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**CAUSES OF THE COLLAPSE OF BANKS IN ZAMBIA:  
A LEGAL PERSPECTIVE**

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**BY**

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Partial Fulfilment.....	(ii)
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BEING A PAPER PRESENTED IN PARTIAL FULFILMENT OF  
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# THE UNIVERSITY OF ZAMBIA

## LAW SCHOOL

I recommend that the obligatory essay prepared under my supervision by Mwaba Mushota entitled **CAUSES OF THE COLLAPSE OF BANKS IN ZAMBIA: A LEGAL PERSPECTIVE**

be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to formality as laid down in the regulations governing obligatory essays.

**30<sup>th</sup> October 2002**

**SIGNED .....**

**M. MALILA  
SUPERVISOR**

***Gaudet tentamine virtus. Hoc erat in votis. Deo gratia.***

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Horace, Sat, II vi1

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## INTRODUCTION

For a very long time, the history of banks in Zambia was that of firm, stable and reliable institutions. The events of the past ten years have however sadly changed this picture. Depositors no longer have the confidence and guaranteed security over their investments. The reputation and image of banks has been ostensibly marred.

In an attempt to arrest the mischief, government introduced new legal measures to strengthen the control and administration of banks. The effect of these measures are yet to be seen.

The Banking and Financial Services Act of 1994 was expected to reinvigorate and rejuvenate banks into reputable repositories they used to be. The avalanche has unfortunately continued to sweep banks into oblivion.

It is regrettable however that the literature on this subject still remains scanty and in most instances a guarded secret.

The task this essay aims to accomplish is therefore magnanimous and of obvious relevance to any curious observer who has witnessed the sudden perplexing rise and fall of banks in Zambia. The essay will examine the various laws related to banks and how they have been applied to save the banks from collapse. The essay will also analyse internal administrative procedures and controls in the banks for possible lapses.

Not many people have undertaken to expound on this subject up to this point in time, despite the effects of bank closures being still vivid in our memory.

It is my task however to relive in this essay the gloomy experiences of banks closure in Zambia and examine the causes for a possible solution.

We shall examine the role of Bank of Zambia as lender of last resort and as the supervising institution of all banks.



We shall equally examine the law relating to banks and where possible make necessary recommendations.

The essay shall conclude with recommendations towards the end.

# CHAPTER ONE

## 1.0 HISTORIC PERSPECTIVE OF BANKING DEVELOPMENT IN ZAMBIA

### 1.1 ANTIQUATED MAXIM

One antiquated English maxim which states that a new broom sweeps better but it does not know the corners, is an epitomic factum of the banks development in Zambia.

Banking in Zambia is synonymous with Barclays, Stanbic, Stanchart and the Zambia National Commercial Bank. The four are the progenitor vanguard banks that have professed *pro aris et focis* for Zambia. These are the banks that can lay legitimate claim of knowing the crevasses of Zambia's economic structure. They are the old brooms that know the corners and only sweep that which must be swept. The rest are the new brooms that in the haste of wishing to appear spotlessly clean, are not capable of distinguishing what to and what not to sweep away. They, like *tabula rasa*, end up sweeping away everything.

### 1.2 CHANGE IN NOMENCLATURE

Except for Barclays, the other three commercial banks have undergone nomenclature change owing to inevitable transformation.

### 1.3 STANDARD CHARTERED BANK; FORMERLY KNOWN AS STANDARD BANK

Standard Chartered Bank<sup>1</sup> is the oldest bank in Zambia. Formerly known as Standard Bank, the bank opened its first branch in Zambia in 1906.

In 1970 Standard Bank parent company merged with Chartered Bank to form the Standard Chartered Bank.

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Footnote

1. Standard chartered Bank; Information; A guide to products and services: Stanbic Bank Z Ltd.

At the critical mass point, it was aptly decided that Standard Chartered Bank would take over business in all the countries where Standard Bank South Africa could not owing to international sanctions against the RSA.

Zambia supported sanctions against South Africa and it fell to obvious conclusion that Standard Chartered continued here where Standard Bank once was. Thus Stan Chart took over in Zambia and continues to operate.

As stated in 1.2 above, the name Stanbic took a long time of thinking to be coined. Stanbic and Standard Chartered share a common ancestry. They were both part of the Standard Bank Group.

What obtains now in Zambia is that Standard Bank has come back in the form of Stanbic. A wonderful coincidence albeit not a reunion because the two are separate legal entities.

Following the economic sanctions imposed on the then apartheid regime of South Africa, Standard Bank pulled out of South Africa and so did Barclays and several other multi national companies. The name Standard Bank was retained in South Africa because Standard Bank is an indigenous South African bank, having been established in Cape Town in 1857.<sup>2</sup>

Standard Bank South Africa also retained its business in the satellite states of Lesotho, Swaziland, and Bophuthetswana now North Western Province of RSA.

#### **1.4 THE ZAMBIA NATIONAL COMMERCIAL BANK; ZANACO: FORMER NATIONAL COMMERCIAL BANK**

The Zambia National Commercial Bank opened as a small commercial bank on 21 August 1969.<sup>3</sup> It was the first wholly owned Zambian Bank. Following the Nationalization program, the Zambian government controlled 99% shares in the bank. The bank changed its name from National Commercial Bank to Zambia National Commercial Bank, ZNCB and still remained a parastatal bank. Currently the

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Footnote

2. Standard Bank; established 1857 in R.S.A by Standard Bank Group.  
3. Commercial Bank; opened doors on 21.8.1969; ZANACO plc profile; Diary 2002. and interview with Peter W. Mweemba SNR MGR ZNCB.

3

bank has 40 branches spread all over the country, and once maintained a representative branch in London. The Zambia National Commercial Bank was established by the government as a commercial bank. For that reason it is *ipso facto* referred to as a government bank<sup>4</sup>

Bank of Zambia at that time was surrounded by four foreign commercial banks and there was need to establish an indigenous bank for three main reasons namely;

- a) to act as a buffer for government and
- b) to parry the dependence on foreign banks whose loyalty was else where.
- c) To act as a national bank.

The Bank of Zambia seconded staff to run the bank but the bank eventually established its own status as a normal and ordinary commercial bank.

Popularly known as the people's bank, the ZNCB earned itself this title for four major reasons namely that;

- (i) It maintained the lowest account opening balances where upon it was, as a consequence patronised by government employees and people in low income bands.
- (ii) It had the most flexible lending requirements. This worked against it as it acquired several bad debts, big and small.
- (iii) The term was paradoxically used as satire to expose corruption, inefficiency and lack of professionalism associated with the bank in its early days.
- (iv) It was used as a propaganda bank for the philosophy of humanism which was man centred. The bank opened branches in unprofitable areas where it had to maintain its presence at the greatest cost but all for political expedience, as directed by Dr. Kaunda.

Zambia National Commercial Bank could have collapsed long before had it not been for the massive government support. Today, Zambia National Commercial Bank is one of the most professionally run banks and continues to claim its legitimate place among the three foreign conglomerates as a towering giant.

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Foot Note

4.

ZANACO London office; Zambia National Commercial Bank Plc profile; 2002; Diary.

(v) **ZAMBIA NATIONAL COMMERCIAL BANK ZNCB HISTORICAL ORIGIN IN PERSPECTIVE**

The Zambia National Commercial Bank ZNCB is a bank with an eye catching historical background.

The ZNCB is a product of two merged commercial banks namely Commercial Bank Zambia Limited, formerly the Netherlands Bank of South Africa and the National Commercial Bank.

Prior to independence in 1964, a commercial bank called the Netherlands Bank of South Africa existed and had its office in Luangwa House next to the former Kingston's or near the present Shoprite shop in Cairo Road. The bank had another branch at the north end of Cairo Road called North End branch. This is exactly where ZANACO has its training centre now. The branch was renamed Kwacha Branch later.

The share holders for the Netherlands Bank of South Africa were, the Netherlands Bank of South Africa itself, Dresner Bank of Germany and Commerz Bank also of Germany Both Dresner and Commerz banks are very big banks in Germany.

At independence in 1964, the Zambian government having been arch political enemies with South Africa could not stand a South African business name of such prominence and therefore asked the bank's share holders to change the name to something Zambian. The share holders agreed and changed the bank's name to Commercial Bank Zambia Limited. Ownership and share holding for the bank continued undisturbed.

Sometime in 1968, however, government decided to form its own commercial bank.

Government wanted the new bank to reflect its image and therefore named it National Commercial Bank NCB. The bank was 100% government owned.

Following the nationalisation program of 1972, the government attempted to nationalise all foreign banks in Zambia.

The enactment of the Banking Act of 1972 was therefore to facilitate this exercise.

The four foreign banks namely Barclays, Commercial Bank Z Ltd, Grindlays Bank and Standard Chartered bank all resisted government take over.

Government however offered to buy off Commercial Bank Z Ltd. Owing to political rivalry between RSA and Zambia the share holders agreed to sell the bank to the Zambia government.

Sometime between 1972 and 1977, the government decided to merge its two commercial banks. Commercial bank was fused into National Commercial Bank.

At about the same time many independent African countries in the region had decided to establish national banks. This development caused problems in the handling of international business transactions with instruments or instructions being misdirected. Government therefore decided to call the merged bank Zambia National Commercial Bank.

The Netherlands Bank of South Africa has since been changed to Ned bank one of South Africa's largest banks.

Today, government controls 99 % share holding in the ZNCB and there are plans to privatise the bank.

### **1.5 STANBIC BANK: ONCE KNOWN AS GRINDLAYS BANK LATER AS ANZ GRINDLAYS BANK**

Stanbic Bank opened its business in Zambia in the very early 1960s. Then known as Grindlays Bank International Zambia Limited, the bank opened branches in Mufurila, Ndola, Chingola, Kabwe, Kafue, Mkushi and Lusaka where it had its headquarters.<sup>5</sup>

Between 1985 and 1988 the bank was sold to the Australia and New Zealand Banking Corporation A.N.Z. and adopted the name A.N.Z. Gridlays Bank.

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Footnote

5. Grindlays Bank Int; opened 1963; Old Records of G.B.I.

6

The Australians could not however cope with global control of what became one of the world's biggest banking group. They therefore decided to sell off the African region of the ANZ Grindlays.<sup>6</sup>

Negotiations between ANZ Grindlays and Standard Bank South Africa began, and ANZ Grindlays Bank African Region was finally sold to Standard Bank South Africa about 1990.

At this point the name Grindlays completely disappeared and the bank is now called Standard Bank Investment Corporation, Stanbic in short.<sup>7</sup>

## 1.6 WHAT HAS KEPT THE FOUR OLD BANKS INTACT?

In order to answer this question, some legal background on bank customer relationship need to be made.

There has so far been no satisfactory definition of the term bank. The definition has been rendered laboriously difficult owing to the diversity of bank business.

In fact the definition we are attempting is that of the commercial deposit banker typified by anyone of the big four banks we have analysed above.<sup>8</sup>

What has kept the big four banks intact is historical.

As stated in 1.8 when banking started in Zambia, four commercial banks emerged as a monopoly. These banks however, have a rich and strong historical background.

Unlike the later local banks, the four originate from very strong and reliable financial backgrounds.

Their capital base is firm and intact and they have through the years established solid depositor buttress which cannot easily fail them.

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### Footnote

6. ANZ Gridlays Bank 1988 A.N.Z. News line.

7. Stanbic Bank 1990. Staff Interview.

8. Definition of commercial bank. P. 14. Law of Banking; By Lord Chorley and J. M. Holden; 1965.

Barclays Bank is a world wide trade mark name associated with dignity and superior banking services. Standard Chartered is another reputable banking conglomerate whose reputation stands at the apex of banking accomplishment. Stanbic is a subsidiary of Standard Bank South Africa, Africa's second largest bank and the Zambia National Commercial Bank is the country's flag carrier. It has the weight of government support behind it. This could not be said of any of the local defunct banks except maybe for Meridien BIAO and Bank of Credit and Commerce BCCI.

## 1.7 ORIGIN OF BANKING

Modern commercial banking is said to have originated during parliamentary wars in Europe in the 17<sup>th</sup> century. People then turned to the goldsmiths as safe depositories for their money and valuables for a small fee.<sup>9</sup> In peace times depositors still found it necessary and convenient to keep their money with the goldsmiths who agreed upon the terms that the money shall be "returned as and when the owner required it"<sup>10</sup>

Goldsmiths however discovered that depositors by and large did not ask for their money much often. They therefore started loaning it out to the needy monarchs and noblemen.<sup>11</sup> That was the genesis of banking.

When Cecil Rhodes discovered diamonds, gold and copper deposits in South Africa, Zimbabwe and Zambia he declared that he would build a rail road from Cape Town to Cairo. At the time both Egypt and South Africa were under the British rule. This is the C to C route people sing about today.

Zambia's economic development basically originated from the South. It will be recalled that at one point the governor of South Africa presided over Zambia then Northern Rhodesia. The headquarters of the Federation of Rhodesia and Nyasaland was Salisbury today's Harare in Zimbabwe.

This therefore explains Zambia's links with the Southern African countries.

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### Footnote

- 9. Modern Commercial Banks; Ibid
- 10. Returned as and when requires ibid
- 11. Beginning of lending. P. 15: Lord Chorey and J.M. Holden; Law of Banking



As if by coincidence the first bank to open its doors in Zambia was Standard Bank which came with Cecil Rhodes from South Africa. This happened in 1906 just as the rail road construction had reached Lusaka from Cape Town.

The discovery of Copper deposits by Cecil Rhodes is what attracted Standard Bank to Northern Rhodesia. The bank could see the prospect of economic growth in this country and therefore strategised by opening operations in Zambia.

It was not long after the mines were discovered that they began to operate. It all looked as though the copper mines dust and thick smoke would never settle. There was economic eruption in Zambia just as envisaged by many. Other banks such as Barclays and Grindlays moved in precisely around the late fifties into the early sixties. Banks played a pivotal role in the mining industry. Machinery and equipment was brought in through banking arrangements. Copper proceeds were also secured through banks.

Export of copper was done through banks and so were the importation of mining accessories. Expatriate staff had their remuneration externalised through the banks. Despite the economic boom Zambia experienced in the sixties into the early seventies, banking still remained a monopoly of the big four.

There are good reasons for that. Until the mid seventies, banking in Zambia was not the most attractive profession. In those days, young professionals preferred to work as locomotive drivers or as firemen in the railways. As the aviation industry grew significantly large, many young professionals wanted to train as pilots and fly the VC 10 or alternatively join the air force to fly the migs. For many reasons banks were in the very background of economic attraction. Salaries in banks were lower than in government and this was the trend until the late 1970s.

As economic activity increased however, the role of banks slowly picked up. Suddenly, all focus was on the banks and the insurance industry.

How did banks gain their popularity in Zambia at the time of the country's economic ebb?

The obvious answer to the question is basically the economic failure itself which gave birth to innovation and search for economic survival instincts at corporate and individual level.

Following the developments in air, road and rail road transport and the opening up of new economic challenges, one thing stood out. The need for foreign exchange.

What therefore built up the image of banks was the foreign exchange that Bank of Zambia provided through them. The formula worked in such a way that Bank of Zambia which was shunned as a government institution became the corner stone of every economic activity, and the banks were its agents.

Merchants, traders, scholars business women and men alike all at this point, beginning in the early 1980s needed foreign exchange to acquire their goods, for travel abroad, or for schooling at outside colleges and universities. Naturally all commercial banks became a hive of activity for the very reason of foreign exchange scarcity.

Despite poor economic performance however banks suddenly became the most highly paying institutions and everyone wanted to work for them.

At the apex of economic problems, the UNIP government on 6<sup>th</sup> August 1985 introduced the auction of the Kwacha. At that time one Kwacha was equivalent to US\$ 0.25c or K4 to one US dollar. That marked the mushrooming of banks in Zambia.

The next chapter discusses the banking renaissance but let me mention before we get there that the auction of the kwacha was the beginning of the withdrawal of the once dreaded exchange control regulations.

Perhaps one other attraction for the new banks was the introduction in the early 1990s of the sale of government bonds and treasury bills by the BOZ. At the interest rate of 275% in 1992, most banks preferred to put their money in treasury bills and reap off a windfall profit without having to struggle with the perfection of credit memorandum or chasing after a recalcitrant customer.

The repurchase of government bonds and treasury bills almost desmated the function of commercial banks as credit facilitators.

Many banks opted for the easy way to get their money miraculously multiplied without sweat. Some customers who borrowed from the banks also failed to repay their loans because of the exorbitant interest charges.

The quest for foreign exchange and the subsequent introduction of treasury bills repurchase at high interest return were the main attraction for the emergence of new banks in Zambia.

## **1.8 THE BANKER CUSTOMER RELATIONSHIP**

One major point highlighted in the preceding paragraph is that blacksmith and depositor entered into an agreement whose terms were that blacksmith would pay depositor his money or valuables back as and when required.

In essence therefore, the relationship between the bank and the customer is based on contract. The terms of the contract are that the bank agrees to hold the customer's money or to lend him its own, and to render all other various services such as cheques and other transactions. One therefore ought to examine the rights and obligations that arise on each side from that contractual relationship. The rest is a reflection on the legal principles through which the bank gives the services which the customer expects of it and yet safeguarding its own position. Strict adherence to this rule is what has kept the four banks alive to this day. None compliance to banking rules is what has led to the death of the banks we are writing about.

Banking is a conservative business which grows with history and time. It is no wonder that all the four commercial banks extolled above do share a common background of antiquity and steadfastness.

## CHAPTER TWO

### 2 THE CAUSES OF THE COLLAPSE OF BANKS IN ZAMBIA

#### 2.1 ZAMBIA'S BANKING RENAISSANCE

The period 1980 to 1990 could aptly be described as Zambia's period of banking renaissance.<sup>12</sup> This certainly was the most exciting period in Zambia's banking history. For the first time the Quartet banking monopoly was broken, as several new banks opened their doors. Banks both old and new jostled for prime business and strategic areas to open up branches. Employment in banks was the most prestigious and ionic language of the time.<sup>13</sup> There developed a high but mutual staff turn over in all the banks. Old banks lost some of their experienced staff to the new banks, but these movements also created new innovations and promotion opportunities for both the old and the new banks.

The renaissance period like most good moments in life did not last very long.

As we shall see in chapter three, the banking industry has been regulated by specific Banking Acts at all times.

Perhaps the question to pose at this point is why have we had so many Banking Acts after independence?

Every law is need based. Where there is no mischief to be addressed there is no need for a new law and the *status quo* is therefore maintained.

What then was the mischief in the 1959 Banking Act that the Banking Act of 1965 was to correct? This question is answered in 3.2 but suffice to say that there was a new country which was adorned in a new legal framework. For independence to be meaningful it was felt that certain colonial laws such as the Public Order Ordinance had to be replaced or relaxed. Movement of persons was restricted and this had to be reviewed if people were to feel truly independent.

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Foot note

12. Renaissance; period of rebirth P. 1143; Chambers 20<sup>th</sup> century, By A.M. Macdonald.

13. Banking Renaissance; Mr. M. Bwalya; former Barclays, stanchart, B.CC>I, Fellow of Institute of Bankers Now Chief Accountant with CocaCola Zambia; Lusaka.

There were a number of other legislations which were tailored to protect the white settlers ' interests and oppressed the indigenous people. The Lands Act was one such laws. Land was held in perpetuity by the settlers and this had to be amended to accommodate the needs of the indigenous people who had no land.

Although the Banking Act of 1965 did not change anything significantly from the Banking Act of 1959, it at least removed the colonial tag and control. Indeed it was not just the question of throwing away every good law or any law for which there was no better replacement.

The 1965 Banking Act was however repealed almost entirely by the Banking Act of 1972. The Banking Act of 1972 like most Acts at that time came in to replace all colonial Acts. This was Zambia's first legal revolution. Zambia at independence inherited a capitalist society. However in order to demonstrate their own style of self rule the UNIP government completely moved from the West to the East. As it were, the Eastern societies were founded on socialism and communism. The main feature of socialism was state control of all economic and political institutions. This system placed the people at the centre of activity and dismantled the bourgeois mentality and completely rejected and ejected all forms of capitalism.

This period was called the water shade and correctly so because it clearly demarcated the old and the new ways of political and economic life and direction for Zambia.

Every law that did not reflect the socialist aspiration was repealed. The Banking Act was one such laws which required amending . The Banking Act of 1965 regulated banks which were critical institutions to the economy.

As will be seen in chapter three Kenneth Kaunda declared war on capitalism and was determined to do all he could to ensure capitalism was eradicated.

This premature populist and guileless act on Kaunda's part was perilous and depraving to the economy for several reasons. Kaunda did not understand what it took to run a socialist economy. All investors, experts and scholars ran away from Zambia. The country did not have sufficient qualified manpower to take over

sophisticated industries and technological infrastructure whose inner complexity they least understood.

The civil service was manned by people with basic elementary education. The most educated being the boisterous standard six, the equivalent of grade VII today.

In early 1990s rumours started spreading of some banks having liquidity problems. Reports from the Bank of Zambia Technical Committee on which all the banks were represented started issuing caution on negotiable instruments from some new banks.<sup>14</sup>

The rumour eventually crystallised into dreaded reality. One of the most eminent and highly respected banks Meridien Bank was threatened with closure. It did not all sound true but soon the easy party was over and it was time to cry for the bank.

### **2.2.1 THE COLLAPSE OF MERIDIEN BANK BIAO**

The heavy presence of paramilitary police at Meridien Bank building pointed to a very serious event taking place at the bank.

News however soon spread that Meridien Bank had closed down.

Paramilitary police were therefore deployed to turn away anyone intending to enter the bank for whatever reason.

The episode turned into a circus. Several people in disbelief converged around the building as if to bid farewell to an important departed personage. A somber and timorous cloud hang over the entire nation.

Some depositors were seen wailing openly while others stood motionless overwhelmed by the event.

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Footnote

14. Bankers Technical Committee at BOZ reviewing performance of Banks on monthly basis

There were others however who mused that the act was just a temporal routine check up by government on one or two questionable transactions at the bank. Some thought a big robbery could have taken place whilst others totally convinced walked away down cast.

There were all forms of speculation.

The closure of Meridien Bank was a national disaster. Everyone was shaken. The banks were shaken, the national economy was shaken and even the less sophisticated peasant farmer felt the agitation of the tremor. All legal provisions safeguarding banks were rendered ineffectual and empty.

Meridien bank's closure disproved and laid bare the fallacy people believed that banks do not close. But the closure of the giant bank was to any banking scholar, a question of time.

The bank came with great aura, pomp and promise but departed with a trail of guilt, scorn and regret.

The collapse of Meridien Bank was what Professor Adolf Schlemtcher would term as *mysterium tremendum* "great mystery" and it indeed was to so many in Zambia.

The fall of Meridien however only paved the way for the fall of many more new banks in Zambia.

The unprecedented closure of Meridien Bank was a great violation of customer banker contractual agreement alluded to in chapter one.

The misery, discomfort and desperation Meridien Bank closure inflicted on depositors, resulted in the call for the enactment of strict laws that would protect depositors' funds under such circumstances. This essay has echoed the Meridien depositors' call and has equally recommended for the introduction of a depositors protection scheme DPS covered in chapter four.

So far no reaction has been received from either the Bank of Zambia or government on how depositors funds should be protected in the event of banks closure. As

stated above, the fall of Meridien Bank paved the way for *coup de grace* for many new local banks that have to date continued to collapse.

We shall examine in detail the reasons leading to the closure of Meridien Bank later in the chapter. For now we present the shocking downfall of the African Commercial Bank and many others.

## 2.2 THE COLLAPSE OF AFRICA COMMERCIAL BANK

The problem of bank closures was first sounded at the Bankers Technical Committee meeting BTC sometime in 1994. African Commercial Bank was under critical scrutiny and all banks were alerted on how to handle negotiable instruments from the bank. It could be seen that the collapse of ACB was residual and not as abrupt as that of Meridien. Effectively ACB closed before Meridien although its liquidation came later due to court proceedings.

African Commercial Bank, popularly known in contemporary circles as ACB was a bank of great promise. Of all the newly formed banks that eventually went under, ACB was one that went down alive. The banks doors were officially closed on Monday 13 November, 1995. A dark day for the banking fraternity in Zambia.

African Commercial Bank was placed under receivership under the management of George Sokota of Deloitte and Touche. On November thirteenth nineteen hundred and ninety five.<sup>15</sup>

Bank Managing Director Mr. Fearoson not fully convinced by BOZ decision to close the bank placed an injunction in the High Court restraining BOZ from closing the bank. This was unsuccessful and on Thursday August 21 1997, the High Court ruled in favour of BOZ and ordered immediate placement of the bank under liquidation.<sup>16</sup>

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### Footnote

15. ACB Placed on receivership 13.11. 1995.

16. High Court ruling to liquidate ACB; 21.8 1997.



The reasons given for the closure of ACB were ;

**(i) High level of non performing loans**

It was established that some very senior managers and directors responsible for credit were reckless and unprofessional in handling the bank's credit matters. Huge loans were given without equal recovery pursuit. These non performing loans eventually ate into the vertebral seam of the bank and diminished its nominal capital.

**(ii) Liquidity problems**

Liquidity problems were cited as some of the reasons for the closure of ACB. When a bank experiences liquidity problems it is like a human being suffering from pernicious anaemia,<sup>17</sup> he dies if blood is not supplied in good time. Liquidity for a bank is life because, banking business is about money and without money the bank is as good as dead.

The bank's liquidity problems were a consequence of non performing loans and poor marketing strategy.

Poor deposits mobilisation plunged the bank into abysmal pecuniary slumber. It would seem the ACB management was too lax to recognise the perils or was it their lack of banking experience? They certainly killed a bank they had the opportunity to save. This explains why MD Fearoson avidly attempted to restrain the BOZ from liquidating the bank because there was still hope to revive it.

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Footnote

17. Pernicious anaemia; severe lack of blood. P. 43; Twentieth Century Chambers Dictionary By Macdonald.

### **(iii) High Incidence of insider Borrowing**

The bank management lacked discipline, and treated customers' funds with casual tenacity. Insider borrowing is an act of imprudent and un professional banking practice. This is said to have been prevalent at the bank.

Banks survive on customer loans and overdrafts on which commercial interest is charged. Staff loans anywhere do not attract equitable interest. In many cases such facility is either interest free or attracts minimal interest. It is imprudent therefore to give incommensurate hefty loans and packages to staff at the demise of the bank.

### **(iv) Lack of proper security on loans**

Security on loan facilities is a fundamental prerequisite to lending. Improper or lack of security results in bad debts.

Security on loans was poor and sometimes non existent because managers gave loans to their friends and relatives from whom they could not recover. They therefore wrote off huge loans as bad debts.<sup>19</sup>

African Commercial Bank was the second of the new banks to open after Citi Bank .

### **(v) Failure to capitalise**

The Bank was owned by Zambian share holders. Mr. John Mupanga Mwanakatwe was its first Board Chairman.

The share holders failed to recapitalise the bank and BOZ's effort to save it as lender of last resort failed too.<sup>18</sup>

### **(vi) AMOUNT OWING AT TIME OF CLOSURE.**

African Commercial Bank owed K12 b at the time of closure.

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Footnote

18.

Above information was given by Peter Mbewe of BOZ. Interviews were also carried out with former ACB staff who supplied much of what is in this report.

### **(vii) Security Of Depositors' Funds**

There was no insurance on depositors funds. So far however, close to 82% of depositors have been paid back their money leaving about 18% yet to be paid. This is a good record considering that the bank was rundown before its closure.<sup>19</sup> This figure is at December 31, 2001.

### **(viii) Deposits At Liquidation of ACB.**

The bank had K4.3b as deposit balance. There has not been much recovery in loans. The figure now stands at K8.5 billion yet to be recovered.

### **(ix) Bank's Total Assets At Closure**

ACB had K14.8b in assets at the time of closure. The assets value was well above the liabilities total in loans.

### **(x) Action Taken Against Erring Directors**

From the liquidations' point of view no action has been taken against erring directors of the defunct African Commercial Bank.

The managing director of the Bank was fully convinced that with proper re-organisation ACB was going to be recapitalised and continue to operate. Mr. Fearson argued that the problems the bank faced were not insurmountable and were within the new board of directors capacity to resolve given a second chance.

There were sufficient laws to deal with the culprits who led the bank into collapse. If BOZ had the good will and capacity as supervising institution it could have moved in to save the bank from collapse. But as it were BOZ came in when it was too late. The BOZ could have invoked the relevant provisions such as economic sabotage and fraud to punish the directors and anyone associated with the demise of the bank. This is what Ferrosen was hoping would happen. It did not. Instead the bank was closed alive.

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Footnote

19. Depositors' security 82% paid so far as at 21.12.2001 Information from BOZ Dept of Bank Supervision

## **2.4 THE COLLAPSE OF COMMERCE BANK**

### **2.5 Reasons for closure**

Commerce Bank closed on 29<sup>th</sup> November 1995.<sup>20</sup>

The following are the reasons cited for the bank's closure .

#### **(i) Under Capitalisation**

It has been established that the bank was under capitalised. This resulted in the bank not having full lending capacity.

#### **(ii) NON PERFORMING LOANS**

The bank had a high portfolio of non performing loans. This Increased to K16.6 billion Kwacha at the time of closure. The bank had a deposit balance of K9.2 billion.

#### **(iii) Lending policies**

Poor lending policies and practices resulted in staff and directors granting themselves huge loans and overdraft facilities, which they failed to repay. These were eventually written off as bad debts.

#### **(iv) Reorganisation of Commerce Bank**

The bank underwent a "restructuring"<sup>21</sup> process with a number of institutional depositors buying shares in the bank. But the restructuring program failed because of depositors flight to safety having lost confidence in the bank which finally collapsed.

It should be noted as a matter of great concern that the directors of Commerce Bank were the same for the African Commercial Bank.

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Foot Note

20. Commerce Bank, closed on 29.11.1995. Reasons; Non performing loans, insider lending, under capitalisation over indebtedness. Information from BOZ and Ex Commerce Bank Staff.

21. Restructuring

## **2.6 THE COLLAPSE OF CREDIT AFRICA BANK CAB**

Credit Africa Bank closed on November 28 1997 and it was put on receivership instantly. Lumbwe Mwila of Ernest and Young was appointed Receiver.

### **2.7 Reasons for closure**

The bank was closed following the BOZ inspectors discovery of fraudulent transactions. BOZ engaged the services of Ernst and Young, Forensic accounting experts from RSA, to audit the bank and stop any further externalisation of funds to foreign accounts.

The BOZ retained the services of the Forensic Accountants to establish whether funds were fraudulently obtained and externalised.

A task force was formed to prosecute the directors of the bank for various offences. The task force was instructed to prevent any funds from being externalised outside Zambia, and to establish any foreign accounts to which funds were remitted and freeze those accounts.

#### **(i) Depositors funds security**

Only 17% of the depositors funds has been paid out since closure.

#### **(ii) Loans outstanding**

There was K32 billion in loans as at closure of the bank.

#### **(iii) Deposits as at closure**

The bank had K10.5 billion Kwacha deposit balance at closure.<sup>22</sup>

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Footnote

22. Collapse of Africa Credit Bank, Source of Information; Liquidators and BOZ. Department of Banking Supervision. Former M.D. Christopher Muntanga was also interviewed.

#### **(iv) Bank's present status**

The liquidation of the bank has been disturbed following High Court Ruling in favour of one creditor Al Shams declaring the company a preferred creditor upon claim of US \$341 000.

#### **(v) Any Other Information**

The credentials of the shareholders and directors of the bank were extremely suspect. The law did not provide for prior investigation of directors and shareholders of banks. This problem has been corrected by section 7 of the BFS Act of 1994.

### **2.8 THE COLLAPSE OF FIRST MERCHANT BANK**

First Merchant Bank closed on 2 February 1998. Brian Musonda of BDO Kateka and Evans was appointed Receiver.

### **2.8 REASONS FOR CLOSURE**

#### **(i) Adverse press reports**

First Merchant Bank was a victim of adverse press reports following seizure of certain accounts at the bank. Depositors took flight to quality <sup>24</sup> leaving the bank completely rundown.

This was a most unusual thing to happen. Such an act was tantamount to instant justice on the bank and the press the executioner.

#### **(ii) Depositors' funds security**

So far only 3% of depositors have been paid. And 25% of the loans recovered.

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Foot Note

23. Flight to equality; flight by depositors to safe banks. P. 684 Pagents Banking.

### **(iii) Deposits as at closure**

The bank had a balance of K14. billion as against K15.b in loans with assets valued at K20.2 billion. This was a healthy bank which could have lived on had it not been for the rundown on deposits through customers flight to quality “incited by the press”.<sup>24</sup>

### **(iv) Present status**

The liquidation of First Merchant bank has not proceeded as anticipated. Al Shams and Jayesh Shah sued and obtained High Court ruling making them “preferred creditors”<sup>25</sup> to the bank where they are claiming US \$1.2. million.

The implication of this judgement is that the liquidation must first be conducted on behalf of the preferred creditors until they are fully paid.

This means that until the US \$1.2 million is paid, other creditors to the bank cannot be paid their dues. If the US \$1.2 million is not met within the credit balance of the bank, the liquidation will proceed to set off the debt by disposing off the assets.

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#### **Footnote**

24. First Merchant Bank closure due to Press adversely. Information from News papers former staff at the bank and the BOZ dept of supervision

25. Preferred Creditor; one with secured funding to the company. Information from Peter Mbewe BOZ Dept of Banks Supervision.

## **2.10 THE CLOSURE OF MANFOLD INVESTMENT BANK**

### **2.11 REASONS FOR CLOSURE**

#### **(i) Failure to observe minimum statutory deposit requirement**

Manfold Investment Bank closed on 4 December 1997. This followed repeated failure by the bank to observe minimum statutory deposit requirement. The bank operated below required capital and was in constant liquidity problems.<sup>26</sup>

#### **(ii) Balance at closure**

That bank had a debit balance of K667 million at the time of closure.

#### **(iii) Loans**

The total amount of loans was only K1.6 billion.

#### **(iv) Total Assets**

Assets total value was K2.1 billion as at closure.

## **2.12 THE CLOSURE OF MERIDIEN BANK BIAO**

Meridien Bank closed on 19 May 1995.

### **2.13 REASONS FOR CLOSING**

#### **(i) Take over of defunct foreign banks in West Africa**

Meridien Bank BIAO externalised a lot of foreign exchange to its foreign parent bank which failed to come to its rescue when the chips were down. The Bank was compelled by its Chairman Mr. Andrew Sadarnese to take over moribund banks in

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Footnote

26. Manfold Investment Bank; Closure 4/12/1997 information from BOZ Dept of Bank Supervision liquidators i.e.



West Africa. Millions of Dollars were externalised to resuscitate these banks. The exercise was total disaster and only succeeded to deplete the liquidity of the bank further.<sup>27</sup>

## **(ii) High Insider Borrowing**

Insider borrowing was rife at Meridien Bank.<sup>28</sup> Insider lending had several negative implications. Interest charge on loans and overdraft facilities availed to staff and directors was negligible.<sup>29</sup> This obviously reduced the profitability of the bank.<sup>30</sup> Insider borrowing greatly compromised bank security on depositors funds. The practice extended even to customers some of whom were personal friends of the directors and staff. Meridien Bank is said to have had the most liberalised lending policies. It is no wonder that the bank went down.

## **(iii) Poor Credit management**

Meridien Bank was one bank where loans were given to friends without proper credit documentation. These loans turned into bad debts and for lack of security they were written off.<sup>31</sup>

## **(iv) Directors salaries**

Meridien Bank had a two tier salary structure for its senior management staff. Directors received salaries in Kwacha and foreign currency. The double salaries had a drain on the bank's liquidity.

## **(v) Advertisement**

It has been stated that Meridien bank was overly advertised and advertisement costs were too high on the balance sheet.

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### **Footnote**

27. BOZ Dept of Banks Supervision

28. Interview with former Meridien Directors and staff.

29. Poor Credit facility: information from Credit staff of former meridien, confirmed by BOZ dept of Bank supervision

30. Poor credit supervision, Directors salaries, advertisements, information from former Meridien Bank employees and directors and BOZ confirmed.

31. This remark was repeated by several former meridien bank employees and management and authenticated by BOZ dept of Supervision attention of Mr Peter Mbewe.

## **(vi) Internal Lending**

There was rampant insider borrowing at Meridien bank. “Internal borrowing” compromised the security of the bank. Insider lending eventually ate into the bank’s profitability and affected its nominal capital. there was rampant lending to connected parties at Meridien bank. There seemed to be no professional control of the bank at the highest level of management.

## **(vii) Share holders**

Meridien Bank had both local and foreign share holders.

“Mr. Sadarnese”<sup>33</sup> was the major share holder of Meridien Bank . It has been stated in several quarters that Mr Sadarnese owned Meridien Bank the rest were mere employees. Mr. Sadarnese who is a friend of Kenneth Kaunda is said to be a man of dubious character.

## **(viii) Balance at closure**

Meridien Bank had a deposit balance of K38.7m at closure.

## **(ix) Total Assets At Closure**

The Bank had a total assets value of K78.9 billion.

## **(x) Loans Outstanding at Closure**

There was K17 billion outstanding in loans at closure and “K60b owed to government”.<sup>34</sup>

## **(xi) Other Relevant information**

Government did not want to see Meridien Bank collapse for several reasons. Meridien bank was one of the biggest banks at the time. Government wanted to preserve depositor confidence by saving the bank. Other existing and upcoming

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Foot note

32. Internal Borrowing

33. was Chairman

34. K60 billion owed to govt

Zambian banks were to be saved from collapse as well. It was in that light that government put in several billions of Kwacha to resuscitate the bank. This failed. Bank of Zambia as lender of last resort did the best to save the bank but equally failed. The bank finally collapsed because its problems were "irredeemable".<sup>35</sup> Several former management staff of Meridien bank interviewed described Sadarnese as a mere trader and speculator who had no knowledge of how banks operate.

Mr. Sadarnese made all the decisions and other directors had no say. No one questioned the prudence of his decisions as majority shareholder. A good example is his decision for Meridien Bank Zambia to acquire "defunct banks in West Africa".<sup>36</sup> This decision should have met with the strongest resistance from all the board members but Sadarnese bulldozed his decision. Thus a huge burden of failed banks in West Africa was placed on Meridien Bank Zambia.

(xii) Meridien Bank put up the most imposing building for its head quarters. This building has since been sold to COMESA at US \$5.5 million.

## **2.14 THE COLLAPSE OF PRUDENCE BANK**

Prudence Bank was closed after removal of its managing director on 18.10.1997.

## **2.15 REASON FOR CLOSURE OF THE BANK**

### **(i) External Borrowing**

The "Bank borrowed heavily from external sources"<sup>37</sup> which included the BOZ and Commercial Banks. The bank often borrowed to meet requirements for its negotiable instruments at the clearing house.

### **(ii) Failure to capitalise**

Share holders were requested to recapitalise the bank but they failed. There being no other available remedy, the bank ground to a complete halt.<sup>37</sup>

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Foot note

35. Irredeemable

36. Defunct Banks

37. Borrowing from external sources

**(iii) Excessive Overheads**

The bank was extremely lavish in its expenditure especially on its senior management staff who gave themselves “hefty salaries and allowances”.<sup>38</sup>

**(iv) Excessive interest on Foreign Currency Accounts**

The bank opened with a bang and a rather an unprofessional approach. They gave such high and unsustainable interest on foreign currency accounts. There was evident lack of professionalism on the part of management staff.

**(v) Inexperienced management**

Prudence bank had a raw and very inexperienced management. This can be confirmed by the many irregular acts which showed that the bank lacked proper direction and experienced staff.

**(vi) Balance at closure of the bank**

The bank had K2.3 billion deposits balance at closure.

**(vii) Loans**

Loans stood at K8 billion at closure.

**(viii) Paid out to depositors**

More than 24% of the depositors have been paid their dues.

**(ix) Loans recovery**

Over 44% of the total loans outstanding have been recovered.

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Foot note

38. Hefty salaries

## **2.16 THE CLOSURE OF ZAMBIA EXPORT AND IMPORT BANK EXIM BANK**

Popularly known as Exim Bank, the Zambia Export and Import Bank closed on 19 February 1997. Exim Bank was a “wholly government owned bank”<sup>39</sup>.

## **2.17 REASONS FOR CLOSURE**

### **(i) Failure to recapitalise**

The government being the major share holder of the bank failed to provide recapitalisation.

### **(ii) Potential Buyers**

Government looked for “potential buyers”<sup>40</sup> but could not get any. The bank was therefore placed under liquidation on March 6, 1998 and Messrs. Ammad Phiri and Charles Sichangwa were appointed joint receivers.

### **(iii) Depositors Paid Out**

So far “100% of all the depositors have been paid out”. A commendable effort indeed.

### **(iv) Loans recovery**

More than 30% of all the loans commitments have been recovered.

### **(v) Total Assets**

Assets valued at K1.4 billion were declared.

### **(vi) Deposits received at closure**

Only K37 million as deposits balance was declared at closure.

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Footnote

39. wholly government owned

40. potential buyers

41. 100% paid

## **(vii) Loans outstanding**

The bank's "loans portfolio was quite small "<sup>42</sup>standing at only K912 million.

## **(viii) Any Other reasons:**

EXIM bank which was a wholly government bank collapsed because "government failed to recapitalise it"<sup>43</sup>

## **2.18 COLLAPSE OF UNION BANK**

Union Bank Zambia Limited closed on February 13, 2001.

## **2.19 REASON FOR CLOSURE**

### **(i) Non Performing Loans**

The bank had a high portfolio of non performing loans. Non Performing loans can choke even a big healthy bank because banks' survival depends on recovery and timely repayment of loans.

### **(ii) Insider lending**

It has been revealed that the directors and share holders of the bank depleted its credit base through unconventional borrowing and failure to repay the loans. This coupled with poor credit security on customer loans and overdrafts aggravated the already morbid bank's position.

### **(iii) Negative regulatory capital**

Owing to high insider lending, the bank operated below the regulated capital base. This was due to total exhaustion of even the very minimum deposit ratio with BOZ. Such a scenario only exposed the glaring incompetence of management at the bank.

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Foot note

42. Small loans portfolio.

43. government failed to recapitalise the bank.

#### **(iv) Inter Bank Borrowing**

The bank engaged in inter bank borrowing to enable it meet clearing house requirements on its negotiable instruments. "Interbank borrowing"<sup>44</sup> is often encouraged where banks are enjoying equal market opportunities. This practice can be frustrating when the borrowing bank does so for survival, as was the case for the Union Bank.

#### **(v) BOZ as lender of last resort**

Although the BOZ as lender of last resort assisted the bank to continue with its operations, this effort was frustrated by the bank's share holders who showed no commitment at all to bail the bank out of its misery. The end for the bank was inevitable and it came without a warning to the unsuspecting depositor.

#### **(vi) Depositors pay out ratio**

Union bank has since effected more than 10% repayment on depositors funds through its liquidators.

#### **(vii) Loans Outstanding**

The Bank was owing K7.6 billion in loans as at closure.

#### **(viii) TOTAL ASSETS**

"There was K27 Billion in total Assets."<sup>45</sup>

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Foot note

44. Interbank borrowing

45. . in assets

## (ix) ANY OTHER REASONS

Union Bank took over the defunct "Bank of Credit and Commerce BCCI"<sup>46</sup> which closed in the early 1980s. It would seem a lesson was not learnt and a repetition occurred over 12 years later. The main culprits are the bank's directors themselves who ignored procedures and used their positions to borrow without corresponding responsibility to repay.

The Penal Code Cap 87 of the Laws of Zambia under Division V Section 279<sup>47</sup> provides for the punishment of Directors of Companies. The Act states inter alia that; if the offender is "director or officer of the corporation"<sup>48</sup> or company (which banks are) and the things stolen is the property of the corporation or company, he is liable to imprisonment for seven years. Even in the absence of the Banking and Financial Services Act of 1994, the Bank of Zambia could have invoked the above stated or other provisions in the laws to punish the perpetrators of the collapsed banks. It did not.

This chapter has highlighted the problems faced by most collapsed banks in Zambia. It is evident that to a large extent the problems were similar. It is most regretted however that banks continue going down despite the causes having been long exposed. The question we ask is when will professionalism and integrity prevail in the Zambian banks? Banks are complex institutions which cannot be managed on trial and error basis. Most shareholders in defunct banks are simple traders with daring simplistic notion of banks business.

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### Footnote

46. BCCI closed bank

47. Penal code Cap 87

48. Prosecution of directors



## CHAPTER THREE

### 49. THE COLLAPSE OF BANKS IN ZAMBIA THE LEGAL PERSPECTIVE

#### a. THE BANKING ACT OF 1959

At independence in 1964, banks in Zambia were regulated by the Banking Act of 1959.<sup>49</sup> This Act was in force until 1965 when it was repealed by the Banking Act of 1965 which came with the dawn of independence and self rule euphoria.

The main mischief removed from the Banking Act of 1959 by the Banking Act of 1965 was nomenclature. The Act retained all the salient features of the 1959 Act.

#### b. The Banking Act of 1965

The Banking Act of 1965<sup>50</sup> was merely to reflect the new government perspective. It removed from the Banking Act of 1959 any such areas as did not conform with the aspirations of the newly independent state. Much however remained the same.

### 3.3 THE BANKING ACT OF 1972.

The Banking Act of 1972<sup>51</sup> came in to replace the Banking Act of 1965. Government at this moment was contemplating laws that would be in support of its new initiatives. The Banking Act of 1972 was therefore ushered in as one such supportive instruments to the new political and economic dispensation “nationalisation”.

The epoch of economic policy in Zambia came in 1972. A time also viewed largely as the point of departure from prosperity to the abysmal tunnel of doom. Kaunda decided to introduce socialism. This meant that all economic ventures were to be government controlled. The Banking Act of 1965 was amended to reflect the new economic avenue (socialist path) and every company of significant economic standing was brought under the ambit and control of government.

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Footnote

49. banking Act 1959; P.10; How effective is BOZ control of Commercial Banks? L.N. Kalinde Obligatory Essay, 1995.

50. Ibid

51. Banking Act of 1972; Kalinde at p. 11 1995; UNZA Law School oblg. Essay on BOZ.

Two national conglomerates were formed namely the Zambia Industrial and Mining Corporation ZIMCO and the Industrial Engineering Corporation Indeco, to superintend all economic activities in the productive sector. These umbrella companies were headed by Chairmen appointed by Kaunda.

The Banking and Financial Services Act of 1994, BFS came in to reverse the chaotic economic situation created by UNIP.

The Act was inter alia intended to address the economic policies in a new democratic environment.

It came to liberate banks from rapacious government control, and give them the leeway to operate freely and responsibly.

There was need at the same time to give Bank of Zambia more legal power to supervise, control and act decisively on erring banks and not just act as a watch dog.

The deregulation of the exchange control was a positive move but there was need to monitor the out flow of foreign exchange to encourage private entrepreneurship both locally and internationally. With these regulations in place, the closure of banks was to take a centre stage. BOZ with the necessary legal power should have been on top of things. To date however banks are still closing down. At the time of this essay, reports were being received that the United Bank of Zambia UBZ is under the threat of collapse. Where then is the problem? Is it the inadequacy of legal provisions? It is my opinion that Bank of Zambia has no capacity to handle the problems of banks closure, either due to wrong staff deployment or simply lack of professionalism or good will.

### **3.4 NATIONALISATION OF INDUSTRIES IN ZAMBIA**

The UNIP government of Kenneth Kaunda in 1969 decided to nationalise all major companies and industries in Zambia.<sup>52</sup>

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Footnote

52. Nationalisation

At that time the four commercial banks referred to in Chapter one were privately owned. Except for National Commercial Bank which was a creature of the government itself, the other three banks were foreign owned.

The Banking Act of 1972 was therefore enacted to bring the four commercial banks under state control.

Government proffered to control 51% shares in all the commercial banks. The move was totally rejected by all the four foreign controlled banks, namely Commercial Bank (z) Ltd, Barclays, Grindlays and Standard bank. A bitter and strained relationship developed between the commercial banks and government. Government was suspicious of the activities of the banks who too did not consider it feasible to be nationalised in one country when they remained private else where. There was an impasse. Government eventually relented and only acquired as its own bank, the then Commercial Bank which was immediately renamed Zambia National Commercial Bank after the merger with National Commercial Bank<sup>53</sup>

To punish the three defiant commercial banks which at the heat of discussions had threatened to pull out of Zambia, government deliberately increased nominal capital for banks from 200, 000 to K2 million and that became the new law.

### **3.5 THE MAJOR REASON FOR THE 1972 AND 1994 BANKING ACTS.**

It should be emphasised that the two main reasons why Kaunda repealed the 1965 Banking Act and any other acts were

#### **(i) Political**

Kaunda identified himself as political liberator of the Southern African region. To achieve his combustible ambition he needed total control of every institution, local and foreign operating in Zambia. He also needed total support and unquestioned loyalty from all Zambians. He therefore introduced the one party state.<sup>54</sup>

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Foot Note

53. Rift between govt and Commercial Banks; Kaunda Speaks putting records straight, D> K. Kaunda

54. UNZABECA mulungushi conference Centre, Lusaka 1992 P.7

Interview with valentine Kayope former MP in UNIP; former foreign affairs Deputy Minister MMD; Former Science and Technology Minister MMD

## (ii) Economic

Kaunda realised that without economic control, his dream would be but an empty puff otherwise wishful thinking. Kaunda knew that financial institutions were used to finance wars and destabilised nations elsewhere. He knew too that the forces he was fighting owned the means of production and finances. Although he lost the battle to nationalise and control the banks, he monitored their activities microscopically.

Economic activity in Zambia had dwindled so much that by 1988 most big companies had moved out of the country.

Foreign companies and expatriate staff could not have their earnings remitted because there was no foreign exchange.

The Bank of Zambia introduced a pipeline system by which all foreign exchange remittances were channelled. Commercial banks were not allowed to keep any foreign currency except in small amounts for departure fees for those travelling abroad. Even that had to be approved by BOZ before issuance to the traveller. BOZ approved all foreign exchange transactions from Commercial banks.

There existed several stringent regulations on foreign currency. Suspicion, fear and uncertainty symbolised the pattern of life in Zambia. Banks had no significant role to play in the economy. They became more of agent institutions for the Bank of Zambia.

It was evident that the nationalisation policy had totally failed by 1973.

From 1964 to 1970, Zambia enjoyed rapid economic growth. Companies and industries continued to grow in size and number. Both the Copperbelt and Midlands were a hive of positive economic activity. The mines boomed in luxuriant opulence. Goods and passenger trains whistled merrily as they delivered travellers and copper to various destinations. Factories and industries billowed smoky clouds of success and there was a continuous orchestra of metal rattling from machines. There were all signs of prosperity everywhere. Crime was low and the violent type almost unheard of.

That was Zambia's golden hour to found a firm economic base.

Unfortunately that was short lived success. Kenneth Kaunda's "socialist policies scared away all the investors"<sup>55</sup>.

From 1972, it was evident that Zambia was destined to collapse.

By 1990, most companies had ground to a shattering stop and lay rusty and still.

The Movement for Multi Party Democracy MMD government emerged in 1991 following a political revolution.

MMD under Dr. Chiluba worked to reverse the negative policies left by UNIP. But having inherited a bankrupt government there was little Dr. Chiluba could change.

"MMD however enacted some positive laws"<sup>56</sup>. The Banking and Financial Services Act BFS was one.

This Act aims to remove the archaic socialist practices and give autonomy and freedom to banks to act as economic stakeholders. The Act also enhanced the powers of the BOZ to effectively monitor banks and ensure strict adherence to the law.

Whether the BOZ has the zeal and capacity to effect the desired change remains to be seen.

The BFS Act of 1994 should be effected without political considerations for it to be an instrument of total legal deliverance.

### **3.6 INVESTIGATION OF APPLICANTS**

Section 7 of the BFS Act of 1994 states that in deciding whether or not to grant a banking licence and in deciding what conditions should be attached, to such a licence, the registrar shall have regard to:

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Foot note

54. socialism scared away investors

55. MMD enacted laws such as the BFS Act of 1994

- i. the capital adequacy of the applicant
- ii. the financial condition resources and history of the applicant and the applicants' associates and affiliates.
- iii. The character and experience of the directors and major share holders and of persons proposing to be concerned in the management of the business to be under taken under the authority of the licence.
- iv. The convenience and needs of the community intended to be served by that business.
- v. The prospects for profitable operations of that business.<sup>57</sup>

We saw in chapter two the various reasons that led to the collapse of banks. If the registrar could invoke section 7 certain banks that were allowed to open could not have opened owing to the inadequacies leading to their closures.

Section 8 stipulates the various activities a bank is allowed to carry out. These include;

- (a) making loans and extending credit to any person on the security of property of any kind or unsecured.
- b. Dealing as principal or as agent in bills of exchange, promoting notes, cheques Travellers cheques (T/cs) and any other instruments.

The case of Credit Africa bank revealed gross mismanagement and fraud. Under section 36 of the Act, it is an offence for a director, officer, employee, agent appraiser, accountant or legal advisor of a bank to make any false or misleading statement or entry or omit any statement or entry that should be made in any book account report or statement of the bank.<sup>59</sup>

Section 37<sup>60</sup> empowers the minister to dismiss any director of a bank who fails to comply with the provisions of the Act.

Some of the defunct banks were in gross breach of section 41 which provides that no bank shall receive money or payment from any person in order to contract with it.

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Foot note

56. Section 7 (a) (b) (c) (e) Banking and financial Services Act 1994.

57. Section 8; Banking and Financial Services Act 1994

58. Section 36 Banking and Financial Services Act 1994

59. Section 37 Banking and Financial Services Act 1994

If any bank is found doing that it will be liable to a penalty of ten million Kwacha or imprisonment for a term not exceeding five years.

### **3.7 APPOINTMENT OF AUDITOR**

Section 62(1) of the BFS 1994 states that every bank shall appoint an auditor<sup>61</sup> of good professional standing and approved by the Bank of Zambia. The auditor shall (2) audit accounts and make reports to the share holders upon the annual balance sheet, profit and loss account and other matters required by the Act.

The functions of auditor are important. Auditor requires verification of all accounts and records of the bank. A good audit may save the bank from collapse by revealing lapses of the bank officers in good time.

If Bank of Zambia insist on regular audit of banks they could save depositors money from being lost through unprecedented bank closures.

This is the challenge BOZ has in this era. We are yet to ascertain its capacity and potency to change things round and protect the vulnerable depositor from the daunting experience of bank closures.

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Foot note

61 Appointment of auditor

## CHAPTER 4

### 4.0 MONITORING OF BANKS BY BANK OF ZAMBIA

The responsibility and duty to monitor banks in Zambia rests with the Bank of Zambia B.O.Z.

### 4.1 ESTABLISHMENT OF THE BANK OF ZAMBIA BOZ

The Bank of Zambia is established under the Bank of Zambia No. 43 of 1996 937 also known as the Bank of Zambia Act of 1996<sup>62</sup>

Part VI of the Bank of Zambia Act 1996 specifies Bank of Zambia relations with other banks and financial institutions.<sup>63</sup>

The Act establishes the BOZ at nominal capital of K10b.

### 4.2 MINIMUM LIQUIDITY RATIOS AND RESERVE REQUIREMENTS

Section 41 (1) stipulates inter alia that;

The Bank may by gazette notice determine;

- a) The minimum ratio or liquid assets which each bank or financial institution is required to hold,
- b) The minimum reserve balance which each financial institution shall maintain with the Bank.
2. The Bank may by Gazette notice determine the class of assets which shall qualify to be liquid assets referred to under this section.
3. The Bank may by Gazette notice specify the class or classes of liabilities against which the ratio requirement may be calculated.
4. No bank or financial institution shall be required to maintain higher percentages than any other bank or financial institution.
5. Where a bank fails to maintain a balance in its account with BOZ sufficient to comply with the duty under that section the bank concerned shall pay to the BOZ interest calculated on daily basis on the amount in deficit at a rate determined by B.O.Z for that purpose.

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Footnote

62. BOZ Act 1996 Act

63. Part (Vi) of 1996 Act; relations with other banks



### 4.3 ACCOUNTS FOR BANKS AND OTHER FINANCIAL INSTITUTIONS

Section 42 (1) states that the BOZ may maintain accounts for banks and other financial institutions as the BOZ board may determined <sup>64</sup>.

(2) The Bank may

(a) purchase, sell, discount or rediscount any treasury bills or other securities issued or granted by government forming part of a public issue and their acquisition by the bank.

(b) grant for a period not exceeding six months advances secured by:

(i) instrument specified in (a) above

(ii) other securities issued or granted by the government and forming part of public issue and

(iii) holding of any assets which the bank is permitted to buy sell or deal as stated by section 39 which permits the BOZ to deal in gold and other precious articles.

(3) where the "BOZ considers an advance"<sup>65</sup> necessary in order for a bank to

(a) meet liquidity requirements or

(b) forestall insolvency to system of holder of any account operated in accordance with subsection (1) above. The Bank will decide to make either an unsecured or secured advance to the bank concerned, as secured by the assets of the given bank subject to the decision of the board of the BOZ.<sup>66</sup>

### 4.4 INSPECTION

Section 55 states that BOZ shall carry out periodic inspection of any bank in accordance with the provision of the Banking and Financial Service Act of 1994.<sup>67</sup>

Further, the BOZ has powers conferred on it by the B.F.S Act, to examine banks operations at anytime.

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#### Footnote

64. Section 42 (1) Accounts for Banks

65. Subsections BOZ advance to ailing bank

66. Section BOZ decision

67. Section 55 (1) (2) BOZ Act of 1996.

#### **4.6 LICENSING OF COMPANIES AS BANKS.**

Section 4 (1) of the Banking and financial services Act of 1994 states that;; upon application by a company, the registrar in consultation with the ministry, may grant a license authorising the company to register and conduct banking business.<sup>68</sup>

The application must comply with all the requirements in order for it to be approved by the registrar of banks.

Section 9 (4) states that no bank shall whether of itself or by a subsidiary, open a branch or any office outside Zambia without the prior consent of the Bank of Zambia, which consent may be granted on such terms as the BOZ may determine.

We Saw in chapter two how Meridien Bank was marchialled by Mr. Andrew Sadarnese to take over operations of dying banks in west Africa. Such acts under this Act are not permissible without prior BOZ approval.

#### **4.7 THE REGISTRAR AND DEPUTY REGISTRAR OF BANKS**

Section 20 (1) of the Act states that the minister upon recommendation from the BOZ shall appoint a registrar of banks and financial institutions and his deputy to be nominated from the BOZ.<sup>69</sup>

This section is important for two reasons.

The BOZ is now empowered to nominate a suitable person to be appointed registrar of banks. Two that such a person should be of approved standing in BOZ view . This is a commendable provision because the BOZ is the best judge of who qualifies to operate a bank in Zambia. The BOZ now has a voice in the appointment of registrar of banks and financial institutions, and his deputy.

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Foot Note

68. Licensing of Companies as banks Section 4(1) Banking and Financial Services Act

69. Registrar and Deputy Registrar of Banks Section 20 (1) of the Banking and Financial Services Act 1994.

- (iii) The designation of Deputy registrar to an employee of the BOZ means that the BOZ would be appraised at all occasions of what banks are allowed or not allowed to operate in Zambia. As an employee of the BOZ the Deputy Registrar will ensure BOZ authority is manifest in the scrutiny of applicants. This in effect means that BOZ is itself in charge of the registration of banks in Zambia.

#### 4.8 OWNERSHIP OF BANKS

The story of African Commercial Bank and Commerce Bank covered in chapter two made sad reading. We discovered how directors and share holders of African Commercial Bank were the same directors and shareholders of Commerce Bank. This group of individuals was responsible for the collapse of two banks in Zambia.

Section 24(1) of the Banking and Financial Services Act of 1994 prohibits any person who has *de jure* control or *de facto* control of a bank to own shares or maintain *de jure* or *defacto* control of any other bank.<sup>70</sup>

It is interesting to note how grossly abused this provision has been. The repurgations have been too ghastly to contemplate. Strict adherence to this section will certainly bring sanity in the management of banks in Zambia.

#### 4.9 EFFECTS OF AMALGAMATION OR TRANSFER OF BANKS

Union Bank was formed as a last minute alternative to the dying Bank of Credit and Commerce BCCI.<sup>71</sup> It would seem that the shareholders of the new bank were not as fully committed and never learnt any lesson from the collapse of BCCI..

The responsibility of changing the image of banking in Zambia now lies squarely on the BOZ itself. Indeed there could be no better professional body to monitor this most sensitive area of the economy.

The registrar and his deputy as *de facto* nominees of the BOZ should exhibit highest integrity in examining applications for banks. Any past mistakes are to be avoided.

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Footnote

70. Ownership of Banks Section 24 B. F. S. Act 1994

71. BCCI closed and Union Bank emerged taking over everything left by BCCI.

One director at Union Bank has been director and share holder at several defunct banks. His companies owe huge sums in bad debts. These type of people should be black listed by the BOZ because they have caused so much injury to the economy and should never be allowed to be directors or shareholders in banks.<sup>72</sup>

#### 4.10 BOZ AS LENDER OF LAST RESORT

The Bank of Zambia being the Central Bank is also lender of last resort. The term lender of last resort<sup>73</sup> however has no specific definition owing to the various responsibilities a Central Bank undertakes to help banks in distress.

The Central bank may for instance render credit facility to an ailing bank to help it meet its obligations. Could that be termed lending of last resort?

Perhaps Bank of Zambia as lender of last resort should be viewed in a broader perspective as a Central Bank. Just what is a Central Bank?

Phillip Molyneux defines a Central Bank as "a body that undertakes the financial operations of government, which in so doing influences the behaviours of financial institutions in order to aid the economic policy of government."<sup>74</sup>

Most countries have central banks. The activities and authority these banks have differ from country to country. In Zambia the BOZ is also referred to as the Central Bank, In England it is the Bank of England, In Germany the Deutsche Bundesbank and in the US the Federal Reserve System.<sup>75</sup>

Principally however all Central Banks perform some if not all the following functions

- (i) issue bank notes and coins also called legal tender notes and coins
- (i) Control money supply in the country, and beyond for convertible currencies.
- (ii) Control of financial system through regulatory supervision
- (iii) Act as banker for government
- (iv) Act as official government agent in gold and foreign exchange deals.

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#### Footnote

- 72. Person referred to in Union Bank and BCCI is a serving politician of high rank. Name and details withheld.
- 73. Lender of last resort, Banking rescues and insolvency M.K. Chisunka; University of Wales 2000 p. 31 LMA.
- 74. Molyneux p. 1991; Banking; An Introductory Text London Macmillan P. 93
- 75. Central Banks P. 32 Banking Rescue and Insolvency; M. K. Chisunka, University of Wales LMA.

- (v) Act as banker for commercial banks.

#### **4.11 OTHER FACILITIES OF CENTRAL BANK C.B. TO COMMERCIAL BANKS**

2.5 The Central Bank acts as collector of depository reserve for commercial banks<sup>76</sup> whose capacity to retain physical liquid cash is limited.

#### **2.6 CENTRAL CLEARANCE SYSTEM**

The central bank creates a central clearance facility for all interbank transactions and the payment system.

#### **2.7 LIQUIDITY SUPPORT**

The Central bank gives liquidity support to commercial banks through rediscount or advance facility.

2.8 Acts as lender of last resort already referred to above.

2.9 It regulates supervision of all banking systems.

It is in this context that the central bank is deemed as head and nerve center of the banking system<sup>77</sup>.

#### **4.12 DEPOSIT PROTECTION SCHEME DPS.**

Bank closures have a multiplier or ripple effect because they affect other banks' operations and place a heavy burden on the entire economy.<sup>78</sup>

The closure of Meridien bank is one good example. Before its closure Bank of Zambia moved in to try and resuscitate the bank. Its efforts failed. Government intervened and put in a lot of money. This effort equally failed. When finally the bank closed it caught so many depositors unaware. It was a disaster felt even by those who had no direct business links with the bank. Debtors could not pay their creditors, business for some came to a complete halt and even the ordinary depositor could not access the very basics of life because his funds were trapped in the monster's belly.<sup>79</sup>

Whilst banks have insurance for funds in transit, counter and reserve funds, there is no comprehensive insurance for depositor's funds.

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#### **Foot note**

76. BOZ collector of deposit reserves

77. P.34 Banking Rescues and Insolvency in

78. P. 23; Banking Rescues and Insolvency in Zambia by M. K. Chisunka of BOZ at University of Wales U.K. LLM degree 2000.

79. Comment made by one distraught former meridien Bank depositor 1997.

There has since been an out cry however for deposit protection schemes for all banks.

Deposit protection scheme DPS is a form of insurance. This scheme in the USA safeguards depositors' funds up to US \$100,000<sup>80</sup> the equivalent of ZMK 450,000 000 at today's rate i.e. 20.09.2002.

Whilst this may not give much consolation to the multi millionaire it certainly is a great consolation to an ordinary depositor even by the U.S. standards.

No depositor wants to wait without guarantee of recovering full value of his funds. Consequently the call for D.P.S. in Zambia is rational and just. Bank of Zambia should consider introducing this security measure.

#### **4.13 WHO SHOULD PROVIDE D.P.S.?**

Who should provide D.P.S. is a question with no readily available answer. Governments in some countries have pondered to bear this risk to preserve public confidence in banks.

The Chancellor of the Exchequer in the UK. in his report to parliament in 1985 stressed that, "even with a generally effective system of supervision, no deposit can be entirely without risk. There should however be some arrangement to provide that, whatever happens, there is a degree of protection sufficient to prevent severe hardship among the most vulnerable depositors. The Deposit Protection Scheme achieves this"<sup>81</sup>

#### **4.14 MORAL HAZARD**

Moral hazard is the negative side of D.P.S. Some governments in an attempt to prevent the risks of banks closures have also considered the repurcation such a scheme would bring with it. Moral hazard arises when the insured person's behaviour changes and takes little or no precaution at all to prevent the risk.<sup>82</sup>

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#### **Footnote**

80. HINZ; R. Rocha R. and Gutierrez (1999); improving the regulation and supervision of pension funds; Are there lessons from the banking sector? World bank page 3

81. Cmmd 9695 [1985] The Role and Aims of the Banking supervisor at P.7

82. Moral hazard; Penguin, Economics Dictionary op cit. p. 284.

#### 4.15 WHERE WILL THE NEXT BANK PROBLEM COME FROM?

This is a harsh question to contemplate yet inevitable. Bank closures do not come in a vacuum. They build on previous events, collective experiences, developments and directions of the past,. As George Santayana inviolably stated that “those who cannot learn lessons of the past and adapt them to ameliorate future occurrences are bound to repeat them.”<sup>83</sup>

#### 4.16 WHAT SHOULD BOZ DO TO PREVENT FUTURE BANKS COLLAPSE?

Richard Spillenkothen gave some useful hints on what central banks should do to avoid bank closures, stating that;

Central Banks need skilled personnel who can understand risk management practices and capable of directing attention where it is most needed.

The need for more risk sensitive and prudential standards such as capital and improvement of risk management practices in banks is most essential.

Banks disclosure of information is vital. And this, Richard said, should not be an accidental discovery.<sup>84</sup> what is Bank of Zambia's response to this? BOZ is currently training staff to equip them with the necessary skills to combat occasions that lead to bank closures.<sup>85</sup>

In his paper entitled New Regulator for the New Millennium, presented at the Royal Lancaster Hotel on 11 December 2000, Howard Davies Chairman of Financial Services Authority FSA introduced three concepts namely;

#### 4.17 Information Asymmetries

By information asymmetries, Howard Davies ungues that individual depositors, policy holders and investors need to access and secure the necessary information they

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Foot note

- 83. Philosopher George Santayana; Quoted by Richard spillenkothen; Director supervision and Regulation New York Banking Dept 17.01.002
- 84. Page 5, Remarks by Richard Spillenkothen Director, Division of supervision and Regulation, at the New York State Banking Dept New York Dd October 25, 1999
- 85. Interview assurance given by Peter Mbewe BOZ

need to make credit assessments of the institutions they are dealing with. This in Zambia requires immediate implementation. The old banks Barclays, Stanchart Stanbic and the Zambia National Commercial Bank have gone a step ahead in this direction and do offer accurate data on their various activities including for some, their liquidity standing.<sup>86</sup>

#### **4.18 External Systemic failure of firms**

By this David explains that when there is economic failure in any given scenario, it is the banks that monitor that failure before anyone else. He therefore urges that banks should highlight every possible and imagined economic failure so as to alert their depositors of the eminent dangers in the economy. This gives a depositor time to plan ahead of time and in case of a catastrophe the depositor will have been forewarned and the shock won't be as devastating.<sup>87</sup>

#### **4.19 Fraud and Misrepresentation**

Howard Davies has emphasised the need for banks to guard against fraud and misrepresentation. These crimes have eaten into the fabric of banking and are responsible for the collapse of many banks world wide.<sup>88</sup>

Section 36 of the B.F.S. Act of 1994 has spelt out the penalty for these crimes once perpetrated by any person who is connected to or is in bank employment.

#### **4.20 EARLY INFORMATION DISCLOSURE**

David Clementi Deputy Governor stressed that there should be improvement on information disclosure by banks. He argued that disclosure of an appropriate kind should help the market distinguish clearly between well managed and adequately capitalised banks on the one hand and their less sound counterparts on the other. This should act as a spur to the weaker firms to improve their performance.

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#### **Footnote**

- 86. Information asymmetries; knowledge passed to depositors by the bank. Page 3, Howard Davies, Chairman F.S.A. Royal Lancaster Hotel Dec 11. 2000
- 87. External systemic failure *ibid*
- 88. External systemic failure *ibid*



Disclosure should also help to reduce uncertainties which may mitigate the tendency of financial markets to lurch into periodic self fulfilling crises.

David concluded that “it is certainly arguable that greater and earlier disclosure of the exposure of long term capital management for example could have avoided the problems seen in World Financial Markets following its collapse in the autumn of 1998.”<sup>90</sup>

#### **4.21 LESSON LEARNT FROM BANKS CLOSURE**

Tobias M.C. Asser presenting a paper on legal Aspects of Regulatory Treatment of Banks in Distress stated that, one lesson learned from these disasters is that maintaining the confidence of domestic and foreign investors requires credible bank regulatory system that closely supervises banks, strictly enforces banking law, helps restore ailing banking institutions to financial health and expeditiously expels insolvent banks from the financial system. Such regulatory pruning or weeding helps preserve and promote vigor and growth in a financial system. It removes incentives for weak institutions which do not comply with prudential regulations and thereby eliminates unfair competition which results from non compliance with prudential requirements.<sup>91</sup>

#### **4.22 BASLE COMMITTEE CORE PRINCIPLES FOR BANKING SUPERVISION.**

The collapse of banks is a world wide phenomenon and there is spontaneous reaction to the problem at global level.

A group of ten countries called the G.10 plus Switzerland and Luxembourg under the auspices of the Bank for International Settlements, formed a committee of Banking Supervisory Authorities whose objective was to seek different ways to achieve global financial stability. Thus the Basle committee on banking<sup>92</sup> was born in order to promote the adoption of global concerted actions aimed at obtaining financial stability.

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#### **Footnote**

89. Fraud and misrepresentation *ibid*

90. Speech by David Clementi, Deputy Governor, at the Launch of the Oxford Centre for Computational Finance; University of Oxford, UK.

91. Tobias M.C. Asser, legal Aspect of Regulatory Treatment of Banks in Distress. IMF April 19.2001

92. Basle Committee on Banking Supervision 1975 meeting of Central Bank Governor of the G.10.

The committee came up with twenty five points recommended for all banks supervision world wide.

These points all emphasize the same common areas that have caused collapse of banks. They also recommend effective supervisory and legal mechanisms to ensure strict adherence to the laws and guidelines of supervision and recommendations.

#### **4.23 The twenty five Basle Principles:**

##### **Principle One**

*An effective system of banking supervision will have clear responsibility and objectives for each agency involved in the supervision of banking organizations. Each such agency should possess operational independence and adequate resources. A suitable legal frame work for banking supervision is also necessary, including provisions relating to the authorization of banking organizations and their on going supervision powers to address compliance with laws as well as safety and soundness concerns, and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.*

##### **Principle Two**

*The permissible activities of institutions that are licenced and subject to supervision as banks must be clearly defined and the use of the word "bank" in names should be controlled as far as possible.*

##### **Principle Three**

*The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process at a minimum should consist of an assessment of the banking organisation's ownership structure, directors and senior management, its operation plan and internal controls and its projected financial condition including its capital base. Where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained .*

## **Principle Four**

*Banking supervisor must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.*

## **Principle Five**

*Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank undue risks or hinder effective supervision.*

## **Principle Six**

*Banking supervisors must set prudent and appropriate minimum capital adequacy requirements for all banks. Such requirements should reflect the risks that the banks undertake, and must define their component of capital, bearing in mind their ability to absorb losses. At least for internationally active banks, these requirements must not be less than those established in the Basle.*

## **Principle Seven**

*An essential part of any supervisory system is the evaluation of banks policies, practices and procedures related to the granting of loans and making of investments and the on going management of the loan and investment portfolios.*

## **Principle Eight**

*Banking supervisors must be satisfied that the banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan loss provisions and loan loss reserves.*

## **Principle Nine**

*Banking supervisors must be satisfied that the banks have management information systems that enable management to identify concentrations within the portfolio and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.*

## **Principle Ten**

*In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arms length basis, that such extensions of credit are effectively monitored and that other appropriate steps are taken to control or mitigate the risks.*

## **Principle Eleven**

*Banking supervisors must be satisfied that the banks have adequate policies and procedures for identifying, monitoring and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.*

## **Principle Twelve**

*Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor and adequately control market risks. Supervisors should have powers to impose specific limits and or a specific capital charge on market risk exposures if warranted.*

## **Principle Thirteen**

*Banking supervisors must be satisfied that the banks have in place a comprehensive risk management process (including appropriate board and senior management oversight) to identify measures, monitor and control all other material risks and where appropriate, to hold capital against these risks.*

## **Principle Fourteen**

*Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility, separation of the functions that involve committing the bank paying away its funds, and accounting for its assets and liabilities, reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these control as well as applicable laws and regulations.*

## **Principle Fifteen**

*Banking Supervisors must determine that banks have adequate policies, practices and procedures in place, including strict "know your customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.*

## **Principle Sixteen**

*An effective banking supervisory system should consist some form of both on- site and off- site supervision.*

## **Principle Seventeen**

*Banking supervisors must have regular contact with bank management and thorough understating of the institution's operations.*

## **Principle Eighteen**

*Banking supervisors must have a means of collecting, reviewing and anlysing prudential reports and statistical returns from banks on a solo and consolidated basis.*

## **Principle Nineteen**

*Banking supervisors must have a means of independent validation of supervisory information either through on--site examinations or use of external auditors.*

## **Principle Twenty**

*An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.*

## **Principle Twenty one**

*Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business and that the bank publishes on a regular basis financial statements which fairly reflect its condition.*

## **Principle Twenty Two**

*Banking supervisors must have ta their disposal adequate supervisory measures to bring out timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. in extreme circumstances, this should include the ability to revoke the banking lincence or recommend its revocation.*

## **Principle Twenty Three**

*Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide primarily at their foreign branches, joint ventures and subsidiaries.*

## Principle Twenty Four

*A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.*

## Principle Twenty Five

*Banking supervisors must require the local operations of foreign banks to be conducted to the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.<sup>93</sup>*

These principles embrace all areas of bank supervision and BOZ will do well to be acquainted with them and apply them to the local situation.

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Foot note x

93.

The 25 principles on Banking supervision. Part II the core principles for Effective Banking supervisions: The statutory Approach

## CHAPTER FIVE

### 5.0 BANKS ADMINISTRATION. HOW HAS IT CONTRIBUTED TO BANKS COLLAPSE IN ZAMBIA?

#### 5.1 MANAGEMENT OF BANKS

It is a notorious fact that meladministration of banks is largely responsible for the demise of most banks in Zambia.

#### STAFF EXPERIENCE

It has been established that although some new banks such as Meridien had attracted experienced staff from the four veteran banks, these staff were not employed at high influential, managerial levels. Many of them were just branch managers who still had no in put on policy and administration of the new banks.

To the largest extent, the new banks employed new and inexperienced staff. These staff did not understand how banks operate.<sup>94</sup> They did not fully understand risk management and the fine details of lending.

At board management level, the local banks were dominated by one powerful individual who dictated his perilous avarices. Meridien bank is a good example. Mr. Sardines owned more than half the shares of the bank and he manipulated the bank to his selfish desires.

As for other banks, the share holders were half baked pseudo businessmen of questionable background.

#### 5.2 ECONOMIC FACTORS

High inflation and economic failure marked the last part of the UNIP government of

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Footnote

94. New Bank Staff

95. staff experience; the lack of it caused the collapse of banks. Source; Peter Mbewe's paper to parliament in closure of Banks d. 7 April 2000. BOZ document; Dept of Banks supervision.



Dr. Kenneth Kaunda. Banks can be difficult institutions to run in times of economic instability as happened between the period 1980-1990. Loans pricing was a daunting task even for experienced banks. The situation was certainly worse for the new banks who had no technical knowledge of crisis management. During this period inflation was so high that there was no meaningful economic planning anywhere.

### **5.3 CREDIT ADMINISTRATION**

The department of credit is in any bank where money is generated or lost. It is a terrible misconception to always associate lending with collateral.. As Lord Chorley Q.C.<sup>96</sup> stated that “the taking of a suitable security is not the only method whereby bankers try to make sure that their advances shall be safe. Indeed the most important factor to be taken into consideration when assessing the safety of an advance or loan is the borrower’s capacity to repay the loan in accordance with his promise”.

It follows therefore that any security obtained should be regarded as a last line of defence to fall back upon only in very exceptional cases.

A banker will therefore want to know the purpose for which a loan is required and the source from which repayment shall be expected<sup>97</sup>.

### **5.4 DURATION OF RELATIONSHIP**

Customer Banker relationship is said to begin when the parties enter into negotiations. Presentation by a customer of title deeds for a farm, should not always guarantee security of a loan. A prudent banker looks for better information than title deeds.

### **5.5 CAPACITY TO CONTRACT**

Banker customer relationship requires that both parties have the necessary elements that form a valid contract. Capacity is one such elements both parties must

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Foot note

96. Crisis Management; Peter Mbewe, BOZ Banks supervision Dept.

97. Law of Banking by Lord Chorley Q.C. MA at p. 199. 5<sup>th</sup> Ed.

possess. Capacity in lending means that the borrower has the ability to repay the loan. Capacity and ability to repay the loan must be ascertained by the lender.

It is at this moment that experience becomes vital. The banker will employ several methods of facts finding such as, interview with borrower, physical inspecting of the project, market conditions, viability of the project, legality of the project, projections of income from borrower's balance sheets which must reflect at least minimum two years. Referees of borrower and if possible guarantee from reputable person or organisation. The period within which loan is to be repaid and the benefit of the loan to loanee.<sup>98</sup>

Lending is the most specialised field of banking and it is not every manager that can lend. It is a restricted function and must be supervised by experienced and well trained staff. This is the department where a bank's life is gained or lost. The unfortunate misconception of title deeds or security has sent many banks into voluntary death. Banks are not traders or estate agents. The aim of any well managed bank is to lend and get back its money through the agreed repayment program. Banks do not set up traps to deprive their clients of their property. To the contrary, they are proud to create poor men into rich men by the help they render through loans and overdrafts.

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Foot note

98. P. 200; Law of Banking by Lord Chorley Q.C. M.A. 5<sup>th</sup> Ed.

## CHAPTER SIX

### RECOMMENDATIONS

The Bank of Zambia should strictly implement the provisions of the Banking and Financial Services Act of 1994 to avoid banks closure.

The BOZ should itself become more professional by ensuring its employees, workers and managers are but workers and not ignorant bosses.

Banks should ensure that only trained and experienced staff are employed to run credit departments.

The BFS Act of 1994 should be made available to all banks staff.

Proper scrutiny of applicants for opening of banks should be emphasised.

Any person who once held the position of Director or Shareholder in any defunct bank should not be allowed to hold similar position in any bank in Zambia.

Government should introduce as of priority a deposit protection scheme DPS to protect depositors. The scheme should be run by the banks themselves or the BOZ on behalf of the banks or as a trust fund but divorced from government . And K5m to be paid instantly to any depositor with a credit balance in excess of K5m. And balances below K5m to be paid in full instantly. The figure is subject for review.

BOZ should work hand in hand with registrar of banks to ensure proper capitalisation is in place and the prospective banks owners are properly investigated before granting them licence to operate a bank.

The notion by some BOZ staff that banks closures are unpredictable confirms the unprofessional attitude and lack of zeal. There should be a total overhaul of BOZ staffing to improve service and quality delivery.

## CONCLUSION

The past fifteen years have witnessed both the excitement and melancholy of the rise and fall of banks in Zambia.

The bitter lesson learnt is that we all now know as a fact that banking business is sensitive and cannot be operated by casual businessmen.

We have equally seen how much misery and distortion closed banks have brought upon several innocent depositors many of whom are still struggling to recover their money from the defunct banks' liquidators and receivers.

To this, the MMD government under Dr. Chiluba responded with genuine speed and resolve to save the depositor by injecting more money into such banks as Meridien BIAO Bank, Union Bank and many others in an effort to save them from collapse. The efforts of government failed because the owners of these banks had done so much injury to them that reviving them was next to rebuilding them totally anew.

We therefore urge that the law should be enforced to purge out fake businessmen from the banking arena.

Foreign investors should be investigated before granting them not only licences to run banks but any other forms of business. The Meridien bank experience should be avoided at all cost.

It seems the attraction for some so called foreign investors in Zambia is liberalised exchange control. They do not therefore come to Zambia to invest as such but come to reap and rip Zambia's foreign currency which they externalise to their own countries at will.

This is not to condemn our policies at all. Zambia is in a precarious economic situation. It has been since the introduction into the economy by Dr. Kaunda of nationalisation. The present "halt" and "hold unto" exchange controls has some significant gains.

The trading business abound today may be the beginning of the coming back of industrial activity. Shoprite and Game should not be so condemned, because they have made a difference to the people's (those with money) lives and choice.

The banks in any situation are like fish. They flow with the water. Our economy is not yet strong enough to support competitive banking properly so called. That should not however impede us from forging ahead with attempts that may after all bring us the answer to our economic revival.

Having said that however, caution must be sounded to up coming banks to learn to tailor their coat according to the cloth available, or learn to crawl first before attempting to run.

Apart from Mr. Sadarnese irregular acts, Meridien Bank came with a speed that was not bankingly real.

They put up an imposing building in less than five years of their existence and opened braches in almost every center.

Banking business is not trading where loss making braches can be supported by other profitable areas of the business.

Zambians wishing to go into banking business should think their ambitions over. Banking is a tradition and one has to grow with it and into it to be successful.

It may be a wonderful idea to attract the so called big boys to partner up with some Zambian reputable companies to establish banks in this country beyond the present stock.

The laws so far seem good and should not be made too rigid to be a deterrent to possible investment.

The causes of banks collapse have been identified as, lack of commitment by the share holders and directors who failed to recapitalise the banks when they went down on liquidity.

There was no professional approach to the running of banks. Directors and share holders behaved like primitive stone age wild fruit gatherers who ate the fruit and cut down the fruit tree. "They ate into the capital."

Lending is the main core of banking. It is evident that the fallen banks were run by "nice guys" who could not say no to an important man's irregular application for a facility. They operated on hope and divine providence. This legally is contemptuous. There were no trained credit staff in those banks if there were, their recommendations were being overruled by ignorant "bosses". Frauds are a product of dishonesty and incompetence.

Fraud and money laundering crept in because the owners of banks did not understand how banks operate.

Banking is an honourable career and trade. The Bank of Zambia has been given the necessary legal force to effect changes in the banking supervision. There should be no excuse what so ever for the BOZ to fail to arrest future bank closures.

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