

SADC Central Bank Model Law



EXPLANATORY NOTE

The Southern African Development Community (SADC) Central Bank Model Law embodies the key principles that will promote the adoption of general principles which will facilitate the operational independence of SADC central banks, create clear standards of accountability and transparency in the legal and operational frameworks of SADC central banks and facilitate the harmonisation of the legal and operational frameworks of central banks. These key principles are also essential for the achievement of harmonised legislation and the establishment of a regional SADC central bank. Where appropriate, the Central Bank Model Law may be modified to meet the needs of a particular country.

CENTRAL BANK MODEL LAW

To update and re-enact the legislation relating to the Central Bank of [*name of the country*].

BE IT ENACTED by the [*National Legislature*] of [*name of the country*] as follows:

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INTERPRETATION

1. Definitions

In this Act, unless the context indicates otherwise –

“**Bank**”¹ means the Central Bank of [*name of the country*]/Reserve Bank of [*name of the country*]/Bank of [*name of the country*], established under section 2(1) of this Act;

1 This definition needs to be customised to suit the name of the Bank and country.

“**bank**” means a financial institution that is duly registered and approved to carry on banking business in terms of [*the name of the Act*];

“**banking business**” means –

- a) receiving deposits from the public including cheque account deposits and the use of such deposits, either in whole or in part, for the account of and at the risk of the person carrying on the business, to make loans, advances or investments;
- b) any custom, practice or activity designated by the Bank as banking business under the relevant banking or financial institution’s legislation;

“**Board of Directors**” means the governing body of the Bank comprising the Governor, Deputy Governors² and the non-executive directors constituted in accordance with section 9;

2 Reference to Deputy Governor will be referring to Deputy Governors as a class.

“**confidential information**” means information that is classified³ in terms of top secret, secret, confidential and restricted;

3 Classification of information by the relevant law or central bank regulations practice.

“**Constitution**”⁴ means the [*name and citation of the constitution*]

4 Fundamental and organic law of a nation or state, establishing the conception, character and organisation of its government as well as prescribing the extent of its sovereign power and the manner of its exercise.

“**Day**” means business day excluding Saturdays, Sundays and public holidays⁵;

5 Public holidays may be determined by statute and accordingly the definition ought to include a reference to that particular statute.

“**family**” means a principal’s spouse(s) and minor children;

“**financial institution**” means a business, organisation or other entity that manages money, credit, or capital, such as a bank, credit union, a savings-and-loan association (co-operatives), securities broker or dealer, a pawn-broker or investment company or the like;

“**Head of State/Government**”⁶ means the Head of State of [*name of the country*] or Government;

6 Depending on the governmental structure, this may refer to the “President/Head of Government”.

“**Minister**”⁷ means the member of the Cabinet (executive) responsible for national financial matters of [*name of the country*];

7 Depending on the governmental structure, this may be referred to as the “appropriate authority”, for example the Cabinet or Head of State/Government in the case of the Democratic Republic of the Congo.

“**Official gold and foreign exchange reserves**” means the international reserves asset of the Bank and those of the Government;

“**Revaluation Reserve Account**” means a reserve account maintained in the financial records of the Bank to which unrealised profits and losses from gold, Special Drawing Rights, foreign currency or other financial instruments are transferred from the income statement; and

“**Staff**” means officers and employees of the Bank and includes persons employed for a short term.

CHAPTER I

NAME, OBJECTIVES AND FUNCTIONS OF BANK

2. Name of Bank

- (1) The Bank is called “Central Bank of [*name of the country*]/Reserve Bank of [*name of the country*]/Bank of [*name of the country*]”.⁸
- (2) The Bank shall have its Head Office in [*city*] and may, with approval of the Board of Directors (Board) establish branches within or outside the country.

8 Describing the central bank as “National Bank of” is not recommended.

3. Legal form and capacity

- (1) The Bank is a [*juristic person/legal person*] with a common seal.
- (2) The Bank has the legal capacity⁹ to –
 - (a) enter into contracts and incur obligations;
 - (b) sue and be sued in its own name;
 - (c) acquire, hold and dispose of property, whether movable or immovable; and
 - (d) act in any other way necessary for, or incidental to, the discharge of its functions under this Act.

9 Must be distinguished from the functions of the Bank listed in section 6.

4. Primary objective of Bank

- (1) The primary objective of the Bank is to achieve and maintain price stability.
- (2) Without prejudice to the objective of price stability, the Bank may support the general economic policies in [*name of the country*].

5. Independence of Bank

- (1) The Bank is independent and, in pursuit of its primary objective and in the performance of its functions under this Act, shall act without fear, favour or prejudice or direction from any person, authority or institution.¹⁰
- (2) No person shall seek to influence any member of the Board, management or staff of the Bank in the discharge of their duties, or otherwise interfere in their lawful activities.
- (3) No member of the Board, management or staff shall be influenced in the conduct of their duties towards the Bank.

10 The Constitution of the country should also provide for the Bank’s political and economic autonomy, taking cognisance of the necessary Bank’s accessibility to Government where relevant.

6. Duties, functions and powers of Bank

- (1) The Bank shall –
- (a) formulate and implement monetary policy with a view to the achievement and maintenance of its primary objective;
 - (b) implement the appropriate exchange rate policies¹¹ as set out in section 53;
 - (c) hold and manage the official gold and foreign exchange reserves of
[*name of the country*];
 - (d) issue notes and coin that are [legal tender/national currency] and regulate all matters relating to the domestic currency;
 - (e) establish, conduct, monitor, regulate and supervise, and promote the soundness and security of payment, clearing and settlement systems;
 - (f) act as banker and fiscal agent to the Government as set out in sections 38(1) and 39; and
 - (g) act as banker to banks.
- (2) Subject to this Act, the Bank may –
- (a) licence and supervise banks and financial institutions in accordance with section 52;
 - (b) regulate the activities of banks and financial institutions;
 - (c) manage, or assist in the management and administration of, domestic and external debt on behalf of the Government;
 - (d) provide banking services for the benefit of foreign governments, foreign central banks and monetary authorities, and for the benefit of international organisations in which it or the Government participates;
 - (e) participate in international financial institution that pursue financial stability through international monetary co-operation;
 - (f) undertake and discharge responsibilities and perform transactions concerning the Government's participation in international organisations;
 - (g) act as economic adviser to the Government in accordance with section 38(1);

11 The best practice supported by the Bank of International Settlements (BIS) is that Government formulates the exchange rate policy framework, the central bank implements and both institutions have consultations from time to time where necessary. Also see section 53.

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- (h) issue debt securities on terms and conditions that it considers appropriate;
 - (i) borrow externally;
 - (j) acquire shares in any domestic or international institution, company or other body for the purpose of attaining its objectives in terms of this Act;
 - (k) administer foreign-exchange legislation;
 - (l) grant secured or unsecured loans and advances to any of its subsidiaries or its staff as approved by the Board;
 - (m) assist banks in financial difficulty in accordance with section 47;
 - (n) acquire, in the course of satisfying a debt, any interest or right if that interest or right can be disposed of at the earliest suitable opportunity; and
 - (o) establish staff retirement funds or similar arrangements for the benefit or protection of its staff and their dependants and nominees and make contributions towards the costs associated with those arrangements subject to terms and conditions as it may determine.
- (3) The Bank may buy, sell or otherwise deal in –
- (a) financial instruments and, in accordance with the provisions of any law regulating the safe deposit of securities, hold such financial instruments in safe custody, or cause such financial instruments to be held in safe custody, for other persons;
 - (b) gold and other precious metals and hold in safe custody for other persons gold, other precious metals, securities or other articles of value;
 - (c) foreign currency;
 - (d) notes, bills, securities or other instruments of indebtedness issued or guaranteed by the institutions referred to in subsection (4) or any foreign country; and
 - (e) discount or re-discount bills of exchange or promissory notes issued for commercial, industrial or agricultural purposes.
- (4) The institutions referred to in subsection 3(d) are local authorities and major public entities as listed in [*name of statute*]
- (5) The Bank may –
- (a) issue its own interest-bearing securities for purposes of monetary policy and buy, sell, discount or re-discount, or grant loans or advances against those securities;

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- (b) enter into repurchase or reverse repurchase agreements with any institution in respect of interest-bearing securities or such other securities as the Bank may determine;
 - (c) effect transfers in accordance with generally accepted banking practice and sell drafts drawn on its branches and correspondents;
 - (d) open accounts in foreign countries and appoint agents or correspondent banks carrying on business outside [*the country*];
 - (e) make arrangements or enter into agreements with any institution in a foreign country to borrow foreign currency in a manner, at a rate of interest and on terms that the Bank considers appropriate;
 - (f) acquire immovable property required by the Bank for business purposes or for the purpose of providing a dwelling for any officer of the Bank;
 - (g) alienate immovable property subject to any donation of immovable property being approved by the Board;
 - (h) by notice direct any person to furnish the Bank, within a specified period of time, with any specified information that the Bank may reasonably require –
 - (i) to determine the balance of payments;
 - (ii) for purposes related to financial and system stability;
 - (iii) for statistical reports; and
 - (iv) for the performance of any other of its functions under this Act;
 - (i) take steps to contribute towards the achievement and maintenance of financial stability;
 - (j) promote the further development of the domestic financial markets and the safe, sound and efficient operation of and the development of the financial system; and
 - (k) co-operate with or assist other domestic or international regulatory authorities in the field of banking or finance.
- (6) The Bank may –
- (a) perform any task incidental to or necessary for the proper exercise of the powers or the performance of its functions under this Act;
 - (b) perform the functions and exercise the powers, not inconsistent with the provisions of this Act, that may be assigned to it in terms of any other Act of Parliament; and
 - (c) perform the functions and exercise the powers as may customarily be performed and exercised by central banks.

7. Prohibited activities

The Bank shall not –

- (a) engage in trade;
- (b) acquire or purchase shares in corporations;
- (c) accept shares as security;
- (d) acquire immovable property other than in the course of its ordinary business;
- (e) grant unsecured loans;
- (f) enter into risk insurance contracts other than to further its own interests; or
- (g) guarantee loans, advances or debts of the Government or Government controlled institutions or any other institutions.

8. Capital and ownership of Bank

- (1) Subject to the provisions of subsection (2) –
 - (a) the authorised capital of the Bank is [*amount*]; and
 - (b) the minimum paid-up capital of the Bank is [*amount*].
- (2) The Bank may increase its authorised or minimum paid-up capital by an amount and in a manner that the Board may determine and the [*appropriate approving authority*]¹² approves.
- (3) The Government shall subscribe the minimum paid-up capital of the Bank.
- (4) The minimum paid-up capital is not transferable or subject to any encumbrance.¹³
- (5) The Government shall pay any increase in minimum paid-up capital effected in accordance with subsection (2).¹⁴
- (6) Notwithstanding any other provision of this Act, the [*approving authority*], shall cause to be transferred to the ownership of the Bank negotiable, interest-bearing securities, at market rate, issued by the Government from time to time, for such an amount as in the judgment of the Board may be necessary for the purpose of preserving the Bank's capital from any impairment.¹⁵
- (7) The Bank's capital shall not be reduced except by an Act of [*Parliament/the National Legislature*].

12 Appropriate approving authority could be the Minister, Cabinet, private shareholders or other institutions according to the arrangements in each country.

13 However, a country may retain or introduce private-sector participation in the shareholding of the Bank as deemed appropriate.

14 *Ibid* 11.

15 Internal re-capitalisation of the Bank has been provided for under section 65.

CHAPTER II

INSTITUTIONAL ARRANGEMENTS

9. Board of Directors

There shall be a board of directors of the Bank consisting of –

- (a) the Governor of the Bank, who shall be the chairperson of the Board;
- (b) not more than four Deputy Governors; and
- (c) not less than six and not more than ten non-executive directors.

10. Functions and powers of Board

- (1) Subject to the other provisions of this Act, the Board is responsible for determining the general policies of the Bank and for such other functions as are conferred upon the Board by this Act or any other law.
- (2) Without derogating from the generality of subsection (1), the Board shall have the power to –
 - (a) approve the regulations, guidelines and instructions of general application to be issued by the Bank;
 - (b) approve the Bank's budget;
 - (c) approve the annual report and recommendations that the Bank is required to make to the Minister or to Parliament;
 - (d) approve the terms and conditions of engagement of the Bank's agents and correspondents;
 - (e) establish and close subsidiaries, branch offices and agencies of the Bank;
 - (f) determine the policies applicable to the administration and operations of the Bank;
 - (g) determine the terms and conditions of service of the Governor and Deputy Governors;
 - (h) determine the terms and conditions of service of the other directors;
 - (i) determine the accounting policies of the Bank and approve the annual reports and financial statements of the Bank;

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- (j) determine and ensure the establishment of an effective risk management structure;
 - (k) make rules for the good governance of the Bank and the conduct of its business;
 - (l) propose increases in the authorised capital of the Bank, to establish special reserves on the books of the Bank, to determine the net income of the Bank and to decide what amount of such net income shall be transferred to any reserve; and
 - (m) ensure good corporate governance of the Bank.
- (3) The Board may from time to time confer on the Governor any of its powers as the Board considers fit.
 - (4) The Governor may from time to time confer upon a Deputy Governor or another member of staff or committee of the Bank any power conferred upon the Governor by the Board in terms of subsection (3).

11. Appointment of Governor and Deputy Governor(s) and terms of office¹⁶

- (1) The Governor and the Deputy Governors shall be appointed by the [*Head of State/Government*].
- (2) (a) The Governor and Deputy Governors shall each be appointed for a term of six¹⁷ years.
(b) The Governor and Deputy Governors shall be eligible for re-appointment after the expiry of their respective terms of office, provided that no Governor or Deputy Governor shall serve, in total, more than twelve years in office.
- (3) The executive management of the Bank and the direction of its business vests in the Governor who shall manage and direct the Bank in compliance with the policies and directions of the Board.
- (4) The Governor shall exercise any other power and carry out any other duty that may be delegated or assigned to the Governor by the Board.
- (5) The Deputy Governors shall exercise those powers and carry out those duties delegated or assigned to them by the Governor.
- (6) (a) The Governor may act, contract and sign instruments and documents on behalf of the Bank.
(b) The Governor may designate in writing any officer of the Bank to perform any of the Governor's functions or to represent the Governor in an official capacity.

16 It is international best practice to have the appointment ratified by the legislature.

17 The term should not coincide with parliamentary elections to minimise undue political pressure on the office and ensure retention of the memory of the Bank.

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- (7) (a) If the Governor or the Deputy Governor or any member of staff is absent or unable to act, the Board may designate an officer of the Bank to exercise their respective powers and perform their respective functions during the absence or inability to act.
 - (b) If the office of Governor becomes vacant or the Board decides on reasonable grounds that the Governor is incapacitated, the Board shall designate a Deputy Governor as an acting Governor until the vacancy is filled.

Or alternatively

- (1) The Governor and the Deputy Governors shall each be nominated by the Head of State/Government and each such nomination shall be ratified by the Legislature.¹⁸
- (2) The ratification of the nomination of the Governor and Deputy Governors shall be effected as follows:
 - (a) The Head of State/Government shall submit the name of the nominee Governor or Deputy Governor, as the case may be, to the Legislature.
 - (b) the Legislature (upon advice from the relevant specialised committee) shall as soon as possible, but not later than three months after the receipt of the name of the nominee consider the potential appointment of the nominee as Governor or Deputy Governor, as the case may be, in a manner ensuring participation by the public and transparency and openness of the process.
 - (c) on completion of the process of consideration, the Legislature shall either approve or disapprove of the potential appointment of the nominee as Governor or Deputy Governor, as the case may be.
- (3) (a) In the event that the Legislature approves the nominee, the Head of State/Government shall appoint the nominee as Governor or Deputy Governor, as the case may be.
 - (b) A person appointed under paragraph (a) shall before commencing to perform the functions of Governor or Deputy Governor, as the case may be, take an oath or affirmation, which shall be subscribed by him or her, in the form set out in the First Schedule.
- (4) In the event that the Legislature disapproves the nomination of the nominee as Governor or Deputy Governor, as the case may be, the Head of State/Government shall not appoint the nominee to the position as envisaged, whereupon the process as set out in subsection (2) shall be repeated until a Governor or Deputy Governor, as the case may be, is appointed.

18 This is consistent with international best practice (*Governing the Governors: A Clinical Study of Central Banks* by Spagnolo *et al.* as read on www.riskbank.com on 20 January 2005) and promotion of good governance which recommend that appointment of Governors and Deputy Governor(s) should involve at least two arms of the State for checks and balances. Member States with different approaches should be encouraged to harmonise their positions. Due to the national significance of the office of Governors the appointment and dismissal of Governors should be a constitutional provision.

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- (5) The process for the appointment of the Governors and Deputy Governors, as set out in subsection (2), shall with the changes required by the context apply in respect of the appointment of a successor to a Governor or Deputy Governor who becomes incapable of performing his or her duties in accordance with section 17.
- (6) (a) The Governor and Deputy Governor(s) shall each be appointed for a term of six¹⁹ years.
- (b) The Governor and Deputy Governor(s) shall be eligible for re-appointment after the expiration of their respective terms of office, provided that no Governor or Deputy Governor shall serve, in total, more than twelve years in office.²⁰
- (7) The executive management of the Bank and the direction of its business vests in the Governor who shall manage and direct the Bank in compliance with the policies and directions of the Board.
- (8) The Governor shall exercise such other powers and carry out such other duties as may be delegated or assigned to the Governor by the Board.
- (9) The Deputy Governor(s) shall exercise such powers and carry out such duties as may be delegated or assigned to them by the Governor.
- (10)(a) The Governor shall have power to act, contract and sign instruments and documents on behalf of the Bank.
- (b) The Governor may designate in writing a Deputy Governor or any member of staff of the Bank to perform any of the Governor's functions or to represent the Governor in an official capacity.
- (11)(a) If the Governor and the Deputy Governor or any member of staff is absent or unable to act, the Board may designate an officer of the Bank to exercise their respective powers and perform their respective functions during their absence or inability to act.
- (b) If the office of Governor becomes vacant or the Board decides on reasonable grounds that the Governor is incapacitated, the Board shall designate a Deputy Governor as an acting Governor until the vacancy is filled.

19 The term should not coincide with parliamentary elections to minimise undue political pressure on the office and ensure retention of the memory of the Bank.

20 The terms of office of the Governor and the Deputy Governor(s) should not run concurrently.

12. Qualification and experience of Governor and Deputy Governor(s)

- (1) The Governor and any Deputy Governor shall be fit and proper persons of recognised professional standing and experience in the field of economics, banking, finance, law or other fields relevant to central banking.

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- (2) For the purposes of this section, “fit and proper” means all the attributes to be taken into account in determining the suitability of a person to be appointed as Governor or Deputy Governor including the person’s general probity, competence and soundness of judgment for the fulfilment of the responsibilities of office, and the diligence with which the person is likely to fulfil those responsibilities.

13. Terms and conditions of service of Governor and Deputy Governor(s)

- (1) The remuneration and other terms and conditions of service of the Governor and Deputy Governor shall be determined by the Board.
- (2) The remuneration and benefits of the Governor and Deputy Governors shall be disclosed in the annual report of the Bank.
- (3) A declaration of assets and liabilities, businesses and financial interests, in the form set out in the Second Schedule, shall, within 30 days of the appointment or of the coming into operation of this Act, be deposited by the Governor and Deputy Governors, with the [Board/Appropriate Authority] in respect of themselves, their spouses and their minor children.
- (4) The Governor and Deputy Governors shall make a fresh declaration of their assets and liabilities, businesses and financial interests each year and at the expiry or termination of their employment irrespective of the reason for termination.

14. Appointment, qualifications and term of office of non-executive directors

- (1) Each of the non-executive directors shall be fit and proper persons appointed by the [Head of State/Government] from among persons of proven knowledge and experience in the field of central banking, economics, banking, finance, law, business or commercial or other disciplines relevant to the functions of the Bank.
- (2) An appointment under subsection (1) shall be subject to ratification by the legislature.²¹
- (3) Each of the other directors shall hold office for a period not more than three years in total and shall after the expiration of their respective terms of office be eligible for re-appointment unless any of them during their term of office –
 - (a) resigns their office;
 - (b) is disqualified in terms of section 17; or
 - (c) is removed from office in terms of section 22.²²

21 This is optional.

22 Note will be taken that the initial terms of the non-executive directors do not run concurrently to ensure business continuity at the end of respective terms.

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- (4) A person appointed under paragraph (1) shall before commencing to perform the functions of director take an oath or affirmation, which shall be subscribed by him or her, in the form set out in the Third Schedule.

15. Terms and conditions of service of non-executive directors

- (1) The fees and allowances and other terms and conditions of service of the non-executive directors shall be determined by the Board.
- (2) The fees and allowances of the non-executive directors shall be disclosed in the annual report of the Bank.

16. Conflict of interest of Governor, Deputy Governors and non-executive directors

- (1) Subject to subsection (2), the Governor and the Deputy Governors shall not, during their tenure of office, engage in any business, profession or employment, whether remunerated or not.
- (2) The Governor or a Deputy Governor may –
 - (a) act as a member of any board or commission appointed by the Government;
 - (b) serve as a governor alternate governor, director or member of any organ of any international monetary authority or other international financial institution established under any agreement or convention to which the Government has acceded, has an interest in, or given its support or approval; or
 - (c) serve as a member of the board of any corporation established by the Government for the purpose of insuring deposits in a financial institution.
- (3) A director shall not act as a delegate or representative of any commercial, financial, industrial or other concern or receive or accept directions from any such concern or interest in respect of duties to be performed under this Act.
- (4) A director shall fully disclose to the Board any personal or family commercial, financial, industrial or other interest that may potentially conflict with the interests of the Bank.
- (5) A director of the Bank shall not accept any personal gift or credit or a gift or credit on behalf of any person with whom the director has family, business or financial connections, if that acceptance could affect, or give the appearance of affecting, the director's impartiality in respect of the Bank.

17. Disqualifications for membership of Board

- (1) A person shall not be appointed as a member of the Board if the person –
 - (a) is a member of the Cabinet or of Parliament or other executive or legislative authority;²³
 - (b) is a director, officer, employee or owner of, or a shareholder in, a bank or other financial institution, or provides professional services to the Bank, any bank or other financial institution;
 - (c) is a minor, a person under a legal disability or an undischarged insolvent;
 - (d) has –
 - (i) been convicted of an offence in any country;
 - (ii) been sentenced to a term of imprisonment without the option of a fine (whether or not any portion of the sentence is suspended); and
 - (iii) not received a pardon.
 - (e) has been convicted of an offence involving dishonesty in any country and sentenced to a fine or a term of imprisonment whether or not any part of the sentence was suspended;
 - (f) has been disqualified or suspended from practising any profession on the grounds of professional misconduct or dismissed from a position of trust due to misconduct;
 - (g) is unable to perform, or is mentally or physically incapable of performing the duties of a member;
 - (h) is an employee of Government;²⁴ or
 - (i) holds office in a political party.
- (2) A director must vacate office if the director becomes disqualified on any of the grounds listed in subsection (1).
- (3) It shall be the duty of the Chairperson to ensure compliance with the provisions of subsection (2) read with (1).

23 This paragraph should be amended to reflect the specific legislative authorities in each country.

24 Where individual country circumstances so require, civil servants may be appointed to sit on the Board of the central bank. However, such appointments may compromise the independence of the central bank and should be discouraged.

18. Meetings of Board

- (1) The Board shall meet as often as the business of the Bank requires but at least once every three months.
- (2) The quorum for a meeting of the Board shall be two-thirds of its members.

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- (3) The decision of the simple majority of directors present at any meeting constitutes a decision of the Board, unless there is an equality of votes, in which case the Chairperson has a casting as well as a deliberative vote.
 - (4) (a) The Governor shall preside at the meetings of the Board, and if absent or unable to preside, a Deputy Governor designated by the Governor shall reside.

(b) If, for any reason, the Governor fails to designate a Deputy Governor in paragraph (a), the Board shall designate a Deputy to preside.

19. Committees of Board

The Board shall establish an Audit Committee, a Remunerations Committee and a Directors' Affairs Committee.

20. Other committees

- (1) The Board may establish any other committee that it considers necessary, on such terms and conditions as it may determine, with a view to assisting it in the effective exercise and performance of its powers, functions and duties and may at any time enlarge, reduce or dissolve any such committee.
- (2) Each committee shall appoint its own chairperson.

21. Resignation of members of Board

- (1) The Governor or a Deputy Governor may resign from office on written notice to the [*Head of State/Government*].
- (2) The non-executive directors may resign from the Board in writing to the [*Head of State/Government*] with immediate effect.

22. Removal of Governor, Deputy Governor(s) and non-executive directors

- (1) Whenever it appears to the [*Head of State/Government*] that a Governor, Deputy Governor or non-executive director of the Board may not be fit and proper to continue holding office the [*Head of State/Government*] shall appoint a commission to inquire into the matter and submit its findings and recommendations to the [*Head of State/Government*].
- (2) The commission shall –
 - (a) consist of three or five persons one of whom holds or has held high judicial office; and

(b) be chaired by the person who holds or has held that office.

For the purposes of this section “high judicial office” means at least the office of a judge of the High Court or retired judge or such similar position.

- (3) If the commission appointed under subsection (1) advises the [*Head of State/Government*] that the Governor, Deputy Governor or director ought to be removed from office, the [*Head of State/Government*] shall remove that person from the Board.
- (4) The decision of the commission is not subject to appeal.
- (5) The Chairperson of the commission shall forward its findings and recommendations to Parliament for information.
- (6) An investigation as contemplated in subsection (1) against the Governor, Deputy Governor or director, may only be commenced on one or more of the following grounds:
 - (a) breach of any provision of this Act;
 - (b) serious misconduct;
 - (c) incompetence; or
 - (d) dereliction of duty.
- (7) At the time of the appointment of the commission, the [*Head of State/Government*] may, if the person concerned is the Governor or a Deputy Governor, grant that person leave of absence, and in the case of any non-executive director suspend the director pending the investigation.

23. Staff of Bank

Subject to the general terms and conditions of service applicable to staff of the Bank, and to the rules made by the Board, the Governor shall be responsible for the appointment, termination of service and discipline of the staff of the Bank.

CHAPTER III

MONETARY POLICY COMMITTEE

24. Monetary Policy Committee

- (1) A Monetary Policy Committee is hereby established in the Bank.
- (2) The Monetary Policy Committee shall formulate the monetary policy of [*name of the country*].
- (3) The Monetary Policy Committee shall formulate rules of procedure to be followed at its meetings, including the quorum for a meeting, frequency of meetings and the manner of decision-taking.

25. Composition of Monetary Policy Committee

- (1) The Committee shall consist of –
 - (a) the Governor, who shall be the chairperson;
 - (b) the Deputy Governors;
 - (c) two other persons appointed by the [*Head of State/Government*], who –
 - (i) are not members of staff of the Bank, Board of Directors nor public officials;²⁵ and
 - (ii) are persons of recognised professional or academic standing and experience in the fields of economics, banking, finance or other fields relevant to central banking; and
 - (d) two senior members of the staff of the Bank, appointed by the Governor, of whom –
 - (i) one shall be a person who has senior management responsibility within the Bank for economic research; and
 - (ii) the other shall be a person who has senior management responsibility within the Bank for monetary policy operations.
- (2) The persons appointed in terms of subsection (1)(c) shall –
 - (a) hold office for a period of three years and devote all their time to the functions of the Monetary Policy Committee; and
 - (b) be remunerated at a rate to be determined by the Board from time to time.
- (3) Members of the Monetary Policy Committee –
 - (a) shall be subject to the provisions relating to disqualification and removal from office of the directors of the Board; and

25 Civil servants and public service employees or officers are not eligible to be appointed to the Monetary Policy Committee.

(b) may be removed from office for contravention of the Monetary Policy Committee Code of Conduct which is set out in the Fourth Schedule.

(4) A person appointed under subsection (1) shall before commencing to perform the functions of the Monetary Policy Committee take an oath or affirmation, and sign the form set out in the First Schedule.

26. Publication of statement of decisions

(1) After each meeting, the Monetary Policy Committee shall publish in a manner which the Bank considers appropriate, a statement of decisions made.

(2) In addition to the statement referred to in subsection (1), the Monetary Policy Committee shall publish at least once a year a monetary policy review of [*name of the country*].

27. Publication of minutes

After each meeting the Monetary Policy Committee may publish minutes in a manner the Bank considers appropriate.

CHAPTER IV

MONETARY UNIT, BANKNOTES AND COIN/NOTES ISSUE

28. Monetary Unit

- (1) The monetary unit of the [*name of the country*] is [*name of the currency*], divided into one hundred _____, the symbols for which shall be “_____” and “_____”, respectively.
- (2) [*Name of the currency*] is legal tender in the [*name of the country*].

29. Authority to issue banknotes and coin

The Bank is the sole issuer of banknotes and coin as the legal tender and the currency lawfully in circulation within the territory of [*name of the country*].

30. Legal tender

Banknotes and coin issued as legal tender by the Bank and not withdrawn from circulation shall be accepted, at their face value, in payment of all public and private debts in the country.

31. Currency features

The Bank shall, after consultations with Government, determine by regulation the face value, measures, weights, designs and other features of the banknotes and coin that are legal tender.

32. Currency production and safekeeping and inventory

- (1) The Bank shall have all the powers and make all the arrangements as may be necessary for –
 - (a) the printing of notes and the minting of coins;
 - (b) the security and safekeeping of unissued banknotes and coin;
and
 - (c) the custody and destruction, as necessary, of plates, dies, and withdrawn banknotes and coin.
- (2) The Bank shall directly administer the currency reserve inventory and ensure the regular supply of banknotes and coin in order to meet the currency requirements of the economy.

33. Currency exchange

Upon request, the Bank shall exchange, without charge or commission, banknotes and coin that are legal tender.

34. Management of unfit currency and currency inventory

Unfit currency shall be withdrawn and destroyed by the Bank. For the purposes of this section unfit currency means currency that has lost its security features and includes soiled, defaced, illegible, perforated and mutilated in any other way.

35. Exchange of mutilated, lost, stolen or damaged currency

The Bank may –

- (1) decline to exchange banknotes or coin if they are mutilated, their designs are illegible, misshapen or perforated, or if more than [40 per cent] of their surface has been lost;
- (2) withdraw such currency and destroy without compensation to the owner; or
- (3) in the Bank's discretion grant compensation in whole or in part.
- (4) The Bank –
 - (a) shall not be required to provide any compensation for banknotes or coin that were lost, stolen or destroyed; and
 - (b) may confiscate without compensation any banknotes that have been altered in their external appearance, including in particular banknotes that have been written on, painted on, dye-stained, stamped or perforated, or to which adhesive matter has been applied.

36. Accounting treatment of currency issued

The aggregate amount of circulating banknotes and coin shall be noted in the accounts of the Bank as a liability of the Bank, which liability shall not include banknotes and coin in the currency reserve inventory.

37. Currency recall

- (1) The Bank may call in, and withdraw from, circulation any banknotes or coin that are circulating within the territory of the [name of the country], and may issue other banknotes or coin of equivalent amounts in exchange.
- (2) The withdrawal from circulation of banknotes or coin shall be implemented by way of a Bank regulation which shall specify the period during which the banknotes or coin must be presented for exchange and the offices of the Bank where they are to be presented.
- (3) At the end of the exchange period referred to in subsection (2), banknotes and coin called in for exchange shall cease to be legal tender.

CHAPTER V

RELATIONSHIP WITH GOVERNMENT

38. Adviser to Government

- (1) The Bank may act as economic adviser to the Government on matters within the competence of the Bank.
- (2) The Minister may request the Bank to render advice and furnish reports on matters relating to the objectives and functions of the Bank.

39. Banker to Government

- (1) Subject to this Act, the Bank is the banker to the Government on terms and conditions as may be agreed between the Bank and the Minister.
- (2) Notwithstanding the provisions of subsection (1) –
 - (a) the Government may appoint any financial institution or bank to act as its agent in the execution of its banking transactions; and
 - (b) the Government may maintain cash balances with, and generally use the services of any financial institution or bank, provided that the Government shall provide information on those cash balances to the Bank.

40. Fiscal agent

The Bank –

- (a) is the fiscal agent for the Government; and
- (b) may, upon designation by the Minister, serve as a depository or financial intermediary for any international financial institution of which [*name of the country*] may be a member.

41. Lending to Government

- (1) Subject to this Act, the Bank shall not –
 - (a) directly or indirectly make advances or provide any other credit to the Government; or
 - (b) except for the purpose and in the manner specified in section 41(2) as specified below, acquire the notes, bills, securities or other evidences of debt of, or guaranteed by the Government.

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- (2) Notwithstanding the provisions of subsection (1), the Bank may grant temporary advances to the Government in respect of short-term deficiencies of current budget revenues with such loans being collateralised by debt securities in bearer form with interest at market rates subject to repayment within six months following the end of the financial year in which they were granted.
 - (3) Notwithstanding subsection (2), such advances to the Government and the holdings by the Bank of notes, bills, securities or other evidences of debt of, or guaranteed by, the Government (exclusive of credit permitted under the provisions of subsection (4) and section 58(2)) shall not exceed the percentage prescribed by regulation of the annual average of the Government's ordinary revenue for the three financial years immediately preceding for which accounts are available.²⁶
 - (4) Notwithstanding the provisions of subsection (3), the Bank may, in exceptional circumstances, grant a temporary waiver of the limit specified in that subsection, but only if that waiver is consistent with the monetary policy objectives of the Bank and only if it does not cause the aggregate principal amount disbursed and outstanding on all central bank advances to the Government to exceed the equivalent of the percentage prescribed by regulation of the annual average of the Government's ordinary revenue for the three financial years immediately preceding for which accounts are available.
 - (5) If any advances granted by the Bank under this section remain outstanding, irrespective of maturity, after the six-month period referred to in subsection (2), the Bank shall make no further advances to the Government unless and until the outstanding advances have been repaid, the outstanding amount has been set off against profits at the end of the financial year, or appropriate security has been provided to the Bank as agreed upon between the Bank and the Minister.
 - (6) If, in the opinion of the Bank, the limit of the percentage prescribed by regulation under subsection (3) is in danger of being exceeded, the Bank shall submit to the Minister and to Parliament a report on the Bank's disbursed and outstanding advances to the Government and the causes that may lead to the excess, together with any recommendations that it considers appropriate to forestall or otherwise remedy the situation and, if the limit provided in subsection (4) is exceeded, the Bank shall report and make recommendations that it considers appropriate to remedy the situation and avoid its recurrence in the following financial year.
 - (7) Without restricting the generality of subsection (2), the Bank may grant advances to the Government, on such terms and conditions as may be agreed between the Bank and the Minister, in respect of subscriptions and other payments resulting from, or incidental to, the membership of [*name of the country*] of any international

26 The Regional Indicative Strategic Development Plan (RISDP) provides that central bank credit to Government should be less than 10 per cent of previous years' tax revenue by 2008 and less than 5 per cent by 2015. The SADC region recognises that the best practice is to prohibit lending to Government. However, the circumstances of the region currently dictate otherwise.

financial institution, the participation of [*name of the country*] in any account of the institution, and any transactions and operations undertaken in connection with it.

- (8) For the purposes of subsections (3) and (4), the ordinary revenue of the Government includes revenues from taxes, levies, duties and fees, rent, profit and income from any investment or undertaking by the Government, but does not include loans, grants and other forms of economic aid or capital raised.

42. Acquisition of securities issued or guaranteed by Government

- (1) For purposes of the implementation of monetary policy, the Bank may operate in the open market by purchasing and selling debt securities issued or guaranteed by the Government.
- (2) Except for purposes of implementation of monetary policy, the Bank may not purchase, for its own account, debt securities issued or guaranteed by the Government. Any such purchases will be regarded as Bank advances to the Government and in contravention of section 41.

Or alternatively

- (1) The Bank may, in its implementation of monetary policy, operate in the open market by purchasing and selling debt securities issued by the Government.
- (2) The Bank may purchase for its own account, debt securities issued by the Government other than in accordance with subsection (1), but such purchases shall be treated as Bank advances to the Government and therefore be subject to the overall limits specified in section 41.

43. Management of public debt

When authorised by the Minister or by law to do so, and on terms and conditions as may be agreed upon between the Minister and the Bank, the Bank shall act as agent for the Government in the payment of interest and principal debt in respect of the issue and management of the public debt of [*name of the country*].

44. Consultation and exchange of information

- (1) Without prejudice to the powers of the Bank to formulate and implement monetary policy and to any other provisions of this Act, the Bank shall consult with the Minister when necessary to ensure co-ordination between monetary and fiscal policies.
- (2) At the Bank's request, the Government or any Government department or agency shall supply any financial and economic

information or documentation as the Bank may reasonably require for the purpose of discharging its functions under this Act.

45. Policy disputes with Government

- (1) If there is a dispute between the Bank and the Minister in connection with any of the Bank's policies, the parties shall try to resolve the dispute amicably as soon as possible after the dispute arises.
- (2) If there is no amicable resolution of the dispute, either party may refer the dispute to the Chief Justice for determination by a tribunal established in terms of subsection (3).
- (3) Upon receipt of the referral, the Chief Justice shall –
 - (a) appoint an expert to chair the tribunal;
 - (b) require the parties to each submit a list of 4 names from which the Chief Justice will appoint an equal number for each party to sit on the tribunal;
 - (c) give directions on the conduct of proceedings; and
 - (d) require each party to file a written statement clearly setting out the nature of the dispute and the remedy sought.
- (4) The tribunal shall after affording both parties a reasonable opportunity to make submissions, determine the dispute as soon as possible. The decision of the tribunal is final and binding.
- (5) The Chief Justice shall fix the fees payable to members of the tribunal which fees shall be borne equally by the parties.

CHAPTER VI

RELATIONSHIP WITH BANKS AND OTHER FINANCIAL INSTITUTIONS

46. Banker to banks

The Bank may open accounts for, and accept deposits from banks doing business in [*the country*] upon the terms and conditions that the Bank may determine.

47. Accommodation of banks

- (1) The Bank may purchase from, sell to, discount and rediscount from, banks any of the following:
 - (a) bills of exchange and promissory notes drawn or made of types approved by the Bank;
 - (b) treasury bills of the Government forming part of a public issue and maturing within [*period*] days of the date of their acquisition by the Bank;
 - (c) any other instrument approved by the Bank.
- (2) Subject to subsection (3), the Bank may grant advances to banks, whether by loans or overdrafts, for periods not exceeding [*period*] days and secured by –
 - (a) instruments specified in subsection (1) (a), (b) and (c);
 - (b) warehouse warrants and documents of title issued in respect of staple commodities or other goods duly insured, provided that the Bank shall determine the maximum percentage of advances in relation to the current value of such commodities or goods;
 - (c) holdings of any of such assets as the Bank is permitted to buy, sell, or deal in under paragraphs (a), (b) and (c) of section 59; or
 - (d) securities issued or guaranteed by the Government, its institutions or agencies.
- (3) No advance shall be made available under subsection (2) to a bank if the total of advances made by the Bank to such bank cumulatively is equal to or exceeds [*amount*] per cent of the deposit liabilities of that bank.
- (4) Notwithstanding the provisions of subsections (1) and (2), the Bank may in exceptional circumstances –

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- (a) grant advances or contingent commitments to banks if, in the opinion of the Bank, the advance or commitment is necessary having regard to the public interest and the financial condition of the bank;
 - (b) subject to subsection (5) grant emergency liquidity assistance to a bank in distress if in the opinion of the Bank –
 - (i) the bank constitutes no systemic risk to the banking sector, at market price; and
 - (ii) the bank constitutes a systemic risk to the banking sector at such price as the Bank, after consultation with the Minister, deems fit.
- (5) The Bank may only grant emergency liquidity assistance in subsection (4) if –
- (a) the Bank is satisfied that the bank in distress will be able to repay the amount granted, including any additional costs, and that adequate arrangements regarding the repayment have been made;
 - (b) the Minister agrees in writing with the advance or commitment within 24 hours of a proposal having been submitted by the Bank to that effect; and
 - (c) the Minister²⁷ has confirmed in writing that separate funds or debt securities in bearer form with interest at market rates will be made available by the Government to cover the advance or full amount of the commitment provided in the event that it is realised.
- (6) The discount operations of the Bank shall be subject to the terms and conditions, including the discount rate, as the Bank may establish by regulation.
- (7) Notwithstanding the provisions of this section the Bank may, without providing any reason, refuse to discount any of the instruments.

27 Best practice suggests that there is a need for the Minister to approve an unsecured advance by the Central Bank.

48. Publication of Bank's rates

The Governor²⁸ shall fix and publicly announce from time to time the rates for discounts, rediscounts, advances, loans or overdrafts.

28 Governor means "Governor in Committee".

49. Cash reserve requirements for banks

- (1) (a) The Bank may prescribe by notice in the *Government Gazette* and by written notice to the main office of each bank in [*name of the country*], the maintenance by banks of required reserves, including marginal required reserves, against deposit and other similar liabilities of the banks that may be specified for this purpose.

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- (b) Those reserves shall be maintained by way of cash holdings by the bank or by way of deposits in a current account with the Bank, or both in such proportion as the Bank may prescribe.
 - (2) The Bank may prescribe different reserve ratios for different classes of deposits and other similar liabilities, and may prescribe the method of their computation, provided that –
 - (a) the reserve ratios shall be uniform for all banks in the same class but the ratios may differ between different classes of banks; and
 - (b) any such prescription of, or change in the required reserve ratios shall be effective only after reasonable notice has been communicated to the banks.
 - (3) Required reserves held with the Bank may, subject to the charges prescribed by the Bank, be withdrawn by the banks for the purpose of meeting their existing liabilities and may further serve as a basis for the clearance of cheques and the settlement of balances among banks, provided that any such withdrawal shall be repaid by the bank within the period prescribed by the Bank.
 - (4)
 - (a) The Bank may impose on any bank that fails to maintain required reserves in the appropriate ratio prescribed under this section a penalty rate that is higher than the rate fixed at the time by the Bank under section 48 for any of its operations, on the amount of the deficiency for so long as the deficiency continues.
 - (b) Such penalty is payable to the Bank on the date prescribed by the Bank and may be recovered by deduction from any balance of the bank with the Bank.

50. Disclosure by banks and other financial institutions

- (1) The Bank may, prescribe by notice in the *Government Gazette* and written notice to the main office in [*name of the country*] of each bank the manner of disclosure to the public of –
 - (a) the effective annual interest rate payable in respect of deposits made therewith;
 - (b) the terms of obtaining credit including the effective annual interest rate payable in respect thereof; and
 - (c) fees, commissions and any such charges payable.
- (2) The provisions of subsection (1) may, by notice in the *Government Gazette* and written notice to the persons concerned, be made applicable by the Bank, to every person having as a principal object the extension of credit to the public generally or to particu-

lar group, that, in the ordinary course of business, during any calendar year so extends credit to an amount to be determined from time to time by the Board.

- (3) Notices issued under this section shall apply uniformly in [*name of the country*] and shall come into effect on a date specified in the notice, which shall be a date not earlier than [*amount*] days after the issue date, provided that the Bank in such notices may differentiate, according to the nature of their business, between banks, credit institutions and other creditors or classes thereof in respect of the items set out in subsection (1).
- (4) Any bank in violation of subsection (1) may be required to pay to the Bank a penalty charge for each such violation as prescribed by notice in the *Government Gazette*.

51. Consultation with banks and other financial institutions

The Bank may at any time consult with banks and financial institutions on any matter it deems necessary.

52. Regulation and supervision²⁹

The Bank may perform such regulatory and supervisory functions and exercise such powers as may be assigned to or conferred upon it in terms of the [*relevant legislation*].

29 This optional function will apply to central banks that license and supervise in terms of section 6(2)(a).

CHAPTER VII

INTERNATIONAL RESERVES AND FOREIGN EXCHANGE OPERATIONS

53. Exchange rate policy

- (1) Without prejudice of the provisions of this Act, the exchange rate policy shall be formulated by the Government in consultation with the Bank.
- (2) The Bank shall be responsible for the implementation of the exchange rate policy in co-operation, to the extent necessary, with the Government and any other relevant agencies.

54. Maintenance of official international reserves

- (1) The Bank shall hold the official international reserves in any currency or instrument that is approved by the Bank.
- (2) The Bank shall manage the official international reserves of [*name of the country*] prudently.

55. Bank depository of official international reserves

The Bank shall be the sole depository of official international reserves, provided that the Bank may designate agents with whom these reserves may be held.

56. Authorised transactions

Without derogating from the generality of the provisions of section 6(3)(b), (c), (d) and (5)(d), the Bank may for purposes of maintaining international reserves and conducting foreign exchange operations –

- (a) buy, sell or deal in gold coins or bullion or other precious metals;
- (b) buy, sell, or deal in foreign exchange, using any of the instruments commonly used by bankers;
- (c) purchase and sell treasury bills and other securities issued or guaranteed by foreign governments or international institutions;
- (d) open and maintain accounts abroad;
- (e) open and maintain accounts and act as agent or correspondent for the institutions referred to in section 57(c) and (d); and
- (f) enter into any other transaction authorised by the Board.

57. Limitation of contracting parties

The Bank shall, in connection with the operations enumerated in section 56, contract only with the following institutions:

- (a) banks and financial institutions operating in [*name of the country*];
- (b) the Government and its boards and agencies, and local government;
- (c) foreign central banks, financial institutions, governments and their agencies and institutions;
- (d) international institutions; and
- (e) any other party that the Bank may approve.

58. Treatment of unrealised gains or losses on certain assets or liabilities³⁰

- (1) Any net unrealised gains in any financial year of the Bank arising from changes in the valuation of its assets or liabilities in, or denominated in, gold, Special Drawing Rights, foreign currencies, or other financial instruments as a result of any change in the values or exchange rates of gold, Special Drawing Rights, foreign currencies or other financial instruments in terms of the domestic currency shall be credited to a Revaluation Reserve Account.
- (2) Any net unrealised losses in any financial year of the Bank arising from any such changes shall be set off against any credit balance in the Revaluation Reserve Account at the end of the financial year and, if such balance is insufficient to cover such losses, notwithstanding any other provision of this Act, the Government shall issue to the Bank negotiable/non-negotiable interest-bearing government securities to the extent of the deficiency which shall be delivered to the Bank within 60 days from the date of certification of the accounts by the auditor. The interest on these securities will be equal to the interest that the Government is currently paying on securities of one-year maturity or if securities of such authority are not outstanding, the interest on whatever other form of government indebtedness whose maturity is closest to one year.
- (3) Neither net gains nor net losses referred to in this section shall be included in the annual income of the Bank.
- (4) Any credit balance in the Revaluation Reserve Account at the end of each financial year of the Bank shall be applied first, on behalf of the Government, to the redemption of all securities issued under subsection (2) and outstanding; while the remaining credit balance, if any, shall be retained in the account to offset future unrealised losses.

30 Note has duly been taken that central bank accounting is not aligned with the international standard of the International Financial Reporting Standards (IFRS), therefore, there will always be a qualified audit.

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- (5) No credits or debits shall be made to the Revaluation Reserve Account except in accordance with the provisions of this section.
 - (6) The Bank shall within [*period*] months after the close of each financial year submit to the Minister a copy of the audited annual accounts and a statement showing changes in the valuation of its assets or liabilities in, or denominated in, gold, Special Drawing Rights, foreign currencies or other financial instruments as a result of any change in the values or exchange rates of gold, Special Drawing Rights, foreign currencies or other financial instruments in terms of the domestic currency, certified by the auditors.

CHAPTER VIII

PAYMENT, CLEARING AND SETTLEMENT SYSTEMS

59. Payment, clearing and settlement systems

- (1) The Bank shall perform such functions and exercise such powers as may be assigned to, or conferred upon, it in terms of the [*payment system legislation*]³¹ or any other law regulating payment, clearing and settlement systems.
- (2) For the purposes of subsection (1), the Bank may –
 - (a) implement rules and procedures and, in general, take steps that may be necessary to establish, conduct, monitor, oversee, regulate, supervise, and promote the soundness and security of, the payment, clearing or settlement systems; and
 - (b) participate in any such payment, clearing or settlement systems.

31 The Payment System Committee has developed the draft SADC Payment System Model Law as part of the harmonisation process.

CHAPTER IX

ACCOUNTS AND REPORTING REQUIREMENTS

60. Financial year

The financial year of the Bank shall be fixed by the Board and published by notice in a *Government Gazette*.

61. Accounts and audit

- (1) The accounts of the Bank shall be audited annually by independent external auditors appointed by the Board from public accounting firms of good repute.³²
- (2) The Board shall ensure that the auditors are appointed annually for each financial year and that the same auditors do not serve the Bank for a period exceeding five years in succession.
- (3) Unless otherwise provided for in this Act, the accounts of the Bank shall be kept in accordance with the international accounting practice relevant to central banking.³³

32 Without prejudice to subsection (1), the Auditor General/Council of Auditors may, in exceptional cases, examine and report on the accounts of the Bank or any aspect of its operations.

33 See Footnote 30 on the International Financial Reporting Standards not being aligned with central bank accounting.

62. Annual report

- (1) The Bank shall within [period] months after the close of each financial year –
 - (a) submit to the Minister a copy of its annual report containing among other information, the annual accounts, the operations of the Bank, report on the state of the economy and the conduct of monetary policy; and
 - (b) publish its annual report.
- (2) The Minister shall as soon as possible after receipt of the report –
 - (a) cause a copy of the annual report to be laid before Parliament; and
 - (b) cause a copy of the annual accounts to be published in the *Government Gazette*.

63. Report to Parliament

The Governor shall appear before Parliament at least twice a year and at any other time as Parliament or the Governor may request, to report on the current operations and affairs of the Bank, the state of the economy, the conduct of monetary policy and any other matter.

64. Monthly return

The Bank shall within a period of 30 days after the last business day of each month –

- (a) prepare and publish in the *Government Gazette* a return of its assets and liabilities as at the close of business on that day; and
- (b) deliver a copy of the return to the Minister.

CHAPTER X

PROFITS AND RESERVES

65. Determination of net profits

The net profits of the Bank for each financial year shall be determined in accordance with best international accounting practice after allowing for the expenses of operation for that year and after providing –

- (a) for bad and doubtful debts; depreciation in assets; contributions to staff funds; gratuities or other pension benefits for its officers and staff; any items that are usually provided for by bankers; and other charges; and
- (b) with the approval of the Minister, for any other item that the Board considers necessary.

66. Appropriation of net profits³⁴

- (1) The Bank shall establish a General Reserve to which shall be allocated at the end of each financial year of the Bank an amount equal to *[amount]* per cent of the net profits until the General Reserve amounts to *[number]* times the paid-up capital of the Bank.
- (2) The Bank may, with the approval of the Minister, increase the total amount of the General Reserve.
- (3) After the allocation to the General Reserve has been made under subsection (1), *[amount]* per cent of the remainder of the net profits for the financial year shall be applied to the redemption of any securities issued by the Government and transferred to the ownership of the Bank under section 8(6).
- (4) Subject to the provisions of section 41(5), the balance of the net profits for the financial year remaining after all deductions under subsections (1) and (3) have been made shall be paid to the Government as soon as practicable after the completion of the financial audit at the end of the financial year.
- (5) No deduction authorised under subsections (1) and (3) shall be required to be made nor shall any payment under subsection (4) be made if, in the judgement of the Board, the assets of the Bank are, or after the deduction or payment will be, less than the sum of its liabilities and paid-up capital.

34 Where there is private shareholding, legislation should contain provisions that dividends have limitations and are predetermined, to ensure that profit-sharing is not a motive in any shareholding of central bank shares.

67. Treatment of net losses

- (1) If the Bank incurs a net loss during any financial year such loss shall be charged to the General Reserve and if the General

Reserve is inadequate to cover the full amount of the loss, the balance of the loss shall be carried forward to the General Reserve.

- (2) The Government shall, within one month after submission of an audited financial statement by the Bank confirming the balance of the accumulated losses, deliver to the Bank funds, negotiable securities dated and bearing market related terms and conditions or foreign exchange in such amount or amounts as shall be necessary to correct the deficit.

CHAPTER XI

GENERAL PROVISIONS AND CONTINUED EXISTENCE

68. Furnishing of information

- (1) The Bank may, in the manner that it prescribes, require any person –
 - (a) to furnish any information and data that the Bank may require to discharge its functions and responsibilities; and
 - (b) that is or was subject to sections 50 and 51 to open its books for inspection to verify compliance with those provisions.
- (2) The Bank may publish in aggregate form for classes of banks determined in accordance with the nature of their business the information or data furnished under subsection (1), provided that no information shall be published which would disclose the affairs of any person that is a customer of a bank unless the consent of that customer has been obtained in writing.

69. Oath or affirmation of secrecy

Every person appointed under this Act or employed by the Bank shall take and subscribe before a Commissioner of Oaths an oath or affirmation of secrecy as set out in the Third Schedule of this Act.

70. Confidentiality

- (1) No person that is in the employment of the Bank and no member of the Board, member of the Monetary Policy Committee or agent of the Bank shall disclose any confidential information acquired in the course of the performance of their duties, relating to the affairs of the Bank, a bank or any financial institution, to any person except –
 - (a) for purposes of the performance of their duties or the exercise of their powers in terms of this or any other law;
 - (b) when required to do so by a court of law or under any law; or
 - (c) for the purposes of meeting the requirements of an agreement or understanding reached by the Bank with any other central bank or supervisory authorities.
- (2) Subsection (1) applies to any person who receives information disclosed in terms of that subsection.
- (3) The Bank may share information with other central banks and international institutions subject to any conditions regarding the use of that information by the recipient that the Bank considers necessary,

provided that information obtained by the Bank in its capacity as supervisory authority of banks or other financial institutions may only be shared with other supervisory authorities.

71. Immunity from personal liability

The Governor, a Deputy Governor, any other member of the Board or Monetary Policy Committee or any other staff member of the Bank are not personally liable for any loss sustained by, or damage caused, as a result of anything done or omitted by them in the performance of their official duties under this Act, unless it is established that the act or omission was committed in bad faith.

72. Offences relating to Bank's independence

Any person who interferes with the independence of the Bank or who influences another person to interfere in the operations of the Bank is guilty of an offence and on conviction liable to a fine not exceeding *[amount]* or to imprisonment for a period not exceeding *[number]* years or to both such fine and such imprisonment.

73. Offences relating to directorship and acceptance of gifts

- (1) Any member of the Board who acts as a delegate or representative of any commercial, financial, industrial or other concern, or receives or accepts directions in relation to that member's duties under this Act from such a concern commits an offence and on conviction is liable to a fine not exceeding *[amount]* or to imprisonment for a period not exceeding *[number]* years or to both such fine and such imprisonment.
- (2) Any member of the Board who does not fully disclose to the Board any commercial, financial, industrial or other interest that the member or the member's family may have and that becomes the subject of consideration or action by the Board commits an offence and on conviction liable to a fine not exceeding *[amount]* or to imprisonment for a period not exceeding *[number]* years or to both such fine and such imprisonment.
- (3) Any member of the Board or any officer or employee of the Bank that accepts any gift or advantage personally or on behalf of any family, business or financial connection, and the acceptance of the gift or advantage could result or give the appearance of partiality in the performance of that member, officer or employee's duties under this Act, commits an offence and on conviction liable to a fine not exceeding *[amount]* or to imprisonment for a period not exceeding *[number]* years or to both such fine and such imprisonment.

74. Offences relating to currency

- (1) Any person who commits any of the following acts or omissions commits an offence –

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- (a) the counterfeiting or performing any part of the process of counterfeiting a note or coin of the Bank that is legal tender, whether committed here or abroad;
 - (b) the counterfeiting or unlawfully altering or issuing of a note or coin of the Bank or something purporting to be a note or coin of the Bank;
 - (c) the uttering, tendering, accepting or having in their possession any note or coin that has been counterfeited, or unlawfully altered, issued, produced or reproduced knowing, or should reasonably have known, it to be counterfeited, forged or unlawfully altered, issued, produced or reproduced;
 - (d) without the authority of the Bank, the producing, reproducing, engraving or making upon any material any words, figures, letters, marks, lines or devices the print of which resembles any words, figures, letters, marks, lines or devices peculiar to and used in or upon any note or coin of the Bank that is legal tender;
 - (e) without the authority of the Bank, the using, making, mending, obtaining or knowingly possessing –
 - (i) any material upon which has been produced, reproduced, engraved or made any such words, figures, letters, marks, lines or devices; or
 - (ii) any equipment, including any tool, instrument or machinery, capable of being used for the purpose of the commission of any of the offences contemplated in paragraphs (a), (b) or (d);
 - (f) the wilfully defacing, soiling or damaging any note or coin of the Bank, or without a reasonable excuse possesses any defaced, soiled or damaged note or coin of the Bank, or, without the authority of the Bank, writing or placing any drawing on a note of the Bank that is legal tender or attaching to it anything in the nature of an advertisement;
 - (g) the removing from the premises where banknotes or coin are manufactured under this Act, without lawful authority or excuse, any blank or partially printed banknote paper, printing plate, blank metal sheet, ink, matrix, master punch, die, collar, piercing and cutting tool, pattern or mould, or any other tool, machine, engine, instrument or thing used or employed in or in connection with the printing of notes, minting of coins, or any useful part of these objects, or any blank or defective coin of the size, shape and metal composition of any coin of which the coinage is authorised by this Act, or any coin or bullion;
 - (h) the possessing without lawful authority or excuse any of the items referred to in paragraph (g);

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- (i) the fraudulently inserting or using in a machine that vends merchandise or services or collects fares or tolls, anything that is intended to pass for a banknote, coin or the token of value that the machine is designed to receive in exchange for the merchandise, service, fare or toll;
 - (j) the gilding, silvering or colouring any piece of metal of a size or figure fit to be coined for the purpose of minting it into counterfeit coin;
 - (k) the making any piece of metal into a size or figure fit to be minted with intent to facilitate the minting of a counterfeit coin or for the purpose of doing so;
 - (l) the impairing, diminishing or lightening of any coin of the Bank with intent that the impaired, diminished or lightened coin may still pass as coin of the Bank;
 - (m) the possessing, without lawful authority or excuse, the disposing of or dealing with any filing or clipping, or any gold or silver bullion or any gold or silver in dust, solution or other form, produced or obtained by impairing, diminishing or lightening coin of the Bank, knowing that it has been so produced or obtained; and
- (n) producing, uttering, tendering accepting or possessing any counterfeit foreign note in the *[name of the country]*.
- (2) Any person convicted of an offence in terms of subsection (1) shall be liable on conviction –
- (a) in the case of an offence referred to in paragraphs (a), (b), (c), (d), (e), (l), (m) or (n) to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment, or in the event of a second or subsequent conviction, to a fine or imprisonment for a period of not less than five years or to both such fine and such imprisonment;
 - (b) in the case of an offence referred to in paragraphs (f), (g), (h), (j) or (k), to a fine, or to imprisonment for a period not exceeding eight years, or to both such fine and such imprisonment; and
 - (c) in the case of an offence referred to in paragraph (i) to a penalty which may in law be imposed for the crime of fraud.
- (3) For the purposes of subsection (1) –
- (a) “bullion” means any gold, platinum, silver, nickel, gold alloys, platinum alloys, silver alloys, nickel alloys or bronze or other minting alloys in the form of ingots, bars, strips, sheets, scissel, cuttings, granules, rejected coins, blanks, filings, sweepings, dross, scrap or wire;

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- (b) “counterfeit coin” means any coin, other than a coin of the Bank, resembling or apparently intended to resemble or pass for a coin of the Bank, and includes a coin of the Bank prepared or altered so as to resemble or pass for coin of a higher denomination;
 - (c) “counterfeit banknotes” means any banknote, other than a banknote of the Bank, resembling or apparently intended to resemble or pass for a banknote of the Bank, and includes a banknote of the Bank prepared or altered so as to resemble or pass for a banknote of a higher denomination;
 - (d) “counterfeiting” includes the making of a reproduction of a banknote or coin or a counterfeit by means of a computer, a photocopy machine or a photographic technique, minting, stamping, casting or milling or any other process intended to create a reproduction of a banknote or coin;
 - (e) “produce” or “reproduce” includes the production or reproduction of banknote or coin by means of printing, photography, photocopying or any other forms of copying, enlargement, drawing or computer techniques, or the publishing of the banknote or coin so produced or reproduced or making of any tooling, process method, metals or things, that would be used in the production or reproduction of banknote and coin; and
 - (f) a coin shall be regarded as defective if it has been wrongly manufactured, and would accordingly be unfit for issue as a proper coin in accordance with the standards of manufacture applied by the institution entrusted with the manufacture of coins for the purposes of this Act.

75. Offences relating to public officers’ failure to supply information

Any public officer of a government, agency or institution who refuses or fails to disclose any information, documentation or data after being requested to do so under sections 44(2) and 68 shall be guilty of an offence and liable on conviction to a fine not exceeding [amount] or to imprisonment for a period not exceeding [number] years or both such fine and such imprisonment.

76. Offences relating to non-disclosure of information or furnishing of false information by banks, financial institutions and other persons

- (1) Any bank or financial institution or their respective officers and agents or any other person to whom the provisions of sections 50 and 68 regarding the disclosure of information are applicable shall be guilty of an offence if they –
 - (a) supply false information or fail to furnish any information required by the Bank; or

(b) furnish false information to the public.

- (2) A person convicted of the offence referred to in subsection (1) shall be liable to a fine not exceeding [amount] or to imprisonment for a period not exceeding [number] years or both such fine and such imprisonment.

77. Offence relating to unlawful disclosure of information by Bank staff

Any person in the employment of the Bank or an appointee or agent of the Bank who in contravention of section 70(1) discloses to any person any classified information acquired in the course of the performance of their duties, relating to the affairs of the Bank, a bank or any financial institution, shall be guilty of an offence and liable on conviction to a fine not exceeding [amount] or to imprisonment for a period not exceeding [number] years or to both such fine and such imprisonment.

78. General offences

Any person who contravenes or fails to comply with any provision of this Act, other than one in which a specific offence is stipulated, shall be guilty of an offence and liable on conviction to a fine not exceeding [amount] or to imprisonment for a period not exceeding [number] years or to both such fine and such imprisonment.

79. Liquidation, dissolution or winding up of the Bank

The Bank shall not be liquidated, dissolved or wound up other than by an Act of Parliament.

80. Regulations³⁵

The Minister may, in consultation with the Bank, make regulations for the better execution or achievement of the purposes of the provisions of this Act.

35 In certain jurisdictions, the Governor may issue such regulations.

81. Repeal of laws and saving/transitional arrangements and continued existence of the Bank

- (1) Subject to the provisions of subsection (2), the laws specified in the Fifth Schedule are repealed to the extent set out in that Schedule.
- (2) The [body corporate/juristic person/legal person] established by section [.....] of the [previous central bank legislation] Act under the name "Central Bank of [name of the country]/Reserve Bank of [name of the country]/Bank of [name of the country]", shall continue to exist and shall conduct the business of a central bank in accordance with the provisions of the Constitution and of this Act.³⁶

36 The central bank is an important institution. Consequently, a constitutional provision for the establishment of a central bank is recommended.

(3) The Governor and each Deputy Governor and any other director of the Bank holding office at the commencement of this Act shall continue to hold office until the expiration of their terms of office for which they were appointed under the Act, [*current central bank Act, and which stands to be repealed when this new central bank Act is adopted*], and any rules made by the Board under section of that Act shall be deemed to have been made under section 10 of this Act.

82. Short title and commencement

This Act is called
the.....
and comes into operation on a date fixed by.....
in the *Government Gazette*.

FIRST SCHEDULE IN TERMS OF SECTIONS 11, 14 and 25

**BOARD OF DIRECTORS, MONETARY POLICY
COMMITTEE OATH OR AFFIRMATION ON APPOINTMENT**

Oath or affirmation by the Governor or Deputy Governor, member of Board of Directors, Monetary Policy Committee members

“I.....
(full name)

declare that I will, in my capacity as Governor or Deputy Governor, member of Board of Directors, Monetary Policy Committee member of the Bank of [name of the country], fulfil my duties and exercise my functions in good faith and with reasonable care and skill, without fear, favour or prejudice, and as the circumstances may dictate, in the best interest of achieving and maintaining the objectives of the Bank, in accordance with the law and customs of the [name of the country]”.

.....
(Signature)

Sworn/Affirmed atthis.....

day of....., 20.....

Before me,

.....
Commissioner for Oaths

SECOND SCHEDULE IN TERMS OF SECTION 13(3)

DECLARATION OF ASSETS AND LIABILITIES, BUSINESS AND FINANCIAL INTERESTS

I,, being appointed Governor/Deputy Governor of [Bank] make [oath/solemnly affirm/declare] that –

1. I am unmarried/married under the system of
(*matrimonial regime*).
2. My assets and those of my spouse and minor children in [*name of the country*] and outside [*name of the country*] are as follows –
 - (a) immovable property –
 - (i) freehold
 - (ii) leasehold
 - (b) interest in any partnership, société, joint venture, trust or succession.....;
 - (c) motor vehicles.....;
 - (d) jewellery and precious metals.....;
 - (e) securities including treasury bills, units, etc
 - (f) cash in bank
 - (g) cash in hand exceeding [*amount*]..... or
 - (h) other assets exceeding [*amount*] in the aggregate
3. My liabilities and those of my spouse and minor children are as follows:

.....

4. Any other relevant information.....

.....
(Signature)

[*Sworn/solemnly affirmed/declared*] by the above-named before me at
..... this day of, 20.....

Board of Directors – Perquisites Second Schedule

Date	Name of beneficiary	Name of donor	Occasion/Particulars	Accepted/Not accepted	Value of perquisite	Signature

THIRD SCHEDULE IN TERMS OF SECTION 69

OATH OF SECRECY

I,, having been appointed

..... in the “Central Bank of [name of the country]/Reserve Bank of [name of the country]/Bank of [name of the country]”, do swear/affirm that I will faithfully and diligently discharge my duties and perform the functions of my office and that I will not directly or indirectly reveal or transmit any information or matter that may come to my knowledge by reason of my office except as may be required in the discharge of my duties or with the authority of the Board or the Governor.

.....
(Signature)

Sworn at this day of.....

....., 20.....

before me,

.....
Commissioner for Oaths

FOURTH SCHEDULE IN TERMS OF SECTION 25

MONETARY POLICY COMMITTEE CODE OF CONDUCT

1. Fundamental principles and core values

Monetary Policy Committee (MPC) members shall act with loyalty to the Bank, be honest, objective and impartial, and subscribe to the highest standards of professional ethics, diligence, good faith and integrity. They shall avoid any action, or inaction, which could in any way impair the Bank's capacity to carry out its duties, or compromise its standing in the community and its reputation for integrity, fairness, honesty and independence.

2. Conflict of interest

- (1) In the performance of their duties, MPC members shall avoid any situation that may give rise to a conflict of interest. No discrepancies may exist between a member's official responsibilities and any kind of personal or external interests that could jeopardise the member's impartiality and integrity in performing the responsibilities of office. Acceptance of gifts and favours that may appear to influence a member's performance should be avoided.
- (2) If MPC members, who are not full-time members of staff of the Bank, undertake remunerated activities outside the Bank, those activities are subject to the conditions that the Directors' Affairs Committee or any person assigned by it, may determine, provided that those remunerated activities shall in the opinion of the committee not threaten the objectives and purposes of the MPC or have a negative impact on the members' obligations with regard to their duties. An MPC members shall not become a shareholder, director, manager, officer in any banking or other financial institution.

3. Declaration of interests

- (1) To assist in the fulfilment of obligations in relation to conflicts of interests, MPC members shall upon appointment make a full written disclosure of the nature of their direct or indirect interests that may give rise to conflict of interest.
- (2) The matters to be covered by the member's statement shall include but not be limited to the disclosure of –
 - (a) any financial or business interest of the member and that of the member's family; and
 - (b) investments in companies, partnerships or joint ventures.
- (3) The MPC members shall provide the Secretary of the Bank or other custodian of the Board records with an update of that statement on an annual basis.

4. Immunity from personal liability

The MPC members shall not be personally liable in any civil or criminal proceedings or subject to arrest, imprisonment or damages for anything done in the discharge of their duties in terms of this Act unless it is established that it was done in bad faith.

5. Compliance

- (1) Compliance with this Code of Conduct will be monitored by the Directors' Affairs Committee. If MPC members (or members of the public) become aware or suspect that a member of the MPC has, or may have, contravened this Code, this information should be reported immediately to the Directors' Affairs Committee, preferably in writing and in a confidential manner. The Directors' Affairs Committee shall investigate the alleged breach of its own volition or upon request.
- (2) Deviation from the standards of this Code shall be dealt with as misconduct on the part of the member concerned and such a member will be disciplined in accordance with the provisions of the Act.
- (3) For the duration of any investigation into any allegation of a contravention of this Code, the Directors' Affairs Committee reserves the right to suspend the member concerned from carrying out duties for the MPC and the Bank.
- (4) Any investigation into a suspected or possible contravention of this Code shall be kept confidential.

6. Independence

- (1) MPC members shall be independent from any political influence in the performance of their duties under this Act.
- (2) The MPC members shall not act as delegates or representatives of any interest groups or industry in the discharge of their duties.

7. Confidentiality

In accordance with section 70(1) of this Act, members of the MPC are required to maintain strict confidentiality of the information discussed at MPC meetings and not to divulge any confidential information obtained by members in the performance of their duties, provided that such confidentiality shall be lifted one year after they have ceased to be members of the MPC. Members shall also avoid any situation where they might be perceived as having acted with the benefit of knowledge not available to the general market place, for their own interests.

.....
(Signature)

FIFTH SCHEDULE IN TERMS OF SECTION 81

REPEAL OF LAWS

The following laws are repealed –

(1) Previous statute of the Central Bank [citation]

(2)

(3)

(4)