banks to the economy	37
3.4 CAUSES OF BANK CRISES IN ZIMBABWE	39
3.5 RESERVE BANK OF ZIMBABWE FUNCTIONS AND POWERS	49
3.6 BANK REGULATION IN ZIMBABWE	51
3.7 CONCLUSION	60



<b>CHAPTER 4.....</b>	<b>63</b>
<b>ENFORCEMENT OF BANK LAWS IN ZIMBABWE .....</b>	<b>63</b>
<b>4.1 INTRODUCTION.....</b>	<b>63</b>
<b>4.2 THE LAW, ENFORCEMENT AND OBJECTIVES .....</b>	<b>63</b>
<b>4.3 ENFORCEMENT OF BANK REGULATIONS IN ZIMBABWE .....</b>	<b>66</b>
<b>4.4 ENFORCEMENT OF CONSUMER PROTECTION REGULATIONS IN ZIMBABWE .....</b>	<b>75</b>
<b>4.5 THE COURT SYSTEM AND LAW ENFORCEMENT MECHANISMS IN ZIMBABWE ...</b>	<b>77</b>
<b>4.6 CONCLUSION.....</b>	<b>82</b>
<b>CHAPTER 5.....</b>	<b>84</b>
<b>CONCLUSION AND RECOMMENDATIONS .....</b>	<b>84</b>
<b>5.1 INTRODUCTION.....</b>	<b>84</b>
<b>5.2 CHAPTER SUMMARY.....</b>	<b>84</b>
<b>5.2.1 Chapter One.....</b>	<b>84</b>
<b>5.2.2 Chapter two .....</b>	<b>84</b>
<b>5.2.3 Chapter three.....</b>	<b>85</b>
<b>5.2.4 Chapter four.....</b>	<b>87</b>
<b>5.2.5 Chapter five .....</b>	<b>89</b>
<b>5.6 OBSERVATIONS.....</b>	<b>89</b>
<b>5.7 RECOMMENDATIONS.....</b>	<b>89</b>
<b>BIBLIOGRAPHY .....</b>	<b>91</b>



# CHAPTER 1

## INTRODUCTION

### 1.1 RESEARCH BACKGROUND

Zimbabwe is a Southern African country which has witnessed frequent bank collapses in the last two decades. This has eroded consumer and business confidence in the banking sector due to the irreparable financial prejudice suffered by most sectoral consumers.<sup>1</sup> The side effect of this lack of trust in the sector has been the hoarding and preference of cash in most, if not all transactions, as opposed to the use of plastic money.<sup>2</sup> Between April 2015 and March 2016, it is estimated that between US\$3 billion and US\$7.4 billion was circulating outside the banking system in the informal sector thus exposing the depth of mistrust crippling the banking sector.<sup>3</sup> Together with other factors beyond the scope of this study, it is submitted that this lack of trust and confidence in the sector has contributed to the current cash shortage<sup>4</sup> which, according to Latham and Cohen, has left 'a black hole in the financial system that's crushing the rest of the economy'.<sup>5</sup> This is the second cash crisis to plague the country in the last two decades with the first also having arisen due to loss of confidence in the financial sector among other factors.<sup>6</sup> As

---

<sup>1</sup>Mhlanga P 'Failed banks cost depositors US\$190 million' *The Financial Gazette* 14 April 2016 available at <http://www.financialgazette.co.zw/failed-banks-cost-depositors-us190-million/> (accessed 22 January 2017);

Mhlanga P 'Close troubled banks earlier' *The Financial Gazette* 7 May 2015 available at <http://www.financialgazette.co.zw/close-troubled-banks-earlier/>

<sup>2</sup>Mushonga M 'Zimbabwe's rich stashing money at homes' *CAJ News* 30 January 2017 available at <http://cajnewsafrica.com/2017/01/30/zimbabwes-rich-stashing-money-at-homes/> (accessed 28 March 2017);

Nyakwenda L 'Reserve Bank of Zimbabwe swoops on unbanked businesses' *Zimbabwe Situation* 6 June 2016 <http://www.zimbabwesituation.com/news/zimsit-m-reserve-bank-of-zimbabwe-swoops-on-unbanked-businesses/> (accessed 28 March 2017)

<sup>3</sup>US\$7.4-billion circulating in Zimbabwe's informal economy' *ENCA* 10 March 2016 available at <https://www.enca.com/africa/us74-billion-circulating-zimbabwe%E2%80%99s-informal-economy> (accessed 19 January 2017); Chawafambira K 'Unbanked money on the rise' *Daily News* 14 March 2015 available at <https://www.dailynews.co.zw/articles/2014/03/23/unbanked-money-on-rise> (accessed 19 January 2017); The Source 'RBZ figures show US\$3bn circulating in informal sector' *New Zimbabwe* 14 April 2015 available at [http://www.newzimbabwe.com/business-21876-\\$3bn+circulating+in+informal+sector,+RBZ/business.aspx](http://www.newzimbabwe.com/business-21876-$3bn+circulating+in+informal+sector,+RBZ/business.aspx) (accessed 19 January 2017);

<sup>4</sup>Mpofu B & Mhlanga F 'US\$2 billion externalised' *Zimbabwe Independent* 5 February 2016 available at <https://www.theindependent.co.zw/2016/02/05/us2-billion-externalised/> (accessed 22 January 2017); Xhinua 'RBZ says US\$1,8 billion was externalized from Zimbabwe in 2015, urges a stop to the trend' *New Zimbabwe* 4 February 2016 available at [http://www.newzimbabwe.com/business-27526-RBZ+\\$1,8+billion+externalised+in+2015/business.aspx](http://www.newzimbabwe.com/business-27526-RBZ+$1,8+billion+externalised+in+2015/business.aspx) (accessed 29 September 2016)

<sup>5</sup>Latham B & Cohen M 'Death Spiral' Looms for Zimbabwe Economy as Cash Runs Out' *Bloomberg Politics* 7 February 2017 available at <https://www.bloomberg.com/news/articles/2017-02-06/-death-spiral-looms-for-zimbabwe-economy-as-cash-runs-out> (accessed 11 July 2017)

<sup>6</sup>Tambudzai Z & Charumbira M 'Cash Shortages in Zimbabwe: Any prospect for solutions?' (2003) 2.1 *The Dyke* 23 & 24

with the first cash shortage, cash withdrawal limits were imposed by the Reserve Bank of Zimbabwe<sup>7</sup> in 2016 to curb the possibility of a banking sector collapse. This, however, led to longer and overnight bank queues as depositors sought to withdraw their funds.<sup>8</sup> An announcement by the Government of Zimbabwe (GoZ) on 4 May 2016 of intentions to introduce bond notes to further alleviate the shortage<sup>9</sup> resulted in widespread panic due to fear and belief that introduction of the bond notes might result in inflation.<sup>10</sup>

Pursuant to advocating for the prevalent use of plastic money as opposed to hard cash, the RBZ has reported an increase in its use. However, consumer confidence in the banking sector continues to deteriorate even after the introduction of the bond notes and coins, as evidenced by

---

<sup>7</sup> Hereafter RBZ

<sup>8</sup>Nyoka S 'Why Zimbabweans are spending the night outside banks' *BBC News* 9 November 2016 available at <http://www.bbc.com/news/world-africa-37910072> (accessed 21 January 2017); Jakes S 'Zimbabweans sleeping in front of banks to beat the queues' *Bulawayo 24 News* 4 November 2016 available at <http://bulawayo24.com/index-id-news-sc-national-byo-99076.html> (accessed 21 January 2017); 'Zimbabweans sleep outside banks as cash crisis worsens' *Al Jazeera News* 11 November 2016 available at <http://www.aljazeera.com/news/2016/11/zimbabweans-sleep-banks-cash-crisis-worsens-161111191648232.html> (accessed 21 January 2017); Zivira T 'Zimbabweans sleep in bank queues as bond notes beckon' *The Standard* 6 November 2016 available at <https://www.thestandard.co.zw/2016/11/06/zimbabweans-sleep-bank-queues-bond-notes-beckon/> (accessed 12 January 2017); Nyoka S 'Why Zimbabweans are spending the night outside banks' *BBC News* 9 November 2016

<sup>9</sup>This is an inexplicable currency not backed by any commodity introduced by the Zimbabwe government on 28 November 2016 to incentivise exports. Mhlanga P 'Bond notes rule but fears remain' *The Financial Gazette* 9 February 2017 available at <http://www.financialgazette.co.zw/bond-notes-rule-but-fears-remain/> (accessed 9 February 2017) These notes remain to be defined in financial and economic terms as there is no precedence of their use in the world although some have made attempts to define it. See Cross E 'Just what is a Bond Note' *The Zimbabwean* 1 December 2016 available at <http://thezimbabwean.co/2016/12/just-bond-note/> (accessed 9 February 2017). The common and well known definition of 'bond' in legal, financial and economic terms does not link it to currency use. Whilst it will operate as a currency at par with the US Dollar, at the same time the government has said it is not a currency convertible into another outside Zimbabwe. See Additional reporting by Reuters 'Zimbabweans resist newly introduced bond notes' *ENCA* 28 November 2016 available at <http://www.enca.com/africa/zimbabweans-resistant-to-newly-introduced-bond-notes> (accessed 9 February 2017). In essence, it can only operate in Zimbabwe. Because of their mystery, suspicion amongst the citizens is that this is a back door attempt to re-introduce the Zimbabwean dollar as reported by Dzirutwe M 'Zimbabwean lawyers take Mugabe to court over bond notes' *CNBC Africa* 16 November 2016 available at <http://www.cnbc africa.com/news/financial/2016/11/16/zimbabwe-lawyers-take-mugabe-to-court-over-bond-notes-law/> (accessed 9 February 2017)

<sup>10</sup> In 2008 the GoZ printed more money to address the cash shortage fuelling inflation and leading to the abandoning of the Zimbabwe dollar in favour of the multi-currency system. See Makochekanwa A 'Zimbabwe to introduce Zimbabwe Bond Notes: reactions and perceptions of economic agents within the first seven days after the announcement' (2016) Munich Personal Research Papers in Economics Archive 1 available at <https://mpra.ub.uni-muenchen.de/71695/> (accessed 21 October 2016)

more withdrawals against deposits;<sup>11</sup> the persistent cash shortages;<sup>12</sup> continued withdrawal limits;<sup>13</sup> and a resurfacing black market.<sup>14</sup> Whilst bank queues are reported to have disappeared, some believe the worst is still to come and have said this to be 'false calm before a storm'.<sup>15</sup>

## 1.2 STATEMENT OF RESEARCH PROBLEM

It is submitted that the reoccurrence of lack of consumer confidence in the financial sector as a contributory factor to both cash crises, unlike the other factors, has brought to the fore its pertinence in contributing to the financial stability of the country. It is submitted that this negative impact of lack of consumer confidence in banking sector stability and on the economy is cause for concern. With each bank collapse, it is apparent that consumer confidence in the banking sector dwindles. Therefore, there is need to establish how it can be built and/or maintained. This has motivated this study which seeks to investigate whether protection of the financial consumer in the banking sector is adequate and effectively enforced to build confidence in the sector.

Protection of a consumer in the banking sector comes in the form of prudential and/or market conduct regulations.<sup>16</sup> Prudential regulation protects consumers by attaining sectoral stability through maintaining the 'financial health and solvency of institutions and the broader financial system'.<sup>17</sup> Market conduct regulation protects a financial consumer by stipulating how service

---

<sup>11</sup>Moyo S 'Chinamasa explains Zim cash shortages, as bank queues persist' *ZimNews.Net* available at <https://zimnews.net/chinamasa-explains-zim-cash-shortages-bank-queues-persist/> (accessed 11 April 2017); Thornycroft P 'StanChart's Zim business limits use of Visa card abroad' *IOL* 8 February 2017 available at <http://www.iol.co.za/news/africa/stancharts-zim-business-limits-use-of-visa-card-abroad-7663431> (accessed 23 March 2017)

<sup>12</sup>Sandu M & Mandizha T 'Cash crisis takes new twist' *The Standard* 9 April 2017 available at <https://www.thestandard.co.zw/2017/04/09/cash-crisis-takes-new-twist/> (accessed 11 April 2017)

<sup>13</sup>Dzirutwe M 'StanChart's Zimbabwe business limits use of Visa card abroad' *Reuters Africa* accessed 7 February 2017 available at <http://af.reuters.com/article/investingNews/idAFKBN15M0Q7> (accessed 23 March 2017); Mlilo B 'Banks revert to \$50 withdrawals: Standard Chartered cancels Visa cards' *The Chronicle* 8 February 2017 available at <http://www.chronicle.co.zw/banks-revert-to-50-withdrawal-limits-standard-chartered-cancels-visa-cards/> (accessed 8 February 2017)

<sup>14</sup> Mhlanga B 'Black market thrives, as banks run dry' *The Standard* 14 May 2017 available at <https://www.thestandard.co.zw/2017/05/14/black-market-thrives-banks-run-dry/> (accessed 11 July 2017); Xinhua 'US dollar black market thrives in broke Zimbabwe' *The Financial Gazette* 20 March 2017 available at <http://www.financialgazette.co.zw/u-s-dollar-black-market-thrives-in-broke-zimbabwe/> (accessed 21 March 2017); Malaba B 'Cash shortage paralyses Zimbabwe' *African Independent* 11 April 2017 available at <http://www.africanindy.com/news/cash-shortage-paralyses-zimbabwe-8614985> (accessed 11 April 2017)

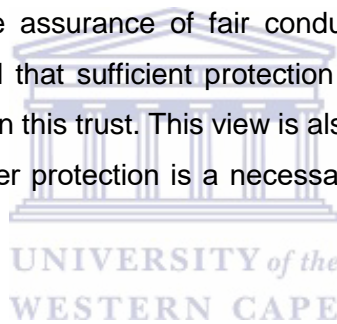
<sup>15</sup> Staff Reporter 'Zimbabwe bank queues suddenly disappear' *Bulawayo 24 News* 16 January 2017 available at <http://bulawayo24.com/index-id-business-sc-economy-byo-102512.html> (accessed 28 March 2017)

<sup>16</sup> See Chapter 2 paragraph 5

<sup>17</sup> Brix L & McKee K 'Consumer Protection Regulation in Low-Access Environments: Opportunities to Promote Responsible Finance' Consultative Group to Assist the Poor (CGAP) Focus Note 60 (2010) 4

providers interact with consumers.<sup>18</sup> The banking sector is required to comply with laws and regulations that govern its operations and market conduct to achieve stability. There is, therefore, need to analyse the current bank regulations to determine whether they adequately protect the consumer.

Tonkiss<sup>19</sup> distinguishes between confidence and trust, and states that confidence is based on 'objective information, external regulations over conduct, contractual agreements, rational and informed decisions', whereas trust is based on 'subjective perceptions, moral sanctions, gentlemen's agreements, non-rational choices'. Acknowledging that a grey area exists between the two, he argues that information, contracts and regulation support the logic of confidence empowering people to invest 'trust in specific institutions or in wider economic and political systems'. From Tonkiss' argument it is, therefore, apparent that before one can confidently transact with and trust a bank, there must be sufficient information, the existence of some contract and regulations. This gives some assurance of fair conduct in transacting with a regulated financial institution. It is submitted that sufficient protection for a banking sector consumer is, therefore, vital to build and maintain this trust. This view is also supported by the RBZ which is of the opinion that 'financial consumer protection is a necessary precursor to building trust in the formal banking sector'.<sup>20</sup>



Enforcement also plays a role in channelling confidence to the sector. It has been argued that;

'The judiciary in Zimbabwe is plagued by weaknesses that include: politicisation and lack of independence; corruption and low remuneration (low morale); too few judges, staff and lawyers with little commercial expertise (brain drain); ignorance of the legal system, hence a slow and patchy process to obtain a satisfactory resolution due to backlogged courts; and bias or selectivity in judgements due to corrupt court officials and judges'.<sup>21</sup>

---

<sup>18</sup>Hargarter A & van Vuuren G 'Assembly of a conduct risk regulatory model for developing market banks' (2017) 20 *South African Journal of Economic and Management Sciences* 2

<sup>19</sup> Tonkiss F 'Trust, Confidence and Economic Crisis' (2009) July/August *Intereconomics* 199 & 200

<sup>20</sup> Section A (1.6.4) Consumer Protection Framework No.1-2017/BSD (hereafter CPF 1-2017/BSD)

<sup>21</sup> University of Stellenbosch 'The effectiveness of legal corporate governance mechanisms that exist to protect shareholders of multinational companies operating in Zimbabwe' (2009) 6 *Corporate Governance In Africa* case study series 11; Mugova S & Sachs PR 'Corporate governance, structure and accountability as affected by national government infrastructure in developing countries' (2016) 13 *Corporate Ownership & Control Journal* 227

In light of the above and with focus being on the financial sector, to also be investigated in this mini thesis is the enforcement of laws and regulations in Zimbabwe. This is to establish the extent to which this influences consumer confidence in the sector.

### 1.3 SIGNIFICANCE OF THE PROBLEM

The relationship between the banks, its creditors (the depositors) and its debtors (the borrowers) is one which relies and is built on trust.<sup>22</sup> Although a deposit becomes property of the bank,<sup>23</sup> when depositors entrust their funds with a bank, they do so on the understanding that a withdrawal can be made without difficulty subject to agreed terms and conditions.<sup>24</sup> Similarly, when a bank extends a loan to a debtor, the debtor trusts the bank to look after its interests.<sup>25</sup> In essence, the operation of any bank is based on trust<sup>26</sup> and once this trust is diminished, it is difficult to reinstate.<sup>27</sup>

Bäckström<sup>28</sup> asserts that problems of confidence can directly threaten stability of the financial sector and gives an example of bank runs. According to Claessens and Kose,<sup>29</sup> a run on a financial institution occurs when there is a significant withdrawal of funds by depositors whose actions are founded on the belief that the institution is or will be insolvent. Together with losses in

---

<sup>22</sup>Dhliwayo CL 'Limiting the Risk of Failure in Financial Institution' (2015) Public Accountants & Auditors Board conference paper 12 available at <http://www.rbz.co.zw/assets/speech-by-dr.-dhliwayo-on-limiting-the-risk-of-bank-failures-at-the-paab-workshop---10-april-2015.pdf> (accessed 16 January 2017); Rutledge SL, Annamalai N, & Lester R & et al 'Good Practices for Financial Consumer Protection' (2012) World Bank 10; Prates MM 'Why Prudential Regulation Will Fail to Prevent Financial Crises. A Legal Approach' Banco Central do Brasil Working Paper n.335 (2013) 6

<sup>23</sup>Nyangara D, Melody R Nyangara MR & Batsirai W Mazviona BW 'An Essay on the Ethical and Corporate Governance Issues in the 2003/4 Zimbabwean Banking Crisis' (2014) 3 *International Journal of Economics & Management Sciences* 2

<sup>24</sup>*Standard Chartered Bank Zimbabwe Limited V China Shougang International* unreported case no SC49/13 2-3 (11 October 2013)

<sup>25</sup>ArdicOP, Ibrahim JA & Mylenko N 'Consumer Protection Laws and Regulations in Deposit and Loan Services' (2011) World Bank Policy Research Working Paper 8

<sup>26</sup>Bonga WG & Mlambo W 'Banks and Financial Literacy Enhancement in Zimbabwe' (2016) 7 *Journal of Economics and Finance* 71

<sup>27</sup>Dhliwayo CL (2015) 12

<sup>28</sup>Bäckström H 'Financial consumer protection goals, opportunities and problems' (2010) 3 *Riksbank Economic Review* 54

<sup>29</sup>Claessens S & Kose AM 'Financial Crises: Explanations, Types, and Implications' (2013) IMF Working Paper WP/13/28 18; See also Iyer R & Puri M 'Understanding Bank Runs: The Importance of Depositor-Bank Relationships and Networks' *American Economic Review* (2012) 102(4) 1414; Goldstein I & Pauzner A 'Demand-Deposit Contracts and the Probability of Bank Runs' (2005) 60 *The Journal of Finance* 1293; Diamond DW & Dybvig PH *Bank Runs, Deposit Insurance, and Liquidity* (1983) 91 *Journal of Political Economy* 401; Biggar D & Heimler A *An Increasing Role For Competition In The Regulation Of Banks: International Competition Network Report* (2005) 5



the banking system and bank liquidations, Laeven and Valencia<sup>30</sup> consider bank runs to be a significant sign of financial distress in the banking system. They argue that these signs of financial distress coupled with significant banking policy intervention measures in response to significant losses in the banking system define a systemic crisis. Such a crisis arises out of systemic risk perceived to occur due to the interconnected relationship of banks.<sup>31</sup> Therefore, the collapse of one bank will have a domino effect on other banks due to this intertwined relationship.

## **1.4 RESEARCH OBJECTIVES AND QUESTIONS**

The study seeks to investigate whether there is a sufficient legal framework to build consumer confidence in the Zimbabwe financial sector. The study is, therefore, conducted with the following objectives:

- to investigate whether the regulations currently in place are effective in ensuring systemic stability by preventing banks collapses in Zimbabwe;
- to investigate whether a banking sector consumer is sufficiently protected in the unfortunate event of bank collapses;  
to investigate whether the enforcement measures in place are effective; and
- to offer recommendations on how to establish a more stable banking sector environment that boosts consumer and investor confidence in the sector.

## **1.5 RESEARCH METHODOLOGY**

The research will be a desktop study conducted based on primary and secondary sources of law, journal articles, research papers, reports and newspaper commentaries.

## **1.6 CHAPTER OUTLINE**

### **1.6.1 Chapter One**

The main objective of chapter one is to introduce the research question and outline the research problem as well as its importance. A chapter summary of all chapters is also given.

### **1.6.2 Chapter two**

The main objective of this chapter is to establish whether there are regulations in place to prevent bank collapses in Zimbabwe. The chapter is commenced with an introduction of financial

---

<sup>30</sup>Laeven L & Valencia F 'Resolution of Banking Crises: The Good, the Bad, and the Ugly' (2010) IMF Working Paper 6

<sup>31</sup> Kaufman G 'Bank failures, systemic risk and bank regulation' (1996) 16 Cato journal 20; Llewellyn D 'The Economic Rationale for Financial Regulation' FSA occasional papers in financial regulation (1999) 14

regulation and its importance because banks fall within the financial sector which is regulated in terms of a set model. Thereafter, a bank will be defined in the Zimbabwean context followed by a discussion of the importance of banks in the economy. Prior to discussing bank regulation, and for one to grasp why regulation of banks in Zimbabwe is a contemporary issue, the causes of bank collapses will be discussed from the available literature. This will include a brief historical background of events in the sector merged with a discussion on the current affairs of the sector. Thereafter, the current bank regulations will be analysed and the chapter will end with a discussion on the functions of the central bank as the regulator.

### **1.6.3 Chapter three**

The objective of this chapter is to investigate whether there is a consumer protection framework to protect a consumer in the bank customer relationship. Given the history of bank collapses in Zimbabwe as enunciated in the previous chapter, the focus of the chapter will be on the type of protection available to a depositor in the event of a bank collapse. The rationale and objectives of consumer protection will be discussed and thereafter, a discussion of the current Zimbabwean consumer protection laws and regulations in relation to consumer protection will follow prior to reaching a conclusion. A consumer in the banking sector is defined as a starting point for understanding of the type of consumer covered in this study. This is because consumer protection covers a broad spectrum in relation to goods and services.

### **1.6.4 Chapter four**

This chapter seeks to establish the current measures available to the RBZ to ensure that banks comply with regulations to maintain sectoral stability. The general law enforcement mechanisms currently in existence are analysed pursuant to a discussion on what enforcement entails and who is responsible for enforcement of bank and consumer protection regulations in Zimbabwe. The discussion in this chapter is started by outlining the importance and objectives of enforcement.

### **1.6.5 Chapter five**

This chapter covers a summary of the study, including observations and recommendations.



## CHAPTER 2

### CONSUMER PROTECTION IN THE ZIMBABWEAN BANKING SECTOR

#### 2.1 INTRODUCTION

Following the emergence of the cash crisis, the RBZ encouraged the nation to use plastic money<sup>32</sup> and for businesses to comply with the Bank Use Promotion Act.<sup>33</sup> This Act requires what is considered to be excess cash in terms of the Act to be banked within a stipulated time period.<sup>34</sup> Enforcement of the Act has been through arrests<sup>35</sup> and imposition of fines<sup>36</sup> to instil a culture of banking. It is, however, submitted that this alone is not a solution. To woo deposits, it is submitted that an adequate consumer protection framework aimed at restoring consumer confidence in the financial sector must be prioritised. This is not to substitute other efforts and measures aimed at ensuring compliance with banking legislation for the sake of systemic stability and consequent protection of the consumer. However, if consumer confidence is not restored, the country will perpetually face the same challenges. This submission is made based on the fact that this is the second cash crisis plaguing the country, with lack of confidence in the banking sector arising as a contributory factor in each.

The objective of this chapter is, therefore, to investigate whether there is an adequate consumer protection legal framework to protect a consumer and subsequently build confidence in the banking sector. The focus of the chapter will be on the type of protection available to a depositor in the event of a bank collapse. The rationale and objectives of consumer protection will be discussed and thereafter, a discussion of the current Zimbabwean consumer protection laws and regulations in relation to consumer protection will follow prior to reaching a conclusion. Due to consumer protection covering a broad spectrum in relation to goods and services, a consumer in the banking sector is defined as a starting point for understanding of the type of consumer covered by this study.

---

<sup>32</sup> This is said to include credit cards, debit cards, pre-paid balance cards, smart cards; See Bisht A, Nair P, Dubey R & Hajela T Analysis of the use of plastic money: A boon or a bane (2015) (1) *SIMS Journal of Management Research* 5

<sup>33</sup> Bank Use Promotion Act 109 of 2008. Hereafter Act 108 of 2008

<sup>34</sup> S11 Act 109 of 2008

<sup>35</sup> Langa V 'Chinamasa threatens cash-hoarding retailers, wholesalers' *Newsday* 7 April 2017 available at <https://www.newsday.co.zw/2017/04/07/chinamasa-threatens-cash-hoarding-retailers-wholesalers/> (accessed 8 April 2017)

<sup>36</sup> Lupande F 'Firm fined \$17 000 for hoarding cash' *The Herald* (29 April 2017) available at <http://www.herald.co.zw/firm-fined-17-000-for-hoarding-cash/> (accessed 29 April 2017)

## 2.2 CONSUMER PROTECTION AND THE FINANCIAL CONSUMER

According to Ardic, Ibrahim and Mylenko,<sup>37</sup> consumer protection refers to the laws and regulations that protect the rights of consumers by governing the relationship between service providers and those that make use of the services, the consumers. Currently, the contractual relationship between service providers and consumers in Zimbabwe is generally governed by the Consumer Contracts Act.<sup>38</sup> This Act does not impose obligations or bestow rights on either party. It was only promulgated 'to provide relief to parties to consumer contracts where the contracts are unfair or contain unfair provisions or where the exercise or non-exercise of a power, right or discretion under such a contract is or would be unfair'.<sup>39</sup> A more comprehensive Consumer Protection Bill<sup>40</sup> designed to replace the Consumer Contracts Act was drafted in 2014 and is currently awaiting promulgation.<sup>41</sup>

The Act does not contain a definition of who a consumer is for purposes of the Act. It only provides a definition of a consumer contract and it is from there that the definition of a consumer is derived. A consumer contract is defined in the Act as one for the supply of services which the supplier deals with in the course of business and the user does not.<sup>42</sup> From the definition of consumer contracts it can be deduced that a consumer is one who accesses and makes use of a service provided by a supplier in the course of the supplier's business. Unlike the Act which fails to define a consumer, the Bill gives a definition thereby offering clarity as to whom the law seeks to protect. In terms of s2 of the Bill, a consumer is one to whom goods and services are marketed by a supplier and or one who enters into a transaction with a supplier in the ordinary course of the supplier's business. Where the context requires or permits, a third party not involved in the transaction but using the goods or is a recipient or beneficiary of a service may also fall within the ambit of the definition.<sup>43</sup> Both definitions as found in the Bill and derived from the Act give a broad application of the term consumer due to the wide range of goods and services it can be applied to. To narrow it down to the banking sector, the Consumer Protection Framework<sup>44</sup> issued in terms

---

<sup>37</sup>Ardic OP, Ibrahim JA & Mylenko N (2011) 2

<sup>38</sup> Act 6 of 1994

<sup>39</sup> Preamble Consumer Contracts Act 6 of 1994

<sup>40</sup> Hereafter the Bill

<sup>41</sup>Mashaire M 'Consumer Protection Bill on cards' *The Herald* 7 July 2016 available at <http://www.herald.co.zw/consumer-protection-bill-on-cards/> (accessed 16 March 2017)

<sup>42</sup> S2 Act 6 of 1994

<sup>43</sup>S2 of the Consumer Protection Bill

<sup>44</sup> Hereafter CPF

of s4C of the Banking Act is of assistance.<sup>45</sup> Although the definition of a consumer is exactly the same as that found in Bill,<sup>46</sup> the CPF applies only to banking and non-banking financial institutions regulated by the RBZ including their agents thus limit the definition to that sector.<sup>47</sup> The CPF is not clear as to whether a 'person' as referred to in the definition is limited to natural persons only or extends to judicial persons. However, whether natural or juristic, such a consumer may aptly be termed a financial consumer given the sector to which the CPF applies.

Campbell, Jackson, and Madrian et al<sup>48</sup> offer an insightful understanding of a financial consumer by listing the functions of a financial institution and linking the two in a discussion on consumer finance. They state that consumer finance can be defined in reference to a particular institution and product. In an effort to provide an understanding of consumer finance, they list the functions of a financial institution as, among others:

'providing a mechanism for the transfer of money and payments for goods and services; managing risks through credit scoring models and credit risk practices, as well as by assembling a diversified portfolio or securing insurance against default; provision of credit; and investing or savings functions'.

From the description of the activities of a financial institution above, a financial consumer is a person who makes use of the above mentioned services and products offered by a financial institution. Financial consumer protection, therefore, comprises of 'arrangements to ensure a just and fair environment of trading for both parties on the supply and demand sides of financial products and services'.<sup>49</sup>

---

<sup>45</sup> See paragraph 5 in this chapter for a discussion on the CPF 1-2017/BSD

<sup>46</sup> In Section A (1.3.1) CPF 1-2017/BSD, a consumer and customer in the financial sector are synonymously defined as: '(a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business; (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business; and (c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services.'

<sup>47</sup> Section A (1.4.1) CPF 1-2017/BSD

<sup>48</sup> Campbell JY, Jackson HE, Madrian BC and Tufano P 'Consumer Financial Protection' (2011) 25 *Journal of Economic Perspectives*(page no.)

<sup>49</sup> 'Financial Access, Financial Education, Financial Consumer Protection Strategy And Action Plans' *Turkey Prime Ministry Circular No. 2014/10 GG 29021* (2014) 1

Mphambela<sup>50</sup> states financial consumer protection as being essentially concerned with the market conduct of financial service providers in their interaction with customers on an ongoing basis'. Two types of regulation exist to protect the consumer namely prudential and market conduct regulation. Prudential regulation is aimed at maintaining financial stability by avoiding systemic risk through quick resolution of issues in systemically important financial institutions.<sup>51</sup> Market conduct regulation governs the interaction of regulated institutions with consumers. Whereas prudential regulation protects consumer assets by preventing a systemic collapse of the sector,<sup>52</sup> market conduct protects a financial consumer by stipulating how service providers interact with consumers.<sup>53</sup> Lumpkin<sup>54</sup> states that prudential regulation has a double-pronged role in maintaining the integrity and stability of the financial system and protecting consumers of financial services. Brix and McKee<sup>55</sup> agree that a consumer benefits from the prudential regulation of financial firms although they state this to be a foundation for consumer protection as opposed to asserting that it does protect the consumer. They argue that whereas consumer protection regulation focuses mainly on products, prudential regulation is aimed at maintaining the 'financial health and solvency of institutions and the broader financial system'. They further state that it contributes to consumer protection by 'trying to prevent losses by small, unsophisticated depositors and promoting sound providers that can offer reliable access to financial services over time'. According to Bonga and Mlambo,<sup>56</sup> consumer protection forms one of the three pillars of financial stability together with financial literacy and financial inclusion. Mphambela<sup>57</sup> states that 'greater financial stability builds consumer trust and confidence in the financial sector as a whole, making it more likely that individuals will want to use formal systems'.

---

<sup>50</sup> Mphambela C 'The Links Between Financial Inclusion and Financial Stability' available at <http://baz.org.zw/consumer-centre/education-centre/links-between-financial-inclusion-and-financial-stability> (accessed 17 April 2017)

<sup>51</sup> Goodspeed I 'Twin Peaks' available at <http://financialmarketsjournal.co.za/oldsite/17thedition/printedarticles/twinpeaks.pdf> (accessed 13 July 2017)

<sup>52</sup> Cranston R *Principles of Banking Law* (2002) 76

<sup>53</sup> Hargarter A & van Vuuren G (2017) 2

<sup>54</sup> Lumpkin S 'Consumer protection and financial innovation' (2016) 6 *OECD Journal: Financial Market Trends* 126

<sup>55</sup> Brix L & McKee K (2010) 4

<sup>56</sup> Bonga WG & Mlambo W (2016) 69

<sup>57</sup> Mphambela C 'The Links Between Financial Inclusion and Financial Stability' available at <http://baz.org.zw/consumer-centre/education-centre/links-between-financial-inclusion-and-financial-stability> (accessed 17 April 2017)

Howells, Ramsay and Wilhelmsson<sup>58</sup> opine that whilst individuals who make purchases for private purposes may easily be categorised as consumers, questions arise in cases where a purchase is made for both business and personal use. One of the questions they raise in pointing this to be a complex and sensitive issue is whether a business may rely on consumer protection principles. The answer in their view lies in the reason for protecting the consumer thus making it imperative to understand the rationale of consumer protection.

## 2.3 RATIONALE OF CONSUMER PROTECTION

Ardic, Ibrahim and Mylenko<sup>59</sup> argue that information asymmetry and power imbalances are naturally found in markets as service providers possess more information about a product or service compared to consumers. This, therefore, means that the relationship between consumers and service providers is not an equal one due to these information imbalances. On this basis, Ardic et al justify government intervention and regulation in the area of consumer protection. They argue that effective protection of rights potentially draws in new customers to the financial sector, and encourages the uptake of new products. Cartwright<sup>60</sup> states that while information asymmetry exists in many markets, there is evidence to suggest that it might be 'particularly pronounced where financial services are concerned'. This, it is argued, is due to the complexity of contracts and difficulties in judging the soundness of firms. Cartwright<sup>61</sup> also states that whilst there are incentives for suppliers to disclose information to consumers in a market system, there are reasons that point to this not always being the case. He argues that where a consumer is not aware of questions to ask in order to obtain the right information prior to making a decision, the supplier may not disclose all information related to the quality of the product. Instead the supplier will volunteer only that which is easy to verify; easy to understand; effective in attracting the consumer; and that which can be provided whilst saving costs. Simply put, it is argued that suppliers will put their profit interests above those of the consumer.<sup>62</sup> This argument concords with the South African Treasury's argument that complicated financial products met with less

---

<sup>58</sup> Howells G, Ramsay I & Wilhelmsson T 'Consumer law in its international dimension' in Howells G, Ramsay I & Wilhelmsson T (eds) *Handbook of Research on International Consumer Law* (2010) 3

<sup>59</sup> Ardic OP, Ibrahim JA & Mylenko N (2011) 2

<sup>60</sup> Cartwright P 'The Vulnerable Consumer of Financial Services: Law, Policy and Regulation' 20 available at <https://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/researchreports/paper78.pdf> (accessed 16 April 2017)

<sup>61</sup> Cartwright P *Banks, Consumers and Regulation* (2004) 51

<sup>62</sup> Cartwright P (2004) 53-54

financial expertise possessed by customers justify more regulatory protection.<sup>63</sup> This raises an important issue of financial literacy.<sup>64</sup> It is argued by Bonga and Mlambo<sup>65</sup> that the loan defaults in the Zimbabwean financial sector relate to financial illiteracy. This, they argue, has resulted in people entering into agreements they do not fully understand due to the complexity of the financial products. In arguing for consumer protection, the South African National Treasury conceptualises financial illiteracy in stating that:

'Financial products and services are intangible, making it difficult for customers to assess their value and suitability, and increasing the risk of hidden charges or unfair terms and conditions; The quality or appropriateness of some financial products, such as retirement savings products or insurance, may only become apparent sometime after purchase or when a disaster occurs; The concentrated and interconnected nature of the sector may allow financial institutions to act in their own (or shareholder) interests at the expense of customers; The underperformance or failure of financial products, particularly long-term savings products, may cause considerable and sustained hardship for customers; Products that carry high fees or are of low value (for example insurance products with very low claim ratios) erode disposable income, and can be particularly harmful in the case of vulnerable groups, like lower income households or the elderly; Losing deposits or savings imposes immediate costs on customers and their dependents; Retail customers generally lack the sophistication and level of information possessed by financial services institutions, increasing their vulnerability to exploitation; Many customers do not know how, or may not have the means, to hold financial institutions accountable for mistreatment, further increasing their vulnerability'.<sup>66</sup>

Llewellyn<sup>67</sup> argues that consumer protection is there to protect the consumer from the effects of a possible financial sector collapse. He argues that the collapse of a financial firm may either be detrimental to systemic stability and/or result in financial loss to individual depositors who are considered unable to look after their own interests. In essence, he argues that consumer protection issues arise because of a possible collapse of the institution where clients hold funds

---

<sup>63</sup> South Africa National Treasury *Treating customers fairly in the financial sector: A draft market conduct policy framework for South Africa Discussion Document* (2014) 19: See also Bäckström H (2010) 50

<sup>64</sup>Zait A & Bertea PE 'Financial Literacy – Conceptual Definition and Proposed Approach for a Measurement Instrument' (2014) 4 *Journal of Accounting and Management* 39. Drawing from a number of definitions, Zait and Bertea define financial literacy as a concept by boxing it into five dimensions namely:

(1) knowledge about financial concepts and products (2) communication aptitudes concerning financial concepts (3) ability to use knowledge in order to take the necessary financial decisions (4) real use of different financial instruments and (5) people's confidence in their previous financial decisions and actions.

<sup>65</sup>Bonga WG & Mlambo W Zimbabwe' (2016) 73

<sup>66</sup> South Africa National Treasury *Treating customers fairly in the financial sector: A draft market conduct policy framework for South Africa Discussion Document* (2014) 19

<sup>67</sup> Llewellyn D (1999) 9-10



or because a financial firm conducts business in an unsatisfactory manner detrimental to its customers. He opines that the regulators' concerns for the liquidity, solvency and riskiness of financial institutions stems from the perceived negative effect the failure of financial institutions has on systemic stability and the interests of consumers.<sup>68</sup> From Llewellyn's argument, it is deciphered that one of the important justifications of financial regulation is protecting the 'vulnerable consumer particularly susceptible to financial loss or harm'.<sup>69</sup> This is done by attempting to prevent a systemic collapse or minimising the effects in the event of a collapse given that consumers are not suitably placed to monitor and determine the safety and soundness of financial institutions to guard against potential losses. Nhavira, Mudzonga, and Mugocha<sup>70</sup> attribute this vulnerability of consumers to 'imperfect consumer information and agency problems associated with the nature of financial intermediation' and argue this to be a justification for prudential regulation'. This type of regulation is deemed beneficial to both the economy and consumer welfare as it prevents bank runs and or bank insolvency and in turn protects the consumers from resultant financial prejudice.<sup>71</sup>

Goodhart<sup>72</sup> raises market externalities as a justification for consumer protection. He argues that actions by one actor in the financial sector have an economic effect on other actors which effects include extreme losses resulting in bankruptcies and liquidation. He argues that such losses are not always internalised and borne by shareholders only, but, also affect consumers and others through the social effects of such losses. Brix and McKee<sup>73</sup> argue that regulating consumer protection has the potential to aid the efficiency and fairness of markets through facilitating healthy competition. This, they state, results in improved products and practices. According to the RBZ, consumer protection equips consumers with information and basic rights, is an important source of market discipline to the financial services sector, and aids competition by encouraging the regulated entities to offer better products and services.<sup>74</sup> The resultant competition is deemed beneficial to both the institutions and consumers by Yam,<sup>75</sup> who argues that it 'strengthens banks,

---

<sup>68</sup> Llewellyn D (1999) 10

<sup>69</sup> Cartwright P 'The Vulnerable Consumer of Financial Services: Law, Policy and Regulation' 16

<sup>70</sup> Nhavira J, Mudzonga E, & Mugocha E 'Financial Regulation And Supervision In Zimbabwe: An Evaluation Of Adequacy And Options' (2013) Zimbabwe Economic Policy and Research Unit 12

<sup>71</sup> UNCTAD Manual on Consumer Protection (2016) 126

<sup>72</sup> Goodhart C 'How should we regulate bank capital and financial products? What role for living wills?' in Turner A *The future of finance and the theory that underpins it* (2010) 167 - 170

<sup>73</sup> Brix L & McKee K (2010) 4

<sup>74</sup> CPF 1-2017/BSD 5

<sup>75</sup> Yam J 'Consumer protection and the banking industry' 2 available at <http://www.bis.org/review/r010620b.pdf> (accessed 25 April 2017)

by forcing them to focus on their own core competence, and the banking system as a whole, by weeding out inefficiencies'. For the consumer, he states that it 'promotes choice, quality and efficiency in products and services, and more reasonable costs'. The Organisation for Economic Co-operation and Development<sup>76</sup> views the main benefits of competition as including 'lower consumer prices, greater consumer choice, better quality of products and services, and faster innovation adoption'. They argue that consumers' ability to choose between different providers of goods benefits the economy as a whole as firms are incentivised to compete with each other, innovate more and be more productive.<sup>77</sup> Lumpkin,<sup>78</sup> however, argues that too much competition in banking has a negative effect on relationship lending and worsens adverse selection and moral hazard problems. The RBZ asserts that:

'consumer protection empowers consumers with information and basic rights, provides an important source of market discipline to the financial services sector, and fosters competition by encouraging regulated entities to offer better products and services rather than taking advantage of poorly informed consumers'.<sup>79</sup>

Whilst the rationale for regulation is to protect the consumer from market imperfections, failures and other impacts that may arise from an unregulated environment, Llewellyn<sup>80</sup> warns that there lies a risk that a consumer may not exercise caution when dealing with financial firms. He argues that this may be due to a consumer assuming that the existence of regulations means the institutions are safe. In his view, 'a consumer must be clear about the limits of regulation'. Campbell, Jackson, and Madrian et al<sup>81</sup> caution that regulators may not necessarily do better than consumers themselves in 'maximising [consumer] welfare'. They, however, state that the outcomes in some cases 'may be improved by regulations on market conduct that reflects the presumed judgement of what most consumers would want, were they fully informed and well advised'.

From the aforementioned, it is submitted that the rationale of consumer protection, in essence, is to minimise the information and power imbalances in the financial sector and aid systemic stability

---

<sup>76</sup> Hereafter OECD

<sup>77</sup> OECD *Competition Assessment Reviews* (2017) 28

<sup>78</sup> Lumpkin S (2010) 127

<sup>79</sup> Section A (1.6.3) CPF 1-2017/BSD

<sup>80</sup> Llewellyn D (1999) 21

<sup>81</sup> Campbell JY, Jackson HE & Madrian BC et al (2011) 95



of the same. From the rationale of consumer protection emerge its objectives. It is from these objectives that a consumer protection framework is designed.

## 2.4 OBJECTIVES OF CONSUMER PROTECTION

Consumer protection is said to consist of placing measures that:

'prevent irregularities or transactions which have a negative impact on consumers, empower consumers to exercise informed choices and select value-for-money goods and services, provide fair access to basic goods and services, and open avenues to address consumer interests and concerns'.<sup>82</sup>

According to Brix and McKee,<sup>83</sup> the three core objectives of consumer protection are to ensure transparency, fair treatment and effective recourse for a consumer. This view is shared by Rutledge, Annamalai, and Lester et al<sup>84</sup> who point out that 'financial consumer protection sets clear rules of conduct for financial firms regarding their retail customers. It aims to ensure that consumers: (i) receive information to allow them to make informed decisions, (ii) are not subject to unfair or deceptive practices and (iii) have access to recourse mechanisms to resolve disputes.' They further state that a 'well-functioning consumer protection regime provides effective safeguards for retail financial services consumers while empowering consumers to exercise their legal rights and fulfil their legal obligations'. Benston<sup>85</sup> shares the same view regarding the rules listed by Rutledge et al. He, however, adds the following as aims of regulation: (i) maintaining consumer confidence in the financial system; (ii) assuring that a supplier on whom consumers rely does not fail; (iii) assuring fair pricing of financial services; (iv) protecting consumers from fraud and misrepresentation; and (v) preventing invidious discrimination against individuals. From the available literature, the objectives are summed up as being aimed at maintaining consumer confidence, contributing to the protection and enhancement of stability of the financial system, providing smaller retail clients with protection, protecting consumers against monopolistic exploitation and reducing the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime.<sup>86</sup> In light of these objectives, a look into the consumer

---

<sup>82</sup> 'Consumer Protection, Consumer Education, & Financial Literacy' <http://www.mftransparency.org/wp-content/uploads/2012/06/MFT-PRES-315-EN-Malawi-Financial-Literacy-and-Consumer-Protection-2010-08.pdf> (accessed 27 April 2017)

<sup>83</sup> Brix L & McKee K (2010) 8

<sup>84</sup> Rutledge SL, Annamalai N, & Lester R (2012) 6

<sup>85</sup> Benston GJ 'Consumer Protection as Justification for Regulating Financial-Services Firms and Products' 17 (2000) *Journal of Financial Services Research* 279

<sup>86</sup> Mwenda KK Aspects of Financial Services Regulation and The Concept of a Unified Regulator (2006) 3; see also Chakrabarty KC 'Regulation for financial consumer protection – present status and future directions' Speech at the Conference of Principal Code Compliance Officers (2013) 5 available at <http://www.bis.org/review/r130506a.pdf>

protection framework of the Zimbabwe banking sector follows in order to ascertain whether it is adequate to build confidence in the sector and consequently contribute to sectoral stability.

## 2.5 REGULATION OF CONSUMER PROTECTION IN ZIMBABWE BANK SECTOR

In Zimbabwe, the financial consumer is protected through prudential and market conduct regulation. Together with systemic regulation, both these regulatory types stem from the objectives of financial regulations.<sup>87</sup> Nhavira et al<sup>88</sup> state that systemic regulation focuses on curtailing the dangers of bank runs. For this reason, it is said that systemic regulation is comprised of deposit insurance to guarantee the return of depositor funds in the event of a bank collapse and the central bank function of lender of last resort (LOLR).<sup>89</sup> This form of regulation ensures financial stability, defined by the RBZ as a condition in which the financial system is capable of facilitating real economic activities smoothly and 'unravelling financial imbalances arising from shocks'.<sup>90</sup> Whilst prudential regulation also seeks to protect consumers, investors and depositors,<sup>91</sup> it is market conduct regulation that is specifically aimed at securing consumer protection to build market confidence in the financial system. This is done by ensuring efficiency, transparency and fairness.<sup>92</sup>

Both prudential regulation<sup>93</sup> and market conduct are statutorily regulated in Zimbabwe under the Banking Act<sup>94</sup> and Deposit Protection Corporation Act.<sup>95</sup> Whilst the Banking Act covers both prudential and market conduct regulation, the DPC Act focuses on prudential regulation. In addition to these Acts is the CPF solely designed to 'set minimum regulatory standards for consumer protection'.<sup>96</sup> It was issued in terms of s4C of the Banking Act and applies only to

---

(accessed 13 July 2017); Botha E & Makina D 'Financial Regulation And Supervision: Theory And Practice In South Africa' (2011) 10 *International Business & Economics Research Journal* 27; Nhavira J, Mudzonga E, & Mugocha (2013) 12

<sup>87</sup>Nhavira J, Mudzonga E, & Mugocha E (2013) 20; See also Llewellyn D (1999) 10

<sup>88</sup>Nhavira J, Mudzonga E, & Mugocha E (2013) 14

<sup>89</sup> Also see chapter 3 paragraph 5 for a discussion on this function

<sup>90</sup> Reserve Bank of Zimbabwe *Financial Stability Report* (2014) 7

<sup>91</sup> Goodspeed I 'Twin Peaks' available at <http://financialmarketsjournal.co.za/oldsite/17thedition/printedarticles/twinpeaks.pdf> (accessed 13 July 2017)

<sup>92</sup> Chakrabarty KC 'Regulation for financial consumer protection – present status and future directions' Speech at the Conference of Principal Code Compliance Officers (2013) 5 available at <http://www.bis.org/review/r130506a.pdf> (accessed 13 July 2017); see also Llewellyn D (1999) 10

<sup>93</sup> See paragraph 6 in chapter 3 which focuses on prudential regulation in terms of the Banking Act

<sup>94</sup> Act 9 of 1999

<sup>95</sup> Act 7 of 2011. Hereafter DPC Act

<sup>96</sup> Clause 1.2.1 of the CPF 1-2017/BS

institutions regulated by the RBZ.<sup>97</sup> It embodies supervisory, regulatory standards and practices deemed appropriate for the purpose of monitoring and supervising the activities of banking institutions and controlling companies.<sup>98</sup> Similar to the CPF and containing similar guidelines is the Code of Banking Practice which sets out the market conduct of banks in dealing with their customers.<sup>99</sup> This code is an undertaking made between and signed by the Bankers Association of Zimbabwe (BAZ) and 18 members of the Bankers Association of Zimbabwe to adopt and abide by it.<sup>100</sup> Due to the fact that it is not an undertaking created or regulated by statute, is not an agreement between consumers and industry players, and is not imposed by a regulatory authority, it is, therefore, apparently binding only between BAZ and the banks party to it. The enforceability of the code by a consumer in the event of breach is, therefore, not feasible.

In the ordinary course of business, a banking institution is required to comply with the consumer protection provisions stipulated in the Banking Act.<sup>101</sup> These provisions relate to publication of information by banking institutions, disclosure of information to customers, and customer complaints procedures.<sup>102</sup> In terms of these provisions, a bank is required to place a notice setting out its interest rates on deposits and loans including the terms and conditions under which it accepts deposits and makes loans.<sup>103</sup> This notice must be in every building it operates in and must be clearly visible to the public. Further to this, a notice containing the same information must be published in a newspaper circulating in each area the bank conducts business. On opening an account for a customer, the bank is required to furnish the depositor with information relating to charges on the account. This includes interest on funds in both the account and on overdraft.<sup>104</sup> Where a loan is given, information relating to interest charged and the manner in which it is calculated must be furnished to the borrower.<sup>105</sup> This is in addition to the consumer being furnished with information clearly identifying the obligations of the borrower, and of every term or condition applicable to the credit. During the lifetime of the loan agreement, the borrower must be

---

<sup>97</sup>This includes non-banking and the agents of both banking and non-bank institutions. See Clause 1.4.1 of the CPF 1-2017/BSD

<sup>98</sup> S4C (1) of the Banking Act 9 of 1999 as inserted by s4 of Banking Amendment Act 2015.

<sup>99</sup>Code of Banking Practice available at <http://baz.org.zw/sites/default/files/Signed%20Code%20of%20Banking%20Practice0001.pdf> (accessed 6 May 2017)

<sup>100</sup>Code of Banking Practice 22

<sup>101</sup> S28D – 28G Act 9 of 1999

<sup>102</sup> S28D – 28G Act 9 of 1999

<sup>103</sup> S28D (1) (c) Act 9 of 1999

<sup>104</sup> S28E (1) (a) –(c) Act 9 of 1999

<sup>105</sup> S28E (2)(a) Act 9 of 1999

furnished with a bi-annual statement indicating the outstanding balance and interest on the balance.<sup>106</sup> Where consumers or members of the public have any grievances concerning their relations with the banking institution, procedures for the grievance to be addressed are required to be in place.<sup>107</sup> Information on these procedures and the manner in which complaints are to be made and dealt with is to be displayed in every branch and at all premises the bank operates from.<sup>108</sup> Civil penalties are applicable for non-compliance by banking institutions with the consumer protection provisions.<sup>109</sup>

Regulated banks are also required to keep adequate capital reserves with the RBZ to 'protect the liquidity, solvency and safety of banks'.<sup>110</sup> This ensures banks are solvent and liquid enough to meet their obligations to their creditors, mainly depositors.<sup>111</sup> These capital reserves allow a bank to 'cushion itself against all types of risk which affects the bank including operational and market risk'.<sup>112</sup> Failure to maintain the required minimum reserves leads to categorisation of the institution as a problem banking institution.<sup>113</sup> On determining a bank to be PBI, the RBZ formulates and implements what it terms a bank resolution plan<sup>114</sup> relating to that particular banking institution. It is made with the aim of protecting and enhancing the stability of the financial system, protecting and enhancing public confidence in the banking system, protecting depositors and where applicable, protecting public funds.<sup>115</sup> Where an institution becomes insolvent and has insufficient liquid assets to pay its creditors, including its depositors, in full and without delay, the RBZ may order such an institution to be wound up.<sup>116</sup> Such an order is made with due consideration to the need of preserving the integrity of the financial system taking into account the interests of the creditors, depositors or shareholders of the banking institution concerned.<sup>117</sup>

---

<sup>106</sup> S28E (2)(b) Act 9 of 1999

<sup>107</sup> S28F (1) Act 9 of 1999

<sup>108</sup> S28F (1) (a) Act 9 of 1999

<sup>109</sup> S28G Act 9 of 1999

<sup>110</sup> Nel HF 'Minimum reserve requirements' *South African Reserve Bank Quarterly Bulletin* (2000) 63; See also paragraph 2.5; S30(1) Act 9 of 1999

<sup>111</sup> S29 (1) Act 9 of 1999

<sup>112</sup> Magweva R & Marime N 'Bank specific factors and bank performance in the multi-currency era in Zimbabwe' 10 (2016) *African Journal of Business Management* 375

<sup>113</sup> S52A (2)(a) Act 9 of 1999. Hereafter PBI

<sup>114</sup> S52A (2) Act 9 of 1999; See also chapter 4 paragraph 3

<sup>115</sup> S52A (1) Act 9 of 1999 See also chapter 4 paragraph 3

<sup>116</sup> S57 (2) Act 9 of 1999

<sup>117</sup> S57 (1) Act 9 of 1999

In the event of a banking institution being wound up, a depositor is paid compensation where the deposit is insured in terms of the DPC Act.<sup>118</sup> In terms of the Act, insurance to protect the financial interests of a depositor in the event of an institution being wound up is provided to depositors of contributory institutions by the Deposit Protection Corporation (DPC).<sup>119</sup> This insurance provides a safety-net for the savings, banking and payments systems.<sup>120</sup> According to the Bank of International Settlement (BIS), the deposit insurance system complements prudential regulation and the LOLR functions as an element of the financial safety net.<sup>121</sup> The DPC was established in terms of s4 the DPC Act and derives its powers from the Act together with the Banking Act. Bigger and Heimler<sup>122</sup> define deposit insurance as a guarantee that all or part of a depositor's debt with a bank will be repaid in the event of bank insolvency. From Goodhart's<sup>123</sup> perspective, the purpose of deposit insurance is to protect customers and to prevent bank runs. In Zimbabwe, the objectives of the DPC are to protect depositors as defined in the Act,<sup>124</sup> particularly small depositors, to contribute towards the stability of the financial system, to enhance competition between different sectors and institutions in Zimbabwe's financial system, to promote sound business practices in contributory institutions and to protect the fund against loss.<sup>125</sup> It is submitted that it is not, however, clear how the DPC enhances competition between the different sectors given that its primary role is to protect consumers by insuring their deposits, if deposited with a contributory institution. From the arguments raised on the rationale of consumer protection,<sup>126</sup> it is apparent that competition in the sector is enhanced through adherence to market conduct regulations by the regulated institutions. It is these regulations that encourage institutions to offer better products and services. Prudential regulation, it is submitted, mainly focuses on preventing bank collapses. The DPC, is designed to focus on prudential regulation and it is from this that its objectives are derived. In attempting to enhance competition between different sectors, it is, therefore, submitted that the DPC is overreaching in its objectives. It is suggested that this provision be abrogated for the DPC not to lose focus by diverting energy to causes for which it was not established.

---

<sup>118</sup> S35 Deposit Protection Corporation Act 7 of 2011

<sup>119</sup> Hereafter DPC

<sup>120</sup> Abel S 'Role of Deposit Protection Corporation of Zimbabwe' *The Herald* 21 January 2015 available at <http://www.herald.co.zw/role-of-deposit-protection-corporation-of-zimbabwe/> (accessed 27 April 2017)

<sup>121</sup> Bank for International Settlements *Core Principle for Effective Deposit Protection Insurance Systems* (2010) 6

<sup>122</sup> Bigger D & Heimler A (2005) 9;

<sup>123</sup> Goodhart C (2010) 167

<sup>124</sup> S2 Act 7 of 2011

<sup>125</sup> S2(a) Act 7 of 2011

<sup>126</sup> See paragraph 3 chapter 2

To protect depositors, both individual and corporate,<sup>127</sup> a fund was established in terms of the DPC Act.<sup>128</sup> It is from this fund that depositors in a deposit taking contributory institution<sup>129</sup> are compensated in the event of insolvency.<sup>130</sup> Currently, compensation is fixed at a maximum of USD1 000 covering all or part of the deposit.<sup>131</sup> Whilst it may only be a fraction of the total deposit that is repaid in the event of a bank collapse, it eliminates the risk of total loss in the event of a bank failure thus allowing a depositor to confidently entrust their money with a bank.<sup>132</sup> For depositors to receive this insurance cover, the institutions with which they deposit their money must make contributions to the fund.<sup>133</sup> Contributions to the fund are, however, to be made only by institutions complying with the prescribed or fixed prudential requirements.<sup>134</sup> Whilst the Banking Act does not itself list the prudential requirements, it empowers the Registrar of Banks to issue prudential supervisory and regulatory standards and practices. These standards and practices must be 'appropriate for the monitoring and supervision of banks and controlling companies'.<sup>135</sup>

Failure to comply with the prudential requirements on or after registration, leads to revocation or suspension of the contributory institutions status.<sup>136</sup> As a consequence of revocation, the depositors of that particular institution will no longer be extended insurance cover by the DPC.<sup>137</sup> Where revocation occurs, the DPC undertakes 'to achieve an equitable balance between the interests of the institution's depositors, in particular its protected depositors, and the fund; and other contributory institutions and their depositors'.<sup>138</sup> The DPC further undertakes to continue providing cover to depositors for six months after revocation or until the deposits are fully

---

<sup>127</sup> 'The Role of Deposit Protection in Promoting Financial Inclusion' available at <http://www.dpcorp.co.zw/assets/role-of-deposit-protection-in-promoting-financial-inclusion.pdf> (accessed 11 May 2017)

<sup>128</sup> S13 Act 7 of 2011

<sup>129</sup> S2 Act 7 of 2011; 'About DPC' available at <http://www.dpcorp.co.zw/about-dpc.html> (accessed 29 April 2017)

<sup>130</sup> S5 (1) (c) Act 7 of 2011

<sup>131</sup> 'About DPC' available at <http://www.dpcorp.co.zw/about-dpc.html> (accessed 9 February 2017); Business Reporter 'Bank depositors fully covered' *The Herald* 9 February 2017 <http://www.herald.co.zw/bank-depositors-fully-covered-dpc/> (accessed 9 February 2017)

<sup>132</sup> S5 (1) Act 7 of 2011

<sup>133</sup> S35 Act 7 of 2011; 'Funding of the Deposit Protection Scheme' available at <http://www.dpcorp.co.zw/deposit-protection.html> (accessed 11 May 2017)

<sup>134</sup> S23 (3) of Act 7 of 2011 read with S2 (1) Act 7 of 2011

<sup>135</sup> S4C of Act 9 of 1999

<sup>136</sup> S23 (3) of Act 7 of 2011 read with s19 of Statutory Instrument 156 of 2013 containing the rules and regulations on the DPC operations and outlining what constitutes a breach of the prudential requirements

<sup>137</sup> S19 SI 156 of 2013

<sup>138</sup> S27 (2) Act 7 of 2011



withdrawn, whichever comes earlier.<sup>139</sup> Although not mentioned if information to this effect will be gazetted, it is assumed that depositors will somehow receive notice of the revocation for them to act. However, once depositors become aware of their exposure to potential loss after deposits are removed from insurance cover, it is submitted that this invites the possibility of mass withdrawals due to panic. This, it is submitted, may have a spill over effect which may affect other contributory institutions in that their depositors may also be induced to withdraw their funds fearing the same fate, even where there is no possibility of this happening. This herd behaviour<sup>140</sup> has the potential to threaten the same financial stability the DPC ought to be contributing to. Instead, it is suggested that a bank resolution plan be designed and implemented to remedy the situation. This will be in terms of the Banking Act which provides for a resolution plan where a bank 'is not being operated or is not conducting its activities in the best interests of its depositor.'<sup>141</sup> Further, as opposed to removing the depositors from cover during this period, it is recommended that the DPC continues providing cover to the depositors of the non-complying institutions. As a penalty for non-compliance, it is recommended that stiff penalties be imposed on the institution in the form of fines over and above the contribution paid into the fund. Such penalties may be paid into the fund thus also contributing to the objective of guarding the fund against loss. It is submitted that because applications for registration of an institution are granted in consultation with the DPC,<sup>142</sup> prior to registration the DPC ought to ensure compliance with all prudential requirements. Ideally, where an institution is not in compliance, operations must not commence. However, where for one reason or other operations do commence and revocation occurs, it is submitted that a depositor ought not to be prejudiced by the actions of an institution out of the depositors control. It is submitted that the depositor must be protected at all times. It is recommended that the DPC considers offering insurance directly to depositors who can pay monthly premiums depending on the amount they wish to cover.

---

<sup>139</sup>S21 (1) of SI 156 of 2013

<sup>140</sup> Herd behaviour is when consumers follow the actions of other consumers. According to van Raaij, it may arise from use of public information including rumours and less use of private information. See van Raaij WF *Understanding Consumer Financial Behavior* (2016) 97-98; Yang WR Signal Effect, Herd Behavior and the Trigger Time of Bank Runs Working Paper (2005) 2 available at [http://econ.ucsb.edu/~mkapicka/RG/model2\\_wanru.pdf](http://econ.ucsb.edu/~mkapicka/RG/model2_wanru.pdf) (accessed 23 September); Ionescu C The herd behavior and the financial instability 12(1) (2012) *Annals of the University of Petroșani, Economics* 137 & 140; Haiss P Bank Herding and Incentive Systems as Catalysts for the Financial Crisis 7 (1 & 2) (2010) *IUP Journal of Behavioral Finance* 34

<sup>141</sup> S52 (2) (h) read with s52A Act 9 of 1999;

<sup>142</sup> Ss8 (2) & 9 of 1999

In addition to the above prudential requirements are prudential supervisory and regulatory standards and practices issued in compliance with s4C of the Banking Act.<sup>143</sup> These were issued in the form of the CPF. The CPF stipulates how service providers are to interact with consumers thus essentially function as market conduct standards.<sup>144</sup> The CPF objectives are to;

- promote consumer rights<sup>145</sup> by setting out minimum standards for regulated entities in achieving consumer protection;
- ensure availability of consumer redress and development of formal or informal robust grievance redress mechanisms for handling customer grievances that are fair, expeditious, inexpensive and accessible;
- ensure fair and equitable business practices, protecting interests of both consumers and regulated entities; and
- foster customer confidence and trust in the banking sector.<sup>146</sup>

This protection is extended to all financial consumers dealing with banks and non-banking financial institutions regulated by the RBZ including their agents.<sup>147</sup> To achieve these objectives, there are seven general consumer protection principles listed in the CPF to guide the regulated entities in meeting the objectives of consumer protection in the financial sector.<sup>148</sup> The principles are briefly outlined below.

#### **a) Equitable and Fair Treatment of Customers**

In compliance with this principle, regulated entities are to give all their customers equitable, honest and fair treatment at all stages of their relationship. Special attention is to be given to vulnerable groups. In the absence of a definition to clarify the ambit of application of the term 'equitable, honest and fair treatment' it is submitted that the CPF leaves it open for discretionary application in each case.

---

<sup>143</sup> In terms of s4C of Act 9 of 1999, the Registrar of banks may adopt prudential supervisory and regulatory standards which are to be notified to the relevant institutions within a reasonable time. Because the office of the Registrar is part of the RBZ it is therefore the RBZ that is responsible for the adoption of the prudential supervisory and regulatory standards to monitor and curtail risk taking by banks to ensure systemic stability. This is in line with the mandate of the RBZ in terms of s6 (1) (c) & (e) of Act 5 of 1999.

<sup>144</sup> Clause 1.5.1 CPF 1-2017/BSD

<sup>145</sup> Clause 4.1.1 of the CPF 1-2017/BSD stipulates that consumers have the right to (a) information and advice; (b) access basic financial services; (c) choose financial products and services; (d) be heard and redress; (e) financial education; and (f) privacy of their data in the custody of the regulated entities.

<sup>146</sup> Clause 1.4.1 CPF 1-2017/BSD

<sup>147</sup> Clause 1.5.1 CPF 1-2017/BSD

<sup>148</sup> Clause 3.1 – 3.7 CPF 1-2017/BSD



## **b) Disclosure and Transparency**

This principle correlates with a consumer's right to information and advice.<sup>149</sup> To comply with this principle, regulated entities are required to 'set out and explain clearly the key features, risks and terms of the products, fees, commissions or charges applicable'. It is further required that all promotional material be accurate, honest, understandable and not misleading. This principle is in line with the statutory requirement that a bank must publish and disclose certain information to customers of banking institutions.<sup>150</sup>

## **c) Financial Education and Awareness**

This principle is aimed at building financial literacy by addressing the consumer's right to financial education.<sup>151</sup> In terms of this principle, regulated entities should not only promote financial education and awareness but also help existing and future customers develop and deepen the knowledge, skills and confidence to understand financial risks.

## **d) Responsible Business Conduct of Institutions and Authorised Agents**

This principle requires regulated entities and their authorised agents to work in the best interest of their customers and avoid conflict of interest. To comply with this principle, a uniform code of ethics is useful. Whilst banks which are members of the Bankers Association of Zimbabwe (BAZ) are guided by the Code of Banking Practice,<sup>152</sup> it is inferable that regulated institutions which do not hold membership are not expected to comply with the code. For the sake of industry consistency, it is recommended that the code be made binding to all institutions providing banking services whether members of BAZ or not.

## **e) Protection of Customer Assets against Fraud and Misuse**

Regulated entities should have in place relevant information, control and protection mechanisms to protect customers' financial assets against fraud, misappropriation or other misuses. It is submitted that this is best achieved by requiring banks to be transparent in their activities thus they can be held accountable by consumers.

---

<sup>149</sup> 4.1.1 (a) CPF 1-2017/BSD

<sup>150</sup> Ss28E & 28F Act 9 of 1999

<sup>151</sup> 4.1.1 (e) CPF 1-2017/BSD

<sup>152</sup> The Code of Banking Practice available at <http://baz.org.zw/resources/code-banking-practice> (accessed 23 December 2017)

#### **f) Protection of Consumer Data and Privacy**

Regulated entities are required to have in place appropriate control and protection mechanisms to protect customers' financial and personal information. This is in promotion of a consumer's right to privacy in respect of their data in the custody of the regulated entities.<sup>153</sup> Such mechanisms should define the purposes for which data may be collected, processed, held, used and disclosed.

#### **g) Complaints Handling and Redress**

Regulated entities should provide customers with reasonable channels to submit claims, make complaints and seek redress. The provided channels are required to be accessible, fair, accountable, timely and efficient. This promotes the consumers right to be heard and redress.<sup>154</sup> However, for the sake of impartiality, it is recommended that a banking ombudsman be appointed to directly receive all industry complaints and resolve the disputes.

Benston and Kaufman<sup>155</sup> argue that whilst prudential regulation could reduce the likelihood of bank failure and produce a positive economic outcome surpassing the cost of the regulation, it is 'neither necessary nor desirable to reduce bank failures to zero for this reason'. Rutledge, Annamalai, and Lester et al<sup>156</sup> argue in favour of laws that provide consumer protection rules concerning banking products and services. In addition, they argue for institutional arrangements to 'ensure the thorough, objective, timely and fair implementation and enforcement of all such rules'. Ardic, Ibrahim and Mylenko<sup>157</sup> argue that effective implementation of consumer protection law requires clearly defining the role of the agencies involved and assigning a single entity for handling complaints and inquiries by consumers. They also argue that monitoring compliance with financial consumer protection regulations is an essential element of effective implementation of the legislation. Campbell, Jackson, Madrian and Tufano<sup>158</sup> argue that while regulation should be designed to protect consumers, it must also be cognisant of business realities. Lumpkin<sup>159</sup> is of the view that well-designed regulations that are properly enforced maintain consumer and investor confidence, which he argues is required 'for the financial system to attract capital and function efficiently'. He further argues that failure to sufficiently protect the financial system from

---

<sup>153</sup> 4.1.1 (f) CPF 1-2017/BSD

<sup>154</sup> 4.1.1 (f) CPF 1-2017/BSD

<sup>155</sup> Benston G & Kaufman G 'The Appropriate Role of Bank Regulation' (1996) 106 *The Economic Journal* 691

<sup>156</sup> Rutledge SL, Annamalai N & Lester R (2012) 10

<sup>157</sup> Ardic OP, Ibrahim JA & Mylenko N ' (2011) 11 & 12

<sup>158</sup> Campbell JY, Jackson HE & Madrian BC et al P (2011) 103

<sup>159</sup> Lumpkin S (2010) 122

abuses sabotages market confidence and consumer protection. He also asserts that 'economic exchange, in general, and financial transactions in particular rely importantly on trust and confidence'. Muller, Devnani, and Heys et al<sup>160</sup> argue that an important benefit of 'good' consumer protection is increased confidence in financial markets and financial institutions. They further argue that;

'Good regulation of the financial sector also aims to prevent situations where, because of competitive pressures, financial sector firms adopt hazardous strategies vis-à-vis their customer base to secure short-term advantages even, if in the long run, such activities are not beneficial for their customers. There exists an important, positive feedback loop from good consumer protection in financial markets to overall financial stability and reduced riskiness of individual institutions and the overall financial sector. This is due to the fact that such robust and effective consumer protection prevents financial institutions from taking excessive consumer lending risks'.

## 2.6 CONCLUSION

From the above discussion, it has been established that a consumer in the banking sector is one who either deposits into, or one who borrows from a bank. It has also been established that justification of consumer protection is largely based on information asymmetry. This is due to the fact that a consumer does not possess the same information as a professional service provider. This creates an imbalance in the relationship between the consumer and the financial service provider. Due to the fact that a consumer may not be financially literate, consumer protection is justified in protecting the consumer from purchasing services and products they do not fully understand. This prevents potential financial prejudice. To protect the consumer from entering into agreements containing terms, conditions and consequences they do not understand and which can financially ruin them, consumer protection is important. It has been established that consumer protection is important in maintaining financial sector stability.

It was established that two types of regulation exist to protect the consumer namely prudential and market conduct regulation. Prudential regulation is aimed at maintaining financial stability by avoiding systemic risk through quick resolution of issues in systemically important financial institutions. Market conduct regulation governs the interaction of regulated institutions with consumers. Whereas prudential regulation protects consumer assets by preventing a systemic

---

<sup>160</sup> Muller P, Devnani S & Heys R et al 'Consumer Protection Aspects of Financial Services' *European Parliament Directorate General For Internal Policies Newsletter* (2014) 42

collapse of the sector, market conduct protects a financial consumer by stipulating how service providers interact with consumers. Although contracts between consumers and service providers are generally governed by the Consumer Contracts Act, in the financial sector, a consumer is protected statutorily under the Deposit Protection Act and the Banking Act. The Deposit Protection Act focuses on prudential regulation whilst the Banking Act regulates both prudential and market conduct regulation. The DPC offers insurance to depositors banking with contributory institutions provided the institutions comply with the set prudential standards. The prudential requirements to be complied with those are those set in terms of s4C of the Banking Act. This is the CPF which gives supervisory, regulatory standards and practices for the purpose of monitoring and supervising the activities of banking institutions and controlling companies. Although issued in terms of s4C of the Banking Act as prudential standards, the CPF is in essence market conduct regulation. The principles of consumer protection as outlined in the CPF are arguably drawn from the rationale of consumer protection and are designed as an instrument in achieving the consumer protection objective. The CPF coupled with the statutory consumer protection provision offer a consumer protection legal framework that has the potential to build confidence in the banking sector. Breach of these prudential standards results in revocation of a contributory institution's status and subsequent withdrawal of insurance cover. The withdrawal is not, however, immediate. It continues for six months after revocation or until the deposit is fully withdrawn whichever comes earlier. It has also been established financial sector stability is essential in protecting the consumer from financial harm that arises when institutions they transact with collapse. It is, therefore, imperative to ensure that there are measures in place aimed at maintaining sectoral stability. This leads to an investigation of whether the current bank regulations in place function as a tool for stability or a weapon against stability.

## CHAPTER 3

### BANK REGULATION IN ZIMBABWE

#### 3.1 INTRODUCTION

The main objective of this chapter is to investigate whether the regulations currently in place are effective in ensuring systemic stability by preventing banks collapses in Zimbabwe. The chapter starts with a discussion of financial regulation and its importance because banks are part of the financial sector which is regulated in terms of a set model. Thereafter, a bank will be defined in the Zimbabwean context followed by a discussion on the importance of banks in the economy. Prior to discussing bank regulation, and for one to grasp why regulation of banks in Zimbabwe is a contemporary issue, the causes of bank collapses will be discussed from the available literature. This will include a brief historical background of events in the sector merged with a discussion on the current affairs of the sector. Thereafter, the current bank regulations will be analysed and the chapter will end with a discussion on the functions of the central bank as the regulator.

#### 3.2 FINANCIAL REGULATION IN ZIMBABWE

An efficient and effective financial sector is pivotal to the success of an economy.<sup>161</sup> To aid the success and functioning of this sector, regulation is important. This is to ensure systemic stability, institutional safety and soundness, avoidance of financial crime, investor and consumer protection.<sup>162</sup> Mwenda<sup>163</sup> defines regulation as a set of binding rules issued by either a private or public body. Falkena, Bamber, and Llewellyn et al<sup>164</sup> state that regulation has to be effective and efficient in the sense that it achieves its objectives and is cost-efficient in the use of resources.

The Zimbabwe financial sector is comprised of insurance companies, pension funds, capital markets, payment systems, microfinance institutions, banks, development finance institutions, credit unions, housing cooperatives, venture capital companies and asset management companies.<sup>165</sup> The sector is regulated by means of a silos model in terms of which regulation and

---

<sup>161</sup>Dhliwayo CL (2015) 5

<sup>162</sup>Cranston R (2002) 63; See also Llewellyn D (1999) 9; Botha E & Makina D (2011) 29

<sup>163</sup>Mwenda KK (2006) 5

<sup>164</sup>Falkena H, Bamber R, Llewellyn D & Store T *Financial regulation in South Africa* 2 ed (2001)2

<sup>165</sup>Mugwati MZ, Nkala D & Mukanganiki C 'The Composition And Regulation Of The Financial Services Sector In Zimbabwe' (2013) 3(4) *Asian Economic and Financial Review* 487; Reserve Bank of Zimbabwe *Zimbabwe National Financial Inclusion Strategy 2016 – 2020* (2016)13

supervision is determined by the type or function of an institution.<sup>166</sup> Although the Ministry of Finance is the head of all regulatory and supervisory bodies in the financial services sector,<sup>167</sup> under this silos model, there are currently five financial regulatory cum supervisory bodies in Zimbabwe. These regulatory bodies are the RBZ, Ministry of Finance, Deposit Protection Corporation, Securities Exchange Commission (SEC) and Insurance and Pensions Commission.<sup>168</sup> The RBZ regulates and supervises commercial banks, asset management companies, unit trusts and microfinance institutions.<sup>169</sup> Insurance companies and pension funds are regulated by the Registrar of Insurance.<sup>170</sup> The Zimbabwe Stock Exchange is self-regulating although it is under the direction of the Ministry of Finance with the Securities Commission supervising its work.<sup>171</sup> The DPC exists to protect depositors and supervise banks to ensure they comply with prudential regulations.<sup>172</sup>

Falkena et al<sup>173</sup> argue that the 'regulatory arrangements' in a country affect the structure, size and efficiency of the market including the business operations of financial institutions. According to Barth, Gan and Nolle,<sup>174</sup> even though a country's financial system is largely an intangible asset that can facilitate economic growth, it may fail to do so in the absence of an appropriate legal, regulatory, enforcement, and accounting environment. They further argue that banks and capital markets are not able to function effectively in the absence of such an environment. These sentiments are echoed by Dhlwayo<sup>175</sup> who states that for economic and financial stability, effective bank regulation and supervision is needed. It is further argued by Biggar and Heimler<sup>176</sup> that the stability of financial institutions, the sector as a whole and the payments system is the most important rationale for regulation in banking. Dowd<sup>177</sup> is against regulation and advocates

---

<sup>166</sup>Nhavira J, Mudzonga E, &Mugocha E (2013)10; See also Botha E &Makina D (2011) 27; Hyde R 'Does The Silo-Based Regulatory Compliance Model Really Work For Advisors Or Consumers?' 12 August 2015 available at <http://www.ticoon.com/blog-original/2015/8/12/does-the-silo-based-regulatory-compliance-model-really-work-for-advisors-or-consumers> (accessed 2 July 2017)

<sup>167</sup>Nhavira J, Mudzonga E, &Mugocha E (2013)9

<sup>168</sup>Nhavira J, Mudzonga E, &Mugocha E (2013)9

<sup>169</sup>Mugwati MZ, Nkala D &Mukanganiki C (2013) 486

<sup>170</sup> Preamble read with s 4 (1) (a) & (b) Insurance and Pensions Commission Act 7 of 2000

<sup>171</sup>Mugwati MZ, Nkala D &Mukanganiki C (2013) 487

<sup>172</sup> See chapter 2 paragraph 5

<sup>173</sup>Falkena H, Bamber R, Llewellyn D & Store T (2001) Preface iii

<sup>174</sup> Barth R, Gan J &Nolle DE *Global Banking Regulation & Supervision: What Are the Issues and What Are the Practices?* (2009) 6

<sup>175</sup>Dhlwayo CL (2015) 5

<sup>176</sup>Biggar D &Heimler A (2005) 5; see also Llewellyn D (1999) 10

<sup>177</sup>Dowd K 'Lessons from the Financial Crisis: A Libertarian Perspective' available at <http://www.libertarian.co.uk/lapubs/econn/econn111.htm> (accessed 7 February 2017)



for what he terms 'financial laissez faire' in arguing this to be the best way to achieve a 'safe, stable and efficient financial system'. Falkena et al<sup>178</sup> contend that self-regulation is advantageous in that it responds to market changes quickly whereas the process of amending legislation to meet the changes results in a delayed response to the changing circumstances in the market. Glossop<sup>179</sup> argues that as opposed to being 'self-corrective' the financial market is 'self-enforcing' and 'if left to its own devices, is inherently prone to busts'. Glossop also argues that the financial system is by nature unstable and will 'spiral' towards instability after periods of stability. In arguing that bank failures are no more important than failures of other firms in an economy, Kaufman<sup>180</sup> implies that banks are not unique institutions thus need no unique supporting regulation. He argues that the prudential regulations put in force to prevent or mitigate the impact of these failures are usually ineffective and counter-productive. He further contends that regulators increase the likelihood of a bank failure and cost of the same. Barth et al<sup>181</sup> and Dhliwayo<sup>182</sup> hold a different view and argue respectively that banks differ from other commercial enterprises and financial institutions thus making a strong legal, regulatory and supervisory framework necessary. It is, therefore, imperative to define a bank in order to distinguish it from other financial institutions. This will assist in establishing whether banks are unique and require regulation as a necessity. This further assists in determining the economic importance of banks as will be discussed below.

### **3.3 BANKS AND THE ECONOMY**

#### **3.3.1 Definition of a bank in the Zimbabwean context**

A bank is defined in the Zimbabwean Banking Act as a company registered or required to be so registered in terms of the Act for it to perform any class of banking business in Zimbabwe.<sup>183</sup>

Banking business is defined in the Act as;

'the business of accepting deposits withdrawable or repayable on demand or after a fixed period or after notice and the employment of those deposits, in whole or in part, by lending or any other means for the account and at the risk of the person accepting the deposits'.

---

<sup>178</sup>Falkena H, Bamber R, Llewellyn D & Store T (2001)

<sup>179</sup> Glossop K 'The Inherent Instability of the Financial System' (2011) 4 *The Journal of Business, Entrepreneurship & the Law* 503

<sup>180</sup>Kaufman G (1996) 18 & 39

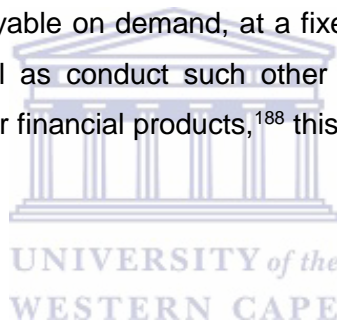
<sup>181</sup> Barth R, Gan J & Nolle DE (2009) 6

<sup>182</sup>Dhliwayo CL (2015) 13

<sup>183</sup> S 2(1) of Act 9 of 1999

A banking institution as defined above may not be registered in more than one of the five classes available for registration in Zimbabwe.<sup>184</sup> On registration, a banking institution is only permitted to conduct the banking activities listed on its registration certificate.<sup>185</sup> This list of activities also assists in defining a bank according to its functions. According to Cranston,<sup>186</sup> this list statutorily defines a bank and it must be articulated which activities on the list may be conducted by the institution for it to be considered a bank. It must further be detailed whether the said bank is restricted only to those specific and incidental activities. Cranston cautions that a list is bound to become outdated as the business of banks changes and advises that there be a mechanism for constantly updating the list. In terms of the Banking Act, it appears that banking institutions in Zimbabwe are not permitted to conduct all activities on the list but only those specified on its registration certificate and 'such other activities as may be prescribed'.<sup>187</sup>

From the foregoing, a bank in the Zimbabwean context may be defined as a company legally permitted to accept deposits repayable on demand, at a fixed time or after notice and loan the same in whole or in part as well as conduct such other activities incidental to its class of registration. Although offering other financial products,<sup>188</sup> this is the core business of commercial



<sup>184</sup> In terms of S6 (1) Act 9 of 1999 an institution may be registered as a: (a) commercial bank, (b) accepting house; (c) discount house; (d) finance house; (e) microfinance bank.

<sup>185</sup> The following are listed as banking activities in s7(1) Act 9 of 1999: (a) receiving deposits; (b) extending credit, including— (i) consumer and mortgage credit; and (ii) factoring, with or without recourse; and (iii) the financing of commercial transactions; and (iv) the recovery, by foreclosure or other means, of amounts so extended; and (v) forfeiting, that is to say, the medium-term discounting without recourse of bills, notes and other documents evidencing an exporter's claims on the person to whom the exports are sent; (c) buying and selling instruments, whether for the account of the banking institution concerned or for the account of its customers, including the underwriting of— (i) money market instruments including cheques, bills of exchange and certificates of deposit; and (ii) futures, options and other financial derivatives relating to debt securities or interest rates; and (iii) exchange and interest rate instruments; and (iv) debt securities and equity; (d) providing money transmission services; (e) subject to the Exchange Control Act [Chapter 22:05], buying and selling foreign currencies, including forward and option-type contracts for the future sale of foreign currencies; (f) issuing an administering means of payment, including credit cards, travellers' cheques and bankers' drafts; (g) money broking; (h) the safekeeping and administration of valuables, including securities; (i) providing services as a portfolio manager or adviser or as a financial agent or consultant; (j) financial leasing; (k) entering into or taking cessation of hire---purchase contracts in accordance with the Hire---Purchase Act [Chapter 14:09]; (l) buying and selling shares on behalf of customers; (m) providing credit reference services; (n) such other activities as may be prescribed.

<sup>186</sup> Cranston R (2002) 6

<sup>187</sup> S 7(1)(n) Act 9 of 1999

<sup>188</sup> Standard Chartered offers cash management, trade services, lending, treasury and custody services <https://www.sc.com/zw/about-us/en/>



banks<sup>189</sup> thus indicating the importance of commercial banks in Zimbabwe.<sup>190</sup> According to Jeanneau,<sup>191</sup> this is not unusual in a developing country as 'banks continue to have an advantage in the processing of information and the diversification of risk, which are central elements in financial intermediation'.

### 3.3.2 Importance of banks to the economy

It is submitted that banks are an integral component of the financial sector and economy due to the various roles they play thus making the constant collapse of banks in Zimbabwe cause for concern.<sup>192</sup> As financial intermediaries, banks ensure money is transferred from a surplus source to a needy source,<sup>193</sup> are the only source of finance for a large number of borrowers and manage the payments system.<sup>194</sup> According to Lovett,<sup>195</sup> they are channels through which 'production, savings, investment and efficient industrial development are facilitated'. Lovett further contends that with no exception, a healthy economic system demands that 'money, banks and financial intermediaries provide this service efficiently and reliably'. Jeanneau<sup>196</sup> is of the view that banks play an essential role in the distribution of economic resources as linchpins in the supply of capital and consequently in spurring on economic development.

Whilst Ndlovu<sup>197</sup> agrees with the general view that financial sector development is key to economic growth, he views Zimbabwe as an exception. Having conducted a study to establish the causal relationship between financial system developments and economic growth from a Zimbabwean perspective, he concludes that there is no evidence the financial sector makes a

---

<sup>189</sup>S2 of 9 of 1999 defines a commercial bank as 'a banking institution that conducts banking business in Zimbabwe and whose business mainly consists of the acceptance of deposits withdrawable by cheque or otherwise'; see also Matei M & Geambaşu C 'Considerations regarding the Direct Involvement of Banks in Capital Markets' (2010) 62 *Economic Sciences Series* 93;

<sup>190</sup>Sibindi AB, Bimha A 'Banking sector development and economic growth: evidence from Zimbabwe' (2014) 9 *Banks and Bank Systems* 54

<sup>191</sup>Jeanneau S 'Banking systems: characteristics and structural changes' (2007) *Bank for International Settlements* 3

<sup>192</sup>Prates MM (2013) 6

<sup>193</sup>Chagwiza W 'The Role of financial intermediaries in Zimbabwe's economic recovery: a robust analysis' (2012) 2 *Journal of Research in International Business and Management* 201

<sup>194</sup>Llewellyn D (1999) 13

<sup>195</sup>Lovett WA *Banking and Financial Institutions Law* 3 ed (1991) 1

<sup>196</sup>Jeanneau S (2007) 3

<sup>197</sup>Ndlovu G 'Financial Sector Development and Economic Growth: Evidence from Zimbabwe' (2013) 3 *International Journal of Economics and Financial Issues* 436 & 442

contribution to economic growth in Zimbabwe.<sup>198</sup> In explaining a possible cause for this, he refers to and agrees with Islam, Habib and Khan<sup>199</sup> who argue this to be because:

‘developing countries having their own socio-economic, political and institutional history which makes them different from each other as well as their developed counterparts, and thus the existence of a reverse causality between finance and growth.’<sup>200</sup>

After conducting a similar study to that of Ndlovu, Sibindi and Bimha<sup>201</sup> established what they term ‘a long run relationship’ between economic growth and banking sector development in Zimbabwe. They contend that economic growth stimulates banking sector development in Zimbabwe which will in turn provide the required and proper feedback to the economy. Their findings, therefore, indicate a quid pro quo relationship between banks and the economy. This view is also supported by the plans laid out by the Ministry of Finance to improve economic growth by increasing bank access to 90 percent of the population by 2020.<sup>202</sup> It is submitted that the importance of banks in an economy and this quid pro quo relationship is also illustrated by the reciprocal negative effects one has had on the other in Zimbabwe. At the start of the century, the economic calamities that attacked the nation contributed to bank collapses which in turn affected the economy leading to the current economic difficulties affecting bank operations in the present day.<sup>203</sup> The lack of confidence in the banking sector consequent to the frequent bank collapses amongst other factors has contributed to Zimbabwe being a cash economy. This has led to the present cash crisis in Zimbabwe. The cash withdrawal limits imposed by the RBZ in response to the current mass withdrawals to prevent bank runs have in turn had a negative effect on the economy consequent to failure by businesses to pay foreign suppliers to continue with production of goods and services.<sup>204</sup>

---

<sup>198</sup>Ndlovu G (2013) 442

<sup>199</sup>Islam R, Habib W & Khan H ‘A Time Series Analysis of Finance and Growth in Bangladesh’ (2004) 30 *The Bangladesh Development Studies* 124

<sup>200</sup>Ndlovu G (2013) 442

<sup>201</sup>Sibindi AB, Bimha A (2014) 57

<sup>202</sup>Marawanyika G and Latham B ‘Growth: Zimbabwe looks to ‘pillars of economy’ *IOL* 11 August 2016 available <http://www.iol.co.za/business-report/economy/growth-zimbabwe-looks-to-pillars-of-economy-2055739> (accessed 10 April 2017); Reserve Bank Of Zimbabwe *Monetary Policy Statement*: (2016) 51

<sup>203</sup> See paragraph 4 for a discussion on the causes of bank collapses

<sup>204</sup>Kumbuka D ‘Cash shortage is crushing Zimbabwe’s already embattled economy’ *Business Day* 7 February 2017 available at <https://www.businesslive.co.za/bd/world/africa/2017-02-07-cash-shortage-is-crushing-zimbabwes-already-embattled-economy/> (accessed 24 March 2017)

Kaufman<sup>205</sup> argues that whilst large scale bank failures aggravate economic downturns, they do not start the downturns. Whether bank failures aggravate or initiate economic downturns, it is submitted that the fact that they play a role in economic downturns means that for the sake of economic growth and possible stability, the financial sector ought to be stable. To decide how this can be achieved, a look into the causes of bank collapses in Zimbabwe is essential.

### 3.4 CAUSES OF BANK CRISES IN ZIMBABWE

According to Kaufman<sup>206</sup> a bank failure occurs when the market value of a bank's assets declines below the market value of its liabilities, making the market value of its capital negative. This, he states, results in losses to shareholders, depositors, unsecured creditors, and the deposit insurer. From its inception in 1892 when the first bank was established<sup>207</sup> until the late 1990s, the banking sector in Zimbabwe has no known record of bank collapses especially one that compares to the one witnessed from the late 1990s to date. The last two decades have been characterised by bank collapses with the first high profile collapse having occurred in 1997.<sup>208</sup> The most collapses occurred between 2003 and 2004.<sup>209</sup> A brief reflection on the history of events leading to the first wave of bank collapses is important for understanding the current events and in determining whether the current regulatory framework still suffices for the future stability of the sector. As aptly put across by Mohammed,<sup>210</sup> 'we cannot even understand our immediate world without knowledge of the past and the further we delve into history the deeper and broader will be our grasp of the present and insight into the future.'

The first high profile indigenous bank collapse serving as an omen of what was to come occurred in 1997. This was United Merchant Bank (UMB), an indigenous bank established in 1995.<sup>211</sup> It was one of the many banks able to infiltrate the sector consequent to economic reforms under

---

<sup>205</sup> Kaufman G (1996) 20

<sup>206</sup> Kaufman G (1996) 19

<sup>207</sup> Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015 available at <https://www.pressreader.com/zimbabwe/the-zimbabwe-independent/20150501/282454232546602> (accessed 23 March 2017); Standard Chartered Zimbabwe 'About us' available at <https://www.sc.com/zw/about-us/en/> (accessed 3 October 2017)

<sup>208</sup> Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015

<sup>209</sup> Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015

<sup>210</sup> Mohammed K 'The Role of History, Historiography and Historian in Nation Building' (2013) 2 *International Journal of Humanities and Social Science Invention* 53

<sup>211</sup> Block R 'Roger Boka Thrived as an Icon, Until His Bank Went Bust' *The Wall Street Journal* 8 September 1998 available at <http://www.wsj.com/articles/SB905209729755995000> (accessed 22 January 2017)

the Zimbabwe Economic Structural Adjustment Programme (ESAP)<sup>212</sup> a decade after independence.<sup>213</sup> In terms of financial reforms, the objectives of ESAP were to remove controls on the direction of bank lending and interest rates, liberalise the licensing of new banks and other financial institutions, improve delivery of financial services and remove legal barriers which inhibited financial institutions from operating across markets.<sup>214</sup> Prior to economic liberalisation, the banking sector was a regulated and protected one<sup>215</sup> as part of a regulated economy bequeathed<sup>216</sup> to Zimbabwe by the Rhodesian Government. The liberalisation process in the financial sector was motivated by the need to move away from what was considered to be an ineffective and monopolistic sector.<sup>217</sup> As a result of ESAP, entry into a sector previously commanded by foreign banks became easier for a new breed of indigenous entrepreneurs.<sup>218</sup>

Prima facie, it is submitted that it appears problems in the Zimbabwean banking sector commenced once there was deregulation through the ESAP program due to increased



<sup>212</sup>ESAP is a programme that was aimed at removing the regulatory controls that had been inherited by the new Zimbabwe after independence. It was implemented in a five-year period from 1991 to 1996. According to the World Bank, the objective of ESAP was to transform Zimbabwe's tightly controlled economic system to a more open, market-driven economy. The restructuring sought to promote higher growth and to reduce poverty and unemployment by carrying out domestic deregulation reforms among others. The focus was on the formal sector as the engine of growth. See 'Structural Adjustment and Zimbabwe's Poor' available at <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/15A937F6B215A053852567F5005D8B06> (accessed 3 September 2017); African Development Bank Group *Zimbabwe Structural Adjustment Programme - Project Performance Evaluation Report* (1997) 1.;

<sup>213</sup>Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015

<sup>214</sup>Chigumira G & Makocheke A 'Financial liberalisation and Crisis: Experience and lessons for Zimbabwe' (2013) Zimbabwe Economic Policy Analysis and Research Unit 11;

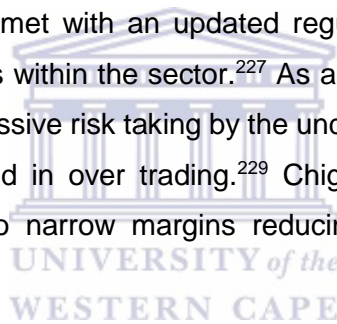
<sup>215</sup>Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015; see also African Development Bank Group *Zimbabwe Structural Adjustment Programme - Project Performance Evaluation Report* (1997) 1; Moyo T 'Financial Sector Liberalization And The Poor: A Critical Appraisal' Structural Adjustment Participatory Review International Network available at [http://www.saprin.org/zimbabwe/research/zim\\_fin\\_sect.pdf](http://www.saprin.org/zimbabwe/research/zim_fin_sect.pdf) (accessed 17 July 2017)

<sup>216</sup>African Development Bank Group *Zimbabwe Structural Adjustment Programme - Project Performance Evaluation Report* (1997) 1

<sup>217</sup>Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015

<sup>218</sup>Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015; Mambondiani LS *Corporate Governance Of Banks: Evidence From Zimbabwe's Banking Sector* (PHD Thesis, University of Manchester 2011) 71; Chigumira G & Masiyandima N 'Did Financial Sector Reform Result In Increased Savings and lending For the SMEs and the poor?' (2003) International Labour Organization IFLIP Research Paper 6

competition<sup>219</sup> in a small market.<sup>220</sup> Abel and Le Roux<sup>221</sup> argue that banking competition is important for economic growth, improved efficiency and improved access to finance. However, Falkena et al<sup>222</sup> differ and contend that although competition is good in the sense that it increases efficiency in the system, it is also detrimental in that it can cause instability. In Zimbabwe's case, it is submitted that it appears to have caused instability. Prior to 1991 and the ESAP reforms, the financial sector was made up of 21 financial institutions comprised of six commercial banks, two discount houses, three building societies, five finance houses and five merchant banks.<sup>223</sup> A central bank existed having been established prior to independence.<sup>224</sup> Following liberalisation, and by December 2003, indigenous banks had proliferated and the banking sector had ballooned. As at December 2003, there were 17 commercial banks, six merchant houses, seven finance houses, eight discount houses and five building societies bringing the total number of licensed financial institutions to 43.<sup>225</sup> It is reported that between 1992 and 2005, the RBZ issued more licences than had ever been issued from the time the first bank was established to 1892.<sup>226</sup> This expansion of the sector was not met with an updated regulatory and supervisory framework catering for the new developments within the sector.<sup>227</sup> As a result, according to Chigumira and Makochehanwa,<sup>228</sup> there was excessive risk taking by the under supervised banks which in some cases were said to have engaged in over trading.<sup>229</sup> Chigumira et al further argue that the increased competition also led to narrow margins reducing profitability and mounting non-



<sup>219</sup>Mutengezanwa M, Mauchi F & Njanike K, et al Pricing of Banking Products and Services: A Case Study of Commercial Banks in Zimbabwe 2011 1 (3) *Scholarly Journal of Business Administration* 48

<sup>220</sup> In 1990 the population of Zimbabwe was 10 484 771 and in 2004 it was 12 867 828 see <http://data.worldbank.org/country/zimbabwe> (accessed 29 March 2017). This therefore meant that by December 2014 for example, and hypothetically assuming every single Zimbabwean accounted for in the census had a bank account in one of the 17 banks which shared clients equally, it would therefore mean each of the 17 commercial banks had 756 931 clients as a maximum.

<sup>221</sup> Abel S & Le Roux P 'Assessing Banking Sector Competition in Zimbabwe Using a Panzar-Rosse Approach' (2016) 9(2) *Journal of Economic and Financial Science* 456

<sup>222</sup>Falkena H, Bamber R, Llewellyn D & Store T (2001)

<sup>223</sup>Nhavira J, Mudzonga E, & Mugocha E (2013) 5

<sup>224</sup> Reserve bank of Zimbabwe 'About us' available at <http://rbz.co.zw/about-us.html> (accessed 24 March 2017)

<sup>225</sup>Muranda Z 'Financial distress and corporate governance in Zimbabwean banks' (2006) 6 *The international Journal of Business in Society* 644

<sup>226</sup>Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015

<sup>227</sup>Chigumira G & Makochehanwa A (2013) 3

<sup>228</sup>Chigumira G & Makochehanwa A (2013) 3

<sup>229</sup> This is defined as a situation where a business rapidly expands operations without sufficient capital or resources to support the expansion. See Parkin S Booth & Co 2013 Newsletter

<http://www.parkinsbooth.co.uk/resources/newsletters/april-newsletter-2013.pdf> (accessed 3 October 2017)

Chapman C 'How do you know when you are overtrading?' (2015) available at <https://www.numitas.com/wp-content/uploads/kalins-pdf/singles/how-do-you-know-when-you-are-overtrading.pdf> (accessed 3 October 2017)



performing loans<sup>230</sup> in banks. It may be argued that the increased competition due to more financial institutions penetrating the sector made survival a struggle for some banks leading to unscrupulous activities to remain afloat thereby setting the scene for a sectoral calamity. Whether it was to stay afloat or out of excessive greed for profits, banks made investments in real estate, vehicles and stocks.<sup>231</sup> An instruction by the central bank to immediately offload these investments crashed the property market consequent to fire sales.<sup>232</sup> It has been argued that the risky investments made during this period are accredited to weak supervisory and regulatory frameworks.<sup>233</sup> In concurrence, it is submitted that had the RBZ had supervisory powers at the time, unscrupulous activities in the sector could have been detected in time thus avoiding their reveal in the form of a catastrophe. To avoid such activities, banks need to remain profitable. It is recommended that for protection of the consumers, there ought to be competition legislation specifically for the sector. Although banking legislation provides for mergers and acquisitions, it is only done where an institution is posing a threat to the sector.<sup>234</sup> It is recommended that mergers be encouraged where an increase of players in the sector has the potential to destabilise the sector. Whilst competition ought to be encouraged, it is submitted that it ought to be contained according to the market size for financial sector stability.

Also occurring in the same era were illegal farm invasions by war veterans forcing many productive commercial farmers to flee the country leaving behind debts owed to banks.<sup>235</sup> Whilst most banks had security for the loans mainly in the form of mortgages, the immediate divesting of land ownership to the state after it started expropriation of the commercial farms<sup>236</sup> meant that banks lost security for these loans. Failure to recover these debts, rising inflation and economic decline resulted in banks being unable to release depositor funds on demand.<sup>237</sup> This resulted in

---

<sup>230</sup> Hereafter NPLs

<sup>231</sup> Makoni TA 'What caused the Zimbabwe banking crises of 2003-4?' available at <https://nurturingchampions.com/2011/08/30/what-caused-the-zimbabwe-banking-crises-of-2003-4/> (accessed 2 December 2016)

<sup>232</sup> Chigumira G & Makochehanwa A (2013) 36; Mambondiani LS (2011) 72; Makoni TA 'What caused the Zimbabwe banking crises of 2003-4?' available at <https://nurturingchampions.com/2011/08/30/what-caused-the-zimbabwe-banking-crises-of-2003-4/> (accessed 2 December 2016)

<sup>233</sup> Chigumira G & Makochehanwa A (2013) 36

<sup>234</sup> S52A Act 9 of 1999

<sup>235</sup> 'Zimbabwe: Farming uncertainty continues' 19 August 2012 available at <http://reliefweb.int/report/zimbabwe/zimbabwe-farming-uncertainty-continues> (accessed 3 September 2017)

<sup>236</sup> Economic Commission for Africa *Economic Report on Africa - Tracking Performance and Progress* (2002) 123

<sup>237</sup> Shaw A 'Zimbabwe's cash woes growing more serious' *IOL News* 29 July 2003 available at <http://www.iol.co.za/news/africa/zimbabwes-cash-woes-growing-more-serious-110511> (accessed 2 February 2017)

depositors withdrawing and withholding their funds from banks in anticipation of default<sup>238</sup> thereby causing the first cash shortage in Zimbabwe. The situation was exacerbated by the central bank fuelling inflation through printing more money in response to the cash shortage.<sup>239</sup> This inflation reduced the purchasing power of all income earned in Zimbabwean dollars consequently making it difficult for most individuals and businesses to survive on a daily basis,<sup>240</sup> let alone make loan repayments. It is submitted that this contraction of deposits and expansion of NPLs contributed to the start of a tidal wave of bank collapses that would annihilate consumer confidence in the sector.<sup>241</sup>

On giving a reason as to why there were no bank collapses after independence between 1980 and 1990 before the economic reforms, Muranda<sup>242</sup> states that the survival and profitability of banks was guaranteed and tacitly suggests this to be because there was 'no dynamic and meaningful competition'. Mutasa<sup>243</sup> agrees with the view expressed by Robertson, an economist, who insinuated that the Ministry of Finance as the then licensing authority was partly to blame for the collapses after issuing licences to those 'less deserving'. Robertson is quoted as having stated that 'the quality of leadership elevated by a liberalisation policy to protect the country from big banks which could hold it to ransom, saw even the less deserving securing bank licences'.<sup>244</sup> He also imputes blame on the same bank leadership which extended loans to themselves, their relatives and friends which loans were consumed as opposed to being invested.<sup>245</sup> The political promotion of indigenisation by people such as the late Roger Boka,<sup>246</sup> founder of UMB, led to banks such as his obtaining licences through political favours and without meeting the adequate

<sup>238</sup>Shaw A 'Zimbabwe's cash woes growing more serious' *IOL News* 29 July 2003

<sup>239</sup>Makochehanwa A 'Zimbabwe's currency crisis: which currency to adopt in the aftermath of the multi-currency regime?' (2009) Munich Personal Research Papers in Economics Archive 5 available at [https://mpra.ub.uni-muenchen.de/22463/1/A\\_Makochehanwa\\_Zimbabwes\\_currency\\_crisis.pdf](https://mpra.ub.uni-muenchen.de/22463/1/A_Makochehanwa_Zimbabwes_currency_crisis.pdf) (accessed 2 February 2017)

; Reserve Bank of Zimbabwe *Bank Licensing, Supervision and Surveillance Annual Report* (2007) 6

<sup>240</sup>Dugger WC 'Life in Zimbabwe: Wait for Useless Money' *New York Times* 1 October 2008 available at [www.nytimes.com/africa/02zimbabwe](http://www.nytimes.com/africa/02zimbabwe)

<sup>241</sup>Makosana MS 'Customers' Adoption of Electronic Banking: An Investigation on the Commercial Banking Industry in Zimbabwe' (2014) 2 *International Journal of Economics, Commerce and Management* 3

<sup>242</sup>Muranda Z (2006) 644

<sup>243</sup>Mutasa B 'Why local banks are collapsing' *Southern Eye* 17 March 2015 available at <https://www.southerneye.co.zw/2015/03/17/why-local-banks-are-collapsing/> (accessed 25 March 2017)

<sup>244</sup>Mutasa B 'Why local banks are collapsing' *Southern Eye* 17 March 2015

<sup>245</sup> See also

<sup>246</sup>Sandu N 'Indigenous financial institutions under scrutiny' *The Standard* 9 January 2004 available at <http://www.thestandard.co.zw/2004/01/09/indigenous-financial-institutions-under-scrutiny/> (accessed 23 January 2017)



requirements.<sup>247</sup> To return the favour, these banks granted loans to the government and politicians,<sup>248</sup> which loans were sometimes unsecured and never repaid thus eventually increasing the quantity of bad loans.<sup>249</sup>

In reaction to the sectoral crisis, the RBZ outlined corrective measures it had and was putting in place to clear limitations. These limitations were considered to be 'major handicaps' in efforts 'to build market confidence in the financial sector and cultivate a smooth operation of the intermediation process between savers and investors'.<sup>250</sup> This was after it blamed industry players for the sectoral collapse which it argued was a result of;

'Extensive diversion of management's attention from the day to day running of the financial institutions, with more focus placed on running of commercial enterprises outside the job of running their banks; High prevalence of insider loans typified by generous advances to banks' directors, management or associated corporates; Failure by some banks to widely diversify the shareholding structures of their banks, leading to undue influence on the day to day operations by the owner-managers; Imprudent credit risk management frameworks, marked by over concentration of lending to a few associated groups of companies effectively increasing default risk; Evasion from core banking business, and tying disproportionately large sums of depositors' funds in speculative activities; deliberate utilisation of local currency liquidity in purchases of foreign currency from the illegal parallel and underground foreign exchange markets for funding of offshore activities and accounts; inadequate Board oversight, aggravated by cross-sitting by the same Directors on more than one board of financial institutions, which increased room for conflict of interest; Weak controls, guidelines, procedures and bank-wide risk management frameworks'.<sup>251</sup>

Njanike<sup>252</sup> agrees with some of causes listed by the RBZ and further attributes the bank collapses of 2003/2004 to poor credit risk management and the need by banks to rapidly expand in the

---

<sup>247</sup> 'Zimbabwe's banks Crisis breaks' *The Economist* 15 January 2004 available at <http://www.economist.com/node/2361065> (accessed 22 January 2017)

<sup>248</sup> Nyoka C 'Banks and the fallacy of supervision: The case of Zimbabwe' (2015) 10 *Banks and Bank Systems* 9

<sup>249</sup> 'Banking in Zimbabwe Thriving, for now' *The Economist* 8 February 2001 available at <http://www.economist.com/node/499865> (accessed 22 January 2017)

<sup>250</sup> These measures included (a) placement of some financial institutions under curatorship management; (b) enforcement of board and management changes; (c) establishment of the troubled bank fund, under which support to distressed banks was given to enable them to reposition their balance sheets and (d) closure of some institutions where the degree of insolvency was beyond reach of any salvage measures. See Reserve Bank Of Zimbabwe *Monetary Policy Statement: The First Quarter To 31 March* (2004) 14-17

<sup>251</sup> Reserve Bank of Zimbabwe *Monetary Policy Statement: The First Quarter To 31 March* (2004) 14 - 15

<sup>252</sup> Njanike K 'The Impact Of Effective Credit Risk Management On Bank Survival' (2009) 9 *Annals of the University of Petroşani, Economics* 182

absence of proper systems and controls. Nyoka<sup>253</sup> argues that on the basis of available evidence, the bank collapses between 2003 and 2015 can be attributed to poor supervisory tools. He further accuses the central bank of making a 'mockery of the supervisory process' through 'well calculated and premeditated' actions that commenced bank collapses in 2003. As with Nyoka, Makoni<sup>254</sup> imputes great fault to the central bank and argues that the measures put in place in 2003 by the central bank triggered the collapse of the banking sector. He argues that the regulations and directives by the RBZ were stringent and that it did not act in good faith. It is agreeable to an extent that the collapses were triggered by the RBZ. However, at the time measures were imposed, there was already rot in the sector due to the unscrupulous activities of banks. This was made possible by the loosely regulated environment they were operating in, thus, the scene for a catastrophe had already been set. Although there was an immediate need to address this rot, it is submitted that the manner in which the RBZ responded to the crisis ought to have been employed where all else had failed. As opposed to imposing harsh measures it is submitted dialogue could have assisted the parties in reaching a resolution which guarded systemic stability. Whilst a discussion on what should have been will not change what was, it is submitted that lessons from this period ought to assist in formulating future enforcement measures. It is recommended that in future, penalties be imposed where dialogue has failed. Both the regulated institutions and the regulator ought to work together hand in hand for the benefit of sectoral stability and consumer protection as opposed to having what may seemingly be an antagonistic relationship.

Commenting on the regulatory response by the RBZ to the 2004 crisis in the Zimbabwe financial sector, Magaisa<sup>255</sup> is of the opinion that whilst regulation is necessary, there is risk of overzealous behaviour in enacting regulations which will lead to a regulatory structure stifling, as opposed to, promoting business growth. He also questions the capacity of the state to enforce the established financial regulations and argues that this will lead to 'a culture of general disregard of laws' and might also fuel corrupt tendencies within the business sector.

---

<sup>253</sup>Nyoka C (2015) 15 & 16

<sup>254</sup>Makoni TA 'What Caused The Zimbabwe Banking Crises Of 2003-4?' available at <https://nurturingchampions.com/2011/08/30/what-caused-the-zimbabwe-banking-crises-of-2003-4/> (accessed 15 November 2016);

<sup>255</sup>Magaisa A 'Curbing excessive regulation in finance' *The Independent* 16 September 2005 <https://www.theindependent.co.zw/2005/09/16/curbing-excessive-regulation-in-finance/> (accessed 13 January 2017)

It can, therefore, be deduced that whilst the liberalisation of the financial sector in the early 1990s enhanced competition in an oligopolistic<sup>256</sup> sector, the absence of a supervisory authority and updated legal framework gave leeway for the new industry to flout the rules.<sup>257</sup> By the time legislation was updated and the RBZ assumed supervisory powers under the Banking Act, the banking sector was on the brink of collapse and had just witnessed one bank failure when UMB had its licence revoked in April 1998. This was due to failure to meet depositor claims<sup>258</sup> consequent to 'imprudent lending and debt-collection policies'.<sup>259</sup> It had only been in business for 3 years. Interesting to note is that it has been the indigenous banks<sup>260</sup> established after economic liberalisation that have been casualties.<sup>261</sup> This is not to say foreign owned banks were not negatively affected. However, unlike indigenous banks, there has been no record of an international bank collapsing in Zimbabwe to date. Given that the casualties of the 2003-2004 financial crisis were indigenous banks, it is submitted that the measures introduced by the RBZ in response to the crisis mainly affected the indigenous banks. Whilst indicating support for the existence of indigenous banks in the sector, the RBZ stated that this did not mean they were not to be reprimanded for failure to comply with regulations. An ultimatum to either 'shape-up to international standards or pack-up' was given to the indigenous banks.<sup>262</sup>

The resuscitation of the economy and boom that followed immediately after introduction of the multi-currency era brought some much needed stability to the economy especially the financial sector.<sup>263</sup> The need for loans increased as individuals and companies sought to give a lifeline to

---

<sup>256</sup> An oligopoly is defined as 'a market structure with a small number of sellers - small enough to require each seller to take into account its rivals' current actions and likely future responses to its actions see OECD Competition Committee *Oligopoly* (1999) 8; Stigler GJ 'A theory of Oligopoly' 72 1964) *The Journal of Political Economy* 44

<sup>257</sup> 'Deliver us from competition' *The Economist* 25 June 2009 available at <http://www.economist.com/node/13900071> (accessed 1 February 2017)

<sup>258</sup> Machipisa L 'Economy-Zimbabwe: panic grips the banking sector' *Inter Press Service News Agency* 6 May 1998 available at <http://www.ipsnews.net/1998/05/economy-zimbabwe-panic-grips-the-banking-sector/> (accessed 22 January 2017)

<sup>259</sup> Block R 'Roger Boka thrived as an icon, until his bank went bust' *The Wall Street Journal* 8 September 1998

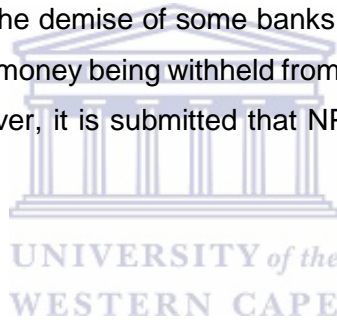
<sup>260</sup> Whilst the term 'indigenous' has been in use in relation to both natural and legal persons, the statutory definition was created in 2007. In terms of s2 of the Indigenisation and Economic Empowerment Act 14 of 2007, an indigenous Zimbabwean company is one in which indigenous Zimbabweans form the majority of the members or hold the controlling interest'. An indigenous Zimbabwean is defined as any person who, before the 18th April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person. From this, an indigenous bank may therefore be defined as a bank in which indigenous Zimbabweans hold the controlling interest.

<sup>261</sup> Mambondiani LS (2011) 72

<sup>262</sup> Reserve Bank of Zimbabwe *Monetary Policy Statement: The First Quarter To 31 March* (2004) 16 & 22

<sup>263</sup> Mugano G 'Cost benefit analysis of the dollarisation' *The Herald* 2 June 2016 available at [www.herald.co.zw/cost-benefit-analysis-of-dollarisation/](http://www.herald.co.zw/cost-benefit-analysis-of-dollarisation/)

their businesses and fund other endeavours that had been vanquished by inflation and other economic challenges as well as establish new ones. The loans, however, came at a hefty price in the form of interest rates as high as 30 per cent per month.<sup>264</sup> Whilst some loans were collateral based, others were only salary based and although this posed no challenges at first, non-secured loans would later sting banks due to a creeping cash shortage crisis, nationwide retrenchments, delayed salaries and salary cuts that resulted in borrowers defaulting on payments.<sup>265</sup> After conducting a study on the causes of bank collapses in the multi-currency era, Dzingirai and Katuka<sup>266</sup> find that failed banks had weak liquidity power and not enough capital to cushion potential risks. Others, such as Sandu, Muranda and Njanike have alleged, respectively, that lack of corporate governance structures; participation of banks in black market activities;<sup>267</sup> poor credit risk management<sup>268</sup> and abuse of depositor funds<sup>269</sup> are contributory factors to the collapse of banks in the present multi-currency era. In addition to the above, it is submitted that lack of confidence in the banking system and high bank charges in the absence of interest on deposits have been contributory factors in the demise of some banks in the multi-currency era.<sup>270</sup> This, it is further submitted, contributed to money being withheld from the sector thus reducing the money available for banks to loan. However, it is submitted that NPLs have been the wrecking ball of



<sup>264</sup>Mataranyika M 'Zimbabwe caps bank interest rates at 18%' *Fin24* 6 August 2015 available at <http://www.fin24.com/Economy/Zimbabwe-capsbank-interest-rates-at-18-20150805> (accessed 10 February 2017)

<sup>265</sup>Zim banks battle rising non-performing loans' *Zimbabwe Independent* 30 May 2016 available at <https://www.theindependent.co.zw/2016/05/30/zim-banks-battle-rising-non-performing-loans/> (accessed 3 February 2017); Kuwaza K 'Tetrad sinks under US\$26m liabilities' *Zimbabwe Independent* 13 March 2015 available at <https://www.theindependent.co.zw/2015/03/13/tetrad-sinks-under-us26m-liabilities/> (accessed 3 February 2017); Hungwe B 'Final demand: Zimbabwe's debt defaulters' *Free and Fair Zimbabwe Election* 12 September 2016 available at <http://zimbabwееlection.com/2016/09/12/final-demand-zimbabwes-debt-defaulters/> (accessed 3 February 2017); Sunday News Reporter 'Retrenchments haunt firms as banks strike' *The Sunday News* 15 November 2015 available at <http://www.sundaynews.co.zw/retrenchments-haunt-firms-as-banks-strike/> (accessed 3 February 2017)

<sup>266</sup>Dzingirai C & Katuka B 'Determinants of Bank Failures in Multiple-Currency Regime in Zimbabwe (2009–2012)' (2014) 6 *International Journal of Economics and Finance* 244

<sup>267</sup>Sandu N 'The changing face of Zim banking' *The Standard* 16 October 2016 available at <https://www.thestandard.co.zw/2016/10/16/changing-face-zim-banking/> (accessed 23 March 2017); Muranda Z (2006) 644

<sup>268</sup>Muranda Z ' (2006) 6 644; Sibanda G 'Banks to blame for non performing loans' *The Herald* 30 March 2017 available at <http://www.herald.co.zw/banks-to-blame-for-n0n-performing-loans/> (accessed 30 March 2017)

<sup>269</sup>Njanike K (2009) 179

<sup>270</sup>Charamba FC 'Banking Sector needs more reforms' *The Herald* 16 December 2016 available at <http://www.herald.co.zw/rbz-intervenes-on-bank-charges/> (accessed 16 December 2016)

many banks.<sup>271</sup> According to Abel and Le Roux,<sup>272</sup> the number of NPLs increased during the multi-currency era and they state this to be a result of risky lending to unsuitable borrowers consequent to increasing competition in the sector. Commenting on the causes of bank failures in the multi-currency era, Chigumira and Makochekanwa<sup>273</sup> argue that the failures and accumulation of NPLs were founded on moral hazard problems, in particular insider lending. Chikoko, Mutambanadzo and Vhimisai<sup>274</sup> argue that NPLs were a result of clients being overburdened after simultaneously borrowing from multiple financial institutions. They also state that the high NPLs were a result of banks seeking to grow their loan books as soon as the economy was dollarised resulting in loose lending standards in efforts to achieve this growth.<sup>275</sup> In 2012, it was announced by the then Finance Minister, Biti, that bad loans made up as much as 80 per cent of some banks' loan books. In 2014, the RBZ acknowledged that the percentage ratio of NPLs was alarming as some banks were at 76 per cent with others at 91 per cent as at June 2014.<sup>276</sup> Although legislation has been updated and the RBZ now has supervisory powers, it is apparent that this has not prevented bank collapses in the multicurrency era. It brings into question whether there is effective regulation to prevent these collapses and whether the RBZ is enforcing compliance with the regulations. Prior to discussing the effectiveness of current regulations and their enforcement, a look into the role of the RBZ will assist in understanding its role in maintaining systemic stability in the financial sector as a regulatory and supervisory authority.




---

<sup>271</sup> Business Reporter 'RBZ boss speaks on non-performing loans' *Newsday* 14 November 2014 available at <https://www.newsday.co.zw/2014/11/14/rbz-boss-speaks-non-performing-loans/> (accessed 10 April 2017); Business Reporter 'RBZ to reduce non-performing loans ratio' *The Herald* 17 July 2015 available at <http://www.herald.co.zw/rbz-to-reduce-non-performing-loans-ratio/> (accessed 17 February 2017); Bhebe N 'Non-performing loans haunt Zimbabwean banks' *The Africa Report* 23 April 2015 available at <http://www.theafricareport.com/Southern-Africa/non-performing-loans-haunt-zimbabwe-banks.html> (accessed 10 April 2017)

<sup>272</sup> Abel S & Le Roux P (2016) 457

<sup>273</sup> Chigumira G & Makochekanwa A (2013) 8

<sup>274</sup> Chikoko L, Mutambanadzo T & Vhimisai T 'Insights on Non-Performing Loans: Evidence from Zimbabwean Commercial Banks in a Dollarised Environment' (2012) 3 *Journal of Emerging Trends in Economics and Management Sciences* 885

<sup>275</sup> Chikoko L, Mutambanadzo T & Vhimisai T (2012) 885

<sup>276</sup> Kuwaza K 'High NPLs: A consequence of poor corporate governance, economic mismanagement' *Zimbabwe Independent* 10 October 2014 <https://www.theindependent.co.zw/2014/10/10/high-npls-consequence-poor-corporate-governance-economic-mismanagement/> (accessed 15 February 2017); Staff Writer 'US\$1bn fund to take over troubled banks' loans' *Zimbabwe Independent* 8 September 2012 available at <https://www.theindependent.co.zw/2012/09/08/us1bn-fund-to-take-over-troubled-banks-loans/> (accessed 15 February 2017)



### 3.5 RESERVE BANK OF ZIMBABWE FUNCTIONS AND POWERS

The RBZ is a body corporate established by the Reserve Bank of Zimbabwe Act.<sup>277</sup> It is capable of suing and being sued in its own name.<sup>278</sup> According to Nhavira and Pindiriri,<sup>279</sup> the RBZ is not an independent central bank and its objectives are, inter alia, not narrowly focused on price and financial stability. Among other functions, it is tasked with the responsibility of ensuring compliance with both prudential and market conduct regulations by regulated institutions. This includes monitoring, supervising and investigating banking institutions where there is a suspected breach of regulations.<sup>280</sup> This is done in pursuit of its mandate to 'foster the liquidity, solvency, stability and proper functioning of Zimbabwe's financial system' and 'to promote the smooth operation of the payment system'.<sup>281</sup> The RBZ derives its powers and functions as regulator and supervisor of financial institutions from both the RBZ Act and Banking Act.<sup>282</sup> As a regulator, the RBZ issues directions to be followed by banks regarding conduct of business activities.<sup>283</sup> These directions are in the form of rules binding only on the institutions regulated by the RBZ.<sup>284</sup> It performs its supervisory and monitoring function by; analysing documents submitted by an institution indicating the institution's operations and financial condition, inspection of documents and the obtaining of information at the premises of the banking institutions, and by other lawful means the RBZ deems appropriate.<sup>285</sup> As part of its monitoring and supervising functions, the RBZ is permitted to conduct spot checks at premises where securities, books, records, accounts or documents pertaining to the institution's banking business are kept.<sup>286</sup> It is further empowered to examine and make extracts or copies of the same<sup>287</sup> subject to the terms stipulated in the Banking Act. Where a bank is found to be in breach of the provisions of the Banking Act and or regulations, to prevent the banking institution becoming a PBI, the RBZ may take necessary and immediate action 'to preserve the integrity of the financial system of Zimbabwe'.<sup>288</sup> Such action includes requiring the bank concerned to develop and implement a capital restoration plan,

---

<sup>277</sup> S4 Reserve Bank of Zimbabwe Act 5 of 1999 as amended by Acts 22 of 2001, 16 of 2004 and 29 of 2004.

Hereafter RBZ Act

<sup>278</sup> S4 Act 5 of 1999

<sup>279</sup> 2011

<sup>280</sup> S45 Act 9 of 1999

<sup>281</sup> S6(1) (c) & (e) Act 5 of 1999

<sup>282</sup> S45 (1) (a) Act 9 of 1999 read with Preamble and s6(1) (c) & (e) Act 5 of 1999

<sup>283</sup> S17 Act 9 of 1999

<sup>284</sup> See paragraph 4.2

<sup>285</sup> S45 (2) (a) - (c) of Act 9 of 1999

<sup>286</sup> S47 (1) (b) Act 9 of 1999

<sup>287</sup> S47 (1) (e) Act 9 of 1999

<sup>288</sup> S48 (4) Act 9 of 1999

restricting the activities or investments of the bank and taking control of any assets of the bank or prohibiting or restricting the disposal or use of any such assets.<sup>289</sup>

Through loans and contingent commitments,<sup>290</sup> the RBZ assists troubled banks by providing extra reserves to banks.<sup>291</sup> This, again, is done to 'foster the liquidity, solvency, stability and proper functioning of Zimbabwe's financial system' and avoid a possible systemic collapse where there are mass cash withdrawals without injecting money back into the system.<sup>292</sup> This is known as a lender of last resort (LOLR) function and according to Mutasa and Nyoni,<sup>293</sup> it 'helps the central bank to create stability by preventing financial panics and bank runs spreading from one bank to the next due to a lack of liquidity'. It further instils confidence in the money and credit markets.<sup>294</sup> Since dollarisation, the RBZ has, however, not been performing this function<sup>295</sup> due to not being adequately capitalised in terms of the RBZ Act.<sup>296</sup> This has left the banking sector without a LOLR. It has been argued that the absence of a LOLR sets up the weaker banks for failure.<sup>297</sup> Muchemwa argues that the absence of a LOLR has resulted in cautious lending practices by banks given that the central bank is not able to financially assist the banks in troubled times. Discussing the liquidity crunch faced by Zimbabwe preceding the cash shortage crisis, he argued at the time that restoring the LOLR function was the only solution to the banking sector liquidity crunch.<sup>298</sup> According to Abel and Le Roux,<sup>299</sup> the absence of the LOLR facility has put domestic Zimbabwean banks at a competition disadvantage against foreign banks as indigenous banks have to rely on foreign sources for liquidity. They argue that coupled with the absence of an active interbank market, this has restricted competition between the foreign and domestic

---

<sup>289</sup> S48 (3) Act 9 of 1999

<sup>290</sup> S11 Act 5 of 1999

<sup>291</sup> Cranston R (2002) 110

<sup>292</sup> Cranston R (2002) 110

<sup>293</sup> Mutasa B & Nyoni M 'Central bank hopes to resume role of lender' *Southern Eye* available at <https://www.southerneye.co.zw/2015/02/09/central-bank-hopes-resume-role-lender/> (accessed 10 April 2017)

<sup>294</sup> Chagwiza W (2014) 61

<sup>295</sup> Zimnat Asset Management 'Liquidity and the lender of last resort' *The Herald* 3 April 2014 available at <http://www.herald.co.zw/liquidity-and-the-lender-of-last-resort/> (accessed 9 April 2017)

<sup>296</sup> S31 Act 5 of 1999 requires the RBZ to hold a certain amount of capital. However, currently the RBZ is not adequately capitalised and is in need of capital injection to perform its function of LOLR; see also Chagwiza W (2014) 61; Zimnat Asset Management 'Liquidity and the lender of last resort' *The Herald* 3 April 2014

<sup>297</sup> The Source 'The curse of Zimbabwe's indigenous banks' *Newsday* 16 December 2013 available at <https://www.newsday.co.zw/2013/12/16/curse-zimbabwes-indigenous-banks/>

<sup>298</sup> Muchemwa S 'Liquidity and the lender of last resort' *The Herald* 3 April 2014 available at <http://www.herald.co.zw/liquidity-and-the-lender-of-last-resort/> (accessed 4 May 2017)

<sup>299</sup> Abel S & Le Roux P (2016) 466



banks. Chigumira and Makochehanwa<sup>300</sup> argue that the expectation that the Government will bail out a distressed bank may weaken incentives of bank owners to manage their asset portfolio prudently. It is agreeable that the LOLR function comes with a moral hazard risk. However, it is submitted that for the sake of stability, bank collapses must be avoided where possible. As opposed to bailing out a financially distressed bank, it is recommended that mergers and acquisitions be encouraged in such situations to avoid a collapse. This must, however, be done within set competition perimeters.

As a supervisor, the RBZ has in the past been accused of not being efficient in responding to issues of market conduct and protecting bank customers from the greedy behaviour of financial sector players. These issues have been alleged to be factors that 'drove many from the financial system and encouraged the reversion of the Zimbabwe economy to a more primitive one reliant on cash-based-transactions'.<sup>301</sup> It has been argued that the RBZ becomes involved when it is too late and after the bank assets 'have been stripped' thereby prejudicing depositors and other creditors.<sup>302</sup> It is submitted that were the RBZ to effectively execute its role as a supervisor, many problems could be detected, diagnosed and possibly cured in the early stage thus avoiding collapses. The legislation to be enforced must also sufficiently outline the prudential requirements to be complied with by banks. This leads to the question of whether the current legislation encapsulates the prudential requirements necessary for sectoral stability. Following, is a discussion of the current regulations to address this question.

### **3.6 BANK REGULATION IN ZIMBABWE**

Barth, Gan and Nolle<sup>303</sup> argue that the roles played by banks 'in reducing transaction costs, acting as indicators to investors and providing liquidity' sets them apart from other financial institutions thus making regulation and supervision essential. As previously discussed, whilst the banking sector grew rapidly, banking legislation remained unchanged for some time. In force until 1999 was the 1965 Banking Act which gave the central bank no supervisory powers. From its promulgation, the Banking Act has had several amendments<sup>304</sup> made over the years with the most

---

<sup>300</sup>Chigumira G &Makochehanwa A (2013) 12

<sup>301</sup>Nhavira J, Mudzonga E, & Mugocha E (2013)6

<sup>302</sup>Chawafambira K 'Depositors call for RBZ protection' Weekend Post 27 March 2015 available at <http://www.weekendpost.co.zw/articles/2015/03/27/depositors-call-for-rbz-protection> (accessed 12 June 2017)

<sup>303</sup>Barth R, Gan J & Nolle DE (2009) 6

<sup>304</sup> The Act has been amended by the following; Act 9/1999, 22/2001 (s. 4), 12/2002, 4/2004, 16/2004, 1/2005, 6/2005, 3/2009 (s. 54), 5/2011 (s. 16) and most recently Amendment Act 2015

recent being under the Banking Amendment Act 2015.<sup>305</sup> In the Amendment Act, various provisions in the principal Act as well as other ancillary Acts<sup>306</sup> have either been abrogated or promulgated due to the need for improving the legal and regulatory environment.<sup>307</sup>

Among other objectives, the Banking Act was promulgated to 'provide for the registration, supervision and regulation of persons conducting banking business and financial activities in Zimbabwe'.<sup>308</sup> Whilst financial activities are not defined for purposes of the Act, banking business is defined as;

'the business of accepting deposits withdrawable or repayable on demand or after a fixed period or after notice and the employment of those deposits, in whole or in part, by lending or any other means for the account and at the risk of the person accepting the deposits'.<sup>309</sup>

Although not specified whether 'persons' for purposes of application of the Act refers to natural or juristic persons, the definition of a banking institution<sup>310</sup> read with s6(1)<sup>311</sup> of the Act leads to the conclusion that application of the Act is limited to persons juristic in nature. The Act does not, however, apply to all juristic persons conducting banking business and financial activities. Exceptions are listed in s3 (1) of the Banking Act.<sup>312</sup> Ancillary to the Banking Act are regulations issued under Statutory Instrument 205 of 2000.<sup>313</sup> These regulations relate to assets, liabilities and conduct of financial affairs of the regulated institutions and are to be complied with by all.<sup>314</sup> It is from the Act and these regulations that banking institutions derive obligations to protect their customers and maintain sectoral stability by following the set prudential and market conduct regulations.

---

<sup>305</sup> Hereafter Amendment Act 2015

<sup>306</sup> Preamble of the Banking Amendment Act 2015

<sup>307</sup> Nyamabvu G 'Yet another bank forced to shut down' *New Zimbabwe* 27 July 2012 available at <http://www.newzimbabwe.com/news-8621-Yet%20another%20bank%20forced%20to%20close/news.aspx> (accessed 6 April 2017)

<sup>308</sup> Preamble of Act 9 of 1999

<sup>309</sup> S7(1) Act 9 of 1999

<sup>310</sup> See paragraph 2.3.1

<sup>311</sup> In terms of s6(1) of Act 9 of 1999, there are 5 classes of banking institutions which can be registered in Zimbabwe namely; a commercial bank, an accepting house, a discount house, a finance house and a microfinance bank.

<sup>312</sup> The Act does not apply to the Post Office Savings Bank, a body corporate established or constituted directly by any enactment, a building society registered in terms of the Building Societies Act and a co-operative society registered in terms of the Co-operative Societies Act or Companies Act

<sup>313</sup> Hereafter SI 205 of 2000

<sup>314</sup> S31 read with s81 of Act 9 of 1999

For the Act and regulations to apply to an institution, it must be registered.<sup>315</sup> Registration of a bank is effected by the Registrar of banks in consultation with the Minister, through the Governor of the RBZ, and the DPC.<sup>316</sup> On being registered, a bank may only conduct the approved banking business and activities as specified in its registration certificate.<sup>317</sup> Conducting banking activities prior to registration or conducting banking business in a class it is not registered in is a criminal offence attracting a fine and or a maximum 5 year imprisonment term.<sup>318</sup> Further to this, the RBZ may apply to the High court for a prohibitory order to avoid a repetition or continuation of the offence.<sup>319</sup> After registration but prior to commencing operations, the RBZ must be satisfied that the bank has an adequate system to detect and prevent money-laundering including the financing of terrorism. This is in addition to an adequate corporate governance framework and a management system, including risk management.<sup>320</sup> Commencing operations prior to satisfying these requirements is an offence punishable by imposition of a fine.<sup>321</sup> It is recommended that measures be put in place to completely avoid a situation where operations commence without meeting the requirements.

Once granted permission to commence operations, a bank is required do so whilst adhering to 'sound administrative and accounting practices and procedures ... proper risk management policies ... the conditions of its registration and with any directions given to it by the RBZ or the Registrar'<sup>322</sup> in terms of the Act. Whilst it is required that those tasked with operating the systems and procedures in the bank be duly qualified and experienced, both the Act and regulations make no mention of the minimum qualifications. This, therefore leaves it to the RBZ to solely determine what it deems as properly qualified and experienced.<sup>323</sup> It is submitted that failure to provide a template for this provision may present challenges as it may eliminate consistency in its application by the RBZ.

In what appears to be an effort to avoid NPLs arising from insider loans, s35 (2) of the Banking Act stipulates the conditions under which loans may be advanced to a banking institution's

---

<sup>315</sup> S5 Act 9 of 1999

<sup>316</sup> S8 Act 9 of 1999

<sup>317</sup> S 7 & 34 Act 9 of 1999

<sup>318</sup> S 5(3) Act 9 of 1999

<sup>319</sup> S63 (1) Act 9 of 1999

<sup>320</sup> S 16(1)(a) Act 9 of 1999

<sup>321</sup> S16 (2) Act 9 of 1999

<sup>322</sup> S 17 of Act 9 of 1999

<sup>323</sup> S 16(1)(b) Act 9 of 1999 read with s 5 of SI 205/2000

principal officers or directors, to persons holding what is considered a significant interest in the banking institution and to any of their close relatives.<sup>324</sup> In terms of the said provision, loans may only be advanced provided it is under the same terms and conditions as when a loan is advanced to an ordinary customer. Further, the loan may only be advanced where;

- 'the transaction has been approved by the board of the banking institution (without the participation of any director or principal officer to whom the credit is sought to be extended in the decision to approve the extension of the credit);
- the credit does not exceed ten per cent of the paid-up equity capital of the banking institution;
- the credit is covered by one hundred per cent collateral; and
- the credit is deducted from the paid-up equity capital of the banking institution'.<sup>325</sup>

Extension of a loan in violation of the above requirements renders the loan agreement voidable at the instance of the board of the banking institution or the Registrar.<sup>326</sup> Once the agreement is rendered voidable, the credit including interest must be paid within a stipulated time.<sup>327</sup> Failure to repay the money attracts a civil penalty of US\$50 (subject to change) for each day the institution, director, shareholder or principal officer remains in default.<sup>328</sup> In the event that the civil penalty is not complied with within 181 days, criminal proceedings will be instituted attracting a fine and or imprisonment on conviction of the offender.<sup>329</sup> Property acquired with a loan extended in breach of the aforementioned provisions including income received from the same is subject to seizure by the RBZ. This is after it has been categorised as tainted and obtained through commission of a serious offence in terms of s80 of the Money Laundering and Proceeds of Crime Act 4 of 2013.

---

<sup>324</sup>In terms of s2 Act 9 of 1999 as amended by Amendment Act 2015, a close relative in relation to any person is defined as a spouse, a child, step-child, parent or step-parent and the spouse of any of these persons

<sup>325</sup> S35 (3) Act 9 of 1999

<sup>326</sup> S35 (6) Act 9 of 1999

<sup>327</sup> S35 (7) (b) (ii) Act 9 of 1999

<sup>328</sup> S35 (7) (b) (ii) Act 9 of 1999

<sup>329</sup> S35 (7) (c) Act 9 of 1999

Concerning capital reserves, each bank is required to maintain a prescribed minimum<sup>330</sup> to minimise risk taking<sup>331</sup> and for purposes of supervision and regulation.<sup>332</sup> The said reserves are to be maintained by the RBZ.<sup>333</sup> According to Chikoko and Le Roux;<sup>334</sup>

‘adequate capital supports future growth, fosters public confidence in the bank’s condition, provides the capacity under the bank’s legal lending limit to serve customers’ needs, and protects the bank from unexpected losses’.

In 2012, the RBZ announced new prescribed minimum capital reserves of up to USD100 million and a June 2014 deadline for banks to comply.<sup>335</sup> According to the Chinamasa,<sup>336</sup> this was motivated by ‘the need to strengthen the regulatory and supervisory framework as well as enhance financial stability’. Although Zimbabwe is not a member of the Basel Committee on Banking Supervision (BCBS),<sup>337</sup> the new prescribed capital reserves are said to be in line with the international standard set by the Basel II Capital Accord framework<sup>338</sup> approved by the BCBS in June 2004. According to Gottschalk and Griffith-Jones,<sup>339</sup> the main purpose of the Basel II accord is to ‘strengthen the soundness and stability of the international banking system, through

---

<sup>330</sup> In terms of s2 Act 9 of 1999, ‘minimum capital means capital representing a permanent commitment of funds by the shareholders of the banking institution (net of any loans and advances given to an insider and borrowed capital) which is available to meet losses incurred without imposing a fixed unavoidable charge on the institution’s earnings’

<sup>331</sup> Chinoda T, Chingombe C & Chawuruka P ‘The Impact Of Minimum Capital Requirements On Performance Of Commercial Banks In Zimbabwe’ (2015) 6 *Journal of Economics and Finance* 60; See also Chikoko L & Le Roux P ‘The Impact of Minimum Capital Requirements on Zimbabwe Commercial Banks Lending’ (2013) 2 (3) *International Journal of Finance and Accounting* 132

<sup>332</sup> Jabangwe J & Kadenge PG ‘An Investigation of the Relationship between Capital Levels and the Performance of Banks in Zimbabwe from 2009 to 2013’ *Botswana Journal of Economics* 69

<sup>333</sup> Ss29 & 30 of Act 9 of 1999 read with s12 of SI 205/2000

<sup>334</sup> Chikoko & Le Roux ‘The Impact of Minimum Capital Requirements on Zimbabwe Commercial Banks Lending’ (2013) 2 (3) *International Journal of Finance and Accounting* 132

<sup>335</sup> Business Reporter ‘RBZ raises capital requirements tenfold’ New Zimbabwe 31 July 2012 available at <http://www.newzimbabwe.com/business-8653-RBZ+raises+bank+capital+requirements/business.aspx> (accessed 6 April 2017)

<sup>336</sup> Kachembere J ‘6 banks fail to meet RBZ minimum capitalisation’ *Daily News* 3 December 2014 available at <https://www.dailynews.co.zw/articles/2014/12/03/6-banks-fail-to-meet-rbz-minimum-capitalisation> (accessed 6 April 2017)

<sup>337</sup> The BCBS is part of the Bank of International Settlements and is responsible for setting the global standard for prudential bank regulation and providing a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability’. See ‘About the Basel Committee’ available at <http://www.bis.org/bcbs/about.htm?m=3%7C14%7C573> (accessed 9 July 2017); ‘About the BIS – overview’ available at <http://www.bis.org/about/index.htm?m=1%7C> (accessed 9 July 2017); There are currently 45 institutions from 28 countries/jurisdictions which are members excluding Zimbabwe. See Basel Committee membership available at <http://www.bis.org/bcbs/membership.htm> (accessed 9 July 2017)

<sup>338</sup> Chinoda T, Chingombe C & Chawuruka P (2015) 60

<sup>339</sup> Gottschalk R & Griffith-Jones S *Review of Basel II Implementation in Low-Income Countries Institute of Development Studies Report* (2006) 6

encouraging banks to improve their risk management practices'. It appears that it is with this purpose in mind that the RBZ set the new capital requirements. However, at the end of September 2014, three months well after the deadline to meet the capital requirements, only 14 of the 20 banks in operation at the time had complied.<sup>340</sup> Although the deadline was extended to 2020, it was reported in March 2017 that only two of the 13 commercial banks in operation had complied.<sup>341</sup> Sibanda and Chikoko<sup>342</sup> argue that the new capital requirements combined 'with a low savings culture and increased loan impairments in the economy' are likely to worsen bank failures. They are of the view that the requirements are steep and argue that they are likely to cause bank liquidations leading to a new banking crisis should banks fail to raise new capital. They are, however, of the opinion that those that raise the capital will be able to survive crises. Dzingirai and Katuka<sup>343</sup> argue that the central bank must impose high liquidity and capital requirements and the regulations must be kept high given existence of research proving that most of the failed banks in the multi-currency era had weak liquidity power and not enough capital to cushion potential risks. They also argue that these capital requirements must be imposed based on each bank's characteristics rather than applying the one-size fits-all approach currently used. Barth, Caprio and Levine<sup>344</sup> opine that 'capital regulations may be especially important in countries with weak official supervisory powers, or a regulatory environment that does not spur private monitoring'. After conducting a study to analyse the connection of minimum capital requirements with commercial bank performance in Zimbabwe, Mbizi<sup>345</sup> arrived at the conclusion that protection of bank creditors and depositors in the event of a bank failure was a 'major reason' for bank capital regulations. Although he states another purpose of capital requirements as being to maintain bank safety and soundness by providing 'a buffer against losses for banks' and discourage risk taking by banks, he asserts that protection of 'defenceless customers' in the event of a bank failure is the most popular reason for the minimum capital requirements.

---

<sup>340</sup> Reserve Bank Of Zimbabwe *Banking Sector Report For Quarter Ended 31 March* (2014)

<sup>341</sup> Kaduwo K 'Zimbabwe: Assessing U.S.\$100 Million Capital Requirement for Local Banks' *Zimbabwe Independent* 10 March 2017 available at <https://www.theindependent.co.zw/2017/03/10/bankers-must-held-liaable/> (accessed 10 March 2017)

<sup>342</sup> Sibanda M & Chikoko C 'An Evaluation of Banking Sector Regulatory Capital in a Multicurrency Economy: A Case for Zimbabwe' (2014) 5 *J Economics* 72

<sup>343</sup> Dzingirai C & Katuka B (2014) 244

<sup>344</sup> Barth JR, Caprio G & Levine R 'Bank regulation and supervision: what works best?' (2004) 13 *Journal of Financial Intermediation* 237

<sup>345</sup> Mbizi R 'An Analysis of the Impact of Minimum Capital Requirements on Commercial Bank Performance in Zimbabwe' 1 (2012) *International Journal of Independent Research and Studies* 131



In addition to regulations regarding capital requirements are those concerned with the assets and liabilities of banking institutions and other pertinent issues regarding their conduct of the financial affairs.<sup>346</sup> In conducting banking business and on a monthly basis, banks must furnish the RBZ with accounting, financial statements and other relevant statements indicating the financial operations of the banking institution and its financial position.<sup>347</sup> It is submitted that strict compliance with this provision keeps the RBZ updated on an institution's financial standing thus allowing the RBZ to detect signs of trouble at an early stage. Failure to provide these statements leads to an investigation. In terms of the Act, an investigation will be carried out where:

- the institution has failed to supply the statements;
- the bank has supplied incorrect or incomplete information;
- the RBZ has information that the officers, employees or agents of the bank have failed to comply with provisions;
- an auditor recommends correction of an irregularity and correction is not made;
- the RBZ suspects the commission of a criminal offence;
- the rights of depositors are being prejudiced; and or where;
- the supervisor is prevented from carrying out duties at the bank.<sup>348</sup>

On conclusion of the investigation and based on its findings, the RBZ may issue a warning or impose one of the penalties listed in s48 of the Banking Act.<sup>349</sup> In extreme cases, the RBZ in consultation with the DPC, may have the institution placed under curatorship or have its licence cancelled.<sup>350</sup>

Mugwati et al<sup>351</sup> contend that the financial services sector has suffered from weak policies resulting in disharmony in the sector due to 'numerous legal instruments' and 'various regulatory frameworks' making up the legal framework in Zimbabwe. They are of the opinion that this is what led to the curatorship of some institutions subsequent to their failure to implement and abide by corporate governance principles. Nyoka<sup>352</sup> identifies weaknesses in the current regulatory framework and advocates for a stronger one for banks to: be capitalised; have strong credit risk management and good corporate governance systems; and ensure there is no concentration of

---

<sup>346</sup> S31 of Act 9 of 1999

<sup>347</sup> S38 of Act 9 of 1999 read with ss17 & 18 SI 205 of 2000

<sup>348</sup> S49 (a)-(h) of Act 9 of 1999

<sup>349</sup> See paragraph 4.4

<sup>350</sup> S53 of Act 9 of 1999 read with Amendment Act 2015

<sup>351</sup> Mugwati MZ, Nkala D & Mukanganiki C (2013) 487

<sup>352</sup> Nyoka C (2015) 15 & 16



bank ownership while curbing the unfavourable effect of moral hazard. He argues that on the basis of available evidence, the bank collapses between 2003 and 2015 can be attributed to poor supervisory tools and that the central bank made a 'mockery of the supervisory process' through 'well calculated and premeditated' actions that commenced bank collapses in 2003. However, as opposed to calling for a change in the regulatory model, he recommends changes within the current model including calling for the regulatory bodies to be relieved from political influence which he says is responsible for appointment of inexperienced staff not familiar with the products they regulate. Gosho<sup>353</sup> is of the view that the regulatory model in Zimbabwe is marred by poor coordination between the regulators themselves and recommends the twin peaks model<sup>354</sup> of financial regulation. Under the twin peaks model, one regulator performs the safety and soundness supervision function while the other focuses on conduct of business regulation. Gosho argues that this brings the entire financial system together and cuts costs attached to the institutional model. He suggests the establishment of a Financial Services Board to oversee the operations of the prudential supervision regulators as well as those for conduct of business operations. The RBZ will be part of the prudential regulation board concerned with ensuring financial stability in the economy while performing its LOLR function.

Nhavira, Mudzonga and Mugocha<sup>355</sup> are also of the opinion that the regulatory and supervisory system currently in place is no longer relevant for Zimbabwe. This, they argue, is evidenced by bank failures due to corporate governance failures, betrayal of fiduciary responsibilities and loss of public confidence in the system. They argue in favour of the twin peaks model as opposed to maintaining the silos model. They, however, fail to make a comparative analysis of why one is suitable over the other in Zimbabwe thus justifying its implementation. Their support for the twin peaks regulatory model is on one hand hinged on competing with South Africa for investment and on the other, Zimbabwe's ranking in financial market development, lack of legislation addressing consumer issues at the time and securities markets 'transcending right across the financial system'. They also state that the Greece and Cyprus banking sectors collapsed due to having multiple regulators similar to Zimbabwe and failure to adopt a macro prudential approach required in terms of the model. However, whilst the two countries may have had a similar regulatory

---

<sup>353</sup>Gosho T 'Is the financial and the supervisory, regulatory system in in Zimbabwe still appropriate? Available at <https://www.scribd.com/document/145273574/Regulation-of-Financial-System>(accessed 2 July 2017)

<sup>354</sup>This model is defined as a form of regulation by objective, were there is a separation of regulatory functions between two regulators. See Botha E & Makina D (2011) 30; South Africa National Treasury *Twin Peaks in South Africa: Response and Explanatory Document* (2014) 7

<sup>355</sup>Nhavira J, Mudzonga E, & Mugocha E (2013) 48

models, it is probable that there may have been conditions specific to the two countries contributing to the banking crisis which conditions and such factors may not be found in Zimbabwe. Unless established that exactly the same factors resulting in the Greece and Cyprus collapses are present in Zimbabwe with the three countries having the exact same conditions, it is not justifiable to base changes to the regulatory framework on the problems of other countries.

Rusike<sup>356</sup> discusses some of the available alternatives to the silos model with justification as to why Zimbabwe ought to adopt a different regulatory model. In arguing for an alternative model, he states that a financial group operating in three different financial industries is likely to face challenges and or confusion given that in such a case it has three different regulators. In addition, he argues that each institution may be viewed as a separate entity from its holding company because of the different regulators. Botha and Makina<sup>357</sup> argue that while 'most countries have moved from the silo based approach to financial regulation, there is no agreement on the best regulatory structure a country should adopt. They, however, cite the shortcomings of the silos model especially with regard to regulating financial conglomerates. They argue that there is inconsistency when a financial conglomerate or group operates in the three main industries of the sector such as banking, insurance and securities sectors. Such a financial group would then be regulated by three different regulators. They argue that this allows regulatory arbitrage whereby stringent regulation in one sector is counteracted by moving operations to sectors where regulation is not as stringent. Weighing in on the debate of a change in the Zimbabwean regulatory framework, Choruma<sup>358</sup> argues that Zimbabwe's economy is small and not complicated enough to require multiple regulators. He advocates for a dual regulatory framework which he states to be the best solution to strengthen the regulatory system in Zimbabwe. Under the dual framework, he argues that whilst the RBZ continues with banking supervision there ought to be the creation of a new regulatory authority such as a Financial Services Authority Zimbabwe to regulate all other financial services. Among others, he lists investor, depositor and consumer protection as advantages of the dual regulatory framework. Choruma<sup>359</sup> further cites the following as disadvantages of fragmented regulation of the Zimbabwe financial services sector;

---

<sup>356</sup>Rusike G 'Rethinking financial sector regulation' *News Day* 9 June 2011 available at <https://www.newsday.co.zw/2011/06/09/2011-06-09-rethinking-financial-sector-regulation/> (accessed 3 April 2017)

<sup>357</sup> Botha E & Makina D (2011) 27 & 30

<sup>358</sup> Choruma A 'Call for harmonised regulatory framework' *The Financial Gazette* 22 February 2016 available at <http://www.financialgazette.co.zw/call-for-harmonised-regulatory-framework/> (accessed 10 April 2017)

<sup>359</sup> Choruma A 'Call for reform in financial services' *The Financial Gazette* 11 February 2016

'Duplication of functions among regulators; Uneconomic uses of limited national resources as governance and management structures have to be created for each regulator; Increase in bureaucracy as market has to meet requirements of different regulators; Market confusion as to which regulator is responsible for what aspects of regulation; Complexity of the regulatory system arising from existence of multiple regulators, Creation of legal loopholes in the monitoring system, which weakens supervision and enforcement; Ineffective control/regulation of diversified financial groups, institutional investors and mobile money transfer operators ...; Higher compliance costs for companies; Lack of accountability for market failures; Inadequate consumer/investor protection; and omission of some players from regulation'.

Although agreeable that the institutional model of regulation increases costs for institutions and poses challenges in regulating institutions operating in more than one sector, it is submitted that bank failures are not evidence of the faults of the model. From the causes of bank failures discussed above, none have been imputed on the regulatory model. The bank failures have been a result of defective or delayed legislation, failure to comply with sound bank practices by banks and the regulators enforcement technique, or lack of it, to bank crises. It is submitted that the change currently required is the manner in which the RBZ conducts its supervisory and enforcement functions. This requires the RBZ to be timeous in its responding to a crisis. This will allow detection of problems at an early stage and avoid systemic instability, building consumer confidence as a result. Unless and until the RBZ becomes a more effective regulator and supervisor, it is submitted that even if the model was changed to the twin peaks, as long as the RBZ remains a supervisor, the same problems being faced by the sector will continue. However, if the problems being faced under the current model are addressed, a twin peak model might work in the future. It is recommended that regulation continues under the current model with changes being made to make it more efficient. The regulator needs to exercise its supervisory role more effectively and enforce the current regulations in place.

### **3.7 CONCLUSION**

The main objective of this chapter was to investigate whether the regulations currently in place are effective in ensuring systemic stability by preventing bank collapses in Zimbabwe. It was established that the Zimbabwe financial sector is comprised of insurance companies, pension funds, capital markets, payment systems, microfinance institutions, banks, development finance institutions, credit unions, housing cooperatives, venture capital companies and asset management companies. It was further established that the financial sector is regulated in terms

of a silos model whereby regulation and supervision is determined by the type or function of an institution. Regulation was defined as a set of binding rules issued by either a private or public body. Arguments for and against regulation were presented. However, to establish whether bank regulation is of necessity, a bank was defined in the Zimbabwean context to distinguish it from other financial institutions. This was to assist in determining the economic importance of banks in the economy. It was established that there is a quid pro quo relationship between the economy and the financial sector. This conclusion is based on how the economic calamities that affected the nation contributed to bank collapses, which in turn affected the economy resulting in the current economic difficulties affecting bank operations in the present day. The lack of confidence in the banking sector consequent to the frequent bank collapses amongst other factors has contributed to Zimbabwe being a cash economy. An argument by Kaufman was raised to the effect that whilst large scale bank failures aggravate economic downturns, they do not start the downturns. It was argued that the fact that they have a role to play in economic downturns means that for the sake of economic growth and possible stability, the financial sector ought to be stable. The causes of bank collapses were discussed to decide how this stability can be achieved. It was argued that consequent to ESAP there was increased competition in a small market in the absence of an updated regulatory and supervisory framework. Prior to the financial sector reforms under ESAP, competition in the sector was low and banks were guaranteed profit. The banks that entered into the sector were indigenous and some entered based on political favours without meeting all requirements. This increased competition made it difficult for most banks to earn profits leading to speculative activities and investments in vehicles and immovable property by banks. The regulatory response by the RBZ to these activities was said to have contributed to the wave of bank collapses which occurred between 2003 and 2004. The RBZ, however, blamed industry players for the collapse. Although deemed harsh, it was argued that action was required to bring an end to these activities. It was concluded that both the RBZ and banks had a role to play in the collapse and it was recommended that imposition of penalties be used where dialogue has failed. It was also recommended that for protection of the consumers, there ought to be competition legislation specifically for the sector. Although banking legislation provides for mergers and acquisitions, it is only done where an institution is posing a threat to the sector. It was further recommended that mergers be encouraged where an increase of players in the sector has the potential to destabilise the sector. Whilst competition ought to be encouraged, it is submitted that it be contained according to the market size for financial sector stability.

Although the current Banking Act gives the RBZ supervision powers to ensure that banks comply with legislation in their operations and market conduct, bank collapses have continued in the multicurrency era. NPLs, weak liquidity power, not enough capital to cushion potential risks, lack of corporate governance structures, participation of banks in black market activities, poor credit risk management and abuse of depositor funds have been given as reasons for bank failures in the multicurrency era. It has also been noted that all banks that have collapsed are indigenous banks with no record of a foreign bank collapsing in Zimbabwe to date. The Banking Act has gone over various amendments and provisions have been promulgated requiring banks to comply with prudential regulations. The Act is administered by the RBZ as the regulator. As the regulator, the RBZ is responsible for ensuring compliance with sound accounting, risk management and corporate governance requirements. Where a bank is found to be in breach of the provisions of the Banking Act and or regulations, the RBZ may take necessary and immediate action 'to preserve the integrity of the financial system of Zimbabwe'. In addition to this, the RBZ is also statutorily a LOLR although it has not been performing this function since 2009 due to it not being adequately capitalised. As opposed to bailing out a financially distressed bank, it is recommended that mergers and acquisitions be encouraged in such circumstances to avoid a collapse. This must be done within set competition perimeters.

Following the bank collapses, a change in the regulatory model was advocated for by Gosho, Rusike and Nhavira et al. They argued the current silos model in place is not effective and suggested the twin peaks model as the best alternative. However, it is submitted that because fault has only been imputed on the regulator and not the model of regulation, it is the regulator that needs to be more effective in its role of maintaining systemic stability. It is submitted that unless the problems being faced under the current model are addressed, a twin peaks model might not be the solution. To be a more effective regulator, the RBZ needs to address systemic problems as and when they arise. The problems must be met with action that seeks to achieve the long term goal of achieving consumer confidence in the sector, as opposed to merely punishing the delinquent behaviour of financial sector actors.

## CHAPTER 4

### ENFORCEMENT OF BANK LAWS IN ZIMBABWE

#### 4.1 INTRODUCTION

Mwenda<sup>360</sup> argues that the importance of enforcement of regulations in the financial sector is to promote consumer confidence. Singh<sup>361</sup> corroborates this argument in stating that the manner in which rules are enforced in financial regulation and supervision is a decisive factor in the sustenance of a favourable degree of investor and depositor confidence in the marketplace. In addition to building consumer confidence in the financial sector, enforcement measures are formulated to urge supervised banks to comply with the prudential requirements as constituted in supervisory decisions or regulations.<sup>362</sup> Prior to the 2003/4 crisis, the RBZ had no supervisory powers. To date, legislation and regulations have since been updated to give the RBZ supervisory powers. Contained therein are sanctions the RBZ may impose on contravention of the law and regulations by the regulated institutions. Having established that a bank regulation and sectoral consumer protection framework exists, the objective of this chapter is to investigate the enforcement of the same in Zimbabwe. The law enforcement mechanisms currently in existence are analysed pursuant to a discussion on what entails enforcement and who is responsible for enforcement of bank and consumer protection regulations in Zimbabwe. The importance and objectives of enforcement are discussed as a starting point.

#### 4.2 THE LAW, ENFORCEMENT AND OBJECTIVES

The law is defined as a set of rules prescribed by a given authority with an objective of maintaining law, order and peace in the society.<sup>363</sup> In line with the rule of law principle, 'all persons, institutions and entities, public and private, including the State itself', must be held accountable to these laws. These laws are promulgated by the legislature and must meet the requirements of being 'publicly promulgated, equally enforced and independently adjudicated'.<sup>364</sup> In Zimbabwe, the law is in the form of Acts of Parliament, presidential decrees and ministerial regulations.<sup>365</sup> With power to

---

<sup>360</sup>Mwenda KK (2006) 4

<sup>361</sup> Singh D *Banking Regulation of UK and US Financial Markets* (2016) 113

<sup>362</sup> 'Enforcement' available at <https://www.bankingsupervision.europa.eu/banking/tasks/enforcement/html/index.en.html> (accessed 28 May 2017)

<sup>363</sup> Pillai RSN *Legal Aspect of Business (Mercantile Law)* (2011) 4

<sup>364</sup> Cheng C ed *A New International Legal Order* (2016) 174

<sup>365</sup> Madhuku L *An Introduction to Zimbabwean Law* (2010) 6



delegate its law making powers, where Parliament does so to either the president, the ministers, local authorities or other state institutions, this delegated legislation is contained in what are known as statutory instruments.<sup>366</sup> Through these instruments, presidential decrees and ministerial regulations are made subsidiary/secondary law. According the International Compliance Association<sup>367</sup> secondary legislation is ‘generally legislation that has been drafted by a regulatory body empowered to do so pursuant to the primary law by which it is established’.<sup>368</sup>

In Zimbabwe, banking sector regulations are contained in statutory instrument 205 of 2000<sup>369</sup> and are issued by the Minister of Finance.<sup>370</sup> Whilst an Act stipulates what must be done, regulations outline how it is done.<sup>371</sup> Mwenda<sup>372</sup> defines regulations as a ‘set of binding rules issued by a private or public body’, binding on the specified regulated bodies. Once these regulations are in place, they are to be enforced by the relevant regulatory body whose functions, amongst others, are stated to be:

- laying down rules or principles determining who can conduct financial services business;
- laying down both prudential and conduct of business rules by which regulated financial services businesses must conduct their business;
- supervising compliance with the rules;
- conducting investigations into suspected breaches of the rules, sometimes in conjunction with other law enforcement bodies; and
- enforcing the rules.<sup>373</sup>

---

<sup>366</sup>Madhuku L (2010) 13

<sup>367</sup> Hereafter ICA

<sup>368</sup> ‘What is secondary legislation?’ available at <https://www.int-comp.org/careers/a-career-in-compliance/what-is-compliance/> (accessed 12 June 2017)

<sup>369</sup>Hereafter SI 205 of 2000

<sup>370</sup>Preable SI 205 of 2000

<sup>371</sup> ‘Subsidiary Legislation (Regulation)’ available at <https://www.slp.wa.gov.au/faq.nsf/Web/Topics/97122C9860FE02FC48256CC9002A2895?opendocument> (accessed 17 June 2017)

<sup>372</sup>Mwenda KK (2006) 5

<sup>373</sup> ‘What functions does a regulator usually fulfill?’ available at <https://www.int-comp.org/careers/a-career-in-compliance/what-is-compliance/> (accessed 12 June 2017)



Madhuku<sup>374</sup> argues that enforceability alone determines whether a rule is law or not and that 'it is the quality of enforceability by the state that distinguishes law from other rules'. Shihata<sup>375</sup> argues that without enforcement, the law is not law. This view is supported by Mwenda<sup>376</sup> who equates laws without enforcement to a 'tiger without teeth'.

Ardic et al<sup>377</sup> argue that an effective consumer protection framework requires laws and regulations with complimentary enforcement mechanisms including dispute resolution. Speaking about enforcement of bank regulations in Ireland, Elderfield<sup>378</sup> expounded on the benefit of enforcement as a deterrent against substandard conduct by firms. He argued that enforcement is a motivating factor for firms to conduct their business with high standards where there is a compelling possibility that the firms will face penalties for non-compliance with the regulatory standards. Delis, Staikouras and Tsoumas<sup>379</sup> argue that:

'the objective of an enforcement action taken against a bank is to improve transparency in the banking system, increase financial soundness, discipline banks for faulty behaviour and set an example. Thus, in the long run, sanctions are expected to have a stabilising effect on banks, through the improvement of financial soundness, optimisation of their credit and liquidity risk, minimisation of operational risk and higher market discipline'.

To achieve this objective, it is submitted that enforcement must occur whenever there is a breach, as opposed to when there is a crisis only. It is submitted that to build a culture of compliance with the law and for the same to be respected, laws and regulations must always be enforced in the event of a breach. In Zimbabwe,<sup>380</sup> enforcement of laws has mostly been in reaction to a crisis as opposed to avoiding a crisis. Partly for this reason, the RBZ has also been blamed for the problems faced by the banking sector.<sup>381</sup> After conducting a study to examine the relationship between the legal system and bank development, Levine<sup>382</sup> found that 'countries with legal systems that rigorously enforce laws and contracts have better-developed banks than countries

---

<sup>374</sup>Madhuku L (2010) 1

<sup>375</sup>Shihata IFL 'The role of law in business development' (1996) 20 *Fordham International Law Journal* 1579

<sup>376</sup>Mwenda KK (2006) 4

<sup>377</sup>Ardic OP Ibrahim JA & Mylenko N (2011) 2

<sup>378</sup>Elderfield M 'Effective enforcement – encouraging compliance and good practice' available at <http://www.bis.org/review/r121212g.pdf> (accessed 28 May 2017)

<sup>379</sup>Delis MD, Staikouras PK & Tsoumas C 'How do banks respond to enforcement actions?' (2012) Athens University of Economics and Business 3

<sup>380</sup>Langa V 'Chinamasa threatens cash-hoarding retailers, wholesalers' *Newsday* 7 April 2017

<sup>381</sup>See paragraph 2.4

<sup>382</sup>Levine R 'The Legal Environment, Banks, and Long-Run Economic Growth' (1998) 30 *Journal of Money, Credit and Banking* 611

where enforcement is more lax'. It is, therefore, apparent that whilst financial regulations are enacted to maintain sectoral stability and protect consumers as enunciated in chapters two and three, enforcement is also important for sectoral stability and growth.

#### **4.3 ENFORCEMENT OF BANK REGULATIONS IN ZIMBABWE**

As the financial sector regulator, the RBZ is responsible for enforcing both prudential and market conduct regulations. This includes the enforcement of consumer protection standards to be complied with by banks in their daily operations.<sup>383</sup> The DPC is also tasked with enforcing prudential regulations but only to a limited extent.<sup>384</sup> Delis, Staikouras and Tsoumas<sup>385</sup> define enforcement actions as 'remedial measures' against supervised financial institutions that are found in violation of laws, rules and regulations, have unsafe or unsound banking practices, have breached fiduciary duties, have violated any written agreements, final orders and or conditions imposed in writing. Delis et al state that these enforcement actions are intended to alter the practices and behaviour that caused the problems, stabilise the institutions, and avert potential losses to the deposit insurance fund.

According to Singh,<sup>386</sup> there are two encouraged enforcement methods, namely the compliance-based and the deterrence-based approaches. He describes a compliance based approach as one which involves interaction through dialogue between the regulators and those that are regulated without resorting to administrative, criminal or civil proceedings. The deterrence approach is stated to be one which involves sanctions to punish those that have failed to comply with rules and regulations. Gilbert and Vaughan<sup>387</sup> classify enforcement actions as informal and formal. They describe informal actions as 'understandings between banks and their supervisors' and are used 'when problems are considered to be less severe and management is expected to take corrective steps'. Formal actions are said to be used when there is continuous violation of the law or regulations or 'when unsafe and abusive practices occur'.<sup>388</sup> Such actions, according to Gilbert and Vaughan are enforceable in the courts.<sup>389</sup> According to the ICA, enforcement

---

<sup>383</sup> See paragraph 4.5

<sup>384</sup> See paragraph 4.5

<sup>385</sup> Delis MD, Staikouras PK & Tsoumas C (2012) 7

<sup>386</sup> Singh D (2016) 114

<sup>387</sup> Gilbert RA & Vaughan MD Do Depositors Care About Enforcement Actions? Federal Reserve Bank of St. Louis working paper (2000) 5

<sup>388</sup> Gilbert RA & Vaughan MD (2000) 8

<sup>389</sup> Gilbert RA & Vaughan MD (2000) 5

generally entails inspection, investigation powers, surveillance powers, imposition of corrective or remedial action and imposition of penalties.<sup>390</sup> Discussing enforcement actions in the USA, Fiordelisi, Raponi and Raghavendra<sup>391</sup> state that regulations are enforced through actions such as;

'[written] agreements between the two parties (supervisor and bank), who jointly establish all corrective measures the bank needs to adopt: unilateral actions such as "cease and desist orders" imposed by the authority to the bank after hearings, to repair unsound or unsafe practices; "prompt corrective actions" ...issued to banks...;and through "deposit insurance threats"

Whilst the USA is a different jurisdiction whose enforcement actions may be influenced by various and differing factors from those in Zimbabwe, the enforcement actions stated appear to be generally universal. As the regulator, the RBZ applies both the compliance and deterrence approach in enforcement. The compliance measures are in the form of memorandum of understanding agreements signed between banks and the RBZ.<sup>392</sup> The deterrence approach is used when imposing corrective or remedial action or penalties where institutions are not in compliance with laws and regulations.<sup>393</sup> The regulations issued in terms of the Banking Act stipulate the standards to be complied with by the regulated institutions in their business operations.<sup>394</sup> Although banking institutions are statutorily required to have compliance officers to ensure compliance with laws and regulations,<sup>395</sup> the RBZ is vested with the power to enforce the said laws and regulations.<sup>396</sup> The power to enforce these regulations is derived from both the RBZ Act<sup>397</sup> and the Banking Act.<sup>398</sup> This is done through inspection, investigation,<sup>399</sup> and monitoring<sup>400</sup> of bank operations and market conduct. This is in alignment with the second pillar of Basel II, which requires on-site inspections to involve an essential component of supervisory review, in agreement with the application of appropriate sanctions where breaches of law are revealed.<sup>401</sup>

---

<sup>390</sup>'What five processes does regulatory enforcement normally entail?' available at <https://www.int-comp.org/careers/a-career-in-compliance/what-is-compliance/> (accessed 12 June 2017)

<sup>391</sup>Fiordelisi F, Raponi J, &Raghavendra RP Corporate culture and enforcement actions in banking (2015)

<sup>392</sup>Mandizha T 'RBZ measures to negatively affect banks' *Newsday* 28 February 2013 available at <https://www.newsday.co.zw/2013/02/rbz-measures-to-negatively-affect-banks/> (accessed 12 April 2017)

<sup>393</sup> S48 (1) (d) Act 9 of 1999

<sup>394</sup> S81 Act 9 of 1999

<sup>395</sup> S28B Act 9 of 1999

<sup>396</sup> s6 (1) (e) of Act 5 of 1999 read with S45 1(b) & (b) Act 9 of 1999

<sup>397</sup> s6 (1) (e) read with S7 (1) (s) Act 5 of 1999

<sup>398</sup> S45 1(a) Act 9 of 1999

<sup>399</sup>s6 (1) (e) of Act 5 of 1999 read with S45 1(b) Act 9 of 1999

<sup>400</sup> S45 1(a) Act 9 of 1999

<sup>401</sup>Delis MD, Staikouras PK &Tsoumas C (2012) 7

Investigations are conducted to prevent and detect any contravention with the Banking Act or any other Act an institution ought to comply with in the course of operations.<sup>402</sup> An institution found to be in contravention of any term or condition of its registration, or any provision direction, requirement or order of the Act will be subject to enforcement actions.<sup>403</sup> However, whilst the enforcement actions to be taken are those listed in s48 (1) of the Act,<sup>404</sup> the section has since been repealed.<sup>405</sup> It is submitted that the repeal of this section without promulgation of an alternative provision means either of two things. Firstly, it could mean that the RBZ may impose unspecified enforcement actions not listed in the Act. In the alternative, it could also mean that unless an institution is classified as a PBI,<sup>406</sup> there will be no enforcement action. The first scenario does not pose a challenge if an institution is afforded an opportunity to be heard prior to the enforcement action being taken. A recommended enforcement action may be challenged by an institution if the penalty imposed does not correlate with the violation alleged. Where possible, the parties can reach an agreement that ensures depositors, creditors and shareholders are protected. Challenges arise where immediate enforcement action is taken in the absence of representations by the offending institution.<sup>407</sup> In such cases, discretionary action detrimental to the institution may be taken in circumstances that do not call for that specific action, possibly disrupting operations and leading to an institution being classified as a PBI. Although immediate action may be taken where necessary to prevent irreparable harm to the banking institution or its depositors, creditors or shareholders,<sup>408</sup> it is suggested that possible enforcement actions be predetermined and made known to relevant parties. With regard to the second scenario, it is submitted that delaying enforcement action until an unsound institution is declared to be a PBI may cause financial prejudice to depositors, creditors and or shareholders. This is due to the possibility that by the time an institution is declared a PBI, it would have been stripped of its assets leaving nothing to be recovered in the event of a collapse. Although the DPC now pursues directors where assets are not sufficient to raise funds for compensation of depositors,<sup>409</sup> the

---

<sup>402</sup> S45 1(b) Act 9 of 1999

<sup>403</sup> s51 (1) Act 9 of 1999

<sup>404</sup> s51 (1) Act 9 of 1999

<sup>405</sup> S28 (a) Amendment Act 2015

<sup>406</sup> s52A (2) Act 9 of 1999 as inserted by s 29 Amendment Act 2015 read with s2 Banking Amendment Act, 2015 which defines a PBI as 'a banking institution whose capital adequacy, asset quality or liquidity or solvency is, or will be (in the opinion of the Registrar), significantly impaired unless there is a major improvement in its financial resources, risk profile, strategic business direction, risk management capabilities or quality of management

<sup>407</sup> S48 (2) Act 9 of 1999

<sup>408</sup> S48 (3) Act 9 of 1999

<sup>409</sup> See paragraph 4.3

delays in bringing matters to a finality in the court system still leaves the possibility of financial prejudice intact.<sup>410</sup>

With the repeal of s48 (1), it appears that the RBZ will take measures against an institution subsequent to investigation where an institution is classified as a PBI. A PBI is one classified as such because:

- it can no longer maintain the prescribed minimum amounts of capital and reserves, or is otherwise in an unsound financial condition; or
- it can no longer maintain net assets which, together with other financial resources available to it, are of an amount and nature sufficient to safeguard its creditors; or
- it can no longer provide adequate security for the assets entrusted to it; or
- it is facing liquidity problems, or its prudential liquidity ratios are below the prescribed regulatory minimum; or
- it has failed to put in place and implement a sound corporate governance framework and risk management framework, or it is in breach of good corporate governance requirements or its operations exhibit poor risk management; or
- it is carrying out non-permissible activities or employing undesirable methods in carrying on its business; or
- it has not complied with any instruction, requirement or condition imposed by the Registrar in terms of this Act; or
- it is not being operated or is not conducting its activities in the best interests of its depositors.<sup>411</sup>

On identifying a PBI and to avoid cancellation of its license where possible,<sup>412</sup> the RBZ may design and implement a bank resolution plan. The plan may involve any of the following:

- merging of the PBI with another banking institution;
- acquisition of the PBI by another banking institution;
- acquisition by or transfer to a third party of any asset or liability of the PBI, including any asset held in trust;
- establishment of a bridging banking institution to acquire some or all of the assets and liabilities of the PBI;

---

<sup>410</sup> See paragraph 4.5

<sup>411</sup> S52(2) (a) to (h) Banking Amendment Act 2015

<sup>412</sup> S52A (1) Banking Amendment Act 2015

- taking of control of the PBI by a curator with powers to establish and institute a timely plan of resolution;
- winding up of the PBI; or
- taking any action necessary to give effect to the plan of resolution, including the sale or closure of any branch, agency or other office of the PBI and, subject to any other law, the dismissal of any of its officers or employees.<sup>413</sup>

Prior to implementation of any resolution plan, the RBZ is required to give the institution an opportunity to make representations unless 'immediate action is necessary to prevent irreparable harm to the banking institution or its depositors, creditors, shareholders'<sup>414</sup> members or employees.<sup>415</sup> Both the Banking Act and the Amendment Act do not, however, mention whether the institution will be allowed to make representations at a later stage and if so, when. After the RBZ has decided which action to take and after hearing representations from the concerned bank, the RBZ serves the institution with a 'problem bank notice',<sup>416</sup> informs it of the resolution plan and publishes the notice in the Gazette. Prior to implementation of the plan, the RBZ is required to make a Chamber Application<sup>417</sup> for the confirmation of the notice.<sup>418</sup> In the interests of its creditors, depositors or the public, the RBZ is permitted to take supervisory or enforcement actions against the PBI concerned pending judgement in the application.<sup>419</sup> Some of the actions the RBZ may take include restricting the activities or investments of the bank, removing or replacing all or any of the directors, prohibiting or restricting the disposal of any assets, requiring the bank to develop and implement a capital restoration plan and or taking control of any assets of the banking institution.<sup>420</sup>

After an order confirming the notice is granted, any party wishing to appeal against the decision made may do so in the Supreme Court.<sup>421</sup> On receiving the appeal, the Supreme Court is mandated to ensure, where possible, that judgement is delivered within thirty days after the appeal is filed.<sup>422</sup> Whilst this provision seeks to expedite the process and make certain the period

<sup>413</sup> S52A (2) inserted by s29 Banking Amendment Act 2015

<sup>414</sup> S48 (2) inserted by s28 Banking Amendment Act 2015

<sup>415</sup> S52A (3) (b) inserted by s29 Banking Amendment Act 2015

<sup>416</sup> S52A (3) (a) (i) Act 9 of 1999

<sup>417</sup> This is an application that is made to a judge of the High Court in chambers. See S52B (1) Act 9 of 1999

<sup>418</sup> S52B (1) Act 9 of 1999

<sup>419</sup> S52B (6) Act 9 of 1999

<sup>420</sup> S48 (3) read with S52B (6) Act 9 of 1999

<sup>421</sup> S52B (4) Act 9 of 1999

<sup>422</sup> S52B (4) Act 9 of 1999



within which these matters are brought to finality, it is submitted that enforcement of this provision may be practically impossible. This is due to the fact that neither the RBZ nor Minister possesses authority to direct the Supreme Court on how to conduct its cases and stipulate the time period within which it must conclude a matter. As enunciated earlier, the Supreme Court is subject only to the Constitution and the Supreme Court Act.<sup>423</sup>

After an appeal has been noted, the Act provides that 'no court shall set aside the decision of the Reserve Bank made pursuant to a bank resolution plan without the consent of the Reserve Bank, unless the court is satisfied that the decision was made corruptly or in bad faith'.<sup>424</sup> It is, however, submitted that this provision is futile for the reasoning to follow. Whilst the RBZ may legally depart from the requirement of giving 'adequate notice of any right of review or appeal'<sup>425</sup> provided that such deviation is 'reasonable and justifiable',<sup>426</sup> it is submitted that the right of review or appeal still exists. Therefore, where a decision made by the RBZ is taken for review or appeal in terms of the Administrative Justice Act 12 of 2004, the High Court, when approached for relief, may confirm or set aside the decision as an alternative to other actions listed in the Act.<sup>427</sup> The ability of the High Court to do so is not only derived from the Administrative Justice Act, but also from the Constitution<sup>428</sup> and the High Court Act<sup>429</sup> as the establishing and constitutive Acts respectively. Therefore, it is submitted that this provision is not capable of invalidating the provisions of Act 12 of 2004 permitting the High Court to set aside a decision of the RBZ. Further, seeking the consent of the RBZ to set aside its decision indirectly makes the RBZ an authority higher than the Supreme Court which is not the case.

In the event that a confirmation order is not granted by the High Court,<sup>430</sup> the RBZ is not precluded from either making a fresh application or prior to a determination being made, from amending the original application to include the new evidence where new evidence has been obtained. This, therefore, excludes the application of the *res judicata* principle<sup>431</sup> in such cases between the RBZ

---

<sup>423</sup> S164 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013

<sup>424</sup> S52B (5) Act 9 of 1999

<sup>425</sup> S3 (2) (c) Administrative Justice Act 12 of 2004

<sup>426</sup> S3 (3) (b) Act 12 of 2004

<sup>427</sup> S4 (2) Act 12 of 2004

<sup>428</sup> S171 of Amendment (No. 20) Act, 2013

<sup>429</sup> S13 Act 29 of 1981

<sup>430</sup> S52B (3) Banking Amendment Act 2015

<sup>431</sup> In the case of *Ben Raymond Mundangepfupfu and Alban Tachiyirweyi Mundangepfupfu v Innocent Chisepo* unreported judgement HH 188-17 (22 March 2017) 8, the principle was defined as a 'special plea of *res judicata*

and PBIs. Further, pending confirmation of the resolution plan, the RBZ 'may take any of the measures referred to in s52A (6) or any other formal supervisory or enforcement action against the PBI concerned in the interests of its creditors or depositors or in the public interest.'<sup>432</sup> Where a PBI is in a dire state, such an institution may be placed under curatorship. An institution placed under curatorship is one in;

'an unsound financial condition and is not operating in accordance with sound administrative and accounting practices and procedures, adhering to proper risk management policies ... [and includes] banking institutions [that have] failed to comply with the minimum financial requirements prescribed in ... [the] Act'.<sup>433</sup>

To preserve the financial standing of the institution under curatorship, avoid the possibility of a 'run on deposits'<sup>434</sup> or where necessary, the curator may freeze the deposits and investments held by PBI. This is done in consultation with or on order by the RBZ for a period not exceeding one year.<sup>435</sup> The effect of this action is that no one may:

- withdraw or remove any such amount from the banking institution concerned; or
- set off any such amount against any amount he owes the banking institution concerned; or
- pledge or hypothecate any such amount; except to an extent permitted by the curator.<sup>436</sup>

According to Muza,<sup>437</sup> during the period of curatorship, the curator is expected to establish the full extent of the institution's problems. He further states that once the period of curatorship has ended, the curator gives recommendations on how the problems established may be resolved. Should the institution be deemed beyond salvage because it is 'no longer viable on a sustainable basis' thus essentially insolvent, the RBZ may have it placed under liquidation.<sup>438</sup> Whereas placement under curatorship is done in consultation with the Minister only,<sup>439</sup> an institution is

---

means that the same matter has been decided in another court of competent jurisdiction and may not be pursued further by parties'

<sup>432</sup> S52B (6) Banking Amendment Act 2015

<sup>433</sup> S53 (1)(a) & (b) Act 9 of 1999

<sup>434</sup> Muza ON 'Resolution framework for distressed banks' *Newsday* 16 June 2011 available at <https://www.newsday.co.zw/2011/06/16/2011-06-16-resolution-framework-for-distressed-banks/> (accessed 12 June 2017)

<sup>435</sup> S56 (1) & (2) Act 9 of 1999

<sup>436</sup> S56 (5) Act 9 of 1999

<sup>437</sup> Muza ON 'Resolution framework for distressed banks' *Newsday* 16 June 2011

<sup>438</sup> Muza ON 'Resolution framework for distressed banks' *Newsday* 16 June 2011

<sup>439</sup> S53 Act 9 of 1999

wound up or placed under judicial management after the RBZ has obtained an order from the High Court to that effect.<sup>440</sup> Further, although the Banking Act provides for the RBZ to appoint the DPC as a 'provisional liquidator, provisional judicial manager, liquidator or judicial manager of a banking institution',<sup>441</sup> without specifying the manner of appointment, in practise this is done on confirmation by the High Court.<sup>442</sup> This has in some cases been a source of financial prejudice due to the consequent delays in processing claims of depositors.<sup>443</sup> Due to these delays and as argued by Muza,<sup>444</sup> the curatorship of banks in Zimbabwe elicits painful memories as it has 'become symbolic with financial loss in all its conceivable forms – temporary loss, permanent loss, loss of value, loss of time and loss of momentum'. To address the issue of delays in making payments to depositors caused by confirmation of the DPC as the liquidator, Chikura<sup>445</sup> suggests that the appointment of DPC as the liquidator by the RBZ be regarded as an appointment 'equivalent as that of the court'. In some cases, delays have been due to a banking institution challenging the cancellation of its license.<sup>446</sup> Such was the case of Trust Bank, which challenged the cancellation of its license by the RBZ thereby suspending final liquidation for almost two and a half years.<sup>447</sup>

Muza<sup>448</sup> argues that the purpose of curatorship is to avoid 'collateral damage' by protecting the interests of both depositors and creditors and that 'curatorship can also serve the purpose of protecting the stability of the broader financial system, in addition to its primary purpose of preserving the assets of the troubled financial institution'. This argument is supported by Gono<sup>449</sup> who contended the same whilst commenting on the reasons for placing ReNaissance Merchant Bank (RMB) under curatorship. The bank was placed under curatorship following investigations that unearthed 'deficiencies, including inadequate capitalisation, inappropriate shareholding

---

<sup>440</sup> S57 (1) (a) Act 9 of 1999

<sup>441</sup> S57 (1) (b) Act 9 of 1999

<sup>442</sup> Mtomba V 'Collapsed banks yet to compensate depositors' *Newsday* 8 October 2014 available at <https://www.newsday.co.zw/2014/10/08/collapsed-banks-yet-compensate-depositors/> (accessed 12 June 2017)

<sup>443</sup> Mtomba V 'Collapsed banks yet to compensate depositors' *Newsday* 8 October 2014; In terms of s57 (1) (c) Act 9 of 1999, after an institution has been placed under judicial management, the claims of depositors receive first preference as may be prescribed

<sup>444</sup> Muza ON 'Resolution framework for distressed banks' *Newsday* 16 June 2011

<sup>445</sup> Mtomba V 'Collapsed banks yet to compensate depositors' *Newsday* 8 October 2014

<sup>446</sup> Kadzere M 'Trust Bank placed under final liquidation' *The Herald* 31 May 2016 available at <http://www.herald.co.zw/trust-bank-placed-under-final-liquidation/> (accessed 12 June 2017)

<sup>447</sup> Kadzere M 'Trust Bank placed under final liquidation' *The Herald* 31 May 2016

<sup>448</sup> Muza ON 'Resolution framework for distressed banks' *Newsday* 16 June 2011

<sup>449</sup> 'ReNaissance saga' *Newsday* 3 June 2011 available at <https://www.newsday.co.zw/2011/06/03/2011-06-03-renaissance-saga/> (accessed 4 June 2017)

structure and disintegration of corporate governance structures'.<sup>450</sup> Gono<sup>451</sup> stated that placement of the institution under curatorship was done to 'protect depositors, preserve the institutions' assets and stability of the sector'. In addition to this, it is said a corrective order was issued for RMB 'to institute mandatory measures to address identified gross corporate governance deficiencies and imprudent banking practices'.<sup>452</sup> Commenting on the curatorship of RMB, Magaisa<sup>453</sup> argued that the RBZ was also to blame for the bank failure given its delayed response in acting on a failed bank. This argument is supported by Mutasa<sup>454</sup> who contends that the bank collapses reveal weaknesses in the supervisory and monitoring structure due to the RBZ intervening only when it is too late and after the bank assets 'have been stripped' thereby prejudicing depositors and other creditors. Commenting on the delay in paying compensation to depositors by the DPC, Chikura<sup>455</sup> argued that failure 'to quickly conclude liquidation' by the RBZ gave the directors and executives time to 'strip the bank of its assets leaving a shell by the time it is liquidated'. Chikura stated that the DPC was left with no alternative but to pursue litigation against the directors of these failed institutions in terms of s318 of the Companies Act<sup>456</sup> to raise the funds needed to compensate the depositors. He lamented, however, that corruption may delay the conclusion of the court cases unless the courts, in his words, 'start playing it straight'.<sup>457</sup> It is submitted that this delay in conclusion of the cases by courts appears to be a contributory factor to the financial demise of an institution under curatorship. In the case of Interfin Bank, the institution was placed under curatorship in June 2012, with a reported 248 summonses being issued to the institution's debtors since it was placed under curatorship. In February 2014, it was reported that judgements in which the curators were pursuing US\$23 million from banks' debtors were still pending.<sup>458</sup>

---

<sup>450</sup>ReNaissance saga' *Newsday* 3 June 2011

<sup>451</sup>Ruzvidzo V & Kadzere M 'RMB under curatorship' *The Herald* 2 June 2011 available at <http://www.herald.co.zw/rmb-under-curatorship/> (accessed 4 June 2017)

<sup>452</sup>'ReNaissance saga' *Newsday* 3 June 2011

<sup>453</sup>Magaisa A 'Collapse of ReNaissance, a failure of regulation' *Nehanda Radio* 5 June 2011 available at <http://nehandaradio.com/2011/06/05/collapse-of-renaissance-a-failure-of-regulation/> (accessed 4 June 2017)

<sup>454</sup>Chawafambira K 'Depositors call for RBZ protection' *Weekend Post* 27 March 2015 available at <http://www.weekendpost.co.zw/articles/2015/03/27/depositors-call-for-rbz-protection> (accessed 12 June 2017)

<sup>455</sup>Moyo A 'Depositors of closed banks hope against hope' *The Sunday Mail* 12 March 2017 available at <http://www.sundaymail.co.zw/depositors-of-closed-banks-hope-against-hope/> (accessed 31 May 2017)

<sup>456</sup>Act 47 of 1951

<sup>457</sup>Moyo A 'Depositors of closed banks hope against hope' *The Sunday Mail* 12 March 2017

<sup>458</sup>Nyakazeya P 'Interfin Bank problems far from being solved' *The Financial Gazette* 20 February 2017 available at <http://www.financialgazette.co.zw/interfin-bank-problems-far-from-being-solved/> (accessed 12 June 2017)

Delis Staikouras and Tsoumas<sup>459</sup> argue that enforcement actions can have both positive and negative effects on the risk and performance of the banks against whom the action is imposed. They argue that this might result in the overall performance of the involved bank declining as the bank might find it difficult to obtain capital and short-term funding at usual rates. They are also of the opinion that once the public becomes aware of the penalty, it could activate a negative view against the involved bank from its creditors, and in drastic cases, lead to a bank run that would place considerable strain on the bank's performance and overall risk of insolvency.<sup>460</sup>

#### **4.4 ENFORCEMENT OF CONSUMER PROTECTION REGULATIONS IN ZIMBABWE**

As discussed in the previous chapter, consumer protection in Zimbabwe is regulated in terms of the DPC Act, the Banking Amendment Act and by a CPF issued in accordance with the Banking Amendment Act. With the establishment of a Deposit Protection Fund 'for the compensation of depositors in the event of financial institutions becoming insolvent',<sup>461</sup> an institution is expected to make a contribution to the fund based on meeting the prudential standards stipulated in the statutory instrument containing bank regulations. As the authority tasked with administering the fund,<sup>462</sup> the DPC also monitors the activities of banks to ensure there is minimal exposure to the fund<sup>463</sup> and protects the fund against loss.<sup>464</sup> Protecting the fund against loss is done for purposes of ensuring that there is enough money to compensate depositors in the event of insolvency of a contributory institution.<sup>465</sup> To enforce compliance with prudential regulation aimed at ensuring solvency and stability of banks,<sup>466</sup> the DPC may revoke or suspend a contributory institution's status for as long as the prudential standards are not met.<sup>467</sup> An institution whose status is being revoked may make representations prior to revocation<sup>468</sup> and where a decision has been made, appeal against the decision of the DPC.<sup>469</sup>

---

<sup>459</sup> Delis MD, Staikouras PK & Tsoumas C (2012) 4

<sup>460</sup> Delis MD, Staikouras PK & Tsoumas C (2012) 4

<sup>461</sup> Preamble Act 7 of 2011

<sup>462</sup> S5 (1) (a) Act 7 of 2011

<sup>463</sup> S5 (1) (d) Act 7 of 2011

<sup>464</sup> S5 (2) (e) Act 7 of 2011

<sup>465</sup> S13 (3) Act 7 of 2011

<sup>466</sup> Cranston R (2002) 76

<sup>467</sup> S27 Act 7 of 2011

<sup>468</sup> S27 (3) Act 7 of 2011

<sup>469</sup> S54 Act 7 of 2011

Where an institution remains or becomes a contributory institution, subscriptions into the fund must be paid as and when they become due. Failure to meet this obligation without a 'lawful excuse' is a criminal offence subject to prosecution in a court of law and attracts a fine five times the amount of the contribution.<sup>470</sup> For depositors whose deposits are held in a contributory institution, a right to compensation arises on insolvency of the contributory institution.<sup>471</sup> The compensation paid is not more than the amount insured by the DPC and is to be paid 'as soon as reasonably practicable'.<sup>472</sup> Should a depositor not be paid compensation, an application for payment may be made to the DPC provided the deposit is insured.<sup>473</sup> If compensation is not paid, the depositor may appeal against the refusal to pay compensation by the DPC to the Minister.<sup>474</sup> If aggrieved by the decision of the Minister on appeal, the party so aggrieved may appeal against that decision to the Administrative Court within the time and manner prescribed in the rules of court.<sup>475</sup>

The CPF issued in compliance with the Banking Amendment Act are enforced by the RBZ as the authority issuing the regulations in terms of s4C of the Act.<sup>476</sup> Whilst it is not stated what form of action will be taken where an entity is not in compliance, the CPF provides that the RBZ may conduct on-site visits or investigate a regulated entity's consumer protection compliance and take the appropriate enforcement action.<sup>477</sup> Although the Banking Amendment Act makes it compulsory for banking institutions to set up a complaints resolution process, it provides no alternative for a consumer who is not satisfied with the outcome. This is, however, addressed in the CPF which provides for complaints to be taken further to the RBZ and courts should the consumer not be satisfied with the complaints resolution process.<sup>478</sup> Failure by an institution to set up a complaints resolution process attracts a fine for each day the institution remains in default. Should the institution remain in default for a period of 180 days, it is guilty of an offence and on conviction is liable to either a fine or imprisonment.<sup>479</sup>

---

<sup>470</sup> S32 Act 7 of 2011

<sup>471</sup> S35 Act 7 of 2011

<sup>472</sup> S39 Act 7 of 2011

<sup>473</sup> S40 (1) Act 7 of 2011

<sup>474</sup> S54 (1) (g) Act 7 of 2011

<sup>475</sup> S54 (5) Act 7 of 2011

<sup>476</sup> S6.2.1 CPF 1-2017/BSD

<sup>477</sup> Ss6.2.1 & 6.2.2 CPF 1-2017/BSD

<sup>478</sup> S4.1.4 CPF 1-2017/BSD

<sup>479</sup> S28G Act 9 of 1999



#### 4.5 THE COURT SYSTEM AND LAW ENFORCEMENT MECHANISMS IN ZIMBABWE

Whilst regulations are enforced by the responsible regulatory authority, laws brought into existence through a legislative process are enforced by the state through different government institutions. These are the police force, courts and judges, prisons and corrective institutions.<sup>480</sup> The police force derives its powers to enforce the law from the Constitution.<sup>481</sup> In terms of the Constitution, the police service is required to cooperate with any established body existing by law whose objectives are 'detecting, investigating or preventing particular classes of offences'.<sup>482</sup> With regard to the financial sector, the police cooperates with the RBZ and other aggrieved parties in investigating all criminal matters relating to financial institutions prior to handing over the cases to the courts for prosecution.<sup>483</sup>

Depending on the type of court, the courts derive their powers from the Constitution and constitutive Acts. The court system is comprised of the Constitutional Court, Supreme Court, High Court, Labour Court, Administrative Court, Magistrates' courts, customary law courts; and other courts established by or under an Act of Parliament.<sup>484</sup> The Constitutional Court is the highest court in relation to all constitutional matters and 'decides only constitutional matters and issues connected with decisions on constitutional matters'.<sup>485</sup> In all other matters, both criminal and civil,<sup>486</sup> the Supreme Court is the highest court of appeal. Preceding the Supreme Court in hierarchy is the High Court which has original jurisdiction in civil and criminal matters<sup>487</sup> throughout Zimbabwe. Its powers to enforce the law are derived from the Constitution and the High Court Act.<sup>488</sup> In addition to this, the High Court supervises the Magistrates Court and other lower courts.<sup>489</sup> For administrative matters there is an Administrative court established in terms of the Constitution<sup>490</sup> to hear matters instituted before it in terms of the Administrative Court Act<sup>491</sup> or

---

<sup>480</sup> 'Enforcing the rule of law in Zimbabwe'

<sup>481</sup> S219 (1) (e) of Amendment (No. 20) Act, 2013

<sup>482</sup> S219 (2) (b) of Amendment (No. 20) Act, 2013

<sup>483</sup> Mashingaidze S 'Corporate governance: effectiveness of Zimbabwean hard law on blockholders' protection' (2014) 11 Corporate Ownership & Control Journal 554

<sup>484</sup> S162 of Amendment (No. 20) Act, 2013

<sup>485</sup> S167 (1) (a) & (b) of Amendment (No. 20) Act, 2013

<sup>486</sup> Ss 9 & 21 of the Supreme Court Act 28 of 1981 read with s169 (1) of Amendment (No. 20) Act, 2013

<sup>487</sup> S13 and 23 of the High Court Act 29 of 1981 read with s171 (1) (a) of Amendment (No. 20) Act, 2013

<sup>488</sup> Act 29 of 1981

<sup>489</sup> s171 (1) (b) of the Amendment (No. 20) Act, 2013

<sup>490</sup> S173 (2) of the Amendment (No. 20) Act, 2013

<sup>491</sup> Act 39 of 1979

any other enactment.<sup>492</sup> Where any party wishes to appeal a decision made by an administrative authority,<sup>493</sup> the Administrative Court also serves as a court of appeal.<sup>494</sup> In terms of hierarchy, the Administrative Court is lower than the High Court.<sup>495</sup> Also preceding the High Court in hierarchy is the Magistrates Court which is established in terms of the Magistrates Court Act.<sup>496</sup> It has jurisdiction to hear both civil<sup>497</sup> and criminal cases<sup>498</sup> subject to the limitations and terms stipulated in the Act. The other lower courts in the system are the Community Courts and the Small Claims Court which have jurisdiction over civil cases. In both these courts, legal representation is not permitted and the litigants must be natural persons. In the Small Claims Court, however, a 'corporate body or association of persons may be a party to proceedings therein only as defendant or respondent'.<sup>499</sup> Where there is an imprisonment sentence following criminal proceedings, Zimbabwe Prisons and Correctional Services enforce the ruling by ensuring that the meted sentence is served.<sup>500</sup> In civil proceedings and after judgement has been handed down, it is the Sheriff who enforces the judgments of the superior courts<sup>501</sup> with the assistance of the police only if necessary. Judgements handed down in the Magistrates' court are enforced by the messenger of court.<sup>502</sup>

With regards to enforcement of bank laws in Zimbabwe, it has been argued that;

'enforcement of laws via courts assumes that: courts have resources to handle cases in a timely way, and judges understand the banking sector and new legal concepts well enough to enforce the law'.<sup>503</sup>

Whilst judges may be easily equipped with knowledge and understanding of the sector through training, the issue of resources poses a challenge. There has been a lack of resources that

---

<sup>492</sup> S4 (1) Administrative Court Act Act 39 of 1979

<sup>493</sup> S2 Act 39 of 1979

<sup>494</sup> S4 (2) (a) Act 39 of 1979

<sup>495</sup> This is insinuated by s4 Act 39 of 1979 which allows any person who is aggrieved by the failure of an administrative authority to comply with certain provisions of the Act to apply to the High Court for relief.

<sup>496</sup> Act 18 of 1931

<sup>497</sup> S11 of the Magistrates Court Act 18 of 1931

<sup>498</sup> S49 of Act 18 of 1931

<sup>499</sup> S6 (1) of the Small Claims Court Act 20 of 1992

<sup>500</sup> Nyahuma T 'Enforcement of court judgments' *The Sunday Mail* 2 October 2016 available at <http://www.sundaymail.co.zw/enforcement-of-court-judgments/> (accessed 4 June 2017)

<sup>501</sup> Nyahuma T 'Enforcement of court judgments'

<sup>502</sup> Nyahuma T 'Enforcement of court judgments'

<sup>503</sup> University of Stellenbosch 'The effectiveness of legal corporate governance mechanisms that exist to protect shareholders of multinational companies operating in Zimbabwe' (2009) 6 Corporate Governance In Africa case study series 11

has affected the judiciary and has delayed bringing matters to a finality in many instances. An example is lack of textbooks for judges to use in deciding cases.<sup>504</sup> This has delayed the delivery of judgements. In commercial cases, property of high value or a lot of money is usually the centre of a dispute. It is submitted that investors and consumers in the sector need assurance that a dispute will be heard and finalised within a reasonable time for business and life to continue. Delays in justice delivery dampens their confidence in the sector and the result may be withdrawal of investments and this is potentially devastating to the sector. Information at hand from the World Bank as of June 2016 reveals that it takes a total of about 410 days for a matter to be brought to finality in the Magistrates Court.<sup>505</sup> This is from the time legal action is initiated in the Magistrates court until judgment is enforced. In the higher courts there have also been issues of delay. In 2011 it was reported that Supreme Court judgements were taking an average of between 14 months and four years to be delivered.<sup>506</sup> This has resulted in a backlog of cases. In some instances depositors of failed financial institutions have had to wait for years to recover their finances due to delays in concluding court cases between the RBZ and some of the failed institutions.<sup>507</sup> As a result of these delays, foreign investors have low confidence in the Zimbabwe court system.<sup>508</sup>

Calls for a special commercial court to deal with banking and other financial cases were made<sup>509</sup> and the court has recently been gazetted.<sup>510</sup> It has been argued that a Commercial Court will assist in reducing the backlog at the general courts and 'deliver justice to the general

---

<sup>504</sup>Mawonde A 'Law textbooks shortage: Judges forced to borrow' *The Herald* 26 November 2014 available at <http://www.herald.co.zw/law-textbooks-shortage-judges-forced-to-borrow/> (accessed 27 September 2017)

<sup>505</sup> 'Enforcing Contracts in Zimbabwe' available at <http://www.doingbusiness.org/data/exploreeconomies/zimbabwe/enforcing-contracts> (accessed 27 May 2017)

<sup>506</sup>Muzulu P 'Judicial system marred by inefficiency' *The Standard* 5 October 2014 available at <https://www.thestandard.co.zw/2014/10/05/judicial-system-marred-inefficiency/> (accessed 17 June 2017)

<sup>507</sup> Business Reporter 'US15 depositors funds trapped' *The Sunday Mail* 8 June 2014 available at <http://www.sundaymail.co.zw/us15m-depositors-funds-trapped/> (accessed 8 June 2017); Majaka N 'Help us with banks' *Daily News* 1 February 2015 available at <https://www.dailynews.co.zw/articles/2015/02/01/help-us-with-banks> (accessed 7 June 2017)

<sup>508</sup>Zenda C 'Foreign businesses shun Zimbabwe courts' *Zimbabwe Consolidated News* 22 December 2016 available at <http://zimbabwe-consolidated-news.com/2016/12/22/foreign-businesses-shun-zimbabwe-courts-2/> (accessed 8 June 2017)

<sup>509</sup>Mafukidze T 'Time for a commercial court in Zimbabwe!' *The Corporate Lawyer* 12 June 2009 available at <https://thecorporatelawyer.wordpress.com/2009/06/12/time-for-a-commercial-court-in-zimbabwe-by-tererai-mafukidze/> (accessed 4 June 2017)

<sup>510</sup> REF

public that usually loses out when a financial institution goes bankrupt'.<sup>511</sup> Dhliwayo<sup>512</sup> argues that 'a commercial court dedicated to adjudicating commercial and banking-related cases would expedite the settling of commercial and banking-related cases taking long to be settled through the court system'. Whilst the establishment of a commercial court may ease the backlog, it is submitted that unless and until corruption within the judiciary is eradicated, the commercial court may find itself plagued with similar challenges facing the existing courts. Chikura<sup>513</sup> argues that the only way for cases to succeed is if the courts play their part and desist from corruption. The statement 'why pay a lawyer when you can buy the magistrate' referred to by Chikura in commenting on the role of the courts in dispensing justice reveals the extent to which corruption has infected and compromised the court system. It is submitted that the low remuneration received by the presiding officers has contributed to corruption in the judicial system. In an eyebrow raising move justified as giving judges essential tools to necessitate them to work effectively, the RBZ has in the past made donations to judges. This was in the form of 'luxury cars, plasma television sets and electricity generators ... houses ... [and] directly augmenting [the judges] salaries over and above constitutionally guaranteed remuneration from the Consolidated Revenue Fund'.<sup>514</sup> It is submitted that donations such as this appear to be bribes under the guise of donations. It is further submitted that this compromises the administration of justice as also claimed by some legal practitioners in reaction to this donation.<sup>515</sup> Even if it were supposed that the donation was made in good faith, it is submitted that this potentially skews the impartiality of some judges in the event that they have to preside over cases between the RBZ any other party.

Further compromising the judiciary is the political interference in Zimbabwe courts. It has been reported that the judiciary is controlled by the current ruling party.<sup>516</sup> Evidence to this effect

---

<sup>511</sup> Staff Reporter 'Commercial Court almost ready' *The Financial Gazette* 30 June 2016 available at <http://www.financialgazette.co.zw/commercial-court-almost-ready/> (accessed 7 June 2017)

<sup>512</sup> 'Commercial court mooted' *The Sunday Mail* 3 February 2014 available at <http://businessdaily.co.zw/index-id-national-zk-34089.html> (accessed 4 June 2017)

<sup>513</sup> Moyo A 'Depositors of closed banks hope against hope' *The Sunday Mail* 12 March 2017 available at <http://www.sundaymail.co.zw/depositors-of-closed-banks-hope-against-hope/> (accessed 31 May 2017)

<sup>514</sup> 'Compromised Judiciary' available at <https://www.hrw.org/reports/2008/zimbabwe1108/5.htm> (accessed 4 June 2017)

<sup>515</sup> 'Compromised Judiciary' available at <https://www.hrw.org/reports/2008/zimbabwe1108/5.htm> (accessed 4 June 2017)

<sup>516</sup> Hofisi DT and Feltoe G 'Playing Politics with the Judiciary and the Constitution?' (2017) *The Zimbabwe Electronic Law Journal* available at <https://www.zimlji.org/zw/journals/Playing%20Politics%20with%20the%20Judiciary%20and%20the%20Constitution.pdf> (accessed 28 June 2017)

was in 2016 when the then President warned judges against handing judgements not in favour of the ruling party.<sup>517</sup> Although the judgement resulting in the warning was from a case involving political activities, it is submitted that this has contributed to the low confidence in the judicial system. In relation to the financial sector, it casts doubt on whether judges will remain impartial when license holders of an institution are not members of the ruling party and are appearing against the RBZ which is not independent from the ruling party. Whilst this may seem far- fetched, the giving of bank licenses to indigenisation activists shows the extent to which politics infiltrates the sector. Also compromising the impartiality of judges, is the acceptance of farms as a perk by judges. The same farms were subject to litigation in their courts during the land redistribution programme thus making it an eyebrow raising move for judges to be given these farms. Further exacerbating the situation is the contempt of court by top government officials over the years with no consequences following their actions. As lamented by Zenda,<sup>518</sup>

‘There ... is a tendency amongst top government officials in disregarding decisions of the court. This has been exacerbated by the courts themselves failing to prosecute for contempt of court thus contributing to the growing lack of confidence in the judicial system.’

It is submitted that failure to hold these officials accountable for their actions through prosecution for contempt of court not only weakens confidence in the judiciary, but renders the laws useless if it cannot be enforced. It is submitted that this compromises the judiciary as it brings into question whether the laws are being enforced impartially through equal punishment for all who break it.<sup>519</sup> Shihata<sup>520</sup> argues that evidence exists to show that ‘the establishment of the rule of law attracts private investment, to the extent that it creates a climate of stability and predictability, where business risks may be rationally assessed, property rights protected, and contractual obligations honoured’. It has also been argued that the success of a country in the globalisation era may be inhibited by failure of its citizens to respect the law. In support of this argument, it has been said that ‘where the people highly

---

<sup>517</sup> ‘Robert Mugabe lambasts Zimbabwe judges over protests’ BBC News 4 September 2016 available at <http://www.bbc.com/news/world-africa-37270873> (accessed 11 November 2017)

<sup>518</sup> Zenda C ‘Judiciary weak on enforcing rule of law’ *The Financial Gazette* 10 March 2016 available at <http://www.financialgazette.co.zw/judiciary-weak-on-enforcing-rule-of-law/> (accessed 4 June 2017)

<sup>519</sup> Enforcing the Rule of Law in Zimbabwe, Zimbabwe Human Rights NGO Forum Special Report (2001) 3

<sup>520</sup> Shihata IFL (1996) 20 1578

regard laws and commands, there is also order and where there is order, investors flock in, growing the economy and building the nation'.<sup>521</sup>

#### 4.6 CONCLUSION

It has been established that to ensure compliance with laws and regulations it is of great importance that there be enforcement of legislation. This makes the legislation binding and further builds consumer confidence in the financial sector. This will result in sectoral stability and economic growth. It has also been established that there are two types of enforcement methods that are used by regulators namely the compliance method and the deterrent method. The compliance based approach is in the form of memorandum of understanding agreements whilst the deterrence base approach involves penalties for failure to comply with the law. It has been established that enforcement of bank regulations in Zimbabwe is done by the RBZ. It is done by way of supervision, monitoring and investigating institutions suspected of failing to comply with the regulations. In terms of the Amendment Act 2015, where a breach of the regulations is established, the RBZ mostly imposes formal actions encompassing administrative, civil or criminal proceedings. This is after an institution has been declared to be PBI. Where the bank is beyond redemption, its license will be cancelled.

The DPC also has a role to play in ensuring compliance of bank regulations through revocation or suspension of contributory banks status where it fails to comply with the regulations. Further to this role, it has also been established that the DPC has a role to play in the liquidation of an insolvent bank in ensuring that money owed to depositors is compensated although it has faced challenges in this area due to some banks being stripped of assets by the time they are liquidated. The DPC, however, only compensates up to the insured amount. Where a depositor is not paid compensation, an application for the same may be made to the DPC with a right of appeal to the Administrative court existing in the event that the DPC refuses to compensate.

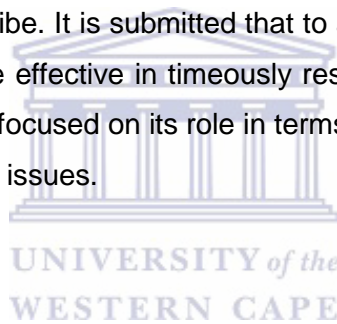
It is apparent that whilst legislation has equipped the RBZ with enforcement actions, there are several challenges that are met in practice in enforcing banking law and regulations. As the regulator, the RBZ has been accused of delayed action in enforcing the law and regulations thus being partly blamed for the dire state of financial affairs in banks by the time liquidation takes

---

<sup>521</sup> 'The Importance of Obeying Laws and Commands' 18 May 2015 available at <http://www.premiumessays.net/articles/sample-essay-on-the-importance-of-obeying-laws-and-commands/#sthash.iJeE4HPg.dpbs> (accessed 20 May 2017)



place. It has been argued that by the time the RBZ gets involved, the directors of the institution would have stripped it of its assets thus prejudicing depositors. Whilst the DPC has now resorted to suing such depositors, the delays in the court system in bringing matters to a finality leaves the possibility of financial prejudice intact. These delays have dented consumer and investor confidence in the justice system. Also detrimental to investor and consumer confidence in the judicial system is the political interference by the ruling party. Whilst the political interference is mostly in politically linked cases, it casts doubt on the impartiality of judges in the event that a bank license holder is not a member of the ruling party. Whilst it may appear to be a far-fetched conclusion, the giving of licenses to indigenisation activists who did not meet the requirements offers insight on how politics is able to infiltrate the banking sector. Also casting doubt on the impartiality of judicial officers is acceptance of donations from the RBZ and the state. In the past, the RBZ has given the judicial officers luxury assets and augmented their salaries. Whilst justified as a move to assist judges who were said to be financially under-resourced, it is submitted that this *prima facie* appears to be a bribe. It is submitted that to assist in restoring confidence in the sector, the RBZ needs to be more effective in timeously resolving banking sector problems. In addition to this, it needs to remain focused on its role in terms of its founding Act and desist from involvement in political and judicial issues.



## **CHAPTER 5**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 INTRODUCTION**

The objective of this mini thesis was to investigate whether there is a sufficient legal framework to build consumer confidence in the financial sector. The study was, therefore, conducted with the following objectives:

- to investigate whether the regulations currently in place are effective in ensuring systemic stability by preventing bank collapses in Zimbabwe;
- to investigate whether a banking sector consumer is sufficiently protected in the unfortunate event of bank collapses;
- to investigate whether the enforcement measures in place are effective; and
- to offer recommendations on how to establish a more stable banking sector environment that boosts consumer and investor confidence in the sector.

The research was a desktop study based on primary and secondary sources of law, journal articles, research papers, reports and newspaper commentaries. The study was divided into five chapters which are summarised below.

#### **5.2 CHAPTER SUMMARY**

##### **5.2.1 Chapter One**

The main objective of chapter one was to introduce the research question and outline the research problem as well as its importance. A chapter summary of all chapters was also given.

##### **5.2.2 Chapter two**

The objective of chapter two was to investigate whether there is an adequate consumer protection legal framework to protect a consumer and subsequently build confidence in the banking sector. The focus of the chapter was on the type of protection available to a depositor in the event of a bank collapse. It was established that a consumer in the banking sector is one who deposits into a bank or one who borrows from a bank. It has also been established that justification of consumer protection is largely based on information asymmetry. This is due to the fact that a consumer does not possess the same information as a professional service provider. This creates an imbalance in the relationship between the consumer and the financial service provider. Due to the fact that a consumer may not be financially literate, consumer protection is justified in protecting the consumer from purchasing services and products they do not fully understand. This prevents potential financial prejudice. To protect the consumer from entering into agreements containing

terms, conditions and consequences they do not understand and which can financially ruin them, consumer protection is important. It has been established that consumer protection is important in maintaining financial sector stability.

It was established that two types of regulation exist to protect the consumer; prudential and market conduct regulation. Prudential regulation is aimed at maintaining financial stability by avoiding systemic risk through quick resolution of issues in systemically important financial institutions. Market conduct regulation governs the interaction of regulated institutions with consumers. Whereas prudential regulation protects consumer assets by preventing a systemic collapse of the sector, market conduct protects a financial consumer by stipulating how service providers interact with consumers. Although contracts between consumers and service providers are generally governed by the Consumer Contracts Act, in the financial sector, a consumer is protected statutorily under the Deposit Protection Act and the Banking Act. The Deposit Protection Act focuses on prudential regulation whilst the Banking Act regulates both prudential and market conduct regulation. The DPC offers insurance to depositors banking with contributory institutions provided the institutions comply with the set prudential standards. The prudential requirements to be complied with those are those set in terms of s4C of the Banking Act. This is the CPF which gives supervisory, regulatory standards and practices for the purpose of monitoring and supervising the activities of banking institutions and controlling companies. Although issued in terms of s4C of the Banking Act as prudential standards, the CPF is in essence market conduct regulation. Breach of these prudential standards results in revocation of a contributory institution's status and subsequent withdrawal of insurance cover. The withdrawal is not, however, immediate. It continues for six months after revocation or until the deposit is fully withdrawn whichever comes earlier. It has also been established that financial sector stability is essential in protecting the consumer from financial harm that arises when institutions they transact with collapse. It is, therefore, imperative to ensure there are measures in place aimed at maintaining sectoral stability. This led to an investigation of whether the current regulations in place are designed as a tool for stability or a weapon against stability.

### **5.2.3 Chapter three**

The main objective of chapter three was to investigate whether the regulations currently in place are effective in ensuring systemic stability by preventing bank collapses in Zimbabwe. It was established that the Zimbabwe financial sector is comprised of insurance companies, pension funds, capital markets, payment systems, microfinance institutions, banks, development finance

institutions, credit unions, housing cooperatives, venture capital companies and asset management companies. It was further established that the financial sector is regulated in terms of a silos model whereby regulation and supervision is determined by the type or function of an institution. Regulation was defined as a set of binding rules issued by either a private or public body. Arguments for and against regulation were presented. However, to establish whether bank regulation is of necessity, a bank was defined in the Zimbabwean context to distinguish it from other financial institutions. This was to assist in determining the economic importance of banks in the economy. It was established that there is a quid pro quo relationship between the economy and financial sector. This conclusion is based on how the economic calamities that affected the nation contributed to bank collapses which in turn affected the economy leading to the current economic difficulties affecting bank operations in the present day. The lack of confidence in the banking sector consequent to the frequent bank collapses amongst other factors has contributed to Zimbabwe being a cash economy. Although argued by Kaufman that whilst large scale bank failures aggravate economic downturns they do not to start the downturns, it was argued that the fact that they have a role to play in economic downturns means that for the sake of economic growth and possible stability, the financial sector ought to be stable. The causes of bank collapses were discussed to decide how this can be achieved. It was argued that consequent to ESAP there was increased competition in a small market in the absence of an updated regulatory and supervisory framework. Prior to the financial sector reforms under ESAP, competition in the sector was low and banks were guaranteed profit. The banks that entered into the sector were indigenous and some entered based on political favours without meeting all requirements. This increased competition made it difficult for most banks to earn profits leading to speculative activities and investments in vehicles and immovable property by banks. The regulatory response by the RBZ to these activities was said to have contributed to the wave of bank collapses which occurred between 2003 and 2004. The RBZ, however, blamed industry players for the collapse. Although deemed harsh, it was argued that action was required to bring an end to these activities. It was concluded that both the RBZ and banks had a role to play in the collapse and it was recommended that imposition of penalties be used where dialogue has failed. It was also recommended that for protection of the consumers, there ought to be competition legislation specifically for the sector.

Although the current Banking Act gives the RBZ supervision powers to ensure banks comply with legislation in their operations and market conduct, bank collapses have continued in the multicurrency era. NPLs, weak liquidity power, not enough capital to cushion potential risks, lack

of corporate governance structures, participation of banks in black market activities, poor credit risk management and abuse of depositor funds have been given as reasons for bank failures in the multicurrency era. It has also been noted that all banks that have collapsed are indigenous banks with no record of a foreign bank collapsing in Zimbabwe to date. The Banking Act has gone over various amendments and provisions have been promulgated requiring banks to comply with prudential regulations. The Act is administered by the RBZ as the regulator. As the regulator, the RBZ is responsible for ensuring compliance with sound accounting, risk management and corporate governance requirements. Where a bank is found to be in breach of the provisions of the Banking Act and or regulations, the RBZ may take necessary and immediate action 'to preserve the integrity of the financial system of Zimbabwe'. In addition to this, the RBZ is also statutorily a LOLR although it has not been performing this function since 2009 due to it not being adequately capitalised. As opposed to bailing out a financially distressed bank, it is recommended that mergers and acquisitions be encouraged in such circumstances to avoid a collapse. This must be done within set competition perimeters.

Because of the bank collapses others have advocated for a change in the regulatory model as they argue the current silos model in place is not effective. The twin peaks model has been advocated for as the best alternative. However, it is submitted that because fault has only been imputed on the regulator not the model of regulation, it is the regulator that needs to be more effective in its role of maintaining systemic stability. It is submitted that unless the problems being faced under the current model are addressed, a twin peak model might not be the solution. To be a more effective regulator, the RBZ needs to address systemic problems as and when they arise. The problems must be met with action that seeks to achieve the long term goal of achieving consumer confidence in the sector as opposed to merely punishing the delinquent behaviour of financial sector actors.

#### **5.2.4 Chapter four**

The objective of chapter four was to investigate the enforcement of bank laws and regulations in Zimbabwe. It was established that to ensure compliance with laws and regulations it is of great importance that there be enforcement of legislation. This makes the legislation binding and further builds consumer confidence in the financial sector. This will result in sectoral stability and economic growth. It was also established that there are two types of enforcement methods that are used by regulators namely the compliance method and the deterrent method. The compliance based approach is in the form of memorandum of understanding agreements whilst the

deterrence base approach involves penalties for failure to comply with the law. Enforcement of bank regulations in Zimbabwe is done by the RBZ by way of supervision, monitoring and investigating institutions suspected of failing to comply with the regulations. In terms of the Amendment Act 2015, where a breach of the regulations is established, the RBZ mostly imposes formal actions encompassing administrative, civil or criminal proceedings. This is after an institution has been declared to be PBI. Where the bank is beyond redemption, its license will be cancelled.

The DPC also has a role to play in ensuring compliance of bank regulations through revocation or suspension of contributory banks status where it fails to comply with the regulations. Further to this role, it has also been established that the DPC has a role to play in the liquidation of an insolvent bank in ensuring that money owed to depositors is compensated although it has faced challenges in this area due to some banks being stripped of assets by the time they are liquidated. The DPC, however, only compensates up to the insured amount. Where a depositor is not paid compensation, an application for the same may be made to the DPC with a right of appeal to the Administrative court existing in the event that the DPC refuses to compensate.

It is, therefore, apparent that whilst legislation has equipped the RBZ with enforcement actions, there are several challenges that are met in practice in enforcing banking law and regulations. As the regulator, the RBZ has been accused of delayed action in enforcing the law and regulations thus being partly blamed for the dire state of financial affairs in banks by the time liquidation takes place. It has been argued that by the time the RBZ gets involved, the directors of the institution would have stripped it of its assets thus prejudicing depositors. Whilst the DPC has now resorted to suing such depositors, the delays in the court system in bringing matters to a finality leaves the possibility of financial prejudice intact. These delays have dented consumer and investor confidence in the justice system. Also detrimental to investor and consumer confidence in the judicial system is the political interference by the ruling party. Whilst the political interference is mostly in politically linked cases, it casts doubt on the impartiality of judges in the event that a bank license holder is not a member of the ruling party. Whilst it may appear to be a farfetched conclusion, the giving of licenses of indigenisation activists who did not meet the requirements offers insight in how politics is able to infiltrate the banking sector. Also casting doubt on the impartiality of judicial officers is acceptance of donations from the RBZ and the state. In the past, the RBZ has given the judicial officers luxury assets and augmented their salaries. Whilst justified as a move to assist judges who were said to be financially under resourced, it is submitted that



this prima facie appears to be a bribe. It is submitted that to assist in restoring confidence in the sector, the RBZ needs to be more effective in timeously resolving banking sector problems. In addition to this, it needs to remain focused on its role in terms of its founding Act and desist from involvement with political and judicial issues.

### **5.2.5 Chapter five**

In this chapter a summary of the study is given including observations. Recommendations pursuant to findings are given.

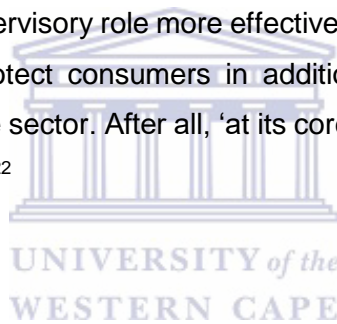
## **5.6 OBSERVATIONS**

It was observed that the start of the first wave of bank collapses was due to increased banking sector competition in a small market due to ESAP financial sector reforms. This meant reduced profits for some institutions resulting in unscrupulous activities by most of the institutions. Whilst the RBZ intended to remedy the situation, the manner in which it did so exacerbated the situation resulting in a sectoral catastrophe. Outdated legislation also played a role in the collapses as the RBZ had no supervisory powers at the time banks started engaging in unsound financial activities. Although legislation is now constantly being updated to address problems, and the RBZ now has supervisory powers, bank collapses have continued. Whilst some have blamed this on economic troubles and the regulatory model, it appears the delayed involvement of the RBZ has played a role in the bank collapses. Not only have the responses been at a time when an institution is near collapse, but this delayed action has also been at the expense of the depositors. Although the sector is now governed by an updated consumer and banking sector regulatory framework, these laws and regulations are not being enforced in a manner that builds consumer and investor confidence.

## **5.7 RECOMMENDATIONS**

It is recommended that for protection of the consumers, there ought to be competition legislation specifically for the sector. Although banking legislation provides for mergers and acquisitions, it is only done where an institution is posing a threat to the sector. It is recommended that mergers be encouraged where an increase of players in the sector has the potential to destabilise the sector. Whilst competition ought to be encouraged, it is submitted that it be contained according to the market size for financial sector stability.

In addition to increased competition, bank failures have been a result of defective or delayed legislation, failure to comply with sound bank practices by banks and the regulators enforcement technique, or lack of it, to bank crises. It is submitted that the only change currently required is the manner and time within which the RBZ responds to a crisis. This will allow detection of problems at an early stage and avoid systemic instability, building consumer confidence as a result. Unless and until the RBZ becomes a more effective supervisor, it is submitted that even if the model was changed to the twin peaks model, as long as the RBZ remains a supervisor, the same problems being faced by the sector will continue. However, if the problems being faced under the current model are addressed, a twin peak model might work in the future. It is recommended that regulation continues under the current model with changes being made to make it more efficient. In enforcing legislation, it is recommended that penalties be imposed only where dialogue has failed. It is also recommended that a banking ombudsman be appointed to directly receive and handle all consumer complaints against industry players. In addition, the regulator needs to exercise its supervisory role more effectively and timeously enforce the current regulations in place. This will protect consumers in addition to building both consumer and investor trust and confidence in the sector. After all, 'at its core, banking is not simply about profit, but about personal relationships'.<sup>522</sup>



---

<sup>522</sup> Rohatyn F *DEALINGS A Political and Financial Life* (2010) 30

## BIBLIOGRAPHY

### Legislation

1. Constitution
  2. Banking Act 9 of 1999
  3. Contracts Act 6 of 1994
  4. High Court Act 29 of 1981
  5. Reserve Bank Act 5 of 1999
  6. Supreme Court Act 28 of 1981
  7. Banking Amendment Act 2015
  8. Deposit Protection Act 7 of 2011
  9. Magistrates Court Act 18 of 1931
  10. Small Claims Court Act 20 of 1992
  11. Administrative Justice Act 12 of 2004
  12. Bank Use Promotion Act 109 of 2008
  13. Insurance and Pensions Commission Act 7 of 2000
  14. statutory instrument 105 of 1999
  15. Statutory Instrument 156 Of 2013
  16. Statutory Instrument 205 of 2000
- 
- The logo of the University of the Western Cape is a faint, light blue watermark in the background. It features a classical building with a pediment and columns, with the text 'UNIVERSITY of the WESTERN CAPE' written below it in a serif font.

### Case law

17. *Standard Chartered Bank Zimbabwe Limited V China Shougang International* SC49/13 2-3
18. *Ben Raymond Mundangepfupfu and Alban Tachiyirweyi Mundangepfupfu v Innocent Chisepo* unreported judgement HH 188-17 (22 March 2017)

### Bills

19. Consumer Protection Bill

### Books

20. Barth R, Gan J & Nolle DE *Global Banking Regulation & Supervision: What Are the Issues and What Are the Practices?* (2009) Nova Science Publishers, Inc
21. Buckle M & Beccalli E 'Principles of banking and finance' (2008) University of London Publications Office
22. Cartwright P *Banks, Consumers and Regulation* (2004)

23. Cheng C ed *A New International Legal Order* (2016)
24. Cranston R *Principles of Banking Law* 2 ed (2002)
25. Lovett WA *Banking and Financial Institutions Law* 3 ed (1991)
26. Madhuku L *An Introduction to Zimbabwean Law* (2010)
27. Mwenda KK *Aspects of Financial Services Regulation and The Concept of a Unified Regulator* (2006) Washington DC: The International Bank for Reconstruction and Development/World Bank
28. OECD *Competition Assessment Reviews* (2017) OECD Publishing: Paris
29. Pillai RSN *Legal Aspect of Business (Mercantile Law)* (2011) Chands Publishing
30. Rohatyn F *DEALINGS A Political and Financial Life* (2010) Simon and Schuster Publishing
31. Singh D *Banking Regulation of UK and US Financial Markets* (2016)
32. Van Raaij WF *Understanding Consumer Financial Behavior* (2016)

### Chapters in books

33. Calomiris CW & Gorton G 'The Origins of Banking Panics: Models, Facts, and Bank Regulation' in Glenn Hubbard GR (ed) *Financial Markets and Financial Crises* 4 ed (1991)
34. Goodhart C 'How should we regulate bank capital and financial products? What role for living wills?' in Turner A *The future of finance and the theory that underpins it* (2010)
35. Howells G, Ramsay I & Wilhelmsson T 'Consumer law in its international dimension' in Howells G, Ramsay I & Wilhelmsson T (eds) *Handbook of Research on International Consumer Law* (2010)

### Manuals

36. UNCTAD 'Manual on Consumer Protection' (2016) United Nations Conference on Trade and Development

### Internet Sources

37. Abel S 'Role of Deposit Protection Corporation of Zimbabwe' *The Herald* 21 January 2015 available at <http://www.herald.co.zw/role-of-deposit-protection-corporation-of-zimbabwe/> (accessed 27 April 2017)
38. Bernanke BS 'Financial Innovation and Consumer Protection' <https://www.federalreserve.gov/newsevents/speech/bernanke20090417a.htm>

39. Bhebhe N 'Non-performing loans haunt Zimbabwean banks' *The Africa Report* 23 April 2015 available at <http://www.theafricareport.com/Southern-Africa/non-performing-loans-haunt-zimbabwe-banks.html> (accessed 10 April 2017)
40. Block R 'Roger Boka Thrived as an Icon, Until His Bank Went Bust' *The Wall Street Journal* 8 September 1998 available at <http://www.wsj.com/articles/SB905209729755995000> (accessed 22 January 2017)
41. Business Reporter 'Bank depositors fully covered' *The Herald* 9 February 2017 <http://www.herald.co.zw/bank-depositors-fully-covered-dpc/> (accessed 9 February 2017)
42. Business Reporter 'RBZ boss speaks on non-performing loans' *Newsday* 14 November 2014 available at <https://www.newsday.co.zw/2014/11/14/rbz-boss-speaks-non-performing-loans/>
43. Business Reporter 'RBZ raises capital requirements tenfold' *New Zimbabwe* 31 July 2012 available at <http://www.newzimbabwe.com/business-8653-RBZ+raises+bank+capital+requirements/business.aspx> (accessed 6 April 2017)
44. Business Reporter 'RBZ to reduce non-performing loans ratio' *The Herald* 17 July 2015 available at <http://www.herald.co.zw/rbz-to-reduce-non-performing-loans-ratio/>
45. Business Reporter 'US15 depositors funds trapped' *The Sunday Mail* 8 June 2014 available at <http://www.sundaymail.co.zw/us15m-depositors-funds-trapped/>
46. Cartwright P 'The Vulnerable Consumer of Financial Services: Law, Policy and Regulation' 20 available at <https://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/researchreports/paper78.pdf> (accessed 16 April 2017)
47. Chakrabarty KC 'Regulation for financial consumer protection – present status and future directions' Speech at the Conference of Principal Code Compliance Officers (2013) 5 available at <http://www.bis.org/review/r130506a.pdf> (accessed 13 July 2017)
48. Charamba FC 'Banking Sector needs more reforms' *The Herald* 16 December 2016 available at <http://www.herald.co.zw/rbz-intervenes-on-bank-charges/> (accessed 16 December 2016)
49. Chawafambira K 'Depositors call for RBZ protection' *Weekend Post* 27 March 2015 available at <http://www.weekendpost.co.zw/articles/2015/03/27/depositors-call-for-rbz-protection> (accessed 12 June 2017)
50. Chawafambira K 'Unbanked money on the rise' *Daily News* 14 March 2015 available at <https://www.dailynews.co.zw/articles/2014/03/23/unbanked-money-on-rise> (accessed 19 January 2017)

51. Choruma A 'Call for harmonised regulatory framework' *The Financial Gazette* 22 February 2016 available at <http://www.financialgazette.co.zw/call-for-harmonised-regulatory-framework/> (accessed 10 April 2017)
52. Cross E 'Just what is a Bond Note' *The Zimbabwean* 1 December 2016 available at <http://thezimbabwean.co/2016/12/just-bond-note/> (accessed 9 February 2017)
53. Dowd K 'Lessons from the Financial Crisis: A Libertarian Perspective' available at <http://www.libertarian.co.uk/lapubs/econn/econn111.htm>
54. Dzirutwe M 'StanChart's Zimbabwe business limits use of Visa card abroad' *Reuters Africa* accessed 7 February 2017 available at <http://af.reuters.com/article/investingNews/idAFKBN15M0Q7> (accessed 23 March 2017)
55. Dzirutwe M 'Zimbabwean lawyers take Mugabe to court over bond notes' *CNBC Africa* 16 November 2016 available at <http://www.cnbc africa.com/news/financial/2016/11/16/zimbabwe-lawyers-take-mugabe-to-court-over-bond-notes-law/> (accessed 9 February 2017)
56. Dugger WC 'Life in Zimbabwe: Wait for Useless Money' *New York Times* 1 October 2008 available at [www.nytimes.com/2008/10/01/africa/02zimbabwe](http://www.nytimes.com/2008/10/01/africa/02zimbabwe)
57. Elderfield M 'Effective enforcement – encouraging compliance and good practice' available at <http://www.bis.org/review/r121212g.pdf> (accessed 28 May 2017)
58. Goodspeed I 'Twin Peaks' available at <http://financialmarketsjournal.co.za/oldsite/17thedition/printedarticles/twinpeaks.pdf> (accessed 13 July 2017)
59. Goshu T 'Is the financial and the supervisory, regulatory system in in Zimbabwe still appropriate? Available at <https://www.scribd.com/document/145273574/Regulation-of-Financial-System>
60. Hungwe B 'Final demand: Zimbabwe's debt defaulters' *Free and Fair Zimbabwe Election* 12 September 2016 available at <http://zimbabweelection.com/2016/09/12/final-demand-zimbabwes-debt-defaulters/> (accessed 3 February 2017);
61. Hyde R 'Does The Silo-Based Regulatory Compliance Model Really Work For Advisors Or Consumers?' 12 August 2015 available at <http://www.ticoon.com/blog-original/2015/8/12/does-the-silo-based-regulatory-compliance-model-really-work-for-advisors-or-consumers> (accessed 2 July 2017)
62. Jakes S 'Zimbabweans sleeping in front of banks to beat the queues' *Bulawayo 24 News* 4 November 2016 available at <http://bulawayo24.com/index-id-news-sc-national-byo-99076.html> (accessed 21 January 2017)



63. Kachembere J '6 banks fail to meet RBZ minimum capitalisation' *Daily News* 3 December 2014 available at <https://www.dailynews.co.zw/articles/2014/12/03/6-banks-fail-to-meet-rbz-minimum-capitalisation> (accessed 6 April 2017)
64. Kaduwo K 'Zimbabwe: Assessing U.S.\$100 Million Capital Requirement for Local Banks' *Zimbabwe Independent* 10 March 2017 available at <https://www.theindependent.co.zw/2017/03/10/bankers-must-held-liable/>
65. Kadzere M 'Trust Bank placed under final liquidation' *The Herald* 31 May 2016 available at <http://www.herald.co.zw/trust-bank-placed-under-final-liquidation/> (accessed 12 June 2017)
66. Kumbuka D 'Cash shortage is crushing Zimbabwe's already embattled economy' *Business Day* 7 February 2017 available at <https://www.businesslive.co.za/bd/world/africa/2017-02-07-cash-shortage-is-crushing-zimbabwes-already-embattled-economy/>
67. Kuwaza K 'High NPLS: A consequence of poor corporate governance, economic mismanagement' *Zimbabwe Independent* 10 October 2014 <https://www.theindependent.co.zw/2014/10/10/high-npls-consequence-poor-corporate-governance-economic-mismanagement/> (accessed 15 February 2017)
68. Kuwaza K 'Tetrad sinks under US\$26m liabilities' *Zimbabwe Independent* 13 March 2015 available at <https://www.theindependent.co.zw/2015/03/13/tetrad-sinks-under-us26m-liabilities/> (accessed 3 February 2017)
69. Langa V 'Chinamasa threatens cash-hoarding retailers, wholesalers' *Newsday* 7 April 2017 available at <https://www.newsday.co.zw/2017/04/07/chinamasa-threatens-cash-hoarding-retailers-wholesalers/> (accessed 8 April 2017)
70. Latham B & Cohen M 'Death Spiral' Looms for Zimbabwe Economy as Cash Runs Out' *Bloomberg Politics* 7 February 2017 available at <https://www.bloomberg.com/news/articles/2017-02-06/-death-spiral-looms-for-zimbabwe-economy-as-cash-runs-out> (accessed 11 July 2017)
71. Lupande F 'Firm fined \$17 000 for hoarding cash' *The Herald* (29 April 2017) available at <http://www.herald.co.zw/firm-fined-17-000-for-hoarding-cash/> (accessed 29 April 2017)
72. Machipisa L 'Economy-Zimbabwe: panic grips the banking sector' *Inter Press Service News Agency* 6 May 1998 available at <http://www.ipsnews.net/1998/05/economy-zimbabwe-panic-grips-the-banking-sector/> (accessed 22 January 2017)
73. Mafukidze T 'Time for a commercial court in Zimbabwe!' *The Corporate Lawyer* 12 June 2009 available at <https://thecorporatelawyer.wordpress.com/2009/06/12/time-for-a-commercial-court-in-zimbabwe-by-tererai-mafukidze/> (accessed 4 June 2017)

74. Magaisa A 'Curbing excessive regulation in finance' *The Independent* 16 September 2005  
<https://www.theindependent.co.zw/2005/09/16/curbing-excessive-regulation-in-finance/>  
(accessed 13 January 2017)
75. Magaisa A 'Collapse of ReNaissance, a failure of regulation' *Nehanda Radio* 5 June 2011  
available at <http://nehandaradio.com/2011/06/05/collapse-of-renaissance-a-failure-of-regulation/> (accessed 4 June 2017)
76. Majaka N 'Help us with banks' *Daily News* 1 February 2015 available at  
<https://www.dailynews.co.zw/articles/2015/02/01/help-us-with-banks> (accessed 7 June 2017)
77. Makoni TA 'What Caused The Zimbabwe Banking Crises Of 2003-4?'  
<https://nurturingchampions.com/2011/08/30/what-caused-the-zimbabwe-banking-crises-of-2003-4/>
78. Malaba B 'Cash shortage paralyses Zimbabwe' *African Independent* 11 April 2017 available  
at <http://www.africanindy.com/news/cash-shortage-paralyses-zimbabwe-8614985> (accessed  
11 April 2017)
79. Mandizha T 'RBZ measures to negatively affect banks' *Newsday* 28 February 2013 available  
at <https://www.newsday.co.zw/2013/02/rbz-measures-to-negatively-affect-banks/> (accessed  
12 April 2017)
80. Mangudya JP 'Measures to deal with cash shortages whilst simultaneously stabilising and  
stimulating the economy' [http://www.chamberofminesofzimbabwe.com/wp-  
content/uploads/2016/05/press-statement-on-cash-shortages-challenge-04-may-2016-2.pdf](http://www.chamberofminesofzimbabwe.com/wp-content/uploads/2016/05/press-statement-on-cash-shortages-challenge-04-may-2016-2.pdf)
81. Marawanyika G and Latham B 'Growth: Zimbabwe looks to 'pillars of economy' *IOL* 11  
August 2016 available [http://www.iol.co.za/business-report/economy/growth-zimbabwe-  
looks-to-pillars-of-economy-2055739](http://www.iol.co.za/business-report/economy/growth-zimbabwe-looks-to-pillars-of-economy-2055739) (access 10 April 2017)
82. Mashaie M 'Consumer Protection Bill on cards' *The Herald* 7 July 2016 available at  
<http://www.herald.co.zw/consumer-protection-bill-on-cards/> (accessed 16 March 2017)
83. Mataranyika M 'Zimbabwe caps bank interest rates at 18%' *Fin24* 6 August 2015 available at  
<http://www.fin24.com/Economy/Zimbabwe-caps-bank-interest-rates-at-18-20150805>  
(accessed 10 February 2017)
84. Mawonde A 'Law textbooks shortage: Judges forced to borrow' *The Herald* 26 November  
2014 available at <http://www.herald.co.zw/law-textbooks-shortage-judges-forced-to-borrow/>  
(accessed 27 September 2017)

85. Mhlanga B 'Black market thrives, as banks run dry' *The Standard* 14 May 2017 available at <https://www.thestandard.co.zw/2017/05/14/black-market-thrives-banks-run-dry/> (accessed 11 July 2017)
86. Mhlanga P 'Bond notes rule but fears remain' *The Financial Gazette* 9 February 2017 available at <http://www.financialgazette.co.zw/bond-notes-rule-but-fears-remain/> (accessed 9 February 2017)
87. Mhlanga P 'Close troubled banks earlier' *The Financial Gazette* 7 May 2015 available at <http://www.financialgazette.co.zw/close-troubled-banks-earlier/>
88. Mhlanga P 'Failed banks cost depositors US\$190 million' *The Financial Gazette* 14 April 2016 available at <http://www.financialgazette.co.zw/failed-banks-cost-depositors-us190-million/> (accessed 22 January 2017)
89. Mlilo B 'Banks revert to \$50 withdrawals: Standard Chartered cancels Visa cards' *The Chronicle* 8 February 2017 available at <http://www.chronicle.co.zw/banks-revert-to-50-withdrawal-limits-standard-chartered-cancels-visa-cards/> (accessed 8 February 2017)
90. Moyo A 'Depositors of closed banks hope against hope' *The Sunday Mail* 12 March 2017 available at <http://www.sundaymail.co.zw/depositors-of-closed-banks-hope-against-hope/> (accessed 31 May 2017)
91. Moyo S 'Chinamasa explains Zim cash shortages, as bank queues persist' *ZimNews.Net* available at <https://zimnews.net/chinamasa-explains-zim-cash-shortages-bank-queues-persist/> (accessed 11 April 2017)
92. Moyo T 'Financial Sector Liberalization And The Poor: A Critical Appraisal' Structural Adjustment Participatory Review International Network available at [http://www.saprin.org/zimbabwe/research/zim\\_fin\\_sect.pdf](http://www.saprin.org/zimbabwe/research/zim_fin_sect.pdf) (accessed 17 July 2017)
93. Mphambela C 'The Links Between Financial Inclusion and Financial Stability' available at <http://baz.org.zw/consumer-centre/education-centre/links-between-financial-inclusion-and-financial-stability> (accessed 17 April 2017)
94. Mpofu B & Mhlanga F 'US\$2 billion externalised' *Zimbabwe Independent* 5 February 2016 available at <https://www.theindependent.co.zw/2016/02/05/us2-billion-externalised/> (accessed 22 January 2017)
95. Mtomba V 'Collapsed banks yet to compensate depositors' *Newsday* 8 October 2014 available at <https://www.newsday.co.zw/2014/10/08/collapsed-banks-yet-compensate-depositors/> (accessed 12 June 2017)
96. Muchemwa S 'Liquidity and the lender of last resort' *The Herald* 3 April 2014 available at <http://www.herald.co.zw/liquidity-and-the-lender-of-last-resort/> (accessed 4 May 2017)

97. Muronzi C 'The rise and fall of indigenous banks' *The Zimbabwe Independent* 1 May 2015 available at <https://www.pressreader.com/zimbabwe/the-zimbabwe-independent/20150501/282454232546602> (accessed 23 March 2017)
98. Mushonga M 'Zimbabwe's rich stashing money at homes' *CAJ News* 30 January 2017 available at <http://cajnewsafrica.com/2017/01/30/zimbabwes-rich-stashing-money-at-homes/> (accessed 28 March 2017)
99. Mutasa B 'Why local banks are collapsing' *Southern Eye* 17 March 2015 available at <https://www.southerneye.co.zw/2015/03/17/why-local-banks-are-collapsing/> (accessed 25 March 2017)
100. Mutasa B & Nyoni M 'Central bank hopes to resume role of lender' *Southern Eye* available at <https://www.southerneye.co.zw/2015/02/09/central-bank-hopes-resume-role-lender/> (accessed 10 April 2017)
101. Muza ON 'Resolution framework for distressed banks' *Newsday* 16 June 2011 available at <https://www.newsday.co.zw/2011/06/16/2011-06-16-resolution-framework-for-distressed-banks/> (accessed 12 June 2017)
102. Muzulu P 'Judicial system marred by inefficiency' *The Standard* 5 October 2014 available at <https://www.thestandard.co.zw/2014/10/05/judicial-system-marred-inefficiency/> (accessed 17 June 2017)
103. Nyahuma T 'Enforcement of court judgments' *The Sunday Mail* 2 October 2016 available at <http://www.sundaymail.co.zw/enforcement-of-court-judgments/> (accessed 4 June 2017)
104. Nyakazeya P 'Interfin Bank problems far from being solved' *The Financial Gazette* 20 February 2017 available at <http://www.financialgazette.co.zw/interfin-bank-problems-far-from-being-solved/> (accessed 12 June 2017)
105. Nyakwenda L 'Reserve Bank of Zimbabwe swoops on unbanked businesses' *Zimbabwe Situation* 6 June 2016 <http://www.zimbabwesituation.com/news/zimsit-m-reserve-bank-of-zimbabwe-swoops-on-unbanked-businesses/> (accessed 28 March 2017)
106. Nyamabvu G 'Yet another bank forced to shut down' *New Zimbabwe* 27 July 2012 available at <http://www.newzimbabwe.com/news-8621-Yet%20another%20bank%20forced%20to%20close/news.aspx> (accessed 6 April 2017)
107. Nyoka S 'Why Zimbabweans are spending the night outside banks' *BBC News* 9 November 2016 available at <http://www.bbc.com/news/world-africa-37910072> (accessed 21 January 2017)
- 108.

109. Reuters 'Zimbabweans resist newly introduced bond notes' *ENCA* 28 November 2016 available at <http://www.enca.com/africa/zimbabweans-resistant-to-newly-introduced-bond-notes> (accessed 9 February 2017)
110. Reserve bank of Zimbabwe 'About us' available at <http://rbz.co.zw/about-us.html> (accessed 24 March 2017)
111. Rusike G 'Rethinking financial sector regulation' *News Day* 9 June 2011 available at <https://www.newsday.co.zw/2011/06/09/2011-06-09-rethinking-financial-sector-regulation/> (accessed 3 April 2017)
112. Ruzvidzo V & Kadzere M 'RMB under curatorship' *The Herald* 2 June 2011 available at <http://www.herald.co.zw/rmb-under-curatorship/> (accessed 4 June 2017)
113. Sandu M & Mandizha T 'Cash crisis takes new twist' *The Standard* 9 April 2017 available at <https://www.thestandard.co.zw/2017/04/09/cash-crisis-takes-new-twist/> (accessed 11 April 2017)
114. Sandu N 'Indigenous financial institutions under scrutiny' *The Standard* 9 January 2004 available at <http://www.thestandard.co.zw/2004/01/09/indigenous-financial-institutions-under-scrutiny/> (accessed 23 January 2017)
115. Sandu N 'The changing face of Zim banking' *The Standard* 16 October 2016 available at <https://www.thestandard.co.zw/2016/10/16/changing-face-zim-banking/> (accessed 23 March 2017);
116. Sibanda G 'Banks to blame for non performing loans' *The Herald* 30 March 2017 available at <http://www.herald.co.zw/banks-to-blame-for-non-performing-loans/> (accessed 30 March 2017)
117. Staff Reporter 'Commercial Court almost ready' *The Financial Gazette* 30 June 2016 available at <http://www.financialgazette.co.zw/commercial-court-almost-ready/> (accessed 7 June 2017)
118. Staff Reporter 'Zimbabwe bank queues suddenly disappear' *Bulawayo 24 News* 16 January 2017 available at <http://bulawayo24.com/index-id-business-sc-economy-byo-102512.html> (accessed 28 March 2017)
119. Staff Writer 'US\$1bn fund to take over troubled banks' loans' *Zimbabwe Independent* 8 September 2012 available at <https://www.theindependent.co.zw/2012/09/08/us1bn-fund-to-take-over-troubled-banks-loans/> (accessed 15 February 2017)
120. Standard Chartered Zimbabwe 'About us' available at <https://www.sc.com/zw/about-us/en/> (accessed 3 October 2017)



121. Standard Chartered offers cash management, trade services, lending, treasury and custody services <https://www.sc.com/zw/about-us/en/>
122. Structural Adjustment and Zimbabwe's Poor' available at <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/15A937F6B215A053852567F5005D8B06> (accessed 3 September 2017)
123. Sunday News Reporter 'Retrenchments haunt firms as banks strike' *The Sunday News* 15 November 2015 available at <http://www.sundaynews.co.zw/retrenchments-haunt-firms-as-banks-strike/> (accessed 3 February 2017)
124. The Famine Early Warning Systems Network (2003) 'Zimbabwe Monthly Food Security' [http://www.fews.net/sites/default/files/documents/reports/Zimbabwe\\_200309en.pdf](http://www.fews.net/sites/default/files/documents/reports/Zimbabwe_200309en.pdf)
125. The Source 'RBZ figures show US\$3bn circulating in informal sector' *New Zimbabwe* 14 April 2015 available at [http://www.newzimbabwe.com/business-21876-\\$3bn+circulating+in+informal+sector,+RBZ/business.aspx](http://www.newzimbabwe.com/business-21876-$3bn+circulating+in+informal+sector,+RBZ/business.aspx) (accessed 19 January 2017)
126. The Source 'The curse of Zimbabwe's indigenous banks' *Newsday* 16 December 2013 available at <https://www.newsday.co.zw/2013/12/16/curse-zimbabwes-indigenous-banks/> (accessed 4 May 2017)
127. Thornycroft P 'StanChart's Zim business limits use of Visa card abroad' *IOL* 8 February 2017 available at <http://www.iol.co.za/news/africa/stancharts-zim-business-limits-use-of-visa-card-abroad-7663431> (accessed 23 March 2017)
128. US\$7.4-billion circulating in Zimbabwe's informal economy *ENCA* 10 March 2016 <https://www.enca.com/africa/us74-billion-circulating-zimbabwe%E2%80%99s-informal-economy>
129. Xinhua 'RBZ says US\$1,8 billion was externalized from Zimbabwe in 2015, urges a stop to the trend' *New Zimbabwe* 4 February 2016 available at [http://www.newzimbabwe.com/business-27526RBZ+\\$1,8+billion+externalised+in+2015/business.aspx](http://www.newzimbabwe.com/business-27526RBZ+$1,8+billion+externalised+in+2015/business.aspx) (accessed 29 September 2016)
130. Xinhua 'US dollar black market thrives in broke Zimbabwe' *The Financial Gazette* 20 March 2017 available at <http://www.financialgazette.co.zw/u-s-dollar-black-market-thrives-in-broke-zimbabwe/> (accessed 21 March 2017)
131. Yam J 'Consumer protection and the banking industry' 2 available at <http://www.bis.org/review/r010620b.pdf> (accessed 25 April 2017)
132. Yang WR Signal Effect, Herd Behavior and the Trigger Time of Bank Runs Working Paper (2005) 2 available at [http://econ.ucsb.edu/~mkapicka/RG/model2\\_wanru.pdf](http://econ.ucsb.edu/~mkapicka/RG/model2_wanru.pdf)



133. Zenda C 'Foreign businesses shun Zimbabwe courts' *Zimbabwe Consolidated News* 22 December 2016 available at <http://zimbabwe-consolidated-news.com/2016/12/22/foreign-businesses-shun-zimbabwe-courts-2/> (accessed 8 June 2017)
134. Zenda C 'Judiciary weak on enforcing rule of law' *The Financial Gazette* 10 March 2016 available at <http://www.financialgazette.co.zw/judiciary-weak-on-enforcing-rule-of-law/> (accessed 4 June 2017)
135. Zimnat Asset Management 'Liquidity and the lender of last resort' *The Herald* 3 April 2014 available at <http://www.herald.co.zw/liquidity-and-the-lender-of-last-resort/>
136. Zivira T 'Zimbabweans sleep in bank queues as bond notes beckon' *The Standard* 6 November 2016 available at <https://www.thestandard.co.zw/2016/11/06/zimbabweans-sleep-bank-queues-bond-notes-beckon/> (accessed 12 January 2017)
137. 'About the Basel Committee' available at <http://www.bis.org/bcbs/about.htm?m=3%7C14%7C573> (accessed 9 July 2017)
138. 'About the BIS – overview' available at <http://www.bis.org/about/index.htm?m=1%7C> (accessed 9 July 2017);
139. 'About DPC' available at <http://www.dpcorp.co.zw/about-dpc.html>
140. Banking in Zimbabwe Thriving, for now' *The Economist* 8 February 2001 available at <http://www.economist.com/node/499865> (accessed 22 January 2017)
141. Basel Committee membership available at <http://www.bis.org/bcbs/membership.htm> (accessed 9 July 2017)
142. Code of Banking Practice available at <http://baz.org.zw/sites/default/files/Signed%20Code%20of%20Banking%20Practice0001.pdf>
143. 'Consumer Protection, Consumer Education, & Financial Literacy' <http://www.mftransparency.org/wp-content/uploads/2012/06/MFT-PRES-315-EN-Malawi-Financial-Literacy-and-Consumer-Protection-2010-08.pdf> (accessed 27 April 2017)
144. 'Deliver us from competition' *The Economist* 25 June 2009 available at <http://www.economist.com/node/13900071> (accessed 1 February 2017)
145. 'Enforcement' available at <https://www.bankingsupervision.europa.eu/banking/tasks/enforcement/html/index.en.html> (accessed 28 May 2017)
146. Enforcing Contracts in Zimbabwe' available at <http://www.doingbusiness.org/data/exploreeconomies/zimbabwe/enforcing-contracts> (accessed 27 May 2017)

147. 'Funding of the Deposit Protection Scheme' available at <http://www.dpcorp.co.zw/deposit-protection.html> (accessed 11 May 2017)
148. 'ReNaissance saga' *Newsday* 3 June 2011 available at <https://www.newsday.co.zw/2011/06/03/2011-06-03-renaissance-saga/> (accessed 4 June 2017)
149. 'Subsidiary Legislation (Regulation)' available at <https://www.slp.wa.gov.au/faq.nsf/Web/Topics/97122C9860FE02FC48256CC9002A2895?opendocument> (accessed 17 June 2017)
- 150.
151. 'The Role of Deposit Protection in Promoting Financial Inclusion' available at <http://www.dpcorp.co.zw/assets/role-of-deposit-protection-in-promoting-financial-inclusion.pdf> (accessed 11 May 2017)
152. 'US\$7.4-billion circulating in Zimbabwe's informal economy' *ENCA* 10 March 2016 available at <https://www.enca.com/africa/us74-billion-circulating-zimbabwe%E2%80%99s-informal-economy> (accessed 19 January 2017)
153. 'What five processes does regulatory enforcement normally entail?' available at <https://www.int-comp.org/careers/a-career-in-compliance/what-is-compliance/> (accessed 12 June 2017)
154. 'What functions does a regulator usually fulfill?' available at <https://www.int-comp.org/careers/a-career-in-compliance/what-is-compliance/> (accessed 12 June 2017)
155. 'What is secondary legislation?' available at <https://www.int-comp.org/careers/a-career-in-compliance/what-is-compliance/> (accessed 12 June 2017)
156. 'Zimbabwe's banks Crisis breaks' *The Economist* 15 January 2004 available at <http://www.economist.com/node/2361065> (accessed 22 January 2017)
157. 'Zim banks battle rising non-performing loans' *Zimbabwe Independent* 30 May 2016 available at <https://www.theindependent.co.zw/2016/05/30/zim-banks-battle-rising-non-performing-loans/> (accessed 3 February 2017);
158. 'Zimbabwe: Farming uncertainty continues' 19 August 2012 available at <http://reliefweb.int/report/zimbabwe/zimbabwe-farming-uncertainty-continues> (accessed 3 September 2017)
159. 'Zimbabweans sleep outside banks as cash crisis worsens' *Al Jazeera News* 11 November 2016 available at <http://www.aljazeera.com/news/2016/11/zimbabweans-sleep-banks-cash-crisis-worsens-161111191648232.html> (accessed 21 January 2017)

## Journal articles

160. Barth JR, Caprio G & Levine R 'Bank regulation and supervision: what works best?' (2004) 13 *Journal of Financial Intermediation* 205 – 248
161. Benston GJ 'Consumer Protection as Justification for Regulating Financial-Services Firms and Products' 17 (2000) *Journal of Financial Services Research* 277 - 301
162. Benston G & Kaufman, G 'The Appropriate Role of Bank Regulation' (1996) 106 *The Economic Journal* 688-97
163. Bertus M, Jahera JS & Yost K 'The Relation Between Bank Regulation and Economic Performance: A Cross-Country Analysis' (2007) 2 *Banks and Bank Systems* 32 – 45
164. Botha E & Makina D Financial Regulation and Supervision: Theory and Practice in South Africa (2011) 10 (11) *International Business & Economics Research Journal* 27 – 35
165. Bisht A, Nair P, Dubey R & Hajela T 'Analysis of the use of plastic money: A boon or a bane' (2015) (1) *SIMS Journal of Management Research* 5 – 11
166. Bonga WG & Mlambo W 'Banks and Financial Literacy Enhancement in Zimbabwe' (2016) 7 *Journal of Economics and Finance* 69-74
167. Botha E & Makina D Financial Regulation and Supervision: Theory And Practice In South Africa (2011) 10 (11) *International Business & Economics Research Journal* 27-36
168. Campbell JY, Jackson HE, Madrian BC & Tufano P 'Consumer Financial Protection' (2011) 25 *Journal of Economic Perspectives* 91-114
169. Chagwiza W 'Zimbabwean Commercial Banks Liquidity and Its Determinants' (2014) 2 *International Journal of Empirical Finance* 52-64
170. Chikoko & Le Roux 'The Impact of Minimum Capital Requirements on Zimbabwe Commercial Banks Lending' (2013) 2 (3) *International Journal of Finance and Accounting* 131-137
171. Chikoko L, Mutambanadzo T & Vhimisai T 'Insights on Non-Performing Loans: Evidence from Zimbabwean Commercial Banks in a Dollarised Environment' (2012) 3 *Journal of Emerging Trends in Economics and Management Sciences*
172. Chinoda T, Chingombe C & Chawuruka P 'The Impact Of Minimum Capital Requirements On Performance Of Commercial Banks In Zimbabwe' (2015) 6 *Journal of Economics and Finance* 60-68
173. Dzingirai C & Katuka B 'Determinants of Bank Failures in Multiple-Currency Regime in Zimbabwe (2009–2012)' (2014) 6 *International Journal of Economics and Finance* 229 – 246
174. Diamond DW & Dybvig PH Bank Runs, Deposit Insurance, and Liquidity (1983) 91 *Journal of Political Economy* 401-419

175. Glossop K 'The Inherent Instability of the Financial System' (2011) 4 *The Journal of Business, Entrepreneurship & the Law* 482 - 505
176. Goldstein I & Pauzner A 'Demand-Deposit Contracts and the Probability of Bank Runs' (2005) 60 *The Journal of Finance* 1293 - 1327
177. Haiss P Bank Herding and Incentive Systems as Catalysts for the Financial Crisis 7 (1 & 2) (2010) *IUP Journal of Behavioral Finance* 30 – 58
178. Hargarter A & van Vuuren G 'Assembly of a conduct risk regulatory model for developing market banks' (2017) 20 *South African Journal of Economic and Management Sciences* 1 – 11
179. Levine R 'The Legal Environment, Banks, and Long-Run Economic Growth' (1998) 30 *Journal of Money, Credit and Banking* 611
- 180.
181. Islam R, Habib W & Khan H 'A Time Series Analysis of Finance and Growth in Bangladesh' (2004) 30 *The Bangladesh Development Studies* 111- 128
182. Ionescu C The herd behavior and the financial instability 12(1) (2012) *Annals of the University of Petroșani, Economics* 129-140
183. Jabangwe J & Kadenge PG 'An Investigation of the Relationship between Capital Levels and the Performance of Banks in Zimbabwe from 2009 to 2013' *Botswana Journal of Economics* 68 - 86
184. Kaufman G 'Bank failures, systemic risk and bank regulation' (1996) 16 *Cato journal* 17- 45
185. Levine R 'The Legal Environment, Banks, and Long-Run Economic Growth' (1998) 30 *Journal of Money, Credit and Banking* 596-613
186. Lumpkin S 'Consumer protection and financial innovation' 2010 *OECD Journal: Financial Market Trends* 117–139
187. Matei M & Geambașu C 'Considerations regarding the Direct Involvement of Banks in Capital Markets' (2010) 62 *Economic Sciences Series* 59 - 70
188. Mashingaidze S 'Corporate governance: effectiveness of zimbabwean hard law on blockholders' protection' (2014) 11 *Corporate Ownership & Control Journal* 549 – 557
189. Mbizi R 'An Analysis of the Impact of Minimum Capital Requirements on Commercial Bank Performance in Zimbabwe' 1 (2012) *International Journal of Independent Research and Studies*
190. Mohammed K 'The Role of History, Historiography and Historian in Nation Building' (2013) 2 *International Journal of Humanities and Social Science Invention* 50-57

191. Mugova S & Sachs PR 'Corporate governance, structure and accountability as affected by national government infrastructure in developing countries' (2016) 13 *Corporate Ownership & Control Journal* 24 – 231
192. Ndlovu G 'Financial Sector Development and Economic Growth: Evidence from Zimbabwe' (2013) 3 *International Journal of Economics and Financial Issues* 435-446
193. Njanike K 'The Impact Of Effective Credit Risk Management On Bank Survival' (2009) 9 *Annals of the University of Petroşani Economics* 174 – 184
194. Nyangara D, Melody R, Nyangara MR & Batsirai W Mazviona BW 'An Essay on the Ethical and Corporate Governance Issues in the 2003/4 Zimbabwean Banking Crisis' (2014) 3 *International Journal of Economics & Management Sciences*
195. Nyoka C 'Banks and the fallacy of supervision: the case of Zimbabwe' (2015) 10 *Banks and Bank Systems* 8- 17
196. Magweva R & Marime N 'Bank specific factors and bank performance in the multi-currency era in Zimbabwe' 10 (2016) *African Journal of Business Management* 373-383
197. Makosana MS 'Customers' adoption of electronic banking: an investigation on the commercial banking industry in Zimbabwe' (2014) 2 *International Journal of Economics, Commerce and Management* 1- 13
198. Mhlanga R & Sibanda M 'An Investigation of Corporate Financial Strategies Used by Banking Institutions during the Hyper-Inflationary Period in Zimbabwe' (2013) 4 *Mediterranean Journal of Social Sciences* 609 – 616
199. Mugwati MZ, Nkala D & Mukanganiki C 'The Composition And Regulation Of The Financial Services Sector In Zimbabwe' (2013) 3(4) *Asian Economic and Financial Review* 483-489
200. Muranda Z 'Financial distress and corporate governance in Zimbabwean banks' (2006) 6 *The International Journal of Business in Society* 643 – 654
201. Mutengezanwa M, Mauchi F, Njanike K, Fungai Gombarume F & Murgorgo S Pricing of Banking Products and Services: A Case Study of Commercial Banks in Zimbabwe 2011 1 (3) *Scholarly Journal of Business Administration* 48-53
202. Nyoka C 'Banks and the fallacy of supervision: the case of Zimbabwe' (2015) 10 *Banks and Bank Systems* 8-17
203. Shihata IFL The role of law in business development (1996) 20 *Fordham International Law Journal* 1577-1588
204. Sibanda M & Chikoko C 'An Evaluation of Banking Sector Regulatory Capital in a Multicurrency Economy: A Case for Zimbabwe' (2014) 5 *J Economics*



205. Sibindi AB, Bimha A 'Banking sector development and economic growth: evidence from Zimbabwe' (2014) 9 *Banks and Bank Systems* 51-58
206. Tambudzai Z & Charumbira M 'Cash Shortages in Zimbabwe: Any prospect for solutions?' (2003) 2.1 *The Dyke* 22 – 31
207. Tonkiss F 'Trust, Confidence and Economic Crisis' (2009) *Intereconomics* 196 -202
208. Zait A & Berteau PE Financial Literacy – Conceptual Definition and Proposed Approach for a Measurement Instrument (2014) 4 *Journal of Accounting and Management* 37 - 43

### Newsletter

209. Muller P, Devnani S & Heys R et al 'Consumer Protection Aspects of Financial Services' *European Parliament Directorate General For Internal Policies Newsletter* (2014)

### Newspaper Articles

210. Business Reporter 'Industry raises concern over high bank charges' *The Herald* 19 March 2014
211. Chawafambira K 'Unbanked money on the rise' *Daily News* 14 March 2015 available at <https://www.dailynews.co.zw/articles/2014/03/23/unbanked-money-on-rise> (accessed 19 January 2017)
212. Moyo R 'Deposit protection body seeks more capital' *New Zimbabwe* 23 July 2012
213. Munzwembiri P 'Zimbabwe: Where locally owned banks have struggled to prosper let alone survive' *New Zimbabwe* 28 February 2015 Mhlanga P 'Failed banks cost depositors US\$190 million' *The Financial Gazette* 14 April 2016
214. Sandu N 'Indigenous financial institutions under scrutiny' *The Standard* 9 January 2004
215. Shaw A 'Zimbabwe's cash woes growing more serious' *IOL News* 29 July 2003 <http://www.iol.co.za/news/africa/zimbabwes-cash-woes-growing-more-serious-110511>
216. Staff Reporter 'Travellers' cheques to ease Zim cash crisis' *Mail & Guardian* 7 August 2003
217. The Source 'RBZ figures show US\$3bn circulating in informal sector' *New Zimbabwe* 14 April 2015 available at [http://www.newzimbabwe.com/business-21876-\\$3bn+circulating+in+informal+sector,+RBZ/business.aspx](http://www.newzimbabwe.com/business-21876-$3bn+circulating+in+informal+sector,+RBZ/business.aspx) (accessed 19 January 2017)
218. 'Zim banks battle rising non-performing loans' *Zimbabwe Independent* 30 May 2016
219. 'Zimbabwe's banks Crisis breaks' *The Economist* 15 January 2004 available at <http://www.economist.com/node/2361065>



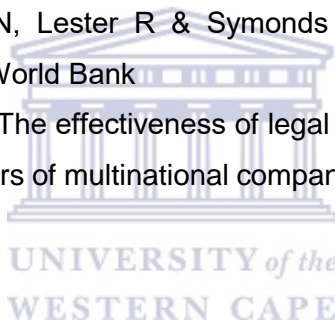
## Reports

220. Biggar D & Heimler A *An Increasing Role For Competition In The Regulation Of Banks: International Competition Network Report* (2005) International Competition Network
221. Brix L & McKee K *Consumer Protection Regulation in Low-Access Environments: Opportunities to Promote Responsible Finance* (2010) Washington, DC Consultative Group to Assist the Poor
222. African Development Bank Group *Zimbabwe Structural Adjustment Programme - Project Performance Evaluation Report* (1997) Côte D'Ivoire: African Development Bank Group
223. Economic Commission for Africa *Economic Report on Africa - Tracking Performance and Progress* (2002)
224. Falkena H, Bamber R, Llewellyn D & Store T *Financial regulation in South Africa* 2 ed (2001) Rivonia South African financial sector forum
225. Gottschalk R & Griffith-Jones S *Review of Basel II Implementation in Low-Income Countries Institute of Development Studies Report* (2006)
226. Reserve Bank of Zimbabwe *Financial Stability Report* (2014) Harare: Reserve Bank of Zimbabwe
227. Reserve Bank of Zimbabwe *Monetary Policy Statement: The First Quarter To 31 March* (2004) Harare: Reserve Bank of Zimbabwe
228. UN Economic Commission for Africa *Economic Report on Africa - Tracking Performance and Progress* (2002) Ethiopia: Economic Commission for Africa

## Research and Conference papers

229. Ardic OP, Ibrahim JA & Mylenko N 'Consumer Protection Laws and Regulations in Deposit and Loan Services' (2011) World Bank Policy Research Working Paper
230. Chigumira G & Makochehanwa A 'Financial liberalisation and Crisis: Experience and lessons for Zimbabwe' (2013) Zimbabwe Economic Policy Analysis and Research Unit
231. Chigumira G & Masiyandima N 'Did Financial Sector Reform Result In Increased Savings and lending For the SMEs and the poor?' (2003) International Labour Organization IFLIP Research Paper
232. Delis MD, Staikouras PK & Tsoumas C 'How do banks respond to enforcement actions?' (2012) Athens University of Economics and Business
233. Dhliwayo CL 'Limiting the Risk of Failure in Financial Institution' (2015) Public Accountants & Auditors Board Conference Paper Reserve Bank of Zimbabwe Harare

234. Hanke SH 'Zimbabwe From Hyperinflation to Growth' Cato Institute Development Policy Analysis (2008) Washington, DC
235. Llewellyn D 'The Economic Rationale for Financial Regulation' FSA occasional papers in financial regulation (1999) United Kingdom: The Financial Services Authority <http://www.fsa.gov.uk/pubs/occpapers/op01.pdf> (accessed 8 December 2016)
236. Makocheke A 'Zimbabwe to introduce Zimbabwe Bond Notes: reactions and perceptions of economic agents within the first seven days after the announcement' University of Munich (2016) Germany
237. Makocheke A 'Zimbabwe's currency crisis: which currency to adopt in the aftermath of the multi-currency regime?' University of Munich (2016) Germany
238. Nhavira J, Mudzonga E, & Mugocha E 'Financial Regulation And Supervision In Zimbabwe: An Evaluation Of Adequacy And Options' Zimbabwe Economic Policy and Research Unit Working Paper series Harare: ZEPARU
239. Rutledge SL, Annamalai N, Lester R & Symonds RL 'Good Practices for Financial Consumer Protection' (2012) World Bank
240. University of Stellenbosch 'The effectiveness of legal corporate governance mechanisms that exist to protect shareholders of multinational companies operating in Zimbabwe' (2009) University of Stellenbosch



### **Working Papers**

241. Claessens S & Kose AM 'Financial Crises: Explanations, Types, and Implications' *IMF Working Paper WP/13/28* 18 (2013)
242. Iyer R & Puri M 'Understanding Bank Runs: The Importance of Depositor-Bank Relationships and Networks' *American Economic Review* (2012) 102(4)
243. Prates MM 'Why Prudential Regulation Will Fail to Prevent Financial Crises. A Legal Approach' n.335 *Banco Central do Brasil Working Paper* (2013)
244. Laeven L & Valencia F 'Resolution of Banking Crises: The Good, the Bad, and the Ugly' *IMF Working Paper* (2010) Washington DC

### **Review Papers**

245. Bäckström H 'Financial consumer protection goals, opportunities and problems' (2010) 3 *Riksbank Economic Review* Swedish National Bank, Stockholm