

**IMPACT OF THE BASEL ACCORD ON SMALL INDIGENOUS BANKS IN
DEVELOPING COUNTRIES: THE CASE OF ZAMBIA**

by

Douglas Walter Rolls II

Supervisor: Professor Corlia van Heerden

Submitted in fulfilment of the requirements for the

Doctor of Laws Degree (LLD)

in the Faculty of Law

Department of Mercantile Law

University of Pretoria

2025

DECLARATION OF ORIGINALITY

I, DOUGLAS WALTER ROLLS, Student Number u 17304030, do hereby declare that this thesis is my work and that, to the best of my knowledge, no similar piece of work has been previously submitted to the University of Pretoria, or any other University, in consideration of a Law Degree (LLD). Where the work of other eminent writers or other data not authored by me has been used, such work has been duly referenced as theirs and not mine. To this effect, all errors, omissions, defects, or anomalies contained in this work are my own, and I bear the onus of them personally.

Douglas W. Rolls

Student's Signature

Date

DEDICATION

To The Most High

Education and perseverance are necessary to establish perfection. That rude material receives its fine polish but from repeated efforts alone and nothing short of indefatigable exertion can induce the habit of virtue, enlighten the mind, and purify the soul.

ACKNOWLEDGEMENT

Words cannot express my profound gratitude to both my supervisors for their indefatigable patience and invaluable guidance in supervising my research work, without which finalising this thesis would not have been possible. To Professor Regard Brits for giving me wings to fly and for setting the groundwork for my thesis which has stood the test of time.

To Professor Corlia van Heerden for teaching me how to navigate the the winds of knowledge in calm and in storm. Most of all for agreeing to take me on and supervise me when my first supervisor left despite already having an overloaded schedule.

I cannot forget to mention and thank Ms Lizette du Plessis, Ms Tembi Maake and Ms Jenny Lambinon for always being there for me when I needed help.

Thanks also go to my research assistant, Ms Lukundo Nanyangwe, and my editor, Ms Tanya Pretorius, for checking that no stone was left unturned with respect to the subject matter of the research and no word was out of place.

To my friends and family for their support and understanding, and belief in me, as I undertook this long journey of enlightenment.

ABSTRACT

The purpose of this thesis is to evaluate the impact of the Basel Accords on small indigenous banks in developing countries, with particular concentration on smallZambian banks. The problem statement intends to investigate whether implementing the three Basel Accords is conducive to the growth of small banks in Zambia. The study further aims to determine whether the present approach to legal regulation of small banks in Zambia is appropriate.

The methodology is based on desk-bound research and examination of both primary sources and secondary sources of material such as books, journals, and relevant articles. The study is impacted by the dearth of secondary research work and the difficulty of getting information from sources like the Zambian central bank and other information centres.

While Basel I and II seem to have stabilised the Zambian financial sector, the Basel III Accord appears to have impacted negatively on many small banks to the extent that they have been forced into merger and acquisition arrangements with larger foreign banks to fund their undercapitalised positions to survive. It also emerges that the Zambian financial system is strongly linked to the international global economy; regionalisation with organisations like SADC and COMESA being the first stages in the process.

This situation is likely to introduce increased instability in the Zambian financial sector by making banks more vulnerable to the vagaries of the international financial markets. It is thus recommended that the Zambian central bank should be more proactive in lobbying for better conditions for small banks from the Basel Committee for Banking Supervision and other international financial regulatory bodies; it should also avoid “cutting and pasting” rules from other jurisdictions to avoid possible distortions in the banking sector. It should also encourage further development of primary and secondary markets in low-cost paper and provide small banks with long-term, low-interest loans to support their growth. The Bank of Zambia, the Zambian central bank, should consider establishing a separate Act financial services Act for small banks to better regulate them. The central bank should also seek out non-Basel Accord solutions for small banks including re-examining the positive aspects of the infant-industry argument. Lastly, it should introduce a formal system for classifying banks in Zambia.

At the international level, it is suggested that the global standard-setting bodies should undergo radical reforms to ensure that they are in tandem with the problems that banks in developing countries face as well as allow them to have a say in global standard setting. It is recommended that global standard-setting bodies apply simpler rules for smaller banks.

The impact of the Basel Accords on small indigenous banks in developing countries and Zambia, in particular, is important because of the role that small banks play in developing economies in growing small and medium-sized businesses that are often ignored by large foreign banks. It is also important that small banks are allowed to grow into large and medium-sized banks to effectively compete against foreign multinational banks.

Institutions based on neoliberal ideals appear to only serve Western businesses' interests despite their call for all countries to create a level playing field. Due to the dearth of empirical research, there are several gaps in the work that may provide opportunities for further research in this important area of the law.

TABLE OF ACRONYMS AND ABBREVIATIONS

APRA	Australian Prudential Regulation Authority
ASEAN	Association of Southeast Asian Nations
AUC	African Union Commission
BCBS	Basel Committee for Banking Supervision
BCCZ	Bank of Credit and Commerce Zambia
BFSA	Banking and Financial Services Act
BIS	Bank for International Settlements
BoT	Bank of Tanzania
BoZ	Bank of Zambia
BSACo	British South Africa Company
CAR	Capital Adequacy Ratio
CB	Commercial Bank
CBK	Central Bank of Kenya
CBR	Central Bank Rate
CBRAN	Currency Board of Rhodesia and Nyasaland
CBRSP	Committee for Banking Regulation and Supervisory Practices
CCBG	Committee of Central Bank Governors
CCyB	Countercyclical Capital Buffer
CEPS	Centre for European Policy Studies
CFR	Council on Foreign Relations
CIS	Commonwealth of Independent States
COMESA	Common Market for Eastern and Southern Africa
CRA	Credit Rating Agency
CRD	Capital Requirement Directive
DTBK	Diamond Trust Bank of Kenya
EAC	East African Community
EAEU	Eurasian Economic Union
EB	European Bank
ECOWAS	Economic Community of West African States
EEC	European Economic Community

ESM	European Stability Mechanism
EU	European Union
FDIC	Federal Deposit Insurance Corporation
FED	Federal Reserve Bank of America
FINDECO	Financial Development Company
G10	Group of 10 Countries
G20	Group of 20 Countries
G7	Group of 7 Countries
GDP	Gross domestic product
GFC	Global Financial Crisis
GMS	Global market shock
G-SIBs	Global Systemically Important Banks
G-SIFIs	Global Systemically Important Financial Institutions
HCTs	High Commission Territories
IBRD	International Bank for Reconstruction and Development
ICG	International Crisis Group
IFIs	International Financial Institutions
IMF	International Monetary Fund
INDECO	Industrial Development Company
IOSCO	International Organisation of Securities Commissions
LCBGs	Large Corporate Banking Groups
LCR	Liquidity Coverage Ratio
LDC	Less Developed Country
LPT	Liquidity Preference Theory
LuSE	Lusaka Securities Exchange
M&A	Mergers and Acquisitions
MINDECO	Mining Development Company
MNBs	Multinational Banks
NIM	Net Interest Margin
NSFR	Stable Net Funding Ratio
OAU	Organisation of African Unity
OCC	Office of the Comptroller of the Currency

OMO	Open Market Operations
PIIGS	Portugal, Ireland, Italy, Greece and Spain
PIT	Public Interest Theory
PNB	Punjab National Bank
PRA	Prudential Regulation Authority
PTA	Preferential Trade Area
RECs	Regional Economic Communities
RISDP	Regional Indicative Strategic Development Plan
RoA	Return on Assets
RoE	Return on Equity
RTGS	Real-Time Gross Settlement
RWA	Risk Weighted Average
S&P	Standard & Poor's
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADC-RTGS	Southern Africa Development Community Real Time Gross Settlement
SAPs	Structural Adjustment Programme
SCB	Stress Capital Buffer
SMEs	Small and Medium Enterprises
TARP	Troubled Asset Relief Programme
TBTF	Too Big to Fail
UK	United Kingdom
UNIP	United National Independence Party
UNO	United Nations Organization
USA	United States of America
VaR	Value at Risk
WB	World Bank (International Bank for Reconstruction and Development)
ZIMCO	Zambia Industrial Mining Company

TABLE OF CONTENTS

DECLARATION OF ORIGINALITY	ii
DEDICATION.....	iii
ACKNOWLEDGEMENT.....	iv
ABSTRACT.....	v
TABLE OF ACRONYMS AND ABBREVIATIONS.....	vii
TABLE OF CONTENTS	x
LIST OF TABLES	xviii
LIST OF FIGURES	xix
CHAPTER 1 INTRODUCTION AND BACKGROUND TO THE STUDY	1
1.1 Introduction	1
1.2 Research problem	20
1.3 Research questions	20
1.4 Hypothesis	21
1.5 Research methodology	22
1.6 Chapter layout	22
1.7 Conclusion.....	23
CHAPTER 2 DEVELOPMENT OF BANKING REGULATION IN ZAMBIA.....	25
2.1 Introduction	25
2.2 The definition of a bank	25
2.3 What is regulation?.....	28
2.4 An overview of the historical evolution of banks	29
2.5 Bank regulation before the 1900s.....	34
2.6 Northern Rhodesia under the BSA Company (1890–1924).....	36
2.7 Early British Colonialism (1899–1964)	39
2.8 The impact of World War II on banking	43
The Federation: 1953 to 1963.....	45
2.9 The Bank of Rhodesia and Nyasaland Act 1956.....	46
2.10 Independence and the First Republic (1964–1979).....	50
2.11 The Second Republic (1980–1990).....	52
2.12 The Third Republic (1991 to date)	58
2.13 Conclusion.....	61
CHAPTER 3 JURISPRUDENTIAL UNDERPINNINGS OF THE ACCORDS	64
3.1 Introduction	64
3.2 The role of capital credit and the money market.....	65
3.3 The ethos of the international financial regulators	66
3.3.1 Neoliberalism.....	71

3.3.2	Foundations of neoliberal theory	73
3.3.3	Washington Consensus	76
3.3.4	Critique of neoliberalism	76
3.3.5	Financialisation.....	77
3.3.6	Corporatocracy	77
3.3.7	Globalisation.....	78
3.3.8	A critique of globalisation	79
3.4	Theories of financial crisis	80
3.4.1	Background to theories of financial crisis	80
3.4.2	Definition of financial crisis	81
3.4.3	The cyclical theories	82
3.4.4	The expansionary phase.....	85
3.4.5	The contraction phase	86
3.4.6	The non-cyclical theory	88
3.5	Theories of liquidity	96
3.5.1	The importance of bank liquidity	97
3.5.2	The Anticipated Income Theory	101
3.6	The Justification for Bank Regulation.....	103
3.6.1	Definition and nature of regulation	104
3.6.2	Relevance and purpose of regulation.....	105
3.6.3	The Traditional Economic Theory of Regulation.....	108
3.6.4	Evaluation of regulatory theories	108
3.6.5	Criticism of regulation.....	116
3.7	The Diamond-Dybvig Model of Banking	117
3.7.1	Motivation and focus of the Diamond-Dybvig Model	118
3.7.2	Premise of bank runs	122
3.7.3	Benefits of the Diamond-Dybvig Model	123
3.7.4	Theories of compliance with international rules and norms.....	127
3.7.5	Policy diffusion mechanisms.....	130
3.8	Conclusion.....	131
CHAPTER 4 THE BASEL COMMITTEE FOR BANKING SUPERVISION (BCBS)		132
4.1	Introduction	132
4.2	Financial regulation before Basel.....	132
4.3	The Basel Accords.....	135
4.3.1	Levelling the playing field.....	139
4.4	Criticism of Basel I.....	143
4.4.1	Basel I required sensitivity concerning risk ratings.....	143
4.4.2	Basel I had limited capital recognition	144

4.4.3	Basel I needed complete coverage of risk sources	144
4.4.4	Basel I used a “one-size-fits-all” approach.....	145
4.5	Basel II Capital Accords.....	146
4.5.1	Pillar I: Minimum capital requirements.....	147
4.5.2	Pillar II: Supervisory review.....	148
4.5.3	Pillar III: Effective market discipline and disclosure	149
4.5.4	Criticism of Basel II	151
4.5.5	The European reaction to Basel II	152
4.5.6	General weaknesses	153
4.6	Basel III Capital Accords	155
4.6.1	Basel III and its Critics	158
4.6.2	Basel IV or the completion of the Basel Accords	163
4.6.3	Criticism of the Basel IV Accord	165
4.7	Western responses to the Basel Accords	166
4.7.1	The United States of America	167
4.7.2	US regulatory agencies	167
4.7.3	Dodd-Frank Act and Basel Accord I	169
4.7.4	Basel II.....	175
4.8	One Accord, two different cultures	178
4.9	The nexus between the BIS, BCBS, and the Bretton Woods Institutions.....	180
4.9.1	Bank for International Settlements (BIS)	180
4.9.2	The Bretton Woods Institutions.....	182
4.10	What kind of law do the Basel Accords fall under?	185
4.10.1	The legal position of the BCBS	189
4.11	Conundrums surrounding the Accords	193
4.11.1	Do the Basel Accords have opt-out clauses?	193
4.11.2	The fallacy of the World Financial Contagion Theory.....	194
4.11.3	Global competition rather than global regulation.....	196
4.11.4	The Accords do not appear to be ideologically neutral	197
4.11.5	A lack of influence for non-member participants.....	198
4.12	Actual problems that make the Accord Models inefficient.....	199
4.12.1	Risk models and their challenges	199
4.12.2	The problem with parameters in the risk formula	201
4.12.3	Problems underlying types of risk models	201
4.12.4	Statistical models used to measure risk	202
4.12.5	Inadequacies of the Value at Risk (VaR)	202
4.12.6	The problem of unknown risk	202
4.12.7	The problem of senior management	203
4.12.8	Lobbying and regulatory capture.....	204

4.13	Regulatory capture.....	209
4.14	Testing presumptions inherent in the Basel Accords	211
4.14.1	Neoliberal economic philosophy as a world standard	211
4.14.2	The model assumes that all banks run on the profit motive	212
4.14.3	Globalisation and international financial integration	212
4.14.4	The Accords are the only panacea to maintain bank stability	213
4.14.5	The Accords are only suitable for internationally active banks	213
4.14.6	Inefficient banks should be allowed to fail or be taken over.....	213
4.14.7	The external rating agency dilemma	215
4.15	Conclusion.....	216
CHAPTER 5 REGIONAL GROUPINGS AND THE BASEL ACCORDS		218
5.1	Introduction	218
5.2	The impact of regionalisation.....	222
5.3	Other theories of integration.....	228
5.4	Southern African Development Community (SADC)	228
5.4.1	SADC and the Central Bank Model Law (CBML)	232
5.5	Common Market for Eastern and Southern Africa (COMESA)	235
5.6	The protection offered by regional organisational groupings	239
5.7	Are regulators biased in implementing their rules?.....	239
5.8	Conclusion.....	243
CHAPTER 6 SMALL BANKS AND THE BASEL ACCORDS		246
6.1	Introduction	246
6.2	The role of banks in economic development.....	246
6.2.1	The importance of banks in a country's development.....	247
6.2.2	Benefits of small local banks.....	250
6.2.3	Wider outreach of small local banks	251
6.2.4	Provision of tailormade services.....	251
6.2.5	Challenges to the survival of small local banks	256
6.3	How to measure small banks.....	259
6.4	Models for classification of banks in the United States	260
6.5	Classification of banks in the European Union (EU)	262
6.6	How some African banks are classified	263
6.6.1	Classification of Nigerian banks.....	263
6.6.2	The concept of banking system stability	264
6.6.3	Economic factors	265
6.6.4	Unemployment	266
6.6.5	Commercial bank ownership	266
6.6.6	Regulation and supervision	267

6.6.7	Bank financial structure	268
6.6.8	Bank risk.....	268
6.7	Competition, concentration, risk-taking, consolidation, and profit.....	269
6.7.1	Competition and profitability in an unregulated environment	270
6.7.2	Competition and stability.....	273
6.7.3	Bank consolidation and concentration.....	274
6.7.4	Competition and banking risk.....	275
6.7.5	Bank concentration and performance	276
6.7.6	Profit structure relationships.....	279
6.7.7	The consequences of market concentration and competition	282
6.8	Mergers and acquisitions	282
6.8.1	Bank mergers and acquisitions	283
6.8.2	Bank mergers and acquisitions in other countries	287
6.8.3	Positive aspects of bank mergers in India	288
6.8.4	Benefits of bank mergers and acquisitions	295
6.8.5	Risks of bank mergers and acquisitions	296
6.9	Regulatory implications of mergers and acquisitions	297
6.9.1	The creation of larger banks	298
6.9.2	Contagion risk.....	301
6.9.3	Systemic risk.....	302
6.9.4	Lender of last resort assistance	303
6.9.5	“Too big to fail” factor	304
6.10	Customer impact and perception	304
6.10.1	Poor culture fit	305
6.10.2	Compliance and risk consistency	305
6.10.3	The concepts of unassisted and assisted bank consolidation.....	305
6.11	Justification for competition in banking	307
6.11.1	The pros and cons of competition in a financial system.....	307
6.11.2	Competition between small and large local banks and multi-national banks	309
6.12	Impact of the Basel Accords on bank competition.....	314
6.12.1	Basel Accords and competition	314
6.12.2	Impact of the Basel Accords on competition: the American experience.....	319
6.12.3	The impact of Basel III on mergers and acquisitions in European and African countries.....	320
6.12.4	Competition and reputation	322
6.12.5	Technical advice from the IMF and World Bank.....	322
6.12.6	Signalling international investors	323
6.12.7	Reassuring host regulators.....	324
6.12.8	Peer pressure and peer learning	324

6.13	The infant industry argument	325
6.13.1	The static view for infant-industry protection	328
6.13.2	Competitive pressure	329
6.13.3	The dynamic argument for infant-industry protection	329
6.13.4	The African experience	335
6.13.5	Conclusion	335
CHAPTER 7 THE IMPACT OF THE BASEL ACCORDS ON SMALL BANKS: THE CASE OF ZAMBIA		339
7.1	Introduction	339
7.2	The banking setup in Zambia at the start of 1991	339
7.2.1	Foreign banks	340
7.2.2	State-owned banks	341
7.2.3	Local banks	341
7.3	The position after the change in government to a market economy	342
7.3.1	Regulatory changes to the Zambian financial framework	344
7.3.2	From government control to liberalisation and then financial regulation	345
7.3.3	Correcting the bottlenecks in the old Banking Act	347
7.4	The evolution and growth of Zambian banking Acts 1994–2017	348
7.4.1	Shortcomings of Banking Act Cap 700 and BoZ Act Cap 699	350
7.4.2	Licensing of banks	350
7.4.3	Lack of authority by the Bank of Zambia	350
7.4.4	Directors' credentials	351
7.4.5	Decentralisation in banking: a response to over-regulation	351
7.4.6	Lack of prudential legislation in Banking Act Cap 700	351
7.4.7	Opening the floodgates for bank failure	354
7.4.8	Legislating the Accords into law	370
7.5	The growth in local banks from 1984 to 1994	376
7.5.1	Declining growth in small banks in Zambia since 2000	378
7.6	Zambia's current economic outlook	379
7.7	Current Zambian financial landscape	380
7.8	The Regulatory Landscape of Zambia's Financial Sector	381
7.8.1	Bureau de changes	383
7.8.2	Micro-finance institutions	385
7.8.3	Building societies	386
7.8.4	Leasing companies	387
7.8.5	Loans disbursed per economic sector by banks	388
7.8.6	Loans to agriculture	390
7.8.7	Loans to manufacturing	390
7.8.8	Loans to wholesale and retail trade	390

7.9	The gradual transition towards digitalisation	393
7.10	The impact of globalisation on Zambia.....	396
7.10.1	Globalisation and the Declining Role of the State	396
7.10.2	Liberalisation and globalisation.....	398
7.10.3	Impact of globalisation on small local banks	399
7.11	The impact of regionalisation on small Zambian banks.....	401
7.12	The impact of the Basel Accords on Zambia	402
7.12.1	Basel I Accord	402
7.12.2	Basel II Accord.....	404
7.12.3	Basel III Accord.....	410
7.12.4	Basel IV Accord	412
7.13	Zambian bank's reaction to market forces	413
7.13.1	Competition and concentration.....	413
7.13.2	Competition and profitability	416
7.13.3	Competition and stability.....	419
7.13.4	Bank consolidation and concentration.....	420
7.13.5	Competition and banking risk.....	421
7.13.6	Profit structure relationships.....	424
7.14	The consequences of market concentration and competition.....	424
7.14.1	The merger between Atlas Mara Limited and Finance Bank Zambia Limited	425
7.14.2	History of Finance Bank Zambia Limited	425
7.14.3	BancABC.....	427
7.14.4	The merger between Access Bank and Cavmont Bank.....	429
7.14.5	The merger between Investrust Bank and Bank of Nevis International	430
7.14.6	The merger between Intermarket, Sabre Capital and Afriland.....	431
7.15	Classification of Zambian banks	434
7.15.1	Tier 2 banks	436
7.15.2	Tier 3 banks	436
7.15.3	Possible reasons for not classifying banks	438
7.16	Problem of sourcing financing for small banks.....	439
7.17	Gaps in the financial architecture that impact local banks	443
7.18	The case of different regulations for different-sized banks.....	444
7.19	The impact of the jurisprudential underpinnings of the Accords on Zambian banks ..	445
7.20	Conclusion.....	457
CHAPTER 8 SUMMARY, RECOMMENDATIONS, AND CONCLUSION		461
8.1	Introduction	461
8.2	Title of the thesis	461
8.3	The problem statement	461

8.4	Review of chapters	462
8.5	Research objectives and questions	464
8.6	Research hypothesis	467
8.7	Limitations of the study.....	468
8.8	Research findings	469
8.9	Research recommendations	472
8.9.1	Recommendation One: Regional institutions	472
8.9.2	Recommendation Two: The Central Bank	473
8.9.3	Recommendation Three: Options for standard-setting bodies	480
8.9.4	Recommendation Four: Allowing developing countries more say	480
8.9.5	Recommendation Five: Alternatives to ameliorating reforms	482
8.9.6	Recommendation Six: Simplifying regulation for smaller banks	485
8.9.7	Recommendation Seven: Adapting for developing countries	487
8.9.8	Conclusion	491
BIBLIOGRAPHY		495
TABLE OF STATUTES		496
TABLE OF CASES.....		497
APPENDICES		560
APPENDIX 1		560
APPENDIX 2.....		562
APPENDIX 3.....		564
APPENDIX 4.....		565

LIST OF TABLES

Table 1. A Timeline of the Establishment of Bank of Zambia	60
Table 2. Basel I: Minimum eight per cent Total Capital Ratio	140
Table 3. Basel II Pillars	149
Table 4. Basel III—Minimum Capital Ratio	161
Table 5. Regulation of US banks from the 18 th century to 21 st century	166
Table 6. Mapping between Basel III standards and EU legislation	206
Table 7. African Regional Economic Communities	222
Table 8. Attributes of local banks as compared to international banks	254
Table 9. Small local banks versus international banks	258
Table 10. How to Measure Bank Size	262
Table 11. Best Indictors for Measuring Bank Size—European Model	263
Table 12. Mergers of Kenyan Banks 2014–2019	291
Table 13. Zambian Foreign Banks 1906–1991	340
Table 14. Restructured and liquidated government financial institutions 1972–1990	341
Table 15. Local Zambian banks 1991	341
Table 16. Types of banks operating in Zambia in 1991	342
Table 17. Types of banks operating in Zambia in 1991	343
Table 18. The main causes of bank failures between 1994–1998	367
Table 19. Zambian banking and financial landscape 2016–2022	380
Table 20. Total number of non-bank financial institutions: 2016–2023	383
Table 21. Banks operating in Zambia as of January 2023	384
Table 22. Loans and advances [sector proportions] 2016–2022	388
Table 23. Sectorial private sector credit share (per cent end of period) 2004–2014	390
Table 24. Local foreign and failed banks 1991–2000	393
Table 25. Globalisation indices for Zambia	398
Table 26. SADC banking sector indicators	401
Table 27. Firm concentration ratio since 1998	414
Table 28. Bank profitability measures, by ownership category (1998–2011)	414
Table 29. Bank profitability measures by ownership category (1998–2011)	419
Table 30. Intermarket bank stock ownership	432
Table 31. Zambian bank mergers 2008–2021	433
Table 32. Measuring bank size based on assets	435
Table 33. Measuring bank size based on assets (Tier 2 banks)	436
Table 34. Measuring bank size based on assets (Tier 3 banks)	436
Table 35. Measuring bank size based on RWA (Tier 3 banks)	438
Table 36. Banking sector funding of assets (per cent of total assets) 2019–2021	443

LIST OF FIGURES

Figure 1. Federation of Rhodesia and Nyasaland	48
Figure 2: Implementation of international banking standards	142
Figure 3. The three pillars of Basel II	146
Figure 4. Basel III—Transitional Arrangements 2017–2028 by BIS	156
Figure 5. Federal Reserve Banks.....	168
Figure 6. Globalisation	228
Figure 7. Overlapping regional economic communities in Africa	234
Figure 8. Growth of non-bank financial institutions in Zambia	393

CHAPTER 1

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

The historical genesis of the Basel Accords starts from pre-World War II and the economic chaos that resulted from the Great Depression in the 1930s which eventually triggered the establishment of the Bretton Woods Conference of 1944.¹ The Bretton Woods Conference² aimed at finding solutions to maintaining global financial stability for the “free world,” given that communism was in full bloom after the fall of the “Iron Curtain” across Europe.³ The spectre of the Chinese Liberation Army under Mao Tse-tung was in control in the Far East. At the same time, many countries outside of Europe and the Americas were under some sort of colonial annexation. They therefore fell under the jurisdiction of the colonisers, mostly France and the United Kingdom. Africa was no different, and apart from Ethiopia, which suffered a five-year occupation by the Italians under Benito Mussolini from 1936 to 1941, it has never been fully colonised as a country. Neither has Liberia. Apart from these two countries, most other African countries were under the colonial yoke of some imperial power, be it British, German, French, Belgian, Spanish, or Portuguese.⁴

The advent of independence for African countries meant that they were free to administer their own affairs independently, albeit with inexperienced administrators. This included the regulation of the country’s financial system, the engine of any economy. The position was further exacerbated by the pervading geopolitics of East versus West that resulted from the “Cold War,” which allowed most of those newly independent countries free reign to take sides as they became pawns in the ideological conflict. This often forced these nascent countries to jostle between the two prevailing ideologies, playing one system against the other, not only as

¹ Bank for International Settlements (BIS) “The History of the Basel Accords” <https://www.bis.org/bcbs/history.htm> see also Federal Reserve History: Creation of the Bretton Woods System (July 1944) <https://www.federalreservehistory.org/essays/bretton-woods-created> (accessed 3 March 2023).

² The Bretton Woods Conference was formally called the “United Nations Monetary and Financial Conference.”

³ Encyclopaedia Britannica “Iron Curtain Speech” (26 February 2023) <https://www.britannica.com/topic/Iron-Curtain-Speech> (accessed 3 March 2023).

⁴ Government of the United States “Milestones 1945–1952 Decolonization of Asia and Africa, 1945–1960” Office of the Historian <https://history.state.gov/milestones/1945-1952/asia-and-africa> (accessed 3 March 2023); Gleijeses “Africa in the Cold War” Oxford Bibliographies <https://www.oxfordbibliographies.com/view/document/obo-9780199846733/obo-9780199846733-0225.xml> (accessed 3 March 2023).

a means of gaining economic benefit but also as a means of seeking political stability in the process. Often, this led to disastrous consequences for most countries, Zambia included. The period from 1973 to 1990 in Zambia's economic history was a clear testament to this resultant downward spiral.⁵

During the Cold War, Zambia, like many other newly independent African nations, chose a middle way in terms of supporting the two Cold War ideologies—Communism and Capitalism. Instead, Zambia, like many other countries, chose Non-Alignment by becoming a member of the Non-Aligned Movement.⁶ As of 2024, despite the fall of communism, this movement is still in existence and has grown to 121 members and 27 observers from the original five countries made up of Yugoslavia, India, Egypt, Ghana, and Indonesia. This movement aimed at maintaining neutrality between the Soviet Union and the United States at the height of the Cold War. During the early part of the 1970s, Zambia was very active in the movement and as chairperson, hosted the 3rd Summit of the Non-Aligned Movement in 1970.⁷ However, Zambia often leaned more toward leftist ideologies, to the extent that it created its own form of African socialism called Humanism. This was also evident from the country's particularly strong ties with China under Mao, Yugoslavia under Tito, Cuba under Castro, and Russia under Podgorny.⁸

The Cold War had a significant negative impact on Africa, often referred to as a “second Scramble for Africa.” The Soviet Union and the United States competed for influence on the continent, hindering Africa's economic and political development. This competition often delayed the independence of many African nations, such as Angola and Mozambique. Sadly, neither superpower's goals of socialist development (Soviet Union) or democratic nationhood (US) was fully realised in Africa.⁹

⁵ Heitz “The impact of the Cold War on African security” *African Security Review* (2016) 427–430. See also Saunders *et al.* *The Cold War and Southern Africa, 1976–1990* (2010) 222–243.

⁶ Munro “Non-Aligned Movement” 5 November 2024. *Encyclopedia Britannica* <https://www.britannica.com/topic/Non-Aligned-Movement> (accessed 26 November 2024).

⁷ Lusaka Declaration on Peace Independence Development, Co-Operation and Democratisation of International Relations Lusaka. 10 September 1970. 194–203.

⁸ Mwangala *Found a Modern Nation-State on Christian Values?: A Theological Assessment of Zambian Humanism* (doctoral dissertation, University of KwaZulu Natal, 2009.).1–103. (accessed 26 November 2024).

⁹ Fofack “Dawn of a Second Cold War and the ‘Scramble for Africa’ 2022 *Africa Growth Initiative at Brookings* 4–5.

In the late 1950s and early 1960s, the Soviet Union, under Khrushchev's leadership, intensified its focus on Africa. Khrushchev saw potential allies in Third World countries, including African nations, and pledged Soviet support for national liberation movements. The Soviet Union believed that true independence required not only political freedom but also radical social and economic transformation. According to scholars like Kempton and Legvold, the Soviet Union viewed Africa as a fertile ground for promoting socialist revolutions. They identified several factors that made Africa receptive to socialist ideas, such as the communal nature of African societies, the limited development of a capitalist class, and the growing role of the state in economic affairs.¹⁰

In the decades that followed Zambia's independence in 1964, the economy experienced moderate growth, averaging 2.3% annually. However, the mid-1970s marked a turning point for the country. The establishment of a one-party state under the philosophy of Humanism coincided with a sharp decline in global copper prices and a surge in oil prices. This combination of factors led to a significant decline of circa 30 per cent in Zambia's real per capita growth between 1975 and 1990, according to a 1990 World Bank report. This downturn was the result of external pressures, rather than internal factors.¹¹ By 1990, the Zambian economy had become technically insolvent as it struggled with a combination of high debt (circa seven billion US dollars or 216 per cent of the country's GDP),¹² high inflation (circa 200 per cent (IMF papers show it at around 183 per cent by 1993),¹³ unemployment (over 60 per cent), an almost non-existent manufacturing and agricultural sector dependent on a mono-economy centred on the vagaries of copper production and other mineral wealth as well as a populace that was uncompromising in its demand for change and a better standard of living. It was a far cry from a country that, at independence, had a currency stronger than the US dollar.¹⁴ Concurrently, global change was at a crossroads with the implosion of the Soviet Union, which

¹⁰ Kempton *Soviet Strategy Toward Southern Africa: The National Liberation Movement Connection* (1989) 1–261. See also Legvold *Soviet Policy in West Africa* (1970) 1–372.

¹¹ Rakner *Political and Economic Liberalisation in Zambia 1991–2001* Nordic Africa Institute (2003) 54–55.

¹² Maimbo, 'Design and Development of the Zambian Banking Regulatory and Supervisory Framework (1970–2000) in Mwenda (ed) *Banking and Micro Finance Regulation and supervision: Lessons from Zambia* (2002) 14.

¹³ Ellyne "Zambian Economic History" IMF Resident Representative (2002) www.imf.org/external/country/zmb/rr/pdf/2002/070702.pdf (accessed 16 June 2017) 1.

¹⁴ This strength resulted from the fact that the Kwacha was linked to the British Pound and the United States Dollar. On 15 August 1971, the United States Dollar depreciated significantly because of inflationary pressures pervading the United States economy, resulting in the appreciation of the Zambian Kwacha since the Kwacha was still linked to the British Pound as well. See Bank of Zambia (BoZ) "History of Zambian Currency" <https://www.boz.zm/currency-history.htm> (accessed 3 March 2023) 1.

was forced to take on an insular view politically as it clung to the reins of power under Mikhail Gorbachev to avert a crumbling Soviet federation. The stabilisation policies of *Glasnost* and *Perestroika* espoused by Gorbachev led to the further unravelling of the communist system and its ideology, replacing it with a more liberal and moderate market approach.¹⁵ The death knell of communism coincided exactly with the political and economic spring that took place in Zambia in the early 1990s, when the country was forced to adopt a set of liberal policies to convert the country to a free market economy as a means of rekindling development in the stagnant economy. Part of these policies included undergoing structural adjustment¹⁶ and the adoption of the Basel Accords under Zambia's membership of the Bank for International Settlements (BIS) and the Bretton Woods Institutions (made up of the IMF and the World Bank).¹⁷

The historical outcome of the Bretton Woods Conference was the Bretton Woods Agreement, which was to set up a system of rules, institutions, and procedures to regulate the international monetary system after World War II.¹⁸ Apart from establishing the International Monetary Fund (IMF),¹⁹ the International Bank for Reconstruction and Development (IBRD)²⁰ and other subsidiary agencies, banks of member countries, mainly the United Kingdom, Germany,

¹⁵ Shvangiradze "The Gorbachev Era: Glasnost & Perestroika Pre-Fall of the Soviet Union" (2022) <https://www.thecollector.com/gorbachev-era-glasnost-perestroika-fall-of-the-soviet-union> (accessed 3 March 2023). 1.

¹⁶ Structural adjustment pertains to the extensive economic initiatives that major international lenders like the IMF and the World Bank mandate from developing nations in exchange for loans. These programs, initially known as SAPs, necessitate the liberalization of the economy to facilitate smoother market operations and increase recipient countries' openness to foreign investments. SAPs also help countries recover from economic crises by improving their balance of payments, increasing their competitiveness internationally, and adjusting their economic structure where required. See Mohan *et al.* 'Structural Adjustment' in *International Encyclopedia of Human Geography* (2020) 61–69.

¹⁷ Zambia was a member of BIS and the Bretton Woods Institutions because the former oversaw central banks, while membership with the latter had been formalised by statute in 1965 with the ratification of the Bretton Woods Agreement Act Chapter 367 of the Laws of Zambia. It is important to note that at the time of writing this thesis, Zambia is not yet a member of the Basel Committee for Banking Supervision (BCBS).

¹⁸ Bretton Woods Agreements, United States Department of State, June 2016.

¹⁹ The IMF or the International Monetary Fund one of two institutions known as the Bretton Woods Institutions. The objectives of the IMF have changed over time. Currently, however, its main mission is to further international monetary cooperation, encourage expansion of trade and economic growth, and discourage countries from implementing policies that would harm prosperity. See more at <https://www.imf.org/en/Home> (accessed 18 February 2019).

²⁰ The World Bank, also known as the International Bank for Reconstruction and Development (IBRD), is the second of two institutions known as the Bretton Woods Institutions. Initially set up to rebuild a devastated Europe after World War II, the Bank's focus has changed to reducing poverty in developing countries by lending money to governments of poorer member countries to improve their economies and standards of living. See more at www.worldbank.org (accessed 18 February 2019).

France, Japan, Canada, and Italy were tasked to maintain fixed exchange rates between their country's currency and that of the United States under the "gold standard"²¹—a fixed exchange rate against the dollar for which the IMF played a global supporting and coordinating role.²² The gold standard, however, failed to achieve its purpose of maintaining stable global exchange rates for its members. Consequently, in 1971, the Bretton Woods system ended soon after the Smithsonian Agreement²³ was introduced to salvage the crumbling fixed-rate arrangement. However, European countries that had their currency fixed to the Par Value system began to leave due to disenchantment with the operations of the exchange rate system. The 1973 Oil Crisis that resulted from Arab countries placing an embargo on the United States of America, the Netherlands, Japan, and Canada for their support of Israel in the *Yom Kippur War*,²⁴ ultimately led to the collapse of the par value exchange rate structure. The system was eventually supplanted by a more flexible method of floating exchange rates called a "managed float regime," where currencies were valued against each other instead of against a gold-backed dollar.²⁵

²¹ In 18 Note that there were two gold standards. The initial gold standard known as the classical gold standard was created in 1870. Under this arrangement, countries fixed the value of their currencies in terms of the amount of gold or linked their currency to that of a country that did so. Currencies were freely convertible into gold. This gold standard failed in 1914 because of the turbulence caused by the Napoleonic Wars. The second gold standard was the one created by the Allies at the Bretton Woods Conference called the Par Value system, where the exchange rate was fixed at USD35 to one ounce of gold. Other countries would peg their currencies against this rate. Due to several factors affecting the United States economy that caused high inflation, the par value system failed in 1971. The Smithsonian Agreement tried to salvage the system but because most countries delinked their currencies from the par value system it was finally replaced in 1973 by a more flexible floating rate system. See Management Study Guide "Bretton Woods Agreement and the Smithsonian Agreement" <https://www.managementstudyguide.com/bretton-woods-agreement-and-smithsonian-agreement.htm>; Katz "The Case for the Par Value System, International Finance Discussion Paper " (8 September 1971) <https://www.federalreserve.gov/pubs/ifdp/1971/4/ifdp4.pdf> (accessed 18 February 2019).4–34.

²² Bank for International Settlements <https://www.bis.org> (accessed 18 February 2019).

²³ The Smithsonian Agreement was a pact established on 17 and 18 December in 1971, delegates from the Group of Ten (G10) gathered at the Smithsonian Institution in Washington, D.C., where they reached a consensus on adjusting currencies and establishing new fixed exchange rates. The dollar's value had decreased compared to gold because of inflation in the US, whereas other currencies increased compared to the dollar. Overall, the dollar's value dropped by almost 10% compared to the currencies of the United Kingdom, Canada, France, West Germany, Italy, the Netherlands, Belgium, Sweden, and Japan. A few months following the Smithsonian Agreement, the six European Economic Community (EEC) constituents decided to uphold their exchange rates within a 2.25 per cent range of parity with one another. This agreement however could not be sustained and eventually failed leading to the collapse of the Par Value. See Britannica "The OECD" <https://www.britannica.com/money/international-payment/The-OECD#ref125864> (accessed 4 November 2024).1.

²⁴ US Department of State "OPEC Oil Embargo1973–1974" Office of the Historian <https://history.state.gov/milestones/1969–1976/oil-embargo> (accessed 3 March 2023).1.

²⁵ Ibid. 1.

In its search for financial stability after 1971, the Bretton Woods Institutions²⁶ tasked the Bank for International Settlements (BIS) to take a more active role in monitoring the world's central banks.²⁷ Historically, the BIS was established in 1930 at the Hague Conference,²⁸ well before World War II, and as a remnant of the Young Plan.²⁹ Its role as a central bank regulator became more pronounced in 1974 with the famous insolvency of the Bankhaus Herstatt Bank³⁰ in Germany and the Franklin National Bank in the United States, and its subsequent association with the Basel Committee for Banking Supervision (BCBS).³¹ As a consequence of these two major bank failures, the bank governors from the “Group of Ten” countries (G10)³² created a watchdog organisation under the auspices of the BIS to monitor worldwide central bank activity. Initially, called the Committee of Banking Regulation and Supervisory Practices (CBRSP), it was later renamed the Basel Committee on Banking Supervision (BCBS).³³

²⁶ The Bretton Woods Conference consisted of 730 delegates from 44 allied nations. See De Vries *The Bretton Woods Conference and the Birth of the International Monetary Fund* (2015) 3–18.

²⁷ The major players in the Bretton Woods Conference were the World War II allies. But the main players were the United States Secretary of the Treasury, Henry Morgenthau, his Chief Economic Advisor, Harry Dexter White, and British economist John Maynard Keynes. See van Trotsenburg El País “Bretton Woods: 75 Years of Solidarity with Latin America and the Caribbean” <https://www.worldbank.org/en/news/opinion/2019/07/15/bretton-woods-75> (accessed 4 November 2024).1.

²⁸ BIS was created in the context of the Young Plan, which was adopted on 20 January 1930 at the Hague Conference. The Hague Conference being a convention respecting the establishment of the BIS in Switzerland. The Treaty was signed by the governments of Belgium, France, Germany, Italy, Japan and the United Kingdom on the one hand, and Switzerland on the other. See Bank for International Settlements (BIS) “History: Foundation and Crisis (1930–1939)” https://www.bis.org/about/history_1foundation.htm (accessed 4 November 2024).1.

²⁹ Bank for International Settlements <https://www.bis.org>. Note: that the Young Plan was the second renegotiation of Germany's World War I reparation repayments in 1929 under a new committee chaired by the American industrialist Owen D Young. See Britannica “Young Plan” <https://www.britannica.com/event/Young-Plan> (accessed 11 April 2021).1.

³⁰ The Bankhaus Herstatt was a privately owned bank in Cologne, Germany, that went bankrupt in 1974. This resulted in what is called the “Herstatt Crisis”. The crisis was in turn, caused by settlement risk that has become known as “Herstatt risk”. Additionally, this crisis ultimately led to the establishment of the BCBS as a means of ensuring that banks have sufficient capital to mitigate their operational risk. See BIS. Basel Committee on Banking Supervision “Bank Failures in Mature Economies Working Paper” (April 2004) https://www.bis.org/publ/bcbs_wp13.pdf (accessed 30 November 2024).

³¹ The Franklin National Bank of New York was the 20th largest bank in the USA. Its failure created shock waves across both the domestic and international financial markets. The failure of the Franklin National Bank came at a time of great financial upheaval from the oil crisis caused by OPEC and the failure of the Bankhaus Herstatt to name but a few of the major issues. See Klebaner *The Failure of the Franklin National Bank: Challenge to the International Banking System* (1981).

³² The G10 comprised the rich and developed countries of Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. See <https://www.bis.org> for more details.

³³ n 24, 1.

According to the BIS, the main objectives of the committee is to close the gaps in international supervisory coverage and to ensure: (i) no banking establishment escapes supervision; and (ii) supervision would be adequate and consistent across member jurisdictions.³⁴ To this end, the BIS established, a set of banking regulations pertaining to capital adequacy requirements that became known as the Basel Accords, starting with a prospectus known as the Concordat in 1975.³⁵ Essentially, it set out principles for the sharing of supervisory responsibilities for banks' foreign branch subsidiaries and joint ventures between the home (or parent) and host supervisory authorities. This was important because it focused on internationally active banks.³⁶

With these foundations in place, capital adequacy became the focus of the committee. To this end, and without going into too much detail as a comprehensive discussion is provided in Chapter Two, the various Basel Accords were created, commencing with the Basel Capital Accord in 1987, which was formally released in 1988.³⁷ This Accord became known as the Basel I Accord. In essence, it required all banks to work towards maintaining a minimum ratio of Capital-to-Risk Weighted Assets of 8 per cent³⁸ by the end of 1992.³⁹ This requirement was unique in that it not only involved member countries but all countries with active international banks, including non-members.⁴⁰ The implied rationale appears to be that after the numerous banking crises of the 1980s, such as the US "Savings and Loan Crisis" between 1980 and 1989, the 1987 stock market crash, and the "Junk Bond Crisis" of 1989 in the USA,⁴¹ there was no

³⁴ (BIS). Basel Committee on Banking Supervision. "A Brief History of the Basel Committee" (2015) <http://www.bis.org/about/contact.htm?m=1%7c81> (accessed 16 June 2017).1.

³⁵ Ibid. 1.

³⁶ n 34, 1.

³⁷ n 34, 1.

³⁸ Under Basel I, banks were required to maintain capital equal to a minimum of 8 per cent of assets weighted by risk. This figure is often known as the capital adequacy ratio. However, in many countries using the ratio, this percentage exceeded the requisite per cent due to variations in each country's calculation of what constituted the risk-weighted assets. To calculate risk-weighted assets for credit risk, a specific risk weight between 0 and 100 per cent was assigned to every dollar of exposure on a bank's balance sheet. Off-balance-sheet risks were accounted for by converting them into credit equivalents with a conversion factor and assigning a risk weight. See Caruana *et al.* "Banking on more" <https://www.imf.org/external/pubs/ft/fandd/2008/06/pdf/caruana.pdf> (accessed 4 November 2024). 1.

³⁹ Bank for International Settlements (BIS). "Overview of the New Capital Accord. Basel Committee on Banking Supervision" Consultative Document (January 2001) <https://www.bis.org/index.htm?> (accessed 3 Mar. 2023).

⁴⁰ n 34,1.

⁴¹ The US Federal Deposit Insurance Corporation attributes the savings and loan crisis that occurred between 1980 and 1982 (some say it continued until 1989) to a combination of historically high interest and inflation rates. See Federal Deposit Insurance Corporation (FDIC) "Chapter 4. The Savings and Loan Crisis and its Relationship to

room for selectivity based on membership to ensure that financial risk was well covered but rather that it was applied across the board. The aim was to prevent “the world getting a cold if one country sneezed”.⁴²

The 1988 Accord was revised in 2004, on the back of what appears to be the “dot-com bubble,”⁴³ when the framework for the Basel II Accord was released.⁴⁴ The Basel II Accord was divided into three main pillars. Pillar 1 was based on minimal capital requirements, which enhanced the rules set out in the 1988 Accord. Pillar 2 was based on the “supervisory review of an institution’s capital adequacy and internal assessment process”. Pillar 3 was based on the effective use of disclosure as a lever to strengthen market discipline, to encourage sound banking practices.⁴⁵

Before the revisions made to the Basel II Accord had time to take full effect, the need for strengthening the framework even further became apparent. This was partly in response to the collapse of Lehman Brothers⁴⁶ that resulted in the consequent Global Financial Crisis (GFC)

Banking” https://www.fdic.gov/bank/historical/history/167_188.pdf (accessed 16 June 2017). An examination of the Banking Crisis of the 1980s and Early 1990s.

The stock market crash of 1987 resulted from a strong bull market (or where shares are being bought) that had lasted for five years, according to analysts. When the market eventually corrected itself, it resulted in the stock market crash. See Corporate Finance Institute (CFI) “Black Monday” <https://corporatefinanceinstitute.com/resources/equities/black-monday/> (accessed 16 June 2017) 1.

Lastly, the junk bond crisis or the “Dot Com Crash” of the early 2000s. The main cause is due to investors falling for big ideas spurred by the Internet rather than investing in companies. See Cassidy *Dot.con: How America Lost Its Mind and Money in the Internet Era* (2003). 1–416.

⁴² The original statement was made by Klemens von Metternich, an Austrian diplomat (1773–1859) who observed that “When Paris sneezes, Europe catches a cold”. The statements reflected the European anxiety at the July Revolution in France in 1830. The phrase has since become widely used (often out of context) by Economists and other scholars since then. See Mansel “Paris, Court City of the Nineteenth Century” 2006 *The Court Historian* 15–28.

⁴³ The “dot-com bubble,” as the name suggests, had to do with the stock market bubble that resulted from the growth in Internet adoption. This effectively resulted in a massive sell of stock on the stock exchange as demand waned. Added to this, there were restrictions placed on venture financing, which increased the rate of the downturn further. See Morris *et al. Analysis of the Dot-Com Bubble of the 1990s* (2008). 1–37.

⁴⁴ n 34 1.

⁴⁵ Basel Committee on Banking Supervision “Consultative Document Pillar 3 (Market Discipline) Supporting Document to the New Basel Capital Accord” https://www.bis.org/publ/bcb_sca10.pdf (accessed 4 November 2024), which was issued for comment by 31 May 2001, January 2001. (This document has now been suspended since the Basel Accord has been superseded.)

⁴⁶ The collapse of Lehman Brothers occurred in 2008 and was not only one of the largest bankruptcies in the United States’ history but also one of the most significant events that led to the 2008 international financial crisis. See Baitshepi “The Failure and Collapse of Lehman Brothers” (2012); Wiggins “The Lehman Brothers Bankruptcy A: Overview” Yale Program on Financial Stability Case Study (2014) 39–62.

of 2008⁴⁷ for which financial market analysts inter alia blamed the fact that banks had too much leverage and inadequate liquidity buffers.⁴⁸ Added to this, most banks exhibited a mixture of poor governance and high-risk management issues, together with inappropriate incentive structures,⁴⁹ which resulted in the mispricing of credit and liquidity risk, and which ultimately led to excessive credit growth.⁵⁰ To counter this risk fully, the Committee strengthened the three pillars of Basel II by, amongst other measures, requiring banks to have an additional layer of common equity under the Accord called a “Common Equity Tier 1 (CET1),”⁵¹ and a “leverage ratio.”⁵² that a “countercyclical capital buffer”⁵³ be introduced to place fetters on banks taking advantage of system-wide credit booms, and that liquidity requirements⁵⁴ were enhanced.⁵⁵ These requirements were not only very technical but also quite complex to understand and implement. Despite these changes under this second Accord, Basel II was still

⁴⁷ The GFC which occurred in 2008 was brought about by the collapse of Lehman Brothers and the unravelling of the investments that were linked to them. It was described as a period of extreme stress in the global financial markets and international banking systems during this time.

⁴⁸ n 34, 1.

⁴⁹ n 34, 1.

⁵⁰ n 34, 1.

⁵¹ The Basel III Accord, which was born out of the further refinement of the weaknesses of Basel II, requires that banks and FIs hold what is called “Common Equity Tier 1” as part of the requirement. It is primarily a component of Tier 1 capital that is made up of common stock held by a bank or FI. See: BIS. Financial Stability Institute FSI Connect “Definition of capital in Basel III –Executive Summary” https://www.bis.org/fsi/fsisummaries/defcap_b3.pdf (accessed 18 December 2024) 1–2.

⁵² Leverage Ratio: Under Basel III Tier 1 Leverage Ratio, banks are expected to measure their leverage ratios as part of meeting the requirement. The leverage ratio in its simplest form can be explained as a capital adequacy tool that measures a bank’s Tier 1 capital divided by its total exposures, including average consolidated assets, derivatives exposures and off-balance sheet items. Basel standards require that banks maintain an average Tier 1 ratio of at least 3%. See: BIS. Financial Stability Institute FSI Connect. “Basel III leverage ratio framework – Executive summary”. https://www.bis.org/fsi/fsisummaries/b3_lrf.pdf (accessed 18 December 2024) 1–2.

⁵³ Countercyclical Capital Buffer (CCyB): The counter cyclical capital buffer is designed to counter procyclicality in a financial system. When cyclical systemic risk is judged to be increasing institution should accumulate enough capital to create buffers that strengthen the bank during a period that the bank is stressed by losses. See BIS Site: Counter Cyclical Capital Buffers (CCyB) “The Countercyclical Capital Buffer Aims” <https://www.bis.org/bcb/ccyb/index.htm> (accessed 10 August 2017).1.

⁵⁴ Liquidity requirement and liquidity ratio: Basel III requires that banks increase their capital from 2.5% under Basel II to 4.5% of a bank’s common equity as a per centage of the bank’s risk-weighted assets. It also requires that the bank hold an additional 2.5% as part of the capital buffer requirement. So, a bank is required to hold a total of 7% to be compliant with Basel III requirements. BIS. Basel Committee on Banking Supervision(BCBS) “Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools” January 2013 <https://www.bis.org/publ/bcb238.pdf> (accessed 18 December 2024) 1–66.

⁵⁵ n 34, 1.

deemed to be insufficient in its effect.⁵⁶ This led to its further enhancement and the eventual introduction of a third phase of the Accord, better known as the Basel III Accord, in 2010.⁵⁷

Overall, despite their apparent intention to manage global financial risk, the Basel Accords have been criticised as reacting *ex-post facto* to economic crises caused by world economic instability rather than implementing *ex-ante* reactions to prevent financial instability before it happens in the first place. The Accords have been met with both positive and negative reactions at an international level. For example, Tarullo was sceptical about whether regulatory convergence would produce any benefits for the United States of America under Basel II.⁵⁸ The main reaction of the United States banking system to Basel III has been the enactment of the Dodd-Frank Act⁵⁹ and the Collins Amendment⁶⁰ of the Dodd-Frank Act in 2010, which in part exempts small bank-holding companies⁶¹ in the United States with less than 500 million dollars in assets from complying with the tenets of Basel Accords⁶² On the whole, the largest United States banks reacted strongly to certain Basel II requirements and threatened to abandon Basel II altogether.⁶³ Generally, research carried out by Gottschalk and Griffith-Jones indicates that most countries (developed or otherwise) have expressed caution concerning the implementation of Basel II.⁶⁴ Basel III came on the back of the European Financial Crisis (EFC), according to

⁵⁶ n 34, 1.

⁵⁷ Bank for International Settlements (BIS) “Basel III: International Regulatory Framework for Banks” <https://www.bis.org/bcbs/basel3> (accessed 3 March 2023). Note that the original timeline of implementation set for 2013 to 2015. Due to the COVID-19 pandemic, the implementation date was pushed back to January 1, 2022, and later to January 1, 2023. See BIS Press Release “Governors and Heads of Supervision announce deferral of Basel III implementation to increase the operational capacity of banks and supervisors to respond to COVID-19” (27 March 2020) <https://www.bis.org/press/p200327.htm> (accessed 4 November 2024).1.

⁵⁸ Tarullo *Banking on Basel: The Future on International Finance Regulation* (2008) 5.

⁵⁹ Getter “US Implementation of the Basel Capital Regulatory Framework” 5 (2014) <https://digital.library.unt.edu/ark:/67531/metadc332990> (accessed 5 August 2022) 4–5.

⁶⁰ FDIC “Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010” FDIC Annual Report <https://www.fdic.gov/system/files/2024-07/ar10doddfrank.pdf> (accessed 30 November 2024) 13–15.

⁶¹ According to Section 404(b) of the Sarbanes-Oxley Act of 2002–Smaller public companies are exempt from internal control requirements. The Act exempts smaller public companies that are not “accelerated filers” or “large, accelerated filers” from compliance with the internal control auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act and directs the SEC to study ways of reducing the burden of Section 404(b) compliance on companies with market capitalizations between \$75 million and \$250 million. See Harvard Law School forum on Corporate Governance. Dodd-Frank Financial Regulation Legislation Summary <https://corpgov.law.harvard.edu/2010/07/07/summary-of-dodd-frank-financial-regulation-legislation/> (accessed 13 November 2014).1.

⁶² n 60, 13–15.

⁶³ Gottschalk & Griffith-Jones “Review of Basel II Implementation in Low-Income Countries” Brighton University of Sussex (2006) https://www.ids.ac.uk/files/Basel_II_in_LICs_web.pdf (accessed 10 August 2017).1.

⁶⁴ n 34, 1.

Atik, and as such, the European parliament has refused to confirm the completion target date as a means of protecting European Banks from creating a further downturn in the economy as a result of complying with the Accords.⁶⁵ The argument appears premised on the fact that “*Basel III requirements would overstretch European banks that are already in bad shape*,” according to Goldstein.⁶⁶ Nonetheless, he argues that this is an incorrect perception and that the banks need to implement Basel III to avoid further banking crises in the future.⁶⁷

In Zambia, the change of government in 1991 not only ushered the country into a plural system of politics but also transformed the economy from a centrally controlled (socialist) economy to a market-driven one. Lacking financial resources of its own, as a result of a depleted national treasury, the IMF was invited to provide support under what was termed the “Structural Adjustment Programmes,” otherwise known as “SAPs.”⁶⁸ This programme comprised a cocktail of “one-size-fits-all” corrective measures that included the liberalisation of many facets of the economy, such as exchange control regulation, the introduction of a stock exchange, the introduction of open market operations (OMO),⁶⁹ the privatisation of state enterprises (or parastatals) and the introduction of a cash budget. More importantly, many of the archaic laws from the Second Republic⁷⁰ were revised or embellished to accommodate a market-driven economy. Of particular importance was the revision of the BFSa (1994), which

⁶⁵ Atik “EU Implementation of Basel III in The Shadow of Euro Crisis” https://www.bu.edu/rbfl/files/2014/03/RBFL-V.-33_1_Atik.pdf (accessed 10 August 2017) 288–345.

⁶⁶ Goldstein “The EU’s Implementation of Basel III: A deeply flawed compromise” (2012) <http://voxeu.org/article/eu-s-implementation-basel-iii-deeply-flawed-compromise> (accessed 10 August 2017) 1.

⁶⁷ Ibid.

⁶⁸ Maimbo (n 12) 34. See Brownbridge “The Causes of Financial Distress in Local Banks in Africa and Implications for Prudential Policy” (Geneva: United Nations Conference on Trade and Development, March 1998). And Brownbridge “Financial Distress in Local Banks in Kenya, Nigeria, Uganda, and Zambia: Causes and Implications for Regulatory Policy” (1998) *Development Policy Review* 173–188.

⁶⁹ OMO stands for open market operations. It was one of the operations that were introduced as part of the country’s structural adjustment programme requirements. OMO simply refers to the purchase and sale of securities in the open market by a central bank to achieve its monetary policy targets. It also helps commercial banks to balance their book daily rather than depending on the central banks to balance its position daily. The Central bank thus becomes a lender of last resort only. See Rocheteau *et al.* “Open Market Operations” 2018 *Journal of Monetary Economics* 98 114–128.

⁷⁰ The First and Second Republic refers to the various stages Zambia went through as a republic. For example, the First Republic lasted from 1964 to 1973 when a one-party state was established, while the Second Republic covers the period from 1973 up to about 1990. The Third Republic covers the period after 1991. See: Erdmann & Simutanyi “Transition in Zambia: The Hybridisation of the Third Republic” (2003) Lilongwe Germany Konrad-Adenauer-Stiftung. 1–99.

was amended in 2000 when sections 94 to 100 were repealed by the BFSA (2000)⁷¹ and which has since been repealed on 18 May 2018 and replaced by BFSA (2017).⁷²

Despite the initial repeal of the old Banking Act Cap 700 of the Laws of Zambia that came into operation in 1971, by the BFSA (1994), two concurrent sets of bank failures shook the nascent market economy. The first set—and by far the most devastating—occurred post-1992–1993 with the insolvency of Meridien Biao Bank, followed by Africa Commercial Bank and Commerce Bank. Further bank insolvencies followed in 1997–1998 with Credit Africa Bank, Prudence Bank, Manifold Investment Bank, and First Merchant Bank.⁷³ The inherent weakness that caused these failures appears to be the insolvent banks’ appetites for “unsafe and unsound banking practices,”⁷⁴ to put it in the language of the Basel Accords. Regardless, authors like Maimbo also blame the ineptitude of the central bank for not being proactive enough during the initial phases of the changeover due to political influence and a lack of resources to monitor and control banks’ positions.⁷⁵ That said, it appears that the problem was corrected with the revision of the Banking Act in 2000,⁷⁶ so much so that there were no major bank failures until Intermarket Banking Corporation was declared insolvent in 2016–2017.⁷⁷ Hence, the research problem of this study surrounds the general question of whether the Basel Accords have had any impact when it comes to creating these inherent weaknesses in small banks in Zambia. It appears that the small banks in the Zambian banking sector may have been unable to meet the new liquidity requirements all along due to a common problem associated with them, namely their low lending limits and the poor loan repayment culture by their clients.⁷⁸

Further, and from a critical standpoint, the wisdom of introducing Basel II in its undiluted form into the Zambian banking sector is questionable. It can be argued that for a developing (or low-income) country such as Zambia, the IMF should have considered introducing the Basel I Accord first to ensure that prior lessons could be gleaned after a strong foundation had been set

⁷¹ Banking and Financial Services Act 1994 (amended by Act No 18 of 2000) Chapter 387 of the Laws of Zambia.

⁷² Act. No. 7 of 2017 assented to on 12 April 2017.

⁷³ Maimbo (n 12) 34.

⁷⁴ Section 77 of the repealed BFSA (1994) (as amended 2000) and Section 63 of the new BFSA Act 2017. See also Mwenda “Legal Aspects of Banking Regulation: Common Law Perspective” in *PULP* (2010) 203–223.

⁷⁵ Maimbo (n 12) 34.

⁷⁶ See above.

⁷⁷ Wayback Machine “History of Intermarket Bank” (archived 11 September 2012) (accessed 3 March 2023).

⁷⁸ Maimbo (n 12) 15–19. Samuel Maimbo raises the fact that the poor repayment culture by borrowers in Zambia discouraged international banks from local clients immediately after Independence.

before proceeding to the more complex level of Basel II, given the lack of sophistication that pervaded the financial markets at the time. Effectively, the country was forced to adopt stringent measures that even banks in developed countries were cautious about implementing immediately. While Basel II was only expressly introduced in 2007, it appears that initially the 25 Core Principles, augmented to Core Principles for Effective Banking Supervision⁷⁹ in response to the GFC, were already adopted implicitly by the central bank as early as 2000, judging by the fact that many of the tenets appear to have been incorporated into the amended BFSA (1994) (as amended in 2000). Logically, this strongly suggests that complying with the Basel Accords was part of the preconditions that the country had to accept and adopt to receive much-needed financial and technical support from the IMF and World Bank. This is not far-fetched when one considers the arguments made by Jones, Knaack, and Beck, who contend that one of the factors that drove the adoption of the Basel Accords, particularly Basel II and Basel III, is the technical advice given by the IMF and the World Bank. They assert that the Fund and the Bank motivate regulators in developing countries to adopt Basel II and III; in some cases, with explicit recommendations.⁸⁰ Zambia appears to be a case in point in this context. It therefore stands to reason that, being on the brink of bankruptcy, Zambia had very few options or choices to negotiate a middle way, other than to agree to the conditions *verbatim* despite the complexity and impacts of the Accords themselves. Equally, it is reasonable to assume that central bank bureaucrats could have initially misjudged the overall depth and extent of the requirements contained in the Basel Accord in their haste to get the economy moving in the right direction.

To magnify this problem further, it is prudent to examine the salient areas of the BFSA(1994) (as amended in 2000)⁸¹ and the current BFSA(2017) to examine the extent to which the central bank had adopted some of the Basel principles.

⁷⁹ Bank for International Settlements (BIS) “Core Principles for Effective Banking Supervision” (2012) 9 <https://www.bis.org/publ/bcbs230.pdf> (accessed 24 October 2024). Note that the 29 *Core Principles* were initially the 25 *Core Principles*. They were, however, expanded to the current number after breaking down principle one into further principles. As of 2024, the core principles were revised to reflect supervisory and regulatory developments since the last revision in 2012, as well as the impact of recent structural trends on banks and banking systems. See Melo *et al.* *Revised Basel Core Principles for Effective Banking Supervision* (2024).

⁸⁰ Jones *et al.*, “Basel Standards and Developing Countries: A Difficult Relationship” VoxEU Centre for Economic Policy Research (CEPR) Policy Portal (2018) <https://voxeu.org/article/basel-standards-and-developing-countries> (accessed 16 October 2023).

⁸¹ Note that the BFSA (2017) is still being evaluated against the core principles to see what changes have been made. See Statutory Instrument No. 38 of 2018 Banking and Financial Services Act (Commencement) Order 2018 issued by the Minister of Finance, Mrs Margaret Mwanakatwe, on 18 May 2018.

The initial set of Core Principles for Effective Banking Supervision was released in September 1997⁸² and are considered by many regulators the world over as being the *Magna Carter* of banking regulation.⁸³ The BCBS regulators originally crafted 25 principles covering the following areas: Principle 1 Licensing and structure—Principles 2 to 5 Prudential regulations and requirements—Principles 6 to 15 Methods of ongoing banking supervision—Principles 16 to 20 Information requirements—Principle 21 Formal powers of supervisors—Principle 22, and Cross-border banking—Principles 23 to 25.⁸⁴ However, these core principles were updated again in 2012 when principle one was further dissected to create 29 principles from the original 25.

The Basel Core principles, enshrined in the 2012 *Core Principles for Effective Banking Supervision*, have been divided into two main categories:⁸⁵ first, supervisory powers, responsibilities, and functions; and second, prudential regulations and requirements.⁸⁶ The former is more related to the function of how the central bank as a regulator should operate, while the latter deals with how the central bank should regulate the commercial banks in the financial sector.

The Core Principles have been updated further for the third time since their introduction. The 2024 updates incorporate regulatory and supervisory advancements, such as reforms introduced after the GFC by the BCBS. It also includes structural changes in banking, like digital finance, and insights from previous Financial Sector Assessment Programme (FSAP) evaluations.⁸⁷ These revisions have resulted in the inclusion of three new areas of regulation to the Core

⁸² BIS. BCBS *Core Principles for Effective Banking Supervision* (September 1997) 2. <https://www.bis.org/publ/bcbasc102.pdf> (accessed 24 November 2024). See also BIS Basle Committee on Banking Supervision *Core Principles for Effective Banking Supervision, Final Version* Basle. Press Statement. 22 September 1997 <https://www.bis.org/press/p970922.htm> (accessed 24 November 2024).1.

⁸³ Elderson “Powers, ability and willingness to act –the mainstay of effective banking supervision.” Speech at the House of the Euro, 7 December 2023. Note that at the time of writing, Frank Elderson is a member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB.

⁸⁴ n 83, 1.

⁸⁵ Bank for International Settlements (BIS) “Core Principles for Effective Banking Supervision” 9 <https://www.bis.org> (accessed 16 June 2017).

⁸⁶ n 83, 21.

⁸⁷ The Financial Sector Assessment Program (FSAP) is a joint programme between the IMF and the World Bank that evaluates the effectiveness and resilience of a country’s banking supervision system. Part of the assessment of the assessment includes determining whether countries are meeting the parameters laid down by Core Principles. See International Monetary Fund, Financial Sector Assessment Program (FSAP) 2023 <https://www.imf.org/en/About/Factsheets/Sheets/2023/financial-sector-assessment-program-FSAP> (accessed 24 November 2024).

Principles, namely (i) operational resilience, (ii) business model sustainability, and (iii) climate-related financial risks.⁸⁸

The IMF and the World Bank contributed to the review process as well. These additional principles now serve as part of the benchmarks that the IMF and the World Bank consider when assessing the effectiveness of a particular country's banking supervisory system. The FSAPs also form part of the bigger review process, the Structural Adjustment Programmes (SAPs), which together form a powerful tool to encourage particular countries to improve their supervisory rules and practices.⁸⁹ In outline, Principle One of the *Core Principles* deals with the responsibilities, objectives, and powers of the central bank,⁹⁰ thus ensuring that a clear framework is in existence and effective banking supervision is in place.⁹¹ Principle Two deals with the independence of the central bank, its accountability and resourcing, as well as legal protection for the supervisor.⁹² This relates widely to sections 19, 33, and 123 of the Bank of Zambia Act 1996, of which an earlier version of the Act initially established the BoZ as a central bank after independence. Principle Three relates to the collaboration of the central bank with local and international stakeholders and is more a general function than something that has a significant impact on the commercial banks themselves. Principles Four to Eight deal mainly with the administration of the central bank and the powers that the central bank should have to make it an effective agent of regulation. Similarly, Principles Nine to Thirteen deal with supervisory techniques and tools; supervisory reporting, corrective and sanctioning powers of supervisors; consolidated supervision and home-host relationships, respectively. Principle Fourteen onwards deals with the commercial banks' relationship with the central bank as a regulator. The central bank requires commercial banks to apply and comply with certain measures to ensure effective prudential regulation. This includes principles relating to corporate governance, risk management processes, capital adequacy, credit risk, assets provisions and reserves, concentration risk, country risk, interest rate risk, liquidity risk, operational risk,

⁸⁸ BIS. Financial Stability Institute *Core Principles for Effective Banking Supervision –Executive Summary* (2024) 1–3 https://www.bis.org/fsa/fsisummaries/cps_for_bankig.htm (accessed 24 November 2024).

⁸⁹ Elderson (n 84).

⁹⁰ n 83, 21.

⁹¹ n 83, 22.

⁹² n 83, 22.

internal control and audit, financial reporting and external audit disclosure and transparency, and lastly, abuse of financial services.⁹³

When Zambia's BFSA(1994) (as amended 2000) Act is examined,⁹⁴ most of the important stipulations of the *Core Principles* have been enshrined in the Banking Act (both the new 2017 and the repealed 2000 one) without a concerted examination of the impact it may have had jointly or indeed severally, on banks in general and small banks in particular. Judging from the newly legislated Banking and Financial Services Act (2017), which supersedes and repeals the BFSA (1994) (as amended by Act No. 18 of 2000), the new 2017 Act was set to capture the additional changes made to the Basel II Accord leading up to Basel III. For example, under Part VI of the BFSA (2017), entitled "Prudential Regulation and Supervision," section 54 deals with the aspects of what is called a "Counter-Cyclical Capital Buffer" as follows:

"54. (1) Subject to sub section (3), the Bank may require banks and financial institutions to maintain a counter-cyclical capital buffer in their risk-weighted assets and forms of common equity capital tier one. (2) Where the Bank adjusts the counter-cyclical capital buffer, the Bank shall announce the decision at least thirty days in advance of the

⁹³ Ibid. (BIS: Core Principles for Effective Banking Supervision). 24—64. Corporate Governance: The system of rules, practices, and processes by which a company is directed and controlled. It involves balancing the interests of various stakeholders, including shareholders, creditors, and customers. Risk Management Processes: A framework for identifying, assessing, mitigating, and monitoring risks that could impact a bank's financial health. Capital Adequacy: The requirement for banks to maintain a certain level of capital to absorb potential losses. Credit Risk: The risk of loss arising from a borrower's failure to meet its debt obligations. Asset Provisions and Reserves: Funds set aside by a bank to cover potential losses on loans and other assets. Concentration Risk: The risk of loss arising from excessive exposure to a single borrower, industry, or geographic region. Country Risk: The risk of loss arising from adverse political, economic, or social conditions in a specific country. Interest Rate Risk: The risk of loss arising from fluctuations in interest rates. Liquidity Risk: The risk of a bank's inability to meet its short-term obligations. Operational Risk: The risk of loss resulting from inadequate or failed internal processes, people, and systems, or from external events. Internal Control and Audit: A system of checks and balances designed to ensure the accuracy and reliability of financial information and compliance with regulations. Financial Reporting and External Audit: The process of preparing and disclosing financial information to external stakeholders, which is then verified by an independent auditor. Disclosure and Transparency: The principle of providing timely, accurate, and complete information to all relevant stakeholders. Abuse of Financial Services: The misuse of financial services for illegal activities, such as money laundering or terrorist financing. See, BIS. Basel Committee on Banking Supervision "The Core Principles for Effective Banking Supervision" (April 2024) 1–70 <https://www.bis.org/bcbs/publ/d573.pdf> (accessed 17 November 2024). Since we are looking at historical information on the operation of the Core Principles the date 14 Sept 2012 is also applicable to BIS. Basel Committee on Banking Supervision "The Core Principles for Effective Banking Supervision" 14 Sept 2012 <https://www.bis.org/bcbs/publ/d573.pdf> (accessed 17 November 2024). See also the United States Securities and Exchange Commission. Form 20–F.

Westpac Banking Corporation Annual Report according to Section 13 or 15(D) of the Securities Exchange Act of 1934 35 https://www.sec.gov/Archives/edgar/data/719245/000110465914079213/a14-23773_120f.htm (accessed 17 November 2024).3–318.

⁹⁴ From a legal standpoint, it is a redundant exercise to review a repealed Act as it is no longer deemed to be good law. However, in this instance, the review is merely to bring out the salient points of the BFSA and to emphasise the development of the statute from when it was first legislated to date.

effective date, except that a decision to decrease the level of the countercyclical capital buffer shall take effect immediately. (3) A counter-cyclical capital buffer shall not be required where the Bank determines that the capital released shall help to absorb losses in a bank or financial institution that pose a risk to financial stability.”⁹⁵

This is a new requirement that was derived from the further refining of the Basel II Accord that eventually resulted in the Basel III Accord.⁹⁶ Further, when looking at the definitions under Part 1 of the Preliminary Provisions of the Act, and in particular under section 2, it is clear that the Basel-inspired rules that are enshrined in the new 2017 Act apply to all financial institutions irrespective of their size and offerings. For example, when defining what constitutes a bank, the Act includes activities like developmental finance, micro-financing, and venture capital funding.⁹⁷ Additionally, the Act embraces all the possible forms of financial services as a means of covering all future possibilities. The logic of this, apart from drafting expediency, is arguably lacking, as the market itself is relatively simple and unsophisticated.

Put plainly, the Act does not provide tiers of applicability based on the size of the banks—thus it lacks proportionality. From the perspective of the smaller banks, this means that they are called upon to conform to the requirements that even some of the Western banks have failed to achieve, while some countries (like the US) have staggered these requirements for smaller banks or have indeed adopted other initiatives to achieve a similar result via various domestic Acts like the Dodd-Frank Act. This will become clearer in Chapter 4 of the work. In general, and from a competitive standpoint, it means that the Basel Accords, if fully implemented, will arguably pave the way for foreign domination of a country’s banking and financial sector, since small local banks might not be able to compete in the highly regulated environment that the Accords intend to achieve.

When looked at holistically, these requirements, in and of themselves, seem to be the perfect way in which a bank should operate. All the same, the general hypothesis of this thesis will be that, while the overall objective is progressive and worthy, when the various objectives are examined on a case-by-case basis, they all tend to have effects on smaller banks. This is particularly relevant where small banks operate in highly competitive and concentrated markets

⁹⁵ Banking and Financial Services Act (BFSA) “Part VI Prudential Regulation and Supervision” (2017) 223.

⁹⁶ Bank for International Settlements (BIS) “The Capital Buffers in Basel III- Executive Summary” (28 November 2019) https://www.bis.org/fsi/fsi_summaries/b3_capital.htm (accessed 3 March 2023). 1.

⁹⁷ Banking and Financial Services Act (BFSA) “Part 1 of Preliminary Provisions in Section 2” 2017.

with multi-national banking giants. There are also other effects that researchers like Mwangi have identified, particularly problems relating to the development of a sound risk system, asymmetry in supervision, imperfect markets, pro-cyclicality,⁹⁸ access to finance for disadvantaged banks, operational costs, and cross-border challenges,⁹⁹ to name but a few.

Looking at the pillars in relation to Zambia, it appears that issues surrounding capital adequacy are foremost concerning their effects on small banks. Better market discipline and lowered risk are worthy and necessary goals, but it appears that some of the risks that need to be mitigated by the Accords are not only inherent, but primarily unavoidable in small bank portfolios. In this regard, the challenge is to investigate whether the strict application of the capital measures introduced by the various Basel Accords will make it more difficult, if not impossible, for small banks to establish themselves and grow into multinational-sized banking corporations like their international counterparts, especially seeing as low-income countries by their nature have meagre financial resources to start up and assist smaller financial institutions to develop. From a competitive standpoint, it means that if the smaller banks are unable to survive, Zambia will only have large multinational banks operating in its financial sector—a disadvantageous position to be in for any country. One of the major negative consequences of this outcome would be the risk that these larger banks fail to provide services to certain segments of society, thereby leading to counterproductive financial exclusion. There is historical precedent for this risk, such as when larger multinational banks in Zambia in the 1990s refused to deal with small and mid-sized enterprises (SMEs), as these were deemed to be too risky to lend to. For example, a World Bank study reveals that SMEs struggle to secure bank loans, relying instead on personal funds or family support. This creates a \$5.2 trillion annual financing gap in developing countries, affecting 40 per cent of formal SMEs, according to the IFC. East Asia and the Pacific have the largest share of this gap (46 per cent), followed by Latin America and the Caribbean (23 per cent), and Europe and Central Asia (15 per cent). Latin America, the Middle East and North Africa have the highest proportion of unmet needs relative to potential demand, at

⁹⁸ Procyclicality refers to the tendency of financial variables to fluctuate around a trend during an economic cycle. When the rate of procyclicality increases, then the fluctuations become broader. See remarks by Landau “*Procyclicality—What it Means and What Could be Done*” (4 May 2009) <https://www.bis.org/review>. (accessed 12 May 2020) 1–6. Under the Basel Accords, banks are required to mitigate the risk that results from the effects of procyclicality.

⁹⁹ Mwangi *An Assessment of the Extent of Implementation of Basel II Accord in Kenyan Commercial Banks and its Implication on their Profitability* (2013) 1–57.

roughly 88 per cent. Approximately half of formal SMEs lack access to formal credit, with the gap widening for micro and informal enterprises.¹⁰⁰

From the author's personal experience and observation of over 18 years in the banking industry, it is submitted that the portfolios of these large banks comprised the large European and American multinational companies such as BP, Dunlop, Colgate and Palmolive, to name but a few. Threats to business viability in Zambia, including policy inconsistency, unavailability of relevant skills, high energy costs, illicit trade, and the high cost of borrowing, prompted multinationals to relocate their headquarters South Africa after its 1994 democratization.¹⁰¹ as well as political interference and potential threat of nationalisation by politicians left many foreign banks with fewer large international corporate customers to compete for and eventually forced Banks to build products specifically tailored to appease the Small and Medium Enterprise (SME) sector. For instance, Absa Bank Zambia Limited signed a memorandum with the United States government on 16 June 2022 to initiate a loan guarantee scheme. The scheme will support Absa Bank in making loans of up to USD20 million to SMEs.¹⁰² Further, banks like First National Bank (FNB), which was recently conferred with the award of best SME bank in 2022¹⁰³ and Standard Chartered Bank indicate a concerted shift in focus towards providing support to SMEs in their marketing strategies.¹⁰⁴ The argument, therefore, is one for encouraging the development of national institutions rather than depending on foreign institutions as the sole basis for a country's development. In fact, according to Maimbo, international banks domiciled in Zambia have long been criticised for not lending to indigenous businessmen and women.¹⁰⁵ It is thus submitted that there is an imminent danger that the Basel Accords could have the negative drawback of consolidating this trend further by removing small local bank competition from the equation in favour of larger foreign banks. As pointed

¹⁰⁰ World Bank "Small and Medium Enterprises (SMEs) Finance" <https://www.worldbank.org/en/topic/sme/finance> (accessed 10 March 2023).

¹⁰¹ Zambia Association of Manufacturers (ZAM) "Securing the Future of Manufacturing in Zambia" <http://zam.co.zm/securing-the-future-of-manufacturing-in-zambia/> (accessed 3 March 2023).

¹⁰² Government of the United States Embassy in Zambia "US Government Launches Loan Guaranty to Support SMEs in Zambia" <https://zm.usembassy.gov/usaaid-dfc-loan-guaranty/> (accessed 9 March 2023).

¹⁰³ Financial Insight "African Business News and Analysis. FNB Zambia conferred Best SME Bank Zambia 2022 and Best Innovative Bank Zambia" (2022) <https://fizambia.com/fnb-zambia-conferred-best-sme-bank-zambia-2022-and-best-innovative-bank> (accessed 9 March 2023).

¹⁰⁴ Standard Chartered "Business Instalment Loans is Standard Chartered Innovative Facility Targeted at SMEs" <https://www.sc.com/cn/en/business-sme/business-loans-working-capital/sme-business-instalment-loan/> (accessed 9 March 2023).

¹⁰⁵ Maimbo (n 12) 17.

out above, authors have been sceptical about the effectiveness of the Basel Accords. Kurian, for example, states that while international banking regulations (Basel norms) have existed since 1988, they have not stopped financial fraud. There is a concern that large banks might manipulate the current rules (Basel II) for their benefit, which could also undermine future regulations (Basel III). The initial reasoning behind these regulations is that the collapse of major banks destabilizes the entire financial system was as relevant when the first set of rules (Basel I) came out as it is today. Alternatively, without these regulations, banks would likely determine their own financial safety margins (equity levels), relying on the market to punish them for risky behaviour.¹⁰⁶

1.2 Research problem

Focusing on the Zambian context, this thesis will critically investigate the impact of the Basel Accords on smaller banks in developing countries, particularly in Zambia, where the Accords have been implemented. Are the Basel requirements conducive or obstructive to the establishment, development, and growth of such small financial institutions? The aim is to determine whether the present approach to financial regulation in Zambia is the most appropriate and, if not, to make substantive proposals on the way forward.

1.3 Research questions

To address the research problem, this thesis will interrogate the following research questions:

- a) How are small and medium banks regulated in Zambia, and how have they been affected by the central bank's adoption of the Basel Accords?
- b) What are the Basel Accords, and how do they operate in developing countries? Are the rules contained in the Accords used to regulate smaller banks any different from what is expected of larger banks?
- c) What are the main pillars of the Accords, and what effect does each pillar have on a small developing bank's ability to operate in a financial market? How do these pillars interface with the Core Principles for Effective Banking Supervision?
- d) How does Zambia compare with a country like South Africa, which has a large base of locally established small and medium-sized banks?

¹⁰⁶ Kurian "Basel and How it Has Never Worked. In the Hindu Business Line" <http://www.thehindubusinessline.com/opinion/basel-and-how-it-has-never-worked/article2811562.ece?> (accessed 10 August 2017).

- e) Are there alternative banking regulatory frameworks to the Basel Accords for developing countries to adopt that would foster and speed up the growth of small, indigenous banks? What position have the regional groupings (e.g. SADC, COMESA) adopted regarding the Basel Accords, if any, and what regional initiatives exist to support small to medium-scale banks regionally, and in Zambia in particular?

1.4 Hypothesis

There is a significant relationship between developing countries adopting the Basel Accords and the stifled growth and development of that country's small indigenous banks. The argument therefore is one for developing national institutions rather than depending on foreign institutions as the basis for a country's development.

Given the above assumption, it is arguable that small banks should have their own tailor-made bank regulatory rules to enable them to develop and flourish within a jurisdiction without being relegated to the back of the economy and ultimately insolvency, due to the unfair competitive disadvantage small banks have *vis-a-vis* the larger, more established banks. Some authors contend that the larger banks can easily manipulate the Basel Accords to their advantage. If this is true, then it appears logical that the larger (international) banks can use the Basel Accords as a means of weeding out competition in the jurisdictions in which they operate on the pretext of enforcing prudential regulation. In the case of low-income countries under the guidance of organisations like the IMF, the result would come at the cost of the small indigenous banks that are catering to the indigent of society.

Additionally, high capital requirements in their various forms appear to negatively impact smaller banks because the capital is locked away, effectively stifling growth in loans and therefore profitability, unlike larger banks, which already have large reserves because of their operations or being subsidiaries of multinational corporations. Equally, because the smaller banks are deemed to be riskier than the larger banks from the customers' perspective, they tend to attract smaller and riskier borrowers who do not qualify for loans from the bigger banks and who are less likely to make repayments because of their poor credit rating. Smaller banks also tend to attract deposits from less liquid depositors, as the larger depositors are risk-averse and willing to forgo lower interest rates for lower bank risk. All things being equal, the additional capital requirements are supposed to level the playing field, yet due to information asymmetry in low-income countries, financial market customers are often unaware of the impact of the additional capital requirements imposed on banks, one the working of the banking sector,

meaning that changes in perception are too small for increased capital requirements to act as a benefit to smaller banks.

1.5 Research methodology

The thesis adopts a critical and qualitative methodology. It will be a mixture of desk research composed of primary and secondary data, including policy documents, working papers, the Basel Accords and Core Principles, legislation, books, journal articles, and Internet sources.

1.6 Chapter layout

Chapter 1 maps out the study by providing the background to the research problem, questions, hypothesis, and methodology as well as the chapter layout. It is thus primarily focused on framing the study and does not engage in an extensive review of the literature or detailed analysis of the research findings. The chapter is confined to providing the foundational elements of the study, including the background, research problem, research questions, hypothesis, and methodology. Additionally, it offers an outline of the chapter layout to guide the reader through the structure of the dissertation. This chapter does not include detailed discussions of theoretical frameworks, data analysis, or results, which are addressed in later chapters.

Chapter 2 looks at the historical development of banking regulation in Zambia starting from about 1900 to 1964 when Zambia gained independence. It then examines the evolution of banking regulation from 1964 until 1991 when there was a significant change in the politics of the country as it shed its socialist cloak for a market economy.

Chapter 3 considers the jurisprudential underpinnings of the study. This part of the thesis seeks to understand the various factors and theories that explain the worldview of the various institutions like the IMF, the World Bank the BIS and the BCBS. It also explains the concept of neoliberalism and the various theories that are attached to this school of thought such as financialisation, corporatocracy, and globalisation. It further considers some of the theories of financial crisis and the justification for bank regulation.

Chapter 4 looks at the central theme of the work—the BCBS and the Basel Accords. In this chapter the various Basel Accords are examined, starting with Basel I. The study attempts to critique the various financial players by showing the inequality that exists between developed countries and developing countries' access and treatment of the Accords. It also seeks to

identify where the Basel Accords fit in, in terms of international law and whether they can be deemed international law or not.

Chapter 5 looks at the role of the regional groupings in attempting to mitigate the harshness of the Basel Accords. It examines how the concept of regionalisation fits into the concept of globalisation. It further critiques the operations of regional institutions like SADC and COMESA as agents of globalisation.

Chapter 6 assesses the impact of the Basel Accords on competition and in turn, how this relationship impacts small banks. The chapter considers the importance of small banks in a developing economy and why it is necessary to protect these institutions. It further analyses various relationships such as the relationship between competition and stability, competition and profitability, competition and banking risk, and so forth. It then considers some of the consequences of some of these relationships, particularly mergers and acquisitions. It also considers the impact of the Accords on competition to examine their possible effects on banks in general and small banks in particular. Finally, the chapter examines ways of protecting small banks via the “infant-industry” argument.

Chapter 7 conducts a case study of Zambia and the impact that the Basel Accords have had on Zambian small banks. Many of the concepts from the previous chapters are reintroduced to determine if the results are any different from what other developing countries experience.

Chapter 8 concludes the study and makes recommendations to address the challenges faced by small banks concerning the capital requirements set by the Basel Accords.

1.7 Conclusion

This introductory chapter is intended to lay down the background of the study in summary. The background attempts to introduce the subject matter of the thesis by considering the historical background of the various institutions, like the Bretton Woods Institutions, including the BIS and BCBS, which are central to the study. A brief history of Zambia and its relationship with these institutions is also outlined. With this background set, the problem statement for the thesis is provided. This is immediately followed by the objectives and the research questions. The hypothesis is also stated for the thesis so that it can act as a guide and sounding board to test the thesis and its outcome. The research methodology provides an overview of the methodology to be used, based mainly on desk-bound research, which involves an examination of various

authors' opinions in the field of study. Lastly, the chapter layout gives a brief outline of what will be covered in each chapter for the guidance of the reader.

The next chapter, Chapter 2, considers the historical development of banking regulation in Zambia in more detail, starting from 1900 up to 1964 when Zambia gained independence. The historical analysis stops short of 1991, just before significant changes occur in the economy with the introduction of plural politics.

CHAPTER 2

DEVELOPMENT OF BANKING REGULATION IN ZAMBIA

2.1 Introduction

Chapter One covered the introduction to the thesis by providing a clear rationale for the thesis and an outline of the argument that this thesis will support. Chapter Two will interrogate the historical development of banking regulation and the Basel Accords to set the groundwork for understanding forthcoming chapters. The science of law can only be understood by looking retrospectively at where that law emerges from. This retrospective analysis gives the reader a clearer view of the historical evolution of the studied subject matter. This is in line with Lord Byron's position that "*the best prophet of the future is the past.*"¹⁰⁷ In achieving this historical objective for banking, some authors tend to go as far back as the Code of Hammurabi.¹⁰⁸ to justify the existence of a formal banking system in its simplest form. For instance, it is recorded that:

*"... the temples became so rich that the concept of banking came up as an idea around the time of Hammurabi, in the 18th century BC the priests allowed people to take loans. Old Babylonian temples made numerous loans to the poor and entrepreneurs in need. The code of Hammurabi recorded interest-bearing loans."*¹⁰⁹

While it records a significant milestone historically, it is not the intention of the author to go that far back in terms of detail, especially since the study concerns more contemporary and complex forms of banking, like regulation, which was not evident in those ancient societies. Added to this, the fact that the historical work of that era lacks any certainty, as the processes are lost in the mists of antiquity, further discourages its use for scientific investigation.

2.2 The definition of a bank

This chapter aims to identify when the first rudiments of regulation came into being in the modern banking industry. But before delving any deeper, it is necessary to understand some of the main concepts used in the thesis. The late eminent economist Paul Samuelson emphasised

¹⁰⁷ WisdomQuotes.com "210 History Quotes" <http://wisdomquotes.com/history-quotes/> (accessed 13 July 2017).

¹⁰⁸ Wilcox *et al.* "The History of Banking: Early Banking in Ancient Times: Banking Across Different Civilisations and Kingdoms" Sutori <https://www.sutori.com/en/story/the-history-of-banking-XEGQ38urQ9jcAGaocDmHmgD> (accessed 16 March 2023) 1.

¹⁰⁹ Ibid.

that unless one knows what animal they are dealing with definitionally, they are likely to go off track when carrying out their research.¹¹⁰ This rationale applies to the study of law even more because the law, by its nature, requires concise definitions of concepts and words to operate efficiently while carrying out justice in the courts of law and researchers' desks. These rules are equally important when establishing workable definitions of what constitutes a “bank”. The purpose of which is quite widely defined. This results from the fact that many financial institutions that are taken for granted today were a novelty or did not exist 200 or 300 years ago before formal banking began. Nevertheless, with time and sophistication, the definition of a bank has changed markedly to accommodate the level and form of banking sophistication. The evolution of banking is thus the evolution of the definition of a bank itself.

To add further complexity to the matter, legally speaking, a bank must be clearly defined. Judge Salmon echoed this in deciding the case of *Woods v Martins Bank Limited*,¹¹¹ where he posited that the question of what a bank is:

*“Will be answered differently from time to time and place to place and that the nature of the banking business at any particular time depends on the surrounding circumstances and must be a matter of fact as well as of law.”*¹¹²

Despite attempting to define a bank, the *Woods Case* appears to have fallen short of “*clearly distinguish[ing] a banker from a dubious money lender.*”¹¹³ It was not until the English case of *United Dominions Trust (UDT) v Kirkwood*¹¹⁴ almost a decade later, Lord Denning, in the *ratio decidendi*, tried to clarify a bank’s meaning more lucidly as a means of creating a working definition for it. The *UDT Case*, as it is commonly referred to, has since become the cornerstone of defining the main constitutive elements required to describe a bank under the common law. More particularly, that:

“Bankers (i) accept money from and collect cheques for their customers and place them to their credit; (ii) honour cheques or orders drawn on them by their customers when

¹¹⁰ Samuelson *Economics* International Student Edition (1970) 1–20.

¹¹¹ [1959] 1 QB 55 at 56.

¹¹² Penn & Shea: *The Law Relating to Domestic Banking* 2 ed (2000) 91.

¹¹³ Ibid.

¹¹⁴ [1966] 2 QB 431–437.

presented for payment and debit their customers accordingly, and (iii) keep current accounts in which the credits and debits are entered.”¹¹⁵

Notwithstanding the above definition, while it holds, the core pillars of the definition appear to be rather simplistic when compared to today’s complex banking processes that no longer only deal with bank accounts and depositing and paying of cheques but with derivatives and other complex financial transactions that often fall outside the ambit of the standard definition. To bridge the gap, legislation has been introduced in many instances to keep the definition current. A good case in point is to compare how the first *Zambian Banking Act*,¹¹⁶ and the modern *Banking and Financial Services Act (BFSA) 2017*¹¹⁷ define a bank. The *Zambian Banking Act*’s definition of a bank

“ means any person who carries out banking business [and] ‘banking business’ means the business of accepting deposits of money withdrawable or payable on demand or after a fixed period or after notice and the making of advances to customers.”¹¹⁸

The *BFSA (2017)* which constitutes the statutory definition of a bank, defines a bank and banking business under Part 1 section 2 of the Act as:

“Bank’ means a company authorised to conduct banking business by this Act...[and]... ‘banking business’ means:

- (a) receiving deposits including chequing and current account deposits, and the use of the deposits either in whole or in part for the account or at the risk of the person carrying on the business to make loans, advances or investments;*
- (b) providing financial services; and*
- (c) owns or controls a customer or the person on whose behalf a transaction is conducted and where two or more persons are associated through the beneficial ownership of shares in the same company each person shall be a beneficial owner of the aggregate number of shares in the company.”¹¹⁹*

¹¹⁵ [1966] 2 QB 431–437.

¹¹⁶ *Banking Act 1971* Part 1 Section 2(1); Chapter 700 of the Laws of Zambia.

¹¹⁷ *Banking and Financial Services Act (BFSA) No 7 of 2017*.

¹¹⁸ *Banking Act 1971* Part 1 Section 2(1); Chapter 700 of the Laws of Zambia. 6.

¹¹⁹ n 118.

Despite the identifiable similarities between the two definitions, there is a clear indication that the definition of what constitutes a bank is made up of more than just collecting and paying cheques, as defined in the *UDT Case* in the BFSA (2017) definition. Accordingly, it is submitted that this definition will continue to evolve in line with the development of a bank's operations.

Now that one of the essential constituents of the definition of a bank has been covered, the second most important concept that requires clarification is the meaning of regulation.

2.3 What is regulation?

When the definition of regulation is examined, it is clear that it exhibits a dynamic and multifaceted character, so much so that one of the significant problems of defining regulation is that it is not strictly a legal concept, but rather a general one that is open to all forms of interpretation depending on, among other things, the area it is trying to address and the context in which it is being used. There are, therefore, multiple definitions for regulation and it is vital to settle on the one that makes the most sense for purposes of this thesis. The definition offered by *Collins English Dictionary* provides a working definition. For our purpose, it defines regulation as: “[r]ules made by a government or other authority to control the way something is done or the way people behave.”¹²⁰ However, reliance on a dictionary definition does not do sufficient justice to the concept's depth and spread.

Authors like Julia Black have taken up the mantle of attempting to plumb the depths of the idea to unravel and bring out all the nuances of the relationship between law and regulation. To do this, she has asked three pertinent questions. First, how does the common understanding of the law help us understand the nature of regulation? Penultimately, in what ways does regulation challenge us to reconsider our understanding of the law? Lastly, Black asks whether social forces are within or without the concept of law and regulation.¹²¹ This study will not attempt to examine the various concepts of Black's work in the same depth, as it would significantly detract from the initial problem statement of the thesis. However, many of the ideas and arguments may implicitly be considered in the thesis and thus, it is hoped the thesis may

¹²⁰ *Collins English Dictionary*; compare also Black's Law Dictionary 8 ed 113; *Oxford Paperback Dictionary* 4 ed 674; *Collins Dictionary of Law* 2 ed 331.

¹²¹ Smith “What is Regulation? A Reply to Julia Black” 2002 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ajlph27&div=5&id=&page=> (accessed 17 March 2023); Black “Rules and Regulators” *Oxford Academic* (1997) <https://doi.org/10.1093/acprof:oso/9780198262947.001.0001> (accessed 17 March. 2023).

implicitly enrich Black's ideas further in a minimal way. Given the preceding, it is logical to predict and expect that, as the behaviours of the regulated entities change according to the influences of the moral compass of the "right thinking members of society" over time, so too, the way the regulatee is regulated by the regulator will change consequently.

The final concept to be explored is that of prudential regulation. According to the Australian Prudential Regulation Authority (APRA), prudential regulation is a legal framework focused on the financial safety and stability of institutions and the broader financial system.¹²² Prudential regulation differs from ordinary regulation in that it is deemed proactive or forward-looking rather than reactive and static in nature. Equally, it consists of two main heads: micro-prudential regulation, which looks at individual firms and macro-prudential regulation, which looks at the whole financial system.¹²³ Now that some major concepts have been established, it is time to consider the historical background of where banks came from.

2.4 An overview of the historical evolution of banks

This study begins its historical timeline from the 12th century, or the time of the influential Genovese family, the de' Medicis, from where modern banking is said to have derived its origin. From this point onwards, the development of banking in Europe, England, North America, and Africa is examined, albeit quite briefly. From the point of view of this study, it will be noted that the American connection will be less regarded initially because of the weak historical links between the United States and Zambia before the establishment of the Bretton Woods Institutions. However, this position changed significantly post-Bretton Woods due to the global influence of these institutions on international banking. Therefore, the second and more detailed historical study will examine the evolution of banking in Zambia from both the pre- and post-independence periods. This task will be simple because Zambia shares a mutual historical background with other Commonwealth countries; they were former colonies and protectorates of the United Kingdom at one stage in their political and, more importantly, financial evolution.

Inherent within the historical analysis hereafter is a golden thread that attempts to show, where research allows, the growth and evolution of Zambian regulation over the years; and the fact

¹²² Australian Prudential Regulation Authority (APRA) "What is Prudential Regulation?" <https://www.apra.gov.au/what-prudential-regulation> (accessed 16 March 2023).

¹²³ Morris *The Law of Financial Services Groups* (2019) 57.

that regulation has continued to be accessed from the colonial power and its international associates, despite the country's independence. It will also evidence the gradual development of the indigenous banks; and try and show how regulation in certain instances was strong despite the lack of solid international regulatory policies that exist today under the Basel Accords. Finally, it will also attempt to show that a centrally planned government does not typically suffer bank closures without offering an alternative solution for its clients. In its nascent form, the history of banking as we know it today results from a nexus of not only customs, economics, politics and law but also influence and chance.

Early banks in England appear to have lacked any formal definition, either statutorily or under the English Common Law and Equity. As alluded to earlier, the Italian de Medici family was the first family of Renaissance investors to create a rudimentary form of modern banking. However, over time their prominence and influence waned and was usurped by the Fuggers, a German dynasty that peaked during the 15th and 16th centuries.¹²⁴ While the history of their evolution and involvement in politics with the nobles of the day is not part of the scope of this thesis, it is worth noting that they were very influential and lent money to several royal houses to fund both government projects and wars. In short, the Fuggers were predominantly financiers to the European royalty of the day.¹²⁵

By the end of the 16th century, however, the Fuggers stopped financing borrowers altogether, preferring instead to enjoy the aristocratic existence that their work had earned them, so much so that by the onset of the 17th century, there was a marked change in how banks did business.¹²⁶ From being financiers to the aristocracy and governments of the day, banks shifted their business focus to provide commercial services to the general public rather than serve the unique needs of kings and the nobility. Thus, banks became conduits for economic development.¹²⁷ Moreover, during this period, the type of regulation that existed was based on private initiatives, such as those initiatives that were controlled by guilds rather than by national and international

¹²⁴ The de Medicis were a well-to-do and influential Italian family that wielded political and financial power over Europe in the first half of the 15th century through the Medici Bank. See Goldthwaite "The Medici Bank and the world of Florentine capitalism" 1987 *Past & Present* 114 3–31.

¹²⁵ Häberlein *The Fuggers of Augsburg: Pursuing Wealth and Honor in Renaissance Germany* (2012) (Charlottesville: University of Virginia Press). See also, Ehrenberg *Capital and Finance in the Age of the Renaissance: A Study on the Fuggers and Their Connections* (1985, repr Fairfield, NJ: Kelley

¹²⁶ Häberlein (n 126); Ehrenberg (n 126).

¹²⁷ Häberlein (n 126); Ehrenberg (n 126).

rules as they exist today.¹²⁸ The coincidence is uncanny, especially since the roots of the Industrial Revolution had created the demand for capital.

With the shift in banking mode, came the development of novel instruments like cheques, where bills of exchange had previously been the primary means of conducting financial transactions.¹²⁹ The evolution of the cheque, which is a type of bill of exchange, requires that it be payable by a bank to whoever is the cheque holder.¹³⁰ This requirement spurred the growth of banks, which resulted in a situation where the use of cheques was restricted to financial institutions that were recognised as banks by the various organisations of the time.¹³¹

The transformation of financial institutions from money lenders to private banks evolved gradually over the 16th and 17th centuries. In Britain, this evolution was marked by the conversion of informal money lenders into formal bankers. These bankers were often of Jewish descent.¹³² However, banks were already acting as custodians of value by accepting gold for safekeeping and issuing out “IOUs,” better known as promissory notes, in return. Since banks had surplus amounts of gold lying dormant in their vaults, they often lent out a percentage of the surplus they had at interest,¹³³ and hence, the concept of private banking was born. These acts and the issuance of promissory notes eventually led to the idea of gold-backed currency between 1821 and 1914, which ultimately ended with the failure of the par value system in 1973.¹³⁴

Early banks appear to have suffered two dilemmas among many others. The first dilemma was related to the type of association that characterised the early banks at the time—that of being registered as a partnership for want of a better business association. Secondly, a need to

¹²⁸ Häberlein (n 126); Ehrenberg (n 126).

¹²⁹ Häberlein (n 126); Ehrenberg (n 126).

¹³⁰ Häberlein (n 126); Ehrenberg (n 126).

¹³¹ Penn (n 113) 93.

¹³² BritishHistory.co.uk “Bank of England” <https://www.british-history.ac.uk/old-new-london/vol1/453-473> (accessed 13 July 2018).

¹³³ Ibid.

¹³⁴ The par value system refers to the international fixed exchange rate system introduced by the Bretton Woods Institutions, where USD35 was equivalent to one ounce of gold. Other countries pegged their currency to this exchange rate from 1944 to 1971, when the exchange rate system collapsed because of pressure in the United States economy. After the Smithsonian Agreement of 1971, which tried to salvage the system, the exchange rate was amended and pegged at USD38 to one ounce of gold. This did not help save the system and led to its final collapse where it was replaced by a flexible exchange rate regime in 1973. See De Vries “Twenty Years with Par Values, 1946–1966” 1966 *Finance & Development*. 283–289.

establish an organisation that could act as a “lender of last resort”¹³⁵ to mitigate or forestall possible future insolvencies by individual banks resulting from a lack of adequate capital by a commercial bank.¹³⁶ In other words, the first semblance of financial regulation was initiated, albeit in a very rudimentary form.

Concerning the former dilemma, over the 19th century, the British banking system was in a state of flux.¹³⁷ The reason was that most of the banks were established as small partnerships, as there was no better form of business organisation to accommodate the banking business.¹³⁸ This meant that most banks needed to be bigger and able to provide substantial financing to their customers. Additionally, because of their size, these banks could not withstand adverse conditions such as economic downturns or other financial crises.¹³⁹ Consequently, many of these banks failed.

During the period of the Bank Restriction Act of 1797–1821, the Bank of England's obligations to exchange currency for Gold were suspended by the Government due to a shortage of gold reserves in the country. It was, however, restored by the British government in 1821.¹⁴⁰ The standard was to have long-term ramifications for world finance, as seen in later chapters.¹⁴¹ It was not until 1825 that banks could operate as joint-stock companies, which came on the back of the Bubble Act 1720, the doctrine of limited liability, and the veil of incorporation associated with limited companies. The conversion of these banks from partnerships to limited liability companies set the stage for rapid growth in banking due to the marked increase in bank stability

¹³⁵ BritishHistory.co.uk “Bank of England” <https://www.british-history.ac.uk/old-new-london/vol1/pp453-473> (accessed 13 July 2018).

¹³⁶ When all other choices have been exhausted and you desperately need money, you turn to a lender of last resort. Similarly, when banks are unable to obtain the capital they require for their regular operations, they often turn to the central bank as their lender of last resort. See HistoryAndPolicy.org “Planning for the Bicentenary of the Abolition of Slavery and African Emancipation in 2033–2038” <http://www.historyandpolicy.org/policy-papers/papers/british-and-american-banking-in-historical-perspective-beware-of-false-prec> (accessed 13 July 2018). See European Central Bank “What is a Lender of Last Resort?” (26 August 2019) <https://www.ecb.europa.eu/ecb/educational/explainers/tell-me-more/html/what-is-a-lender-of-last-resort.en.html> (accessed 13 July 2018).

¹³⁷ Ibid.

¹³⁸ n 137.

¹³⁹ n 137.

¹⁴⁰ The restriction period came into being in England with the enactment of the Bank Restriction Act 1797 which was an Act of Parliament of Britain (37 Geo. 3. c.45). This Act removed the requirement of the Bank of England to convert banknotes into gold. This restriction lasted until 1821 when convertibility was once again restored to the Bank of England or the Old Lady of Threadneedle Street as she is affectionately known.

¹⁴¹ n 137.

that came with the separation of the business from its owner. The eventual consequence of this growth, according to Michie and Mollen, was that the expansion of banking operations enabled financial institutions to effectively manage their workforce. This was done through recruitment, training, and oversight, which led to a better understanding of the risks associated with long-term lending using short-term funds. Access to public investment allowed banks to accumulate significant capital because they created a more stable financial foundation than partnerships. Furthermore, the development of an interbank money market facilitated efficient resource utilisation, enabling banks to lend surplus funds and address temporary liquidity shortages.¹⁴²

The solution to the second problem of “lender of last resort” led banks to enter a private initiative where various private banks came together and set up a bank that could act as a lender of last resort to them.¹⁴³ As a result, the Bank of England was set up. The bank originally started as a joint stock company¹⁴⁴ in 1694, when the Scottish businessman William Peterson was asked to set up a bank by the British government, by arranging a loan of £ 1,200,000 for them to finance a war against France.¹⁴⁵ After this, the 18th century saw the Bank of England take on further tasks associated with a modern-day central bank, such as organising the sale of government bonds when funds were needed, acting as a clearing bank to the government departments including processing their daily transactions and, most importantly for our purpose, becoming a banker to the other commercial banks.¹⁴⁶

Since all the commercial banks at that time were using the Bank of England as a lender of last resort in the event of a liquidity crisis, the Bank of England, as the central bank, needed a large reserve of gold to finance those intermittent crises. The Bank of England thus required that the commercial banks hold a certain amount of gold as a form of surety, which eventually led to the central bank keeping almost all the commercial banks’ bullion (gold) in its vaults as

¹⁴² n 137.

¹⁴³ HistoryWorld.net “Plain Text Histories” <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?ParagraphID=idu> (accessed 20 December 2017).

¹⁴⁴ A joint-stock company is a precursor to the limited company. A joint stock company typically issues stock and requires that shareholders become liable for any debts incurred by the company. See Britannica “*Joint-Stock Company*” (2010) *Encyclopedia Britannica* <https://www.britannica.com/money/joint-stock-company>.(accessed 13 July 2018).

¹⁴⁵ n 137; Bordo “A Brief History of Central Banks.” <https://www.clevelandfed.org/publications/economic-commentary/2007/ec-20071201-a-brief-history-of-central-banks> (accessed 13 July 2018).

¹⁴⁶ n 137.

security.¹⁴⁷ Effectively, by the late 19th century, Britain possessed a central bank that was experienced in supporting the banking system's stability by acting selectively to avoid moral hazard.¹⁴⁸

2.5 Bank regulation before the 1900s

The development of the financial system can be seen as evolutionary, as regulation tends to grow in line with the developments and needs of the day and to support institutions that require funding. Regulation existed in tandem with the growth of the financial sector, but it was mainly at a local rather than international level. Many authors posit that regulation existed and was rather strict, but because it was based on the various private guilds, it was disjointed and applied narrowly, as it had neither national nor international influence.¹⁴⁹

Ogus¹⁵⁰ argues that the rules and origins of modern-day regulatory law lie much deeper than the eighteenth century and can be traced back to the Tudor and Stuart periods¹⁵¹ in English history, where trade and industry were subjected to very detailed legislative controls.¹⁵² As a result, regulation could be split into direct regulation and self-regulation.¹⁵³

¹⁴⁷ n 137.

¹⁴⁸ n 137.

¹⁴⁹ Ogus *Regulation: Legal Form and Economic Theory* (1994) 2–7 <https://www.bloomsburycollections.com/book/regulation-legal-form-and-economic-theory/> (accessed 13 July 2018).; Ogus (ed) 'Introduction' in *Regulation: Legal Form and Economic Theory* (2004) 1–12.

¹⁵⁰ Ibid. 2–7.

¹⁵¹ University of the Fraser Valley "Early Modern Studies: Tudor-Stuart England" <https://libguides.ufv.ca/c.php?g=320458&p=2139507> (accessed 13 July 2018); Britannica Money "House of Tudor" <https://www.britannica.com/topic/House-of-Tudor> (accessed 13 July 2018); Guy *Tudor England* (1988) 32. The Tudor period in British history began in 1485 CE and lasted until 1603 CE. It eventually ended with the reign of the famous Tudor queen, Elizabeth I. The Stuart period came immediately after this and lasted approximately 111 years from 1603 CE to 1714 CE.

¹⁵² Ogus (n 150) 2–7.

¹⁵³ Ogus (n 150) 2–7.

Self-regulation was mainly associated with the guilds,¹⁵⁴ which were given *carte blanche* over rights of production at the onset of the Industrial Revolution.¹⁵⁵ Still, regulation was a private phenomenon rather than a public one and was outside the ambit of government control.¹⁵⁶

The trade regulation that was established by the guilds had all but disappeared by the advent of the mid-18th century. Albert Venn Dicey¹⁵⁷ is credited with the growth of regulation as a 19th-century development, which resulted in collective disenchantment by the masses due to the inequality fuelled by the electoral franchise dominated by the *laissez-faire* movement¹⁵⁸ and the blooming of the English Industrial Revolution.¹⁵⁹

The main difference between regulation under the guilds and regulation in the 19th century was the deliberate creation of administrative structures to diagnose problems and formulate solutions to regulatory issues.¹⁶⁰ In short, regulation had been introduced into the public domain to impose order and structure in various systems and institutions.

Turning our attention to Africa, south of the Sahara, it is common knowledge that while banks were evolving in England in the 18th and 19th centuries, imperial powers, including Britain,

¹⁵⁴ Guilds are a group or association of tradesmen that do similar things, e.g. stonemasons. See Bosshardt & Lopus “Business in the Middle Ages: What Was the Role of Guilds?” 2013 *Social Education* 77 64–67.

¹⁵⁵ In modern history, the Industrial Revolution was the transition from an agrarian and handicraft economy to one dominated by industry and machine production. These technological advancements brought about unique working and living arrangements and radically altered society. The 18th century saw the start of this process in Britain, which then expanded to other regions of the globe. The English economic historian, Arnold Toynbee (1852–1883), originally popularised the phrase Industrial Revolution to characterise Britain’s economic growth from 1760 to 1840, even though French writers had used it earlier. See Britannica, T. Editors of Encyclopaedia (2024, June 2). Britannica Money “Laissez-Faire” <https://www.britannica.com/topic/laissez-faire> (accessed 2 June 2024).

¹⁵⁶ Ogus (n 150) 2–7.

¹⁵⁷ Ogus (n 150) 2–7.

A V Dicey held the Vinerian Chair of English Law at Oxford University between 1882 and 1909 and is widely regarded as the high priest of orthodox constitutional thought in Britain. Dicey, a follower of John Austin, was the first to apply this legal positivist method to the study of constitutional law in Britain.

¹⁵⁸ *Laissez-faire* is a French word that means “allow to do”, and it refers to a policy of little government intervention in people’s and society’s economic matters. Although the phrase’s origin is unknown, folklore indicates that it was inspired by the response that industrialists gave when King Louis XIV of France’s comptroller general of finances, Jean-Baptiste Colbert, asked them what the government could do to support business: “Leave us alone”. The Physiocrat economists, who were influential in France from roughly 1756 to 1778, are typically linked to the *laissez-faire* philosophy. As classical economics evolved in Britain under the influence of Adam Smith, a Scottish philosopher and economist, and his book *An Inquiry into the Nature and Causes of the Wealth of Nations*, the *laissez-faire* philosophy got great support. See Britannica Money “Laissez-Faire” <https://www.britannica.com/topic/laissez-faire> <https://www.britannica.com/topic/laissez-faire> (accessed 2 June 2024).

¹⁵⁹ Ogus (n 150) 2–7.

¹⁶⁰ Ogus (n 150) 2–7.

were partitioning and colonising the African continent. According to Abdul and Noraziah,¹⁶¹ colonialism, which first appeared in the late 18th century, was regarded as the best system for exploiting less developed nations. Colonialism, therefore, influenced African business law as most aspects of the law about the operation of businesses within Africa were adopted from the legal system of the colonial masters.¹⁶²

From an African perspective, it was also the beginning of the era of what can be termed as “acquired regulation”, albeit very weakly. According to Takwi:

*“In addition to language and religion, the legal system was another aspect of colonial culture that the countries of [s]ub-Sahara Africa inherited from the colonial rulers. This legal system was a direct consequence of the common law used by Britain or the civil law used by France.”*¹⁶³

In its nascent form, the colonialist rolled out regulations to all its British Overseas Territories, be they colonies, protectorates, or any other form of colonial administration, and thus began the adoption of acquired laws and procedures in those areas of influence, including finance.¹⁶⁴ Xiao points out that the rise and dominance of British overseas banks worldwide during the 19th century were crucial in accelerating the globalisation of finance.¹⁶⁵ This was done by what he terms “the first mover advantage” that maintained the position of British banks.

2.6 Northern Rhodesia under the BSA Company (1890–1924)

It follows logically to examine the history of regulation in Zambia from its colonial roots to understand its progression. To do that, various periods will be reviewed. Firstly, an attempt will be made to look at regulation in the era of early British colonisation from around 1899 to about 1953, and then from 1953 to 31 December 1963, when the Federation was dissolved in preparation for the independence of the two Rhodesias (Northern and Southern) and Nyasaland

¹⁶¹ Abdul & Noraziah “Tracking the Pre- and Post-Colonial Banking: The Quest for Islamic Banking” 2010 *Prosiding Perkem Journal* 173–184.

¹⁶² Takwi “The Influence of Colonial Culture on the Banking Systems of Countries in Sub-Saharan Africa” 2022 *International Journal of Science and Research* 375–381.

¹⁶³ Ibid. See a more detailed exposition on the topic in Merry “From Law and Colonialism to Law and Globalization” 2006 *Law & Social Inquiry* 569–590.

¹⁶⁴ Takwi (n 163) 375–381.

¹⁶⁵ Xiao “Why British Banks Dominated Colonial Financial Markets for so Long” London School of Economics (LSE) <https://blogs.lse.ac.uk/economichistory/2022/03/08/why-british-bnaks-dominated-colonial-financial-markets-for-so-long/> (accessed 8 March 2022).

(now Malawi). Further, regulation in post-independent Zambia will be explored, and the evaluation thereof divided into two main periods.

The first period under the post-independence heading will cover 1964 to 1991. This era was characterised by a shift in the country's political philosophy from a market-led economy remnant of the colonial government to one based on a blend of African socialism known as Humanism and mainstream socialism.

Kenneth Kaunda created "Humanism" as a guiding philosophy for post-independence Zambia. This ideology, detailed in his 1966 book and made the national philosophy in 1967, aimed to shape Zambia's national identity and economic strategy. Humanism provided a moral and ideological framework for building the nation, blending socialist, Christian, and traditional African values. While it resembled other African socialist movements, Kaunda emphasised its uniquely Zambian origins, claiming its core principles—communalism, inclusivity, equality, and mutual support—were inherent in precolonial Zambian society. He presented this philosophy to the UN as a distinct African economic model, rooted in traditional cooperation, offering it as an alternative to capitalist, socialist, and communist systems.

"Kaunda developed a philosophy and a vision for postcolonial Zambia that he called 'Humanism'. Outlined in a book that appeared in 1966, and declared the Zambian national philosophy in 1967, Humanism was to form the foundation of Zambia's national identity and the blueprint for its economic development (Sekwat 2000: 523). The ideology offered a moral and ideological basis for nation-building, and it reflected a merger of socialist, Christian and traditional values (Kanu 2014: 376). While Humanism shared many similarities to African socialism articulated in other postcolonial states, Kaunda insisted that it was a homegrown philosophy deeply rooted in local traditions. He claimed that the values underlying Humanism, such as communalism, inclusiveness, egalitarianism and mutual aid, were the defining features of precolonial societies (Meebelo 1973: 1–5). As he said in his address to the United Nations (UN) General Assembly following independence: 'Our economic life has always been based on what I should like to describe as traditional cooperative way of living. This is the African substitute for the capitalism, socialism and communism of the

*East and West. We offer it as our contribution to the world sum of experience.” (Legum 1966: 195)*¹⁶⁶

The stance of the country to take on socialism can be explained by the fact that the world itself was struggling under a polarised capitalist-communist philosophical conflict called the “Cold War,”¹⁶⁷ that intended to directly influence those newly independent countries as a means of acquiring them as satellites over time. This would mean that the Zambian government would need to pick a system of government that reflected its philosophy as a country. It also meant picking an economic philosophy that would help the country catch up in terms of development with other developed countries and live up to its promises to its electorate in terms of providing high living standards. Upon independence in 1964, President Kenneth Kaunda said that his wish was “for Zambians to have an egg on their table for breakfast every morning (or an egg a day policy), a pint of milk and for every Zambian to have a pair of shoes on their feet.”¹⁶⁸

The second and more current period from 1991 to date will be examined to evaluate the consequences of the earlier decisions made at independence, as well as their impact and development on the financial sector. In this period, there was an unravelling of the socialist philosophy as a tired and almost insolvent government struggled to meet the needs of a rapidly growing and impatient populace. Accordingly, this era saw the introduction of Structural Adjustment Programmes (SAPs) and the expansion of statutes relating to commercial laws to encourage local and international investment support and grow the new dispensation.

¹⁶⁶ Schler “*Uns* Paris: Éditions de la Maison des sciences de l’homme” (2021) <https://doi.org/10.4000/books.editionsmsh.51525> (accessed 17 March 2023).

¹⁶⁷ The Cold War resulted from the post-World War II competition between the United States and the Soviet Union and its allies and was an open but restrained conflict. There was little use of actual weapons throughout the Cold War; instead, it was fought on fronts of politics, economics, and propaganda. The English author, George Orwell, used the phrase, “Cold War” to describe a nuclear standoff between “two or three monstrous super-states, each in possession of weapons by which millions of people can be wiped out in a few seconds” in a piece that appeared in 1945. During a congressional debate at the State House in Columbia, South Carolina, in 1947, American businessman and presidential advisor Bernard Baruch also used the term for the first time, “Cold War” in Congress to describe a standoff between two countries.

¹⁶⁸ ZimFieldGuide.com “Kenneth Kaunda who Died on 17 June 2021 aged 97, the Last of Africa’s True Independence Leaders and One of the Few that Stepped Down” <https://zimfieldguide.com/harare/kenneth-kaunda-who-died-17-june-2021-aged-97-last-africa%E2%80%99s-true-independence-leaders-and-one> (accessed 24 March 2023); Schler & Gez “Development Shadows: The Afterlife of Collapsed Development Projects in The Zambian Copperbelt” 2018 *Africa Spectrum* 3–31.

2.7 Early British Colonialism (1899–1964)

It is a fact that the area known as Zambia today was at the Iron Age level before the incursion of the British, Portuguese, German, and French explorers and missionaries, and as such, the mode of exchange of value was mainly through barter trading. At this time, the means of exchange of value in this area of the African continent was fundamental. As such, there was no sophisticated financial system in place, nor any indication that metals such as copper and iron were kept in a simple bank repository, as happened in Europe with gold and other precious metals. On the arrival of the British to spearhead their commercial and political interests in South Central Africa, Cecil John Rhodes scouted the African landscape for opportunities to exploit by making concessions in his attempt to create his dream of a Cape to Cairo railway for the imperial majesties in England. Due to the territory's relatively undeveloped status at the time, the non-monetary medium of exchange evolved quickly when proper money was thrust into the local economy in the form of English and South African currency used at the time.¹⁶⁹

To put things into perspective, when the white settlers moved north into Northern Rhodesia, South Africa already had a functioning and flourishing financial sector (for example, the first bank, Lombard Bank, was established in Cape Town in 1793.¹⁷⁰ Equally, but much later, the Johannesburg Stock Exchange was established in 1886 to support prospectors after the discovery of gold on the Rand). By 1902, South Africa was already a self-governing dominion of the British Empire. It appears that a central bank took much longer to establish, as the South African Reserve Bank was only opened in 1921 after having been established under the provisions of the Currency and Banking Act of 1920,¹⁷¹ with its first banknote being issued around 1922.¹⁷² Before this, notes were issued by various commercial banks respectively.¹⁷³

Southern Rhodesia (now Zimbabwe) had always been more developed than its neighbours to the north since it had been designated a white colony. For example, the first stock exchange was established as far back as 1891¹⁷⁴ (almost 4 years after the South African Stock Exchange)

¹⁶⁹ Note that there are various short forms of representing the British South Africa Company such as: BSAC, BSACo, BSA Company.

¹⁷⁰ Gelb *The Origins of the South African Reserve Bank* (1984) 1–39.

¹⁷¹ Currency and Banking Act No 31 of 1920.

¹⁷² Gelb (n 171) 1–39.

¹⁷³ Gelb (n 171) 1–39.

¹⁷⁴ Karekwaivenani *A history of the Rhodesian Stock Exchange: The formative years, 1946–1952* Zambezia (2003) 9–34. Trading of stocks and shares in Zimbabwe goes back to 1891 when the first stockbroking firm was opened. The first Stock Exchanges were set up a few years later in 1894 in Salisbury and Bulawayo. Later, two other

in Southern Rhodesia, and it introduced its first banknotes in 1896 in £1 and £5 (pound) notes. This was effected by the private bank, Standard Bank of South Africa, placing Southern Rhodesia far ahead of its sisters, Nyasaland, and Northern Rhodesia.¹⁷⁵ This is made clear in the following excerpt from the British Colonial Office, which shows the use of a Southern Rhodesia tender by Northern Rhodesia:

*“NORTHERN RHODESIA (1889) Unit: £ s. d. Legal tender: Southern Rhodesia Currency Board coins and notes (5/-, 10/-, £1, £5), and U.K. coins; see General note (ii) below. Other media: East and South African currency; see General Note (ii). General notes: i. Originally under the British South Africa Chartered Company, the territory became a Crown Colony in 1924. ii. Until 1931, the only legal tender was U.K. coins, including the sovereign. In practice, gold did not circulate, but instead, the notes of the Standard Bank of South Africa and Barclays (Dominion, Colonial, and Overseas) issued for Southern Rhodesia were used. After the abandonment of the gold standard by the United Kingdom, the legal position of these notes in respect of redemption was obscure, but these notes and Bank of England notes were made legal tender (1934) and parity with sterling was maintained by the banks. In 1939, the Southern Rhodesia Currency Board was set up under the Colonial Sterling Exchange accordingly being withdrawn, and United Kingdom notes are no longer accepted. There is some circulation of East African notes and coins and South African silver, brought in by migrant labour and exchanged at par and repatriated. iii. Banks: Standard Bank of South Africa and Barclays (Dominion, Colonial, and Overseas).”*¹⁷⁶

In 1921, the British government decided to acquire Northern Rhodesia as a protectorate, and as a result, it chose not to renew the British South Africa Company (BSACo) charter to govern Northern Rhodesia. In 1924, the BSACo officially handed over power to Britain, and Northern Rhodesia formally became a protectorate and not a colony, as Southern Rhodesia was. This was done by issuing the Northern Rhodesia Order in Council Act of 1924.¹⁷⁷ Despite this shift,

exchanges emerged in Gwelo and Umtali around 1898. These exchanges were intended to meet the capital needs of the gold mining industry, whose rapid expansion was fuelled by rumours of a ‘Second Rand’ in Southern Rhodesia.⁶ During this period, the London and Johannesburg exchanges also saw the listing of Rhodesian enterprises seeking to raise capital.’

¹⁷⁵ Shannon “The Modern Colonial Sterling Exchange Standard” Hansard 347 (9 November 1950) <https://www.elibrary.imf.org/view/journals/024/1952/001/article-a005-en.xml> (accessed 24 March 2023).

¹⁷⁶ Ibid. 343.

¹⁷⁷ Northern Rhodesia Order in Council, 1924, S.R.O 1924 No 324, S.R.O & SI Rev VIII 154. The Northern Rhodesia Order in Council Act essentially transferred power from the administrator, BSACo, or vested in the South African High Commission to the British government in 1924. Thus, changing administration from the

the BSACo was allowed to maintain its mineral rights in Northern Rhodesia. The reasons for the handover are unclear, and some historians have suggested that the BSACo lacked adequate finance to continue pursuing its objectives in the area. However, the new status brought the proper use of money into the territory as the British established their administrative status in the jurisdiction. The first bank to establish a branch in Zambia was Standard Bank, which opened in 1906 in the Kalomo district of Southern Province, followed by Barclays Bank, which opened a branch in Fort Jameson (now Chipata) in 1918. The branches were run out of South Africa and England as there was no established central bank in the territory at the time to manage these banks. The “Annual Report of the Colonies, Northern Rhodesia, 1924–25” states that most banking business in the southern region was handled by South African institutions. Standard Bank of South Africa had branches in Livingstone and Lusaka, while the National Bank of South Africa operated a branch in Broken Hill (now Kabwe) and an agency at Bwana M’Kubwa. In terms of currency, English coinage was often used, even though Southern Rhodesian bank notes and coins were the dominant currency in circulation, with South African currency also being accepted as legal tender, as Zambia had no local money notes or coins of its own at the time.¹⁷⁸

The report appears to be erroneous as it fails to mention the existence of Barclays Bank for some reason, but be that as it may, Ailola describes the regulatory effects on the financial system as having only two banks in Northern Rhodesia. He posits that before and following 1911, no dedicated banking laws were established. This lack of legislation likely stemmed from limited banking presence in Northern Rhodesia, only Standard Bank and Barclays Bank operated branches. Consequently, there was insufficient demand for regulatory control. Even after the formation of the Federation with Southern Rhodesia and Nyasaland, oversight from the banks’ headquarters in South Africa and London was deemed adequate, negating the perceived need for local banking regulations.¹⁷⁹

BSACo to the British government. At this point, Northern Rhodesia was given protectorate status under the headship of a governor and under conditions like other British protectorates, despite having features of a charter colony under the BSACo. A charter colony was one of three classes of colonial establishments assigned to colonies in the 17th Century. The other two classes were a proprietary colony and a royal colony. See Roberts-Wray *Commonwealth a Colonial Law* (1966); Stevens (1966) 753; Robertson *et al.* *Encyclopaedia of US Political History* (2010). 1–4000.

¹⁷⁸ Illinois University “Colonial Reports –Annual. No 1992 Northern Rhodesia Report for 1924–1925” (2011) https://libsysdigi.library.illinois.edu/ilharvest/Africana/books2011-05/3064635/3064635_1924_1925/3064635_1924_1925_opt_.pdf (accessed 20 March 2023).

¹⁷⁹ Ailola *The Regulation of Commercial Banks in Zambia and their Role in Development* (doctoral thesis, University of Warwick, 1988) 93.

The effects of the Great Depression of 1929¹⁸⁰ and World War I (1914–1918) were felt in these territories despite often being described (euro-centrally) as existing on the fringes of Western civilisation. As a result of the connectedness of the territory to its imperial power, it was vicariously involved in World War I. The end of World War I, by a quirk of delayed communication, effectively took place in a town called Abercorn (now Mbala, Zambia) near the border with the German protectorate called Tanganyika (now Tanzania) on 25 November 1918, under German General Paul von Lettow-Vorbeck.¹⁸¹ The halcyon years that followed, often referred to as the “Roaring Twenties,” were soon a distant memory as the effects of the Great Depression, created by a lack of capital expansion, made a worldwide impact on commerce and finance, which was evidenced in part by reduced funding to the protectorates and a general downturn in world economies that included large-scale unemployment in Northern Rhodesia. Studies show that the effects of the Great Depression on the two Rhodesias and Nyasaland lasted from 1929 to about 1935.¹⁸²

On the European banking front, by the start of World War I, the British banking system was so robust that it could withstand many of the financial crises that afflicted many of its European neighbours. On the contrary, this did not mean that banks did not fail, but that the English financial system had come of age and could cope with the various risks that it encountered.¹⁸³ Michie and Mollen observe that the banking system was so robust that it withstood the effects of the two World Wars and the GFC of 1929 to 1932 (the Great Depression), unlike its American cousin, where banks and the United States economy went into meltdown.¹⁸⁴

Suffice it to say that up to that time, central banks in the West had remained relatively independent of each other due to the strong autarkic and nationalistic interests that were held by European countries and allies like the United States. The onset of the Great Depression did

¹⁸⁰ In essence, the Great Depression was the consequence of the New York stock market crash of October 1929. This resulted in one of the worst downturns (or economic depressions) in the history of the industrialised world to date, lasting from 1929 to 1939. See Smiley Great Depression. The *Concise Encyclopedia of Economics* (2008). See also Great Depression History <https://www.history.com/topics/great-depression/great-depression-history> (accessed 19 November 2024).

¹⁸¹ Atlas Obscura “Mbala Surrender Monument” <https://www.atlasobscura.com/places/mbala-wwi-surrender-monument> (accessed 20 March 2023).

¹⁸² Kaniki “*The Impact of the Great Depression on Northern Rhodesia*” 1995 *TransAfrican Journal of History* 24 131–150.

¹⁸³ HistoryAndPolicy.org “*Planning for the Bicentenary of the Abolition of Slavery and African Emancipation in 2033–2038*” <http://www.historyandpolicy.org/policy-papers/papers/british-and-american-banking-in-historical-perspective-beware-of-false-prec> (accessed 13 July 2018).

¹⁸⁴ Ibid.

little to foster sound relationships between countries, except to exacerbate trade and boundary quarrels while magnifying the inadequacies of the League of Nations¹⁸⁵ and, ultimately, the unequal terms demanded of Germany in the Treaty of Versailles¹⁸⁶ after World War I, resulting in yet another worldwide *mêlée* this time, World War II.

The first semblance of an organised central bank in Northern Rhodesia was the establishment of a currency board in 1938 based in Southern Rhodesia. Its jurisdiction extended to Northern Rhodesia and Nyasaland because of a monetary agreement between Southern Rhodesia and the other two territories.¹⁸⁷ However, World War II disrupted the further development of this institution for almost six years.

From a regulatory perspective despite the dire circumstances existing at the time, there were no reports of any established banks becoming insolvent in Northern Rhodesia, even though many of these colonial banks were controlled out of London and South Africa.¹⁸⁸ In contrast, many banks in the developed world, both Europe and America, became insolvent during the 1929 Great Depression.

2.8 The impact of World War II on banking

The resulting war and the ultimate victory of the Allies¹⁸⁹ in 1945, whose ethos held the *laissez-faire* model of development and democracy in high esteem, was juxtaposed against the threat

¹⁸⁵ The League of Nations was set up on 10 January 1920 after World War I (1914–18) to “end all wars” by getting member states to resolve their disputes peacefully. It was created as an intergovernmental organisation established to promote international cooperation that would result in international peace and security. However, despite its positive objectives, it failed to prevent the outbreak of World War II. It was eventually replaced by the United Nations Organization (UNO) in 1946. See Eloranta “Why did the League of Nations fail?” 2011 *Cliometrica* 27–52. See also Galletti “A History of the League of Nations” https://www.aape.org/exhibit_view_frame.asp?intExhibitNumber=1&intCurrentFrameNumber=1. (accessed 13 July 2018).

¹⁸⁶ The Treaty of Versailles was a post-World War I treaty, held at the Palace of Versailles, France, in the famous Hall of Mirrors, which forced Germany to sign a treaty with the allied nations on 28 June 1919 to formally end World War I. The terms of the Versailles Treaty, considered harsh by today’s standards, put the onus for the start of the war on Germany. As punishment, Germany was to not only forced repay the allies reparations for the damage caused by the war, but it had to agree to demilitarise itself. The punishment also included the loss of the territories that Germany had annexed during the war including Alsace and Lorraine that originally belonged to France. This included giving up all its colonies and overseas territories in China, the Pacific and Africa, such as Tanganyika (now Tanzania) and Southwest Africa (now Namibia). See Encyclopaedia Britannica “Treaty of Versailles” (6 January 2023) <https://www.britannica.com/event/Treaty-of-Versailles-1919> (accessed 22 March 2023). There are other sources: Walsh *History in Focus* 2 ed (2001) 86–91; Clough ‘The Treaty of Versailles’ in *Economic History of Europe: Twentieth Century* (1968) 65–86.

¹⁸⁷ n 184.

¹⁸⁸ Seekings *et al.* “The Economic History of Zambia” Working Paper April (2022) 1–36.

¹⁸⁹ Allies is a term that describes the international military coalition formed during World War II (1939 to 1945). These countries opposed the Triple Axis countries made up of Germany, Italy and Japan. The major allies often

of a new ideology of communism¹⁹⁰ and other shades of socialism—an ideology that was a complete antithesis of Western ideals. Referring to the Soviet Union and its satellites, Sir Winston Churchill proclaimed when East European countries turned to communism as their path to development that “*from Stettin in the Baltic to Trieste in the Adriatic, an iron curtain has descended across the continent*”.¹⁹¹ Indeed, Richard Leone summarised the appeal of communism by these countries from a financial point of view. Communism’s ideological allure likely included its promise to eliminate the persistent stress caused by economic unpredictability. The Soviet Union’s five-year plans, with their scientifically precise production goals, fixed prices, and assurances of progress, functioned as a kind of idealized narrative, suggesting that people could master their own economic futures.¹⁹²

As the war raged in 1944, the Allies were meeting at Bretton Woods retreat in New Hampshire in the United States, to sculpt a new financial system to monitor and regulate the free world’s financial flows and balance of payments and to encourage countries to exchange their currencies freely among one another—a euphemism for promoting free-trade. The idea was that the battleground for world dominance should shift from the trenches of Europe and America to their boardrooms and from territorial mastery to that of trade dominance.¹⁹³

From a regulatory perspective, regulators allowed banks to relax the rules on administering their capital ratios as part of the war effort.¹⁹⁴ This exemption was to allow banks to purchase massive quantities of American government securities to fund the World War II effort, which banks would have needed to be able to participate in the war.¹⁹⁵ It appears that the post-war

referred to as the “Big Three” were made up of the Soviet Union, the United States and the United Kingdom. Other allies consisted of over 21 other countries. See Volle “Allied powers” *Encyclopedia Britannica* (2024) <https://www.britannica.com/topic/Allied-powers-World-War-II> (accessed 19 November 2024).

¹⁹⁰ Communism which was espoused by Karl Marx and Friedrich Engels was a philosophy that opposed capitalism as it was seen as a system that exploited the working classes. The theory propounded that property should be owned by the community and each person works based on their needs and ability.

¹⁹¹ Churchill “Iron Curtain Speech” <https://www.thoughtco.com/winston-churchills-iron-curtain-speech-1779492> (accessed 13 July 2018).

¹⁹² Morris Money, *Greed, and Risk. Why Financial Crises and Crashes Happen* (1999) 3.

¹⁹³ Ibid.

¹⁹⁴ Tarullo *Banking on Basel: The Future of International Financial Regulation* (2008) 29–30. Note that the working capital ratio is calculated by dividing current assets by current liabilities. The ratio is used as a measure of assessing how efficiently a company is operating but above all how liquid the company is and therefore whether the company has enough money to pay off its debt at any given time. This will be the subject of more detailed discussion later under the Chapter dedicated to the Basel Accords.

¹⁹⁵ Ibid. 29.

period left regulators with doubts about the best method of regulating banks—so much so that there was much experimentation of various forms of capital ratios with the Bretton Woods dispensation, especially in the United States—a trend which continued into the late 1950s.¹⁹⁶

The impact of World War II on Northern Rhodesia appeared to have been more economical than physical, as no blood was spilt on its land. So, while the war impacted the lives of ordinary people through commodity shortages, profiteering, inflation, hoarding, and the black market, the banks appeared to be stable and there was no indication that any of the established banks were showing signs of stress that would indicate they were about to become insolvent due to the harsh conditions prevailing at the time.¹⁹⁷

The Federation: 1953 to 1963

Earlier in 1938, the Southern Rhodesia Currency Board was established. It eventually gained more autonomy, allowing it to take over the issuance of paper money in 1939.¹⁹⁸ Further developments in the Southern Rhodesia Currency Board were made in 1954 when it was renamed the Currency Board of Rhodesia and Nyasaland (CBRAN) due to the three countries being merged under a federal government in 1953.¹⁹⁹ The Currency Boards' primary function was not to act as a central bank but to issue currency to the three territories.²⁰⁰ The territories continued to use the Southern Rhodesia pound until 1955 after the board changed its name. However, it soon became apparent that with the rapid growth of the Federation, the Currency Board was inadequate to carry out the duties of a central monetary authority, resulting in the

¹⁹⁶ Tarullo (n 195) 30.

¹⁹⁷ Tembo *The Impact of the Second World War on Northern Rhodesia (Zambia) 1939–1953* (2015) (doctoral dissertation, University of the Free State).

¹⁹⁸ Initially the money was issued by Standard Bank of South Africa. See Nyamunda *et al.* “Money in South-Central Africa, 1890–1931: Africans, Imperial Sterling, and Colonial Economy-Building” 2023 *African Studies Review* 618–636. The South African Reserve Bank (SARB) is responsible for issuing and distributing South African currency, as well as currency for several neighbouring territories. Before 1938, private banks in Southern Rhodesia issued their own banknotes. However, in 1938, the Southern Rhodesia Currency Board (SRCB) was established to take over currency issuance. The SRCB's jurisdiction extended to Northern Rhodesia and Nyasaland until 1954.

¹⁹⁹ Bank of Zambia (BoZ) “Bank of Zambia Background” <https://www.boz.zm/about/background.htm> (accessed 20 March 2023).

²⁰⁰ *Ibid.*

establishment of the Bank for Rhodesia and Nyasaland²⁰¹ in 1956 under the provisions of the Bank of Rhodesia and Nyasaland Act.²⁰²

2.9 The Bank of Rhodesia and Nyasaland Act 1956

The creation of the Bank of Rhodesia and Nyasaland was fashioned on the back of the 1949 Myners Report.²⁰³ The Myners Report advised against creating a central bank, arguing that the country's economic challenges stemmed from external rather than internal issues. It also noted that existing banks were well-managed and therefore did not need a supervisory body. Myners believed that any beneficial central banking functions for the Federation would be more effectively handled by an individual, and not a financial institution. Consequently, the report recommended appointing a financial advisor to the government who could offer policy guidance and maintain strong ties with the financial sector.²⁰⁴ The report's outcome was that banks' licensing became necessary to ensure that banking businesses satisfied government requirements, that banks were adequately capitalised, and that their business was soundly conducted.²⁰⁵ This report eventually led to the promulgation of the Bank of Rhodesia and Nyasaland by assenting to the 1956 Act.²⁰⁶ The Act assigned the responsibility for regulating the monetary system to the Bank, or in other words, the central bank.²⁰⁷ This newly established institution was equipped with the powers of a normal central bank with the ability to lend to the territorial and federal governments. The Act was further amended in 1959²⁰⁸ to make improvements to it. The changes were more profound as it not only gave the Minister of Finance at the time, the power to appoint a registrar of banks but also gave other form and substance to the registration of banks by requiring them to register under one of the four classes of institutions allowable, such as: a commercial bank, an acceptance house, a discount house, or

²⁰¹ Chirozva *Financial Intermediation and Economic Performance in Zimbabwe* (master's thesis, Edith Cowan University, 2001). See also Ailola *The Regulation of Commercial Banks in Zambia and their Role in Development* (doctoral thesis, University of Warwick, 1988) 93.

²⁰² UK Bank of Rhodesia and Nyasaland Act No 2 of 1956.

²⁰³ Chirozva (n 202) 93.

²⁰⁴ Chirozva (n 202) 93. Note that the report by HCB Mynors titled: *Southern Rhodesia Report on the Question of a Central Bank* is not published to take direct quotations from it. We are reliant on secondary authors as a result.

²⁰⁵ n 179.

²⁰⁶ Bank of Rhodesia and Nyasaland Act 1956.

²⁰⁷ Ibid.

²⁰⁸ Bank of Rhodesia and Nyasaland (Amendment) Act 1959.

a financial institution. All banks present in the market had to conform to the requirements immediately.²⁰⁹ The Act effectively severed the umbilicus of the foreign parent banks to their subsidiaries, albeit marginally, as the banks were now required to comply with local regulations and meet their parent bank requirements. That was short-lived with the demise of the Southern African Federation²¹⁰ and its eventual split up into three independent countries that had previously made up the Federation in 1963.²¹¹

From an international perspective, the free world was under a Par Value Exchange Rate regime created by the Allies in 1944 at the Bretton Woods Conference, with the International Monetary Fund (IMF) being appointed as the single regulator to manage the exchange rate regime. The United States dollar was used as the main standard of exchange, where \$35 equalled one ounce of gold. Under that system, the other countries pegged their currencies to the United States Dollar.²¹² This exchange rate regime existed without much ado up to 1971. As this was a worldwide standard, the Group of Ten (G10) countries, namely Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, the United States²¹³ signed up to be members carrying their annexed territories with them. As Zambia was a protectorate of the United Kingdom, the Act applied automatically.

On attaining independence in 1964, Zambia had to sign a new membership agreement as a newly independent state. To this end, Zambia officially formalised its relationship with the IMF on 28 July 1964 when it applied for membership of the IMF by section 2 of Article II of the Articles of Agreement of the Fund.²¹⁴ The effect of this agreement was to usher Zambia into the Par Value Exchange Rate Regime, where \$35 was equal to one ounce of gold. These

²⁰⁹ n 179; Ailola (n 180) 93–95.

²¹⁰ The Federation of Rhodesia and Nyasaland, also known as the Central African Federation, was a political entity that existed from 1953 until 31 December 1963. It included the British colony of Southern Rhodesia (Zimbabwe), which was dominated by settlers, as well as the British colonial office-controlled territories of Northern Rhodesia (Zambia) and Nyasaland (Malawi). See Encyclopaedia Britannica “Federation of Rhodesia and Nyasaland” (6 January 2011) <https://www.britannica.com/place/Federation-of-Rhodesia-and-Nyasaland> (accessed 20 March 2023).

²¹¹ Richardson *et al.*, “The Federation of Rhodesia and Nyasaland Africa Today” Pamphlets No 4. American Committee on Africa” (1959) <http://kora.matrix.msu.edu/files/50/304/32-130-B60-84-32-130-B60-84-al.sff.document.acoa000245.pdf> (accessed 13 July 2018). The dissolution was promulgated by the passing of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 No 2085.

Ailola (n 180) 93–96.

²¹³ International Monetary Fund (IMF) “A Guide To Committees, Groups, and Clubs” <https://www.imf.org/en/About/Factsheets/A-Guide-to-Committees-Groups-and-Clubs> (accessed 13 November 2024).

²¹⁴ Bretton Woods Agreement Act Chapter 367 of the Laws of Zambia.

agreements were further promulgated into Zambian law as the Bretton Woods Agreement Act, Chapter 367 of the Laws of Zambia.²¹⁵ The significance of this historic agreement was to tie Zambia to policy measures created by the Bretton Woods Institutions as one of the members of the “cooperative,”²¹⁶ albeit a weaker and less significant member of the group. From this point onwards, the Bretton Woods Institutions have become a double-edged sword, viewed by some as a source of problems for the various governments, both past and present. This is especially common when calls for austerity measures are made by the IMF, which are often regarded by many countries as direct interference in a country’s affairs and autonomy.²¹⁷

Figure 1. Federation of Rhodesia and Nyasaland²¹⁸

Southern Rhodesia	Northern Rhodesia	Nyasaland
1885 Berlin Conference and the start of the Scramble for Africa		
Establishment of BSACo by Royal Charter given by Britain on 20 December 1889.		
A protectorate was proclaimed by the Order-in-Council Act (OICA) of 9 May 1898.	Various hunters, missionaries, and explorers visit the area and sign treaties with various chiefs. BSACo discovers large copper deposits.	1893. Shire Highlands Protectorate expanded into the Nyasaland district protectorate and eventually into British Central African Protectorate
1901 BSACo unites Mashonaland and Matabeleland into one territory	1911 BSACo grants territory protectorate status	1907 granted protectorate status from Britain by OICA
World War I 1914–1918		

²¹⁵ n 215.

²¹⁶ The IMF arrangement is based on a cooperative structure where countries contribute funds according to their ability. However, the system has been criticised for its tendency to treat its members according to their contributions and the strengths of their economies. Often, the low-income countries have been said to have no voice at all.

²¹⁷ Nowzad “The IMF And Its Critics. Essays in International Finance No 146” (December 1981) 1–24.

²¹⁸ Northern Rhodesia Order In Council (1924) (a) <https://vlex.co.uk/vid/northern-rhodesia-order-in-812571609> (accessed 30 November 2024); Rhodesia and Nyasaland Federation Act, 1953 (1 & 2 Eliz. 2) Chapter 30 <https://vlex.co.uk/vid/rhodesia-and-nyasaland-federation-808080297> (accessed 30 November 2024); Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, S.I. 1963 No 2085, 4477. Zambia Independence Act 1964 CHAPTER 65 www.legislation.gov.uk/ukpga/1964/65/pdfs/ukpga_19640065_en.pdf (accessed 30 November 2024) Nyasaland Order in Council, 1907 <https://vlex.co.uk/vid/nyasaland-order-in-council-812214669> (accessed 30 November 2024); Malawi Independence Act 1964 Chapter 46 https://www.legislation.gov.uk/ukpga/1964/46/pdfs/ukpga_19640046_en.pdf (accessed 30 November 2024); Southern Rhodesia Order in Council Act 20th October 1898 <https://www.rhodesia.me.uk/wp-content/uploads/2018/10/Southern-Rhodesia-Order-In-Council-1898.pdf> (accessed 30 November 2024); Southern Rhodesia Constitution Letters Patent, 1923, Dated September 1, 1923, Providing For The Constitution of Responsible Government In The Colony of Southern Rhodesia <https://vlex.co.uk/vid/southern-rhodesia-constitution-letters-812450145> (accessed 30 November 2024); Southern Rhodesia Act 1965 1965 Chapter 76 <https://www.legislation.gov.uk/ukpga/1965/76/enacted> (accessed 30 November 2024); Southern Rhodesia Act 1979 Chapter 52 <https://www.legislation.gov.uk/ukpga/1979/52> (accessed 30 November 2024); Zimbabwe Act 1979 Chapter 60 <https://www.legislation.gov.uk/ukpga/1979/60> (accessed 30 November 2024).

Granted constitution to the colony in 1923 under the OICA	Northern Rhodesia Order in Council Act of 1924 Granted protectorate status	
World War I 1939–1945		
Federations 1953–1963 Northern and Southern Rhodesia and Nyasaland Commenced by the Rhodesia and Nyasaland Federation Act, 1953		
And dissolved by the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963		
Declares Unilateral Independence in 1965 and becomes Rhodesia. Eventually gains independence in 1980 and becomes Zimbabwe.	Gains independence in 1964 and becomes the Republic of Zambia	Gains Independence in 1964 and becomes Malawi

Some important points to note from that era about the protectorate are that the means of production were in the hands of the colonial masters and the white minority settler population. The segregated laws made it difficult for indigenous Africans and other minority groups to establish banks, let alone fund them, given that they had little access to funds on a large scale as compared to the settler entrepreneurs. So, at the dawn of Zambia's independence in 1964, the banks that existed in the country were the same ones established under the colonial power before independence, namely Barclays Bank, Grindlays Bank, and Standard Chartered Bank.²¹⁹

It is pertinent that certain points are reiterated, particularly the fact that during the colonial administration of Zambia (then Northern Rhodesia), regulation was uncomplicated and less sophisticated than it is today. The type of regulation that was in practice at the time by most banks was normally acquired directly from the parent banks overseas, following the laws and rules of the country in which the parent banks were domiciled. Meanwhile, the semblance of a central bank was slowly starting to take shape, starting, first as a currency board in 1938 and then eventually metamorphosing into the Bank for Rhodesia and Nyasaland. The main objective of this federal bank was to ensure that currency was printed and that banks were properly registered. There was no indication at this stage of a Bank's existence that they had to conform to regulations of the parent abroad.

From an international perspective, while Europe was preparing itself for the beginnings of the European Economic Community (EEC), the United States appears to have been refining its approach as regards the best model for US banks to use to regulate their capital. This process, among other things, involved the assigning of risk weights to major categories of assets on a

²¹⁹ Brownbridge 'Financial Policies & the Banking System in Zambia' in Brownbridge & Harvey (eds) *Banking in Africa. The Impact of Financial Sector Reform Since Independence* (1998) 143–162.

bank's balance sheet before calculating its capital ratio.²²⁰ These rudimentary calculations based on risk weighting were to eventually set the groundwork for what was to become the Basel I Accord in 1974.²²¹ While it can be argued that these rules were a reaction to the international financial crisis, this study will argue that the process was a deliberate and calculated move to dominate world finance by the G10 countries by setting up rules that disadvantaged less-developed local banks.

2.10 Independence and the First Republic (1964–1979)²²²

The advent of the independence of Zambia in 1964 meant that the country needed to have a sovereign central bank of its own to manage the economy and the financial sector. That was achieved by the takeover of the Bank of Northern Rhodesia—a branch of the Bank of Rhodesia and Nyasaland, which was a remnant of the disbanded Federation, and establishing the BoZ Act No 37 of 1964,²²³ by enabling appropriate legislation to give substance to the Act. All the same, the changes were superficial, and the Act changed little apart from incorporating the name of the newly independent country into the statute book.²²⁴ The central bank, BoZ, started modestly with only two departments but grew exponentially as the need to manage the various aspects of the economy expanded, such as exchange control management, as well as import and export control.²²⁵

Similarly, in 1965, the Zambian parliament promulgated a new banking Act by repealing the previous Act created in 1959 under the Federation. Once again, there appeared to be no major amendments to the Banking Act of 1965, apart from replacing the name of the old Act with that of the newly independent territory. This Act was repealed six years later by the Banking

²²⁰ Tarullo (n 195) 30–35.

²²¹ Tarullo (n 195) 30–35.

²²² According to BC Chikulo, *Decentralisation Reforms in Zambia 1991–2010*, there are three clear Republics in Zambia. The First Republic was established at Independence in 1964, while the Second Republic came with the amendment of the Constitution and conversion from plural politics to a one-party participatory democracy under the United National Independence Party (UNIP) in 1973. This lasted up to 1991 when plural politics were once again reintroduced into the country and tentatively ushered the country into the Third Republic. More technically speaking, however, First Republic 1964–1979; Second Republic 1980–1990; and Third Republic 1991 to date. See Chikulo “Decentralisation Reforms in Zambia 1991–2010” [http://www.krepublishers.com/02-Journals/JSS/JSS-40-0-000-14-Web/JSS-40-1-14-Abst-PDF/JSS-40-1-095-14-1549-Chikulo-B-C/JSS-40-1-095-14-1549-Chikulo-B-C-Tx\[10\].pdf](http://www.krepublishers.com/02-Journals/JSS/JSS-40-0-000-14-Web/JSS-40-1-14-Abst-PDF/JSS-40-1-095-14-1549-Chikulo-B-C/JSS-40-1-095-14-1549-Chikulo-B-C-Tx[10].pdf) (accessed 20 March 2023).

²²³ n 200.

²²⁴ Ailola (n 180) 93–95. See Appendix 4.

²²⁵ n 200.

Act No.43 of 1971 to accommodate administrative changes. The amendments also considered reforms that were taking place in the various sectors at the time and to consolidate the process of what was called “Zambianisation,”²²⁶ which involved amending the law to allow Zambians to take control of the country’s economy. As a newly independent country, Zambia faced several dilemmas that required urgent attention.²²⁷ Among these were:

- a) With the economy still controlled by the colonialists, the new government had to take measures to wrest the means of production out of their hands and place it in the hands of the indigenous Zambian population.
- b) From an economic perspective, the government of the day wanted to capture lost revenue from the copper mines of the Copperbelt,²²⁸ which subsequently led to the nationalisation of key industries in 1968 under economic policy measures called the Mulungushi Reforms.²²⁹ Further, in 1970, the government passed the Matero Reforms.²³⁰ These policy measures were created to allow the indigenous population to play a significant role in the country’s economic activity, previously dominated by settlers and multinational corporations.

²²⁶ Zambianisation according to the Oxford English Dictionary is the policy of replacing non-Zambian citizens (typically settlers of European descent) with Zambian citizens (typically of African descent) in various occupations in all sectors of the local economy. See Oxford English Dictionary “Zambianisation” <https://www.oed.com/dictionary/zambianization> (accessed 13 November 2024).

²²⁷ Ailola (n 180) 93–95.

²²⁸ The Copperbelt is the largest concentration of industry in sub-Saharan Africa. The Copperbelt is an area of copper reserves and the mining and industrial growth that is dependent upon them. From Luanshya, Zambia, the belt travels roughly 280 miles (450 km) northwest into the Katanga (formerly Shaba) region of the Democratic Republic of Congo. *Encyclopedia Britannica* “Copperbelt Region Africa” (2014) <https://www.britannica.com/place/Copperbelt-region-Africa> (accessed 13 November 2024).

²²⁹ Turok (eds) *Development in Zambia* (1979). “The Transitional Development Plan, which came before the First National Development Plan of 1966–1971, was started by Zambia shortly after it gained independence. This subsequent plan, which called for significant investment in manufacturing and infrastructure, was mostly carried out and was generally successful. (which was not true of subsequent plans). The Mulungushi Reforms of April 1968 marked a significant shift in the country’s economic structure as the government announced its intention to acquire an equity holding (typically 51% or more) in a number of significant foreign-owned companies to be controlled by the Industrial Development Corporation. (INDECO). The two largest foreign mining corporations, Anglo-American Corporation and Roan Selection Trust, had acquired a majority stake in their operations in Zambia by January 1970.” See Britannica “Mulungushi Reforms” <https://www.britannica.com/topic/Mulungushi-Reforms> (accessed 20 March 2023).

²³⁰ With the Matero Proclamation in 1969 (later to become known as the Matero Reforms), when the government acquired a 51% stake in the two then-existing mining corporations, nationalisation of the country’s mines officially began. These two companies, Roan Selection Trust and Anglo-American Corporation jointly owned all the country’s active mines. Before the Matero statements, the government had made the Mulungushi declarations, which placed state control over 51% of the shares in all significant enterprises (apart from mining). As a result, INDECO was established as the holding company for these shares. See Sikamo *et al.* “Copper Mining in Zambia –History and Future” <http://www.scielo.org.za/pdf/jsaimm/v1116n6/03.pdf> (accessed 20 March 2023).

- c) Apart from this, the one-party system was also introduced to avoid the spectre of tribal politics that had started to cause internal strife as some politicians and external forces pushed the tribal card as a means of achieving additional votes and destabilising the newly independent country.

2.11 The Second Republic (1980–1990)

The economic policies were eventually sealed by establishing a one-party state, also known as a “one-party participatory democracy” under the banner of the sole party, the United National Independence Party (UNIP). Zambia also took a novel path to development, opting to harken back to the dawn of African civilization, where everyone was equal and worked for the society on similar lines to the South African concept of “ubuntu.”²³¹ This ideology became known as Humanism,²³² and placed man at the centre of everything. These philosophies, conceivably influenced by foreign countries such as the Soviet Union, China, and Cuba, pioneered a command economy.²³³ The command economy was paced gradually by the Cold War influence and its promise of rapid development for all. Anthony Baah says that the fact that the enduring damage inflicted on Africa by the Cold War, turned the African continent into a post-independence conflict zone is often overlooked. Western powers, alarmed by the growing trend of African nations adopting successful leftist, people-focused development models, as seen in countries like Ghana, Zambia, and Tanzania, responded by intensifying the conflict.²³⁴

²³¹ *Ubuntu* can best be described as an African philosophy that places emphasis on “being self through others”. It is a form of humanism which can be expressed in the phrases, “I am because of who we all are” and *ubuntu ngumuntu ngabantu* in the Zulu language. See Weidtmann ‘The philosophy of Ubuntu and the notion of vital force’ in *Ubuntu and the Reconstitution of Community* (2019) 98–113.

²³² European Humanism started in Northern Italy in the 13th century and was made up of enquiry and system of education. Zambian Humanism, on the other hand, was more akin to the concept of *ubuntu* (see above). Its main tenets being the human person at the centre; dignity of the human person; non-exploitation; equal opportunities for all irrespective of colour; hard work and self-reliance; working together; extended family and loyalty and patriotism. See Mugumbate & Mumba “Kenneth Buchizya Kaunda” <https://africasocialwork.net/kenneth-buchizya-kaunda/> (accessed 13 July 2018).

²³³ An economic system known as a command economy is one in which the government owns the means of production and economic activity is governed by a central organisation that sets quantitative production targets and distributes raw materials to productive businesses. In such a system, the political choice to allocate a certain portion of the total output for investment as opposed to consumption falls under the purview of the central government. The central planners then determine the selection of commodities to be produced and the quotas for each enterprise. If market surpluses and shortages are considered by the planners when making decisions, consumers may indirectly have an impact on those decisions. However, consumers only directly choose among already manufactured things. The central planners also determine prices. See Britannica Money “Command Economy” <https://www.britannica.com/money/command-economy> (accessed 13 July 2018).

²³⁴ Baah “History of Economic Development Initiatives” 2003 1.

From a banking and financial perspective, the central bank under the new form of political economy was relegated to the back seat of the economy, as the government became the main driver in the planned economy. The urgent need for development and the immediate participation and inclusion of the indigenous population in the economy were paramount. These policies appear to have been set off by further changes in the central bank that required changes to the BoZ Act 1971,²³⁵ resulting in the BoZ Act (1985).²³⁶

The main aims of the BoZ Act (1985), among other things, were to improve the balance of payments accounts by enhancing the monetary management of the Bank. It also put in place rules that dealt with the qualifications for the appointment of the central bank governor and his deputy.²³⁷ According to Maimbo, a credit guarantee scheme was also introduced by the central bank in 1980 to indemnify commercial banks' lending to high-risk small-scale enterprises as a means of encouraging local entrepreneurs to borrow.²³⁸

The Bank was further appointed as banker to parastatal institutions such as the Financial Development Company (FINDECO), Zambia Industrial Mining Company (ZIMCO), Industrial Development Company (INDECO), Mining Development Company (MINDECO), and so on. Notwithstanding, revisions to the Exchange Control Act Chapter 593²³⁹ that was now firmly in place to ration the little foreign exchange that was available in the country. The rest of the Act dealt mainly with the functions of the central bank.²⁴⁰ The legislation needed to be improved when it came to adopting the Basel I Accord rules,²⁴¹ as there appears to be no mention of these rules being adopted anywhere in the literature during this period. Additionally, it is plain to see that the new central bank Act had very little to do with the direct regulation of commercial banks. It is submitted that the structure of the central bank can be said to have evolved more in response to staffing factors rather than to the complexity of the bank.²⁴² This statement is shored up by Maimbo's comments that the central bank under the socialist

²³⁵ Bank of Zambia (Amendment) Act 1971. See Appendix 4.

²³⁶ Bank of Zambia Act No.24 of 1985.

²³⁷ Ailola (n 180) 117–121.

²³⁸ n 200, 1.

²³⁹ Exchange Control Act Chapter 593 of the Laws of Zambia. See also Commercial Bank (CB) *Circular No 3/94* (11 March 1994), which repeals this Act in 1994 via the Bank of Zambia (foreign currency) Regulations 1994. Statutory instrument No.44 dated 4 March 1994.

²⁴⁰ Maimbo (n 12) 11–63.

²⁴¹ See ch 1.

²⁴² n 200.

dispensation of the 1970s and 1980s had no capabilities to regulate commercial banks,²⁴³ primarily because the government dominated all sectors of the economy, including the central bank. The president appointed the central bank governors at the time. The appointees had to, tow the political party's line or face the guillotine. This resulted in divergent policy approaches and management styles by each governor, but, most of all, a lack of political independence for the central bank.²⁴⁴ This fact, plus the fact that the economy was controlled, meant that the central bank's primary duty was whittled down to enforcing financial regulations concerning currency exchange, local lending, and interest rates, paying little attention to overseeing commercial banks. This oversight failure stemmed from the banking sector's dominance by foreign subsidiaries, with the BoZ relying on the banks' home countries' regulatory bodies for supervision.²⁴⁵

In the past, most Africans had operated on the fringes of the economy, which meant that to include the disadvantaged group in the economy, the government had to make concerted and deliberate efforts through policy initiatives to assist in funding local black entrepreneurs. The primary funders, the banks, were slow to come forward and help this group of entrepreneurs, causing both the president at the time and the local press to make accusatory statements against foreign banks, who were reproached for deliberately overlooking African entrepreneurs on the pretext that they failed to pay back their loans.²⁴⁶

The policy measures were all-encompassing and, for purposes of this thesis, only those policy measures relating to the financial sector will be highlighted. However, these are aptly covered by Maimbo, who expounds:

*"Although the state did not nationalise the commercial banks it established its own financial savings institutions, notably the Zambian National Commercial Bank in 1969 and the National Savings and Credit Bank in 1972. State intervention continued into the 1980s with the creation of the Lima Bank in 1987 and the Co-Operative Bank in 1989."*²⁴⁷

²⁴³ Maimbo (n 12) 31.

²⁴⁴ Maimbo (n 12) 17–31.

²⁴⁵ Maimbo (n 12) 17.

²⁴⁶ For example, Maimbo, in his article quotes from the *Zambia Daily Mail* on 18 August 1972 that: "Some commercial banks with foreign interests have been accused of sabotaging the economic reforms by refusing to grant loans and overdrafts to indigenous Zambian businessmen".

²⁴⁷ Maimbo (n 12) 17.

The government determined the regulatory needs of the central bank depending on its own most pressing needs. There appeared to be no pressure internationally for countries to adopt the tenets of the Basel I Accord. This was largely due to the dichotomy in world philosophies created by the Cold War, and because the initial tenets were created by G10 (mainly capitalist countries) before the rules were accepted more widely.²⁴⁸ There appeared to be little or no influence from this Accord on Zambian banking. This was possibly because of two main factors, firstly, the country's leftist leanings, and secondly, the fact that most of the global banks operating in Zambia at the time were regulated vicariously from their foreign headquarters in developed countries.²⁴⁹

Despite the lack of support from foreign banks, the push for the indigenisation of businesses appears to have left out the nationalisation of foreign banks for some reason. This might be attributed, firstly, to the fact that most Zambians preferred to work in industry, taking up the vacant positions left vacant by the colonial administrators rather than creating their own businesses. Secondly, Africans lacked sufficient investment capital to set up their local banks, given that they were far removed from the main economy by the colonial masters who determined which areas of commerce Africans could enter or not. The controlled economy did not allow individual local competitors because the government saw one of its developmental roles as a duty to provide subsidised banking services to all its citizenry.²⁵⁰

The command economy seemed to protect the various government-owned parastatal banks from insolvency as government it easily re-capitalise these banks when liquidity fell to unacceptably low levels. Parker points out generally that where banks are state-dominated then the central bank normally backs its obligations to commercial banks, including those owed to

²⁴⁸ Bank for International Settlements (BIS) "History of the Basel Committee" <https://www.bis.org/bcb/history.htm> (accessed 13 July 2018).

²⁴⁹ Maimbo *Regulation and Supervision of Commercial Banks in Zambia: A Study of the Design, Development and Implementation of Prudential Regulations by the Bank of Zambia between 1980 and 2000* (doctoral thesis, University of Manchester, 2001) 22. Maimbo points out in his work that even though the Financial System Supervision Department (FSSD) was established by the BoZ in 1974, banks were not subject to thorough monitoring or required to submit prudential returns until 1992, aside from those needed for monetary policy purposes. Instead, the FSSD relied more heavily on directives regarding foreign exchange, interest rates, and credit allocation. This method was considered appropriate back then since most commercial banks in Zambia were affiliated with well-known international commercial banks, under the oversight of their home country regulators. By collaborating with regulators in the home country, the BoZ had no trouble monitoring the financial status and performance of banks.

²⁵⁰ Maimbo (n 12) 22. In his paper *Design Development of the Zambian banking regulatory and supervisory frameworks (1970–2000)* quotes President Kaunda in his 1968 Economic Reforms speech as saying '... time to take more drastic steps to assist the people's business to bridge the gap that exists between it and the resident expatriate business.'

depositors.²⁵¹ It also means that coverage restrictions, such as capital requirements, become meaningless with state backing. However, waiving coverage restrictions can only apply to local banks in normal instances and not to international banks operating in a state-controlled environment. Since international banks were outside of Zambian government control, they were largely regulated from their country of origin, in most instances from the United Kingdom, given that their main mandate appears to be to provide finance to businesses from the parent country. Thus, foreign banks seem to have remained robust, given that their cash-rich multinational parents could support any instability in an individual bank's capital requirements due to their large reserves and could also ensure that the banks operating in Zambia met the Basel regulations ahead of the local banks.²⁵²

The only dilemma with a controlled economy that subsidised consumption was that the economy needed to be solvent and buoyant to continue providing relief to undercapitalised banks. This was becoming more difficult to do for a government caught up in the 1973 Oil Shock,²⁵³ where the price of crude oil rose to unprecedented historical levels against declining world copper prices.

Internationally, there appeared to be no consensus among global regulators to establish a single control point that regulated banks' capital adequacy ratios from the 1950s to 1974. This was because each jurisdiction regulated its banks using its own standards. Tarullo²⁵⁴ points out that this scenario changed rapidly when *“three interrelated developments combined to produce a focus on capital levels that became progressively more important in banking regulation within the Basel Committee Countries and eventually the rest of the world...”*²⁵⁵

The failure in 1974 of the Bankhaus Herstatt Bank in Germany and the Franklin National Bank in America sent shockwaves throughout the global financial community. It brought home the fact that, while the local transactions were reasonably regulated by central banks and other

²⁵¹ Parker “Core Principles for Effective Deposit Insurance Systems –Overview and Methodology” International Monetary Fund Monetary and Capital Markets Department” 1–86 <http://siteresources.worldbank.org/financialsector/resources/N-CorePrinciplesofDepositInsurance.pdf> (accessed 13 July 2018).

²⁵² Parker (n 252) 1–86.

²⁵³ The oil shocks occurred on 19 October 1973 and were because of a decision by the OPEC cartel to stop exporting crude oil to the United States. The action by OPEC sent shock waves around the globe and resulted in fuel price quadrupling in certain instances. See Schumacher ‘The 1973 Oil Crisis and Its Aftermath’ in *Energy: Crisis or Opportunity?* (1985) 21–41.

²⁵⁴ Tarullo (n 195) 30.

²⁵⁵ Tarullo (n 195) 29–30.

regulators, banks operating outside of their country's jurisdictions were practically not regulated at all and thus prone to failure, which in turn would have dire consequences on the international financial systems as demonstrated by the failure of these two banks. This risk was augmented by various interrelated issues, which centred on capital levels at the time of the bank failures.²⁵⁶

Tarullo postulates that the weakness in the world financial system could be blamed, firstly, on the gradual decline of capital ratios over the years, in some cases, from as far back as the 1939 Great Depression,²⁵⁷ meaning banks were gradually getting weaker in terms of their capital base. The situation was made worse by the lack of concerted efforts from the relevant authorities and national financial regulators to introduce formal incentives aimed at strengthening overall capital positions for their financial institutions. The second weakness was due to the upheaval in the financial services industry in the 1970s that was caused by a combination of factors such as high inflation and economic stagnation (also called Stagflation), in the United States, the failure of the par value system, and the 1973 oil shock, among others.²⁵⁸

Last, there was the modification or abandonment of traditional regulatory devices that had long been established to measure capital levels and thus ensure adequate safety and soundness within individual financial systems.²⁵⁹ It makes clear reading that the main aim of establishing rules was nothing short of monitoring international cross-border cash flows for what is always referred to by the Basel Committee as “internationally active banks.”²⁶⁰ An important argument is raised when it comes to contending with why local banks in low-income countries should not be included in the Basel Accords. Firstly, most small local banks are struggling to compete with stronger international banks, and secondly, most of these banks are not internationally

²⁵⁶ Tarullo (n 195) 29–30.

²⁵⁷ Tarullo (n 195) 29–30; Bank for International Settlements (BIS) “History of the Basel Committee” <https://www.bis.org/bcbs/history.htm> (accessed 20 March 2023).

²⁵⁸ Ferguson *et al.* (eds) “*The Shock of the Global: The 1970s in Perspective*” (2011). See also Maddison “Western Economic Performance in the 1970s: A Perspective and Assessment” 1980 *PSL Quarterly Review* 134.

²⁵⁹ Tarullo (n 195) 29–30.

²⁶⁰ An internationally active bank is a bank that the Basel Committee on Banking Supervision (BCBS) defines as a Group 1 bank: or A bank with Tier 1 capital of more than €3 billion and designated as a global systemically important bank (G-SIB). See BIS Basel Committee on Banking Supervision (BCBS) “Basel III monitoring results published by the Basel Committee” <https://www.bis.org/press/p180306.htm> (accessed 10 November 2024).

active—a prerequisite for a bank to adopt the Basel Accords. They instead chose to be insular and provide services to their local clients that large multinational banks often ignore.

Looking at Zambia from a regulatory perspective, it is no surprise, therefore, that the 1974 Basel Accords had little impact on the *Zambian Banking Act (1996)*²⁶¹ The societal reform of the country resulted in the economy being protected from all but the most serious external influences on the economy. From the perspective of international banks operating in the country, they had already implemented and conformed to the standards set by the Basel Committee in their home jurisdictions, despite these protections, so effectively they were one step ahead of the local banks.

2.12 The Third Republic (1991 to date)

From 1973 onwards, the Zambian economy was in slow decline, mainly because it was a mono-economy dependent on copper as its main income stream and supporting consumption rather than investment expenditure. The IMF tried to correct the economic malaise by imposing its “one-size-fits-all” conditions,²⁶² as it was argued that the socialist policies caused economic inefficiencies. Tensions exacerbated by both internal and external pressures eventually came to a head, starting with the demise of the Soviet Union as well as the advent of *Glasnost* and *Perestroika*²⁶³ in Russia, where Zambia lost a major ally against IMF policies.²⁶⁴ On the home front, unprecedented food riots were evidenced on the streets of Lusaka in June 1990, when the price of maize meal, Zambia’s staple food, almost doubled. The riots were swiftly followed by

²⁶¹ Maimbo (n 12). See Appendix 4.

²⁶² Ahmed “A Critical Evaluation of IMF History and Policies” *Management & Economics Research Journal* (2018). See also, Head “Seven Deadly Sins: An Assessment of Criticisms Directed at the International Monetary Fund” 2003 *University of Kansas Law Review* 521.

²⁶³ *Perestroika* means the process of reform that transformed the USSR into present-day Russia. The process was started by Leonid Brezhnev and implemented by Mikhail Gorbachev; saw the end of central planning as a state policy. *Glasnost* was *Perestroika*’s twin and aimed at making the crumbling Soviet regime more open as well as making information more available to the Russian public. See Gidadhubli “Perestroika and Glasnost” 1987 *Economic and Political Weekly* 784–787.

²⁶⁴ Diplomatic relations between Russia and Zambia were established through notes exchange on the 30 October 1964, shortly in the aftermath of Zambia’s Independence Day. In contrast, the Soviet Union was amongst the first nations to recognize the young republic and to commence on a half-century-old history of beneficial ties based on mutual trust, respect and understanding. An intergovernmental Agreement on Economic and Technical Cooperation was signed in May 1967, which greatly boosted the development of bilateral activities between USSR and Zambia in trade and the economic sector. In early 1968 the governments embarked (through respective agreements) on implementing several power construction projects in the North-Western Province. Further Trade Agreements were signed in Lusaka in December 1971 set forth the mutual provision of the most favored nation treatment in bilateral trade and facilitated a gradual buildup of shipments. See Embassy of the Russian Federation “Bilateral Cooperation” <https://zambia.mid.ru/en/countries/bilateral-relations/political-relations/> (accessed 5 November 2024).

an attempted *coup d'état* to try and oust President Kenneth Kaunda's government.²⁶⁵ These events caused a shake-up in government, forcing it to concede to general elections and the installation of the first-ever democratically elected government since independence in 1964.

Without delving into the politics of the era, 1991 was a turning point, not only in terms of Zambian financial history but also in terms of its financial regulation, as the country reverted to a market economy and rekindled relations with the IMF, which up till then had been strained.²⁶⁶ The new dispensation was required to convert the economy back to a market economy with the assistance of the IMF and the World Bank and to make it conducive for foreign and local investors to invest in the country. To do this, the country underwent austere structural adjustment programmes under the guidance of the IMF in 1992/1993²⁶⁷ as a prerequisite to access much-needed stability funding. Structural adjustment involved the liberalisation of foreign exchange and interest rates; liberalisation of pricing, which had previously been controlled; restructuring of government-owned financial institutions (this concept will be examined in more detail in later chapters); reforms to the prudential system, as well as agricultural pricing and food subsidy reforms.²⁶⁸

Part of the 1992/1993 SAPs included the reform of the Zambian financial sector, which was deemed inefficient and uncompetitive according to the IMF reports.²⁶⁹ These financial sector reforms FSR²⁷⁰ required the revision of the major banking legislation, including the Banking Act, (1985) Cap 700 of the Laws of Zambia and the BoZ Act No.24 of 1985 Cap 699 of the Laws of Zambia, statutes that had been drafted to support the controlled economy in the previous dispensation between 1973 and 1990. This resulted in the repeal of Cap 700 and Cap

²⁶⁵ ChaloChatu.org “1990 Zambia Food Riots” http://www.chalochatu.org/1990_Zambia_food_riots (accessed 14 August 2022).

²⁶⁶ Rule “Zambia-IMF Fallout Mirrors Third-World Woes” *The New York Times* (8 June 1987) <https://www.nytimes.com/1987/06/08/world/zambia-imf-fallout-mirrors-third-world-woes.html> (accessed 20 March 2023). See also Farnsworth “IMF Chief Challenges Criticism from Zambia”. *The New York Times*. May 7, 1987 <https://www.nytimes.com/1987/05/07/business/imf-chief-challenges-criticism-from-zambia.html> (accessed 20 March 2023).

²⁶⁷ Simutanyi “The Politics of Structural Adjustment in Zambia” 1996 *Third World Quarterly*. 825–839. See also Maimbo ‘Design and Development of the Zambian Banking Regulatory and Supervisory Framework (1970–2000) in Mwenda (ed) *Banking and Micro Finance Regulation and supervision: Lessons from Zambia*. 2002.

²⁶⁸ Maimbo (n 12) 27.

²⁶⁹ Maimbo (n 12) 27.

²⁷⁰ Financial System Supervision Department *Financial System Supervision Annual Report* (1995).

699²⁷¹ to modernise the financial sector, which would in turn result in the growth of local entrepreneurship as well as boost foreign investor confidence and improve transparency in the country's financial system. This included reforming interest rates, prudential reforms, and the restructuring of government owned banks amongst other policies²⁷² Not only were the banking Acts divided into the BoZ Act 1996, being the Act governing the central bank, and the Banking and Financial Services Act (BFSA) 1994 which governed banks, but the central bank, namely the BoZ,²⁷³ took its rightful place at the helm of the country's development. While it appears that there were still elements of political interference in the appointment of the governor, the central bank took full rein in supervising and regulating the commercial banks.²⁷⁴ To appreciate the significant changes to financial regulation from independence, it is essential to examine the evolution of the various Acts over this period, starting with the Banking Act, Chapter 700 of the Laws of Zambia.

Table 1. A Timeline of the Establishment of Bank of Zambia²⁷⁵

TIME	EVENTS
1938	The Salisbury (Harare) based Southern Rhodesia Currency Board was established with a jurisdiction that extended to Northern Rhodesia (Zambia) and Nyasaland (Malawi).
1954	The Southern Rhodesia Currency Board was named the Currency Board of Rhodesia and Nyasaland when its ownership changed from the Southern Rhodesia government to the Federal government of Rhodesia and Nyasaland.
1956	As the view grew stronger that a currency board was inappropriate, the Bank of Rhodesia and Nyasaland was established in March 1956.
1964	The Bank of Zambia was established to take over from the Bank of Northern Rhodesia on 7 August 1964, although its Act was only passed in June 1965.
1967	Research Development was among the first departments to be established. The increase in departments after that partly reflected the increased demand for the various services offered, forcing the bank to increase the functions that it performed, which centred around administering government-imposed regulations such as exchange controls and import and export controls.

²⁷¹ Maimbo (n 12) 27.

²⁷² Brownbridge *et al.* *Progress, Constraints and Limitations of Financial Sector Reforms in the Least Developed Countries* (1999) 48.

²⁷³ See ch 2 para 11.

²⁷⁴ Southern African Institute for Policy and Research "Central Role of the Central Bank Governor" <https://saipar.org/wp-content/uploads/2020/08/Central-Role-of-the-Central-Bank-Governor.pdf> (accessed 20 March 2023). See also Mutenta "Is the Bank of Zambia Independent" 2019 <https://www.grin.com/document/490360> (accessed 20 March 2023). 1–6. See also Hinfelaar "Bank of Zambia's Autonomy Amongst Political Turnovers in Zambia, Working Paper " University of Manchester ESID (2020) 8 <http://www.effective-states.org> (accessed 20 March 2023).

²⁷⁵ Bank of Zambia. This table was created from the history of banking in Zambia https://www.boz.zm/css/BoZ_Historical_Background.pdf (accessed 20 March 2023).

1975	The expansion of the functions of the Bank saw a rise in the number of staff from 400 in 1975 to 1226 staff members in 1988 and 1,400 in 1994. In addition, the corporate head office opened in 1975, while the regional office in Ndola opened in 1979.
1991	The Movement for Multiparty Democracy (MMD) came to power and prioritised the restoration of economic future growth and employment. As a result, price controls and subsidies on all consumer items were abolished. Macroeconomic management in Zambia has been different since then since they are based on free market principles.
1992	The emphasis has been on creating a stable macroeconomic environment as a prelude to sustainable economic growth. The government's focus on price stability as a critical contribution to future economic growth prospects has posed a new but welcome challenge for the Bank.

2.13 Conclusion

Given the above observations, the stage is now set to proceed with further arguments that will make a case for the position of local banks in Zambia. However, the foregoing has demonstrated that banking was essentially a foreign concept in Africa. Foreign entities dominate the sector because local development of the financial institutions has yet to happen. Banks came with foreign domination, and so did the entities that regulated them.

Financial institutions in the West, and England in particular, evolved organically because of necessity and custom. In contrast, for most developing countries, and Zambia specifically, the institutions were thrust upon the economy to bolster colonial domination. They provided the necessary capital for various settlers and foreign business interests in the pre-independence era to assist them in plying their trade. It is strongly argued from an academic position that the banking model of choice captured in the first Banking Act (1964) may not necessarily have tied in with the country's development level, especially when the indigenous populations were expunged from the economic equation altogether by policies that included separating the various populations based on colour and assumptions about the intelligence quotients of these particular groups of people that did not conform to the standards of Victorian morality and the social practices that went with it.²⁷⁶ This position was argued in the British parliament by James Johnson, a Member of Parliament for Rugby from 1950 to 1959:

“Northern Rhodesia is the darkest spot in the whole of the British Colonial Empire. Its social colour bar, racial discrimination, intimidation, and ostracism are worse than those being experienced in the Union of South Africa. Its educational policy and health services cannot be anything but deplorable. The discrepancies in the conditions of service between the European and African Civil Services and between the European

²⁷⁶ Rutberg “Race Relations and Politics in Colonial Zambia: The Elwell Incident” 1965 *Race* 117–29.

*miners and the African miners are shocking. Not all will share those views in their entirety. Some will say that Mr. Nummular paints a lurid picture.*²⁷⁷

The advent of independence did little to change the status quo; the banks that were opening their doors to customers at independence were the same as those that existed before. It was little wonder that these banks were averse to lending to the indigenous populations, as it could create sufficient wealth for them to take over the reins of the developing economy from the colonial master.²⁷⁸ Local initiatives are often set aside for international rules—the Basel Accords being one of these initiatives.

Throughout the thesis, it will become increasingly clear that individual countries have not had the chance to effectively address issues and concerns specific to their banking systems. Suffice it to say that the objective of international regulation is to stabilise the world economy for developed countries at the expense of underdeveloped countries. It is submitted that the banking systems we now take for granted would not exist if the strict regulations we have now were in place when these systems were being developed. Besides, some of these banks have little impact on the international economy, no matter what the financial theory of contagion²⁷⁹ espouses. It is submitted that the world's first financial crisis started in the developed countries. It is, therefore, safe to say that most banks in developing countries do not significantly bear upon the international financial system. Further chapters of this thesis will argue and attempt to show that several banks in Africa and other low-income countries have quietly moved into insolvency and eventually oblivion, without as much as making a wave on the international financial systems, unlike the other way around. This mood is aptly captured in Anthony Baah's paper to the African Labour Research Network workshop, wherein he outlines the problem of continued foreign domination.

He posits that post-independence African development has seen two approaches to development: those initiated by African nations themselves, and those imposed externally. African-led development initiatives that prioritise human welfare. In contrast, externally imposed development programmes, driven by rigid free-market principles since the 1980s, have consistently failed. Africa's brief period of self-directed policy, lasting less than a decade

²⁷⁷ Hansard Northern Rhodesia (1956) <https://api.parliament.uk/historic-hansard/commons/1956/jun/01/northern-rhodesia-african-development> (accessed 20 March 2023).

²⁷⁸ Maimbo (n 12) 15.

²⁷⁹ See ch 4 para 4.11.2.

after independence, was followed by a shift to foreign-designed programs, which have resulted in escalating debt and widespread poverty.²⁸⁰

²⁸⁰ Baah (n 235) 1.

CHAPTER 3

JURISPRUDENTIAL UNDERPINNINGS OF THE ACCORDS

3.1 Introduction

The previous chapter set the groundwork for the thesis by looking at the historical development of regulation, which included introducing operational concepts and definitions that would pervade the work as well as attempting to explain what regulation is. Next, a historical overview of the growth of regulation was given, followed by a consideration of the evolving Zambian financial regulation from before Zambia's independence to its Third Republic in 1991.

This chapter will focus on the jurisprudential underpinnings of the Basel Accords by examining the glue that holds the theory of the Accords together. This exercise is essential because the black letter of the law does not necessarily espouse any theories about why things happen. To reach a better understanding of various processes, the assistance of other areas of the social sciences will be necessary to explain the relationships in question. The black letter of the law is mainly used as a means of resolving disputes or breaches of the law rather than for its jurisprudence. From this perspective, the work will vary considerably as the intention is to evaluate the different relationships and theories under discussion, particularly the economic and sociological approaches thereof. Many of these concepts will be referred to in the following parts of the thesis. Therefore, certain theories behind the Accords must be discussed and understood in detail to help bring all the relevant parts together at the end of the thesis.

While the victory of the Allies historically came about in 1945 with the end of World War II and in 1989 with the fall of the Berlin Wall in East Germany. The real victories came before the war had ended, at the height of World War II in 1944, with the establishment of the Bretton Woods Institutions to govern and rebuild a post-war world after the Second World War had ended. The second victory for the Allies came with the meltdown of the Soviet Union's communist government in 1991. A victory not only for the group of countries fighting the injustices of Nazism and the despotic systems of the Soviet Union but for students of ideology it was a triumph of the neoliberal thought process whose basis was the *laissez-faire*²⁸¹ system

²⁸¹ *Laissez-faire* (French: to allow to do) advocates minimum interference from governments in both economic and social affairs. The statement is attributed to the answer Jean Baptiste Colbert was given as Controller General of Finance under Louis XIV of France when he asked how the French government could assist French industrialists at the time to which they responded, "Leave us alone". This idea was later built on by Adam Smith in classical economics to become the "invisible hand". See Britannica Money "Laissez-Faire" <https://www.britannica.com/topic/laissez-faire>; Smith *An Inquiry into the Nature & Causes of the Wealth of Nations* (1776).

of economics and law that supported this kind of entrepreneurial system of government and thinking. In other words, it was a byword for democracy and competition. Therefore, it is no surprise that the institutions that emerged from the Bretton Woods Conference were already pregnant with these ideas and were set to become the worldwide disseminators of these ideals. In effect, growth under *laissez-faire* economic systems is created from, and dependent upon, borrowing, because it allows entrepreneurs and many others like them to extend themselves beyond their means and engage in economic activity that, in its purest form, results in a concept called “pure” or “perfect” competition which, in turn, reaches a concept called “equilibrium” or “state of balance” at which supply and demand operate at peak efficiency. This stasis is the mainstay for any market economy to thrive, according to economic theory.²⁸² This idea is particularly evident in contract and commercial law in the English common law, based on the theories of Adam Smith and other luminaries from the time of the Industrial Revolution.²⁸³ Banks can therefore be considered an integral part of any system that uses this ideology, except where a state chooses to run the financial system, in which case, the doctrine used may vary.

3.2 The role of capital credit and the money market

Renowned sociologist, Joseph Schumpeter, explained how the phenomenon of credit, capital, and the money market create development in his famous book, “The Theory of Economic Development”.²⁸⁴ While Schumpeter was writing as a classical liberal, the ideas outlined in his book still appear to resonate in present-day *laissez-faire* economies. Moreover, these concepts seem to be the basis of any well-organised capitalist system. Credit and its creation are therefore a cornerstone in any market economy, particularly a capitalist one, as can be summed up by Schumpeter’s quote below:

“First, we must prove a statement so strange at first sight that in principle no one other than the entrepreneur needs credit—or the corollary but at once much less strange statement that the credit serves industrial development...If he does not happen to possess it—and if he did then it would simply be the consequence of the former

²⁸² Ahuja *Principles of Microeconomics* 16 ed 3–850. Part -V Theory of the Firm and Pricing in Perfect Competition Chapter 23 titled *Equilibrium of the Firm under Perfect Competition* 461–480 covers this area of discussion.

²⁸³ Smith (n 282). “Smith was concerned with a type of recognisably capitalist in outline, and his purpose was to expose the basic laws of motion which govern its operation. In successfully undertaking this revolutionary task, Smith left us a book of lasting relevance: a book which in effect contains a great system of thought, constructed by first analysing individual problems before going on to demonstrate their mutual connection and the interdependence of all economic phenomena.”

²⁸⁴ Schumpeter *The Theory of Economic Development* (1934) 107 3–255.

*development—he must borrow it. If he does not succeed, then he cannot become an entrepreneur...He can only become an entrepreneur by previously becoming a debtor. He becomes a debtor in consequence of the logic of the process of development, or, to put it still another way, his becoming a debtor arises from the necessity of the case and not something abnormal...What he first wants is credit. Before he requires any goods, he requires purchasing power. He is the typical debtor in the capitalist Society...”*²⁸⁵

Further, Schumpeter viewed capital as the lever by which the entrepreneur subjects the goods that he needs to his or her control. At the same time, the money market²⁸⁶ is seen as the headquarters of the capitalist system, which provides credit requirements to the entrepreneur whose primary purpose is to finance development.²⁸⁷ Even though Schumpeter’s work was written many decades ago, it still holds firm when compared with the current thinking in finance and the roles that each concept plays in finance. While Schumpeter spoke of a money market that appears to be synonymous with the capital markets,²⁸⁸ it is submitted that banks fit well into this category of classification.

3.3 The ethos of the international financial regulators

As shown in Chapter 2 of the work dealing with the historical background of the Accords, in July 1944, where 44 country representatives gathered at Bretton Woods retreat in New Hampshire, US, to lay the foundation of the post-war economic order.²⁸⁹ The Bretton Woods Conference was intended to address the issue regarding a system of global financial and monetary governance by establishing organisations to address conundrums.²⁹⁰ The Americans and British negotiated the agreement during World War II. The leaders envisioned a system of free and stable exchange rates; this freedom was guaranteed by the removal of exchange

²⁸⁵ Schumpeter (n 254) 102.

²⁸⁶ According to *Britannica*, a money market is a set of institutions, conventions, and practices that aim to facilitate the lending and borrowing of money on a short-term basis. It differs from say a capital market which normally facilitates medium- and long-term credit. See *Britannica Money* “Money Market” <https://britannica.com/topic/money-market>. (accessed 23 March 2020)

²⁸⁷ Schumpeter (n 254) 116.

²⁸⁸ See ch 3 para 3.2.

²⁸⁹ See ch 2.

²⁹⁰ Note that the word, “Conundrum” does not have a Latin root. Therefore, the correct spelling for the plural is conundrums and not conundra as would be expected.

controls and other restrictions. Stability was underpinned by adjustable pegs to the US dollar and backed by gold.²⁹¹

World leaders acknowledged the need for international public financing for economic development and post-war reconstruction after World War II. The Bretton Woods Conference thus led to the establishment of the Bretton Woods twins in 1944, namely the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), better known as the World Bank. When initially established, the IMF's objective was to oversee and support the Bretton Woods system of pegged exchange rates. It was assigned twofold functions. Firstly, it was tasked to oversee the exchange rates of member governments under the par value exchange rate system and, secondly; to make its financial resources temporarily available to its members under adequate safeguards, therefore, providing them with the opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national and international prosperity.²⁹² Following the United States' decision in 1971 to suspend the convertibility of dollars into gold, countries moved towards floating exchange rates in 1973.²⁹³ As a result, the first aspect of the IMF's operations became redundant, and only the second aspect survives to date.²⁹⁴

The World Bank, the second twin created by the Bretton Woods conference, was established to provide investment capital for post-war reconstruction and economic development to countries devastated by World War II. Despite development being the hallmark of the IBRD, it has been contended that its funding had a limited impact on developing countries at the time because the bank initially focused on post-war reconstruction for Western countries.²⁹⁵

²⁹¹ US Department of State Archive 2001–2009 “Bretton Woods Conference 1944” <https://2001-2009.state.gov/r/pa/ho/time/wwii98681.html> (accessed 11 April 2021).

²⁹² n 292.

²⁹³ To salvage the initial failure of the Par Value System, the Group of Ten (G10) industrialized countries concluded a revised framework of fixed exchange rates pegged to a devalued dollar after protracted negotiations, as embodied in the December 1971 Smithsonian Agreement. However, this did not work and approximately fifteen months later, in February 1973, market speculation triggered a further depreciation of the dollar accompanied by the re-establishment of revised exchange rate parities. This pressure on the Dollar led to heightened pressure within the international financial markets and, in response, the Group of Ten agreed to an arrangement whereby six European Community members simultaneously fixed the value of their respective currencies vis-à-vis one another while floating their collective value against the U.S. dollar. See United States Department of State Office of the Historian, “Nixon and the End of the Bretton Woods System, 1971–1973” <https://history.state.gov/milestones/1969-1976/nixon-shock> (accessed 6 November 2024).

²⁹⁴ n 292.

²⁹⁵ n 292.

According to Babb and Kentikelenis, for more than three decades after World War II, neither the IMF nor the World Bank was in the business of promoting neoliberal policies.²⁹⁶ However, the IMF was well-known for practising conditionality in its stabilisation programmes, which were designed to support the value of national currencies within the Bretton Woods System.²⁹⁷ In exchange for emergency loans, the IMF required austerity measures such as a reduction in the fiscal deficit and money supply.²⁹⁸ However, this changed significantly in the 1980s when both organisations became famous for using conditionality²⁹⁹ to promote market liberalising reforms, particularly in newly independent and developing countries. For example, Leckow acknowledges that the theme of conditionality is a subject of enormous controversy.³⁰⁰ While there appears to be several different resources explaining what conditionality is, Leckow defines it as:

*“Those features of a member country’s program of economic reform whose successful implementation is expressly established by the IMF as a condition for the availability of IMF financial assistance.”*³⁰¹

To make sense of the origin of conditionalities, Leckow further refers to Article I(V) of the IMF Articles of Agreement, which explains the objective of the assistance by the IMF viz:

*“[t]o give confidence to members by making the general resources of the fund temporarily available to them under adequate safeguards, thus providing them with the opportunity to correct the maladjustment in their balance of payments without resorting to measures destructive of national or international prosperity.”*³⁰²

²⁹⁶ See ch 3 para 3.1.

²⁹⁷ Babb & Kentikelenis Alexander ‘International Financial Institutions as Agents of Neoliberalism’ in *The SAGE Handbook of Neoliberalism* (2018) 16–27.

²⁹⁸ Ibid.

²⁹⁹ Babb (n 298) 16–27.

³⁰⁰ Leckow ‘Conditionality in the International Monetary Fund’ in *Current Developments in Monetary and Financial Law* (2002) 53–64.

³⁰¹ Ibid.

³⁰² Leckow (n 301) 53–64; Articles of Agreement of the International Monetary Fund 22 July 1944 Article I(v); International Monetary Fund (IMF) “Articles of Agreement of the International Monetary Fund”, note that Article VIII falls under the heading: General Obligations of Members (22 July 1944) <https://www.imf.org/external/pubs/ft/aa/> (accessed 11 April 2021). Article I deals with the purposes of the IMF which include promoting international monetary cooperation, facilitating the growth and expansion of international trade, promoting exchange stability, establishing a multilateral system of payments by providing member confidence and lessening the period of disequilibrium for a country that suffers economic maladjustments.

The political context for its shift was the rise of neoliberal conservative governments in both the United States and the United Kingdom. It contends that neoliberalism spread unevenly across emerging markets, embodied in the Washington Consensus policies³⁰³ embraced by the World Bank, IMF, and United States Treasury in the immediate post-Cold War period.³⁰⁴ The Washington Consensus tasked the World Bank and IMF with the highly visible job of persuading governments to make politically tricky and painful structural reforms with the promise that the short-term pain would be justified by sustained growth. This set up a natural experiment on the effectiveness of neoliberal policies in developing countries.³⁰⁵

The neoliberal theory is promoted by these multilateral agencies³⁰⁶ through the following processes: firstly, through privatisation, which has been a central plan in the economic restructuring policies, commonly referred to as the Structural Adjustment Programmes (SAPs), which have been supported by other International Financial Institutions (IFIs).³⁰⁷ The second pillar of neoliberal programmes to “marketise”³⁰⁸ the expanding global economy is liberalisation, which entails the removal of officially imposed restrictions on movements

³⁰³ The expression “Washington Consensus” was introduced in 1989 by economist John Williamson. He was referring to a set of policies that garnered favour among Latin American policymakers as a reaction to the macroeconomic instability and debt crisis of the early to mid-1980s. These policies were also supported by experts from Washington’s international institutions—particularly the International Monetary Fund and the World Bank, along with the U.S. Treasury—to assist in recovering from the debt crisis. The term “Washington Consensus” alarms some economists while offering lasting insights to others. The principal policies of the Washington Consensus encompass maintaining fiscal discipline, rearranging public spending priorities (shifting from subsidies to investments in health and education), overhauling tax policy, allowing the market to set interest rates, keeping a competitive exchange rate, liberalizing trade, enabling foreign investment, privatizing state enterprises, reducing barriers to entry and exit in markets, and ensuring property rights. Williamson pointed out that these policies challenged the prevailing beliefs in developing countries, many of which favoured state-controlled systems during the 1950s. See Irwin *et al.* “What is the “Washington Consensus?” (2021) <https://www.piie.com/blogs/realtime-economic-issues-watch/what-washington-consensus> (accessed 6 November 2024).

³⁰⁴ Leckow (n 301) 53–64.

³⁰⁵ Leckow (n 301) 53–64.

³⁰⁶ A multilateral agency, as opposed to a bilateral organisation, is simply an organisation such as the United Nations, the IMF, and the World Bank Group, etc, which are formed by three or more nations to work on issues of common interest. See Ryden “What is a Multilateral Organisation?” Impact Pool <https://www.impactpool.org/articles/what-is-a-multilateral-organization> (accessed 11 April 2021).

³⁰⁷ International financial institutions. These are known as multilateral development banks (MDBs). They normally offer grants, guarantees, credits and low-cost loans to borrowing member countries to achieve developmental goals. See Trade Commissioner Service “Get to Know the IFIs, the UN and Aid Agencies” <https://www.tradecommissioner.go.ca/development-development/ifi/know-ifi-connaître.aspx?lang=eng> (accessed 11 April 2021).

³⁰⁸ To marketise means to expose an industry or service to market forces. According to Britannica, marketisation means the introduction of competition into the public sector previously governed by public control. In its broadest sense it means transforming an entire economy away from a planned economic system towards greater market-based organisation. See Britannica Money “Marketization” <https://www.britannica.com/topic/marketization> (accessed 11 April 2021).

between countries on goods, services, money, and capital. Neoliberal prescriptions provide that regulatory authorities should reduce, or preferably eliminate, trade barriers, foreign exchange restrictions, and controls on foreign direct and portfolio investments.³⁰⁹

In the SAPs liberalisation is the crucial objective sought to be achieved by the IMF and World Bank. This is also evidenced in the IMF's Article VIII of its Charter ³¹⁰ where it espouses a monetary and financial liberalisation, which prescribes restrictions on current account transactions and discriminatory currency arrangements without its approval.³¹¹ section 3 of the "Avoidance of Discriminatory Currency Practices" reads as follows:

*"No member shall engage in or permit any of its fiscal agencies referred to in Article V. Section 1 to engage in any discriminatory currency arrangements or multiple currency arrangements of multiple currency practices whether within or outside margins under Article IV or prescribed by or under schedule C except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force, the member concerned shall consult with the fund as to their progressive removal unless they are maintained or imposed under Article XIV, section 2 in which case the provisions of section 3 of the article shall apply."*³¹²

Another means through which neoliberal theory is advanced is through deregulation. Deregulation, in this context, entails the removal of those rules and procedures that allegedly interfere with market dynamics, damage incentives, and compromise efficiency.³¹³ On the other hand, neoliberalism emphasises the need for laws and institutions that uphold markets and promote their efficient operation. This is done by measures such as price and wage control, subsidies, fixed exchange rates, and several taxes. In summation, neoliberalism uses deregulation to shift from state interventionism toward market-enabling governance. The

³⁰⁹ Leckow (n 301) 53–64.

³¹⁰ Articles of Agreement of the International Monetary Fund 22 July 1944. Note that Article VIII falls under the heading: General Obligations of Members. See International Monetary Fund (IMF) "Articles of Agreement. Article III Quotas and Subscriptions International Monetary Fund: Articles of Agreement" <https://www.imf.org/external/pubs/ft/aa/> (accessed 11 April 2021).

³¹¹ International Monetary Fund Articles of Agreement. Article III Quotas and Subscriptions International Monetary Fund: Articles of Agreement <https://www.imf.org/external/pubs/ft/aa/> (accessed 11 April 2021).

³¹² Ibid.

³¹³ Scholte "The Sources of Neoliberal Globalization" United Nations (2005) 3–31.

deregulation measures have been the cornerstone of the structural adjustment programmes advanced and promoted by the International Financial Institutions (IFIs).³¹⁴

3.3.1 *Neoliberalism*

Neoliberalism is a concept used to describe the furtherance of the ideas of classical liberalism that resulted from the Industrial Revolution. There appears to be no clear definition to speak of this concept, and over time, the word has come to mean different things. As observed by Taylor *et al.* Research analysing scholarly articles reveals that neoliberalism is frequently used without a clear definition, serving variously as a label for ideology, economic theory, development strategy, or economic policy. It often carries a negative connotation, equating it with unrestrained market fundamentalism akin to classical liberalism, rather than reflecting the nuances of its original conception. This has led to debate about the term's precise meaning and its value as an analytical tool in social sciences, particularly given the increasing diversity of market economies.³¹⁵

We will see that in its most basic form, neoliberalism espouses policies of economic liberalisation that include privatisation action, deregulation, globalisation, free trade, and austerity measures in government spending in furtherance of the private sector. Neoliberalism is a paradigm shift away from the ideas of John Maynard Keynes, which is the cornerstone for many policy measures across the free world countries from the 1930s until the 1970s.

³¹⁴ Ibid.

³¹⁵ Taylor & Gans-Morse "Neoliberalism: From New Liberal Philosophy to Anti-Liberal Slogan" 2009 *Studies in Comparative International Development* 137–161.

Keynesian Economics³¹⁶ fell out of favour because it failed to resolve the persistent stagflation³¹⁷ that came to haunt market economies of the 1970s.³¹⁸

Neoliberalism was not an entirely new concept to Western economic philosophy. Ideas were already being mulled over by European liberal scholars in the 1930s, with the push for governments to control financial markets more closely because of the Great Depression and the 1929 stock market crash. Equally, there was a need to avoid the economic failures of the 1930s. Some scholars felt that the market failures had to do with the flaws in classical liberalism itself.³¹⁹

The term became more common during the 1980s when it quickly took on negative connotations and was used more as a tool to criticise economic policy related to market reform and the dogma of a free market. On the philosophical front, there were thinkers like Friedrich Hayek, Milton Friedman, and James Buchanan, who advocated for the system, while on the political front, policymakers such as Prime Minister Margaret Thatcher and President Ronald Reagan put the philosophical ideals into practice. But all of these drew on similar values of favouring the Washington Consensus as a model of development³²⁰ reducing the role of the state in the economy while encouraging the privatisation of public economic sectors, deregulation of private corporations, and decreasing government expenditure and debt.³²¹

³¹⁶ Keynesian economics comprises a collection of macroeconomic theories and models that emphasize the impact of aggregate demand on inflation and overall economic output. This theory is named after the British economist John Maynard Keynes (1883–1946), who is regarded as the pioneer of modern macroeconomics. Keynesians assert that due to the somewhat inflexible nature of prices, changes in any spending component—such as consumption, investment, or government expenditures—lead to variations in output. For instance, if government spending rises while all other spending components stay the same, output will increase. Additionally, Keynesian economic models incorporate a multiplier effect; this means that output varies by a multiple of the spending increase or decrease that triggered the change. If the fiscal multiplier exceeds one, a one dollar rise in government spending would lead to an increase in output that is greater than one dollar. See Jahan *et al.* “What Is Keynesian Economics?” (2014) IMF Finance & Development <https://www.imf.org/external/pubs/ft/fandd/2014/09/basics.htm> (accessed 13 November 2024).

³¹⁷ Stagflation is an economic concept that is used to explain a combination of economic stagnation and inflation in an economy. This condition characterised many economies in the 1970s. It essentially ended the reign of the economist, John Maynard Keynes, in macroeconomics and ushered in the era of Milton Friedman. See Laidler “Milton Friedman and the Evolution of Macroeconomics” 2006 Working Paper (2006) 43.

³¹⁸ Taylor (n 316) 137–161.

³¹⁹ Classical Liberalism by its nature is a political tradition and a branch of liberalism that advocates for individual autonomy. It therefore emphasises civil liberties, economic and political freedom, including freedom of speech. It abhors government control and supports free market principles under what is called *laissez-faire* economics guided by the invisible hand and the rule of law. See Douma *What is Classical Liberal History?* (2018) 503–505.

³²⁰ See ch 3 para 3.

³²¹ Taylor (n 316) 137–161.

This ideology was further disseminated by international organisations such as the IMF and World Bank to third-world countries through the policies they proffered to these countries that needed assistance in what they deemed as Structural Adjustment Programmes (SAPs), part of which included privatisation, trade liberalisation, and the enforcement of strong private property rights and reduced government spending.³²²

3.3.2 *Foundations of neoliberal theory*

Neoliberalism is a doctrine based on the inexorable truths of modern economics. It emerged as an ideological response to the crisis of the “Keynesian welfare state,”³²³ which was precipitated by the generalised capitalist crisis associated with the end of the post-war reconstruction boom and was brought to a head by the escalating cost of the United States war against Vietnam at the beginning of the 1970s. Clarke contends that Adam Smith³²⁴ laid the foundations of neoliberalism with his argument that free exchange was a transaction from which both parties necessarily benefited since nobody would voluntarily engage in an exchange from which they would emerge worse off.³²⁵

³²² Taylor (n 316) 137–161.

³²³ A Welfare State refers to a system where organized authority intentionally employs political and administrative measures to influence the operation of market forces in at least three ways. Firstly, it guarantees a minimum income for individuals and families, regardless of the market value of their labour or assets. Secondly, it reduces the level of insecurity by allowing individuals and families to cope with certain “social contingencies” (such as illness, aging, and job loss) that could otherwise result in personal and familial crises. Finally, it ensures that all citizens, regardless of their status or class, have access to the highest possible standards in a specific range of agreed-upon social services. See Fry ‘Ghost in the Machine: The Keynesian Full Employment Welfare State’ in *The Politics of Decline* (2005) 3.

³²⁴ Adam Smith is a significant figure in the evolution of economic thought. Primarily recognized for his major work such as *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), (the first detailed framework of political economy), and *The Theory of Moral Sentiments* (1759)—His seminal work when compared alongside his previous lectures on moral philosophy and governance, it becomes apparent that the *Wealth of Nations* can be interpreted not just as an economic treatise but also as a segment of a larger narrative on historical development. See Heilbroner “Adam Smith” *Encyclopedia Britannica* (2024) <https://www.britannica.com/biography/Adam-Smith> (accessed 6 November 2024).

³²⁵ Clarke ‘The Neo-liberal Theory of Society’ in *The Ideological Foundations of Neo-Liberalism. A Critical Reader* (2005) 50–59 <https://home.pages.warwick.ac.uk> (accessed 11 April 2021).

Neoliberalism rests on economics or economicism³²⁶ and marketism,³²⁷ which is achieved through the means of privatisation, liberalisation, and deregulation. Neoliberalism has an economistic³²⁸ worldview at its core; it tends to treat economics in isolation from other dimensions of social relations. The doctrine supposes that economic policies towards globalisation could be a culturally and politically neutral matter of technical expertise. From a neoliberal perspective, the global economy should consist of a free and open market. Production, consumption, and exchange of resources should unfold through forces of supply and demand, as they emerge from the uninhibited interactions of a multitude of firms and households in the private sector. As seen earlier, there is no precise definition of neoliberalism, though scholars have endeavoured to define it. Some proposed definitions or descriptions of what encompasses neoliberal theory,³²⁹ all share four common and inexorable features according to Davies, namely:

- a) That Victorian liberalism³³⁰ is viewed as inspiration for neoliberalism, but not a model. Neoliberalism is an inventive, constructivist, modernising force, which aims to produce a new social and political model and not to recover an old one. Neoliberalism is not a conservative or nostalgic project.
- b) That neoliberal policy targets institutions and activities which lie outside of the market, such as universities, households, public administrations, and trade unions. This may be to

³²⁶ Economism (sometimes spelled Economicism) is essentially a theory that espouses the dominance of economic forces over other forces such as social and cultural forces. Given that the label is also applied to a group of moderate Russian social democrats at the end of the 19th century and the beginning of the 20th century it is also sometimes used as a term referring to the distraction of working-class political and activism from a global political project to purely economic demands. The concept encompasses rewarding workers in socialism with monetary incentives rather than through revolutionary politics. See Open Education Sociology Dictionary “Economism Definition” <https://sociologydictionary.org/economism/> (accessed 11 April 2021); Encyclopedia.com “Economism” <https://www.encyclopedia.com/history/modern-Europe/Russian-soviet-and-cis-history/economism> (accessed 11 April 2021).

³²⁷ Marketism is “the core idea of marketism is that of equating all trade with equal and mutually beneficial market exchanges and believing that such exchanges are certain to lead to the division of labour and transformative changes in labour productivity.” See Huang “A Critique of Marketism: Varieties of Exchanges in China’s Past and Present. *Modern China*” 2021 *Modern China* 3–28.

³²⁸ Economistic simply means relating to economics or finances. See CollinsDictionary.com “Economistic Definition and Meaning” <https://www.collinsdictionary.com/dictionary/english/economistic#> (accessed 11 April 2021).

³²⁹ Davies “A Bibliographic Review of Neoliberalism” (2014) *Journal of Theory, Culture and Society* 309–317; Clarke (n 326) 50–59.

³³⁰ The foundations of Victorian liberalism go right back to the philosopher, John Locke, who fashioned liberalism into a distinct tradition with his theory of social contract and his work on the *Second Treatise of Government*. Liberalism became the dominant political force by the reforms of the Whigs in Victorian England between 1830 and 1886. Victorian Liberalism reached its apex under William Gladstone (1868-1894). See Encyclopaedia Britannica “Liberalism in the 19th Century” <https://britannica.com/topic/liberalism/Liberalism-in-the-19th-century> (accessed 11 April 2021).

bring them inside the market, through acts of privatisation or to reinvent them in a market-like way, or simply to neutralise or disband them.

- c) To do this, the state must be an active force and cannot simply rely on market forces. This is where the distinction from Victorian liberalism is greatest. A neoliberal state is required to produce rules for institutional and individual conduct in ways that agree with its ethical and political vision.
- d) This ethical and political vision is dominated by the idea of competitive activity, which produces inequality. Competition and inequality are valued positively under neoliberalism as a non-socialist principle for society in general, through which value and scientific knowledge can best be pursued.

To Gertz and Kharas, neoliberalism is a highly contested word meaning different things to different people.³³¹ The writers espouse three distinct but related conceptualisations of neoliberalism, namely:

- a) **Neoliberalism as a thought collective.** This entails defining neoliberalism as an organised intellectual and political movement propagated by a specific group of people.
- b) **Neoliberalism as an academic theory.** Neoliberalism refers to the academic study of economics using neoclassical models. These models are neoliberal in the sense that they are grounded in individual choices on what to consume and produce.
- c) **Neoliberalism as a policy and practice.** Neoliberalism constitutes a set of economic policies that have been implemented by governments espousing the same principles of individualism and markets as neoliberal thinkers.³³²

Writers further define neoliberalism as a branch of modern neoclassical economics, citing the definition propounded by Colander, Holt, and Rosser in 2004, which defined neoclassical economics as “an analysis that focuses on optimising behaviours of fully rational and well-informed individuals in a static context and the equilibrium that results from that optimization.”³³³ Neoliberal policy is said to mean any measure intended to lessen the role of a state and enhance the role of markets in at least one national economy.³³⁴

³³¹ Gertz & Kharas “Beyond Neoliberalism Insights from Emerging Markets. Global Economy and Development at Brookings” (2019) 1–108.

³³² Scholte (n 314) 3–31.

³³³ Gertz (n 332) 1–108.

³³⁴ Babb (n 298) 16–27.

3.3.3 *Washington Consensus*

The Structural Adjustment Programmes come on the back of what is called the “Washington Consensus.”³³⁵ The Washington Consensus is a set of standardised policy prescriptions often associated with being meted out by the likes of the IMF and the World Bank. Often, the prescriptions given out by these institutions include severe austerity measures, which include a liberalisation of the economy in question. Rowden³³⁶ sees the Washington Consensus as a framework of free-market policies for indebted and inflation-ridden developing nations. These policies mandated trade and financial liberalization, privatization, deregulation, elimination of capital controls, strict fiscal austerity, independent central banks, and relaxed foreign investment restrictions, all aimed at reducing state economic intervention and promoting free-market activity. In the 1980s, these policies became mandatory for IMF and World Bank debt relief and loans. By the 1990s, they influenced WTO membership rules, and they have since become a fundamental part of economics education globally.³³⁷

3.3.4 *Critique of neoliberalism*

Neoliberalism has faced significant criticism since its inception as an ideology. Mark Bittman aptly summarises the negative aspects of the neoliberal system. He says that while social progress has been notable over the past four decades, economic conditions have deteriorated. This decline is attributed to the implementation of neoliberal policies, including anti-union measures, deregulation, unchecked market fundamentalism, and heightened avarice, which began under Richard Nixon and accelerated during Ronald Reagan’s presidency. The current widespread hardship is a consequence of insufficient resistance to these policies in the past.³³⁸

It has also been argued that the resulting inequality in both developed and developing countries was tied to the implementation of neoliberal policies, which culminated in anti-inflationary bias and anti-unionism as well as under-employment which has resulted in greater numbers in

³³⁵ See ch 3 para 3.3.

³³⁶ Rowden *From the Washington Consensus to the Wall Street Consensus: The Financialization Initiative of the World Bank and Multilateral Development Banks* (2019). Rowden ‘If the Washington Consensus was Really over what would that Look Like for Development Strategy’ in *Critical Perspective on Development Economics* (2021) <https://developingeconomics.org/2021/06/24/if-the-washington-consensus-was-really-over-what-would-that-look-like-for-development-strategy/>. (accessed 15 June 2020).

³³⁷ Ibid.

³³⁸ Bittman “Is It Bad Enough Yet?”(2014) *The New York Times* 8 https://www.nytimes.com/2014/12/14/opinion/sunday/mark-bittman-is-it-bad-enough-yet.html?referrer&_r=1 (accessed 12 August 2020).

informal employment. It has also resulted in increased industrial accidents and occupational diseases.³³⁹

While there are many negative consequences blamed on neoliberalism, there are three that are of particular interest to this study, namely financialisation, corporatocracy and globalisation.

3.3.5 *Financialisation*

Karwowski and Stockhammer mention that the term “financialisation,” coined in the early 1990s, covers a wide range of academic disciplines and thus definitions of the concept can vary widely because of this. For this thesis, the standard definition that is widely coined by Epstein in his work called “Financialisation and the World Economy”³⁴⁰ has been chosen, namely:

*“Financialisation refers to the increasing importance of financial markets, financial motives, financial institutions and financial elites in the operation of the economy and its governing institutions, both at the national and international level.”*³⁴¹

Pally outlines the principal impacts of financialisation on an economy, and while the reference was to the American economy, most, if not all, the impacts can apply to most economies. The first impact is to elevate the significance of the financial sector relative to the real sector.³⁴² As a result, this leads to the second impact, where income is transferred from the real sector to the financial sector. Ultimately, this leads to increased income inequality and wage stagnation, which can ultimately lead to the risk of debt deflation and recession.³⁴³ More recently, additional work has been done around financialisation and emerging market economies, which will be alluded to in later chapters of the thesis.

3.3.6 *Corporatocracy*

Corporatocracy leverages neoliberal policies and globalization to consolidate its power. There appears to be no clear definition for it, but it tends to mean that it is an economic, political, or

³³⁹ Ibid.

³⁴⁰ Karwowski *et al.* “Financialisation in Emerging Economies: A Systematic Overview and Comparison with Anglo-Saxon Economies” 2017 *Economic and Political Studies* 60–86.

³⁴¹ Epstein *Financialisation, Rentier, and Central Bank Policy, Manuscript, Department of Economics* (master’s thesis, University of Massachusetts 2001). 1.

³⁴² Pally “Financialisation: What It Is and Why It Matters” (2007) Working Paper 3–31. <https://www.levyinstitute.org>. (accessed 26 August 2020).

³⁴³ Pally (n 143) 3–31.

judicial system controlled by corporations or, indeed, corporate interests.³⁴⁴ Corporatocracy may be evidenced by things such as bank bailouts,³⁴⁵ excessive pay for chief executive officers, and, in general, the exploitation of a country's treasury, its natural resources, and its people in general. Academics who are critical of globalisation and the operations of the Bretton Woods Institutions tend to use the description quite often when voicing their views on the current state of the geopolitical system. When compared to other concepts like capitalism, corporatocracy is relatively new and appears to be the result of the emergence of a neoliberal style of governance, together with globalisation.

3.3.7 Globalisation

Globalisation has been a topical issue over the last 200 years³⁴⁶ as countries decided how to get rid of their borders and trade with one another as a single sovereign state starting with the European Union (EU) which was established in 1948³⁴⁷ out of the ravages of World War II and other previous conflicts that plagued Europe over hundreds of years. Some of the ideas were premised on the works of classical thinkers like Adam Smith, David Ricardo, and many other authors who foresaw the possibility of not only inter-country trade but also the integration of countries. Globalisation, according to Alaskan, is thus the culmination of these ideas and ideals that have set the globe on a path to world integration through trade, financial flows, the exchange of technology, information, and the free movement of people across borders.³⁴⁸ Globalisation is not a single concept but covers economic, cultural, and political globalisation. Each one of these concepts has its impact on the world, so to speak. As this thesis focuses on banking, most of what will be discussed is related to economic globalisation. Nevertheless, it

³⁴⁴ Shen "Capitalism, Corporatocracy and Financialisation: Imbalances in the American Political Economy. The Public Sphere" 2012 *Journal of Public Policy* 15–32.

³⁴⁵ Financial bank bailouts take place when a government normally, using taxpayers' money, injects money into a troubled bank to help them avoid insolvency. See Mare *et al.* "Bailouts and Fiscal Contingent Liabilities" Policy Research Working Paper (2023) 1–39 (authorised for public disclosure).

³⁴⁶ Harold "In Defense of Globalisation. International Monetary Fund Finance and Development" (2023) https://www.imf.org/en/Publications/fandd/issue_s/2023/03/in-defense-of-globalisation-harold-james (accessed 11 April 2021).

³⁴⁷ The march of the European Union (EU) towards economic integration started with the Treaty of Brussels in 1948. This was established by the founding states known as the "Inner Six" and was initially made up of Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany. Several treaties followed later culminating in the Treaty of Rome in 1958, the Maastricht Treaty in 1993, followed shortly by the Treaty of Amsterdam in 1999 before financial integration in 1999 when the single currency in the form of the Euro was launched. See European Union "History of the European Union 1990–1999" https://european-union.europa.eu/principles-countries-history/history-eu/1990-99_en (accessed 11 April 2021).

³⁴⁸ Ouattara "The Challenges of Globalisation for Africa" *Proceedings of the Southern Africa Economic Summit sponsored by the World Economic Forum* (1997) 1.

is difficult to take a position as these concepts are often intermingled with one another, and often the discussion of one cannot occur at the exclusion of the other.

3.3.8 *A critique of globalisation*

Globalisation appears to have its supporters and its critics. It appears in many respects that the critics and supporters can be placed clearly on the divide between developed and developing countries, with some caught in between. Certain issues that have been raised relate to the impact of globalisation on economic growth, including, for instance, American hegemony, the impact of transnational and other large corporations, sovereignty, and damage to the environment because of economic growth, to name but a few.

Many authors view globalisation as an uneven process in developing countries that has resulted in the integration of some groups at the expense of others.³⁴⁹ These imbalances tend to restrict the growth of an economy.³⁵⁰ Globalisation has also been blamed for the continuum of global crisis because it encourages a capitalist approach to development.³⁵¹ The result is that many countries are forced into following a market economy approach which may not be suitable for that particular country.

Best asserts that globalisation is an American project hatched and solidified by the Washington Consensus to transfer American ideals and values globally, including to developing countries. His concern is that this may result in the transfer of the same negative tendencies that America suffers from.³⁵²

Another burning issue that is often raised is the question of the impact of globalisation on the sovereignty of developing countries, particularly that these countries must give up some of their sovereignty to become proxy members of the global clubs. Countries tend to “sell their voices”

³⁴⁹ Kiely “The Clash of Globalisations. Neo-Liberalism, The Third Way and Anti-Globalisation” (2005) 109–159 [http://www.gci.org.uk/Documents/ CLash.pdf](http://www.gci.org.uk/Documents/CLash.pdf) (accessed 11 April 2021).

³⁵⁰ Ibid.

³⁵¹ Skonieczny *Interrupting Inevitability: Globalization and Resistance* ProQuest 347845517 (2010).

³⁵² Best ‘Introduction: Pathologies of Power and the Rise of the Global Industrial Complex’ in Best *et al.* (eds) *The Global Industrial Complex: Systems of Domination* (2011). See soft copy at <https://drstevebest.wordpress.com/2011/12/18/pathologies-of-power-and-the-rise-of-the-global-industrial-complex/> (accessed 11 April 2021).

to multinational institutions and effectively become recipients of policies made at these plenaries, with little power to change anything.³⁵³

3.4 Theories of financial crisis

The theories of how a financial crisis occurs are important to this part of the thesis as it gives a deeper insight into some of the rules created by the Basel Accords and the mischief they intend to remedy. They are thus the building blocks against which mitigants are created by the BCBS³⁵⁴ in trying to forestall bank failures in a market. The Accords are founded on the fact that banks fail if they are not properly regulated and capitalised. It is therefore important that this area of banking theory be examined. The theories that have been presented are by no means the only ones available or relevant. The scope of the thesis would, however, not permit a full evaluation of each theory, which could itself take up several volumes. Prudence would dictate that only the theories that were used in the formulation of the Accords be examined, but the counter to that assertion would be that there is no explicit work that offers up this information freely. Equally, it can be noticed that the theories are mostly given up in their bland and naked state. An attempt will be made to clothe them when we get to the analysis at the end of the thesis.

3.4.1 *Background to theories of financial crisis*

Fresh in the minds of investment experts, bankers, governments, researchers and financial analysts is not the Central American crisis of 1982, but the Global Financial Crisis of 2007–2008 (also known as the GFC) which fiercely stung the global financial system. The investment markets came to a standstill as about USD 600 billion that had been flowing into the market disappeared. According to Mishkin, the crisis occurred in phases or stages.

The first phase of the crisis was brought on by the subprime mortgage crisis.³⁵⁵ It started when the French bank BNP Paribas suspended the redemption of its shares held in some of its money market funds. This was due to a decline in the once-buoyant housing prices that led to the

³⁵³ Friedrichs *et al.*, “The World Bank and Crimes of Globalization: A case study” 2002 *Social Justice* 13–36. See also Tabb “Contextualizing Globalization: Comments on Du Boff and Herman” 1997 *Monthly Review* 35–40.

³⁵⁴ The Basel Committee on Banking Supervision (BCBS) is the primary global standard setter for the prudential regulation of banks and provides a forum for regular cooperation on banking supervisory matters. Its 45 members comprise central banks and bank supervisors from 28 jurisdictions. See BIS. The Basel Committee for Banking Supervision (BCBS) “Overview” <https://www.bis.org/bcbs/index.htm> (accessed 6 November 2024).

³⁵⁵ Mishkin “Over the Cliff: From Subprime to the Global Financial Crisis” 2011 *Journal of Economic Perspectives* 49–70.

unravelling of mortgage-backed financial securities, in many instances securities based on what were deemed to be safe subprime mortgages. These, however, turned out to be risky and investors started losing money on them. As a result, there was a run on several banks. The run, however, was different in that it was described as a run on the shadow banking system. Bear Stearns was the next to succumb to the run in March 2008. It was only saved by the US Federal Reserve when it brokered a deal with JP Morgan for Bear Stearns to stay afloat. This was followed by the collapse of AIG on 16 September 2008.³⁵⁶

According to Mishkin, the second phase of the crisis resulted in the GFC and saw the failure of Lehman Brothers, as well as Fannie Mae and Freddie Mac,³⁵⁷ swiftly followed by the sale of Merrill Lynch, America's biggest brokerage firm, a day before Lehman Brothers filed for bankruptcy. This was the last straw that turned the crisis into a fully-fledged disaster. The value of equities, real estate, and currencies that collapsed amounted to over USD 28 trillion in losses in home equity and investments. At this point, the crisis was considered global as it was widespread. Interestingly, many developing countries escaped this crunch completely. The global financial system had crumbled mainly in the West, sparking interest in analysing the possible theories that created the financial crisis.³⁵⁸

3.4.2 Definition of financial crisis

The history of the Western financial system is replete with financial crises, because if there is a financial system, there is always the potential for it to fail. With the financial disaster that it creates comes new ideas on how to try to stop the scourge of the next one. What is worrisome, however, is that these crises are growing with the sophistication of the financial markets. It is therefore imperative that this area of the banking industry be examined to understand the thinking of the players in this sector. Thinking that will be later applied to the analysis when the Zambian case study is evaluated.

To do this, several theories will be examined to provide some sort of explanation for what causes crises in a financial sector in general and financial institutions in particular. An examination of various literature shows that experts and academics have defined financial crises variably. For purposes, the definition of a financial crisis will be narrowed down to two

³⁵⁶ Ibid.

³⁵⁷ Mishkin (n 356) 49–70.

³⁵⁸ Mishkin (n 356) 49–70.

main crises that relate to the flow of the thesis. The first definition will be taken from Mishkin who defines a financial crisis as:

“...a disruption to financial markets in which adverse selection and moral hazard become much worse so that financial markets are unable to efficiently channel funds to those who have the most productive investment opportunities.”³⁵⁹

Or in other words, financial markets collapse as banks become burdened with non-performing loans, and as a result, this creates illiquidity in the financial market that could eventually spawn a financial crisis. From the above “standard” set by Mishkin of a definition for a financial crisis, four theories are discussed under two broad categorisations. These, in turn, are made up of cyclical and non-cyclical hypotheses.

3.4.3 The cyclical theories

Cyclical theories are so named because they occur within the context of a business cycle.³⁶⁰ Cyclical theories have two branches that fall under them, namely, financial instability and business cycle hypotheses.

3.4.3.1 The financial instability theory

This theory emerged in the 1970s and was based on the rising levels of financial instability, especially after World War II. Minsky espoused the theory. Born in 1919, Minsky grew up at a time when the financial sector was incredibly stable³⁶¹ with only isolated pockets of instability. Minsky's theories were based on the growing instability that resulted firstly from the 1966 credit crunch and was followed closely by numerous episodes of instability in the US and world economies in the 1970s.³⁶² These frequent episodes of instability troubled Minsky and resulted in him studying the phenomenon using the Keynesian framework. As he began to

³⁵⁹ Mishkin “Anatomy of Financial Crisis, Working Paper No 3934” NBER (December 1991) 1–24 <https://ssrn.com/abstract=227370> (accessed 11 April 2021).

³⁶⁰ Hendrickson *Theories of Financial Crises* (2013) 13.

³⁶¹ Ibid.

³⁶² The United States underwent a severe economic recession in the 1970s because of high stagflation at the time which resulted in slow economic growth, job cuts and failing industries. Often described as the great inflation it lasted from 1965 to 1982, according to Bryant “Federal Reserve Bank of Atlanta” <https://www.federalreservehistory.org/essays/great-inflation> (accessed 11 April 2021).

understand the model more, he espoused the Financial Instability Hypothesis that mirrors the deeply rooted Keynesian ideals.³⁶³

Minsky attributes financial instability to heightened inflation and excessive debt deflation spiralling out of control. In his espousal of the Financial Instability Theory, Minsky locates the source of instability to profit-seeking activities. He explains that profit-seeking activities begin with banks since they appreciate that innovation guarantees profits and so innovate marketable assets and liabilities. According to Minsky, because of their profit-seeking nature, banks will stretch liquidity to meet the demand for and maximise profits, while businesses increase their borrowings to increase profits. This makes up the central theme of the theory of profit-seeking.³⁶⁴ It is argued that in stable economic times, businesses tend to borrow more which eventually exhausts the liquidity elasticity of banks, leading to instability. It can thus be said that debt has a destabilising effect on the system.

The basis of this theorem is that of economic financing regimes. Minsky notes that financing regimes describe the economy at two different points, firstly, where it is stable, and secondly, where it is unstable. These regimes are based on income debt relations of economic units. The third basis is that during times of prosperity, the economy can move from financing forms that are stable to those that are unstable. Conclusively, Minsky sees financial instability as a key inherent feature of capitalist economies.³⁶⁵

This idea divides financing of the economy into three distinct parts, namely: hedge financing, speculation financing, and Ponzi financing.³⁶⁶ Hedge financing occurs when financial commitments are met from cash flow.³⁶⁷ In this situation, there is sufficient expected income

³⁶³ Hendrickson (n 361) 13. See also Burger “A Historical Analysis of the Credit Crunch of 1966” (1969) Federal Bank of St Louis https://files.stlouisfed.org/files/htdocs/publications/review/69/09/Historical_Sep1969.pdf (accessed 11 April 2021) This article gives more insight into the 1966 US credit crunch on which Minsky built some of his theories. The article further posits that the 1966 US financial crisis proved to be the first verification of the “financial instability hypothesis” theory that Minsky had been working on since the late 1950s. Wray “The 1966 Financial Crisis: A case of Minskian Instability?” (January 1999) Working Paper Levy Economics Institute <https://www.levyinstitute.org/publications/the-1966-financial-crisis> (accessed 11 April 2021).

³⁶⁴ Hendrickson (n 361) 13.

³⁶⁵ Caballero “*Hyman Minsky and Financial Instability*” 2019 Portland State University Economics Working Paper 1–15.

³⁶⁶ Ibid.

³⁶⁷ Caballero (n 366) 1–15.

to meet all future payment commitments, both principal and interest. There is no need to borrow or dispose of assets.³⁶⁸

In speculative financing, financial obligations are met with earnings from liabilities³⁶⁹ which results in a situation where “when creditors pay, then we will be able to pay.” In other words, speculative financing is less tangible and more speculative, and without any assurance attached to it.³⁷⁰

Ponzi financing occurs when an entity with an outstanding loan does not generate enough cash flow to meet its principal or interest repayment.³⁷¹ There is a crisis here and funds must be found elsewhere to meet financial obligations. Ponzi financing increases the risk for debt holders.³⁷² Even if income is received from the debtors the realisation is not sufficient to meet all its loan commitments. Borrowing and asset sales may have to be instituted to meet financial obligations.³⁷³

These modes of debt financing have economic effects; when the economy is hedging finances, it shows stability. Where Ponzi and speculative financing are used, it moves further from an amplified system, and if it continues this trajectory, it soon becomes unstable. Minsky³⁷⁴ states that if the economy, during good times, overuses speculative finance, inflation rises. An attempt by the central bank to constrict the monetary framework turns speculative finance into Ponzi finance. This results in an increased cost of doing business.³⁷⁵

Minsky concludes that business cycles are compounded by factors from within the business cycle and hence are known as cyclical theory.³⁷⁶ These factors may broadly be described as internal dynamics of capitalist economies and systems of intervention and regulation to keep the economic resonance. Thus, the rise in innovation, the complexity of the financial system,

³⁶⁸ Caballero (n 366) 1–15.

³⁶⁹ Hendrickson (n 361) 13.

³⁷⁰ Hendrickson (n 361) 13.

³⁷¹ Hendrickson (n 361) 13.

³⁷² Hendrickson (n 361) 13.

³⁷³ Hendrickson (n 361) 13.

³⁷⁴ Caballero (n 366) 1–15.

³⁷⁵ Caballero (n 366) 1–15.

³⁷⁶ Caballero (n 366) 1–15.

as well as the presence of government and its role as a refinancing agent, tends to make the financial system unstable and eventually results in a crisis.

3.4.3.2 *Business Cycle Theory*

In the same fashion as the Financial Instability Hypothesis, the Business Cycle Theory is a cyclical theory that occurs within the cycle of a business. Garrison is a proponent of this theory.³⁷⁷ Garrison's work appears to have been developed on earlier ideas espoused by Ludwig von Mises, particularly the Monetary Business Cycle, which he described as monetary mismanagement.³⁷⁸ It is important at this point to define a business cycle. In a nutshell, it may be defined as "*a form of fluctuations found in the aggregate economic activity of nations that organise their work mainly in business enterprises.*"³⁷⁹

Fundamental to the definition is the idea of fluctuations, which are viewed as changes that are best described by defining the term "cycle" within the context of business. This is because, *prima facie*, fluctuations may take any form—either haphazard or organised. A cycle is thus considered as expansions occurring together in many economic activities, followed by a recession or contraction. Revivals of the cycle, which result from an upturn in an economy, merge into the expansionary phase of the next cycle. The sequence of these changes is normally periodic, and each cycle tends to last for about one to eleven years.³⁸⁰ This further reveals two important phases of a cycle, namely an expansionary phase and a contractionary phase. These two phases are recurrent in normal business cycles as detailed below.

3.4.4 *The expansionary phase*

It is important to understand from the outset that entrepreneurs play a key role in the expansionary phase by using innovation to drive development. They select from the always-present innovation, such as new technology, a new product, or indeed a new organisation which triggers economic development.³⁸¹ It is also trite to mention that credit is the foundation of capitalist development. Credit is created by the banking system and gives the entrepreneur the

³⁷⁷ Garrison "The Austrian Theory of the Business Cycle in the Light of Modern Macroeconomics" 1989 *Review of Austrian Economics* 3–29.

³⁷⁸ Mises *The Theory of Money and Credit* (1953) 9–487. See also Mises *et al. The Austrian Theory of the Trade Cycle and Other Essays* (1983) 1–128.

³⁷⁹ Burns *et al. Measuring Business Cycles* (1946) 1.

³⁸⁰ Ibid.

³⁸¹ Schumpeter *The Theory of Economic Development* (1934) 107.

power to get the physical inputs to bring to life the innovation.³⁸² Thus, innovation and over-optimism trigger the expansion phase. Asset price inflation and high profitability increase demand for credit. As a result, there is drainage of cash as banks keep lending out more money. It is observed that herding and speculative behaviours further magnify the *status quo*, forcing banks to rely more on the central bank to circumvent shortages.³⁸³ The second generation of entrepreneurs is thus forced to imitate the first generation as a means of accessing the extra profit available in the new market and surviving elimination from the market, coupled with competition. Because of the increased demand for credit, even banks that do not follow the trend of credit expansion are flooded with deposits and consequently suffer from high liquidity. This stimulates such institutions to also follow suit and expand their credit capacity.³⁸⁴

But as the reliance of banks on the central bank increases, the expansion is less and less funded by savings from clients and so reflects only an artificial increase in investment. This sort of investment is incapable of earning the required long rate of return, which is a result of marginal productivity, in equilibrium. There is thus increased investment and resulting credit expansion, resulting in a boom phase which eventually peaks and comes to an end, and gives way to a downturn or contraction phase in the economy.³⁸⁵ It is the only stage in the cycle that a business must run through. Towards the end of this period, inflation rises and distortions in the exchange rate become prevalent. The central bank, at this point, declines to fund banks to alleviate growing inflation and to foster its exchange rate objectives.³⁸⁶ Credit expansion terminates, thereby marking the beginning of the contraction phase.

3.4.5 *The contraction phase*

When the central bank responds in such a manner at the end of the expansionary phase, this not only leads to a reduction in lending because the central bank has put in place contractionary measures, such as increasing the interest on base lending rates and asking banks to hold more cash with the central banks by way of increased bank reserve requirements as well as selling government securities such as bonds and treasury bills and other short-term investment papers.

³⁸² Ibid 107.

³⁸³ Fisher *The Purchasing Power of Money: Its Determination and Relation to Credit, Interest and Crises* (1911) 818–829.

³⁸⁴ Ibid.

³⁸⁵ Fisher (n 384) 818–829.

³⁸⁶ Hawtrey *Good and Bad Trade* 2 ed (1926). See also Glasner *Hawtrey's Good and Bad Trade: A Centenary Retrospective* (2021) 263–296.

These central bank policies normally help to reduce non-performing loans because the demand for borrowing decreases, resulting in a tally between assets market deflation and goods market deflation. But it can also result in large loan losses where the deflation is severe. Effectively, this entails that there is low or no demand for goods and services while supply remains high. Or to put it simply, a firm is producing whatever is not selling due to a lack of demand from consumers. Depending on the robustness of the business, weaker firms may be at risk of becoming insolvent and may resort to selling all their assets to keep the business running. This is normally called an “Asset Fire Sale.”³⁸⁷ These results from a lack of demand arising from reduced investment and consumption demand. Consumption is hampered negatively because of lower income and high unemployment. The effect of real debt deflation is destructive as it leads to a cumulative breakdown of the financial system and subsequently to a financial crisis.

Keynes indicates that deflation directly increases the debt burden in domestic currency; thus, a combination of goods market deflation and high debt irrevocably leads to a systemic financial crisis.³⁸⁸ As much as substantial debt is a characteristic of capitalist economies, it is undesirable since goods market deflation in the presence of high domestic debt is the final blow to the integrity of the financial sector in a capitalist economy.³⁸⁹ Debt deflation accounts for and identifies with the essential forces that explain the instability of capitalist economies. The artificially increased capital stock is destroyed and has the potential to cause a financial crisis.³⁹⁰ It is demonstrated that deflation in the United States during the Great Depression became a real debt burden despite nominal debt having been paid off.³⁹¹ Further, as the term cycle suggests, and as demonstrated above, the cycle is recurrent by nature, meaning that it has the potential to recur and start all over again at a future point in time after a crisis.

³⁸⁷ Detzer & Herr “Theories of Financial Crises: An Overview”, Working Paper 2014 Hochschule für Wirtschaft und Recht Berlin (2014) A “fire sale” normally consists of selling goods or assets at heavily discounted prices. The name was normally associated with the sale of goods that were damaged by fire, but now the term has been adopted by the financial and business industry to refer to sales where the seller is in financial distress and is forced to sell the business at discounted prices. See Shleifer *et al.* “Fire sales in finance and macroeconomics” (2011). *Journal of economic perspectives* 29–48.

³⁸⁸ Keynes *Treatise on Money, The Pure Theory of Money* (1930) 3–377; Keynes *A Monetary Theory of Production: Collected Writings* (1973). In Moggridge (ed) *Collected Writings of John Maynard Keynes, vol XIII - The General Theory and After, Part I - Presentation* (1973) London Macmillan 408–411.

³⁸⁹ Minsky Can “It” Happen Again? *Essays on Instability and Finance* (1982) 344.

³⁹⁰ Hayek *Prices and Production* (1931); *Collected Works of F.A. Hayek* 7 (2012) 1–547.

³⁹¹ Fisher “The Debt Deflation Theory of Great Depressions” *Econometrica* 337–357 344.

3.4.6 *The non-cyclical theory*

Non-cyclical theory occurrences are not restricted to the business cycle only. There are two hypotheses under this cycle: asymmetric information and speculative investment theories.

3.4.6.1 *Asymmetric information*

Asymmetric information describes a scenario, or a phenomenon, where a player in the financial market possesses less information than other stakeholders.³⁹² This occurs in transactions where one party is not equipped or provided with sufficient information necessary to know about the counterparty or the circumstances they are dealing with to enable that party to make a rational decision. This entails that transactions that occur in financial markets are the subject of asymmetric information with the resultant effect of adverse selection and moral hazard, as discussed below.³⁹³ Asymmetric information describes the superiority of information between parties in a transaction.

A clearer example is an illustration where directors and managers of one entity have information on the soundness of their company and its policies that are superior to those that either lend or invest in the institution. Two possible results ensue from such a state of affairs: insider trading³⁹⁴ and concealment of information relevant to a transaction. It has been suggested that to deal with this, regulators have established insider trading laws that prohibit trading on shares based on information that is not available to the public. Additionally, disclosure regulations have also been enacted to compel institutions to make financial information public to investors.³⁹⁵

3.4.6.2 *Adverse selection*

It is important to note that adverse selection occurs when potential borrowers with a more probable default result stand a better chance of being selected.³⁹⁶ Put another way, bad

³⁹² Binaku & Niklas *The Anatomy of Financial Crises and the Current One's Effects on the Swedish Economy*. (bachelor thesis, Umeå School of Business, 2009) 11.

³⁹³ Mishkin "Anatomy of Financial Crisis" Working Paper NBER (December 1991) 1–24 <https://ssrn.com/abstract=227370> (accessed 11 April 2021).

³⁹⁴ Insider trading refers to the illegal use of information for profit in financial trading. It is illegal to trade while in possession of material non-public information or in other words to use information that is not in the public domain to trade with as it disadvantages the other traders that are not in possession of the information. See insider trading definition. See Britannica Money "Insider Trading" <https://www.britannica.com/money/insider-trading> (accessed 11 April 2021).

³⁹⁵ Pilbeam *Finance and Financial Markets* 3 ed (2010) 460.

³⁹⁶ Begg *et al. Economics* African Edition 11 ed (2013) 276–277.

customers are more likely to be accepted by financial institutions because of asymmetric information.³⁹⁷ Learning from the Global Financial Crisis of 2007 to 2008, subprime loans and mortgages which were viewed as high risk had high-interest rates—this has been considered to also have meant that adverse selection could not be avoided. Interest rates tended to attract a higher-than-normal proportion of high-risk borrowers who were more prone to default on payments than was expected for traditional mortgages.³⁹⁸ It follows, therefore, that loans are likely to attract high-risk and less credit-worthy borrowers. To circumvent this likelihood, lenders prefer to withhold lending. This renders borrowers with good credit risk incapable of accessing finance.

3.4.6.3 Moral hazard

Moral hazard is often considered as an aftermath, as it occurs after a loan has been given. Describing moral hazard, scholars note that buying insurance to cover the risk of an event happening makes the event more likely to happen relative to when it is not insured. The fact is that insurance encourages investors to invest more money since insurance guarantees repayment of investors' funds. This, in turn, leads to the loss of more funds as investments in risky deposit-taking institutions increase.³⁹⁹ A loan is extended, and the borrower acts detrimentally in the lender's view. The likelihood of default is made more probable. Activities include investment in high-risk projects, and for borrowers, if the yields are good, then they are willing to go all the way, bearing the risk. If such a project fails, the lender suffers most of the loss relative to the borrower. This *status quo* compels lenders not to make loans, which results in reduced lending and investments. According to Mishkin, there are five primary factors responsible for worsening adverse selection and moral hazards in financial markets. In turn, this leads to a financial crisis. Mishkin identifies the factors as: increases in interest rates; stock market declines; high uncertainty levels; bank panics; and unanticipated declines in the aggregate price levels.⁴⁰⁰

Notably, the interplay between adverse selection and interest rates is an important illustration of credit rationing. It is also very interesting to note that entities with the riskiest investment projects are usually willing to pay higher interest rates. At times, however, lenders may deny

³⁹⁷ Pilbeam (n 396) 433.

³⁹⁸ Pilbeam (n 396) 433.

³⁹⁹ Pilbeam (n 396) 460.

⁴⁰⁰ Pilbeam (n 396) 123.

some borrowers loans even if they are willing to pay high-interest rates as they ration credit. This means that the higher the interest rates, the greater the adverse selection, as there is an increased probability that a lender is lending to a borrower who is a bad credit risk.⁴⁰¹

Decreases in the stock market are proportional to serious declines in the market value of an entity's corporate net worth.⁴⁰² The diminished net worth further raises the unwillingness of lenders to lend out money on the basis that net worth plays a collateral role in the lending process. This creates a situation where borrowers are incentivised to carry out risky investments increasing the likelihood of moral hazard as a result because the investor has less to lose should the investment fail.⁴⁰³ In Mishkin's understanding, the failure of an important institution makes it more difficult for lenders to distinguish between good and bad credit. This rise in uncertainty makes the information in the financial markets more asymmetric and the problem of adverse selection becomes even more extensive.⁴⁰⁴

3.4.6.4 Disadvantages of asymmetric information

Mishkin also provides a solution to the problem of asymmetric information. He espouses using a private production and sale of information which, at the end of the day, positions lenders to be well informed about their potential borrowers.⁴⁰⁵

3.4.6.5 Bank panics

Asymmetric information also accounts for bank panics. In bank panics, depositors who fear losing their money rush to withdraw their savings from a bank. The loans are supplied onto the market and deposits are received in the bank's contract, and as a result, banks fail. Bank panics (also known as bank runs) thrive on asymmetric information. Depositors are incapable of distinguishing between solvent and insolvent banks as they rush to withdraw their savings. The net worth of the institution further declines while the value of its liabilities increases in real

⁴⁰¹ Pilbeam (n 396) 123.

⁴⁰² "Net worth" is simply the difference between the assets and the liabilities of a going concern. However, at a more complex level, using of the Indian Companies Act 2013 section 2 (57) Regulation 2(s) of LODR as an example, Net Worth refers to the total value of a company's equity, calculated by summing its paid-up share capital, profit-derived reserves, and profit/loss balance, while subtracting accumulated losses and unwritten-off expenses. However, it excludes reserves arising from asset revaluations, depreciation adjustments, or mergers. See: Indian Companies Act 2013.

⁴⁰³ Beg (n 397) 276–277.

⁴⁰⁴ Mishkin "Anatomy of Financial Crisis" Working Paper NBER (December 1991) 1–24 <https://ssrn.com/abstract=227370> (accessed 11 April 2021).

⁴⁰⁵ Mishkin (n 405) 1–24.

terms. This is all due to unanticipated bank panics and adverse selection and moral hazards are more heightened for the lenders.⁴⁰⁶ Consequently, this reduces the level of investments and sends economic activities plummeting.

As a non-cyclical theory, the Asymmetric Information Theory explains the nature and *modus operandi* of how a financial crisis occurs. In addition to the theories above, other theories such as the Speculative Investment Theory and the Kindleberger Cycle Theory will be examined below.

3.4.6.6 Speculative Investment Theories

Speculative Investment theories find their theoretical basis in the research of Adam Smith, John Stuart Mill, Knut Wicksell, Irving Fisher, and Hyman Minsky. These theories can be traced back to the 1970s. While Charles Kindleberger was not the father of the speculative investment theories, he contributed immensely to their understanding. The heart of the theory is based on speculation in finance. Meaning, for example, that an investor speculates by purchasing assets such as stocks, commodities, real estate, or currencies, primarily to earn money from them in the short term when their price is changing rapidly, rather than holding them long term. This strategy often involves significant risk, aiming for large, fast profits. Kindleberger's analysis reveals that speculative behaviour plays a central role in financial crises.⁴⁰⁷ Kindleberger is the mind behind the Speculative Investment theories. At the centre of this hypothesis lie manias and panics like the assertions made by Minsky. Kindleberger considers a cycle in which there is first a dislocation that displaces economic equilibrium. It is noted that the dislocation is due to new technology, which was previously absent, for instance, Internet banking. It is further observed that the new technology not only makes previously less viable businesses workable, but profitable as well. Notably, amid failure, a first generation of successful innovators captures these economic benefits and makes a profit. Innovators and their financial backers become immensely affluent as a result. These dislocations occur in bubbles called "Kindleberger

⁴⁰⁶ Mishkin (n 405) 1–24.

⁴⁰⁷ Kindleberger *Manias, Panics, and Crashes: A History of Financial Crises* (1978). New York 1–271. See also Hendrickson *Theories of Financial Crises* (2013) 13.

cycles.”⁴⁰⁸ The Kindleberger cycle is made up of four cycles. As outlined below, these consist of Phase One, Phase Two, Phase Three and lastly the *Torschlusspanik* wave.⁴⁰⁹

3.3.8.6.1. Kindleberger Cycles: Phase One

The first cycle implies that dislocations also occur when there is development in the entire economic growth of the economy.⁴¹⁰ An example of this can be seen in the development of the Canadian economy before World War I, between 1895 and 1911. Investment poured into Canada, leading to rapid industrialisation. Similarly, South Korea saw massive investments in its economy in the 1990s. These countries saw the growth in new steel mills, cement factories and insurance firms. There was also a concomitant growth in shopping centre development which created a further demand for steel and concrete.⁴¹¹ Investment manias in new markets also continued and could be seen taking place in Argentina and Canada⁴¹² in the 1890s, and in the Philippines, Singapore, Korea, and Indonesia in the 1960s.⁴¹³ In this first growth cycle, the economy expands rapidly because of massive mania investments.⁴¹⁴ This cycle then transitions into the second cycle.

3.3.8.6.2. Kindleberger Cycles: Phase Two

This phase may be described as the second generation of innovators, except these are less informed; they copy strategies that the first generation of successful investors applied. This is like behavioural psychology where the second generation bases their decisions on what the first generation did. It may be assumed that the motivation here is the successes of the former and sometimes the high cost of acquiring information, resulting in what is called an “informational cascade.” Regardless, capital flows into the economic units that appear to have positive profit outcomes. The inflow of capital is with the same force as in the first-generation period and the economy is pushed towards competitive equilibrium, which in turn pushes private economic profits to zero. Despite this, capital relentlessly keeps flowing into the economy as uninformed

⁴⁰⁸ Kindleberger (n 408) 1–271. See also Morck *Kindleberger Cycles: Method in the Madness of Crowds?* (2021) 563–578 573.

⁴⁰⁹ Morck (n 409) 563–578.

⁴¹⁰ Kindleberger (n 408) 1–271.

⁴¹¹ Kindleberger (n 408) 1–271.

⁴¹² Tanzi *Argentina: An Economic Chronicle. How One of the Richest Countries in the World Lost Its Wealth* (2007).

⁴¹³ Hwanyuck & Moeck *The Long Shadow of the Big Push* (unpublished manuscript) (2021).

⁴¹⁴ Aliber & Kindleberger ‘Speculative Manias’ in *Manias, Panics, and Crashes* (2005). 1–340.

investors continue pouring their savings into erstwhile (former) positive economic profit ventures, leading to what is called a “mania or bubble.”⁴¹⁵

As prices of shares in these ventures rise, demand also rises in tandem with the share prices. This cycle continues pushing up prices further in a positive feedback loop, or to what is sometimes called over-trading.⁴¹⁶ Over-trading is described as a mania since there is a rapid increase in fortunes that calls forth numerous imitators pushing speculation far beyond expected levels for anticipating price rises, and may even extend to articles in which there was never any expectation for price rises.⁴¹⁷ It is during such times that credit levels heighten; this is due to two factors: first, there is asymmetric information between banks and shareholders (of the borrowing companies); secondly, there is a superficial creditworthiness that seems to dress potential borrowers because of high financial securities prices which do not reflect fundamental market values.⁴¹⁸ Credit expansion is a common feature of the bubble or mania.

3.3.8.6.3. Kindleberger Cycles: Phase Three

The end of the mania or bubble heralds the beginning of this phase; it is an instant of collective insight as asset prices are seen for their fundamental values which was not the case previously. This moment, also known as the “Minsky moment,”⁴¹⁹ is right at the end of the bubble road and the beginning of the crash crescent. At this juncture, there is usually little or no real new information; the boom ends up crashing and no one is ready to take the blame for it, not even the government. Minsky moments are often delayed. For a short time, investors continue to see the prices of assets not for their fundamental values. So, stories are crafted to justify the ever-high share prices.⁴²⁰

Everyone at this point seeks to further delay the crash, and more participants continue to come forth. Accountants bring forth new relaxed rules while regulators aid in abbreviated listing and reporting requirements. Banks also provide readily available and easily accessible loans which

⁴¹⁵ Aliber (n 415) 1–340.

⁴¹⁶ Smith *An Inquiry into the Nature & Causes of the Wealth of Nations* (1776).17–760.

⁴¹⁷ Mill *Principles of Political Economy* (1848). 542.

⁴¹⁸ Ibid.

⁴¹⁹ Vercelli “A Perspective on Minsky Moments: Revisiting the Core of the Financial Instability Hypothesis” 2011 *Review of Political Economy* 49–67. Minsky observed that the end of the bubble coincided with the beginning of the crash.

⁴²⁰ Ibid.

in turn exacerbates the mania.⁴²¹ The government is even more involved through the ministry of finance and central banks as they pass more policies that promote lending. The government hopes to see the mania continue just past the next election. Financial experts on the other hand devise new investment vehicles with high returns, such as highly leveraged real estate.⁴²²

While all these efforts to prolong the good times are seemingly a good thing, they unfortunately create more avenues for fraudsters to explore. At this point, the crash may occur due to a mere revelation of fraud.⁴²³ This is now right at the Minsky moment as the mania ends leading to the final phase.

3.3.8.6.4. Kindleberger Cycles: Final phase of the cycle or the Torschlusspanik wave

The knowledge of the fraud now informs investors who, uninformed, made investments to realise that their shares are overvalued. They respond by quickly seeking to dispose of the shares before the entire investment world realises the shares are overvalued and the price falls; everyone attempts to sell their investments, creating a surge called the *Torschlusspanik* wave.⁴²⁴ *Torschlusspanik* is a German term that describes people in a small room trying to all depart at the same time and getting stuck at the doorway, and no one manages to exit the room. This is translated as door-closing panic.⁴²⁵

The resulting disequilibrium is a sad development for most investors, but some who are used to such disequilibrium and high yields from mania innovate new high-return investments. It may take more than one panic to ignite the switch. Before long, a bubble arises, and it is vital to note at this point that more than one *Torschlusspanik* wave may be necessary to effect the switch. *Torschlusspanik* waves result in prices of securities falling far below their fundamental values, which then forces firms not to issue new shares. Investors are at this point frustrated and depressed because of how meaningless their investments have become; they react by reducing consumption, which depresses business activity further.⁴²⁶

⁴²¹ Mill (n 418) 542.

⁴²² Mill (n 418) 542.

⁴²³ Mill (n 418) 542.

⁴²⁴ Kindleberger *Manias, Panics, and Crashes: A History of Financial Crises* 5 ed (2005). 1–340.

⁴²⁵ Ibid.

⁴²⁶ Kindleberger (n 425) 1–340.

At this stage, bankers are shocked by the magnitude of their non-performing loans. They respond by cutting down lending to rebuild reserves or capital. Banks and institutions that are politically connected seek bailouts⁴²⁷ at the hands of the government, exposed frauds appear again with the same risky investments which, at this point, investors do not recall. Investment, consumption, credit, and business activity all drop and the economy contracts into a depressive state and goes into recession.⁴²⁸

As the downturn becomes severe, the agony of investors is spoken loudly against unrestrained free markets to which regulators respond with new strict rules. A good example of this is what transpired in the mid-17th century when the securities and financial market were invaded by fraud which impacted share prices, forcing them downwards. In response to this, regulators decided to limit the number of stockjobbers to 100. They were also stopped from trading on their account. In 1722, the Bubble Act⁴²⁹ banned unincorporated joint stock companies, citing them as being a public nuisance.⁴³⁰ They could only be formed under a royal charter or by special Acts of Parliament.⁴³¹

It is said that after the 1929 Great Depression during the mid-20th century, the US government implemented significant economic controls, including substantially high tax rates for wealthy individuals, regulated interest rates for bank deposits, restrictions on bank branch expansion, stringent limits on stock market margin trading, and tightly controlled stock market operations.⁴³²

⁴²⁷ See ch 3 par 3.6 and ch 4 para 8.3

⁴²⁸ Kindleberger (n 425) 1–340.

⁴²⁹ Kindleberger (n 425) 1–340; Bubble Act (1720) 6 Geo.1.c 18; see also Royal Exchange and London Assurance Corporation Act 1719 –the Prohibition is contained in Sections 18 and 19 of the Act. See Step Worldwide “The Birth of the Trading Trust” <http://miami.step.org/tgr/tgr-may-2011/birth-trading-trust> (accessed 14 August 2020).

⁴³⁰ Harris “The Bubble Act: Its Passage and its Effects on Business Organisations” 1994 *Journal of Economic History* 610–627.

⁴³¹ Joint stock companies are a throwback to an earlier era. It is said to be the predecessor of modern-day corporations and other types of registered companies in the world. The best example of this type of company is the famous English East India Company. However, with the passage of time, the structure of the company has changed to accommodate more modern circumstances and practices. While joint stock companies were initially created to finance large-scale commercial ventures in the colonies during the age of discovery, its contemporary version does not. Similarly, while the US uses the name joint stock companies for some of its business forms or associations, these companies are no longer legally organised like their predecessors who could bear unlimited liability for debts owed to the company. Instead, the companies take the modern legal form of a corporation, a partnership or indeed a limited liability company. See Schmitthoff “The Origin of the Joint-Stock Company” (1939) *University of Toronto Law Journal* 74–96.

⁴³² Kindleberger (n 425) 1–340.

The quotation above shows that sometimes a long period of near-equilibrium normalcy comes to prevail in the economy as happened after the Great Depression. (the proverbial calm after the storm) Their anger vented, and investors again came to expect normal returns, consistent with the economy's equilibrium growth rate, thus creating a circle once again.⁴³³

Therefore, in conclusion, it is evident that a financial crisis is the result of a chain of sequential events in the economy which starts with asset price booms and bubble bursts, a wave of bank runs, liquidity traps and distortions in the international capital flows. It is a culmination of the foregoing that erupts into a full crisis.

The theories discussed in this chapter show that financial crises may arise within a single jurisdiction or from one spread to another; they can have domestic or external origins, and stem from private or public sectors. They come in different shapes and sizes, evolve into different forms, and can rapidly spread across borders. Financial crises often require immediate and comprehensive policy responses that call for major changes to the financial sector and fiscal policies. They may also necessitate coordination of global policies to avoid them.

3.5 Theories of liquidity

Liquidity is at the core of banking and is a recurring theme in all written works and commentaries on financial intermediation and financial markets. Its role and relevance cannot be over-emphasised. For example, in reaction to the 2007–2008 GFC, the Basel Committee for Banking Supervision (BCBS), after considering all the factors leading to the crisis, emphasised the place of liquidity in the equation to correct the problem. It immediately proposed new liquidity requirements, like the Liquidity Coverage Ratio (LCR)⁴³⁴ as discussed in Chapter 4, which is aimed at strengthening the liquidity risk profile of banks by ensuring that they have sufficient cover for any eventuality. This is achieved by initiating rules to ensure a bank's stock is sufficient and that they have highly convertible liquid assets as part of their battery against possible liquidation. These assets must be sufficient to absorb the heightened liquidity demand of a bank in shock for at least 30 calendar days. Added to this, the Committee proposed further

⁴³³ Kindleberger (n 425) 1–340.

⁴³⁴ The LCR is calculated by: Stock of High-Quality Liquid Assets (HQLA) divided by Total Net Cash outflows over the next 30 calendar days $\geq 100\%$. See BIS. Basel Committee on Banking Supervision. "Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools" January 2013 12–13 <https://www.bis.org/publ/bcbs238.pdf> (accessed 7 November 2024). See ch 4 para 5.1.

mitigants to strengthen bank positions such as the Net Stable Funding Ratio (NSFR),⁴³⁵ also discussed in Chapter 4, which is meant to supplement the new capital requirement. Be that as it may, it is important that try and examine possible theories that advance the role of capital to understand the function and thinking of the BCBS and other regulators. An attempt will be made to examine some of these theories; particularly theories that try to explain bank liquidity.

3.5.1 *The importance of bank liquidity*

Banks characteristically have two main functions as financial institutions: firstly, they provide liquidity for depositors who invest in “demand deposits”. Demand deposits allow a depositor to recall their deposit at any time during the life of the deposit. Hence the name “demand” or sometimes “on demand,” signifies that the funds are immediately accessible by the depositor at any time for this genre of clients. Secondly, banks also have a liquidity transformational role as they convert liquid assets into illiquid assets which have long-term maturity periods.⁴³⁶ What this means, in simple terms, is that banks will take a deposit and then invest it for a specific term; thus, tying it up until it matures. The resulting tied up asset given out as loans must be enforced by the bank while it is monitoring and controlling the borrowers adherence to the terms and conditions of the loan. This function then ties in with the monitoring and enforcement of the loan agreement’s function which is the basis of the process of regulation.⁴³⁷

Regardless of the function considered, liquidity is the central theme and speaks to both the present (demand deposits) and future (loan maturity) liquidity requirements of a bank. At this point, it is important to understand the concept and meaning of bank liquidity. According to the BCBS, liquidity is “*the ability of a bank to fund increases in assets and meet obligations as they become due or mature, without incurring unacceptable losses.*”⁴³⁸ Put another way,

⁴³⁵ The NSFR represents the ratio of stable funding that is available to the amount of stable funding that is required. This ratio must always remain at a minimum of 100 per cent. “Available stable funding” refers to the segment of capital and liabilities that are anticipated to remain dependable across the time frame considered by the NSFR, which spans up to one year. The required stable funding for a particular institution is determined by the liquidity features and remaining maturities of the different assets that the institution possesses, along with those of its off-balance sheet (OBS) commitments. The Net Stable Funding Ratio (NSFR) is calculated as the available amount of stable funding divided by the Required amount of stable funding $10. \geq 100\%$. See BIS. Basel Committee on Banking Supervision Basel III: The Net Stable Funding Ratio October 2014 2 <https://www.bis.org/bcbs/publ/d295.pdf> (accessed 16 November 2024). See ch 4 para 5.1.

⁴³⁶ Casu *et al.*, *Introduction to Banking* 2 ed (2015). 14.

⁴³⁷ Ibid.

⁴³⁸ Bank for International Settlements (BIS) “Principles for Sound Liquidity Risk Management and Supervision” BIS, Basel (2008) https://www.bis.org/list/bcbs/spp_12/from_01012008/index.htm (accessed April 18, 2021)

liquidity is the ease with which a financial claim or asset may be cheaply⁴³⁹ converted to cash while retaining its inherent capital value. The latter definition is more suited to deposit-taking financial institutions like banks, and thus for the purposes of this thesis, bank liquidity. Conclusively, bank liquidity is the ability of banks to meet both commitments and to create liquidity as they fall due without making a loss—the failure of which results in insolvency. This was evidenced by the 2007–2008 GFC with the failure of Lehman Brothers.⁴⁴⁰ So effectively, it is liquidity that enables banks to meet their business, operational, and financial obligations. Thus, bank liquidity requirements are a stipulation that banks must hold adequate cash or near-liquid instruments to meet their projected liquidity needs and obligations to the public.⁴⁴¹

There are various other theories that try to explain the character and function of liquidity that need to be considered. Theories such as the Liquidity Preference Theory; the Liquidity Premium Theory; and the Anticipated Income Theory will be examined. Many of these theories show the interplay between the theory and liquidity.

3.5.1.1 Liquidity Preference Theory

This theory dates to the 1930s. It was designed and developed by John Maynard Keynes.⁴⁴² Keynes discussed the effect of the supply and demand for money on interest rates. Liquidity preference within the context of this theory refers to a perfectly tradable asset with stable value. It is the desirability for a more liquid asset as opposed to more illiquid ones. The gist of this theory is demonstrably presented in an analogy of investment markets: firstly, investors are concerned about the uncertainty of future interest rates, and the further into the future one projects interest rates, the higher the degree of error. Because of this risk of uncertainty and increased degree of error in the forecast, investors prefer to hold short-term bonds which are highly liquid or can be easily converted into cash. If they must hold risky long-term bonds, then they seek high premiums to ameliorate the high risk.⁴⁴³ Better put, lenders must be compensated proportionally relative to the term of maturity to forego liquidity.⁴⁴⁴ Thus the liquidity premium

⁴³⁹ Bannock & Baxter *The Penguin Dictionary of Economics: The Essential Guide for Understanding Economic Terms* (2011) 227.

⁴⁴⁰ See above: para 3.4.1.

⁴⁴¹ Gulde “8 Liquid Asset Requirements: Role and Reform” in *Instruments of Monetary Management* (1997).

⁴⁴² Keynes *The General Theory of Employment, Interest and Money* (1936).4–190.

⁴⁴³ Pilbeam *Finance and Financial Markets* 3 ed (2005) 93.

⁴⁴⁴ Blake *Financial Market Analysis* 2 ed (2000) 153.

liquidates the investor's preference to stay liquid. The Liquidity Preference Theory is one of the determinants of the term structure of interest rates.

3.5.1.2 The Liquidity Premium Theory

In this school of thought theorists do comparative analysis between lenders and borrowers *vis-à-vis* liquidity. They assert that on one hand; lenders of funds prefer short-term lending to long-term lending. On the other hand, borrowers prefer long-term borrowing to short-term borrowing. To bring these two approaches to equilibrium, borrowers pay high liquidity premiums, and the amount of a premium is commensurate with the term of maturity.⁴⁴⁵ This acts as an incentive to lend long and predicts higher interest rates. It is necessary to state that the liquidity premium paid to investors is in the strict sense to induce them to take greater risk and not to part with liquidity.⁴⁴⁶ This theory illustrates a relationship between liquidity and interest rates, that is, how fast an investor gets back their money.

3.5.1.3 Merits of the Liquidity Premium Theory

This theory can demonstrate liquidity preference and the desirability to minimise the sum income also known as the “lump sum” income⁴⁴⁷ and capital risks as the other factors that determine the term structure of rates. This depicts a realistic approach as it combines the complexities of forces at play in these investment activities; it looks at lenders and borrowers preferences as well as differences in risk-return attributes of securities of different maturity terms.⁴⁴⁸

The theory has proved useful in its exposition of the fact that even with securities that are zero default risk, there is a greater degree of other types of risks ever present. These types of risks are proportional to the term of maturity.

⁴⁴⁵ Pilbeam (n 444) 93.

⁴⁴⁶ Pilbeam (n 444) 93.

⁴⁴⁷ Sum income is a term used to describe lump sum income or money that is not received regularly such a winning the lottery or an inheritance from an unknown relative. See: Massachusetts Law Reform Institute “What is Lump Sum Income and Why is it Such a Problem?” <https://www.masslegalservices.org/content/54-what-lump-sum-income-and-why-it-such-problem> (accessed 19 December 2024).

⁴⁴⁸ Pilbeam (n 444) 93.

3.5.1.4 Limitations of the Liquidity Premium Theory

In the foremost, this theory overlooks everything by emphasising the role of liquidity premiums. It bundles all the different types of investors into the same risk category, and as a result, determination of liquidity premiums is difficult.⁴⁴⁹

Secondly, the theory is difficult to apply in practice since variations in interest rate risk are not directly proportional to those in maturity.⁴⁵⁰ Therefore, its assumption that liquidity premiums for maturity for levels of interest rate risks may be determined way in advance, is impractical.

Importantly, the Liquidity Premium Theory is based on expectation, yet it does not discuss the dynamics of expectations.⁴⁵¹ This is even more problematic because once investors develop expectations and they do not come to pass, disaster looms. What happens and possible alterations to expectations in such events, remain unanswered.

The theory also lacks clarity on what causes the change in the value of the principal. It does not indicate whether it is in real or nominal value. It is a fact that the former changes due to changes in prices while the latter changes are from expected changes in interest rates.⁴⁵² The theory assumes that the liquidity premium would mostly be positive. This assumption implies that interest rates or prices will be increasing.⁴⁵³

In conclusion, over the years, bank regulation has grown to encompass all aspects of regulation. Capital regulations and liquidity requirements continue to be the cornerstone of sound banking. This chapter has shown some of the reasons why banks and investors engage in practices that ensure adequate liquidity. Liquidity contributes to the foundation of prudential regulation. Cash reserve (liquidity) is an important need for both the investor and the bank. If the investor must forego liquidity in the interim, a premium must be paid and if the bank must ensure liquidity for the demand deposits, then the depositor must pay a fee. This is the hallmark of the liquidity theory.

⁴⁴⁹ Bartleby Research “Advantages of Liquidity Premium Theory” <https://www.bartleby.com/essay/Advantages-Of-Liquidity-Premium-Theory-PJSAGEBSNR> (accessed 23 April 2021).

⁴⁵⁰ n 450.

⁴⁵¹ n 450.

⁴⁵² n 450.

⁴⁵³ n 450.

3.5.2 *The Anticipated Income Theory*

This theory, though considered a method, has roots in the post-World War II era. Herbert Prochanow the proponent of this theory⁴⁵⁴ premised it on the understanding that repayment of a term loan is made possible out of the borrower's future earnings.⁴⁵⁵ It is a projection of what the borrower is expected, or better put, anticipated, to earn, that count when a bank considers issuing a loan since it is the borrower's future earnings that settles a loan in instalments. Therefore, the bank takes into consideration the anticipated income of the borrower to calculate the monthly instalments till maturity, and the security to issue out a loan. This theory and the liquidation of a loan are thus based on the anticipated income of the borrower.⁴⁵⁶ The theory argues that while keeping cash and near-cash assets increases liquidity, banks must harness the opportunity to make more profits by lending out money. This raises finance and promotes even more buoyant liquidity levels.⁴⁵⁷

The Anticipated Income Theory is premised on this function of banks, and it must be indicated that the more loans are issued, the more profits are made if it is in consideration of the borrower's anticipated income. Emphasis is that, as banks engage in giving out loans, they should project the anticipated income of the borrower. This enables the lender or bank to draw a repayment plan for systematic and consistent instalments,⁴⁵⁸ as opposed to a lump sum payment. The resultant benefit is an interplay between liquidity and anticipated income. If there is prudent conduct in this activity, banks will be always liquid, consumer confidence will grow, and bank runs will be kept to a minimum.⁴⁵⁹ Banks are thus able to meet their business and financial obligations. Additionally, the future liquidity position is forecastable since long-and mid-term amortisation schedules can be done in advance. Interest and principal repayment are known way before they fall due. Future liquidity is thus determinable from the future earnings of a borrower. Therefore, the Anticipated Income Theory is premised on the argument that

⁴⁵⁴ Prochnow "Bank Liquidity and the New Doctrine of Anticipated Income" 1949 *Journal of Finance, American Finance Association* 298–314.

⁴⁵⁵ Bankers of Tomorrow "Theories of Banking" (2015) <http://bankersoftomorrow.blogspot.com/2015/07/theories-of-banking.html> (accessed 16 April 2021).

⁴⁵⁶ Ibid.

⁴⁵⁷ n 456.

⁴⁵⁸ Kaufman 'The Truth About Bank Runs' in England & Huertas (eds) *The Financial Services Revolution: Policy Directions for the Future* (1998) 1–48.

⁴⁵⁹ Tegwi *Banking and Finance for Professionals* 2 ed (2010).

loans must be paid in instalments and not in a single lump sum. From the principal repayment and interest, a bank has a continuous supply of liquidity.⁴⁶⁰

The theory satisfies the three objectives of liquidity, namely planning, safety, and profitability. This ensures that the bank is assured of liquidity as borrowers save and regularly pay their loans in instalments. The bank can forecast its future liquidity by analysing the borrower's future income. This way it can plan easily, such as present and future investments which may *inter alia* take the form of expansion and recruitment of more staff. Safety is enhanced as the loan is backed by both good security and the borrower's ability to repay. Because of the assured income that loans come with when assessed under the Anticipated Income Theory, banks can make use of their reserves where no interest is earned to make profits.⁴⁶¹ Lastly, in this order of advantages, the business community has access to loans for their projects.

On the downside, however, the Anticipated Income Theory is a method and not a pure theory, it simply analyses a borrower's creditworthiness and tries to answer the question of whether a potential borrower would repay a loan without defaulting. Secondly, instalments may be certain but normally have a particular payment date feature of when it is common to make the repayment.⁴⁶² For example, in Zambia, instalments are mostly paid at the month-end. This means that the emergency needs of the bank may not be adequately met should they arise between these instalment periods.⁴⁶³

To conclude on this area, it can be reiterated that the Bank Liquidity and Anticipated Income theories are two essential theories premised on a bank's two main functions: provision of liquidity and transformation of liquidity, respectively. On the one hand, a bank must be able to provide liquidity on demand by its depositors while, on the other hand, it converts liquid assets into illiquid assets. The latter yields not only profits in the long term but consistent liquidity through monthly instalments. This entails an essential interplay between liquidity and

⁴⁶⁰ Tegwi (n 460).

⁴⁶¹ Kaufman 'The Truth About Bank Runs' in England & Huertas (eds) *The Financial Services Revolution: Policy Directions for the Future* (1998) 1–48.

⁴⁶² Mohammad *et al.* argue that the weakness of the Anticipated Income Theory is to assume that all loans can be billed according to the scheduled time, without giving the possibility of default on credit by the debtor due to external or internal factors. Internal factors can be mismanagement or lack of experienced and skilled human resources. This theory is considered difficult to expect as a source of seasonal liquidity and meets the demand for credit that must be met immediately. See Mohammad *et al.* "The Analysis of Financial Banks in Libya and their Role in Providing Liquidity" 2021 *Journal of Economic Education* 1–13 5-6.

⁴⁶³ Meghana "Top 4 Theories of Liquidity Management" Micro-EconomicNotes.com <https://www.microeconomicsnotes.com/banking/commercial-banks/top-4-theories-of-liquidity-management/1234> (accessed April 18, 2021).

anticipated income. Therefore, anticipated income is one of the determinants of liquidity in the long term.

From the above theories on liquidity are born theories of regulation. In other words, the theories that put forward ideas on how and why to regulate liquidity so that it is well managed and does not result in a position of illiquidity that ultimately may lead to the failure of the institution. These theories have changed over time and appear to be a function of the sophistication of a particular financial system and the inherent risk associated with it. It makes sense therefore that where a financial system is more sophisticated and uses sophisticated or complex products, such as derivatives, then that market will need to be more closely regulated as compared to a market that deals in basic financial products. So, where institutions tend to bear a higher risk, regulation will tend to be higher and more intense. This position is visible with the evolution of the Basel Accords from Basel Capital Accord I to Accord IV.

But what do the theories predict? In general, it is not easy to apply a specific theory to the Basel Accords. Instead, the various schools of thought and other applied theories will be considered to see how best they fit the Basel Accords. To this end, various classical and neoclassical theories will be examined to see how closely their tenets fit the Basel Accord framework. While the Marxist School of thought has weakened considerably with the demise of the Soviet Union, an attempt will be made to look at this school as a means of providing a comparative position more than anything else. Although, given that the basis of the Accords is rooted in a free economy, it may be a zero-sum game to do so. To this end, it makes sense that most of the theories examined will be based on free-market economies, including theories such as the capture theories which include the Public Choice Theory, Private Interest Theory and the Public Choice Interest Theory. The Marxist point of view will also be evaluated under the Muckraker Theory. In closing, an examination of the arguments from the political science school of thought will also be considered, as a means of bringing all the theories together.

3.6 The Justification for Bank Regulation

Regulations exist everywhere: in churches, member conduct is regulated by church policy and doctrine; at home, family members are guided by rules set by their guardians, at the workplace, workers must operate in compliance with company policies and directives; on the political plane, political parties are regulated by societal rules of the registrar; even at war, rules of engagement must be followed; and at sea, rules apply too. It is not unusual, therefore to note that human beings are a product of regulation. With this realisation, it is only natural to expect

financial institutions to be good candidates for regulation given their propensity to fail and to cause financial discord or crisis in a financial system.

Given the foregoing, it is appropriate that this study, in its quest to discuss regulation and its theories, must launch by defining and discussing the nature of regulation, then consider the relevance of regulation, trailed by the theories of regulation and the interplay between them. This section of the thesis, therefore, also looks at criticisms of regulation.

3.6.1 Definition and nature of regulation

An attempt was already made at defining regulation in Chapter 2⁴⁶⁴ as rules made by a government or other authority to control the way something is done or the way people behave. This definition is rather simplistic in its approach and an attempt will now be made to give the definition a deeper contextual meaning. Thus, from the perspective of bank regulation it entails deliberate restrictions of an entity's choice of activities by another that is not party to the activity according to Mitnick.⁴⁶⁵ This reveals the dichotomous nature of regulation, which is comprised of restrictions embedded in rules and activities that lie in ongoing processes.

The first basis of the definition centres on what Mitnick calls the "definition and nature of regulation," which in essence is a set of rules endorsed by the state for the regulatee to follow.⁴⁶⁶ Stretching it further, regulation refers to rules laid down for a particular entity or entities to follow in their conduct of day-to-day affairs.⁴⁶⁷ Conclusively, regulation by nature bears a legal connotation and as such, may be said to be specific rules of conduct that are either enacted by the legislature or passed by regulatory agencies for institutions and individuals in a particular sector to comply with as they do their business. Regulation in this sense prescribes the legal order and industry practice of doing business.

The second aspect of the definition of regulation arises from what is called "enforcement and supervision" rules, which give birth to monitoring and supervision by the entity not party to the activity⁴⁶⁸ for all-time adherence. To regulate in this sense thus refers to the activity that ensures

⁴⁶⁴ See ch2 para 3

⁴⁶⁵ Mitnick *Creating, Designing, and Removing Regulatory Forms: The Political Economy of Regulation* (1980) 3.

⁴⁶⁶ Ping *Banking Regulation in China: Banking Regulatory Theories* (2014) 28.

⁴⁶⁷ Mitnick (n 466) 4.

⁴⁶⁸ Mitnick (n 466) 3.

adherence to laid-down rules.⁴⁶⁹ This describes an ongoing process, where regulatory agencies monitor and supervise the activities of the regulatee to foster consistent adherence to the rules. Thus, regulation in this second sense, can be seen as not merely being about a set of rules (as in the first sense of regulation) but about the actual mechanisms that ensure compliance with rules by regulatory agencies.⁴⁷⁰

Regulation as continuous oversight for adherence to rules can be likened to the everyday parlance of supporting a tomato plant with a firm twig to keep the fruits away from the ground where they would rot and destroy the entire plant. This is especially true in the banking and financial sector, where one wrong action by a single bank may lead to a systemic negative effect. For instance, the downfall of Lehman Brothers in the United States collapsed the global banking and financial sector.⁴⁷¹ This entails that regulation cannot only be emphasised in one sense (as being rules) but both (ongoing adherence to such rules as well) senses are vital.

Putting together the two senses of the term, regulation is the continuous monitoring and supervision for adherence to set rules and practices. It is a combination of rules and the activity of ensuring compliance within a jurisdiction or sector as endorsed by the state and its agencies.⁴⁷² It is a rule of compliance and an activity of ensuring compliance.

3.6.2 Relevance and purpose of regulation

It is important from the outset to appreciate regulation as a product of law and policy. This is because law and policy are backed by intent, and this is seen in the Realist Theory. These theorists assert that the law is not self-sufficient and as such, there is a need to go beyond the written text and policy to find out what the intention of the crafters was.⁴⁷³ The basis for this reasoning is that justice must be served while discarding absurdity in legal results.⁴⁷⁴

⁴⁶⁹Turnbull *et al.* (eds) *Oxford Advanced Learner's Dictionary* 8 ed (2010) 1283.

⁴⁷⁰Mitnick (n 466) 3.

⁴⁷¹ Blinder "Six Errors on the Path to the Financial Crisis" *The New York Times* (25 January 2009) <https://www.nytimes.com/2009/01/25/business/economy/25view.html> (accessed March 30, 2021). See ch 1 para 1.1.

⁴⁷² Australian Government "Best Practice Regulation Handbook" Department of Finance (2010) 9 <https://www.finance.gov.au/obpr/proposal/better-regulation-draft-handbook.html> (accessed 30 March 2021).

⁴⁷³ Zeleznikow & Hunter "Deductive, Inductive and Analogical Reasoning in Legal Decision Support Systems" 1995 *Law, Computers & Artificial Intelligence* 2 157.

⁴⁷⁴ Ibid.

First, one must consider the intent underlying a particular regulation and by its very nature, as a product of law, regulation is jurisprudentially sprinkled with legislative or statutory intent. The legislative intent is the cornerstone of statutory/legislative interpretation which is best understood from the relationship between democratic governance of a state and the intervening legislation that controls the process.

In a democratic dispensation like Zambia, the country is divided into constituencies,⁴⁷⁵ each of which is represented by a member of Parliament. These representatives, on being elected, automatically become part of the legislature and are identified with the enactment of laws. This background is essential because it enables statutory interpretation, let alone statutory intent, to be satisfactorily explained and justified. Statute is, thus, in the literal objective sense, a product of the citizens, brought to life through their representatives in the National Assembly. It is in this way justified that the desire of the people is reflected and prevails in the law. The desire of the people may also be likened to public interest as discussed below.

From the litigation perspective, statutory intent may be inferred from the “Purposive Rule”, also called the “Golden Rule”. Statutory intent puts the Golden Rule to the test. Courts focus on interpreting statutes on either the plain and clear words of the construction or without doing actual violence to the clear meaning of any of the words used, will reflect the underlying political and social purposes of the legislation in its application to view cases, by elucidating what the words are intended to mean, by supplying technical deficiencies or by resolving ambiguities.⁴⁷⁶

Clearly, in the foregoing, the court is at liberty to invoke the Purposive Rule where, on the face of the words being considered, the plain and clear words of statute are ambiguous, or an injustice may be fostered. In defining the Golden Rule, the Supreme Court⁴⁷⁷ in the case of *Attorney General and MMD v Akashambatwa Mbikusita Lewanika and 4 Others* (1994) (SCZ Judgement No 2 of 1994) [1994] ZMSC3 (09 February 1994), looked to the Constitution to determine the intention of the legislators. To quote verbatim:

“Mr Mwansa said the words to be interpreted in this case were to be found in article 71(2)(c). Admittedly Article 71(2) (c) does not include the situation where one resigns

⁴⁷⁵ Constitution of Zambia (Amendment) Article 266 Number 2 of 2016.

⁴⁷⁶ Greenberg & Leighton Paisner (eds) *Craies on Legislation: A Practitioners’ Guide to the Nature, Process, Effect and Interpretation of Legislation* 10 ed (2012) 713.

⁴⁷⁷ *Attorney General and MMD v Akashambatwa Mbikusita Lewanika and 4 Others* (1994) (SCZ Judgement No 2 of 1994) [1994] ZMSC3 (9 February 1994).

*from one party and does not join another party. He said that the court should look at the intention of the legislature. The court should use the Golden Rule to arrive at a justifiable decision, the court should probe the spirit of the provision which is very clear. It was intended to stop the crossing of the floor in the House. He said the function of Parliament is to legislate and there is no obligation for [P]arliament to look at what was before. The court should therefore have looked at the spirit of the law...*⁴⁷⁸

In contrast to the case above, the court also applies the literal rule as it considers the ordinary and plain meaning of the words as used in the Supreme Court case of *Matilda Mutale v Emmanuel Munaile*⁴⁷⁹ In this case, the trial judges held the following at point 2 of the judgement:

*“(2) The fundamental rule of construction of Acts of Parliament is that they must be construed according to the words expressed in the Acts themselves. If the words of a statute are precise and unambiguous, then no more can be necessary than to expound on those words in the ordinary and natural sense.”*⁴⁸⁰

Statutory intent is the purpose the statute is meant to serve. Statutes are the law that is brought to life by the people themselves through their representatives. It is for this reason that statutory interpretation, while being both political and social, is key to legal reasoning. Statutory interpretation is a core to justice administration and its subsequent birth to predictable outcomes.⁴⁸¹ Therefore, statutory intent is the desire of the people reflected in the statute as the basis and purpose for its enactment. It also helps to answer questions on why certain laws or regulations exist. With the introduction complete, the discussion below now focuses on the three main purposes of regulation as posited by the Traditional Economic Theory of Regulation.⁴⁸²

⁴⁷⁸ [1994] ZMSC3. 13 at para 3.

⁴⁷⁹ SCZ Judgement No 14 of 2007 [2007] ZMSC 188(25 July 2007). 118–131.

⁴⁸⁰ [2007] ZMSC 188 at page 119 lines 10–15.

⁴⁸¹ Wilson ‘The Politics of Regulation’ in McKie (ed) *Social Responsibility and the Business Predicament* (1974) 135–168.

⁴⁸² Ibid.

3.6.3 The Traditional Economic Theory of Regulation

Regulation serves to constrain the use of monopoly power and prevent serious distortions to competition and maintenance of market integrity.⁴⁸³ This is achieved as regulation deters the tendency of industry groups to purposefully suppress the production of unfavourable information.⁴⁸⁴

Secondly, regulation serves to protect the needs of ordinary people in cases where information is difficult or costly to obtain and error could devastate welfare.⁴⁸⁵ Regulation tends to reduce the imbalance and unequal possession of information among market participants.

Thirdly, where there are sufficient externalities that the social and overall cost of market failure exceeds both the private cost of failure and the extra cost of regulation,⁴⁸⁶ it is argued that incentives exist for regulation where state intervention can help to rectify market malfunctions of socially desirable activity, such as industrial pollution. Regulation emanates largely from the political desire to protect the public interest from market failure.⁴⁸⁷ This prevents the abuse of monopoly power.

The absence of adequate incentives for participants to provide legitimate user groups with information is corrected by regulation. With the meaning and nature of regulation laid bare, some of the theories associated with regulation are now considered.

3.6.4 Evaluation of regulatory theories

Various authors have attempted to examine and explain why a government might intervene in the country's financial markets. This worked towards the development of what is known as "regulatory theories." Prominent among these are authors such as Richard Posner, who looked at various aspects of regulation, such as the Public Interest Theory (PIT) or Market Failure Theory; Capture Theory or Private Interest Theory; and the Economic Theory of Regulation. Some of these theories will be examined in turn to evaluate their adequacy and veracity.

⁴⁸³ Wilson (n 482) 135–168.

⁴⁸⁴ Wilson (n 482) 135–168.

⁴⁸⁵ Wilson (n 482) 135–168.

⁴⁸⁶ Wilson (n 482) 135–168.

⁴⁸⁷ Wilson (n 482) 135–168.

3.6.4.1 *Public Interest Theory*

Public Interest Theory is a school of Economics that is more inclined toward political science; as a result, it is also known as the Economic Theory of Politics or (New) Political Economy. It posits that governments and regulators act to promote the general welfare of Society.⁴⁸⁸ It is officially linked to the Public Choice school of thought.⁴⁸⁹ James Buchanan is said to have artfully described it as “politics without romance.” The perspective this replaced naively assumed political actors are driven by a desire for the collective benefit. Traditional “public interest” views depict officials as selfless servants, executing the public’s wishes. It suggested that voters and leaders transcend personal interests when dealing with public matters.⁴⁹⁰

Its contemporary proponents include Niskanen, Arrow, Tullock, and Buchanan.⁴⁹¹ This theory is a hybrid of economics and political science. This school of thought is traced back to the 18th century, before which the self-interest of the government leaders was widely dispelled. In 1942, Hume, the renowned Scottish philosopher, categorically rejected the existence of self-interest in holders of government positions and encouraged a treatment of that absence toward them.⁴⁹² This was strongly criticised by Smith in his famous book, “The Wealth of Nations,” in 1776. He argued that the relationship between government and business where those in authority favoured through a grant of monopolies, was a clear show of self-interest.⁴⁹³ de Borda came on the scene in 1781 and considered the nature of elections. He looked at the fact that no matter what any given voter feels about an issue, only one vote is theirs, as much as the unconcerned. In 1785, the Marquis de Condorcet noted the problem of voter cycling.⁴⁹⁴ This cycling comes from the fact that voting among three or more candidates may fail to effectively choose the

⁴⁸⁸ Butler *Public Choice –A Primer* (2012) 20.

⁴⁸⁹ Shughart “II: Public Choice Theory. Schools of Economic Thought Econlib CEE” <https://www.econlib.org/library/enc/PublicChoice.html> (accessed 22 February 2020). Public Choice theory applies the theories and methods of economics to the analysis of political behaviour that was once the preserve of political scientists and sociologists. See also Shughart & Mazzolini (eds) *The Elgar Companion to Public Choice* 2001. See also den Hertog “Review of Economic Theories of Regulation”(2018) Tjalling C Koopmans Research Institute, Utrecht School of Economics Discussion Paper Series 18 <http://www.uu.nl/rebo/economie/discussionpapers> (accessed March 30, 2021).

⁴⁹⁰ Ibid.

⁴⁹¹ Bannock & Baxter *The Penguin Dictionary of Economics* 8 ed (2011) 331.

⁴⁹² Smith *The Wealth of Nations* (1776) 11–537.

⁴⁹³ Ibid.

⁴⁹⁴ Smith (n 492) 11–537. See also Young “Condorcet’s Theory of Voting” 1988 *American Political Science Review*. 4.

candidate that the majority wanted, thus making it prone to what Marquis de Condorcet called vote “cycles,” which at the end of the day produces no clear winners.⁴⁹⁵

Almost a century later, came the Oxford mathematician, Dodgson⁴⁹⁶ who focused on voting procedures and the solving of de Condorcet’s cycling paradox. In 1896, Swedish Economist Wicksell, wrote on the just distribution of tax, arguing that using the simple majority rule, those who acquire power may unfairly ensure that the tax incidence burden lies on the minority.⁴⁹⁷ He concluded that it is only by unanimous agreement that fairness may be realised. In general, the crux of the ethos of this school of thought boils down to the use of modern (neoclassical) economic analysis to study political processes and the interplay between the economy and politics, specifically examining how political institutions, governments, parties, voters, interest groups, and public bureaucracies operate.⁴⁹⁸

It further espouses that the government is a leviathan (or monster) that aims at maximising its revenue, exploiting and expanding its monopoly of power.⁴⁹⁹ The government is not a benevolent agent of the public that does its best to serve them, but instead uses coercion as a means of exploitation and expansion of the elected officials’ power. In a nutshell, an approach to collective economic and political choices. A good example of this is reflected in how someone in a group in a society that benefits from a public choice is not always the one who bears the cost.⁵⁰⁰ In Zambia, for example, children born to both tax and non-taxpayers enjoy free primary education, and yet the former bear the cost. Public Choice explores at length how government decisions are made, identifies the self-interest of groups and the possible exploitation of coerced minorities in governmental decision-making, and provides ways of minimising these problems.⁵⁰¹ It asserts that collective decisions are necessary for several responsibilities that require communal action. Public interest proponents point out that:

The reality is that those making public decisions are driven by self-interest, just like everyone else. Simply holding a government position doesn’t transform individuals into altruists. Public Choice Theory suggests we should not assume people act differently when influencing

⁴⁹⁵ Shughart (n 490) 1.

⁴⁹⁶ Also known as the “Alice in Wonderland” author Lewis Carroll.

⁴⁹⁷ Shughart (n 490) 1.

⁴⁹⁸ Shughart (n 490) 1.

⁴⁹⁹ Shughart (n 490) 1.

⁵⁰⁰ Shughart (n 490) 1.

⁵⁰¹ Shughart (n 490) 1.

government than when making market choices; it is thus wise to acknowledge self-interest as a potential motivator. This does not imply selfishness, as people can genuinely care for others. However, the theory argues that individuals will rationally pursue their own goals, whether for personal wealth or community well-being.

Buchanan and Tullock's application of this economic perspective to government was revolutionary. They argued that politicians, officials, and voters use the political system to advance their own interests, much like in the marketplace. Their conclusion challenged traditional thinking that political decisions, rather than being purely driven by the "public interest," can be less efficient, less rational, and more susceptible to manipulation than market processes.⁵⁰²

While it is not in itself a problem, self-interest at the expense of public interest is what makes the entire public decision-making process prone to manipulation and exploitation as occurs in the marketplace. Institutions of government are used to foster private interests. It is also argued that groups have no interests, beliefs, and values except those of their members; it is these interests that are expressed when an individual stands in a booth to cast a vote.⁵⁰³ Groups do not possess voter cards. On this basis, the theory argues that voting and legislating processes can, and are, used to actualise often conflicting individual interests.⁵⁰⁴

It is posited by supporters of the theory that there is no objective communal public interest.⁵⁰⁵ In a democratic dispensation, the majority takes the day and regard, or recourse may be given to them. It is fair to concur with the assertion that it is impossible to agree on what constitutes public interest.⁵⁰⁶ The minority is inversely coerced to follow what the majority who can manipulate collective public decision-making to their advantage. Therefore, public choice seeks only to enlighten political debate in two ways: initially, propound the different dynamics that exist between motivated individuals that emerge in different political institutions. Secondly, it outlines the different results of the foregoing.⁵⁰⁷ It enlightens and provides a basis

⁵⁰² Shugart (n 490) 1.

⁵⁰³ Shugart (n 490) 1.

⁵⁰⁴ Shugart (n 490) 1.

⁵⁰⁵ Shugart (n 490) 1.

⁵⁰⁶ Shugart (n 490) 1.

⁵⁰⁷ Shugart (n 490) 1.

to make more inclusive decisions despite the difficulty in ascertaining what constitutes public interest.

The theory also posits that change is inevitable in two circumstances: first, changes outside the political circles may enable political actors to find new ways of self-enrichment.⁵⁰⁸ It would also be correct to state that the same events may deter further self-enrichment of these actors. The second circumstance is citizen-driven; the citizenry may, using an initiative such as revolt, force constitutional change that restores control to them.⁵⁰⁹ The world has, in the recent past, witnessed revolutions that have forced dictatorial regimes into democratic dispensation. The Arab Revolution, or “Arab Spring”⁵¹⁰ as it was called, is a case in point. The Arab Spring saw some of Africa’s longest-reigning and richest leaders overthrown and killed in countries like Libya, Egypt, and Tunisia.⁵¹¹ This gives credence to the assertions made by researchers like Simmons, Dobbin, and Garrett in their paper “The Diffusion of International Liberalism,” where they posit that a significant reason for the global expansion of liberal economic and political ideas is the use of force, paradoxically an illiberal method. Stronger nations or organisations can pressure weaker ones to adopt similar policies through various means. This pressure, exerted by governments, international bodies, or even NGOs, involves using threats, economic leverage, or information control to influence policy choices. Essentially, it is about the powerful imposing their preferred policies on the vulnerable.⁵¹²

⁵⁰⁸ Peltzman “Towards a More General Theory of Regulation”, Working Paper 1976 *Journal of Law and Economics* 54. (Caveat: The initial paper was not available for quotation. However, since then, the paper has been formally published, allowing citations to it.).

⁵⁰⁹ Ibid.

⁵¹⁰ The Arab Spring according to *Encyclopaedia Britannica* are a series of protests and uprisings in late 2010 and early 2011 that challenged the Middle East and North Africa’s entrenched dictatorships. Protesters demanded greater political rights, economic equality and government accountability. Protestors in some countries overwhelmed their countries’ capitals forcing presidents like President Zine al Abidine Ben Ali of Tunisia to resign and flee his country in January 2011. Similar protests got rid of President Hosni Mubarak of Egypt who eventually ceded power to a military council. In Libya, demonstrations ousted President Muammar al-Qaddafi. NATO launched a campaign of airstrikes targeting Qaddafi’s forces shifting the balance of power in favour of the rebels. Similar situations occurred in Syria, Bahrain, Algeria Jordan, Morocco and Oman where rulers offered concessions ranging from dismissal of unpopular officials to accepting constitutional changes in to pre-empt protest movements. See *Encyclopaedia Britannica* “Causes of the Arab Spring” <https://www.britannica.com/event/Arab-Spring> (accessed March 20, 2021)

⁵¹¹ Peltzman (n 509) 54.

⁵¹² Simmons *et al.* “Introduction: The International Diffusion of Liberalism” 2006 *International Organization* 781–810.

These strong restraining constitutional changes lead to limitations in the size of the government and the scope of its authority in economic policy in the political process.⁵¹³

3.6.4.1.1. Relevance of the Public Interest Theory

The relevance of public choice is seen in its powerful impact on political science as it has given birth to a new view about the nature of elections, legislatures, and bureaucracies as well as the comparative analysis of the superior-inferior or *vice-versa* relationship between political and market processes.⁵¹⁴ More importantly, its analysis of the prospect of exploiting the minority by a coalition of interest groups has led to advocacy for strong constitutional restraints on government and the political process.⁵¹⁵ This theory sits so well in a democratic state where the rule of law resides and the institutions of government are independent in fortification.

The Public Interest Theory when summed up, says that the source of our motivations is less important than the fact that we all possess them, along with values and desires, which we strive to fulfil. Whether we seek social acceptance, aim to aid others, or desire to live ethically, we are ultimately acting in accordance with our own interests. Even acts of charity, which may diminish our financial resources, provide a sense of personal gain. Public Choice theory suggests we should acknowledge self-interest as a likely influence in politics, though not the sole driver of every action. The source of our motivations is less important than the fact that we all possess them, along with values and desires, which we strive to fulfil. Whether we seek social acceptance, aim to aid others, or desire to live ethically, we are ultimately acting under our own interests. Even acts of charity, which may diminish our financial resources, provide a sense of personal gain. Public Choice theory suggests we should acknowledge self-interest as a likely influence in politics, though not the sole driver of every action.⁵¹⁶

Despite the new empirical developments and perception of Public Interest Theory, the foregoing quotation is the cornerstone of this theory, the basis of which is self-interest.

⁵¹³ Ibid.

⁵¹⁴ Simmons (n 513) 781–810.

⁵¹⁵ Simmons (n 513) 781–810.

⁵¹⁶ Simmons (n 513) 781–810.

Capture Theory, also known as Private Interest Theory,⁵¹⁷ is a product of the Marxist/Muckraker and Political Science schools of thought. This theory generally claims that the subjects of government regulation tend to influence regulatory decisions to suit their ultimate interests.⁵¹⁸ It is noted that this routinely and predictably happens to those for whom regulation is designed to regulate, manipulate regulatory decisions or bureaucrats and legislators who bring to life the regulations.⁵¹⁹ The Capture Theory has been developed by two schools of thought: the Marxist or Muckraker view and the Political Science of Thought, which are both explained below in more detail.

3.6.4.2 Marxist or Muckraker View

This school of thought is a radical one that has at its core the idea that regulation serves the interests of capitalism at the expense of labour in the makeup of society.⁵²⁰ Drawing from the New Zealand insurance industry, it has been argued that the captured regulated market coupled with poor consumer protection is a show of a predominantly capitalist setup where the public interest is almost run down.⁵²¹ Further, privatisation sits at the core of the capitalist political ideology and shifts the focus from public to private interests as the means of production is given to the private sector, the state only retains to a greater extent, legislative and policy directive powers; social welfare is extremely starved.⁵²²

Those with property and the means of production dictate what regulation should look like, leading to class conflict. Merino and Neimark observe that it is also shown that regulation in most cases has had to be introduced in response to crises or adverse events.⁵²³ A suggested solution to this situation is a call for capture-proof regulations necessary to protect the welfare of the public. In 2008, for example, the absence of capture-proof regulations led to the GFC as Bear Stearns and Lehman Brothers collapsed. These banks went out and engaged in offshore

⁵¹⁷ Adams & Tower “Theories of Regulation: Some Reflections on the Statutory Supervision of Insurance Companies in Anglo-American Countries” Geneva Papers on Risk and Insurance (1994) 156-177 <https://link.springer.com/content/pdf/10.1057%2Fgpp.1994.13.pdf> (accessed 30 March 2021).

⁵¹⁸ Ibid.

⁵¹⁹ Etzioni “The Concept of Capture Theory of Regulation Revisited” (2009) *SOC* 319–323. <https://www.doi.org/10.1007.12115-009-9228-3> (accessed 30 March 2021).

⁵²⁰ Ibid.

⁵²¹ Etzioni (n 520) 319–323.

⁵²² Etzioni (n 520) 319–323.

⁵²³ Merino & Neimark “Disclosure Regulation and Public Policy: A Socio-Historical Reappraisal” 1982 *Journal of Accounting and Public Policy* 33–57 34.

as well as off-balance sheet practices while submerged in subprime loans.⁵²⁴ This saw tightening of banking and financial regulatory frameworks, and capture-proof regulations.

The Marxist Capture Theory entails regulatory processes as an outcome of a class society. Industry players, because of the power and money they hold, can hijack regulatory processes to suit their capitalist pursuits at the expense of the welfare of the general public.⁵²⁵ This is a theory of welfare state liberals.

3.6.4.3 Political Science school of thought

This school of thought argues that, while it subscribes to the general concept of the Capture Theory, it does not adopt the class conflict espoused by the Marxists. It keeps away from accusing the capitalists and asserts that there are opportunistic groups of the elite in regulated industries that capture regulatory processes.⁵²⁶ These elite groups can succeed at capturing and dominating society because in their hands lie economic resources, sound organisation capabilities, particular industry knowledge, and immense interest in the outcome of the capture.⁵²⁷ This provides sufficient motivation and armoury to take advantage of a lacuna in the regulatory process. The political process of regulation is hijacked by industrial opportunists and this capture is further sustained by government intervention.⁵²⁸

Therefore, dominantly, the Marxists see broad daylight-organised capture of the regulatory process by those with power and property at the expense of those who can only offer their labour for wages. Though capture is equally characteristic of political scientists, the elite groups in the industry wait for an opportunity to present itself for them to pounce on and capture the regulatory process to the extent of dominating other groups. They prepare well for the opportunity. Ultimately, regulations must be stronger and more capture-proof to curb this widespread vice. The Capture Theory will be used in later chapters to explain the process by which the larger, more affluent international banks lobby for their policies to be implemented, or indeed where policy is too strict to water it down to suit their purposes.⁵²⁹ This often leads

⁵²⁴ Merino (n 524) 33–57.

⁵²⁵ Merino (n 524) 33–57.

⁵²⁶ Etzioni (n 520) 319–323.

⁵²⁷ Feroz “Financial Accounting Standards Setting: A Social Science Perspective” 1987 *Advances in Accounting* 14 8–9.

⁵²⁸ Peltzman “Towards A More General Theory of Regulation” 1976 *Journal of Law and Economics* 211–240.

⁵²⁹ See ch 4 para 12.8.

to weaker regulations that have been blamed for the frequent financial crises in the international financial arena. This idea will be expanded later in the study.

3.6.5 Criticism of regulation

Based on different schools of thought, regulation has come under hot criticism. Stigler, citing an example of concentrated interests of professional groups such as doctors and pharmaceutical companies, argues that regulations serve those special interest groups as opposed to those of the public. These interest groups can lobby politicians to set up regulatory agencies to buy them off. These agencies are thus set up from the start specifically to benefit those special interests.⁵³⁰ Stigler concludes that as a rule, “*regulation is acquired by industry, and is designed and operated primarily for its benefit.*”⁵³¹ For Stigler, regulation is a selfish move by the interest groups for the interest groups and their benefit. Regulation is not for the public good. This tends to sound like the Economic Theory of Regulation. Additionally, Niskanen shows that public agency officers look to maximise their budgets and, in turn, acquire power, status, comfort, and security. They achieve this by manipulating politicians, as they know more about how the agencies function than do the legislators. Legislators are in most cases, generalists.⁵³² It is argued, therefore that:

*“...once the politicians have committed to a policy, bureaucrats can crank up the implementation budget, knowing that the politicians will not want the public humiliation of abandoning the project. The result is a larger and less efficient bureaucracy than electors actually want.”*⁵³³

Therefore, the gist of this argument is that people, or the “technocrats” in public agencies, have their personal interests at heart, which they serve through the manipulation of the ignorance of politicians.

⁵³⁰ Stigler “The Theory of Economic Regulation” 1971 *Bell Journal of Economics and Management Science* 3–21.

⁵³¹ Ibid.

⁵³² Niskanen *Bureaucracy and Representative Government* (1971). See also Niskanen *Bureaucracy: Servant or Master?* (1973) 3–231.

⁵³³ Ibid.

It is further argued by the free-market theorists⁵³⁴ that regulation deters the efficient operation of markets. It rejects the view that government intervention is a necessary tool in correcting market imperfections. It is based on the efficient market hypothesis, which postulates that optimal levels of information must be disclosed to buyers by suppliers through the interplay of the price mechanism and that state intervention in the market is thus not needed.⁵³⁵

In conclusion, therefore, different schools of thought have discussed the subject of regulation. On one hand, the Capture Theory notes that regulatory agencies hijack regulation to satisfy their interests. On the other hand, Public Choice theorists argue that self-interest is characteristic of those who hold positions in regulatory agencies and regardless of its outcome, everyone has this interest. These interests are what characterise voting, legislative and regulatory decisions. It is impossible to decipher what constitutes public interest; thus its discussion simply informs political debt. Most importantly, regulation is necessary.

One more theory needs to be considered before closing this important chapter, namely the Diamond-Dybvig Model of banking. This model is important to the understanding of how the mix of assets may lead to runs on the bank because the depositors become nervous about a bank's status.

3.7 The Diamond-Dybvig Model of Banking

Living in a world where money is the medium of exchange, everyone desires money, and, on a lighter note, people dream of working for banks and financial institutions because of money. They think that working for financial institutions, especially banks, results in job security and earns one a lot of money. But this is only from an outsider's perspective, little do they realise that banking is a risky business; that it is at the hands of banks that the world has witnessed several financial crises, with the most recent devastating one occurring in 2007–2008. To make matters worse, the collapse of two prominent and influential banks in the US, Lehman Brothers and Bear Stearns, jammed the whole financial sector up.⁵³⁶ Lehman Brothers failure popped the financial crisis bubble and immediately caused the global financial system to come to a

⁵³⁴ Free market theorists can be categorised by periods starting with people like Adam Smith to contemporary thinkers like Milton Friedman, John Maynard Keynes, Paul Samuelson and their acolytes such as Nicholas Kaldor, John Hicks, and Roy Harrod, to name but a few.

⁵³⁵ Adams & Tower "Theories of Regulation: Some Reflections on the Statutory Supervision of Insurance Companies in Anglo-American Countries" *Geneva Papers on Risk and Insurance Review* (1994) 156–177 <https://link.springer.com/content/pdf/10.1057%2Fgpp.1994.13.pdf> (accessed 30 March 2021).

⁵³⁶ See para 3.4.1.

standstill, leaving a trail of eroded trust in the financial sector and further, exemplifying the impact that systemically important banks have on a financial sector—in this case, the global financial sector. It is this background of risks and dangers associated with banking that lays the foundation for the discussion of the Diamond Dybvig model of banking.

Foremost, this section identifies the proponents of the model and discusses the motivation of the Diamond-Dybvig model. It then considers the basis of the model, which is centred on bank runs. Thereafter it considers the reasons for continued engagement in issuing short-term deposits against long-term illiquid assets by banks. To sum up, the benefits of the model are discussed by drawing specific examples from the collapse of Lehman Brothers that led to the 2007–2008 GFC. The model is named after its proponents Diamond and Dybvig. The duo are both economists and 2022 Nobel laureates in economics for their Diamond-Dybvig model. The model stems from their 1983 article called “Bank Runs, Deposit Insurance and Liquidity”, from which they designed their present model.⁵³⁷ They claimed that deposit contracts could not achieve optimal risk sharing for the agent when decision-making was so individualised. They also demonstrated that to counter this inadequacy, government-insured deposit contracts were desirable because of the government’s strong financial muscle of taxation.⁵³⁸ For a purely capitalistic model, this appears to be a strange statement.

3.7.1 Motivation and focus of the Diamond-Dybvig Model

Despite bank runs being a problem banks are not deterred by the very nature of runs in which, short-term liability holders ‘run’ en masse to liquidate their savings in financial intermediaries, forcing intermediaries to engage in asset sales that could leave them insolvent.⁵³⁹

It is this undeterred tendency and choice that the model seeks to explain. It particularly focuses on the reasons that banks have for opting to issue deposits that are more liquid than their assets and end up in runs. The model also explains bank runs, financial crises, and the prevention of such crises.⁵⁴⁰ It is surely safe to add that it creates a basis for regulation as it is evident that financial markets are highly unpredictable and, suddenly, a run may occur leading to a systemic

⁵³⁷ McCulloch & Min-Teh “Government Deposit Insurance and the Diamond-Dybvig Model: *The Geneva Papers on Risk and Insurance Review*” Geneva Association (1998) 139–149 <https://link.springer.com/content/pdf/10.1023/A:1008626211411.pdf> (accessed 11 April 2021).

⁵³⁸ Ibid.

⁵³⁹ Sims “Bank Runs and the Diamond-Dybvig 1983 Model” ECON: Financial Crises: University of Notre Dame “ (2019). 2 https://www3.nd.edu/~esims1/slides_diamond_sp2019.pdf (accessed 11 April 2021).

⁵⁴⁰ Sims (n 540) 2.

convulsion⁵⁴¹ and must be avoided. To better appreciate this model, it is important to understand how banks operate.

Banks bear *inter alia*, two essential functions in the economy: they provide liquidity by transforming short-term demand liquidity into illiquid loans and monitor borrowers.⁵⁴² Banks also enforce loan contracts.⁵⁴³ As financial intermediaries, banks make their money by sharing a portion of the returns on investment in long-term projects.

Having the term “liquidity” predominantly littered on these pages underscores its relevance in the model and this write-up. Financial market analysis indicates that lenders prefer assets (financial claims) that are easily converted into cash without loss of capital value, since the future is not certain. It is noted that the most important function of banks is to create liquidity⁵⁴⁴ and because investors have high liquidity requirements, they prefer to invest in banks rather than directly hold assets (which are long-term in nature).⁵⁴⁵ Liquidity is therefore the ease with which a financial claim or asset may be cheaply⁵⁴⁶ converted to cash while retaining its inherent capital value.

The short-term liquid assets that are transformed into long-term illiquid liabilities (loans which are long-term investments) pose a problem for banks. This is because the short-term demand deposits may be retrieved at any time,⁵⁴⁷ while loans cannot be sold that easily, especially at high prices without a discount. On one hand, there are demand deposits which can be retrieved at any point, and on the other hand, there are illiquid assets which are easy to liquidate. This is a maturity mismatch and leads to bank runs as explained below.

⁵⁴¹ Berkeley University “The Diamond-Dybvig Model” (2016) 38 <https://www.econ.berkeley.edu/sites/default/files/course-homepage/2016-11-15/lecture-notes/Notes%20for%2011-17-2016.pdf> (accessed 12 April 2021).

⁵⁴² Casu (n 437) 14.

⁵⁴³ Holden “Diamond-Dybvig Model” *ECON* 1 [https://www.uio.no/studier/emner/sv/oekonomi/ECON4325/v09/undervisningsmateriale/diamond-dybvig\[1\].pdf](https://www.uio.no/studier/emner/sv/oekonomi/ECON4325/v09/undervisningsmateriale/diamond-dybvig[1].pdf) (accessed 12 April 2021).

⁵⁴⁴ Diamond “Banks and Liquidity Creation: A Simple Exposition of the Diamond-Dybvig Model” 2007 *Economic Quarterly* 189–200 189.

⁵⁴⁵ Schumpeter (n 254) 20–22; Mankiw *Principles of Economics: International Edition* 6 ed (2012) 621.

⁵⁴⁶ Bannock & Baxter *The Penguin Dictionary of Economics: The Essential Guide for Understanding Economic Terms* (2011) 227.

⁵⁴⁷ Diamond “Banks and Liquidity Creation: A Simple Exposition of the Diamond-Dybvig Model” 2007 *Economic Quarterly* 189–200 189.

Characteristically, banks raise funds from demand deposits that are susceptible to withdrawal at any time. They then lend out these funds in the form of loans. Notably, a bank whose funds are a total product of demand deposits has a liquidity mismatch.⁵⁴⁸ This mismatch is problematic if an anticipated huge number of depositors attempt to withdraw at the same time.⁵⁴⁹ Put another way, one single morning, banks wake up to all depositors withdrawing their savings. One possible result is imminent, banks would panic in a pursuit to liquidate their deposits. It means that the bank's liabilities are more illiquid than its assets, as a result, a mismatch arises, and the bank's liquid assets become "insufficient to meet its obligations"—a term used to describe potential insolvency. Depositors are forced to try and retrieve their assets lodged with the bank before it is declared insolvent. This is the essence of a bank run.⁵⁵⁰ Interestingly, what seemingly starts to render help to clients as banks offer short-dated claims against long-dated assets, results in a bank run. The model illustrates that mere panic may cause a run on the bank: all that is needed to set the panic in motion is many depositors becoming concerned about there being more withdrawals than expected.⁵⁵¹ Depositors scramble for their money to avoid getting nothing since the available liquid cash may run out. Illiquid assets such as real estate are less risky and depositors may not need their money at that very stage but the mere thought of losing their money, makes them rush to get it right away.

The sudden demand for liquidity may render banks incapable of liquidating customer claims immediately leading to economically negative effects as depositors may not be able to receive their money. Banks may have to liquidate their investments at discounts to pay depositors off.⁵⁵² As has been noticed by many commentators, the cause of panic in the public does not need to be true, as false news even on social media, may create a general expectation by the public that the bank may fail.⁵⁵³ This sends the bank into a run triggering disequilibrium.

The Diamond-Dybvig Model explains that banks are experts at creating liquidity against illiquid assets. A method like insurance is employed to create liquidity and is called deposit

⁵⁴⁸ Ibid.

⁵⁴⁹ Diamond (n 548) 189.

⁵⁵⁰ Diamond (n 548) 190.

⁵⁵¹ Kashyap "Bank Runs Aren't Madness: This Model Explained Why" *Chicago Booth Review* (2014) <https://www.reviewchicagobooth.edu/magazine/summer-2014/bank-runs-aren't-madness-this-model-explained-why> (accessed April 13, 2021).

⁵⁵² Ibid.

⁵⁵³ Clarke (n 326) 190.

insurance. Banks create demand deposit contracts to provide quick liquidity to investors.⁵⁵⁴ This works for them if investors have confidence in the financial intermediary.

Deposit insurance works by pooling many deposits which act as an insurance incentive for depositors to be able to retrieve their savings on demand. The hope is that, though depositors liquidity demands may be uncertain, few of them would seek to withdraw their money at once.⁵⁵⁵ Notwithstanding, caution must be exercised in that, while liquidity insurance is good, it is a game of probability; and if one morning all depositors decide to withdraw their money at the first chance, the bank would panic as it would not be able to pay out its liabilities all at once. Otherwise, depositors receive protection and are granted access to their funds on short notice through deposit insurance. As the focus of the thesis is on saving small banks and not small customers of banks, deposit insurance will not be covered in much detail in this work.

The anchorage for liquidity demands lies in the fact that investors and producers (or depositors generally) are uncertain about their liquidity needs and consequently, how long they would need to hold an asset. This implies that they would rather be able to access their savings at any time than at a fixed time.⁵⁵⁶ Therefore, it is the uncertainty in consumption that creates liquidity demands. Heightened liquidity demands lead to bank runs as the counterparties seek to avoid a loss of their investment,⁵⁵⁷ leading them to scramble for their assets held with the bank. This effect then snowballs and eventually results in long queues of investors (depositors) outside of banks. Notwithstanding that, from an economic view, banking is considered a form of shared risk. That is to say that on one hand, the bank bears the risk of a run while on the other hand, depositors share the risk of liquidating assets before their maturity date, resulting in losses.⁵⁵⁸ This is perfect equilibrium.

Some of the reasons for continued engagement are that banks continue to engage in transforming liquid assets into illiquid assets because the returns on the latter are high. Implicitly, the benefits (or returns) outweigh the risks (defaults and runs on the bank).⁵⁵⁹ The

⁵⁵⁴ Clarke (n 326) 190.

⁵⁵⁵ Kashyap (n 552) 1.

⁵⁵⁶ Clarke (n 326) 190.

⁵⁵⁷ Pelaez & Pelaez *Regulation of Banks and Finance: Theory and Policy after the Credit Crisis* (2009) 58.

⁵⁵⁸ Clarke (n 326) 190.

⁵⁵⁹ Kashyap (n 552) 1.

higher the risk, the higher the returns. Illiquid assets earn high returns.⁵⁶⁰ However, it should be realised that, as an important economic activity, governments possess a great interest in the business of banking; they develop policies to ensure banks hold enough liquid assets to offset bank runs if they occur. One way that policy is used to curb this problem is by using minimum liquidity requirements.

Secondly, the Diamond–Dybvig model provides ways of evading a run, in addition to the use of deposit insurance. It is observed that a time may come when deposit insurance may not work as every depositor withdraws. Deposit insurance is mainly for the small investor rather than the larger investor. The preventative solution to such an event is to employ taxation through government tax collection agencies,⁵⁶¹ a form of government deposit insurance. Therefore, government deposit insurance is a better option and basis for not only prudentially regulating banks but also safeguarding depositor's savings. In countries where government deposit insurance exists, financial intermediaries are not deterred from issuing demand liquid deposits against risk illiquid assets.

Unfortunately, Zambia still does not have a government-backed deposit insurance scheme in place yet. Unlike South Africa, which has introduced a deposit insurance scheme called the Corporation for Deposit Insurance (CODI), which became operational on April 1, 2024, to protect qualifying bank depositors in the event of a bank failure. CODI is a subsidiary of the South African Reserve Bank (SARB) that manages South Africa's deposit insurance scheme.⁵⁶²

Stretching further, such insurance compels each financial intermediary to be another's keeper since all have a share in the government pool. The element of peer pressure does mitigate some of the risk by ensuring that banks do not carry out risky transactions.

3.7.2 Premise of bank runs

This is premised on the risks that banking as a business takes; it engages in contracts (bank deposits) which offer high liquidity and low risk on the liabilities side of the bank's balance sheet. These liabilities are financed by highly illiquid and risky assets (loans) on the asset side of the bank's balance sheet. Interestingly, and more pressing for banks, depositors hold

⁵⁶⁰ Clarke (n 326) 190.

⁵⁶¹ Clarke (n 326) 190.

⁵⁶² SARB *Corporation for Deposit Insurance (CODI)* [https://www.resbank.co.za/en/home/what-we-do/Deposit-insurance#:~:text=The%20Corporation%20for%20Deposit%20Insurance%20\(CODI\)%20is%20South%20Africa's%20Deposit,operational%20on%201%20April%202024](https://www.resbank.co.za/en/home/what-we-do/Deposit-insurance#:~:text=The%20Corporation%20for%20Deposit%20Insurance%20(CODI)%20is%20South%20Africa's%20Deposit,operational%20on%201%20April%202024) (accessed 4 April 2025).

undiversified portfolios as deposits that usually have the same liquidity and risk features.⁵⁶³ To circumvent a possible run, banks must diversify their balance sheet to meet deposit obligations in the event of a run.

This illiquid and risky nature of a bank's assets on the asset side of the balance sheet entails, according to the Diamond-Dybvig model, that an investment is characteristically long-term in nature. It demonstrates this by using three time periods, namely 0, 1, and 2. The model then uses the letter R to denote the return on the asset. Again, this is numbered as R_0 , $R_1 < R_2$, and finally R_2 .⁵⁶⁴ So what do these numbers mean?

Essentially 0, R_0 , means that where an economic agent invests one unit, they will get no return on their investment.

Where an economic agent invests one unit upon the passage of defined time 1, but before full maturity (of 2) the investment is likely to be illiquid and the yield will be less than what he would have expected to obtain at full maturity (or at 2).⁵⁶⁵

Lastly, where the economic agent invests one unit up to the time of 2 then they are likely to get the full return on their investment (R_2).⁵⁶⁶

It is essential to note that runs arise because of heightened demand for liquidity at period 1; individual depositors run on the bank or withdraw their savings at 0 or 1 where the loans issued out by the bank are yet to mature. The resulting mismatch that arises⁵⁶⁷ may lead to panic by investors and eventual runs. Conclusively, the elaborated mismatch is the root cause of runs on banks.

3.7.3 Benefits of the Diamond-Dybvig Model

Traditionally, banks barred convertibility as a means of safeguarding their solvency. They prevented runs by completely preventing depositors from withdrawing their savings. This

⁵⁶³ Casu (n 437) 15.

⁵⁶⁴ Modified from Diamond-Dybvig Model 1983. See Lemmen *An Introduction to the Diamond Dybvig Model (1983)*, (1994).

⁵⁶⁵ Lemmen (n 565).

⁵⁶⁶ Lemmen (n 565).

⁵⁶⁷ Lemmen (n 565).

⁵⁶⁸ Clarke (n 326) 190.

forcefully barred liquidity transformation, better known as convertibility, and depositors would not access their savings until they matured.⁵⁶⁹ The Diamond Dybvig Model captures the pros and cons of suspending convertibility.

The Diamond-Dybvig Model is used to also evaluate deposit insurance and provide solutions to mismatches. In the model, the mismatch between the assets (loans) and liabilities (deposits) hinges on liquidity and can be resolved using deposit insurance and maintenance of certain levels of liquidity. *Per contra*, the downside to this is that where an asset is a high risk and the returns are attractive, banks will not be deterred from such an investment since they know that depositors will be patient because of deposit insurance.⁵⁷⁰ This means that if depositors are going to be patient, then a risky investment will not cause panic, let alone a bank run. In this way, deposit insurance is an incentive to engage in risky investments. Moreover, since deposit insurance is self-limiting as observed above, the model proposes government deposit insurance as an alternative.⁵⁷¹

Clarke states that government deposit insurance works because the government is big business with the ability to efficiently and effectively tax. Additionally, the government can provide guarantees against large losses by mere promises.⁵⁷² The adoption of government insurance protects banks from runs and insolvency.

The Diamond-Dybvig Model notes that deposit insurance regulations and models compel the government to insure banks against failure as a way of protecting customer deposits when banks fail. This often makes governments key stakeholders in the deposit insurance process. This is seen as the best regulatory approach compared to the use of discretionary policies, eliminating runs. The model shows the superiority of government deposit insurance over suspension of convertibility and central-bank lending.⁵⁷³ Therefore, the model has served as a foundational platform for developing other models, such as non-government deposit insurance. It has been used to build many models, and despite its simplicity, it is elastic enough to be stretched to deliver insights about any environment.⁵⁷⁴ In Zambia, for instance, minimum liquidity is

⁵⁶⁹ Kiely (n 350) 109–159.

⁵⁷⁰ Kiely (n 350) 109–159.

⁵⁷¹ Kiely (n 350) 109–159.

⁵⁷² Clarke (n 326) 190.

⁵⁷³ Clarke (n 326) 190.

⁵⁷⁴ Kiely (n 350) 109–159.

prescribed as a matter of law and policy in the BFSA (2017) and in various central bank circulars issued to the commercial banks. This tends to buffer Zambian banks against runs and eventual insolvency. Minimum capital requirements are also prescribed to increase the buoyancy of the banking sector by way of central bank circular. The Diamond-Dybvig model does not only provide this framework for law and policy but many parallels between the Diamond-Dybvig model with the Basel III Accords can be clearly illustrated.

It also informs financial and economic experts about the historical episodes of the 2007–2008 GFC. It further explains why financial intermediary business exists despite the risk of runs. Prominent in the commercial banking practice preceding the crunch was characteristic liquidity transformation conducted outside the system. This was not initially appreciated as a risk and danger to a healthy financial system.⁵⁷⁵ For a while, it was forgotten that confidence is the cornerstone of the banking business, and its erosion could, without reserve, be attributed to one of the reasons for the 2007–2008 GFC.

In the fall of 2007, the eroding confidence began to yield negative effects and soon the asset-backed commercial paper market collapsed. This market employed financing vehicles that acquired assets such as mortgage-backed securities against issuing short-maturity commercial paper (mostly less than one month). Banks as intermediaries arranged payments to avoid having to hold capital, which they would have had to have had they kept the securities directly on their balance sheets.⁵⁷⁶ This system emerged in avoidance of regulation.

In less than a year, fear struck investors. They realised that the underlying assets were riskier than initially thought.⁵⁷⁷ On the first opportunity, they opted out and funding was renewed. In about half a year, over USD600 billion in the investment market could not be accessed

⁵⁷⁵ Kiely (n 350) 109–159.

⁵⁷⁶ Kiely (n 350) 109–159.

⁵⁷⁷ Mishkin “Over the Cliff: From the Subprime to the Global Financial Crisis” 2011 *Journal of Economic Perspectives* 49–70. See also Mishkin *The Economics of Money, Banking, and Financial Markets* (2007). Mishkin’s analysis of the 2008 Global Financial Crisis (GFC) shows that banks and financial institutions misjudged the risk associated with mortgage-backed securities (MBS) and collateralized debt obligations (CDOs) that they were trading in. The collapse of the housing market and the surge in subprime mortgage defaults revealed the true quality of these assets. Added to this, flaws in risk models, credit ratings, and loan origination practices, exacerbated by asymmetric information and misaligned incentives, contributed to the crisis. The resulting market’s illiquidity, plummeting asset prices, and bank failures further exposed the extent of the risk, and this ultimately led to a systemic financial meltdown.

anymore.⁵⁷⁸ Loss of confidence leads to panic and eventual runs as demonstrated by the Diamond-Dybvig model and most certainly collapsed the global financial system.⁵⁷⁹

Firms heavily dependent on repurchase agreements⁵⁸⁰ for their funding were shown to be vulnerable by the 2007–2008 crisis. Bear Stearns and Lehman Brothers collapsed when the market seized up satisfying the Diamond-Dybvig model’s basic observation that funding longer-term assets with shorter-term debt is always risky.⁵⁸¹

After the crisis, regulators introduced mandatory measures on how much banks could finance illiquid assets with short-term liabilities. These measures included the introduction of the Liquidity Coverage Ratio (LCR), the Net Stable Funding Ratio (NSFR), stricter limits on short-term debt, and enhanced liquidity risk management practices.⁵⁸² The model informs the challenges this would pose. Some of this financing activity may happen due to regulatory arbitrage but some may occur because depositors may prefer to have access to their money on short notice. Thus, limiting this type of funding is costly.⁵⁸³

In closing this section, it is important to point out that the Diamond-Dybvig model is an essential model that not only explains how banks operate but also brings out the risks that are prevalent in the business. It exposes how financial crises have their core runs on short-term bank debt. As pointed out, these runs are characterised by short-term liability holders “running” *en masse* to liquidate their savings in financial intermediaries. This compels banks to sell assets (normally called fire sales), leaving them insolvent. It clearly defines liquidity, its transformation and its negatives. The model enables appreciation of the causes of financial

⁵⁷⁸ Kiely (n 350) 109–159.

⁵⁷⁹ Kiely (n 350) 109–159.

⁵⁸⁰ A repurchase agreement (repo) also known as a sale-and-repurchase agreement is an operating contract in which one party sells a bond to another with the promise of purchasing it back at a slightly increased price. You’re basically borrowing short-term, with the security and assets acting as collateral. This is a traditional approach for institutions to raise money very fast. See Corporate Finance Institute (CFI) “What is a Repurchase Agreement (Repo)?” https://corporatefinanceinstitute.com/resources/capital_markets/repurchase-agreement-repo/ (accessed 13 November 2024).

⁵⁸¹ Kiely (n 350) 109–159.

⁵⁸² BIS. Basel Committee on Banking Supervision (BCBS) “Consultative Document International framework for Liquidity Risk Measurement, Standards and Monitoring” (16 April 2010) 3–19. See also the report that was produced by the Committee on the Global Financial System prepared by a Working Group established by the Committee chaired by Claudia Buch (Deutsche Bundesbank) and B Gerard Dages (Federal Reserve Bank of New York): Committee on the Global Financial System “CGFS Papers No 60 “Structural Changes in Banking After the Crisis Report” (January 2018) 1–119.

⁵⁸³ Kiely (n 350) 109–159.

crises and ways of preventing their occurrence by, for instance, government deposit insurance schemes. The model also informs financial players and policy.

3.7.4 Theories of compliance with international rules and norms

Lastly, explanations must be sought out as to why a country may comply with international norms such as the Basel Accords. The examination of literature concerning the adoption of the Accords indicate that what started as a regulatory system for the Group of Seven (G7) and later the Group of Ten (G10) industrialised countries initially was taken up by almost all countries within a short space of time with very little coercion or threats of coercion from the regulators; to the extent that even countries like Zambia who are not members of the BCBS have fully adopted the Basel III Accords without much ado. Some of the reasons may be attributed to authors such as Cho, who provides four main reasons to explain why a country would adopt a rule or a norm. Again, this area is not a single, pure school of thought, but derives from several diverse areas of the social sciences.

Borrowing from Downs and other authors, Cho suggests that the state-based enforcement approach may be one reason for compliance. Other approaches that he advances are the market-based approach; the managerial approach and results from what he calls functional institutionalism.⁵⁸⁴ Lastly, Cho talks about the impact of the “role of ideas”. Each one of these theories will now be considered in seriatim as a means of not only understanding their relevance but also explaining why countries comply with international rules and norms generally.

a) The state-based enforcement approach. This appears to mean that under this approach coercive incentives are necessary to stop countries acting out of their own volition. State enforcement, therefore, gets countries to comply with treaties or the norms that need to be adopted widely. These coercive measures carried out by the enforcing state may include economic, political, or military sanctions to achieve its goals.⁵⁸⁵

b) The market-based approach. Under this approach, market forces facilitate compliance by ensuring that market forces reward players who comply with the tenets that need to be enforced

⁵⁸⁴ Cho *Why Do Countries Implement Basel II. An Analysis of the Global Diffusion of Basel II Implementation* (doctoral thesis, London School of Economics and Political Science, 2013) 49–55.

⁵⁸⁵ Ibid.

and provide sanctions for anyone who does not follow the rules. Importantly, Cho borrows from Simmons⁵⁸⁶ and argues that the pressure to adopt global standards results when:

*“[R]ules regulating capital adequacy may convey important information on the quality of a firm ... appropriate prudential regulations are a competitive advantage that other jurisdictions have an incentive to copy ... to avoid the risk of developing a reputation as being poorly regulated as most banks are simply in no position to forgo reputational concerns and compete for international business on price alone.”*⁵⁸⁷

This statement appears to hold true, especially for developing countries where many countries have correspondent relationships with large multinational banks. Non-compliance would thus simply mean that business would move to another country or bank that is compliant.

Despite the apparent positive outlook of the theory, authors like Mosley⁵⁸⁸ and Chey,⁵⁸⁹ advise that caution should be exercised, as in some instances, market forces are averse to implementing international regulatory standards for whatever reason. They also stipulate that in some instances the source of the enforcement may be from internal national participants rather than from international institutions “underscoring the importance of domestic factors in inducing market pressures.”⁵⁹⁰

c) The managerial approach. This approach is based on the principle that there is a tendency for some countries to comply with international rules more strictly than others and that these countries adhere to international standards as a norm. This may be a result of trying to save transaction costs since interests were secured by entering the treaty in the first place and thus they are compelled to comply.⁵⁹¹ Reading between the lines, it would appear that this sort of arrangement would be common with countries that practice monism⁵⁹² as a means of adopting

⁵⁸⁶ See Simmons “International Law and State Behaviour: Commitment and Compliance in International Monetary Affairs” 2000 *American Political Science Review* 94 819-835. And Simmons “Compliance with International Agreements” 1998 *Annual Review of Political Science* 75-93.

⁵⁸⁷ Cho (n 585) 49-55.

⁵⁸⁸ Cho (n 585) 49-55.

⁵⁸⁹ Cho (n 585) 49-55.

⁵⁹⁰ Cho (n 585) 49-55.

⁵⁹¹ Cho (n 585) 49-55.

⁵⁹² There appears to be no clear definition of monism suffice to say that in countries with a monist legal system, international law is directly incorporated into national law upon ratification of a treaty. This differs with a dualist system which requires a separate step to translate international laws into national legislation before it can be applied domestically. This means that in Monist countries international treaties, like the ICC Statute, can be directly applied and enforced by national courts without requiring additional domestic legislation. This would not

international law and conventions. Effectively, therefore, the non-compliance would arise not from outright refusal to comply but from the lack of clarity of the treaty language and the inability of the parties to interpret the language of the treaty correctly to give it its full efficacy,⁵⁹³ and thus to quote Cho:

*“The principal source of noncompliance is not wilful disobedience but the lack of capability or clarity or priority, then coercive enforcement is as misguided as it is costly.”*⁵⁹⁴

According to Cho, this can be managed by ensuring transparency and establishing a dispute settlement mechanism including capacity building and persuasion.⁵⁹⁵

d) Functional institutionalism. It appears that under this neoliberal theory, the reasons advanced by Cho and other authors for compliance under this theory are that neoliberal institutions design powerful institutions that monitor and evaluate a country’s compliance and where the need arises, they provide support, not only in the form of capacity building but also resource and opinion mobilisation. So, borrowing from Genevieve Wright, mobilisation involves four clear stages:

*“First the discontent with present conditions or a desire for change; second awareness of the common need for change; third controversy and discussion; fourth decision as to the proper course of actions.”*⁵⁹⁶

This theory is ineffective in answering questions relating to why there is a variation in compliance across various countries. This may lead to the analysis turning inward and considering domestic-level variables and factors.

be possible in countries that have adopted a dualist system as they would still need to enact specific legislation to enable the prosecution of war crimes and other international crimes. However, the extent of direct incorporation can vary between different monist systems. Some countries incorporate all international obligations upon ratification, while others only incorporate self-executing treaties. See Schütze *European Union Law* (2021).1–1104. See: Part 1. Constitutional Foundations. 5. European Law 1. Nature-Direct Effect.

⁵⁹³ Cho (n 585) 49–55.

⁵⁹⁴ Cho (n 585) 49–55.

⁵⁹⁵ Cho (n 585) 49–55.

⁵⁹⁶ Wright “Mobilisation of Public Opinion: Professional Women in Community and Home Service” 1942 *Pi Lambda Theta Journal* 149–151.

- **Role of Ideas.** Ideas are in the realm of Constructivists⁵⁹⁷ who view shared norms and legitimacy as the primary drivers of compliance with international norms.⁵⁹⁸
- **Policy Diffusion.** Policy diffusion as a theory espouses that prior adoption of a trait or practice in a population alters the probability of adoption for remaining non-adopters. From a definitional perspective the originators of the work like Simmons and Dobbin,⁵⁹⁹ define “policy diffusion” as occurring:

*“When government policy decisions in a given country are systematically conditioned by prior policy choices made in other countries...what theorists of diffusion theory explicitly reject is the notion that processes of policy change can adequately be understood by conceiving of national governments as making decisions independently of each other.”*⁶⁰⁰

3.7.5 Policy diffusion mechanisms

Under this heading, there are four main policy diffusion mechanisms: First, where one has competition-based diffusion mechanisms, then policy changes give rise to a country having a competitive edge and thus cause other countries to implement similar policies to compete against that country. By replicating these mechanisms, countries hope to gain the same economic advantages or market share that accrued to the country which it is copying the policies. This will cause policies to diffuse into these competing jurisdictions according to Simmons.⁶⁰¹ The type of competition-based diffusion can either be horizontal or vertical; the former occurring in countries that have similar competitive profiles, while the latter speaks to a situation where there is a distinct hierarchical relationship between the countries where

⁵⁹⁷ The constructivist school of thought established itself in 1999 after the paper called “The Social Construction of Europe” written by Christiansen, Joergensen and Wiener. The theory itself was not new and was already established earlier in international relations as part of the rationalist mainstream theories. Constructivism believes that social ideas and collective identities and discourses matter. For Europe, this was used to explain integration. In this thesis the ideas are used to talk about what is needed for regulation. See Leuffen *et al.* (eds) ‘Constructivism’ in *Integration and Differentiation in the European Union* (2022) 5 <https://www.researchgate.net/signup.SignUp.html?hdrsu=1> (accessed 18 July 2023).

⁵⁹⁸ Wright (n 597) 149–151.

⁵⁹⁹ Wright (n 597) 149–151.

⁶⁰⁰ Wright (n 597) 149–151; Simmons *et al.*, “Introduction: The International Diffusion of Liberalism” 2006 *International Organization* 781–810. See also an updated version of the international diffusion of liberalism in Meseguer & Gilardi “What Is New in the Study of Policy Diffusion? [Review of The Global Diffusion of Markets and Democracy; Simmons *et al.* “Bounded Rationality and Policy Diffusion: Social Sector Reform in Latin America” 2009 *Review of International Political Economy* 527–543.

⁶⁰¹ Wright (n 597) 60.

competition is unequal.⁶⁰² The second policy diffusion occurs when countries learn from one another. This leads to an improved understanding of “the cause-and-effect” relationship of policies because of the experiences, according to Meseguer,⁶⁰³ based on the learning-based diffusion mechanisms. The third diffusion mechanism is emulation-based diffusion, where a country embodies the core tenets of constructivism.⁶⁰⁴ The final mechanism is what is called the coercion-based diffusion mechanism. This occurs when one has a top-down model where powerful countries impose their policy preferences on weaker states by manipulating the opportunities and constraints they encounter. Often, the mechanisms that the more powerful country can use include physical force, manipulation of economic costs and benefits, not obviating monopolisation of information or expertise to influence policy changes in other countries.⁶⁰⁵

3.8 Conclusion

This chapter considered some of the jurisprudential foundations that underpin the Basel Accords, mainly to try and establish the grounds on which the Basel Accord theories are built. As the work is premised on the neoliberal schools of thought, the jurisprudential foundations are predominantly found within the various theories that believe in free enterprise and the *laissez-faire* system of economics and law. These include theories of financial crisis, theories of liquidity; and theories that justify regulation. Many of these theories are the tools of logic that govern countries that follow a Western or capitalist economic system, like the G7, G10, and G20 countries. This includes international organisations and regulators like the IMF, the World Bank, BIS, and the BCBS to name but a few. While many of the theories that were examined in the chapter above are not perfect in their application, they at least give the reader a rough understanding of the framework that the Accords are built upon. Some of the theories will be revisited in later work, especially where it is necessary to bring out pertinent issues that surround areas of the study. The ensuing chapter will build on the information from this chapter by evaluating the Basel Capital Accords individually.

⁶⁰² Wright (n 597) 60–61.

⁶⁰³ Wright (n 597) 62.

⁶⁰⁴ Wright (n 597) 62.

⁶⁰⁵ Wright (n 597) 62.

CHAPTER 4

THE BASEL COMMITTEE FOR BANKING SUPERVISION (BCBS)

4.1 Introduction

The previous chapter dealt with the ideological underpinnings of the BCBS and similar institutions in general. It was then broken up into various components, such as identifying the type of law under which institutions like the BCBS fall. Other components of the chapter included looking at the role and importance of capital by examining theories such as those related to financial crises and liquidity. The work also considered the justification for bank regulation by looking at its associated theories before concluding the chapter. Finally, Chapter 4 discusses the main concepts in each Basel Accord and their impact on developed and developing countries. Various discussion points on the underlying assumptions of the Accords follow. In some instances, these areas will be discussed to their conclusion, while other points will need to be examined in further chapters due to their importance. Among these will be the concept of the “level playing field” and the issue of competition between banks.

4.2 Financial regulation before Basel

Ebbinghaus, the German psychologist, is known for his “forgetting curve,” suggests that the human mind tends to crowd out information as it acquires newer, more recent information.⁶⁰⁶ This tendency to forget things from the past often leads to myopic analysis if left unchecked. For this reason, it is important that, before discussing the Basel Accords and the various issues surrounding them, the period before their introduction be revisited to appreciate the magnitude of their impact and influence.

Hamilton⁶⁰⁷ remarked in 1781 that: “*Most commercial nations have found it necessary to institute banks and they have been the happiest engines that ever were invented for advancing trade.*”⁶⁰⁸ While this statement indicates that it was made with a sense of euphoria at the time, there have been many transformations since then in an ever-changing and dynamic regulatory

⁶⁰⁶ Ebbinghaus “Forgetting Curve Definitions and Examples” *Practical Psychology* <https://practicalpie.com/ebbinghaus-forgetting-curve/> (accessed 18 July 2023).

⁶⁰⁷ National Historical Publications and Records Commission “From Alexander Hamilton to Robert Morris” (30 April 1781) <https://founders.archives.gov/documents/Hamilton/01-20-02-0332> (accessed 12 October 2022). Alexander Hamilton was a multi-talented individual best known for aiding George Washington with his work on the Federalist Papers, not to mention one of the founding fathers of the United States of America.

⁶⁰⁸ n 608.

environment that have led to constant changes to regulatory frameworks and the rules that govern their operations. We need to look at the past and present to appreciate these changes. This is done by borrowing mainly from Dowd, Hutchinson, Ashby, and Hinchliffe's work,⁶⁰⁹ wherein it is noted that the early systems of regulation, particularly in the United States, were much more straightforward and thus carried a much lower risk than current systems today. Equally, in terms of their outlook, they were bound by strong moral obligations towards clients in those days.⁶¹⁰ That is not to say that banks did not fail, but that institutions were less greedy and the markets less complex in their nature and operations. These ideals are far from today's complex, cut-throat, derivative-driven markets, which generate billions of dollars in turnover in a single day.

This area of Dowd's work examines a period when today's developed Western nations, such as the United States, the United Kingdom, and countries in Europe, had economic development levels comparable to those of contemporary developing countries. Thus, when Dowd's work is compared to present-day developing countries, there are many similarities. First, Dowd's work shows systems grow and reach a particular level of development, to use the Schumpeterian Innovation analogy.⁶¹¹ Accordingly, American banking, and indeed banking across the so-called "civilised world," was much simpler in this outlook. It was bereft of any system of deposit insurance or capital adequacy regulation on a large scale. Many banks were not obligated to trade as limited companies, and in fact, many traded on a partnership basis.⁶¹² The

⁶⁰⁹ Dowd *et al.* "Capital Inadequacies the Dismal Failure of the Basel Regime of Bank Capital Regulation, Policy Analysis No 681" (2011) 1–38 <https://www.cato.org/policy-analysis/capital-inadequacies-dismal-failure-basel-regime-bank-capital-regulation> (accessed 24 June 2023).

⁶¹⁰ Ibid.

⁶¹¹ Beaugrand "And Schumpeter Said, 'This is How Thou Shalt Grow': the further quest for economic Growth in poor countries" (2004), IMF, Working Papers. 3–19 <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/And-Schumpeter-Said-This-is-How-Thou-Shalt-Grow-Further-Quest-for-Economic-Growth-in-Poor-17134>. pp.3–21 (accessed 24 June 2023). See also Joseph Schumpeter's classic work Schumpeter *Theorie der Wirtschaftlichen Entwicklung* (1911); English translation as *The Theory of Economic Development – An Inquiry into Profits, Capital, Credit, Interest, and the Business Cycle* (1934); reprinted (1961) in which he discusses his ideas on development and how it should take place. See also Haubrich "A Brief History of Bank Capital Requirements in the United States" (2020) <https://www.clevelandfed.org/en/publications/economic-commentary/2020/ec-202005-evolution-bank-capital-requirements> (accessed 24 June 2023). See Sengupta *et al.* *Schumpeterian Innovation. Theory of Innovation: A New Paradigm of Growth* (2014) 63–77. They explain in their abstract that Schumpeterian innovation theory uses three basic premises for industry growth: creative accumulation, creative destruction, and rejection of competitive market equilibria. These aspects all emphasize evolutionary growth and endogenous innovation. Market dynamics, profit expectations, and long-run growth provide the key ingredients of this innovation theory.

⁶¹² Dowd (n 610) 1–38.

resultant personal liability seen earlier in Chapter 2 of the thesis⁶¹³ appears to have been a form of self-regulation that ensured that banks and financial institutions were cautious when taking risks and extending credit. Equally, each bank cultivated long-term relationships with a focus on long-term profitability. Further, these structures ensured that partners and shareholders exercised tight corporate governance. Dowd's writings suggest that it is a misunderstanding that banks were viewed as being undercapitalised. On the contrary, banks were highly capitalised to the tune of 20 per cent.⁶¹⁴ This starkly contrasts with what pertains, where regulation is not based on gentlemanly consideration and fear of public opinion, but on strict numbers and ratios.

The conservatism of banks was attributed in large part to the lack of instruments and safety nets that currently exist in modern-day banking, such as deposit insurance and a lender of last resort, to name but a few. As banks had to live with the spectre of a possible bank run with no apparent backup in those days, they were obligated to ensure that the public confidence in banks was maintained and that a bank was on an even keel about the risks that it was taking. Particularly important was the "originate-to-hold" banking model, where banks were obliged to hold assets up to maturity. Beaugrand observes that banks positions were relatively uncomplicated and transparent; there were hardly any derivative products of complex securitisations; trading activities and bonuses held little sway in the markets; and lastly, government involvement was limited with no central bank."⁶¹⁵ So, Dowd argues that, ultimately, these institutions survived not because of strong regulation but because "*the principle decision-makers...bore the consequences of their own mistakes in a context of well-controlled conflicts of interest.*"⁶¹⁶ This point is important and will be considered in later chapters of the work, albeit generally. European banks also exhibited similar traits in terms of conservatism and, to an extent, still do today. But when the United States model is compared to the European model, there are slight differences between the two models. For example, the issue of a deposit insurance system,⁶¹⁷ Equally, the United Kingdom had already established a central bank which was acting as a

⁶¹³ See ch 2.

⁶¹⁴ Beaugrand (n 612) 3–19.

⁶¹⁵ Beaugrand (n 612) 3–19.

⁶¹⁶ Dowd (n 610) 1–38; Beaugrand (n 612) 3–19.

⁶¹⁷ Michie *et al.*, "British and American Banking in Historical Perspective: Beware of False Precedents." History & Policy <https://www.historyandpolicy.org/policy-papers/papers/british-and-american-banking-in-historical-perspective-beware-of-false-prec> (accessed: 25 June 2024). See ch 4 para 4.8.

lender of last resort in the era Dowd was writing about. However, at this time, regulation was not strongly enforced on banks by a regulator.⁶¹⁸ In European countries, different methods of regulation were used by the various central banks and regulators (where there was an established independent regulator) when regulating banks. This position did not change until the onset of the European Union (EU), whereby banks were forced to act in concert for the most part and answer to the European Central Bank (ECB) in terms of regulation.⁶¹⁹

The point of emphasis from looking at Dowd's analysis above is that it is because, at any time, countries are at different levels of development. While Western countries today are very advanced in terms of technology and banking, developing countries can be said to be where the West was forty years ago. This means that the two systems are disjointed by a gap of about half a century except for countries like South Africa and possibly other BRICS⁶²⁰ nations. It is therefore unfair to expect developing countries to attain the same standards as developed countries overnight. Equally, it is submitted that introducing some of these regulations damages a country's economy rather than enhancing it. It is therefore argued that developing countries should be left to develop organically until they reach the same level of development as advanced countries, without which their growth stands to be impeded, thus resulting in a continuous cycle of financial instability in the long run.

The next phase of this chapter examines the elements and objectives of the four Basel Accords and the changes they have made to banking regulation.

4.3 The Basel Accords

The Basel Accords are viewed differently by many. While some view the Accords with awe and trepidation, others view them with a healthy dose of scepticism and still others show ignorance and disinterest. This part of the chapter attempts to elucidate how the operations of the Basel Committee function. This will be done in a non-technical way. It is also intended to bring out how the Accords ultimately influence local policy in a country like Zambia and other similar countries. As seen in Chapter 2, dealing with the historical background of the Zambian

⁶¹⁸ Dowd (n 610) 1–38.

⁶¹⁹ Dowd (n 610) 1–38; Beaugrand (n 612) 3–19. See ch 4 para 4.8.

⁶²⁰ BRICS is an acronym for Brazil, Russia, India, China, and South Africa. Goldman Sachs economist, Jim O'Neill, coined the term BRIC (without South Africa) in 2001, claiming that by 2050 the four BRIC economies would come to dominate the global economy. South Africa was added to the list in 2010. International Monetary Fund. "Is the Emerging World Still Emerging?" <https://www.imf.org/external/pubs/ft/fandd/2021/06/jim-oneill-revisits-brics-emerging-markets.htm>.(accessed: 25 June 2024).

financial system, the first Basel Accord of 1974 (Basel I) was not implemented immediately by all countries because it was developed initially for only a select group of ten industrialised countries (G10) before it became available for other countries to join.⁶²¹ In Zambia, another factor that appears to have prevented the adoption of Basel I was attributed to the fact that the country was still under a controlled socialist economy.⁶²² This is evidenced by the fact that there were no amendments to Zambian financial laws over this period to account for the new forms of regulation immediately after the collapse of the Bankhaus Herstatt bank in 1974.⁶²³ Basel I was implemented almost 20 years later, in 1994, when the new Zambian Banking and Financial Services Act (BFSA) was promulgated under a market-led economy.⁶²⁴ Although there is little evidence to show that Zambia formally adopted the Basel I Accord, it is still necessary to discuss this Accord to complete the Basel tetralogy framework, to give the reader a complete picture of the characteristics of each of the Accords. For clarity, while there are four Accords that have been established, Base IV will be discussed generally and not in relation to Zambia because it has not yet been adopted for use by the Bank of Zambia. So, the thesis will concentrate on a trilogy of the first three Basel Accords (I, II, and III), which have been expressly (Basel II and III) and impliedly (Basel I) adopted by the central bank Basel I Capital Accord.

As pointed out earlier in the chapter, international financial reform began with the Committee for Banking Regulation and Supervisory Practices (CBRSP) in 1974, the precursor to the BCBS.⁶²⁵ The committee's main objective was to ensure financial stability and improved supervision in developed countries after the German bank, Bankhaus Herstatt Bank, failed in 1974. As indicated, the demise of this German bank led to significant disturbances in the international financial markets, particularly for those banks that were trading internationally or

⁶²¹ See ch 2.

⁶²² Rakner *Political and Economic Liberalisation in Zambia 1991–2001* Nordic Africa Institute (2003) http://saipar.org/wp-content/uploads/2015/12/Political-and-Economic-Liberalisation-in-Zambia_Lise-Rakner.pdf (accessed 14 July 2023); Mijere “African Socialist Ideologies and the IMF Policies for Economic Development: The Case of Zambia” 1988 *The African Review* 41–59; Simutanyi “The Politics of Structural Adjustment in Zambia” 1996 *Third World Quarterly* 825–839; Madimutsa *et al.* “Public Sector Reform and the Introduction of Neoliberal Capitalism in African Socialist States: The Case of Zambia” 2021 *Review of Radical Political Economics*. 462–477. See ch 2 para 2.12.

⁶²³ See para 4.3.1 below.

⁶²⁴ See ch 7 para 4.5 to 4.7.

⁶²⁵ n 34, 1.

across borders, as the BCBS puts it.⁶²⁶ The BCBS was born out of the turmoil that resulted from the failure of the collapse of the Gold Standard⁶²⁷ and the fall of the Smithsonian arrangement⁶²⁸ in 1973.⁶²⁹ These failures resulted in the gold standard being abandoned and a multi-currency exchange rate regime replacing the par value fixed-rate regime. Further, these internationally active banks were not well-capitalised, meaning that in the event of problems, they were at risk of becoming insolvent, as evidenced by the demise of the Bankhaus Herstatt and other banks like the Franklin National Bank⁶³⁰ in the United States. From the history of the organisation, it seems that the committee was not only interested in sorting out the problem of financial instability but also found an opportunity to influence bank regulation worldwide.⁶³¹ This was aimed at “closing the gaps in international coverage to ensure primarily that no bank escapes supervision and ensure that supervision is adequate and consistent across member countries.”⁶³² To this end, the Basel Committee issued its first paper, the Concordat in 1975. Then, closing the gaps in financial regulation appears to have been of minor importance, apart from standardising the Accords across borders. However, later chapters will reveal why this objective is essential in the neoliberal globalisation plan.⁶³³ The main aims of the Concordat⁶³⁴ were very interesting. In its rudimentary form, it intended to share supervisory responsibility

⁶²⁶ Heffernan ‘The Causes of Bank Failures’ in *Handbook of International Banking* (2003) 366. See also Certainly! Here is the citation reformatted to match the Speculum Juris style: Schenk “Summer in the City: Banking Failures of 1974 and the Development of International Banking Supervision” 2014 *English Historical Review* 1129–1156.

⁶²⁷ See ch 1 para 1.1.

⁶²⁸ The Smithsonian Arrangement: in 1971, there was a deal to devalue the United States dollar by 8.5% and push the value of an ounce of gold from USD 35 to USD 38. At the same time, other countries that had pegged their currency against the dollar also agreed to appreciate their currencies against the dollar. However, in 1973 the agreement crumbled due to a soaring US deficit, resulting in other countries abandoning the par value system. See Encyclopaedia Britannica “Par Value System” <https://www.britannica.com/topic/Smithsonian-Agreement> (accessed 5 May 2023).

⁶²⁹ Management Study Guide “Three Basel Accords: History of the Basel Norms” <https://www.managementstudyguide.com/three-basel-accords.htm> (accessed 13 May 2021).

⁶³⁰ The Franklin National Bank was declared insolvent on 8 October 1974. According to an article by John Allan in the *New York Times*. The failure is a notorious fact in US and international banking history. US government officials attributed the failure to bad management, exacerbated when the bank incurred large foreign-exchange trading losses exceeding \$46 million. The bank was immediately taken over by the European American Bank and Trust Company and New York Bank with European ownership. See Allan “Found Insolvent by US and Taken Over” *New York Times* (9 October 1974) <https://www.nytimes.com/1974/10/09/archives/franklin-found-insolvent-by-us-and-taken-over-european-group-in.html> (accessed 20 July 2023); Federal Deposit Insurance Corporation (FDIC) “Failed bank List” <https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/> (accessed 20 July 2023).

⁶³¹ n 630, 1.

⁶³² n 630, 2. Note that member jurisdictions at this point in time were essentially composed of the G10 Countries.

⁶³³ See ch 3 para 3.3.1.

⁶³⁴ See ch 4 para 1.

for banks with foreign branches, subsidiaries, and joint ventures between the host and the home supervisory authorities.⁶³⁵ The first Accord was promulgated by the Concordat in 1975. After a capital measurements system, commonly referred to as the Basel Capital Accord, was approved by the G10 governors, which was released to the banks for use in July 1988.⁶³⁶ Further changes were made to the Concordat in 1990 in an attempt to improve the cross-border flow of prudential information, resulting in the publication of a paper titled “The Minimum Standards for the Supervision of International Banking Groups and their Cross-border Establishments.”⁶³⁷

From an analytical perspective, we see that the BCBS Committee was looking to regulate banks that were active across borders to manage the risk inherent in cross-border trade, where it was considered that information was asymmetric.⁶³⁸ (For example, where one party to a transaction has more information than another, as we saw in the previous chapter.⁶³⁹ Thus, information asymmetry or lack of information by one party to a transaction may increase the risk posed by the transaction. This risk arises from the fact that the party lacking the knowledge may have overlooked an essential aspect of the risk profile of the transaction, which, if he had known, would have prevented him from entering that transaction in the first place. As a result, this may bring about the failure of the transaction because the risk is not well known, and thus, it is poorly managed. Ultimately, these failed transactions could lead to the demise or insolvency of a bank, especially where the bank was small, weak and undercapitalised. While this standard initially applied to banks in G10 countries only, more than 190 countries actively followed these norms.⁶⁴⁰

It is apparent from the historical background of the BIS that the BCBS only sought to include other international players selectively around 1990. By 1996, when it drew up its report on the supervision of cross-border banking, it had included members outside the G10 country

⁶³⁵ n 630, 2.

⁶³⁶ n 34, 1.

⁶³⁷ BIS. Basel Committee on Banking Supervision (BCBS) “Minimum Standards for The Supervision of International Banking Groups and Their Cross-Border Establishments” (July 1992) www.bis.org/publ/bcbasc314.pdf (accessed 14 November 2024). n 630, 2,

⁶³⁸ Asymmetric information describes a situation when one of the parties to a transaction has more information than the other, thus giving the party with more information the ability to make a better-informed decision. In many instances where asymmetric information exists it can result in market failure. Hence the Basel Accords trying to remove it as one of the impediments to cross-border transactions.

⁶³⁹ See ch 3 para 3.4.6.1.

⁶⁴⁰ Management Study Guide “Three Basel Accords: History of the Basel Norms” <https://www.managementstudyguide.com/three-basel-accords.htm> (accessed 13 May 2021).

membership.⁶⁴¹ Despite all these good intentions, the Latin American Debt Crisis (LADC) hit the world.⁶⁴² However, it needs to be clarified whether the Latin American countries had adopted the Basel I Accord at the time of the crisis. In response to this crisis, further enhancements to the Concordat were made to halt the erosion of capital standards by the G10 countries. While it has been argued that the Latin American Debt Crisis was the knock-on effect of the 1973 Oil Crisis⁶⁴³ and the overabundance of cheap Petro-dollars on American financial markets, the crisis gave the BCBS impetus to develop the Basel Accords further.⁶⁴⁴

4.3.1 *Levelling the playing field*

The Committee also wanted to remove what it deemed a source of competitive inequality arising from differences in national capital requirements.⁶⁴⁵ This sentence appears to insinuate that some countries, particularly Japan, were conducting their business in such a way that it disadvantaged other players in the international financial markets. According to Osugi exchange rate issues were a source of irritation for the United States, so much so that it hardened its attitude towards Japan because the United States believed Japan's financial markets were unfairly closed, contributing to the dollar's rising value against the Yen. Simultaneously, the US trade deficit fuelled protectionist feelings in Congress. Consequently, the deregulation measures in the US-Japan Accord were largely driven by US demands. While Japanese authorities recognised the need for financial liberalisation due to global trends, US pressure significantly accelerated the pace of deregulation in Japan.⁶⁴⁶

The intention was therefore to level the playing field by ensuring that the Japanese banks conformed to the international rules that were clear and easy to understand. The level playing field theme continues to be emphasised as is evident in the excerpt taken from the speech made

⁶⁴¹ n 630, 2.

⁶⁴² Also known as "*la Decada Perdida*" or "the lost decade" in Spanish. The Latin American debt crisis resulted from countries' foreign debt exceeding the countries' earning power and countries could not pay off the foreign loans that they had borrowed as a result. The main countries involved in this crisis were Brazil, Argentina and Mexico. See Sims *et al.* "The Latin American Crisis of the 1980s, (1982–1989)" Federal Reserve History (2013) <https://www.federalreservehistory.org/essays/latin-american-debt-crisis> (accessed 8 January 2020).

⁶⁴³ See ch 1 para 1.1.

⁶⁴⁴ Sims *et al.* "The Latin American Crisis of the 1980s, (1982–1989)" Federal Reserve History (2013) <https://www.federalreservehistory.org/essays/latin-american-debt-crisis> (accessed 8 January 2020).

⁶⁴⁵ Ibid. See MoneyTerms.co.uk "Risk Weighted Assets" <https://moneyterms.co.uk/risk-weighted-assets/> (accessed 8 January 2020).

⁶⁴⁶ Osugi 'Japan's Experience of Financial Deregulation Since 1984' in *An International Perspective. BIS Economic Paper* (1990) <https://www.bis.org/publ/econ26.pdf> (accessed 8 January 2020).

by Secretary-General to the BCBS, William Coen, to the 9th Islamic Financial Services Board, “Public Lecture on Financial Policy and Stability” in Kuala Lumpur, Malaysia, 5 April 2017.⁶⁴⁷

The stability of the global financial system is a shared benefit. Without consistent, universally applied prudential standards, the regulatory landscape becomes fragmented and unfair, imposing costly and inefficient compliance burdens on international banks and potentially destabilising individual countries. Therefore, robust global standards are essential to strengthen bank resilience, ensure national financial stability, and promote efficient capital allocation within a level playing field.⁶⁴⁸

The concept of the level playing field is important when explaining some of the rules that the Basel Accords have created. This area will be revisited in the thesis when the concepts of the Accords are discussed. To this end, the Capital Accord was issued in 1988,⁶⁴⁹ which demanded that banks introduce a minimum ratio of capital to risk-weighted assets of 8 per cent.⁶⁵⁰ As appears from Table 2 below, therefore, a bank’s assets or off-balance sheet exposures were weighted according to the risk posed by the asset, using the risk-weighted assets (RWA) ratio. In turn, depending on the risk index outcome that the bank gets after calculating its RWA, it would be required to maintain a capital adequacy ratio (CAR) that matches the risk the bank has in terms of its assets so that, if the bank has any problems, it will be able to cover any shortfalls adequately and prevent it from going into liquidation. Simply put, the RWA ratio will indicate to the bank how much capital it should be holding given the riskiness of its portfolio of assets.⁶⁵¹

Table 2. Basel I: Minimum eight per cent Total Capital Ratio⁶⁵²

BASEL I	
Pillar I Capital (High Quality) Tier 1 • Common Equity	Pillar II Capital (Low Quality) Tier 2 • Supplementary Capital

⁶⁴⁷ Coen “Global Adoption of the Basel Framework: Enhancing Financial Stability Across Countries” speech by Secretary General BCBS William Coen to the 9th Islamic Financial Services Board Public Lecture on Financial Policy and Stability (5 April 2017) 1–8.

⁶⁴⁸ Ibid.

⁶⁴⁹ Basel Committee on Banking Supervision (BCBS) “International Convergence of Capital Measurement and Capital Standards” 1–28 (July 1988) <https://www.bis.org/publ/bcbs04a.pdf> (accessed 10 January 2020); Goodhart *The Basel Committee on Banking Supervision; A History of the Early Years 1974–1997* (2011) 542.

⁶⁵⁰ n 650, 1–28.

⁶⁵¹ n 650, 1–28.

⁶⁵² Minimum eight per cent Total Capital Ratio table source: See BIS-BCBS “Part 2: The First Pillar –Minimum Capital Requirements” 12–203. See ch 1 para 1.1.

• Preferred Stock	

The BCBS demanded that banks implement this Accord fully by the end of 1992, at the latest.⁶⁵³ Although the Accord was initially designed for G10 member countries, non-member countries with active cross-border banking operations were quick to adopt these principles.⁶⁵⁴ It is unclear why non-member countries reacted to the Accord so swiftly, but it appears to be related to the risk of losing out on business with the compliant G10 member countries.⁶⁵⁵ According to Jones, Knaack, and Beck, this is attributed to reputation and competition concerns because Basel II/III offers the best technical solution to financial stability problems in their jurisdictions, regulators in developing nations do not implement these rules. Rather, worries about competition and reputation also influence regulatory decisions.⁶⁵⁶ That is to say, the members of the Accord would use the excuse of non-compliance to remove non-members as business partners, which could have devastating consequences, especially for banks that acted as intermediaries to these foreign banks, like correspondent banks.

Jones, Knaack, and Becks' research also highlights the fact that for Basel III, despite being agreed upon by 28 members of the BCBS and the fact that the members are the only ones obliged to adopt and implement the agreed standards, it was found that many countries had adopted the standards despite not being members.

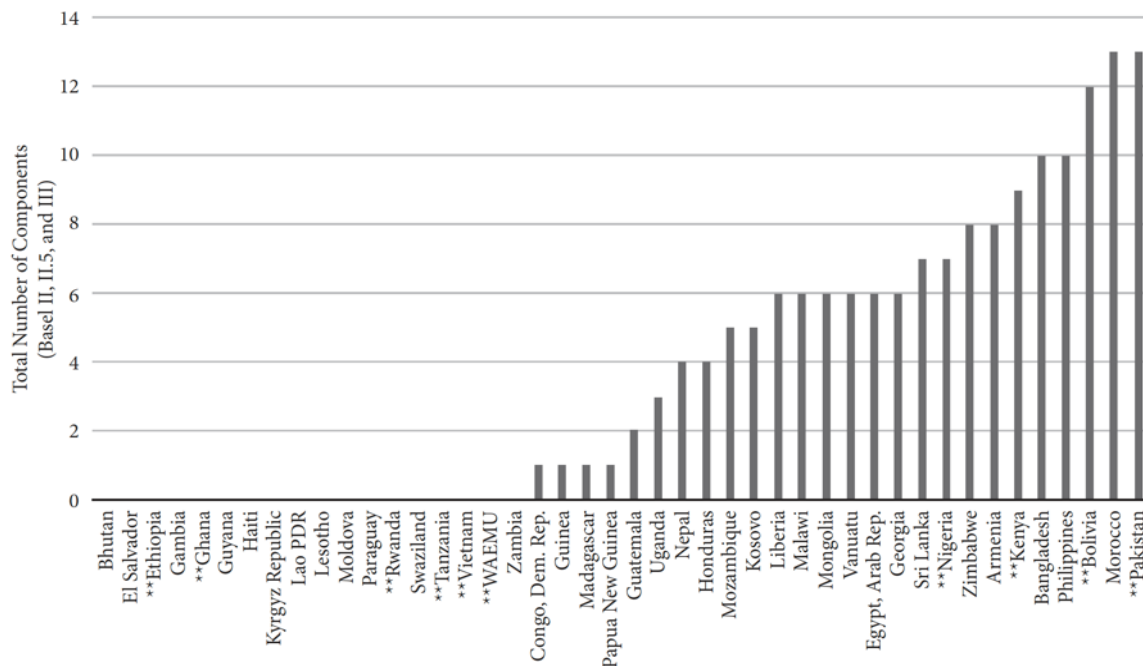
⁶⁵³ n 34, 1.

⁶⁵⁴ n 34, 1.

⁶⁵⁵ Jones *et al.*, "Basel Standards and Developing Countries: A Difficult Relationship" VoxEU Centre for Economic Policy Research (CEPR) Policy Portal (2018) <https://voxeu.org/article/basel-standards-and-developing-countries> (accessed 16 October 2023).

⁶⁵⁶ Ibid.

Figure 2: Implementation of international banking standards⁶⁵⁷



A 2015 Financial Stability Institute (FSI) Survey results showed that out of a population of 100 non-member jurisdictions surveyed, 90 were at some stage of implementing Basel II, while 81 had taken steps to begin the implementation process.⁶⁵⁸ It is submitted that this is an amazing result for countries that are not members of the BCBS but have implemented the Basel Accords in record time. The Accord continued to evolve and was further amended and issued as “Minimum Standards for the Supervision of International Banking Groups and Their Cross-Border Establishments“ in 1992 to define the general provisions more precisely.⁶⁵⁹ Further amendments were made in 1995 to include bilateral netting⁶⁶⁰ of banks’ credit exposure in

⁶⁵⁷ BIS-FSI Survey Basel II,2.5 and III implementation July 2015. 1–61. Data from the FSI survey 2015 covering one hundred jurisdictions outside of the Basel Committee. These have been supplemented with data from case studies from the cited document. The income categories are according to the World Bank classifications for 2015.

⁶⁵⁸ BIS. Financial Stability Institute (FSI) “FSI Survey Basel II, 2.5 and III Implementation” (July 2015) <https://www.bis.org/fsi/fsiop2015.pdf> (accessed 4 December 2024).

⁶⁵⁹ Tarullo (n 195) 5.

⁶⁶⁰ Bilateral (or between two parties) netting is a term that is used in banking to describe a process by which two banks reduce the total amount of money owed to each other. Rather than pay for many transactions, the transactions are consolidated, and normally, the party owed the surplus is paid out. Multilateral (or between more than two parties) transactions work in the exact same way as bilateral netting, except that in this case, there are several transactions, with many parties involved and all occurring at the same time.

derivative products.⁶⁶¹ In 1996, a paper was issued to deal with multilateral netting.⁶⁶² Added to these changes, the committee issued a paper titled “The Amendment to the Capital Accord to Incorporate Market Risks.”⁶⁶³ This paper, as the name suggests, dealt with incorporating market risk into the Accords, particularly risks resulting from foreign exchange, traded debt securities, equities, commodities, and options.⁶⁶⁴

4.4 Criticism of Basel I

However, the Basel I Capital Accord was flawed from the outset and thus failed to achieve its intended goal of financial stability. One of the major shortcomings associated with Basel I was the fact that the capital requirements set by the BCBS were based on a single risk-credit risk-without considering other risks like operational and market risk. This flaw resulted in banks only considering a fraction of the potential risks a bank could suffer.⁶⁶⁵ At an international level, some of the main areas of concern centred on sensitivity concerning risk ratings; limited capital recognition; complete coverage of risk resources; one size fits all approach to regulation. These concerns are covered below sequentially as follows:

4.4.1 *Basel I required sensitivity concerning risk ratings*

One of the main arguments put forward was that Basel I needed to differentiate between small and large financial companies.⁶⁶⁶ The RWA did not distinguish each company’s risk rating, thereby giving a company with a better risk rating the same rating as a riskier company.⁶⁶⁷

⁶⁶¹ Tarullo (n 195) 5.

⁶⁶² BIS. Basle Committee on Banking Supervision Basle “Basle Capital Accord: Treatment of Potential Exposure for Off-Balance-Sheet Items” (April 1995) 1–11 <https://www.bis.org/publ/bcbs18.htm> (accessed 14 November 2024). This document modifies the treatment of off-balance-sheet items outlined in the Basle Capital Accord of July 1988 to (a) account for netting effects while calculating the “add-ons” for potential future exposure linked to specific off-balance-sheet items and (b) expand the matrix of add-ons to more accurately reflect the potential future exposure related to longer maturities and a wider variety of transactions not specifically included in the original Accord. This amendment came into effect at the end of 1995. See also Tarullo (n 195) 5.

⁶⁶³ BIS. Basle Committee on Banking Supervision (BCBS). Bank for International Settlements (BIS) “Amendment to the Capital Accord to Incorporate Market Risks” 1–54 9 (1996).<https://www.bis.org/publ/bcbs24.pdf>. (accessed 14 November 2024) This document represents the central part of a three-part set of documents released by the Basle Committee to revise the Capital Accord from July 1988 to address market risks.

⁶⁶⁴ Tarullo (n 195) 3.

⁶⁶⁵ n 34, 1.

⁶⁶⁶ Perez “Must-Know. Why Basel Was Not a Good Fit for All Banks” (2014) <https://finance.yahoo.com/news/must-know-why-basel-wasn-205707242.html> (accessed 15 November 2024).

⁶⁶⁷ Ibid.

4.4.2 *Basel I had limited capital recognition*

In this case, it was argued that the list of collateral guarantees in Basel I appeared to be limited in nature when compared to what the banks were using.⁶⁶⁸ Effectively, this left a lacuna in the regulatory matrix that allowed banks to comply with some assets and not with others effectively failing to mitigate risks for the bank assets.

4.4.3 *Basel I needed complete coverage of risk sources*

Basel I has been criticised for focusing on covering only one type of credit risk. Despite amendments to the Accord in 1996, gaps in operational, reputational, and strategic risk areas.⁶⁶⁹ For example, there was a limited diversification of credit risk in that the eight per cent minimum capital ratio that made up the calculation for Basel I, depended on only four broad risk weightings (0 per cent, 20 per cent, 50 per cent, and 100 per cent).⁶⁷⁰ Equally, the assumption that a minimum capital ratio of eight per cent was adequate to prevent banks from failing ignored the changing nature of default risk. Another problem with this Accord was an acknowledgement of credit risk⁶⁷¹ term structure: capital charges were set at the same level regardless of the credit exposure maturity level of a bank.⁶⁷² Another problem was the simplified estimation of potential future counterparty risk.⁶⁷³ Capital requirements need not account for the various levels of risk associated with different currencies and macroeconomic risk. This was as good as assuming that all participants share a common market, which is not

⁶⁶⁸ Perez (n 667).

⁶⁶⁹ Perez (n 667).

⁶⁷⁰ Perez (n 667).

⁶⁷¹ Credit risk is most simply defined as the potential that a bank borrower or counterparty will fail to meet its obligations in accordance with agreed terms. The goal of credit risk management is to maximise a bank's risk-adjusted rate of return by maintaining credit risk exposure within acceptable parameters. Banks need to manage the credit risk inherent in the entire portfolio as well as the risk in individual credits or transactions. Banks should also consider the relationships between credit risk and other risks. The effective management of credit risk is a critical component of a comprehensive approach to risk management and is essential to the long-term success of any banking organisation. See BIS. Banking Committee on Banking Supervision (BCBS). Principles for the Management of Credit Risk. Consultative paper issued by the Basel Committee on Banking Supervision Issued for comment by 30 November 1999. Basel (July 1999). 1 1–27. <https://www.bis.org/publ/bcbs54.pdf> (accessed 15 November 2024).

⁶⁷² Perez (n 667).

⁶⁷³ Perez (n 667). Counterparty credit risk (CCR) is defined as the potential for financial loss arising from the default of a counterparty to a financial transaction. Unlike traditional credit risk, where only the lender faces the risk of non-payment, CCR is a bilateral risk. Both parties involved in the transaction could potentially incur losses. The market value of the transaction can fluctuate over time due to changing market conditions, increasing the uncertainty of potential losses for either party. See BIS. Basel Banking Committee on Banking Supervision (BCBS) "CRE Calculation Credit of Risk CRE50: Counterparty Definitions RWA for Credit And risk terminology" Version 15 (2019) 1 (updated July to 2024).

the case. Lastly, the failure of the Accord to recognise the effects of portfolio diversity was seen as a major weakness in the operation of Basel because the total of individual risk exposures does not equal risk reduction through portfolio diversification. Aggregating all risks may result in an erroneous risk assessment at the very best.⁶⁷⁴

4.4.4 Basel I used a “one-size-fits-all” approach

One of the major criticisms against Basel I was its “one-size-fits-all” approach.⁶⁷⁵ Effectively, it treated every bank in the same way, no matter how different it was in terms of size, the type of product dealt in, or the strength of its capital base.

Furthermore, criticisms were advanced against what were deemed to be arbitrary measures. For example, experts claimed that the 8 per cent ratio used to measure the capital risk had little effect on real insolvency targets, and therefore the ratio was technically redundant as it did not measure what it was supposed to measure accurately.⁶⁷⁶ Equally, Basel I was regarded as too narrow in its approach to risk assessment, as it did not consider the risk associated with the granting of loans to various sectors and regions.⁶⁷⁷ Not only that, but it was more relevant for certain bank models than others. Basel I seemed to favour retail and commercial banking units, at the cost of the more sophisticated banks like merchant banks and fund managers that did not use standard banking products.⁶⁷⁸

It has also been argued that the rules of the Basel I Capital Accord were not only unsophisticated in their approach to risk but were potentially deceptive because the risk calculation that was used to establish the eight per cent RWA rule was not sensitive enough to bring out the risk in the portfolios they were assessing. The Capital Accord also failed to consider qualitative measures like the number of debtors and the risks that they are likely to pose.⁶⁷⁹ This eventually led to some banks creating worthless risk models to comply with the Basel I Accord, rendering

⁶⁷⁴ Bank for International Settlements (BIS) “Amendment to the Capital Accord to Incorporate Market Risks” 9 (1996) <https://www.bis.org/publ/bcbs24.pdf> (accessed 15 November 2024); Office of the Comptroller of Currency OCC Approves Basel II Capital Rule <https://www.occ.gov/news-issuances/news-releases/2007/nr-occ-2007-123.html> (accessed 15 November 2024).

⁶⁷⁵ Perez (n 667).

⁶⁷⁶ Perez (n 667).

⁶⁷⁷ Perez (n 667).

⁶⁷⁸ Perez (n 667).

⁶⁷⁹ n 650, 1–28.

the whole exercise of measuring the intended risk futile.⁶⁸⁰ Added to this, the stronger, more influential banks began to lobby for better, clearer, and more effective standards in place of the Concordat.⁶⁸¹

Given the issues described above, major changes had to be made to the Basel I rules, considering the weaknesses that were identified, to avoid it becoming a redundant piece of regulatory policy. Basel II was thus formulated as a further expansion of the Basel I Accord and is probably one of the most well-known of the three Accords because it came into being on the back of Lehman Brothers GFC debacle in 2007–2008.⁶⁸²

4.5 Basel II Capital Accords

Basel II was first introduced in 1999 as a proposal to amend, and eventually replace, the Basel I Accord⁶⁸³ and culminated in a revised capital framework in June 2004 known as the Basel II Accord. This was issued as a paper titled “The International Convergence of Capital Measurement and Capital Standards.”⁶⁸⁴ This Accord included the element of market risk⁶⁸⁵ that was lacking in Basel I, making the calculations more accurate. Apart from this, mathematical models were used to calculate risk. The calculations also included market values as part of their input. This resulted in a regulatory framework with three distinct pillars and areas of concentration, as shown in the diagram below. Figure 3. The three pillars of Basel II:⁶⁸⁶

⁶⁸⁰ Sharma Ipshita: The EU and Global Banking Regulation 2014; Quaglia 2014 ch 3 (Slides).

⁶⁸¹ Ibid.

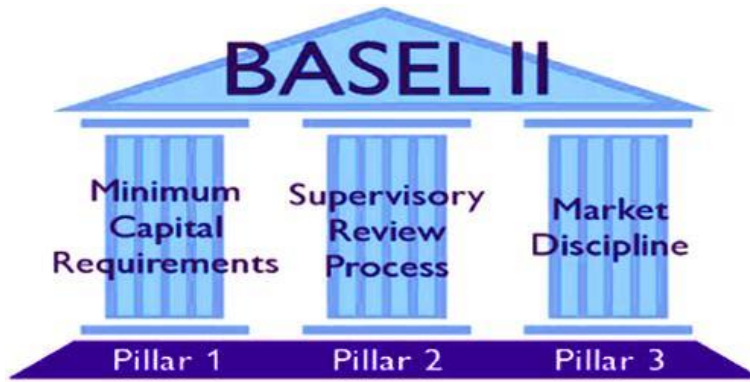
⁶⁸² See ch 1 para 1.

⁶⁸³ n 34,1.

⁶⁸⁴ Bank for International Settlements (BIS) “BIS International Convergence of Capital Measurement and Capital Standards A Revised Framework” 1–228 (June 2004) <https://www.bis.org/publ/bcbs107.htm> (accessed 7 March 2024).

⁶⁸⁵ Market risk is defined as the risk of losses in on and off-balance-sheet positions arising from movements in market prices. The risks subject to this requirement are: (1) The risks concerning interest rate related instruments and equities in the trading book; (2) Foreign exchange risk and commodities risk throughout the bank. See first version in the format of the consolidated framework: BIS. Basel Banking Committee Supervision (BCBS) “MAR Calculation of RWA for Market Risk. MAR10 Definition and application for market risk” Version 15 (2019). 1.

⁶⁸⁶ WikiBankz “Basel Capital Accord” <https://wikibanks.cz/basel-capital-accord/> (graphic) (accessed 10 September 2022).



4.5.1 *Pillar I: Minimum capital requirements*

Pillar I was an extension of Basel I and continued to be associated with the capital requirements of a bank. Banks were required to use risk models to assess their risk. They could choose to use a standardised model, or, where available, they could use their internal risk models.⁶⁸⁷ The first constituents of the first pillar of Basel II are found in Part Two of the revised framework of the “International Convergence of Capital Measurement and Capital Standards”. Under this head, and in particular, Part 2. I, of the revised framework paper shows how to calculate the minimum capital requirements, including regulatory capital, risk-weighted assets, and transitional arrangements.⁶⁸⁸ Part 2. II looks at “Credit Risk—The Standardised Approach.” Under this heading, the committee proposed two methods for banks to calculate capital requirements for credit risk. The first calculation relied on a standardised approach, which relies on external credit ratings to assess risk. The second calculation relies on an internal ratings-based approach, which allows banks to use their internal models to measure credit risk. However, this approach required explicit approval from the bank’s supervisor,⁶⁸⁹ followed by Part 2.III, which covers “Credit Risk—The Internal Ratings-Based Approach (IRB).” This section of the Framework describes the IRB approach to measuring credit risk. Banks with regulatory approval can use their internal risk models to calculate capital requirements for specific exposures. These models estimate factors like default probability, loss severity, exposure at default, and effective maturity. However, in certain cases, regulators may mandate the use of specific supervisory values instead of internal estimates for some of these risk components; further,⁶⁹⁰ Part 2.IV,

⁶⁸⁷ BIS. Basel Committee on Banking Supervision (BCBS) “International Convergence of Capital Measurement and Capital Standards. A Revised Framework” (June 2004) 1–228 <https://www.bis.org/publ/bcbs107.pdf> (accessed 14 November 2024).

⁶⁸⁸ Ibid.

⁶⁸⁹ n 688, 15.

⁶⁹⁰ n 688, 48.

covers “Credit Risk—Securitisation Framework.” Under this heading, banks must use the securitisation framework to calculate regulatory capital requirements for exposures linked to traditional, synthetic, or hybrid securitisations. Given the diverse structures of securitisations, capital requirements should be based on the underlying economic risks rather than the legal form of the transaction; Part 2.V., covers “Operational Risk.” Where operational risk refers to the potential loss stemming from insufficient or unsuccessful internal processes, people, and systems, as well as from external occurrences. The definition encompasses legal risk but excludes strategic and reputational risks. The framework offers three approaches for determining operational risk capital charges, ranging from basic to more sophisticated and risk-sensitive techniques. (i) the Basic Indicator Approach; (ii) the Standardised Approach; and (iii) Advanced Measurement Approaches (AMA). Under this arrangement, banks are encouraged to move along the spectrum of available approaches as they develop more sophisticated operational risk measurement systems and practices.⁶⁹¹ Lastly, Part 2.VI., covers “Trading Book Issues.” The following definition of the trading book replaces the current definition found in the Market Risk Amendment, section 1, Paragraph 2. It is now defined as a book consisting of positions in financial instruments and commodities held either with trading intent or to hedge other elements of the trading book. It is a collection of financial assets and commodities held for short-term trading or to manage risk associated with other trading activities. To qualify for special capital treatment, these assets must be easily tradable or effectively hedged against market risks. They should also be regularly valued and actively managed to generate profits or minimise losses.⁶⁹²

4.5.2 Pillar II: Supervisory review

This involved a supervisory risk assessment view of a bank’s capital adequacy and internal risk assessment processes. Some of the standards for supervisory review appear to have been taken from the “Core Principles for Effective Banking Supervision.”⁶⁹³ Under Part Three, “The Second Pillar—Supervisory Review Process”, is found. The various parts that are considered are Part 3. I which deals with the importance of supervisory review, and Part 3. II, outlines the four key principles of supervisory review,⁶⁹⁴ while Part 3. III discusses specific issues to be

⁶⁹¹ n 688, 137.

⁶⁹² n 688, 150.

⁶⁹³ n 688, 1–228.

⁶⁹⁴ These key principles consist of Principle 1: Banks should have a process for assessing their overall capital adequacy with their risk profile and a strategy for maintaining their capital levels. Principle 2: Supervisors should

addressed under the supervisory review process, such as credit and operational risk. Part 3. IV examines other aspects of the supervisory review process, and lastly, Part 3. V deals with the supervisory review process for securitisation.

4.5.3 Pillar III: Effective market discipline and disclosure

The third pillar is intended to make banks safe by introducing effective market discipline bolstered by using disclosure mechanisms.⁶⁹⁵ Part Four covers “The Third Pillar—Market Discipline” and only has two subheads, the first Part 4. I, examines “General Considerations” such as disclosure requirements, guiding principles, materiality, frequency, propriety, and confidential information, to name but a few, while Part 4. II deals with disclosure requirements. Part 4. II includes general disclosure requirements and speaks to credit, market, and operational risk, and so on.

The three pillars are summarised in the diagram below:

Table 3. Basel II Pillars⁶⁹⁶

Basel II Requirements		
Pillar I	Pillar II	Pillar III
Minimum Capital Requirements	Supervisory Review Process	Transparency and Market Discipline
i) Credit risk (new measurement) ii) Market risk (unchanged) iii) Operational risk (new)	i) Assessment of risks and capital adequacy of the individual banks ii) Constant contact with the bank	i) Increasing disclosure of capital requirements as well as methods of risk assessment

This revised framework was essentially created by adding two additional requirements to the Basel I Accord to cover all the areas of risk, leading to it being known as the “Three Pillar

review and evaluate banks’ internal capital adequacy assessments and strategies and their ability to monitor and ensure compliance with regulatory capital ratios. Supervisors should take appropriate supervisory action if they are not satisfied with the result of this process. Principle 3: Supervisors should expect banks to operate above the minimum regulatory capital ratios and should be able to require banks to hold capital above the minimum. Principle 4: Supervisors should seek to intervene early to prevent capital from falling below the minimum levels required to support the risk characteristics of a particular bank and should require rapid remedial action if capital is not maintained or restored. See Decamps *et al.*, *The Three Pillars of Basel II: Optimising the mix in continuous time model* (2002) for Part 3: The Second Pillar –Supervisory Review Process <https://www.bis.org/bcbs/cp3part3.pdf> 139–144 (accessed 7 November 2024).

⁶⁹⁵ n 688, 1–228.

⁶⁹⁶ Source: BCBS. See Decamps *et al.* *The Three Pillars of Basel II: Optimising the mix in continuous time model* (2002) 1–25.

Accord”. The basis of Basel II, however, still focused on addressing the problems associated with the “banking book” of financial institutions without necessarily examining the transactions carried out by these institutions. For example, the first of these pillars, minimum capital requirements, was an improvement on the Basel I Capital Accord.⁶⁹⁷ However, this meant that additional rules were introduced to strengthen the capital measurement of the initial Accords.

The second pillar in the series dealt with supervisory review of financial institutions’ capital adequacy and an internal assessment process.⁶⁹⁸ Effectively, banks had to assess their own risk and be evaluated by the regulator. Besides, the mathematical risk models, one of the important risk assessment tools, was the “Core Principles for Effective Banking Supervision,” which outlined objectives for both the regulator and the regulatee. Risk assessment involves complex mathematical models that measure various aspects of risk in a bank’s portfolio. However, the major problem with these mathematical models was not their inability to measure the associated risk of a transaction but that, often, the more sophisticated banks were carrying out transactions where some risks were difficult to measure. This was particularly widespread with transactions dealing with derivative and off-balance sheet products. As a result, this rendered Pillar II ineffective in its ability to capture the entire risk that a bank was exposed to.⁶⁹⁹

The final pillar, Pillar III, dealt with disclosure by financial institutions. Disclosure in this instance requires banks to publish or publicly disclose information relating to the risks a bank has undertaken, how much capital they have, and the policies they are using to manage the risk associated with the particular transaction. This rule was introduced to rein in banks that, up to this point in time, had a *carte blanche* to operate as they pleased without necessarily being obligated to disclose their transactions to anyone outside of the bank’s jurisdiction. With this rule in place, a supervisor could regulate the institution by various means, where and when it felt that the transactions entered were too risky. It could also take steps to mitigate the risk or, indeed in some cases, refuse to sanction the transactions. Mitigation would typically require the bank to increase its capital to cover any eventualities that may result from the transaction concerned. This was viewed as a means of strengthening market discipline in the financial market, which would in turn ensure that banks are forced to follow the rules, therefore leading

⁶⁹⁷ n 688, 1–228.

⁶⁹⁸ n 688, 1–228.

⁶⁹⁹ n 258.

to sound banking practices to the benefit of not only the financial market but also the financial markets of the country and the world at large.⁷⁰⁰

However, these changes appeared insufficient to achieve the set goals, as they covered the risks evident in the banking book⁷⁰¹ only. As a result, there was still a large amount of unknown risk not covered in the trading book.⁷⁰² In an attempt to address this gap in the system, the Basel Committee, in collaboration with the International Organization of Securities Commissions (IOSCO),⁷⁰³ revised the framework and created a comprehensive document that covered risk in both the banking book and the trading book under the title: “Basel II: International Convergence of Capital Measurement and Capital Standards: a Revised Framework,” which was released in mid-2006.⁷⁰⁴ Added to this, there was a greater emphasis on the degree of cooperation between the home-host supervisors. The BCBS made it a point to issue further guidance in this area. These guidelines helped strengthen the regulatory processes, especially for already relatively advanced banks.⁷⁰⁵

4.5.4 Criticism of Basel II

The criticisms that have been levelled against Basel II are numerous and scathing, to say the least. They have been made at various levels. They can be divided clearly into criticisms at the macro and micro levels in line with the development of the country being dealt with and the view of the market players themselves. These criticisms can be further divided into comments

⁷⁰⁰ n 258

⁷⁰¹ The Banking Book refers to assets on a bank’s balance sheet that are expected to be held to maturity. These usually consist of loans to, and deposits from, both retail (or individuals and small businesses) and corporate (large businesses) customers. The risk involved in the banking book includes credit, interest rate, market, liquidity, and operational risk, to mention but the main ones. See BIS. Basel Banking Committee Supervision (BCBS) “RBC Risk-based Capital Requirements. RBC25 Boundary between the Banking Book and the Trading Book” (2019) 1–2.

⁷⁰² The Trading Book refers to “assets held by a bank that are available for sale and hence regularly traded”. Trading book assets include equities, debt, commodities, foreign exchange, derivatives, and other complex financial contracts. The type of risk dealt with in the trading book may be like that of the banking book, but may also include risk associated with default, event, concentration, and correlation risk. See BIS. Basel Banking Committee Supervision (BCBS) “RBC Risk-based capital requirements. RBC25 Boundary between the banking book and the trading book” (2019) 1—2.

⁷⁰³ n 258; Basel Committee on Banking Supervision (BCBS) “The Application of Basel II to Trading Activities and the Treatment of Double Default Effects” (July 2005) <https://www.bis.org/publ/bcbs111.htm> (accessed 10 May 2023). The paper that resulted from the collaboration was framed under BIS and can be found on the bis.org site as well.

⁷⁰⁴ n 258; Basel Committee on Banking Supervision (BCBS) “International Convergence of Capital Measurement and Capital Standards A Revised Framework, Comprehensive Version” (June 2006) <https://www.bis.org/publ/bcbs128.pdf> (accessed 10 May 2023).

⁷⁰⁵ n 258.

made by the most developed countries cascading down to the least developed countries. An attempt will be made to categorise the various comments accordingly. This is even though in some instances the issues transcend these categorisations and apply across the board regardless of the size of a country or the strength and sophistication of its financial market and its market players. There is a particular dichotomy regarding the American and European (including the United Kingdom) approaches. Starting with the European reaction to Basel, the different approaches to dealing with Basel II by these countries will be appraised, including the criticisms garnered against them.

4.5.5 The European reaction to Basel II

Despite being architects of the Accords, European countries were initially apprehensive about the review process that was suggested under Pillar II.⁷⁰⁶ At the same time, they felt that using the internal ratings system, where banks could rate themselves to gauge their credit risk levels, would adversely impact smaller banks, possibly because these were less sophisticated than the larger multinational banks.⁷⁰⁷ Generally, the Europeans felt that many of the changes required to ensure that the weaknesses of the Basel I Accord were corrected were not attended to and were watered down. This effectively meant that inherent flaws in the new Accord would be carried forward from Basel I despite the revisions that were made. This made them uncomfortable because they felt that they had more at stake and, therefore, more to lose than the Americans.⁷⁰⁸

The smaller European countries raised similar concerns. For example, Zapodeanu and Gal Raluca⁷⁰⁹ mention that the complexity of the internal rating methods suggested in Basel II was too complex and challenging to apply to the smaller European countries, particularly those in Eastern and Central Europe, where the banks needed a superior culture of credit management.⁷¹⁰ The authors indicate that for these countries, bank regulators must exercise greater responsibility in regulating banks. This would imply a more significant cost to achieve the same level of regulation as other larger European countries. Equally, the constant

⁷⁰⁶ Sharma (n 681).

⁷⁰⁷ Bank for International Settlements (BIS) <https://www.bis.org/> (accessed May 18 2020).

⁷⁰⁸ n 708.

⁷⁰⁹ Zapodeanu & Gall “The Limits of Basel II Accord” 2009 723–729. <https://core.ac.uk/download/pdf/6304008.pdf> (accessed 6 June 2020).

⁷¹⁰ Zapodeanu (n 710) 723–729.

innovation in the financial markets would require upgrades that, would increase the costs of meeting the rules. The authors also felt that while Basel II had increased the risk sensitivity in the market, this alone was not enough as other risks were not considered, particularly those associated with reputational, systemic, and strategic risks, which in their view, were not part of the operational risk that the Accord addresses.⁷¹¹

Interestingly, the outcomes of implementing the Basel II Accord and the resultant effects indicate many parallels with developing countries. These include the high costs of implementing the Basel II Accord,⁷¹² followed by the discrimination between banks resulting from the Accord in terms of their ability and, ultimately, their strength as determined by the outcomes of the Accord itself and the ratings of the banks.⁷¹³ In this case, it amounted to discrimination between small and large banks and local and foreign banks, which ultimately translates into further discrimination at the country level for countries with lower ratings, eventually impacting their ability to access loans and the interest these countries are charged.⁷¹⁴ Further, there tends to be an increase in the number of banks in the financial sector, affecting bank concentration as weaker banks merge with stronger ones, whittling away the competition.⁷¹⁵ As will become apparent below, there are parallels to banks in developing countries.

4.5.6 General weaknesses

Some of the other weaknesses brought to the fore were that Basel II was difficult to understand and interpret, resulting not only in complex calculations but also higher implementation costs.⁷¹⁶ Basel II was also criticised because of the feared impact on the various banks' business cycles, particularly concerning capital. Tighter regulations would suffocate banks, especially when economies were in a downturn or recession.⁷¹⁷

⁷¹¹ Zapodeanu (n 710) 723–729.

⁷¹² Zapodeanu (n 710) 723–729.

⁷¹³ Zapodeanu (n 710) 723–729.

⁷¹⁴ Zapodeanu (n 710) 723–729.

⁷¹⁵ Zapodeanu (n 710) 723–729.

⁷¹⁶ Barnes *Banking Regulation and the Basel III Accord: An Examination of the Short Comings of Basel III* (doctoral thesis, University of Wolverhampton, 2019).

⁷¹⁷ Barnes (n 717) 130.

Many banks were concerned that Pillar I amendments fed into Pillar II, and that since reliance was still placed on Credit Rating Agencies (CRAs)⁷¹⁸ despite the problems that they created in the Basel I Accord, it would mean that Basel II would be prone to similar weaknesses, thus weakening the Accord considerably beforehand.⁷¹⁹

Barnes remarks that the problem with CRAs was that they were a business “with a heart” and were sometimes prone to being “soft” on their clients when providing risk ratings. This resulted in poor CRA estimations and undervalued risk. This relationship was eventually blamed for the failure of Basel II.⁷²⁰

On a more technical basis, the Value at Risk (VaR)⁷²¹ was deemed quite complex in its requirements. Its inadequacies only became apparent when the 2007–2008 GFC hit the international financial sector, particularly concerning how it was calculated. One of the most significant weaknesses identified was its reliance on historical data, which resulted in inaccurate risk assessments.⁷²²

Lastly, there were issues relating to efficiently assessing an organisation’s risk, particularly concerning the type of material that had to be gathered to make a sound assessment. Added to this were problems related to withholding information and complicity, which could impact an

⁷¹⁸ Credit rating agencies (hence referred to as CRAs) specialise in assessing and evaluating the creditworthiness of corporate and governmental debt issuers. It is anticipated that CRAs will play a larger role in managing corporate and sovereign credit risk under the new financial architecture. The Basel Committee on Banking Supervision’s (BCBS) recent reform of bank capital regulations, which resulted in Basel II, has strengthened CRAs position. The information imbalance between lenders and borrowers about the latter’s creditworthiness is resolved by CRAs. Compared to issuers with higher credit ratings, those with lower ratings pay higher interest rates, which represent greater risk premiums. Additionally, ratings establish whether debt and other financial instruments are suitable for some institutional investors’ portfolios because of national regulations that restrict investment in speculative-grade bonds. The two primary classifications of rating agencies are (i) recognised and (ii) non-recognized. For regulatory purposes, supervisors in every nation accept the former. Only five credit rating agencies (CRAs) are recognised by the Security and Exchange Commission (SEC) in the United States, with Moody’s and Standard and Poor’s (S&P) being the most well-known. Euromoney, Institutional Investor (II), and the Economist Intelligence Unit (EIU) are among the “unrecognized” CRAs. The differences between CRAs are significant. Their size and coverage extent (geographical and sectoral) may vary. It is also challenging to compare them because of the significant variations in their approaches and definitions of default risk. See El Khoury “Credit Rating Agencies and Their Potential Impact on Developing Countries, No186” United Nations Conference on Trade and Development (UNCTAD) (2008) https://unctad.org/system/files/official-document/osgdp20081_en.pdf (accessed 8 November 2024).

⁷¹⁹ Barnes (n 717) 131.

⁷²⁰ Barnes (n 717) 133.

⁷²¹ A measure of the worst expected loss on a portfolio of instruments resulting from market movements over a given time horizon and a pre-defined confidence level. BIS. Basel Committee on Banking Supervision (BCBS) “The Market Risk Framework in Brief” (January 2019) 2 https://www.bis.org/bcbs/publ/d457_inbrief.pdf (accessed 15 November 2024).

⁷²² Barnes (n 717) 134.

institution, as shown by previous institutional failures. These problems were identified in large institutions such as Merrill Lynch and other similarly sized organisations.⁷²³ It was under this burden that Basel II came under scrutiny once again, forcing further changes to it.

4.6 Basel III Capital Accords

However, before the above changes could be implemented fully, they were met with the spectacular collapse of Lehman Brothers in September 2008.⁷²⁴ Strangely enough, the collapse happened in the United States, which is known for its rigorous regulation of banks.⁷²⁵ Notwithstanding, the BCBS was forced to reconsider improving the Basel II Accord further. A synopsis of the crisis led the Basel Committee to believe that the banking sector entered the financial crisis with too much leverage and inadequate liquidity buffers. These weaknesses were accompanied by poor governance and risk management as well as inappropriate incentive structures. The dangerous combination of these factors was demonstrated by the mispricing of credit and liquidity risk and excess credit growth.⁷²⁶

The diagram below shows the transitional arrangements for the Basel III Accord by BIS for the period 2017–2028. These, like Basel II, consist of three main pillars: Pillar I, which is enhanced liquidity capital requirements; Pillar II, being the enhanced supervisory review process; and the last pillar, Pillar III, is enhanced risk disclosure and market discipline. While the structure appears to be similar, the levels of liquidity, supervision, and disclosure appear to be at a more advanced level.

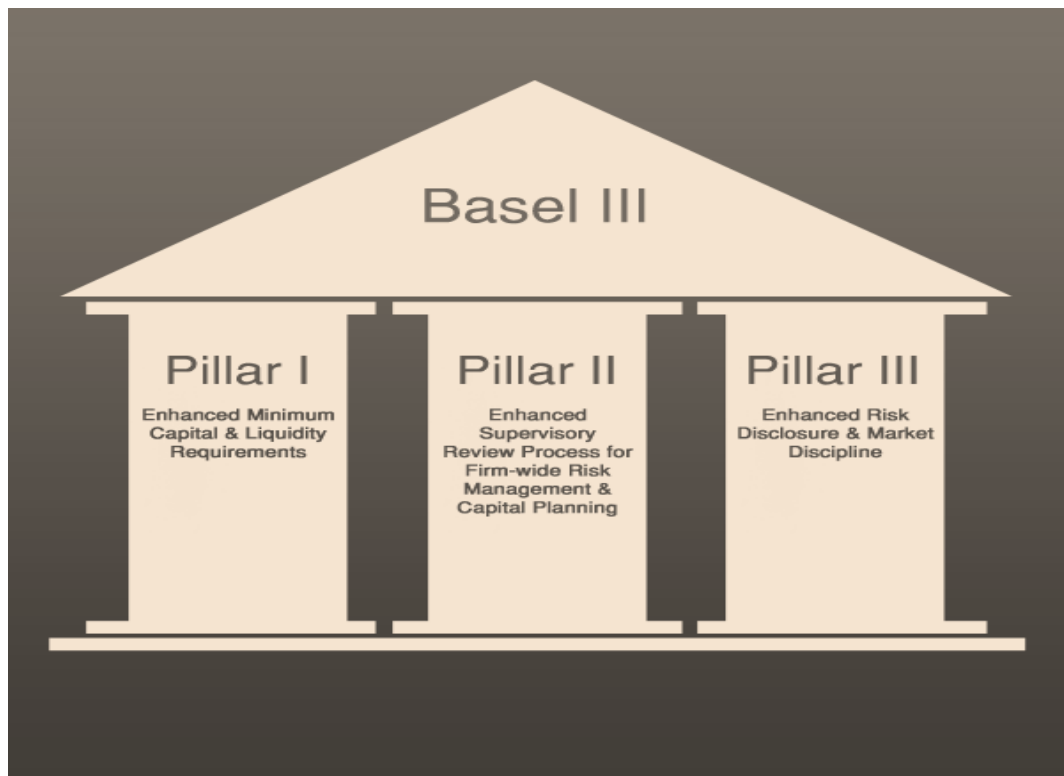
⁷²³ Barnes (n 717) 137. See ch 3 para 3.4.

⁷²⁴ See ch 1 para 1.

⁷²⁵ Azadinamin “The Bankruptcy of Lehman Brothers: Causes of Failure & Recommendations Going Forward” 2013 *Social Science Research* 1–151.

⁷²⁶ n 258.

Figure 4. Basel III—Transitional Arrangements 2017–2028 by BIS⁷²⁷



In other words, banks were over-lending (often to high-risk clients) without ensuring that they had adequate capital to shore them up if the transaction failed or indeed if any other eventuality occurred. Further, and surprisingly, banks appeared not to be monitoring their risks consistently and transparently, if at all, especially the riskier transactions. This also meant the price that the client paid for the transaction, normally an interest rate, had not been correctly priced for the actual risk associated with the asset. So effectively, very risky clients borrowed more at a subsidised or lower-than-normal rate.⁷²⁸ Consequently, these clients failed to meet their obligations, resulting in the GFC.

The above situation will be considered more critically later in the chapter, but the reaction from the Basel Committee was to issue further and stricter rules on capital for financial institutions. This was done by increasing the amount of money that banks held as capital, meaning that the total amount of capital remained unchanged, but required banks to hold a higher amount of Tier

⁷²⁷ Khurram Implementation of Basel III Framework <https://www.linkedin.com/pulse/implementation-basel-standards-iii-transitional-2017-sonia-khurram/> (graphic).(accessed 15 November 2024). See also BIS: Implementation of Basel III-Executive summary. Transitional arrangements and the RECAP process. 1–2.

⁷²⁸ n 258. See also Schoen “The 2007–2009 Financial Crisis: An Erosion of Ethics: A Case study” 2017 *Journal of Business Ethics* 805–830.

1 Capital called Additional Tier 1 Capital.⁷²⁹ The additional capital requirement had the effect of increasing a bank's equity capital to 4.5 per cent from the previous limit of two per cent.⁷³⁰ Two additional requirements that banks had to comply with were in the form of a pair of buffers to act as mitigants in the event of a possible crisis. The first to be introduced was a "Capital Conservation Buffer" to provide a second layer of protection to banks' existing capital with the addition of "Counter-Cyclical Capital Buffers" for good measure to ensure robust safety and soundness.⁷³¹ Lastly, and to supplement all the measures above, the BCBS introduced a non-risk-based leverage ratio⁷³² as a means of stopping banks from using their leverage arbitrarily for lending purposes.⁷³³ This rule was mainly formulated for those banks that have a strong international presence, even though it applies across the board for banks. To achieve these goals, the Basel Committee issued a paper under Basel II, titled "Principles for Sound Liquidity Risk Management and Supervision,"⁷³⁴ in the same month that Lehman Brothers failed.⁷³⁵ This was followed soon after by a further package to address the treatment of complex securitisation positions, off-balance sheet vehicles, and trading book exposures as a means of strengthening the regulation and supervision of these internationally active banks.⁷³⁶ According to the Basel

⁷²⁹ Additional Tier 1 Capital. Additional Tier 1 capital is composed of the following elements: Firstly, it includes specific securities issued by the bank that meet regulatory standards and are not classified as Common Equity Tier 1. Secondly, it encompasses the profit generated from issuing these specialized securities. Additionally, it incorporates similar securities issued by the bank's subsidiaries that also adhere to the Additional Tier 1 capital criteria. Lastly, it incorporates regulatory adjustments made to the calculations as mandated by regulators. For detailed criteria, please refer to section 4 of the document.

⁷³⁰ n 34, 1.

⁷³¹ n 747, 57–60.

⁷³² The Basel Committee on Banking Supervision (BCBS) introduced the leverage ratio (LR) as a non-risk-based capital requirement under the Basel III framework. This measure aims to limit excessive leverage within the banking sector by ensuring banks maintain a sufficient level of core capital relative to their total assets. Calculated by dividing a bank's Tier 1 capital by its average total consolidated assets, the LR encompasses both on-balance sheet and off-balance sheet items, providing a comprehensive assessment of a bank's capital adequacy. The minimum regulatory requirement for the LR is set at 3%, serving as a backstop to risk-based capital requirements and aiming to enhance the stability of the financial system. See BIS. Basel Committee on Banking Supervision "Basel III leverage ratio framework and disclosure requirements" (January 2014) <https://www.bis.org/publ/bcbs270.pdf> (accessed 5 December 2024) 1.

⁷³³ n 34, 1.

⁷³⁴ (BIS) Basel Committee on Banking Supervision (BCBS) "Principles for Sound Liquidity Risk Management and Supervision" BIS, Basel. January 2008 https://www.bis.org/list/bcbs/spp_12/from_01012008/index.htm (accessed April 18, 2021).

⁷³⁵ See ch 1 para 1.

⁷³⁶ n 34, 1.

Committee, internationally active banks are Group One banks and have a Tier 1 Capital⁷³⁷ of more than three billion Euros and include all 30 banks that have been designated by the Financial Stability Board as global systemically important banks (G-SIBs).⁷³⁸ It also included 95 Group Two banks (or banks that have Tier 1 Capital of less than three billion Euros or are not internationally active).⁷³⁹

4.6.1 *Basel III and its Critics*

After much deliberation by the Group of Governors and Heads of Supervision (GHOS) (or the oversight body of the Basel Committee on Banking Supervision comprising the same member jurisdictions as the Committee), the Basel II standards were reviewed and proposals were made for further reviews, taking into account the specific weaknesses of the Accord.⁷⁴⁰ The Basel Committee issued the results of the consensus in 2010 in two papers, the first one titled “Basel III: International Framework for Liquidity Risk Measurement, Standards, and Monitoring”⁷⁴¹ and the second one titled “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” revised the first paper.⁷⁴² These papers effectively enhanced the three Pillars.⁷⁴³ The additions to Basel II to make it Basel III were as follows:⁷⁴⁴

⁷³⁷ Tier 1 capital is also known as core capital. Tier 1 capital is generally defined as consisting of a bank’s common equity (together with additional paid-in capital and retained earnings) non-cumulative perpetual preferred stock and trust preferred securities.

⁷³⁸ Valladares “Internationally Active Banks are Meeting Initial Basel III Standards” (4 October 2018) 1 <https://www-forbes-com.cdnampproject.org/> (accessed 16 January 2020). Note: Since 2011, the FSB has identified global systemically important banks (G-SIBs), in collaboration with the Basel Committee on Banking Supervision (BCBS) and national authorities. The list of G-SIBs is broken up into “buckets” based on the amount of increased loss absorbency that is necessary. The FSB published an integrated set of policy measures in 2011 to address the systemic and moral hazard risks associated with systemically important financial institutions. The list of G-SIBs is updated annually in November along with information on the application of those measures to G-SIBs. See Financial Stability Board (FSB) “Global Systemically Important Financial Institutions (G-SIFIs)” <https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/global-systemically-important-financial-institutions-g-sifis/> (accessed 10 May 2023).

⁷³⁹ n 739.

⁷⁴⁰ n 258.

⁷⁴¹ Basel Committee on Banking Supervision (BCBS) “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring” <https://www.bis.org/publ/bcbs188.pdf> (accessed 9 July 2020)

⁷⁴² Ibid.

⁷⁴³ See ch 4 para 4.5.

⁷⁴⁴ n 742.

- i) **An additional layer of Common Equity**—the “Capital Conservation Buffer,”⁷⁴⁵ that when breached, restricts payouts to help meet the Common Equity requirements. This is covered in the revised document, “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems.”⁷⁴⁶ Part 1. IB 1 and 2 of the document cover this area. It defines capital and detailed proposals for what the capital should consist of.⁷⁴⁷ An explanation of the “Capital Conservation Buffer” can be found in Part 1. III A–C of Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems.⁷⁴⁸ This section explains how the Capital Conservation Buffer works. This buffer is designed to help banks build up extra capital during good times, which they can use to absorb losses during difficult periods. The requirement for this buffer is based on straightforward rules to prevent the bank from falling below the minimum capital requirements.⁷⁴⁹
- ii) A **“Countercyclical Capital Buffer,”** which places restrictions on participation by banks in a system-wide credit boom to reduce banks’ losses in credit busts. These are covered under Part 1. IV A–F in the revised “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring” paper.⁷⁵⁰
- iii) A **“Leverage Ratio”**—a minimum amount of loss-absorbing capital relative to all a bank’s assets and off-balance sheet exposures regardless of the risk weighting. These requirements are found in the “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems” document. (See i) above) More specifically, Part 1 deals with minimum capital requirements and buffers at V, where the rationale, objective, and calculation of the Leverage Ratio are provided.⁷⁵¹ Liquidity requirements—a minimum Liquidity Ratio, the Liquidity Coverage Ratio (LCR), intended to provide enough cash to cover the funding needs over 30 days of stress; and a longer-term ratio, the Net Stable Funding Ratio (NSFR),

⁷⁴⁵ The Capital Conservation Buffer is designed to ensure that banks build up capital buffers outside periods of stress which can be drawn down as losses are incurred. The requirement is based on simple capital conservation rules designed to avoid breaches of minimum capital requirements. See BIS Basel Committee on Banking Supervision (BCBS) “The Capital Buffers in Basel III—Executive Summary” (November 2019) 2–28 https://www.bis.org/fsi/fsisummaries/b3_capital.pdf (accessed 9 July 2020).

⁷⁴⁶ BIS. Basel Committee on Banking Supervision “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems” 3–69 (December 2010, rev June 2011) <https://www.bis.org/publ/bcbs189.pdf> (accessed 8 November 2024).

⁷⁴⁷ Ibid.

⁷⁴⁸ n 747, 54–57.

⁷⁴⁹ n 747.

⁷⁵⁰ n 747, 57–60.

⁷⁵¹ n 747, 61–63.

intended to address maturity mismatches over the entire balance sheet.⁷⁵² These requirements are also found in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems”⁷⁵³ document at B titled “Introducing Global Liquidity Standards” at 1–3 ⁷⁵⁴. It is also covered in the initial paper, titled “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring”⁷⁵⁵ Part II.1 covered the Liquidity Coverage Ratio (LCR)⁷⁵⁶ and Part II.2 the Net Stable Funding Ratio (NSFR)⁷⁵⁷ Additional proposals for systemically important banks, including requirements for additional capital, augmented contingent capital and strengthened arrangements for cross-border supervision and resolution.⁷⁵⁸

The tightening of the definition of capital reflected by significantly higher minimum ratios and the introduction of a macro-prudential overlay, represented a significant overhaul of banking regulation.⁷⁵⁹

The BCBS paper recommended that the strengthened definition of capital be implemented over five years from 2013 and the phasing out of capital instruments that no longer qualify as Common Equity Tier 1⁷⁶⁰ or Tier 2 capital.⁷⁶¹ The tables below show the makeup of the two types of capital.

⁷⁵² n 747, 9. The Net Stable Funding Ratio (NSFR) mandates that banks maintain a stable funding base to cover their long-term assets and off-balance sheet obligations over a one-year period. This aims to reduce reliance on short-term funding and encourage a more prudent approach to liquidity risk management.

⁷⁵³ n 747, 3–69

⁷⁵⁴ n 747, 8–9.

⁷⁵⁵ n 747, 1–40.

⁷⁵⁶ n 747, 9. The Liquidity Coverage Ratio (LCR) is designed to make banks more resilient to short-term liquidity crises. It ensures banks have enough high-quality assets to cover their cash needs during a 30-day period of severe stress, like the conditions experienced during the 2007 financial crisis.

⁷⁵⁷ n 747, 3–25.

⁷⁵⁸ n 34, 1.

⁷⁵⁹ n 34, 1.

⁷⁶⁰ n 747, 13. Common Equity Tier 1 (CET1) capital is a crucial measure of a bank’s financial strength. It encompasses various elements, including common shares issued by the bank, share premium, retained earnings, other comprehensive income, and minority interest in consolidated subsidiaries. These components collectively represent the bank’s core capital and its ability to absorb losses.

⁷⁶¹ n 747, 17. Tier 2 capital is a secondary layer of capital that banks hold to absorb losses. It comprises various components, including specific securities issued by the bank, share premium from issuing Tier 2 instruments, similar securities issued by subsidiaries, certain loan loss provisions, and regulatory adjustments. These components collectively enhance the bank’s capital buffer and strengthen its resilience against potential financial shocks.

Table 4. Basel III—Minimum Capital Ratio⁷⁶²

Tier 1	75 per cent of total capital (Tier 1 capital)	Common Equity Tier 1 (4.5 per cent of RWAs)
		Additional Tier 1 (25 per cent)
Tier 2	25 per cent of total capital (Tier 2 capital)	

This was to be affected over a ten-year period.⁷⁶³ With effect from 1 January 2013, the minimum Capital Ratio would be replaced with the following minimum Common Equity Tier 1 Capital,⁷⁶⁴ as follows:⁷⁶⁵

1. Minimum Common Equity and Tier 1 requirements would increase from 2 per cent and 4 per cent to 3.5 per cent and 4.5 per cent of the total RWA.
2. The minimum Common Equity and Tier 1 requirements rose to 4 per cent and 5.5 per cent of the total RWA respectively at the beginning of 2014.
3. The final requirement for Common Equity and Tier 1 Capital was set at 4.5 per cent and 6 per cent of the total RWA respectively at the beginning of 2015.

Added to this, the Liquidity Coverage Ratio (LCR)⁷⁶⁶ would be phased in from 1 January 2015 and would require banks to hold a buffer of high-quality liquid assets sufficient to deal with the cash outflow encountered in an acute short-term stress scenario as specified by supervisors. To ensure that the banks could implement the LCR without disruption to their financing activities,

⁷⁶² Source: BCBS. Basel III –Minimum Capital Ratio. See Basel III: International Regulatory framework for banks.

⁷⁶³ n 34, 1.

⁷⁶⁴ n 747, 13. Common Equity Tier 1. Common Equity Tier 1 capital consists of the sum of the following elements: Common shares issued by the bank that meet the criteria for classification as common shares for regulatory purposes (or the equivalent for non-joint stock companies); Stock surplus (share premium) resulting from the issue of instruments included Common Equity Tier 1; Retained earnings; Accumulated other comprehensive income and other disclosed reserves; Common shares issued by consolidated subsidiaries of the bank and held by third parties (i.e. minority interest) that meet the criteria for inclusion in Common Equity Tier 1 capital.

⁷⁶⁵ These higher minimum capital standards were announced by the group of Governors and Heads of Supervision at its 12 September 2010 meeting. Jean-Claud Trichet, President of the European Central Bank, and chair of the group of governors and heads of supervision is quoted as saying that the agreements are a fundamental strengthening of global capital standards and that their contribution to long-term financial stability and growth will be substantial. See Bank for International Settlements (BIS) “Group of Governors and Heads of Supervision announces higher global minimum standards” (12 September 2010) <https://www.bis.org/press/p100912.htm> (accessed 7 July 2023).

⁷⁶⁶ n 747, 9. Liquidity Coverage Ratio (LCR). The LCR is designed to protect banks from short-term liquidity problems. It requires banks to hold enough high-quality assets to cover their cash needs during a severe 30-day crisis, like the 2007–2008 GFC. This includes both bank-specific and broader market-wide shocks.

the minimum LCR requirement began at 60 per cent in 2015 rising in equal annual steps of 10 per centage points to reach 100 per cent on the first of January 2019.⁷⁶⁷

Another minimum liquidity standard introduced by Basel III is the Net Stable Funding Ratio.⁷⁶⁸ This requirement took effect as a minimum standard on 1 January 2018 and promotes longer-term funding mismatches and incentives for banks to use stable funding sources.⁷⁶⁹

Basel III, like Basel I, has been widely criticised by many academics as well as practitioners. Amorello, for example, points out that the criticisms of Basel III along four main lines of argument. First, that Basel III requirements are highly complex; second Basel III continues to rely on internal risk-based model regulation to calculate capital requirements; third that Basel III still fails to capture a lot of off-balance risk inherent in banking transactions. The last criticism being the fact that the disclosure requirements remain incomplete.⁷⁷⁰

Practitioners like Eubanks in his article, “The Status of the Basel III Capital Adequacy Accord”, appeared to be more concerned about the impact that Basel III would have not only in terms of its competitive disadvantage for the United States against world financial markets but that it might also conflict with the new capital requirements United States regulators were implemented under the Dodd-Frank Act (PL111–203) of 2010.⁷⁷¹ Following the enactment of the Dodd-Frank Act in 2010, the US banking industry has faced increased regulatory scrutiny. Federal regulators have implemented stricter capital and liquidity requirements for banks, particularly for larger financial institutions. For example, Federal banking regulators announced the final rules for implementation of Basel II.5 on 7 June 2012, and for the implementation of Basel III on 9 July 2013. In 2014 Federal regulators adopted the enhanced supplementary leverage ratio for bank-holding companies with more than \$700 billion of consolidated assets or \$10 trillion in assets under custody as a covered bank-holding company. On 10 October 2014, the Federal banking agencies (i.e., Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance

⁷⁶⁷ n 34, 1.

⁷⁶⁸ n 747, 9. The Net Stable Funding Ratio (NSFR) mandates that banks maintain a stable funding base to cover their long-term assets and off-balance sheet obligations over one year. This aims to reduce reliance on short-term funding and encourage a more prudent approach to liquidity risk management.

⁷⁶⁹ n 34, 1.

⁷⁷⁰ Amorello “Beyond the Horizon of Banking Regulation: What to Expect from Basel IV” 2016 *Harvard International Law Journal* 21–38.

⁷⁷¹ Eubanks “The Status of the Basel III Capital Adequacy Accord” Congressional Research Services (CRS) (2010) <http://www.everycrsreport.com> (accessed 13 May 2021).

Corporation) announced a final rule to strengthen liquidity regulations for banks with \$50 billion or more in assets. These regulations, such as Basel III and additional domestic requirements, aimed to enhance the stability of the banking system by requiring banks to hold more capital and maintain adequate liquidity.

4.6.2 *Basel IV or the completion of the Basel Accords*

In December 2017, the Basel Committee published a further package of reforms for the global regulatory framework, called the Basel IV Accord.⁷⁷² The main aim of the Basel IV Accord is to further strengthen and improve confidence in the financial system. The Basel IV regulatory framework requires banks to hold additional amounts of capital and to improve their risk assessment capabilities. Basel IV also requires banks and financial institutions to adhere to standardised global regulations. This Accord limits the use of internal models and helps to increase transparency as a means of enhancing the comparability of banks' financial health. Additionally, these measures aim to prevent future financial crises and maintain stability within the global banking sector.⁷⁷³ In many respects, Basel IV is the completion of the Basel III Accord or, as the BCBS calls them, finalised reforms. These reforms fall under what is called an "Internal Ratings-Based Approach."⁷⁷⁴ The Internal Ratings-Based (IRB) approach is used by banks to calculate capital requirements as a means of managing their risk. The IRB allows banks to model their risk inputs to calculate risk-weighted assets, which in turn determine how much capital they need to cover their risks. Basel IV limits the use of internal rating-based models. So, while Basel IV, allows for an Internal Ratings-Based (IRB) approach for assessing

⁷⁷² Note that Basel IV Accord is the informal name for a set of proposed banking reforms building on the international banking accords known as Basel I, Basel II, and Basel III. It is also referred to as Basel 3.1. It began implementation on 1 January 2023, although its full adoption is expected to take until 2025 and the stages of implementation vary by country. See Kluwer "Implementing Basel 3.1: Your Guide To Manage Reforms" <https://www.wolterskluwer.com/en/expert-insights/implementing-basel-3-1-your-guide-to-manage-reforms> (accessed 7 July 2023). The Prudential Regulation Authority (PRA) published proposed Basel 3.1 norms and expectations for the UK. Consultation Paper (CP) 16/22, as expected, has numerous European Union (EU)-specific modifications. Many jurisdictions, like Australia, Canada, Hong Kong, Singapore and Switzerland, are further along in their implementations and have stayed mostly faithful to the Basel Committee's criteria. The European Commission's plan, on the other hand, includes deviations from Basel III rules that would make the EU an international outlier. However, the PRA strikes a balance by fine-tuning Basel criteria for the UK market and data without jeopardising resilience, allowing organisations to remain compliant and competitive. See HM Treasury "Implementation of the Basel 3.1 standards" (2022) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1120898/HMT_Basel_3.1_consultation_document.pdf (accessed 7 July 2023).

⁷⁷³ BIS. Basel Committee on Banking Supervision Basel III: Finalising post-crisis reforms December 2017 53 <https://www.bis.org/bcbis/publ/d424.pdf> (accessed 25 November 2024). See also Amorello (n 771) 31.

⁷⁷⁴ n 774, 53; Amorello (n 771) 31.

credit risk, it imposes stricter regulations on its use by Banks.⁷⁷⁵ These restrictions include requiring (a) a minimum capital requirement calculated using standardised approaches and (b) limiting the potential benefits of internal models. (c) The IRB approach is also restricted to specific exposures and portfolios. Currently, banks that have adopted the Basel IV Accord are obligated to meet rigorous standards for model development, validation, and governance. This has resulted in the IRB approach under Basel IV being more constrained and subject to increased oversight. limits the use of internal models. This can be found in the BCBS consultative document titled “Internal Ratings-Based Approach” issued in 2001.⁷⁷⁶ This document has since been superseded by the new “Credit Risk Internal Ratings-Based (IRB) Approach” issued in 2017 as part of the final Basel III package⁷⁷⁷ and includes the following standards:

- i) A more robust risk-sensitive standard output capital floor limit, so that the capital requirement will always be at least 72.5 per cent of the requirement under the standardised approach.⁷⁷⁸ So, effectively a bank’s calculation of the RWA cannot fall below 72.5 per cent (in aggregate) of the risk-weighted assets computed by the standardised approach. This essentially limits the benefit a bank can gain from using internal models to 27.5 per cent.
- ii) A simultaneous reduction in standardised risk weights for low-risk mortgage loans.
- iii) Requiring banks to meet higher maximum leverage ratios to be set as part of the completion of the Basel III package. The minimum leverage ratio is 3 per cent.⁷⁷⁹ This simple leverage ratio was to act as a credible supplementary measure of the risk-based capital requirements. It helped to restrict the build-up of leverage in the banking sector and to avoid destabilising deleveraging processes that can damage the broader financial system and the economy and reinforce the risk-based requirements with a simple non-risk-based “backstop” measure.⁷⁸⁰

⁷⁷⁵ n 774. See al so Amorello (n 771) 31.

⁷⁷⁶ Bank for International Settlements (BIS) “The Internal Ratings Based Approach –supporting document to the New Basel Capital Accord” (2001) <https://www.bis.org/pub/bcbsca05.pdf> (accessed 17 June 2023).

⁷⁷⁷ KPMG “Basel IV Credit Risk Standardised Approach (SA) January 2021 Considerations for Implementation” (January 2021) <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2021/02/basel-iv-credit-risk-standardised-approach.pdf> (accessed 7 July 2023).

⁷⁷⁸ Bank for International Settlements (BIS) “Finalising Basel in Brief” https://www.bis.org/bcbs/publ/d24_in_brief.pdf (accessed 17 August 2022); Bank for International Settlements (BIS) & Basel Committee on Banking Supervision (BCBS) “Consultative Document, Standards, Capital Floors, The Design of a Framework Based on Standardised Approaches” (2014) <https://www.bis.org/bcbs/publ/d306.pdf> (accessed 17 August 2023).

⁷⁷⁹ Bank for International Settlements (BIS) “Basel III Leverage Ratio Framework and Disclosure Requirements” <https://www.bis.org/publ/bcbs270.htm> (accessed 7 August 2023).

⁷⁸⁰ n 780.

- iv) Higher leverage ratio for Global Systemically Important Banks (G-SIBs) with the increase equal to 50 per cent of the risk-adjusted capital ratio.⁷⁸¹
- v) More detailed disclosure of reserves and other financial statistics.

These reforms were to take effect from January 2022 but have since been pushed forward to 2023.⁷⁸² An evaluation of the success of their implementation would need to be appraised, given that the time limit for their implementation has elapsed. It is submitted that due to the COVID-19 pandemic, many countries may not have met this objective fully hence it being extended into 2023.

4.6.3 Criticism of the Basel IV Accord

According to Winkler and Holdtgreffe, there remain many unresolved concerns about Basel IV. Some of these issues have an immediate impact on constraining bank lending. It appears that the risk weighting is more stringent under Basel IV and sensitive to an entirely different set of factors that could result in discrepancies in output.⁷⁸³ Most notable of these being the output floor which limits the degree to which risk weightings from internal models can differ from those calculated under the standardised approach.⁷⁸⁴ The fact that Basel IV requires banks to allocate ever more capital and risk many transactions is also in contention. Further, there are concerns that European corporates are likely to feel the impact of the framework in terms of pricing and availability of funding. It is also likely that where corporates do not have external credit ratings, they will face significant RWA increases.⁷⁸⁵

For European banks, the issue of the new output floor has caused much consternation in banking circles.⁷⁸⁶ This is because the floor limits the degree to which risk weightings from internal models can differ from the standard approach. In certain instances, whenever the

⁷⁸¹ n 779. Note: The Risk-Adjusted Capital Ratio (RACR) is used to gauge a financial institution's ability to continue in the event of an economic downturn.

⁷⁸² BCBS: Bank for International Settlements (BIS) "Finalising Basel III in brief" https://www.bis.org/bcbs/publ/d424_inbrief.pdf (accessed 7 August 2023).

⁷⁸³ Winkler & Koen "Basel IV; What Will Be Its Impact on Europe?" The International Banker <https://internationalbanker.com/banking/basel-iv-what-will-be-its-impact-on-Europe/> (accessed 7 August 2022).

⁷⁸⁴ Ibid.

⁷⁸⁵ Winkler (n 785) 1.

⁷⁸⁶ Winkler (n 785) 1.

internal models indicate an output at a lower risk, the bank must top up its risk weighting and capital allocations. This is likely to impact on the pricing and availability of funding.⁷⁸⁷

4.7 Western responses to the Basel Accords

Despite what the BCBS puts out as a uniform acceptance of the Basel Accords, there are distinct paths that the major countries have taken to adopt these rules. In particular, the United States and Europe have taken entirely different routes to meeting the Basel requirements. This distinction is essential when one considers that there has been little leeway for developing countries to find a middle path for their banks. The idea is especially pertinent when one discovers that the United States and Europe are the masterminds behind the creation of the Accords. The history of American regulation is checkered, to say the least. While it would take a great deal of time to explain these changes, Haubrich has created a summary of United States regulation in one of his articles on bank capital requirements in the United States as outlined in Table 5 below.”⁷⁸⁸

Table 5. Regulation of US banks from the 18th century to 21st century⁷⁸⁹

Time Period	Capital Regulation
18th and early 19th century	Banks chartered by states. Banks are required to have a minimum level of capital to start. Rules vary by state.
National Banking Era, 1864	National banks created; starting capital depends on the location of the bank. Deposits become more important.
20th century	Comptroller considers capital-to-deposit ratio, following states. New Deal lists capital adequacy as a requirement for Federal Deposit Insurance Corporation (FDIC) coverage.
Post-World War II	In 1950s, capital only one component of supervision; risk of assets considered. International Lending Supervision Act of 1983 (ILSA) requires supervisors to create capital requirements. United States implemented Basel I in 1989; explicit risk-weighted assets. Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) creates prompt corrective action.
21st century: Basel and Dodd-Frank Act	Basel II, 2007, creates standardised and advanced approaches. Basel II and Dodd-Frank Act create capital conservation buffer (CCB), countercyclical capital buffer (CCyB), supplemental leverage ratio (SLR), and global systemically important bank (GSIB) surcharges. Stress tests:

⁷⁸⁷ Winkler (n 785) 1.

⁷⁸⁸ Haubrich “A Brief History of Bank Capital Requirements in the United States” (2020) 1–6 <https://www.clevelandfed.org/en/publications/economic-commentary/2020/ec-202005-evolution-bank-capital-requirements> (accessed 24 June 2023).

⁷⁸⁹ Ibid.

	Dodd-Frank Act Stress Tests (DFAST) and Comprehensive Capital Analysis and Review (CCAR).

4.7.1 The United States of America

The United States is an interesting case study concerning implementing the Basel Accords. But equally, it is essential to remember that while many countries are single or unitary states, the United States consist of a federation of over 50 states.

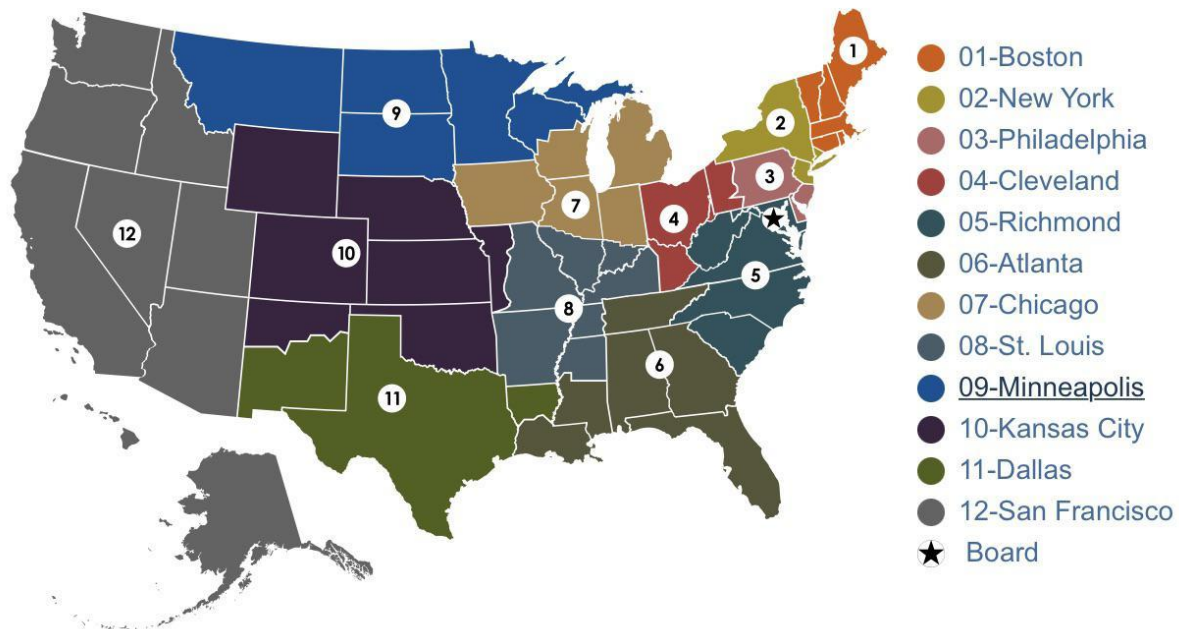
4.7.2 US regulatory agencies

As a means of appreciating the complexity of the United States' financial system, some of the agencies involved must be looked at in respect of their role in the decision-making processes. First, there is the Federal Reserve Board,⁷⁹⁰ which has 12 State Reserve Banks with 24 branches. The diagram below shows these US State Reserve Banks (SRBs) and their locations in America.

⁷⁹⁰ The United States Federal Reserve Bank was set up in 1913 by Act of Congress: See Federal Reserve History "Overview: The History of the Federal Reserve 1913 to Today" <https://www.federalreservehistory.org/essays/federal-reserve-history> (accessed 7 July 2023). The short title for the Act is Federal Reserve Act. 23 December 1913, Ch. 6, § 1 (par.). 38 Stat. 251. See <https://www.law.cornell.edu/uscode/text/12/226> (accessed 7 July 2023).

Figure 5. Federal Reserve Banks⁷⁹¹

Federal Reserve Banks



This is followed by the Office of the Comptroller of Currency (OCC),⁷⁹² whose primary purpose is supervising national banks. It is itself a bureau of the Treasury Department.⁷⁹³ Next is the Federal Deposit Insurance Corporation (FDIC),⁷⁹⁴ which manages insured state-chartered

⁷⁹¹ Reddit “Break down of the United States by Federal Reserve Banks” “https://www.reddit.com/r/MapPorn/comments/ttgb0w/break_down_of_the_united_states_by_federal/” (accessed 7 July 2023).

⁷⁹² The Office of the Comptroller of the Currency (OCC) was created as a bureau of the US Department of the Treasury by the National Currency Act of February 25, 1863. The Act was later renamed the National Banks Act. See Office of the Controller of Currency “Founding of the OCC & the National Banking System” <https://www.occ.treas.gov/about/who-we-are/history/founding-occ-national-bank-system/index-founding-occ-national-banking-system.html> (accessed 7 July 2023).

⁷⁹³ The US Treasury Department is the second oldest department in the Federal government, United States. It was created by the Congress on September 2, 1789. Besides fulfilling its responsibility of managing money, the Department has performed many other functions in the past. See the Treasury Historical Association “A Brief History of the Treasury Department” <https://treasuryhistoricalassn.org/index.php/treasury-history-tours/treasury-department> (accessed 7 July 2023).

⁷⁹⁴ The FDIC is a United States government organisation established under the Banking Act of 1933 (commonly known as the Glass-Steagall Act). The FDIC’s principal purpose is to insure and protect bank depositors’ funds in the event of a bank failure. The FDIC is also important in regulating banking practices. The FDIC was established in the aftermath of the Great Depression, when 9 000 banks failed, resulting in the loss of about nine-million savings accounts. Following the failure of various state-sponsored deposit insurance systems, the FDIC was established as a permanent government agency by the Banking Act of 1935. See Montevirgen “Federal Deposit Insurance Corporation (FDIC)” <https://www.britannica.com/money/Federal-Deposit-Insurance-Corporation> (accessed 7 July 2023).

banks that are not members of the Federal Reserve System.⁷⁹⁵ It also supervises state-chartered savings banks in various states. While the FDIC's primary objective is to maintain stability and public confidence in the US financial system, it is also mandated to encourage troubled institutions that are members of the depository to resolve problems that may lead them to failure by either merging or by seeking additional capital. Where a financial institution fails to resolve its problems, the FDIC will immediately activate its resolution process and attempt to sell off the failing institution to qualified bidders—normally to other healthy insured depository institutions. The FDIC is required by law to do this using the most efficient and least costly options, to minimise losses to the deposit insurance fund.⁷⁹⁶ The following office is the Office of the Thrift Supervisor, partly responsible for overseeing Federal savings banks and associations. One of the problems faced by these agencies is what is referred to as “interagency competition”. According to Farber and O’Connell, these conflicts manifest themselves in an organisation in three different ways: the first is a hierarchical conflict whereby one agency is in a subordinated position, and the dominant agency can overturn the weaker agency’s decisions. The next conflict occurs where there is an advisory and monitoring relationship where one agency has the decisional authority, but still, another exerts some degree of influence over the decision, thus creating “checks and balances” by generating information to be shared. The last one is where there are conflicts between agencies with equal power, and as such, because of the equal relationship, the two agencies compete against one another.⁷⁹⁷

4.7.3 *Dodd-Frank Act and Basel Accord I*

As the Wall Street reform summary specifies, the Dodd-Frank Act was described as creating a new, independent consumer watchdog, housed at the Federal Reserve, specifically tasked with

⁷⁹⁵ The term “dual banking system” refers to the United States parallel state and federal banking systems. The federal system is founded on a federal bank charter, powers established by federal legislation, operation in accordance with federal standards, and oversight by a federal supervisor. The state system is distinguished by state chartering, bank powers established by state law, and operation in accordance with state standards, including oversight by state regulators. Since the Supreme Court’s judgement in *McCulloch v Maryland*, 17 US 316 (1819) in 1819, it has been a basic precept of our constitutional law that states cannot lawfully regulate the powers of corporations constituted under federal law. Courts have repeatedly applied this principle to national banks throughout the years, deeming a variety of state laws inapplicable to national banks and concluding that national banks’ federally authorised powers are not subject to state oversight and regulation. See Comptroller of the Currency Administrator of National Banks “National Banks and The Dual Banking System” (September 2003) <https://www.occ.treas.gov/publications-and-resources/publications/banker-education/files/pub-national-banks-and-the-dual-banking-system.pdf> (accessed 7 July 2023).

⁷⁹⁶ FDIC “Failing Bank Resolutions” <https://www.fdic.gov/resolutions#> (accessed 18 November 2024).

⁷⁹⁷ Kamensy “When Interagency Conflict is a Good Thing” (2018) 1 <https://www.govexec.com/management/2018/08/when-interagency-conflict-good-thing/150713/> (accessed 12 August 2023).

ensuring American consumers receive clear and accurate information when shopping for mortgages, credit cards, and other financial products, and protecting them from hidden fees, abusive terms, and deceptive practices.⁷⁹⁸

These changes were established after years of poor financial management that created one of the biggest financial crises since the 1929 Great Depression.⁷⁹⁹ Under the Dodd-Frank Act, the Federal Reserve was tasked with supervising and regulating all banks, thrifts, bank-holding companies, and non-bank financial institutions with assets over US\$ 50 billion, as well as the full authority to examine all non-bank subsidiaries of bank-holding companies.⁸⁰⁰ Under section 116 reports, the Dodd-Frank Act stipulates that the Financial Stability Oversight Council, through the Office of Financial Research, is authorized to demand certified reports from large bank-holding companies (those with \$50 billion or more in assets) and designated nonbank financial companies, along with their subsidiaries. These reports must detail the company's financial health, risk management systems, transactions with depository institution subsidiaries, and the potential for their activities to destabilize US financial markets under adverse conditions.⁸⁰¹

The Act was an attempt to address various issues, such as the bailout of “too big to fail” (TBTF) institutions, whereby the American taxpayer was inevitably the ultimate supplier of the bailout package.⁸⁰² Dodd-Frank was an attempt to establish rigorous standards for these financial

⁷⁹⁸ Senate Democrats “Brief Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act” https://www.dpc.senate.gov/pdf/wall_street_reform_summary.pdf (accessed 12 August 2023).

⁷⁹⁹ Kamensey (n 798) 1.

⁸⁰⁰ Kamensey (n 798) 1.

⁸⁰¹ Section 116 Reports (a). The Dodd-Frank Wall Street Reform and Consumer Protection Act. Public Law 111–203. July 21, 2010. See the interesting discourse in the senate about the Dodd-Frank Act and the concept of “too big to fail”. Who is too big to fail: does Dodd-Frank authorise the government to break up financial institutions?

Hearing Before the Subcommittee on Oversight and Investigations of the Committee on Financial Services US House of Representatives. One Hundred Thirteenth Congress. First Session. April 16, 2013. By House Committee on Financial Services. Chairman Jeb Hensarling where the committee was discussing the interpretation of the element of too big to fail in the Dodd-Frank Act:

“Today’s hearing focuses on two sections of Dodd-Frank, Sections 121 and 165. Our witnesses represent the two agencies given what we believe to be enormous power under these provisions, the FDIC and the Federal Reserve. Section 121 of the Dodd-Frank Act authorises the Federal Reserve Board to act, with the approval of the FSOC, to restrict a large financial company’s activities or to require it to divest assets or operations if the company imposes ‘a grave threat’ to the US financial system, ‘grave threat’ being used only one time within the Dodd-Frank Act, making it potentially a special phrase.” See Government of the United States Publishing Office “Who Is too Big to Fail: Does Dodd-Frank Authorize the Government to Break up Financial Institutions?” (2013) <https://www.govinfo.gov/content/pkg/CHRG-113hhrg80880/html/CHRG-113hhrg80880.htm> (accessed 22 November 2024).

⁸⁰² Allen *et al.*, “Event Study Analysis of Too-Big-to-Fail after the Dodd-Frank Act: Who is Too Big to Fail?” (September 4, 2018) <http://dx.doi.org/10.2139/ssrn.3942887> (accessed 22 November 2024). See also Omarova “The Too Big to Fail Problem” Cornell Law School Legal Studies Paper Series Research. Paper (2019); Thompson

institutions to protect consumers, investors, and American businesses. This discussion resulted in a lot of work by authors such as Casey and Posner for example, who, examine the impact of various bailouts of United States corporations—including those in the “too big to fail” category, that resulted not only from the 2007–2008 GFC caused by Lehman Brothers debacle, but various other financial crises before the GFC as well. The paper was an attempt to evaluate what policy considerations best justify bailouts and how to best design them. To this end, they maintain in the introduction to their work that: In the 2008–2009 financial crisis, the government provided financial aid to various large companies, including banks and car manufacturers, to prevent economic collapse. Although these bailouts helped stabilise the economy, they were highly contentious due to the perceived arbitrary and politically influenced nature of the government’s actions. When considering future bailouts, it is crucial to address the potential impact on the overall economy, the risk of encouraging irresponsible behaviour, the fairness of selecting which companies receive aid, and the transparency of the process. Any future bailout decisions should be governed by clear principles that ensure these factors are properly weighed.⁸⁰³

The resultant deliberations around the issue eventually resulted in the Dodd-Frank granting new powers to the United States Treasury Department, FDIC and the Federal Reserve to close and wind down “too big to fail” financial institutions (including non-bank financial institutions) in an orderly fashion, as evidenced in sections 121 and 165 of the Dodd-Frank Act.⁸⁰⁴

Furthermore, it created advanced warning systems to identify and address systemic risk in large complex financial institutions. To do this, the Federal Reserve established a new Financial Stability Oversight Council (FSOC) under the Dodd-Frank Act in 2010,⁸⁰⁵ which recognised

“The Dodd-Frank Act and Too-Big-To-Fail: What’s Missing? A Survey of the Current Literature” 2015 *Kansas Journal of Law & Public Policy* 53. Note that the concept of a bailout involves the rescue of a financial organisation by governments using taxpayer’s money to fund the bailout. A bail-in on the other hand is the opposite of a bailout in that it provides relief to a financial organisation on the brink of failure by requiring the cancellation of debts owed to creditors and depositors. While bailouts are more common, Europe has incorporated them into solve many of their financial challenges to good effect. It can also be used where a full public bailout is not possible. Probasco “Forget Bailouts. Here’s How A Bank ‘Bail-In’ Works” *Fortune Recommends* (April 2023) <https://fortune.com/recommends/banking/what-is-a-bail-in/> (accessed 22 November 2024).

⁸⁰³ Posner & Casey “A Framework for Bailout Regulation” 2015 *Notre Dame Law Review* 479–536 479.

⁸⁰⁴ Dodd-Frank Act. Sections 121 and 165. See also the interpretation of the Act.

⁸⁰⁵ Dodd-Frank Act. US Code Title 12 Chapter 53 Subchapter 1 part A §5321. See also Cornell Law School Legal Information Institute (LII) “12 US code §5321 Financial Stability Oversight Council established” <https://www.law.cornell.edu/uscode/text/12/5321#> (accessed 17 July 2023).

and responded to emerging risks throughout the financial system.⁸⁰⁶ The authority is vested in the Financial Stability Act (FSA) of 2010.⁸⁰⁷ The Financial Stability Act of 2010 is itself part of the larger Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted as Public Law 111–203 on July 21, 2010 also establishes the Financial Stability Oversight Council. Under this section of the Act, titled “Council Authority,” the purpose and duties of the Council are to identify risks to the financial stability of the United States that could arise from the significant distress or failure of large, interconnected banks or nonbank financial companies, or threats originating outside the financial services marketplace.⁸⁰⁸ Additionally, improvements to executive compensation and corporate governance allowed shareholders to intervene in financial institutions’ payment and corporate affairs. It also demanded strict accountability and transparency rules to protect investors and businesses dealing with these institutions.⁸⁰⁹ While implementing the Dodd-Frank Act is commendable, it also has its critics. From this perspective, McDonnell remarks that the Dodd-Frank Act looks good in many ways but still needs to be overhauled further to fix it, as it has gone too far in focusing on TBTF institutions. Taking the leftist argument, he remarks that the Dodd-Frank Act does not do enough to address the problem of the TBTF syndrome affecting large United States financial institutions. His critique is based on two main components: the economic and the political argument.⁸¹⁰ These and other criticisms have resulted in amendments to the Dodd-Frank Act. Like the Economic Growth, Regulatory Relief and Consumer Protection Act (s 2155) is a piece of legislation aimed at streamlining financial regulations, particularly for smaller financial institutions such as credit unions, community banks, and regional banks. This simplification is intended to stimulate economic growth by making it easier for these institutions to operate. Additionally, the Act introduces crucial consumer protections for vulnerable groups, including veterans, senior citizens, fraud victims, and those facing financial difficulties.⁸¹¹

⁸⁰⁶ Ibid.

⁸⁰⁷ Financial Stability Act of 2010 12 USC 5301.

⁸⁰⁸ Section 112(a)(1)(A).

⁸⁰⁹ See, for example, Financial Stability Act of 2010, 12 USC 5301: Subtitle E-Accountability and Executive compensation Secs 951–957 and Subtitle G- Strengthening Corporate Governance, Secs 971–972.

⁸¹⁰ McDonnell “Financial Regulation Reform and Too Big to Fail” 2012 *American University Business Law Review* 113 https://scholarship.law.umn.edu/faculty_articles/115 (accessed 16 June 2023). Further criticisms in this line can be seen in work by authors like Joseph Stiglitz and Simon Johnson, and James Kwak, according to McDonnell. These authors’ criticisms were, however, made pre-Dodd Frank implementation.

⁸¹¹ Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155 http://www.young.senate.gov/wp-content/uploads/imo/media/doc/S.2155%20Economic%20Growth_Regulatory%20Relief_and%20Consumer%20Protection%20Act.pdf (accessed 18 November 2024).

- (a) The Economic Growth, Regulatory Relief, and Consumer Protection Act (s. 2155) recognises the unique needs of smaller financial institutions such as community banks, credit unions, and regional banks. The Act aims to streamline regulations specifically for these institutions, reducing unnecessary burdens and allowing them to operate more efficiently.⁸¹²
- (b) The Economic Growth, Regulatory Relief, and Consumer Protection Act (s. 2155) recognises the importance of homeownership in the American Dream. The Bill simplifies regulations for smaller financial institutions, making it easier for them to provide mortgage loans to families, including low-income families. Importantly, the Act maintains essential consumer protections to safeguard borrowers.⁸¹³

The Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) enhances consumer protections, particularly for individuals who have fallen victim to fraud or are experiencing financial hardship. This legislation aims to safeguard vulnerable consumers and provide them with additional support and resources.⁸¹⁴ The economic part of the criticism concentrates majorly on the problem of moral hazard and the fact that, in most instances, TBTF institutions know that, because of the knock-on effects of their failure, they are likely to be bailed out if they are about to fail because the economy would not allow them to fail. Because of this knowledge and assurance, TBTF institutions thus tend to take on much greater risks than they are supposed to further increasing their chances of financial crisis.⁸¹⁵ These arguments are familiar and have been discussed concerning how large TBTF banks lobby the BCBS and its agencies when new Basel rules are being formulated.⁸¹⁶

The political argument to the critique focuses on the political clout of TBTF institutions because of their inherent power that results from their lobbying power in US Congress and among regulatory agencies. This so-called “revolving door” puts many industry insiders at the heart of agency decision-making, which allows these large organisations to benefit from excessive deregulation that often culminates into a financial crisis.⁸¹⁷

⁸¹² Ibid.

⁸¹³ n 812

⁸¹⁴ n 812

⁸¹⁵ McDonnell (n 811) 113.

⁸¹⁶. See ch 4 para 4.12.

⁸¹⁷ McDonnell (n 811) 113.

The implementation of Dodd-Frank in the United States was happening at the same time as the implementation of the Basel II Accords on an international level and resulted in the United States jointly implementing both strands of capital requirements.⁸¹⁸ Literature is relatively scanty on how the United States adopted the Basel I Accord, but it appears it did so at some point under unclear circumstances in 1989.⁸¹⁹ The definitions of minimum capital requirements were different from the definitions of “primary” capital and “total” capital that were used by the United States before Basel. However,⁸²⁰ the United States had already published competing regulations to counter the Basel I Accord in the form of risk-based capital requirements in 1986.⁸²¹ These rules eventually became part of the Basel I rules.⁸²² This was later enhanced by the so-called FDIC Improvement Act of 1991,⁸²³ which was issued as part of the Basel I Accord. This Act was passed at the height of the American savings and loan crisis.⁸²⁴ The FDIC Improvement Act of 1991 (FDICIA) was designed to bolster the FDIC’s authority and mitigate the harmful effects of the savings and loan crisis that saw a rise in bank failures. The primary objectives of this legislation were to protect deposit insurance funds by requiring the FDIC to select the most cost-effective method for resolving failed banks and to base insurance premiums on risk assessments. It also sought to enhance the supervision and regulation of banks by compelling U.S. federal banking agencies to take swift corrective action when a bank’s capital decreased and by implementing new capital standards. Furthermore, the FDICIA also aimed to align the interests of bank owners, managers, and regulators with those of taxpayers and deposit insurance funds.⁸²⁵

⁸¹⁸ Haubrich “A Brief History of Bank Capital Requirements in the United States” (2020) 1–6 <https://www.clevelandfed.org/en/publications/economic-commentary/2020/ec-202005-evolution-bank-capital-requirements> (accessed 24 June 2023).

⁸¹⁹ Ibid.

⁸²⁰ Haubrich (n 819) 1–6. See also Walter “US Bank Capital Regulation: History and Changes since the Financial Crisis” 2019 *Economic Quarterly Review* 1–40.

⁸²¹ Haubrich (n 819) 1–6.

⁸²² Kapstien “Between Power and Purpose: Central Bankers and the politics of Regulatory Convergence” 1992 *International Organisation* 1 265–287.

⁸²³ Federal Deposit Insurance Corporation Improvement Act of 1991. Pub L No 102–242, 105 stat. 2236 and codified in part at 12 USC § 1831t <https://www.ftc.gov/legal-library/browse/statutes/federal-deposit-insurance-corporation-improvement-act-1991> (accessed 18 July 2023).

⁸²⁴ Federal Reserve History: Federal Deposit Insurance Corporation Improvement Act of 1991 <https://www.federalreservehistory.org/essay/fdicia> (accessed 18 July 2023).

⁸²⁵ Richards “Federal Deposit Insurance Corporation Improvement Act of 1991” 1991 <https://www.federalreservehistory.org/essays/fdicia#> (accessed 15 November 2024).

The United States has often been criticised due to its slow implementation of the Basel II Accord, as it adopted the rules when Lehman Brothers crisis hit in 2007–2008.⁸²⁶ This was viewed by many countries and institutions with concern, particularly the European countries, because the United States is considered a dominant player in terms of operations and making the rules, given its global dominance and market size.⁸²⁷ The Centre for European Policy Studies (CEPS) Task Force Report mentions that uncertainty surrounding the implementation process of Basel II in the US, has caused many observers to voice concerns about the potential ramifications of the staggered adoption dates for the implementation of the Basel II Accord in the US, alongside those of other countries (especially European ones) and the apparent inconsistencies with which the new rules are applied.⁸²⁸

4.7.4 Basel II

Basel II in the United States was quite restrictive and only applied to 19 of America's largest banks.⁸²⁹ While the final rules to implement the Basel II Accord were met, the actual date of compliance was delayed significantly after the onset of the GFC that tainted the end of the first decade of the Millennium, starting in 2007 and lasting up to 2009, with some of its effects still being felt in 2010 and beyond.⁸³⁰

⁸²⁶ Eubanks "The Basel Accords: The Implementation of II and the modification of I. CRS Report for Congress Congressional Research Services" Library of Congress (June 2006) <https://everycrsreport.com> (accessed 5 August 2022).

⁸²⁷ Dugan "US Implementation of Basel II: final rules issued but no supervisory approvals to date" European Parliament Directorate General for Internal Policies, Economic and Scientific Policy (2011) <https://www.europarl.europa.eu> (accessed 5 August 2022). Founded in Brussels in 1983, the Centre for European Policy Studies (CEPS) is a leading European think tank and forum for debate on EU affairs, with an exceptionally strong in-house research capacity and an extensive network of partner institutes throughout the world. CEPS "About" <https://www.ceps.eu/about-ceps/> (accessed 5 August 2022); Centre for European Policy Studies (CEPS) "Basel II Implementation in the Midst of Turbulence, CEPS Task Force Report" (June 2008) <http://www.ceps.eu/ceps/download/1506> (accessed 5 August 2022).

⁸²⁸ Ibid.

⁸²⁹ These include among them the following 15 large American banks. A caveat is necessary however in terms of positioning of the banks as this may change from time to time. 1. JPMorgan Chase (\$3.27 trillion) 2. Bank of America (\$2.52 trillion) 3. Citigroup (\$1.72 trillion) 4. Wells Fargo (\$1.69 trillion) 5. US Bancorp (\$590.6 billion) 6. Trust Bank (\$564.84 billion) 7. PNC Financial Services (\$556.31 billion) 8. Goldman Sachs (\$490.80 billion) 9. Capital One Financial (\$469.43 billion) 10. TD Group US Holdings (\$401.25 billion) 11. Bank of New York Mellon (\$341.46 billion) 12. State Street (\$287.07 billion) 13. BMO Harris (\$265.45 billion) 14. First Republic Bank (\$232.94 billion) 15. Citizens Financial (\$221.96 billion). Dugan & Xi "US Implementation of Basel II: Final Rules Issued, but No Supervisory Approvals to Date" (2011) 1-14 <https://www.europarl.europa.eu/document/activities/cont/201110/20111012ATT29102/20111012ATT29102EN.pdf> (accessed 19 December 2024).

⁸³⁰ Getter "US Implementation of the Basel Capital Regulatory Framework" 4 (2014) Congressional Research Service <http://www.crs.gov>. (accessed 5 August 2022).

America's reaction to this crisis was to adopt Basel 2.5,⁸³¹ culminating in the adoption of the rule known as the market capital risk rule⁸³² by the United States federal banking regulators in 2012.⁸³³ They went further to revise the definition of regulatory capital⁸³⁴ and, consequently, increased the amount of capital that banks should hold. The federal banking regulators ultimately ratified most of the Basel recommendations, which received final approval in 2013.⁸³⁵ However, a further precautionary measure also implemented some provisions from the Dodd-Frank Act⁸³⁶ to cover capital reserve requirements for banks. Some of these were the removal of references to credit ratings and the introduction of the Collins Amendment.

⁸³¹ As part of the Basel 2.5 changes, banks were required to retain more capital to protect against default risk and ratings migration risk, which is the risk that a change in rating may result in large mark-to-market losses. As part of the reforms, banks were also required to determine a value-at-risk (VaR) capital charge that was adjusted to reflect strained market conditions (referred to as "stressed VaR"). In addition, Basel 2.5 required that most securitisation exposures be considered as though they were held in the banking book rather than being included in internal models.

Basel 2.5 was a significant improvement, but it did not completely fix the market risk framework's inherent problems. Basel Committee on Banking Supervision (BCBS) "Explanatory Note on the Revised Minimum Capital Requirements for Market Risk" (January 2016) https://www.bis.org/bcbs/publ/d352_note.pdf (accessed 5 August 2022).

⁸³² The market risk rule (12 CFR 217; Regulation Q), which mandates that financial institutions keep capital to cover their exposure to market risk, is a key part of the regulatory capital framework of the Board of Governors of the Federal Reserve System. The regulations primarily apply to state member banks that fulfil specified risk levels which include Bank Holding Companies (BHCs), Savings and Loan Holding Companies (SLHCs), and Intermediate Holding Companies. Federal Reserve Board (FRB) Supporting Statement for the Market Risk Capital Rule (FR 4201; OMB No 7100-0314). See Federal Reserve Bank "Supporting Statement for the Market Risk Capital Rule (FR 4201; OMB No 7100-0314)" (2019) <https://www.federalreserve.gov/reportforms/formsreview/FR%204201%20OMB%20SS%202019.pdf> (accessed 5 August 2022).

⁸³³ Getter (n 831) 4.

⁸³⁴ Note that stress testing is required in the European Union (EU) and the United Kingdom (UK) to set so-called Pillar 2B buffers in the UK and Pillar 2G buffers in the EU. However, according to the Basel standard, only the first 2.5 percentage points of the buffer have pay-out limits (i.e. the capital conservation buffer). For proof that the SCB functions as a minimum requirement. To implement FRTB, each jurisdiction must establish its own regulations, as with all other aspects of the Basel framework. However, because US authorities have already introduced a different capital charge explicitly designed to capture tail risk: the global market shock (GMS), a component of the Dodd-Frank Act Stress Tests, implementation in the United States presents unique and significant issues. Under the Federal Reserve's capital regime for bank holding companies, the stress capital buffer (SCB) replaces the static 2.5 per cent capital conservation buffer and is added on top of the other capital required by the Basel standards. Trading losses incurred because of the GMS can account for a sizeable number of banks' needed stress capital buffers. Other jurisdictions employ stress test results to determine capital buffers, but the United States is unusual in that breaking the SCB in the United States results in automatic limitations on capital distributions, thereby making the SCB a minimum capital requirement. See Collard *et al.* "On the Overcapitalization for Market Risk Under the US Regulatory Framework" <https://bpi.com/on-the-overcapitalization-for-market-risk-under-the-u-s-regulatory-framework/> (accessed 5 August 2022); Berrospide *et al.* "Un-used Bank Capital Buffers and Credit Supply Shocks at SMEs during the Pandemic, Finance and Economics Discussion Series 2021-043" (2021) Board of Governors of the Federal Reserve System <https://doi.org/10.17016/FEDS.2021.043>. (accessed 5 August 2022).

⁸³⁵ Getter (n 831) 4.

⁸³⁶ The full citation for the Act is the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 PL111-203.

4.7.4.1 Removal of references to credit ratings

Section 939 of the Dodd-Frank Act required the removal of any references to credit rating agencies due to their lack of reliability.⁸³⁷ It is submitted that the removal of the risk model was made to appear as though it was a natural consequence of the change in the model rather than from the failure of a flawed risk model.

4.7.4.2 Introduction of the Collins Amendment

The following significant amendment was section 171 of the Dodd-Frank Act, known as the “Collins Amendment”. This amendment catered for the development of a consistent capital requirement for all insured depository institutions, depository holding companies, and systemically important non-bank financial companies. However, small bank-holding companies with less than US\$500 million in assets were exempt from the rule. The exemption would apply not only to foreign parents of bank and thrift holding companies but also to Federal Home Loan Banks.⁸³⁸

With the onset of the COVID–19 pandemic, the United States Federal Reserve temporarily loosened the capital-to-asset requirement for United States banks, much to the consternation of the BCBS.⁸³⁹ This left the BCBS in limbo regarding the United States’ commitment to the Basel Accords. With the decline in the COVID–19 pandemic, the Federal Reserve has gradually phased out these protective measures. As of 2024, the Federal Reserve and other US agencies have affirmed their commitment to aligning with the Basel III endgame standards, with the focus being on implementing stricter capital rules as part of the Basel III “endgame” reforms. In her speech to the Center for Capital Markets at the US Chamber of Commerce, titled “The Path Forward for Bank Capital Reform” on 17 January 2024 Governor Michelle Bowman committed to aligning with these global. The main aim of the new proposal being to increase capital requirements, especially for larger banks.⁸⁴⁰

⁸³⁷ n 837. See ch 4 para 7.3.

⁸³⁸ n 837. Section 171 p5 of the Dodd-Frank Act. A permanent capital floor is imposed on US banks by the Collins Amendment to the Dodd-Frank Act based on capital standards in force on July 21, 2010. The risk-based capital standards (the Standardized Approach) that were implemented in July 2013 will serve as the foundation for this capital floor.

⁸³⁹ Board of Governors of the Federal Reserve System “Press Release –Federal Reserve Board announces Temporary Change to its supplementary Leverage Ratio Rule” (1 April 2020) <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200401a.htm> (accessed 13 May 2021).

⁸⁴⁰ Bowman “The Path Forward for Bank Capital Reform: A Speech at Protect Main Street Sponsored by the Center for Capital Markets at the US Chamber of Commerce” (17 January 2024). See also Board of Governors of

4.8 One Accord, two different cultures

The two main originators of the Basel Accord have two completely different approaches. While the United States tends to approach the Basel Accords as a necessary evil in preference for its own regulatory rules, Europe tends to be more compliant, less insular, and inward-looking. For example, the “Global Risk Report 2021”⁸⁴¹ brings out the differences between the cultures quite clearly. The report indicates that, despite its strength, the European Union banking sector is not earning its cost of capital, while United States competitors have returned to their pre-crisis profitability levels. This paucity in profitability levels is driven mainly by the poor economic environment in the European Union, which has resulted in poor growth in the Eurozone, resulting in EU bank regulators having to strengthen (or increase) their capital buffers. Further, the report states that there are still structural obstacles to bank consolidation throughout the Eurozone, preventing banks from realising synergies across markets. Similarly, the European Union’s capital Market Union remains underdeveloped, thus preventing the creation of a securitisation market.⁸⁴² Despite there being a semblance of a globally coordinated “level playing field” across the European Union, differences remain across economies in how rules effectively work and how they are implemented.

The incremental differences in regulatory-induced costs at the European Union banks compared to the United States peer banks explain the Return on Equity (ROE) gap between the two systems. More importantly, the European Union’s approach to determining capital requirements is not only more complex than the United States but also gives regulators a wider berth in terms of discretion. This may result in it being perceived as less transparent as well. This not only results in European Union banks holding larger amounts of surplus capital, but also, given the differences in business models and market structure, European Union banks face

the Federal Reserve System *et al.* “Agencies reaffirm commitment to Basel III standards” (September 9, 2022) <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20220909a.htm> (accessed 25 November 2024).

⁸⁴¹ World Economic Forum “Global Risks Report” (2021) 16 ed <https://www.weforum.org/publications/the-global-risks-report-2021/> (accessed 15 November 2024).

⁸⁴² Hallak “Capital Markets Union Overview and State of Play” European Parliamentary Research Service 2024. 3 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757648/EPRS_BRI\(2024\)757648_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757648/EPRS_BRI(2024)757648_EN.pdf) (accessed 15 November 2024). In 2015, the European Commission outlined a plan to create a unified European capital market. Despite the free movement of capital within the EU, the Commission recognized that European capital markets were underdeveloped and fragmented compared to the United States. Specifically, European stock markets were half the size of their U.S. counterparts, and bond markets were even smaller, at a third of the U.S. size.

higher capital requirements compared to their United States peers.⁸⁴³ It appears that Zambia's approach stems from the European approach. There are no secondary rules, and all banks are required to implement the Accords across the board regardless of size or status. However, despite what appears to be a false sense of calmness, various countries are still pushing to get the best possible positions for their financial institutions.

While the United Kingdom worked well with the European Bank before Brexit and had its support as a strong lobby, independence has meant that the United Kingdom must now fight for its position in Europe. For example, a 2023 report prepared by Petit and Beck shows that there is a clear divergence of United Kingdom financial services regulation from European Union legislation.⁸⁴⁴ However, despite this divergence, the United Kingdom has agreed to postpone the remaining Basel III standards to January 2025, like its European Union counterparts.⁸⁴⁵ This has resulted in what appears to be some kind of discord amongst various member countries in terms of achieving the aims of the Accords.⁸⁴⁶ For example, on the one hand, the European Union is pushing for bank integration as a priority rather than establishing prudential standards, thus resisting any attempts to improve the capital requirements upwards,⁸⁴⁷ while on the other hand, countries like the United Kingdom, Switzerland, and the United States are pushing for higher standards. Even within the European Union membership itself, there are apparent differences as to what each country would like to achieve concerning the Basel Accords. For example, France was pushing for a European model that it saw as a safer option when compared to the Basel Accords, while the Germans came out strongly against higher capital requirements.⁸⁴⁸ In short, even within the United European Union, various countries are dissatisfied with some of the requirements. This non-committal by the European

⁸⁴³ Wyman "The EU Banking Regulatory Framework and its Impact on Banks and the Economy" (2023) https://www.ebf.eu/wp-content/uploads/2023/02/The.eu.banking-regulatory-framework-and-its-impact-on-bnaks-and-the-economy_30Jan-1.pdf (accessed 16 July 2023).

⁸⁴⁴ Petit & Beck "Recent Trends in the UK Financial Sector Regulation and Possible Implications for the EU" Policy EU Parliament (2023). 5–66 <https://www.europarl.europa.eu/f> (accessed 16 July 2023); Hussein *et al.* "UK Regulation after Brexit" (February 2021) <https://ukandeu.ac.uk/wp-content/uploads/2021/02/uk-regulation-afterBrexit.pdf> (accessed 16 July 2023).

⁸⁴⁵ Ibid.

⁸⁴⁶ Howarth & Quaglia 'Banking Regulation and the Single Rulebook' in *The Political Economy of European Banking Union* (2016) <https://doi.org/10.1093/acprof:oso/9780198727927.003.0009> (accessed 27 June 2024). See also *Financial Times*, 22 October 2010, 13 September 2010.

⁸⁴⁷ Quaglia *The European Union and Global Financial Regulation* (2014) 1–203.

⁸⁴⁸ Ibid.

Union has been blamed for what has been termed “The Uploading of US Rules into Basel I and the Downloading of These International Rules by the European Union.”⁸⁴⁹

Once again, this behaviour shows that developing countries tend to implement some of these international rules due to economic pressure or to appease donors so that they can get the donor support they need to keep their economies afloat. They have no voice or input into the Accords, yet they are expected to make them work almost perfectly. The asymmetrical distribution of power within the international system enables economically advanced nations to exert disproportionate influence in shaping policy and advocating for their interests. In contrast, developing countries tend to have to produce the required result with no voice or ability to change the Accords. This is very important, especially when looked at from the small banks' argument and its impact on this area of the financial sector. It is submitted that changes are required to enable more equitable and relevance-based rules to prevail for this set of banks.

4.9 The nexus between the BIS, BCBS, and the Bretton Woods Institutions

It is imperative to understand the difference between a developed country and a developing country in terms of the socio-political dynamics, especially concerning the relationship with the International Monetary Fund (IMF), the World Bank, and the BIS. It is submitted that these institutions all work in tandem to achieve one aim, namely, to liberalise and make the world safe for multinational operators to invest in, especially when one considers that the Basel Accords were initially meant for internationally active banks only.⁸⁵⁰

4.9.1 Bank for International Settlements (BIS)

This institution's background starts with the establishment of the Bank for International Settlements to collect reparations from Germany for starting World War I.⁸⁵¹ At the Bretton Woods Conference in 1944, the Americans decided that since it had completed its mandate, the best alternative was to wind up the institution immediately.⁸⁵² The European countries at the conference, including the British delegation led by John Maynard Keynes, felt that this would

⁸⁴⁹ Quaglia (n 847) 1–203.

⁸⁵⁰ See ch 4 para 9.2.

⁸⁵¹ Bank for International Settlements (BIS) “History –Overview” <https://www.bis.org/about/history.htm> (accessed 16 February 2020).

⁸⁵² Mikesell ‘The Bretton Woods Debates: A Memoir’ *Princeton International Finance Section* Essay No 192 (1994).

give the United States too much power and lobbied for the decision to be reversed. After World War II, the BIS was given the mandate to focus on the implementation and defence of the Bretton Woods system as well as assist with establishing the basic building blocks for the European Economic Community (EEC),⁸⁵³ as it was called then, eventually becoming the European Union⁸⁵⁴ with a single currency. In time, the BIS became the central banker of all major banks worldwide.⁸⁵⁵ Some of its duties include providing foreign exchange transactions and assisting with central bank reserves. It also acts as a banker *cum* fund manager for international financial institutions.⁸⁵⁶ However, the BIS is privately owned by the world's central banks.⁸⁵⁷

This study seeks to establish the nexus between the BCBS and the BIS to prove that despite being separate entities on paper, these two organisations actually collaborate very closely with one another when it comes to regulating world financial institutions. Research shows that the BIS was initially interested in monitoring cross-border capital flows due to its mandate to work with global central banks. In 1973, the situation came to a head due to many problems in the international financial markets and national economies. As alluded to earlier, some of these problems included the collapse of the par value system, which created massive instability in global economies. Added to this, there was high world inflation that eventually led to stagflation. The last major problem was the oil crisis due to America's support for Israel during the Yom Kippur War of 1973,⁸⁵⁸ which sent the price of crude oil spiralling out of control

⁸⁵³ n 852. The EEC was created in 1957 by the Treaty of Rome, which was signed by Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany. The United Kingdom, Denmark, and Ireland joined in 1973, followed by Greece in 1981 and Portugal and Spain in 1986. The former East Germany was admitted as part of a reunified Germany in 1990. The EEC was set up as a common market where trade barriers would be removed and replaced with a common external trade policy. Added to this agriculture was protected by a common agricultural policy which came into place in 1962. The first tariffs were reduced in 1959 and by 1968 internal tariffs had been completely removed. The Common Market was so successful that by 1968 trade in the EEC zone had quadrupled in value. See Gabel "European Community" Encyclopaedia Britannica (24 March 2023) <https://www.britannica.com/topic/European-Community-European-economic-association> (accessed 12 May 2023.)

⁸⁵⁴ The Maastricht Treaty of November 1, 1993, established the European Community and was embedded into the EU as the first of its three "pillars" (the second being a common foreign and security policy and the third being police and judicial cooperation in criminal matters). The treaty provided a foundation for an economic and monetary union, which included the creation of a single currency, the euro. This was later amended by the Treaty of Lisbon where the name European Community was eliminated together with the concept of the Three Pillars; Gabel (n 854).

⁸⁵⁵ n 852.

⁸⁵⁶ n 852.

⁸⁵⁷ n 852.

⁸⁵⁸ n 852.

worldwide. The fallout from financial instability resulted in the failure of the Bankhaus Herstatt bank in Germany. This led to the creation of the Basel Committee, or the BCBS as it is commonly known, to put in place means to regulate internationally active banks that were blamed for the crisis.⁸⁵⁹ This was done as we saw earlier via the various Basel Accords.⁸⁶⁰ It is essential to state clearly that the BIS and the BCBS have separate mandates. The BIS regulates central banks, while the BCBS implements rules that central banks can use to regulate commercial banks and financial institutions. And therein lies the difference.⁸⁶¹

4.9.2 *The Bretton Woods Institutions*

It has long been argued by the critics of the Bretton Woods Institutions and other multilateral world institutions, including Stiglitz, a long-time employee of the IMF, that there exists a “pecking order” whereby the less developed countries are at the bottom of the pecking order.⁸⁶² This position makes it difficult for them to agree to, or reject, advice from stronger institutions, especially where the country is undergoing structural adjustment programmes.

There appears to be a clear nexus between the IMF, World Bank, and the BIS and their subsidiary organisations where they exist. The assertion does not come on the back of empty rhetoric but on what appears to be happening on the ground and how these institutions have conducted themselves towards developing or indeed weaker albeit resource-rich nations. Zambia is a good case in point, given the historical background discussed in Chapter 2 of this thesis.⁸⁶³

It is submitted that the Bretton Woods Institutions’ objectives were skewed towards the neoliberal interests of the G10 countries. This point is brought out by the response of the Soviet representative when invited to ratify the Bretton Woods Treaty in 1944,⁸⁶⁴ and he declined the offer, retorting that the institutions “were branches of Wall Street.”⁸⁶⁵ However, with time,

⁸⁵⁹ See ch 4 para 4.3.1.

⁸⁶⁰ See ch 4 para 4.3.

⁸⁶¹ n 852.

⁸⁶² Stiglitz “Capital Market Liberalisation, Globalisation and the IMF” 2004 *Oxford Review of Economic Policy* 57–71. See also Pike *Globalization and its Discontents* 2004 321–324.

⁸⁶³ See ch 2.

⁸⁶⁴ Mason & Asher *The World Bank Since Bretton Woods: The Origins, Policies, Operations and Impact of the International Bank for Reconstruction* (1973) 29.

⁸⁶⁵ Ibid; Hudgins “Why the Soviets do not Belong at the World Bank” <https://www.heritage.org>. (accessed 2 July 2020).

introspection, and a need to rapidly develop the thawing Soviet Federation, the Russians became members of the IMF and World Bank on 1 June 1992 with the commencement of *Glasnost* and *Perestroika*, as we saw in the last chapter.⁸⁶⁶ It must be understood that despite all its weaknesses, the Russian Federation still ranks eleventh in the world in terms of the size of its economy, and as a member of BRICS,⁸⁶⁷ it is a powerhouse with much capacity to negotiate with these institutions, unlike developing countries or countries that are just emerging on the economic scene.

The IMF and the World Bank usually enter a country with structural problems by introducing Structural Adjustment Programmes (SAPs) on the back of structural adjustment packages.⁸⁶⁸ Over the years, the IMF and World Bank have become better at prescribing policies that are country-specific rather than the “one-size-fits-all” approach that they were using initially and which gained significant criticism for causing more poverty than they intended to fix.⁸⁶⁹ However, these institutions are still called out as a significant cause of poverty in developing countries rather than of wealth creation. Shah remarks that many of the IMF programmes have resulted in poverty and increased dependency on more prosperous nations,⁸⁷⁰ rather than increased wealth and prosperity. In the same paper, Shah quotes Smith, who states that every prosperous nation today went through a process of development supported by its government, without which they would not have been where they are today.⁸⁷¹ This included providing

⁸⁶⁶ International Monetary Fund (IMF) “List of Members as of March July 2017” <https://www.imf.org/external/np/sec/memdir/memdate.htm> (accessed 2 July 2020).

⁸⁶⁷ Bricks countries consist of five countries, namely India, Brazil, China, South Africa and Russia. These emerging countries are distinguished from other promising emerging market economies because of their size and potential world influence in the 21st century.

⁸⁶⁸ See ch 7 para 7.9.

⁸⁶⁹ Fraser “Did Structural Adjustment Programmes Assist African Development?” (13 January 2015) <https://www.e-ir.info/2015/01/13/did-structural-adjustment-programmes-assist-african-development/> (accessed 16 June 2023); Fatton *Predatory Rule: State and Civil Society in Africa* (1992) (accessed 2 July 2020).

⁸⁷⁰ Shah “Structural Adjustment—A Major Cause of Poverty” (2013) 1 <https://www.globalissues.org/article/3/structural-adjustment-a-major-cause-of-poverty> (accessed 13 May 2021).

⁸⁷¹ Ibid; Smith “Economic Democracy; Political Struggle of the 21st Century” (2002) <http://www.ied.info/books/economic-democracy> (accessed 13 May 2021). See also Smith *The World’s Wasted Wealth 2* (1994) 127–139. The text argues that a country’s economic prosperity is linked to its trade patterns. It emphasizes the multiplier effect, where domestic spending can significantly boost the economy. In contrast, spending on foreign goods benefits the exporting country. Developed countries, according to the text, thrive by selling high-value, capital-intensive products while buying low-value, labour-intensive ones. This trade imbalance widens the gap between rich and poor nations. Additionally, developed countries primarily sell consumer goods, not tools for production, thereby maintaining their control over the means of production and ensuring a continuous market for their products. This strategic approach, often associated with mercantilism, can involve military power to secure control over resources and markets.

equality, health, education and other services to the populace.⁸⁷² Many developed countries today have practised some form of protectionism in their industry.⁸⁷³ These developed countries now discourage developing countries that provide subsidies and practice infant-industry protection mechanisms to desist from doing the same as they support consumption. Additionally, in those days, most countries were not coerced into joining an international organisation for little benefit to themselves. Most systems grew organically, eventually developing into a complex institution, as evidenced by regulation development. It is submitted that acquired legislation and rules such as the Basel Accords are fraught with cultural nuances that can affect the outcome of the most straightforward rules attained by a country with a different culture. These rules are *prima facie* not only about the rules themselves but involve power brokering, hierarchy and international competition among many. These arguments will be developed further in the following chapters when we look at Zambian banks and the impact of the Basel Accord on the small local banks.

It is submitted that the World Bank needs to be more assertive on countries needing financial assistance as it deals with development support. However, the two organisations work closely together to achieve a positive outcome.⁸⁷⁴ Equally, there is less criticism of the World Bank as the IMF is the main institution that imposes conditions on countries. These two organisations collaborate at three main levels according to the IMF Site.⁸⁷⁵ The first level involves high-level coordination at annual meetings of the Boards of Governors of the IMF and World Bank. The next level is at management consultation level where, the managing directors of the IMF and World Bank meet to consult on major policy issues, issuing joint statements. They also visit regions and countries together when required. The third and last level is at the staff collaboration level, where staff work in partnership on country assistance and relevant policy issues for both institutions.⁸⁷⁶ The two institutions therefore depend on one another for information and expertise even though they each have their workforces. Likewise, the World

⁸⁷² Shah (n 871) 1–26.

⁸⁷³ Shah (n 871) 1–26.

⁸⁷⁴ Shah (n 871) 1–26.

⁸⁷⁵ International Monetary Fund (IMF) & World Bank “Factsheets 2022” World Bank News <https://www.imf.org/en/about/factsheet/Sheets/2022/imf-World-Bank-New> (accessed 17 June 2023).

⁸⁷⁶ Ibid.

Bank will often only provide or issue loans where a country is willing to undergo structural adjustment proposed by the IMF.⁸⁷⁷

Equally, the very elusive BIS is the third prong in the sceptre of international regulation. The BIS is mainly responsible for gathering information and ensuring that central banks are towing the international financial line both in a regulatory and organisational sense.⁸⁷⁸ Because central banks are usually transparent in terms of the data that the BIS collects, it is submitted that central banks therefore tend to divulge much of their strategic information. While there are positive aspects to sharing information, the negative side is that it may give the multinationals insight into these banks' operations, which they can use to their advantage.

Other players that impact and influence the BCBS are the rating agencies that work in tandem with the above institutions.⁸⁷⁹ Other institutions that also influence the BCBS are those institutions that deal with human rights and governance issues, including Non-Governmental Organisations (NGOs) that exchange information with these institutions, effectively creating a web of data and control that developing countries cannot easily escape. On the positive side, these institutions have sometimes been responsible for ending authoritarian and despotic regimes. But concurrently, it is submitted that they have taken away a huge chunk of the country's sovereignty. It thus begs the question of why a sovereign state should be subjected to such detailed scrutiny by another country's organisations in the first place on the pretext of creating a global village?

4.10 What kind of law do the Basel Accords fall under?

One major problem affecting the operation of the Basel Accords is how they are defined. The law at the international level and the local levels is very clearly defined. Local laws comprise a combination of judge-made law and statutes in a common law system, whereas, in a pure civil law system, the law is promulgated by parliament. This is often called the hard law or, in some instances, the black letter of the law. The black letter of the law is generally considered to be well-established, free from doubt and well-known and thus no longer in dispute.⁸⁸⁰ This law

⁸⁷⁷ n 876.

⁸⁷⁸ n 258.

⁸⁷⁹ See ch 4 para 14.9.

⁸⁸⁰ Cornell Law School "Blackletter Law. Legal Information Institute (LII)" (2020) https://www.law.cornell.edu/wex/blackletter_law (accessed 16 July 2023).

must be followed, without which it results in some form of legal sanction that may include fines, imprisonment or indeed both.⁸⁸¹

The term international law or the law of nations was first coined by the English philosopher Jeremy Bentham in 1780.⁸⁸² Bentham's classical definition viewed international law as a collection of rules governing relations between nation-states.⁸⁸³ This definition has now been deemed inappropriate and old-fashioned at most as it does not consider the modern nuances of the approach, which is now wider and more inclusive in its application. At the international level, the laws that are created are based mainly on international custom and best practices that have occurred over the millennia. According to *Black's Law Dictionary*, it is:

*"The legal system governing the relationship between nations; more modernly the law of international relations, embracing not only nations but also such participants as international organisations and individuals (such as those who invoke their human rights or commit war crimes)."*⁸⁸⁴

Wallace and Martin-Ortega define international law as *"those rules and norms that regulate the conduct of states and other entities which at any given time are recognised as possessing international personality."*⁸⁸⁵ Further, authors like Starke define international law as, *"that body of law composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe and therefore commonly observe in their relations with each other."*⁸⁸⁶

In short, what is important to gather from this part of the discussion is that there is no single definition that constitutes what international law is. The definition, irrespective of how it is

⁸⁸¹ n 881. For example, in the US case of Jackson ex dem. *Bradstreet v Huntington*. 30 US, 402, 434 (1831) it was said "It is seldom that a case in our time savours so much of the black letter, but the course of decisions in New York renders it unavoidable." The phrase black letter of the law was also mentioned in the US Pennsylvania Supreme Court case of *Naglee v Ingersol*. 7 Pa.185 (1847).

⁸⁸² Garg "International Law –Meanings and Definitions" <https://blog.pleadings.in/international-law-meaning-definitions/> (accessed 17 June 2023); Bentham *Introduction to the Principles of Morals and Legislation* (1780).

⁸⁸³ Wadhwa "Public International Law" <https://www.jiwaji.edu/pdf/ecourse/law/4%20-%20Public%20International%20Law%20-%20Historical%20Development%20of%20International%20Law.pdf> (accessed 17 June 2023).

⁸⁸⁴ Garner *Black's Law Dictionary* 8 ed (2004).1–5426.

⁸⁸⁵ Wallace & Martin-Ortega "Academic Catalogue–2019–2020" (2016) 2 https://www.sweetandmaxwell.co.uk/downloads/2019_Academic_Catalogue.pdf (accessed 13 May 2021).

⁸⁸⁶ Strake *An introduction to International Law* (1984).

defined, is important for the next part of the thesis; however, when trying to evaluate the type of law that the BCBS is made up of and to what laws, if any, it conforms.

The next point that needs to be understood is that international law is deemed to be “soft law” because countries are free to adopt the law in full or in part by ratification, to opt out altogether or to pick parts of the body of law that is appropriate to them while leaving out areas of the law they consider to be against the morals of their society, the “International Human Rights Charter”⁸⁸⁷ being one such charter that has generated different reactions and concurrently different levels of acceptance.⁸⁸⁸

The term “soft law”, according to the European Centre for Constitutional and Human Rights, is a term that is used to denote:

*“Agreements, principles and declarations that are not legal. Soft law instruments are predominantly found in the international sphere. The UN General Assembly resolutions are examples of soft law. Hard law refers generally to legal obligations that are binding on the parties involved and which can be legally enforced.”*⁸⁸⁹

For soft law, the consequence of not complying with the tenets of the soft law is having sanctions imposed on that specific country. Garg confirms this position in law by observing that when a state violates international law, it may be subject to diplomatic pressure or economic sanctions.⁸⁹⁰

Further, when considering how countries adopt international laws, they are divided into monistic and dualist countries. Monistic countries automatically adopt international law as part

⁸⁸⁷ Doctors without Borders “The Practical Guide to Humanitarian Law” <https://guide-humanitarian-law.org/contnet/article/3/soft-law/> (accessed 17 June 2023). Note that the declaration itself is soft law and therefore not a legally binding instrument. It contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding, such as the International Covenant on Civil and Political Rights. For example, Zambia has opted out of the rights relating to sexual orientation as it feels that this goes against the fabric of its society and moral values. See Office of the United Nations High Commissioner for Human Rights (OHCHR) “Declaration on Human Rights Defenders” <https://www.ohchr.org/enspecial-procedures/sr-human-rights-defenders/declaration-human-rights-defenders> (accessed 17 June 2023).

⁸⁸⁸ Ibid.

⁸⁸⁹ European Center for Constitutional and Human Rights (ECCHR) “Hard Law/Soft Law” <https://www.ecchr.eu> (accessed 14 August 2022).

⁸⁹⁰ Garg “Consequences of Violation of International Law” <https://blog.ipleaders.in/consequences-of-violation-of-international-law/?amp=1-june-20-2020> (accessed 14 August 2022).

of their laws without the law going through parliament to be adopted, once they have been promulgated at the international level.⁸⁹¹ While dualistic countries:

*“[P]refer that countries in which the constitution accords no special status to treaties; the rights and obligations created by them have no effect in domestic law unless legislation is forced to give effect to them.”*⁸⁹²

The problem that arises from this position is that dualist countries that have implemented the Basel Accords have to decide which law the BCBS fall under to properly classify them so that they conform to the rules. For example, many countries, including Zambia, are dualist; however, the Basel Accords have not been ratified in those countries as they should be before a parliament. Equally, no memorandum of understanding is signed with these countries to allow the Accords to be used freely. Many countries, including Zambia, signed and legislated the Bretton Woods Agreement, but there is no similar document to show for the Basel Accords. This shows apparent circumvention of the rules that govern the jurisdiction. The question that remains to be answered is what the Basel Accords are in terms of law and treaty, given that they are international rules, and where they sit in terms of their derogability.

One of the arguments about the Basel Accords is that they are soft law. However, this is misleading. Soft law, from an international perspective, means that a country can choose what to implement and in what time frame. This may work for developed countries like the United States, as evidenced by their approach to Basel, where they have only picked the largest banks to participate in adopting the model⁸⁹³ However, there appears to be no choice regarding developing or low-income countries. The only option is how long the government should take to effect implementation of the Basel rules. This is clear with the implementation of Basel III in Europe, where the BCBS stated that it would not allow the Basel III implementation to affect European countries suffering a downturn in the economy at the time.⁸⁹⁴ Again, this shows a skewed and partial approach to the implementation of the Accords when compared to developing countries that appear to need more choices in whether they have to implement the Accords or not.

⁸⁹¹ Sloss “Domestic Applications of Treaties” (2011) 2 <http://digital.commonlaw.scu.edu/facpubs/635> (accessed 14 August 2022).

⁸⁹² Ibid.

⁸⁹³ See ch 4 para 4.7.4.

⁸⁹⁴ Sharma (n 681) 1–203.

4.10.1 *The legal position of the BCBS*

The BCBS has tried to clarify the position of the Basel Accords in terms of whether they are a law or not. However, from its perspective, it claims that the BCBS itself has no legal status at all.⁸⁹⁵ In its defence, it has been quoted as saying that the committee focuses on suggesting general supervisory principles and best practices, rather than imposing legally binding regulations. It expects national authorities to adapt and implement these recommendations within their legal frameworks. This approach promotes a gradual alignment of supervisory practices without aiming for complete uniformity across member countries. Although not considered *sui generis* law in the strict legal sense of a binding treaty, the Basel Accords represent a unique and *sui generis* form of transnational regulation. They function as a framework of internationally agreed-upon standards and guidelines that national regulatory bodies implement and adapt to their specific contexts. While they establish international standards for banking supervision and risk management, they are not a legally binding treaty or international convention. Instead, the Basel Accords are recommendations that national regulators adopt and implement through their domestic legislation.⁸⁹⁶

Despite lacking formal legal status, the committee, which was established under the Bank for International Settlements (BIS), has become a significant international regulatory force. The BIS, a legally recognised entity, provides an organisational framework for the committee and other international standard-setting bodies. The rise of “soft law” involves both the standards themselves and the bodies that create them. While traditional law-making institutions have clearly defined legal positions, informal bodies, like this committee, operate with less formal structures, but this does not negate their influence. Although the committee itself lacks legal personality and acts as an informal forum for international central banks, its recommendations are widely adopted and incorporated into national laws, effectively making it a *de facto* international regulator.⁸⁹⁷

From the preceding, the impact of this rather vague system of rules on countries has not been evaluated in much detail, thus leaving it open to wide interpretation.

⁸⁹⁵ Goodhart *The Basel Committee on Banking Supervision; A History of the Early Years 1974–1997* (2011) 542.

⁸⁹⁶ Ibid.

⁸⁹⁷ Goodhart (n 896) 542. This quote was taken from a footnote by the author. However, the primary source was taken from Lastra *Central Banking and Banking Regulation* (1996) 1–329.

It is submitted that developed countries tend to have the upper hand when implementing these Accords. We will see this later in Chapter 7 when considering how countries lobby and circumvent rules without much ado. For example, it should be questioned why, what started as good practice for the G10 countries, without any force of law, to implement these rules, has now become a golden standard for the whole world.

Much of the literature examined on the Bretton Woods Institutions portrays the Basel Accords rules as being neutral in their application and that they are implemented for the good of a country.⁸⁹⁸ However, it is submitted that this appears to be far from the truth for developing countries. As established earlier in this thesis, whether one admits it or not, there is a nexus between the Bretton Woods Institutions and the BIS regarding developing countries.⁸⁹⁹ The outcome of this nexus is twofold: firstly, governments are forced to implement the Accords to keep “the business” and to maintain the West’s competitive stronghold on less developed countries. Secondly, weaker nations are forced to implement the Accords as a world standard despite their relatively undeveloped economies. This appears to be especially common when the Bretton Woods Institutions implement Structural Adjustment Programmes (SAPs) on countries requiring balance-of-payment support.⁹⁰⁰ When one examines the reasons for the phenomenal adoption of the Basel Accords, it is difficult to see the underlying cause other than the fact that the rules appear to enhance the strength of a country’s financial system. However, on a deeper analysis, one realises that the reason for the early adoption of the Accords as they were being implemented is that all countries across the globe have relationships with parent banks in developed countries. This relationship is often called a “correspondent relationship.” Correspondent banking relationships involve one financial institution (the correspondent) providing banking services to another financial institution (the respondent) where both financial institutions are based in different countries.⁹⁰¹ These relationships generally have a high element of risk attached to them as both parties have very little knowledge about each

⁸⁹⁸ For example, in the IMF paper: *Implementation of Basel II –Implications for the World Bank and the IMF* it says that: “In all countries a strong financial sector infrastructure including effective risk-based banking supervision is critical for financial stability and development and is a necessary precondition for the implementation of the pillar 1 capital requirement...” Reading between the lines this shows that these Accords are supposed to be good for every country. See International Monetary Fund “Implementation of Basel II—Implications for the World Bank and the IMF” (2005) <https://www.imf.org/external/np/pp/eng/2005/072205.htm> (accessed 17 June 2023).

⁸⁹⁹ See ch 4 para 4.9.

⁹⁰⁰ See ch 4 para 4.9.2.

⁹⁰¹ Australian Transaction Reports and Analysis Centre (AUSTRAC) “Correspondent Banking Relationship” <https://www.austrac.gov.au/glossary/correspondent-banking-relationship#> (accessed 17 June 2023).

other. The parent bank in the developed country (or in the hub)⁹⁰² relies on the banks in the foreign jurisdiction (or in the spoke country) it is dealing with to be reasonably compliant with standard international rules to keep transaction and other risks low. Without this mutual assurance, the hub would rather forego the business transaction with the bank in the developing country than suffer losses. Thus, even though the BCBS claims that the Accords are not mandatory because all the G10 countries implemented them, other countries whose financial systems depend on getting business from the developed countries' financial systems must comply without question. Following the evolution of the Basel Accords, the most prominent financial centres across the globe were the first to implement the Basel rules almost without question. This can be evidenced by looking at the way the implementation of the Accords grew—from G7 to G10 and then to G20 countries that sought compliance with the Accords, after which developing countries followed suit.⁹⁰³

Further,⁹⁰⁴ when it comes to developing countries, particularly those suffering from a balance-of-payment disequilibrium and requiring the intervention of the IMF, conditions often include adopting the Basel Accords, as Zambia had to do. Evidence appears to support the fact that, in some instances, adopting the Basel Accords is a standard condition to be implemented, despite the state of the economy.⁹⁰⁵ It is said that the IMF and World Bank have routinely attached regulatory and supervisory conditions to financial sector adjustment loans to less developed countries (LDCs) since the debt crisis of the early 1980s.⁹⁰⁶ This was evident in the 1990s in Zambia when the IMF provided structural adjustment balance-of-payment support.⁹⁰⁷

⁹⁰² The hub and spoke model is used in many areas of academia and business to explain various relationships. In this instance, the hub and spoke model is being used to show the power play between the international banks who because of their power and influence are placed at the centre of the model. These stronger parties then interact with the spoke countries or the weaker less developed countries that lie on the periphery. See: Minculete & Olar "The Approach to the 'Hub and Spokes' Concept in the Economic and Military Fields" (2013) *Strategic Impact*.

⁹⁰³ n 258.

⁹⁰⁴ This is evidenced by the fact that the Banking Act changed three times over a period of about nine years –from 1991 to 2000. Firstly, the old Act the Banking Act Cap 700 of the Laws of Zambia was replaced by the Banking and Financial Services Act 1994 after which the Act was revised in 2000 resulting in the BFS (1994) (as amended 2000). The probable outcome of this instability in the financial system as will be seen in the next Chapter.

⁹⁰⁵ IMF & World Bank "Implementation of the Basel Core Principles for Effective Banking Supervision. Experiences Influences and Perspectives" (September 2002) <https://www.imf.org/external/np/mae/bcore/2002/092302.pdf> (accessed 20 July 2023).

⁹⁰⁶ Ward "The New Basel Accord and Developing Countries: Problems and Alternatives, (2002) Working Paper ESRC" Centre for Business Research.

⁹⁰⁷ According to Maimbo, in his article 'Design and Development of the Zambian Banking and Regulatory and Supervisory Frameworks (1970–2000)', part of the structural adjustment programme was to reform one of four key areas of the economy –the Zambian Financial sector. This fell under the ambit of Financial and Fiscal Reform.

It is submitted that the *Zambian Banking and Financial Services Act (1994)* was amended several times to include these tenets without following the consultative procedures that are a standard process when introducing new rules of such a great impact into a country. Under these circumstances, many countries do not have any leeway to democratically reject the Accords or postpone them until a later date. It is further submitted that it is equally concerning that these rules are often implemented without the knowledge of the country's public because of the claim that the rules are neutral, as they neither consist of soft law nor hard law.⁹⁰⁸ This criticism has two heads to it. First, the international head tends to criticise the IMF policies and its apparent secrecy in carrying out its policies, while the second head of the argument falls under the domestic authority. Under the former head, the question that would be expected from a reader is why the IMF is under scrutiny when the main thrust of the work is based on the BCBS. The clear answer to this question is that these organisations act in tandem with each other, as was seen earlier, and thus support each other policy-wise.⁹⁰⁹ Equally, as the IMF implements many BCBS policies, the criticism in this instance appears justified. To this end, the comments made by Jeffrey Sachs, the head of the Harvard Institute for International Development, in the *Financial Times* of 11 December 1997 appear pertinent.⁹¹⁰ Sachs accuses the IMF of paying lip service to transparency, but as an organisation offers no public documentation of its decisions, except brief press releases without the details needed for a professional evaluation of its programmes. Equally, he points out that IMF staff appear unaccountable for their decisions.⁹¹¹ From a domestic perspective, this point may be reflected in the delay in advising the citizenry of the existence of the Accords. It is difficult to justify why training to educate the public on the Basel Accords only occurred in 2019, as evidenced by the advertisement below from the Zambia Institute of Financial Services site, almost two years after Basel II had already been enacted as part of the BFSA (2017).⁹¹²

The key aims of the reforms in this area were mainly to mobilise domestic savings and maintain a safe and sound financial system. This included reforming banking supervision; Ibid. (Maimbo).

⁹⁰⁸ Sachs "The IMF is a Power unto Itself" *Financial Times* (11 December 1997) 1 https://www.earth.columbia.edu/sitefiles/file/Sacchs%20writing/1997/FinacialTimes_1997_IMFIsapoweruntoitself_12_11_97.pdf (accessed 20 June 2023).

⁹⁰⁹ See ch 4 para 4.9.

⁹¹⁰ Sachs (n 909) 1; Khor "IMF Policies Make Patients Sicker Third World Network (TWN)" <https://www.twn.my/title/sick-cn.htm> (accessed 20 June 2023).

⁹¹¹ Sachs (n 909) 1.

⁹¹² See ch 7 para 7.4.7.

“It is our pleasure to invite you to a training programme on BASEL I, II & III and the Internal Capital Adequacy Process (ICAAP) which will be conducted by the Zambia Institute of Banking & Financial Services (ZIBFS) in conjunction with the Bank of Zambia, from 15th to 16th August 2019...The training program will help participants appreciate the Basel Committee which is the global standard-setting body on banking regulations that also aims to improve risk management and governance as well as strengthen banks’ transparency and disclosures. This is achieved through establishing rules to make sure that financial service providers (FSPs) hold adequate capital to ensure a safe and sound financial sector that can withstand unforeseen difficulties.”⁹¹³

It must be acknowledged that for commercial banks, the information and training were done much earlier for bank management. The first formal mention of the Basel Accords was via Commercial Bank (CB) Circular Number 05/2007, titled “Implementation of the New Basel Capital Accord (Basel II)” in Zambia, dated 15 June 2007, which was issued to all commercial banks. The point is that such far-reaching rules should be in the general contemplation of all citizens as a natural outcome of the democratic process, before the Accords are implemented. Especially since the basis of the Accords are accountability, transparency, and compliance. This appears not to have happened in this case. The sheer complexity of the Accords should have been sufficient to ensure that citizens are aware of the consequences of the rules and allow them to accept or reject them accordingly.

4.11 Conundrums surrounding the Accords

4.11.1 Do the Basel Accords have opt-out clauses?

There are no clear clauses in the Basel Accords that allow a country to opt out and take its own line of action where it feels necessary. This assumes that the rule is irreversible once implemented. This is especially pertinent when it is considered that most countries, particularly developing ones, are not members of the BCBS; therefore, from a legal standpoint, there is no legal relationship between the BCBS and the non-member countries that have adopted the Accords. The Accords are most often used as one of the conditionalities that the IMF asks countries to adopt as part of structural adjustment programmes, which leaves many countries

⁹¹³ Zambia Institute of Banking and Financial Services (ZIBFS) “Training with Bank of Zambia: Basel I, II & III, ICAAP & Implications on Capital” (15–16 August 2019) <https://www.zibfs.com/training-with-boz-basel-i-ii-iii-icaap-implications-on-capital-15th-16th-august-2019/> (accessed 7 May 2020).

in limbo as to who the actual implementers of the Accords are while ensuring that the BCBS has little or no responsibility where the Accords fail to work in the prescribed manner. For example, it is submitted that the Basel Accords create an uneven playing field for local banks by favouring international banks or where local banks fail because they implement the stringent Basel capital requirements. As it is international law, it lacks the basis for legal recourse; but in the case of the BCBS, it can be argued that not only is recourse lacking, but the whole system has been set up on a gentleman's agreement without any liability on their part. It is submitted that where failures in policy occur it is only fair that appropriate compensation be considered. Creditors like international agencies like the IMF World Bank and BCBS, should consider reduced payments when policies have not been successful which would allow the surplus funding to be redirected to investment projects in essential social sectors like education, healthcare, water, sanitation, and social protection. Loan programs and policies should focus on job creation, income redistribution, and poverty reduction, rather than on meting out austerity measures. Progressive taxation can generate the necessary revenue. Before implementing any program, a thorough social and economic impact assessment should be conducted to ensure it does not harm the poor. While the international agencies' expertise can be a valuable resource, individual countries should strengthen their technical capacities. Negotiations should be more inclusive, involving various stakeholders to consider socioeconomic development beyond macroeconomic stability.⁹¹⁴

4.11.2 The fallacy of the World Financial Contagion Theory

One of the reasons for introducing the Basel Accord in 1974, as set out by the BCBS, was to forestall what it called "financial contagion" in countries trading across borders. This is one of the main reasons for the stringent prudential conditions imposed on the banking sector and now applied across the globe. Many other theories explain the mechanics of this contagion. There is no clear and precise answer to how contagion occurs.⁹¹⁵ The black letter of the law does not describe it at all. So, under these circumstances, we must rely on other social sciences, particularly economics, to try and understand the concept. Authors like Dornbusch, Park, and Claessens have tried to describe how contagion spreads from one country to another, which is essentially the spread of financial instability across markets following a crisis in one or more

⁹¹⁴ Kamande "After Half a Century of Misguided Policies, Here's How the World Bank and IMF Can Work for the Poor" (12 October 2023) <https://views-voices.oxfam.org.uk/2023/10/how-the-world-bank-imf-can-work-for-poor/> (accessed on 25 November 2024).

⁹¹⁵ See ch 4 para 11.2 and ch 6 ch 11.2.

countries. This emphasises the role of interconnectedness, including trade and financial ties, in transmitting economic shocks. The way these shocks or contagions spread across a country or group of countries varies from one financial crisis to another, and the study of their variations is thus important in determining their impact on infected countries.⁹¹⁶ However, Rigobon points out that this area is yet to be an exact science and is difficult to test empirically currently.⁹¹⁷

As theory has it, a financial crisis is contagious and should be avoided at all costs. Consequently, it is unsurprising that the Basel Accords were implemented to ensure this contagion did not happen. Nonetheless, it is clear to see that contagion is selective. For example, an examination of third-world countries where several banks have collapsed at once shows no significant correlation with the creation of a worldwide financial crisis. It is submitted that in the case of Zambia, where several banks were declared insolvent between 1994 and 1997, it did not make as much of a ripple on the international financial markets pond. The simple reason for this is that these banks were not linked directly to the global financial system at the time of their failure. Therefore, their impact internationally was essentially a non-event. And to push the point even further, even Zambian banks like Meridien BIAO, which had established subsidiaries across Africa,⁹¹⁸ still appeared to have no significant impact internationally and did not create a crisis despite being categorised as a bank that had cross-border transactions, according to the Basel standards. Despite being spread across Africa, there appears to be no evidence to suggest that the bank's closure caused any African financial crisis.⁹¹⁹ Thus, it is likely that it requires much more than just insolvency to bring about an economic downturn resulting in an international financial crisis. In the author's view, it requires a deep, highly interconnected and complex financial market to create such a crisis. However, ensuring that every country adopts the Accords will bring these countries into the international financial arena with time, financial deepening and sophistication, making them more vulnerable to the vagaries of the global markets, thus increasing the possibility of a knock-on effect in the future. However, even then, some of these banks' capital bases are equivalent to what small banks in

⁹¹⁶ Dornbusch *et al.* *Contagion Understanding How it Spreads* (2000) 177–179.

⁹¹⁷ Rigobon *International Financial Contagion: Theory and Evidence in Evolution* (2002) 1–99.

⁹¹⁸ There appears to be no peer-reviewed material that gives exact numbers for Meridian BIAOs spread across Africa and Europe as such the author must rely on work by Joel Kibazo in *African Business* of June 1995 who mentions that Meridian had 100 branches spread across 19 countries in sub-Saharan Africa, including branches in Hamburg, Paris London, and New York. See Kibazo *African Business* June (1995).

⁹¹⁹ Kibazo *African Business* (1995).

America and other countries own.⁹²⁰ Therefore, it can be strongly argued that the impact of bank failures on a developing country's economy, even if it does happen, will not be likely to create a world recession because the financial systems lack the element of interconnectedness internationally. So, while financial contagion is a reality for countries with highly developed and interconnected financial systems, it is submitted that its overall impact on developing countries appears to be negligible now.

4.11.3 Global competition rather than global regulation

From the preceding points, it can be argued that what appears to be a system of regulating banks is a cleverly designed competition model. It is submitted that while on the face of it, the Accords speak the language of regulation, the real language and therefore, the real intention behind the Accord, appears to be more about gaining a global competitive advantage than ensuring regulation is achieved. This assertion comes from the fact that the Basel Committee has supported the larger Western banks to achieve a "level playing field". The overall impact of the Accords is to appear to strengthen banks from one angle. For example, Weller and Hersh indicate that the World Bank has argued that participating in multinational banks (MNBs) in developing countries will result in positive outcomes such as efficiency and stability needed to attract growing levels of private capital for development.⁹²¹ But, from another angle, it appears to be a way of weakening local banks by reducing their profitability and share of market participants to allow them to be acquired by MNBs via mergers and acquisitions and thus grow their stock of businesses abroad where margins are more comprehensive, particularly the smaller banks.⁹²²

In practice, research finds that increased competition from MNBs leads to domestic banks reducing their loan exposure. A study by Weller in Central Eastern European countries gives

⁹²⁰ A small bank in America means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.322 billion. Intermediate small bank means a small bank with assets of at least \$330 million as of December 31 of both prior two calendar years and less than \$1.322 billion as of December 31 of either of the prior two calendar years. See Electronic Code of Federal Regulations (e-CFR) Title 12—Banks and Banking Chapter Iii—Federal Deposit Insurance Corporation Subchapter B—Regulations and Statements of General Policy Part 345—Community Reinvestment Subpart A—General2. § 345.12 Definitions.

Legal Information Institute (LII) "Title 12: Chapter III, Subchapter B, Part:345, Subpart B:345.26" https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=99e5b31c338f92033104f9402ef4646&term_occur=999&term_src=Title:12:Chapter:III:Subchapter:B:Part:345:Subpart:B:345.26 (accessed 11 July 2023).

⁹²¹ Weller & Hirsch "Banking on Multinationals Increased Competition from Large Foreign Lenders Threatens Domestic Banks, Raises Financial Instability, EPI Issue Brief Issue Brief" Economic Policy Institute (2002) 1–6.

⁹²² Ibid.

robust correlations between MNBs and less credit.⁹²³ On the other hand, the same banks in developing countries cannot actively participate in the developed country markets where the market entry-level requirements are incredibly high. So, to conclude, while the idea is to make one believe that these MNBs are acting conscientiously by investing in developing countries, they are taking up market share to enhance profitability in these areas. There is evidence from research done by Weller to suggest that despite the positive image of safety and soundness portrayed by MNBs and their investments this image needs to be treated with some caution as in some instances, it may even create speculative bubbles that could lead to financial crises in a country.⁹²⁴ This argument will become clearer from the discussion in Chapter 5 where the argument is made that small banks are being forced to merge to survive.

4.11.4 The Accords do not appear to be ideologically neutral

One of the topical issues implied in many works is that the Basel Committee lacks neutrality in terms of its philosophical approach. Many scholars with different philosophical leanings tend to criticise the Basel Accords from the incompatible perspective that to implement the Accords, a country must adopt a neoliberal economic framework, for which the model appears to work best.⁹²⁵ This lack of neutrality stifles any innovation by a country to attempt to remedy its problems.⁹²⁶ For example, it forces other financial systems to adopt its concepts even though they are *prima facie* incompatible with the ideological tenets of the Accords. Islamic banking is a case in point where authors like Zubair and Setiawan in separate articles remark that Islamic bankers and jurists found some of the prescriptions of the Accords incompatible with the nature of Islamic banks.⁹²⁷ For a start, Islamic banks continue to face hurdles in achieving global recognition like the challenge needed to adapt to international standards like the Basel core

⁹²³ Weller (n 922) 1–6. See also other papers by Weller on the same area: Weller “Financial Liberalisation, Multinational Banks and Credit Supply” 2000a *International Review of Applied Economics* 2; Weller & Hersh “Multinational Banks in Developing and Transition Economies, Technical Paper” Economic Policy Institute (2000b) 1–6.

⁹²⁴ Weller (n 922) 1–6.

⁹²⁵ Authors such as Stiglitz *The Price of Inequality* (2012); Chang ‘Kicking away the ladder—globalisation and economic development in historical perspective’ in *The Handbook of Globalisation* (2019) 392–399; Harvey *A Brief History of Neoliberalism* (2007); Chomsky ‘Profit over people’ in *The Applied Theatre Reader* (2020) 186–192.

⁹²⁶ Economics Help “Criticisms of the IMF” <http://www.economics help.org> (accessed 12 September 2022). Note that while the criticisms are levelled against the IMF in this document and not directly at the BCBS. Countries are expected to take on free-market reforms and neoliberal policies as part of the adoption of the Accords.

⁹²⁷ Zubair “Basel Accords and Islamic Banking: A Critical Evaluation” MPRA Paper (2014) <https://mpra.ub.uni-muenchen.de/56446> (accessed 19 June 2023) 1–16.

principles, which may require substantial institutional and legal reforms. In countries with dual banking systems like Malaysia, which has both conventional and Islamic banking systems operating in tandem, implementing the Basel standards can be particularly complex. Most of all, the key questions on how to apply or modify international standards for Islamic banks and how these standards can contribute to the growth of Islamic banking have not been answered yet.⁹²⁸

4.11.5 A lack of influence for non-member participants

One of the most significant criticisms that has bothered the Bretton Woods Institutions for over half a century is the lack of inclusivity of the voices from developing countries, including Zambia. The BCBS appears to suffer the same malady. This is evidenced in the document outlining the history of the committee. For example, the concept of the BCBS was born out of a meeting attended by central bank governors from the G10 Countries at the end of 1974.⁹²⁹ From 1974 to 1992, important decisions regarding the liquidity of banks were made without consulting the countries they would affect. Only in 1992, almost 20 years after the establishment of the Basel Accords, were the standards communicated to other banking supervisory authorities, which were invited to endorse them.⁹³⁰ The supervisory authorities were merely endorsing them and not commenting or contributing to the rules at this stage. It was only in 1996, concerning the BCBS report on “The Supervision of Cross-Border Banking,”⁹³¹ that a joint working group was involved from non-G10 jurisdictions.⁹³² This involved the most developed countries, as supervisors from 140 countries subsequently endorsed the report.⁹³³ Similarly, with the Basel I Accord, the G10 bank governors were the main protagonists in its creation and release in 1988. Again in 1999, the Committee⁹³⁴ issued

⁹²⁸ Setiawan *The Future of Islamic Banking and Finance in Indonesia: Performance, Risk and Regulation* (2023).

⁹²⁹ n 258.

⁹³⁰ n 708.

⁹³¹ Basel Committee for Banking Supervision (BCBS) “The Supervision of Cross-Border Banking” (1996) 1–25. Report by a working group comprised of members of the Basle Committee on Banking Supervision and the Offshore Group of Banking Supervisors Basle (October 1996) <https://www.bis.org/publ/bcbs27.pdf> (accessed 20 June 2023).

⁹³² Ibid.

⁹³³ n 932, 1–25.

⁹³⁴ Note that at the time of writing, the committee consisted of the following countries: Belgium, Canada France, Germany Italy, Japan Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. See BIS site Membership <https://www.bis.org/bcbs/membership.htm> (see Appendix 1) (accessed 20 June 2023).

proposals for a new capital framework called Basel II. Looking at the constitution of the BCBS Committee, it is made up mainly of Western and emerging market countries, except for Japan.⁹³⁵ It is thus easy to criticise the Committee as being non-representative in terms of international representation. To this end, there is a feeling by many countries that the Committee tends to overlook the opinions of developing and less developed countries. It took almost 30 years from 1974 to 2004 before some semblance of consultation was done with non-member states, where most countries are classified as developing. Even then, the consultancy was on a very selective basis.⁹³⁶ However, despite this apparent bias and lack of involvement in the decision-making process related to policy formulation, non-member states still chose to adopt most BCBS policy documents. However, Lehman Brothers crisis in September 2008 appears to prove once again that the ideas and opinions of developing countries did not matter as the BCBS took matters into its own hands and, with the group of Governors and the Heads of Supervision (GHOS), announced higher global minimum capital standards.⁹³⁷ These standards were endorsed at the G20 Leaders' Summit in Seoul, South Korea, in November 2010 before being finally agreed in Basel in December 2010.⁹³⁸

From the preceding, it seems that the Basel Accords have not considered the views of the less developed countries but appear to concentrate on the machinations of developed countries, who have compelled developing countries to take on the Accords using the developed countries' measures as a standard. This is in part due to the process of lobbying by large banks and other interest groups, as will be seen in the next section of the thesis.

4.12 Actual problems that make the Accord Models inefficient

4.12.1 Risk models and their challenges

Research by the author indicates that not much work has been done in the area surrounding mathematical modelling systems that relate to the Accords. In general, it is agreed that the correct use of mathematical models can contribute to effective policy making. Notwithstanding,

⁹³⁵ As of July 2022, these countries included 45 members from 28 jurisdictions, including: United States, United Kingdom, Türkiye (formally Turkey) Switzerland, Sweden, Spain, South Africa Singapore Saudi Arabia Russia Netherlands, Mexico Luxembourg, Korea Japan, Italy Indonesia India Hong Kong Germany France European Union China Canada Brazil Belgium Australia and Argentina. See Bank for International Settlements (BIS) "Basel Committee Membership" <http://www.bis.org/bcbs/membership.htm> (accessed 19 June 2023).

⁹³⁶ n 258.

⁹³⁷ n 258.

⁹³⁸ n 258.

where they are not correctly used, it may result in negative consequences by skewing outcomes.⁹³⁹ Dowd, Hutchinson, Ashby, and Hinchliffe⁹⁴⁰ highlight these models' weaknesses for developed countries. The paper was written about developed countries with huge capital and expertise at their disposal. Therefore, if the developed countries are having problems with these risk models for Basel, then it is surmised that less developed countries would have an even harder time rationalising these financial models since they lack the expertise and resources to do so.

The paper by the aforementioned authors looks at some fundamental assumptions about these models. As a reminder, since quite a bit has been covered already, the initial models were set by Basel themselves, but this resulted in some inconsistencies across the board. This eventually resulted in banks being given *carte blanche* to create their risk models.⁹⁴¹ This is the position currently in the international arena and in a large part of the Basel IV recommendations. With this reminder as a background, it is prudent to examine some of the shortfalls and inconsistencies of the model according to Dowd.

The argument's initial line of defence focuses on each assumption that has been advanced. The "steady law of motion" assumption is the first. It is suggested that because the system is constantly changing in the social sciences, as opposed to, say, physics, where it may do so for a long time, quantitative methodologies from the sciences cannot be applied there and remain constant. Thus, when calculating and measuring models like the Basel models, this dynamic characteristic of social science causes problems when it comes to risk calculations. Dynamism also makes people react to changes in the market differently since parameters are constantly changing. This can be problematic for banks adopting specific models, especially when there are periods of normalcy and periods of volatility. According to Dowd's article, a physical model of behaviour tends to disregard how different agents interact with one another, in contrast to a social model of behaviour. As a result, the agent's interactions with nature are not considered by the physical model. Thus, because it is viewed as a "game against nature", it is considered

⁹³⁹ Richardson *et al.*, Limitations on the use of mathematical models in transport policy analysis (1979) 2–14 <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/509/43459.0001.001.pdf?ref=quillette.com> (accessed 23 April 2022).

⁹⁴⁰ Dowd *et al.*, "Capital Inadequacies the Dismal Failure of the Basel Regime of Bank Capital Regulation, Policy Analysis No 681" (2011) 2–38 <https://www.cato.org/policy-analysis/capital-inadequacies-dismal-failure-basel-regime-bank-capital-regulation> (accessed 23 April 2022).

⁹⁴¹ Interestingly, the *carte blanche* given to use internal models appears not to be the result of easing requirements but because the rating agencies failed to give accurate ratings. This is seen in the Dodd-Frank Act removing these players in the process of rating bank risk. See ch 4 para 4.12.

a poor substitute for addressing issues in the social sciences and thus society at large. The argument's initial line of defence focuses on each assumption that has been advanced. The steady law of motion assumption is the first. It is suggested that because the system is constantly changing in the social sciences, as opposed to, say, physics, where it is constant over a long period, quantitative methodologies from the social sciences cannot be applied to the model and remain constant.⁹⁴²

4.12.2 The problem with parameters in the risk formula

The next problem that is that Dowd's paper considers is the problem associated with calibrating the parameters of any model, which appears to be particularly difficult with financial models. The major difficulty with the calibration is the way the information is acquired. In this case, the information relies on historical samples. This results in a problem where, if one is trying to measure a sample in a volatile period and the historical data is from a quiet period, the outcome will erroneously indicate a much lower risk than what would normally be required. The reverse also holds true.⁹⁴³ The problem is particularly prevalent with sensitive measurements like financial returns, which are an essential component of most risk models. The complexity is further compounded as correlations between financial returns are a temporary phenomenon, particularly where policy is affecting the area dynamically.⁹⁴⁴

4.12.3 Problems underlying types of risk models

It appears that certain models could also exacerbate the measurement problems, eventually leading to a financial crisis. This is particularly evident with the more modern models, like the Black Scholes-Merton⁹⁴⁵ option pricing model as a case in point,⁹⁴⁶ where one risky structure was built on another without clearly evaluating the risk associated with each product separately.

⁹⁴² Dowd (n 610) 10.

⁹⁴³ Dowd (n 610) 11.

⁹⁴⁴ Dowd (n 610) 11,

⁹⁴⁵ The Black-Scholes-Merton model is a mathematical model used in the financial derivative markets. The model was created to estimate the prices of options. Initially, it was used to price European options. Before this most traders valued options differently. The model has now become the standard way for traders to price options. So far it has shown consistent results across all markets and in most instances, price estimates produced by the formula have shown outcomes close to actual prices. See Ruo "The Black-Scholes Option Pricing Model" (20 November 2020) <https://cklxx.people.wm.edu/teaching/math400/Chen-paper2.pdf> (accessed 13 May 2021).

⁹⁴⁶ Dowd (n 610) 11.

4.12.4 Statistical models used to measure risk

Another problem identified with the models was the assumption that risk could be safely measured using normal distribution methods or Gaussian distribution,⁹⁴⁷ as it is called in mathematics. While it may work well with measuring static numbers, it fails to live up to its reputation where the numbers are constantly moving, particularly for the finer risk measurements that investors and bankers need to calculate accurately.⁹⁴⁸

4.12.5 Inadequacies of the Value at Risk (VaR)

As observed earlier when discussing the Basel Accords, the VaR was an essential variable to consider in the models. VaR (or Value at Risk) is a concept that measures the risk of loss for an investment given normal market conditions in a fixed period. The BCBS defines VaR as: “*A measure of the worst expected loss on a portfolio of instruments resulting from market movements over a given time horizon and a pre-defined confidence level.*”⁹⁴⁹ Most risk models use VaR as a means of measuring risk. However, this risk measure has been found inadequate because it lacks accuracy. VaR has also been criticised for its need for more consistency and predictability. It is said that it is the significant losses that need to be measured because they are the ones that can cause institutions to become insolvent. In essence, VaR needs to be overhauled as a measure of risk for it to be more effective.⁹⁵⁰

4.12.6 The problem of unknown risk

While risk can be foreseeable, and one would expect that parties to a transaction would, in most instances, take precautions against the risk posed by the transaction, there is an area of risk that is deemed to be unknowable or incomprehensible, no matter the precautions one takes. Dowd uses an apt quote from Donald Rumsfeld, the United States Secretary of Defence from 1975 to 1977, which will be borrowed verbatim as it so aptly summarises the point thus:

⁹⁴⁷ According to *Britannica*, Normal distribution, also called Gaussian Distribution, is the most common distribution function for independent, randomly generated variables in research. Its familiar bell-shaped curve is ubiquitous in statistical reports, from survey analysis and quality control to resource allocation. *Britannica*, The Editors of Encyclopaedia. “normal distribution”. See *Encyclopedia Britannica* “Normal Distribution” (2 April 2023) <https://www.britannica.com/topic/normal-distribution> (accessed 3 May 2023).

⁹⁴⁸ Dowd (n 610) 11.

⁹⁴⁹ BIS. Basel Committee on Banking Supervision (BCBS). “The Market Risk Framework in Brief” 2019 2 www.bis.org/bcbs/publ/d457_inbrief.pdf (accessed 8 November 2024).

⁹⁵⁰ Dowd (n 610) 11–17.

*“There are known knowns; there are things we know we know. We also know there are known unknowns; that is to say, we know that there are some things we do not know. But there are also unknown knowns –the ones we don’t know we don’t know.”*⁹⁵¹

Dowd says that this problem of unknown risk is common to operational risk because it is associated with the risk of loss not only due to a failure of people but also a failure of systems. These can range from running out of supplies to allowing a trader to act recklessly and independently of others.⁹⁵² Therefore, the unknown risk is not only ever-present in a transaction or set of transactions, but it is also not easy to measure.⁹⁵³ So the next problem that needs to be examined is the issue of management and its effect on risk modelling.

4.12.7 The problem of senior management

Research by Dowd shows that one of the more significant impacts on the modelling process is the role of senior management and its relationship with the risk manager. This results in a situation where the senior manager is interested in lowering the risk or, as Dowd says, “underestimated”. The science of risk assessment is by no means rigorous; in fact, it is viewed as quite the reverse. It is filled with imperfections and value-based judgments, making estimating risks difficult. Furthermore, it is open to manipulation and abuse and lacks a solid scientific base, weakening capital regulation and its outcomes.⁹⁵⁴ To add to Dowd’s argument, Lowe posits that risk-based models are unsuitable for reliable capital regulation. They encourage manipulation, like tax evasion, where self-interest overrides ethical practices. In today’s financial landscape, understating risk is financially advantageous. Therefore, the core concept of using a firm’s risk assessments to determine regulatory capital is fundamentally flawed, both conceptually and practically.⁹⁵⁵

Given the above, the first question surrounds the relevance of this section to the overall work. It must therefore be stated unequivocally that the sections above on the models are an attempt

⁹⁵¹ Dowd (n 610) 17.

⁹⁵² Dowd (n 610) 17. Good examples of this are the numerous incidents of rogue traders that have caused banks to fail including Nick Leeson of Baring Bank (£827m), Jerome Kerviel of Société Générale (£3.7bn), John Rusnack (\$700m), Toshihide Iguchi (\$1.1bn). See Kerviel “Who are The Worst Rogue Traders in History?” *The Guardian* <https://www.theguardian.com/business/2011/sep/15/who-are-worst-rogue-traders> (accessed 20 July 2023).

⁹⁵³ Dowd (n 610) 18.

⁹⁵⁴ Dowd (n 610) 18.

⁹⁵⁵ Dowd (n 610) 18.

to show that the developed or Western countries, despite their resources and expertise, need help with the measurement of risk. The situation would likely be worse for small and insignificant developing countries with little or no resources. It cannot lobby for a better position for itself, let alone create a viable risk formula that will be foolproof. Consequently, there is no foolproof formula for measuring risk, and those measurements currently in existence are prone to error. Additionally, Themrise *et al.*, observe that there is an erroneous perception by less developed countries that Western countries are more knowledgeable when it comes to aspects of technology, finance, and management. Especially, the terms used to describe global development today are shaped by historical systems of dominance, which have created a false hierarchy among nations as they ascribe a higher value to some lives while allowing some groups to extract, exploit, and subjugate others.⁹⁵⁶ As a result, most countries will not even question the measurements' veracity and attempt to adjust them. This can cause large-scale havoc on an economy that adopts these measurements without challenging them, given that the models are an integral part of the Accords themselves.

4.12.8 Lobbying and regulatory capture

An important question relates to the fairness of the Basel Accords and whether all countries follow the Accords to the letter. As evidenced in the earlier chapters of this work, the Accords are considered non-binding until a particular country adopts them. However, the evidence below shows that despite the larger countries seeking a level playing field abroad, the field is skewed in favour of the large multinational banks, who can lobby for whatever they want. Some of the problems associated with the Accords have been attributed to excessive lobbying by the big banks and their failure to adopt the initial requirements set out by BCBS to correct the fundamental problem associated with the market that the Accords are trying to fix. However, the mechanics of bank mobilisation patterns are an area that needs to be researched further.⁹⁵⁷

The current position of the large institutions when it comes to making regulatory rules at Basel is that it is influenced by the lobbying strength of large financial institutions at the national, European, and global level, and the 2007–2008 crisis has done little to change this position.

⁹⁵⁶ Themrise *et al.* "How We Classify Countries and People-and Why it Matters" 2022 *BMJ Global Health* 4.

⁹⁵⁷ Chalmers "When Banks Lobby: The Effects of Organizational Characteristics and Banking Regulations on International Bank Lobbying" 2017 *Business and Politics* 1–28.

The old leading financial institutions are still up to their old tricks, and thus require a change in how BCBS policy is made if regulators are to avoid a repeat of the GFC crisis.⁹⁵⁸

In essence, this means that the rules that are made are influenced by the institutions, sometimes beforehand and sometimes even to the extent of blackmail to secure their profits, according to Phillipe Lamberts⁹⁵⁹ as will be seen from some of the authors that this thesis will rely on, such as the work of various authors like Chalmers and Werter. The Basel Accords appear not to be immune to the impact and influence of the prominent financial players and lobbyists. This results from the fact that the supervisors of the leading European financial markets are both members of the BCBS, including the ECB.⁹⁶⁰ Additionally, Accords like the Basel Accord III are connected to the European financial markets through directives such as the Fourth Capital Requirement Directive (CRD).⁹⁶¹

The Basel III framework laid the groundwork for stricter global banking regulations. The European Union, through the Single Rulebook⁹⁶² initiative, aimed to harmonise financial regulations across its member states and implement Basel III. The Capital Requirements Directive IV (CRD IV)⁹⁶³ (formed by two legal Acts at level 1- the CRD and the CRR) was the EU's specific implementation of Basel III, expanding the scope of regulation to include financial holding companies. The Single Supervisory Mechanism (SSM) was introduced on 4 November 2014 and was established to oversee the largest banks in the Euro area, ensuring consistent and effective supervision.⁹⁶⁴

⁹⁵⁸ Mügge (ed) 'The Wrong Phoenix Rising' in Europe and the Governance of Global Finance abridged in 2014 *Green European Journal*.

⁹⁵⁹ Ibid.

⁹⁶⁰ The European Central Bank (ECB) is the central bank for the eurozone, a group of 19 European Union countries that use the euro as their currency. Its primary function is to oversee monetary policy in the eurozone, which involves controlling the supply of euros and ensuring price stability. Established in 1998, the ECB is headquartered in Frankfurt, Germany. See Bondarenko "European Central Bank" *Encyclopedia Britannica* <https://www.britannica.com/money/European-Central-Bank> (accessed 29 November 2024).

⁹⁶¹ Capital Requirements Directive (CRD) IV 2013/36/EU.

⁹⁶² The Single Rulebook coined in 2009 by the European Council refers to the unified regulatory framework for the EU financial sector which in essence is a set of standardized financial regulations designed to ensure consistent regulatory practices across all European Union member states. This initiative aimed at completing the single market for financial services by providing a unified regulatory framework in the EU countries. The idea behind this was that by aligning with Basel III standards, the Single Rulebook would eliminate possible regulatory loopholes and foster a more efficient and integrated European financial market. See European Banking Authority (EBA) "The Single Rulebook" <https://www.eba.europa.eu/single-rulebook> (accessed 29 November 2024).

⁹⁶³ The two legal Acts that make up the CRD are EU Directive 2013/36/EU and the EU Regulation 575/2013.

⁹⁶⁴ Mügge (n 959).

These Accords are mapped to one another as follows:

Table 6. Mapping between Basel III standards and EU legislation⁹⁶⁵

MAPPING BETWEEN BASEL III STANDARDS AND EU LEGISLATION	
BASEL III STANDARDS	EU LEGISLATION
Basel III: A global regulatory framework for more resilient banks and banking systems (revised version June 2011)	Capital Requirements Directive (EU) 2013/36/EU (CRD)* Capital Requirements Regulation (EU) 575/2013 (CRR)*
Liquidity Coverage Ratio (January 2013)	Capital Requirement Regulation (EU) 575/2013 (CRR)*with additional specifications in Commission Delegated Regulation (EU) 2015/61 with regards to liquidity coverage requirements for Credit institutions
Net Stable Funding Ratio (October 2014)	Regulation (EU) 2019/876 (CRR2)
Basel III: Finalising post-crisis reforms (December 2017)	Not yet transposed in EU legislation
Minimum capital requirements for market risk (January 2016, revised January 2019)	Not yet transposed in EU legislation
* And subsequent amendments	

This has led to a situation in which a few players make policies with a vested interest to the exclusion of all others.⁹⁶⁶ This was brought out earlier in the thesis, where the issue was raised regarding the exclusivity of the decision-making process when deciding on the Basel Accords.⁹⁶⁷ The G7, G10 and G20 countries were shown to be the only ones making decisions, while the rest of the players were only asked to ratify the rules without having any input in the decisions at all. This was particularly evident during the development of the Capital Accords. Most comments (approximately 70 per cent) and supervisory proposals (an additional 15 per cent, often closely aligned with the interests of the domestic banking sector) originated from private financial institutions. Moreover, out of 443 comment letters in two rounds, only a few civil society organisations offered their opinions.⁹⁶⁸ This point can be further substantiated by looking at the history of the Basel accords, where the three groups above are the key players when making decisions that affect the Basel Accords.⁹⁶⁹

⁹⁶⁵ Information for the creation of table was taken from the Basel III Accord and EU legislation and directives mentioned in the table.

⁹⁶⁶ n 258.

⁹⁶⁷ See ch 4 para 4.3.1.

⁹⁶⁸ Tarullo (n 195).

⁹⁶⁹ n 258, 1. See ch 4 para 4.9.

Public policymakers developed the concept of a level playing field that was part of the objectives of the Basel Accords. They used their common assumptions for what they would like to achieve from the perspective of competition in the local or European market and internationally. It will be shown later in this thesis that the policy measures were mainly targeted at the Japanese financial markets,⁹⁷⁰ which were viewed as having an undue advantage over the European and American banks.⁹⁷¹ As a result, the Basel Capital Accord rules that were initially meant to be for large international banks that traded across borders were now applied across the board to include all banks in Europe to enable smooth cross-border transactions.⁹⁷² These changes resulted from fierce lobbying by the European and American banking industries. The main actors or agents, as they are often called, were the banks, securities markets, and insurance providers.

The result of all the lobbying manifested itself when the GFC hit and revealed all the weaknesses of the Basel II capital adequacy rules. The post-mortem on why Basel II failed to protect banks brought out the inability of the rating agencies and the internal models to assess the risk associated with complex securitised financial products.⁹⁷³ Chalmers attributes the regulatory failure to the market agents' undue influence and lobbying efforts.⁹⁷⁴

Financial sector lobbying has thus been a tool the large international banks used to favour their positions and change the market practice to favour these rules. Igan *et al.*,⁹⁷⁵ from the IMF Research Department point out that on 31 December 2007, the “Wall Street Journal” reported that Ameriquest Mortgage and Countrywide Financial, two of the largest Mortgage lenders in the United States, had spent USD20.5 and USD8.7 million respectively on political donations and campaign contributions to influential senators to lobby on their behalf to avoid regulatory oversight.⁹⁷⁶ The BCBS has been accused of being in the pockets of large international banks that have regulatory issues. In most instances, they quickly reinvent themselves after a crisis to

⁹⁷⁰ See ch 4 para 3.2.

⁹⁷¹ n 258, 1.

⁹⁷² n 258, 1.

⁹⁷³ Tarullo (n 195).

⁹⁷⁴ Chalmers (n 958) 1–28.

⁹⁷⁵ Igan *et al.*, “A Fistful of Dollars: Lobbying and the Financial Crisis” *NBER Macroeconomics Annual* (2016) 195–230. Additionally see Blau *et al.* *Lobbying and lending by banks around the financial crisis by Public Choice* (2022). 377–397.

⁹⁷⁶ *Ibid.*

delay the onset of more stringent rules coming into play from regulators.⁹⁷⁷ Of note is that these global banks tended to privatise their gains and socialise their losses.⁹⁷⁸

The Accords were not immune to the influence of lobbyists, as evidenced by the European Parliament before the implementation of the Basel II Accord in 2007. Where it is recorded that the European Parliament had close to 600 amendments tabled for discussion with the Commission and Council, particularly from the banking sector, which was met with a counter lobby from the international players to remove some, if not all, of these amendments.⁹⁷⁹ Meanwhile, most countries, particularly the developing ones, have no say as most of these countries are not members of the BCBS.⁹⁸⁰ While Chalmers agrees that banks are lobbying to get special concessions from the BCBS, it is more about why the banks lobby the BCBS. He outlines two main reasons why banks lobby: Firstly, banks lobby because of what he calls the “organisational characteristics” of banks. Organisational characteristics deal with issues like the financial resources of the financial institution and its international banking activity or how active the bank is internationally.⁹⁸¹ Where a bank is internationally active and has extensive resources, it is more likely to lobby internationally to achieve specific goals. Secondly, a bank that is in the international arena and has strict banking regulations in its domestic market will seek to lobby to pursue opportunities at the international level.⁹⁸² It will try to level the playing field by ensuring strict domestic rules are applied internationally. Furthermore, banks will seek to limit the adjustment costs between regulations in the domestic and international markets. Chalmers argues that banks that face more significant adjustment costs are more likely to lobby the Basel Committee.⁹⁸³

The informal nature of the BCBS has been identified as one of the reasons lobbying is encouraged and accommodated by the BCBS, resulting in a tight web of influence linking the industry with regulators.⁹⁸⁴ It also appears that the BCBS is not responsible for guarding the

⁹⁷⁷ Tarullo (n 195).

⁹⁷⁸ Mügge (n 959).

⁹⁷⁹ Mügge (n 959).

⁹⁸⁰ See the Appendix for Chalmers’ work on some of the banks that were lobbying, as well as the various amendments.

⁹⁸¹ Tarullo (n 195).

⁹⁸² Tarullo (n 195).

⁹⁸³ Chalmers (n 958) 1–28.

⁹⁸⁴ Tarullo (n 195).

public interest because of the lack of connection to state governments. Therefore, the BCBS's decision-making is based on what Chalmers calls "business corporatism".⁹⁸⁵ Chalmers has accused BCBS regulators of acting together to propagate a cult of finance that advocates light-touch regulation and liberal regulatory strategies. This has resulted in BCBS regulation being not only shaped by the preferences of powerful banks but has resulted in a situation where the regulation is influenced by the industry itself rather than by a regulator, often termed "regulatory capture," as outlined below by Baxter.

4.13 Regulatory capture

According to Baxter, regulatory capture has long been essential in explaining why regulatory systems fail.⁹⁸⁶ Baxter suggests that powerful groups have gained undue influence over the regulators, creating an unfair system where competition is stifled or where regulations are designed to benefit a particular group. This concept of "capture" is used to argue both for and against regulation. In a financial landscape dominated by large financial institutions and powerful executives, the concern is that financial regulators are being manipulated. It is argued by some proponents that increased regulation will limit industry influence, while those advocating for deregulation believe that reduced regulatory power will prevent biased decisions by captured regulators.⁹⁸⁷

It is not easy to measure regulatory capture in any area of economic activity, however, and as a result, it can often be misdiagnosed. It is said to be a theory of legislative and regulatory motivation, and sometimes accusations may be made against perfectly normal transactions.⁹⁸⁸

Regulatory capture might also manifest itself in other forms, ranging from the blatant to the more nuanced type of deep or cultural capture that involves a relationship among elite classes of regulators and executives typical of an "old boys' club". This may hide an inherent bias that may favour the part of the industry that the regulator closely identifies with.⁹⁸⁹

⁹⁸⁵ Business corporatism is an economic or political system that seeks social justice among individuals. It is collectivist in nature Britannica. See Encyclopaedia Britannica Money "Corporatism" (17 March 2023) <https://www.britannica.com/topic/corporatism> (accessed 3 May 2023).

⁹⁸⁶ Baxter 'Understanding Regulatory Capture: An Academic Perspective from the United States' in Pagliari (ed) *The Making of Good Financial Regulation* (2012) 31–39.

⁹⁸⁷ Baxter (n 987) 55.

⁹⁸⁸ Baxter (n 987) 55.

⁹⁸⁹ Baxter (n 987) 55.

The situation is similar in the United Kingdom, according to Clive Briault.⁹⁹⁰ However, some nuances exist between regulatory capture in the United States—where it appears to be more direct—than in the United Kingdom, where it is less so because “on the whole, banks [in the United Kingdom] did not have to lobby politicians, largely because politicians argued the case for them without obvious inducement.”⁹⁹¹ What is missing is that lobbying and regulatory capture have strong correlations. Additionally, there appears to be specific mindsets that pervade the regulatees in developing countries. These attitudes hinge on the principle that the less the interference, the better for business, and therefore “better regulation often means less regulation for this group of financial organisations.”⁹⁹² This is against the mindset of the regulator, which is to effect strong regulation. This juxtaposition of interests leads to what Briault calls a “collective intellectual failure” of all parties before the GFC due to their failure to foresee the inherent riskiness of the market for what it was. Vibert refers to the source of regulatory and supervisory failure as “cognitive failure.”⁹⁹³ He asserts that market participants and regulators misread the market signals, ignored the warning signs, and are generally overconfident in their ability to ride out turbulence.⁹⁹⁴

This mindset was translated to the BCBS when it created its regulatory standards, particularly with Basel II. They allowed industry players to use their internal models to calculate risk and, ultimately the amount of capital required by the institution.⁹⁹⁵ While this was not regulatory capture *per se*, Briault says it reflected a generally held view that large banks had strengthened their risk management sufficiently, that the industry possessed expertise valuable for setting capital regulations, and that permitting compliant banks to use their risk models would incentivise those with less robust systems to enhance their risk management practices.⁹⁹⁶

⁹⁹⁰ Briault ‘Regulatory Capture, Political Dominance or collective intellectual Failure? A View from a Former UK Regulator’ 109–111 in Pagliari (ed) *Making Good Financial Regulation: Towards a Policy Response to Regulatory Capture* (2012) 1–250.

⁹⁹¹ Ibid.

⁹⁹² Briault (n 991) 109–111.

⁹⁹³ Vibert “Independent Agencies: No Fixed Boundaries” in Lodge (ed) *Regulatory Agencies Under Challenge. Centre for Analysis of Risk and Regulation (CARR)* London School of Economics and Political Science Discussion paper (January 2016). 1–13 <https://www.lse.ac.uk/accounting/assets/CARR/documents/Regulatory-Agencies-under-Challenge/CARR-DP81-Frank-Vibert.pdf> (accessed 13 May 2021).

⁹⁹⁴ Vibert (n 994) 1–13.

⁹⁹⁵ Bank for International Settlements (BIS) “Amendment to the Capital Accord to Incorporate Market Risks” updated November 2005 <https://www.bis.org/publ/bcbs119.pdf> (accessed 13 May 2021). See, Part B: Use of Internal Models to Measure Market Risks, from B1-B5a-c at pages 35–43.

⁹⁹⁶ n 996, 35–43.

This new world of regulation was seen as a positive step forward. However, many academics disagreed with this assertion. Werter shows⁹⁹⁷ that the Basel Committee was inappropriately influenced by the industry it was supposed to regulate,⁹⁹⁸ resulting in a watering down of some of the regulations because of the regulatory capture that took place during the negotiations with the industry.⁹⁹⁹ Equally, scholars have been critical of the apparent “business as usual” approach of financial institutions during the GFC.¹⁰⁰⁰

4.14 Testing presumptions inherent in the Basel Accords

One of the important points that is necessary to understand the Basel Accords is the underlying presumptions that guide the Accords. This research has not come across as clear-cut presumptions, however. It is therefore trite that to establish some of the presumptions, there is need to look at the ideologies that influenced the Accords and in particular, neoliberal ideology.¹⁰⁰¹ The work will thus consider the following headings to try and establish underlying presumptions, mainly from the author’s point of view:

- The use of neoliberal economic philosophy as the world standard. The model assumes that all banks run on the profit motive.
- The implied assumption that countries must grow gradually.
- Globalisation and international financial integration open developing countries to financial instability.
- The Accords are sold as the only panacea to maintain bank stability.
- The Accords are only suitable for internationally active banks.
- The external rating agency dilemma.

Each one of these presumptions will be looked at in turn.

4.14.1 Neoliberal economic philosophy as a world standard

While the Basel Accords do not specify that they want a country to change its ideology explicitly, parameters are set to achieve the specific goals, and a country would need to adopt

⁹⁹⁷ Werter ‘A Study of The Different Mechanisms of Banks to Influence International Financial Regulation’ in *Global Financial Governance: The Power and the Resources of Banks* (2017).

⁹⁹⁸ Ibid.

⁹⁹⁹ Werter (n 998) 28.

¹⁰⁰⁰ Werter (n 998) 28.

¹⁰⁰¹ See ch 3 para 3.2.

a more neoliberal outlook on the economy. Countries must conform by meeting specific targets to get the reward of recognition and financial support via the Bretton Woods organisations and the various rating agencies.

4.14.2 The model assumes that all banks run on the profit motive

The basis of the Basel Accords is that banks are in the business of banking for the profit motive. Thus, any unprofitable bank is not running efficiently and should be allowed to become insolvent.¹⁰⁰² However, this view detracts from the fact that there are other reasons for the existence of banks, like developmental objectives, for example, not just profits.

The implied assumption by the Bretton Woods institutions is that countries must grow gradually because, as Driscoll posits, the IMF is “the enemy of surprises”. He states that they are convinced that a fundamental condition for international prosperity is an orderly monetary system that will encourage trade to create jobs. He further states that the IMF is supposed to maintain this system no more and no less according to its mandate.¹⁰⁰³ From this statement, it can be argued that one of the underlying assumptions of the neoliberal school is that countries should grow at a “normal pace” and not “leapfrog” in terms of development. This is evident in the IMF and World Bank ethos, which believes that countries should grow gradually.¹⁰⁰⁴ This implies that “miracle economies” are no longer possible for developing countries. Hence, the Taiwans and South Koreas of this world are no longer possible. Surprisingly, the institutions making these statements are supposed to be responsible for global development, so it is trite to question why rapid growth should be a priority for some countries and not for others. Surely, the argument should be cut both ways in that developing countries should adopt the Accords at a gradual and managed pace. They should be allowed to adopt fewer complex rules that are not beyond their capabilities.

4.14.3 Globalisation and international financial integration

There appears to be an unspoken assumption that third-world countries can get developed country diseases. While this may be true for more developed countries because those countries

¹⁰⁰² Werter (n 998) 28.

¹⁰⁰³ Driscoll “What is the International Monetary Fund?” (July 1997) <https://www.elibrary.imf.org/downloadpdf/book/9781557754080/9781557754080.pdf> (accessed 20 June 2023).

¹⁰⁰⁴ Werter (n 998) 28.

have adopted advanced analytical systems to ensure that they are well-monitored and have sufficient capital for their banks to operate safely, the fact of the matter is that most low-income countries do not have the sophistication to carry out half of the transactions that the Basel Accords protects banks against. Some countries lack a stock exchange, so the threat of securities derivatives going wrong is not an imminent possibility. Equally, there is little, if any, sophistication beyond vanilla transactions to speak about. So, while the Accords may work well, it may be more because of a lack of sophistication and limited transactions than anything else. It can be argued that this is the case for Zambia.

4.14.4 The Accords are the only panacea to maintain bank stability

As we have seen earlier, it appears that the BCBS assumes that Capital Accords are the only means of correcting imbalances and risks in a banking system. It is submitted that this argument appears defective in that the culmination of the failure starts way before the capital is impacted. The logical outcome here would be to manage the small banks more intently, given that they lack complexity (and cross-border elements), and thus cracks in the system are more easily identified well before they become large enough to lead to insolvency. The presumption that banks with strong capital bases can survive is a reality—but are we saying banks can do what they want if they have enough capital? Again, this argument favours the capital-rich multinational banks. What about the small, struggling banks in developing countries?

4.14.5 The Accords are only suitable for internationally active banks

The “Core Principles for Effective Banking Supervision” speaks about cross-border transactions for banks in developing countries, among other requirements. While some, but not all, local banks, particularly the small banks, will be able to transact across borders, the reality is that these banks cannot do so given the size of their transactions and their small capital base. Therefore, it makes little sense to incorporate them into the system at all. This is where common sense should prevail by instituting measures for banks to apply to transact across borders rather than leave the door open, figuratively speaking.

4.14.6 Inefficient banks should be allowed to fail or be taken over

Going through the literature on the Accords it is submitted, particularly under the “Core Principles for Effective Banking Supervision,” that where a country has weak banks then these banks are a threat to the country’s financial system and should be removed from the system to

prevent future financial crisis as a result of their failure at some future date.¹⁰⁰⁵ From the perspective of pure supply and demand theory, this may be the correct remedy to opt for, but from a developmental aspect and especially where the weaker banks are the local banks, it is submitted that some kind of intervention by the “invisible hand” is required to keep these institutions alive and healthy. In this instance, the question that begs to be asked, and is of such importance that it will be addressed under the heading of “Competition” later,¹⁰⁰⁶ is whether banks in developing countries have any impact on the level playing field that Western banks desire so much. The answer appears to be clouded by the lack of adequate available research material to give an academically sound response. But when looked at logically overall and making inferences from a qualified and logical standpoint based on existing bank sizes in developed and developing countries, the answer appears to be negative. As a comparative, Zambian banks do not even have half the capital that a small bank in America or Europe have, therefore, the comparative appears to be flawed, to say the least. For example, the US Code of Federal Regulations, which came into effect on 1 January 2021, defines a “small bank” as:

*“(1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.322 billion. Intermediate small bank means a small bank with assets of at least \$330 million as of December 31 of both of the prior two calendar years and less than \$1.322 billion as of December 31 of either of the prior two calendar years.”*¹⁰⁰⁷

These regulations have since been updated as of 20 November 2024.¹⁰⁰⁸ However, the point of the information is to show the discrepancy between the two capital amounts from a Zambian perspective after bringing it to the dollar value by calculating the Kwacha amount at the rate of 17.76 Kwacha (Zambian currency) to the dollar. It turns out to be ZMK23.478 billion. A far

¹⁰⁰⁵ Bank for International Settlements (BIS) “Core Principles for Effective Banking Supervision” 9 <https://www.bis.org> (accessed 16 June 2017).

¹⁰⁰⁶ See ch 6 para 4.

¹⁰⁰⁷ Cornell University “Electronic Code of Federal Regulations (e-CFR) Title 12–Banks and Banking Chapter III–Federal Deposit Insurance Corporation Subchapter B–Regulations and Statements of General Policy Part 345–Community Reinvestment Subpart A–General 345.12 Definitions” <https://www.law.cornell.edu/cfr/text>. (accessed 29 November 2024).

¹⁰⁰⁸ Code of Federal Regulations 20204 <https://www.ecfr.gov/current/title-12/chapter-III/subchapter-B/part-345> (accessed 29 November 2024).

cry from the assets of most Zambian banks, given that capital requirements for Zambian banks are currently at around ZMK104 billion.¹⁰⁰⁹

4.14.7 The external rating agency dilemma

Rating agencies or Credit Rating Agencies (CRAs) as they are also known, have been in existence for close to a century or more.¹⁰¹⁰ While there has been some fallout along the way of other agencies, the current three biggest rating agencies are said to be: Moody's (established formally in 1914, although effectively the date for its first mention was in 1900, starting with the "Moody's Manual"); Standard & Poor's (effectively established in 1860 but formally launched after going through various phases) and Fitches (this agency was established circa 1913 under the guise of the "Fitch Stock and Bond Manual" and "Fitch Bond Book").¹⁰¹¹ Their functions as part of the financial system nexus have been outlined to some extent by Marwan, who observes that credit rating agencies are vital in developed economies and function to bridge the information gap regarding the creditworthiness of companies or countries. Their influence has grown with the growth in global finance and was further amplified by Basel II, which uses their ratings in credit risk calculations. However, ratings tend to be slow to reflect market changes, and when they do change, they often overreact. This delayed and exaggerated reaction was blamed for worsening the recent financial crisis, contributing to instability and spreading problems across countries.¹⁰¹²

¹⁰⁰⁹ The minimum capital requirements are outlined in CB Circular No 02/2012 issued on 30 January 2012. In this circular, the BoZ adjusted the minimum capital requirement to K104 billion for locally owned banks and K520 billion for foreign-owned banks. See Bank of Zambia (BoZ) "New Capital Adequacy Framework" <https://www.boz.zm/232013CAPITAL.pdf> (accessed 20 July 2023).

¹⁰¹⁰ Bank for International Settlements (BIS) "To Err Is Human: Rating Agencies and the Interwar Foreign Government Debt Crisis" (2011) 30–31 <https://www.graduateinstitute.ch/library/publications-institute/err-human-us-rating-agencies-and-interwar-foreign-government-debt> (accessed 13 May 2021). Note that, according to Lund, Standard & Poor's (S&P) was founded in 1860. It is one of the oldest and most widely recognised credit rating agencies in the world. Its ratings range from AAA (the highest rating) to D (default). Moody's was founded in 1900 and its bond ratings range from AAA (the highest rating) to C (default). The last rating agency is Fitch. Fitch could be considered the new kid on the block, as it was founded in 1913. Like S&P, ratings range from AAA (the highest rating) to D (default). See Lund "Bond Ratings: Report Cards for Risk" <https://www.britannica.com/money/bond-ratings-credit-risk> (accessed 13 May 2021).

¹⁰¹¹ Bank for International Settlements (BIS) "To Err Is Human: Rating Agencies and the Interwar Foreign Government Debt Crisis" (2011) 30–31 <https://www.graduateinstitute.ch/library/publications-institute/err-human-us-rating-agencies-and-interwar-foreign-government-debt> (accessed 13 May 2021).

¹⁰¹² El Khoury "Credit Rating Agencies and Their Potential Impact on Developing Countries, No.186" United Nations Conference on Trade and Development (UNCTAD) (2008) https://unctad.org/system/files/official-document/osgdp20081_en.pdf (accessed 8 November 2024).

Given the foregoing, it is apparent that rating agencies are not as neutral in their operations as at first portrayed. The problem appears to be caused by the CRA and the investor. This boils down to the fact that investors are looking for honest and reliable ratings. In contrast, the issuers want favourable ratings as a means of enhancing the quality of the issuance. This problem is thus transferred to the rating agency to manage. The conundrum created is that if the rating agency is too strict, it will lose business to the more flexible competitor.¹⁰¹³ To avoid this situation, the rating agencies typically advise the issuer how to modify the numbers to get the desired results. This eventually results in the rating agency further lowering its standards to keep its clients happy. This leads to rating inflation, especially for the newer products on the market.¹⁰¹⁴ According to Schumpeter, the source of the problem appears to originate from the fact that the managers were “getting rich from managing other people’s money” and thus continued providing favourable, albeit inaccurate ratings; besides, the justification was that everybody else in the industry was doing it anyway.¹⁰¹⁵

As seen above, the procedures and processes are not only sophisticated and technical when seen from the point of view of a developing country, but also when these rules are applied to a small and insignificant local banks that are not rated at all and lack the understanding of the lobby culture that is an ingrained part of the Western way of doing business. These assertions further support the argument that small banks should not be in the business of Basel.

4.15 Conclusion

The chapter attempted to ascertain what existed before the Basel Accords. If the Basel Accords are the panacea to the problems of the financial world, then what existed before this “big bang” of change, without which it is difficult to appreciate the achievements, or not, of the Accords? The Accords themselves were considered. A deliberate attempt was made to avoid the mathematical and statistical technicalities to ensure that readers can understand the concepts and what the author is trying to put across.

Next, an attempt was made to evaluate the problems with the Accords. It was made to balance the various perspectives. Still, the dearth of research material in particular areas meant that the tasks were challenging and led to an inability to achieve the requisite analytical balance. This

¹⁰¹³ Schumpeter (n 254) 20.

¹⁰¹⁴ Schumpeter (n 254) 20.

¹⁰¹⁵ Schumpeter (n 254) 20.

is, of course, a gap for other researchers interested in this area to pursue. Many people who read about bank regulation fail to appreciate the complexity of the Basel Accords in terms of their ability to bind and sanction errant countries.

To remedy this, the section on the legal nature of the Accords was included. This was followed by a breakdown of general challenges associated with the Accords. Also, it is crucial to understand the position of the developed countries concerning the Accords. This area is a “Pandora’s Box” of issues. It is noticed that the disciplined, cohesive and consistent outlook of the Accords present in developing countries is a lobbyist’s paradise and an area where power play works to good effect for the developed countries, often leading to regulatory capture by prominent and influential institutions. In contrast, the reality for developing countries is that they have little or no say in the making of the Accords and, despite not being members of the BCBS, they are often the most persistent stalwarts for the system either by choice or by indirect pressure exerted on these countries often because of meeting structural adjustment objectives. Suffice it to say that the multilateral institutions mentioned in this chapter work with each other to ensure that countries implement these rules to the letter, unlike developed countries, where certain institutions can water down or delay compliance. The “one-size-fits-all” mode of application of the concept comes out consistently in these Accords, especially for weaker nations. The final comment is that the Accords are not harmful for a government to adopt. If only they could be implemented equitably by taking the time to consider all the nuances that affect developing countries. This is a complex undertaking indeed. But without this, the small banks, which are supposed to be the seedling banks of a country, will not grow into large banks but will be wiped out by these policy measures if not correctly managed.

The next chapter examines regional groupings and their role in financial regulation, if any. It will also evaluate how regional groupings interface with international financial organisations and member countries.

CHAPTER 5

REGIONAL GROUPINGS AND THE BASEL ACCORDS

5.1 Introduction

Chapter 4 covered aspects relating to the Basel Committee as a means of regulating financial institutions.¹⁰¹⁶ It also looked at the Western response to the Basel Accords.¹⁰¹⁷ The relationship or nexus between the various international regulatory organisations, like the IMF, the BCBS, and BIS was also examined to show that these institutions act in concert when dealing with countries.¹⁰¹⁸ An attempt was made to evaluate what type of law the Accords fall under.¹⁰¹⁹ This was followed by an examination of the topical issues surrounding the Accords and some of the inherent problems of the Accords. Some of the fundamental presumptions of the Accords were tested before concluding the chapter.¹⁰²⁰ Chapter 4 will now feed into Chapter 5 by looking at how regional organisations influence regulation in member countries, if at all. It will examine, among other things, the impact of regionalisation on countries. It will consider the two main regional bodies that Zambia holds membership in, namely the Southern Africa Development Community (SADC)¹⁰²¹ and the Common Market for Eastern and Southern Africa (COMESA).¹⁰²² The types of protection that these regional organisations offer will be

¹⁰¹⁶ See ch 4 para 2.15.

¹⁰¹⁷ See ch 4 para 7.

¹⁰¹⁸ See ch 4 para 9.

¹⁰¹⁹ See ch 4 para 10.

¹⁰²⁰ See ch 4 para 14.

¹⁰²¹ The Southern African Development Community (SADC), formerly known as the Southern African Development Coordination Conference (1979–1992), is a regional association of countries in Southern Africa that works to advance economic integration and cooperation among its members while preserving their economic independence. Angola, Botswana, the Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe are the member states. SADC's activities are coordinated at yearly gatherings of the presidents of state and government and a council of ministers from every member state. SADC coordinates plans and funds various projects in agricultural and animal husbandry, energy, mining, disease management, telecommunications and regional trade. See Encyclopaedia Britannica "Southern African Development Community" (20 March 2023) <https://www.britannica.com/topic/Southern-African-Development-Community> (accessed 15 June 2023).

¹⁰²² Common Market for Eastern and Southern Africa (COMESA): Consists of 21 African nations that have joined forces to form a union called the Common Market for Eastern and Southern Africa (COMESA). The main goal of the grouping is to advance regional integration through commerce, for the exploitation of the region's natural and human resources to benefit all its citizens. As part of the Organisation of African Unity's (OAU) Lagos Plan of Action and the Final Act of Lagos, COMESA was first founded in 1981 as the Preferential Trade Area for Eastern and Southern Africa (PTA). In 1994, the PTA evolved into COMESA. The PTA was founded to benefit from a wider market, share the region's common history and future, and promote greater social and economic cooperation. COMESA is one of the eight Regional Economic Communities (RECs) that the African Union recognises. See Common Market for Eastern and Southern Africa (COMESA) "COMESA in Brief: Growing

evaluated. Before concluding, it will be established whether there are any biases in implementing the rules.

With the increasing push towards globalisation, regionalism has also been encouraged to break down the world into manageable economic and trading blocs, each comprising one or several interest groups. Southern Africa is no exception to this fad and has seen the growth of several interest groupings, including SADC, COMESA, SACU,¹⁰²³ etc. These groups have areas of focus to develop and maintain. The ability of these institutions to make independent decisions outside of Western ideals and institutions is questionable, given that the link appears to be a more neutral one. However, it is submitted that these institutions are gentlemen's clubs that politicians escape to, to avoid burning issues in their own countries. As it is, the African Union (AU)¹⁰²⁴ is often dismissed as *"a talk shop for tyrants or depicted as an ineffectual lumbering bureaucracy that worries more about per diems than it does about Africa's most pressing problems."*¹⁰²⁵ It is no secret that the queen of African institutions, the AU, has been criticised for having done little to nothing in enforcing African human rights on the continent. Often, many human rights breaches have been left to fester into ugly realities and human tragedies, as little is done to address violations related to ethnic, economic, and undemocratic behaviour by censoring errant countries. The events in the Sudan and Rwanda are but a few reminders of this ennui to respond decisively.¹⁰²⁶ With this in mind, an attempt has been made to examine which

Together for Prosperity" (September 2018) https://www.comesa.int/wp-content/uploads/2020/05/COMESA-in-brief-FINAL-_web.pdf (accessed 15 June 2023).

¹⁰²³ See footnote 867 for a more detailed explanation of SACU.

¹⁰²⁴ African Union (AU), formerly Organisation of African Unity (1963–2002), is an intergovernmental organisation founded in 2002 with the goals of fostering African state unity and solidarity, accelerating economic growth, and fostering international cooperation. The Organisation of African Unity (OAU) was superseded by the African Union (AU). Ethiopia's Addis Ababa serves as the AU's administrative centre. Since its founding on May 25, 1963, the OAU has engaged in diplomatic efforts (particularly in support of African liberation movements), mediation of border disputes and regional and civil wars, and economic and communications research. Many of the OAU's efforts at international coordination were directed through the "Africa group" it maintained at the UN. The Group of 77 serves as a caucus of developing countries inside the UN Conference on Trade and Development, and it was the OAU that helped bring African states together in collaboration. See *Encyclopedia Britannica* "African Union" (9 June 2023) <https://www.britannica.com/topic/African-Union> (accessed 15 June 2023).

¹⁰²⁵ Allison "Think Again: In Defence of the African Union" (2014) <http://issafrica.org/iss-today/think-again-in-defence-of-the-African-union> (accessed 20 November 2022).

¹⁰²⁶ The International Crisis Group (ICG) has accused the African Union and its international partners of having failed to avert the crisis in Burundi. They say that Nkurunziza has taken advantage of differences inside and within the African Union (AU), the United Nations (UN), and the East African Community (EAC), the sub-regional institution tasked with leading the continental response. This allows his government to reject all EAC attempts to bring it to the negotiating table, and it has halted the deployment of African Union Commission (AUC) authorised human rights and military observers, as well as UN Security Council-authorised police. Disunity is fuelled by a lack of a clear understanding of the nature of the situation. The AU itself is split. Most member states prefer a less confrontational approach than the interventionist-inclined AUC, which has now moved focus from Burundi to prevent additional embarrassment, silencing needed warning voices. The situation is fundamentally political, and

regional institutions are responsible for banking regulation on the continent and what measures they have taken, if any, to take the sting out of adopted international policy, including the Basel Accords. Before this critical evaluation is done, however, there is a need to provide some background on the chosen regional institutions.

For this, the discussion will be opened with the following quote borrowed from the African Development Bank (ADB)¹⁰²⁷ report, “Forward”, issued in 2010, which begins with the following profound statement:

*“Most African countries have undertaken financial sector reforms within the broader context of stabilisation and structural adjustment programmes. As a part of these, they have also focused on regional integration, both their real fundamental and financial sectors, in the realisation that creating scale in production and financial markets helps promote regional trade and accelerate growth and poverty reduction.”*¹⁰²⁸

Analysis of this statement indicates that regional bodies or organisations like COMESA and SADC appear to accept that various African countries need multiple reforms in their financial sectors. Equally, from what was seen in previous chapters, there seems to be a consensus that structural adjustment is IMF-led and that structural adjustment is a natural consequence that flows out of sector reforms. It is submitted that there also appears to be a clear indication that these regional organisations seem to accept the authority of the Bretton Woods Institutions without question to manage and guide this process. For example, they do not appear to lobby these international organisations to allow them to set their own Pan-African standards both now and in the future. Further, the statement seems to imply that further development for African

only a negotiated settlement between the government and the opposition can bring it to a conclusion. This necessitates a re-examination of the 2000 Arusha deal, a power-sharing peace pact backed by the AU that ended the 12-year civil conflict. It is a long shot unless the AU, EAC, and the rest of the world community act in harmony. See International Crisis Group “African Union and Burundi Crisis Ambition v Reality. Briefing No 122” (28 September 2016) <https://www.crisisgroup.org/africa/central-africa/burundi/african-union-and-burundi-crisis-ambition-versus-reality> (accessed 15 June 2023).

¹⁰²⁷ The African Development Bank (AfDB) is a financial institution that supports economic development in Africa. It provides loans and grants to African governments and businesses. Established in 1964, the AfDB is headquartered in Abidjan, Côte d’Ivoire. It consists of three entities: the African Development Bank, the African Development Fund, and the Nigeria Trust Fund. The African Development Fund (ADF) was established in 1972 and began operations in 1974. It offers financial assistance on favourable terms to low-income African countries that are unable to access loans from the African Development Bank. The Nigeria Trust Fund (NTF) was established in 1976 by the Nigerian government to support the development of the poorest African countries. It was initially funded with \$80 million and works in collaboration with the African Development Bank. The editors of Encyclopaedia Britannica “African Development Bank” (5 November 2024) <https://www.britannica.com/topic/African-Development-Bank> (accessed 29 November 2024).

¹⁰²⁸ African Development Bank Group *Financial Sector Integration in Three Regions of Africa: How Regional Financial Integration can support Growth, Development, and Poverty Reduction*. Sildar Tunis (2010).

countries can only occur when these countries are brought together as a bloc of countries to reap the benefits of larger markets and other economic and political synergies. Thus, by accepting all these elements, it is logical to assume, by the rules of interpretation, that there seems to be an apparent acceptance that globalisation as a world phenomenon will work for Africa because regionalisation is the first step to attaining globalisation. It is easy to see why resistance to biting the hand that feeds it, is high when some vital financial supporters and advisors are identified. It is submitted that this often leads to what is deemed the “broken sieve approach” where these regional groupings renege on their duty to sieve out information and policy from the international multilateral institutional level and tailor-make it for their own needs. Instead, they allow most rules and procedures to be accepted with little or no variation from the original policy framework, usually created for advanced countries to adopt.

Ultimately, the guidelines are often flawed and thus a poor fit for developing countries, as they are not adjusted to accommodate a developing country’s position. This may result in disequilibria within countries that implement these systems, not excepting the Basel Accords. Noah *et al.*, observe that the reasons for this are many and varied and include issues associated with hegemonic power-play, colonial mentality legacy, and the superior view with which the West is regarded from both an educational and political standpoint, among others.¹⁰²⁹ Unfortunately, these areas are not likely to be covered in much detail in this thesis because they are not part of the main argument of the thesis, but are collateral to the arguments raised as they may provide gaps for further academic research.

So, the question arises as to what the importance of regionalism is to this thesis and why it should be considered in any measure. The clear answer is that regionalism is the next piece of the jigsaw puzzle that cements the argument that globalisation is alive and well. Regionalisation is but one of the building blocks to achieving this universal concept. It shows that the consolidation process in terms of stock markets, financial systems, regulation, trade, law, and many other areas are slowly merging regionally, continentally and eventually globally to create a global bloc called “the global village”—a term has now become a cliché for anything that involves merging of countries. This chapter also argues that the regional bodies are driven by various international organisations’ agendas rather than by the internal energies and objectives of African states and their groupings. Hopefully, the ensuing examination of what

¹⁰²⁹ Tesch *et al.* “Foreign Dependency Economics and Politics” Britannica (2014) <https://www.britannica.com/topic/foreign-dependency> (accessed 8 June 2023).

regionalisation is and the multiple theories attached to it will convince the reader of the validity of these assertions.

5.2 The impact of regionalisation

Regionalisation comes in many shapes and forms in Africa. These groups exist as monetary unions such as the East African Community (EAC);¹⁰³⁰ the Economic Community of West African States (ECOWAS),¹⁰³¹ including the Southern African Development Community (SADC); customs unions like the Southern African Customs Union (SACU)¹⁰³² that was established in 1910 and is perhaps one of the oldest customs unions in the world. Others are included in Table 7 below.

Table 7. African Regional Economic Communities¹⁰³³

	REGIONAL ECONOMIC COMMUNITIES		REC STATUS
01	Arab Maghreb Union	(UMA)	Free Trade Area
02	Common Market for Eastern and Southern Africa	(COMESA)	Free Trade Area
03	Community of Sahel-Saharan States	(CENSAD)	Free Trade Area
04	Economic Community of Central African States	(ECCAS)	Free Trade Area

¹⁰³⁰ The Democratic Republic of Congo, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the Republic of Uganda, and the United Republic of Tanzania make up the seven partner states of the East African Community (EAC) which is a regional intergovernmental organisation with its headquarters in Arusha, Tanzania. Over 30% of the estimated 283.7 million residents of the EAC live in urban areas. With a combined Gross Domestic Product of US\$ 305.3 billion and a land expanse of 4.8 million square kilometres, it is of tremendous strategic and geopolitical significance to the region and offers opportunities for the revitalised and reenergized EAC. See East African Community <https://www.eac.int/> (accessed 8 June 2023).

¹⁰³¹ The Economic Community of West African States (ECOWAS) is a regional organisation with 15 members that was created on 28 May 1975 by the Lagos Treaty. Its mission is to promote economic integration in all spheres of the member nations' endeavours. Members include Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo. ECOWAS was established to promote collective self-sufficiency for its member states and is regarded as one of the cornerstones of the African economic community. As a trading union, it aims to unite all nations into a single, sizable trading bloc. The region's planned integrated economic activities centre on, but are not limited to, industry, transportation, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial issues as well as social and cultural issues. See Economic Community of West African States (ECOWAS) "Activity of the Constituting Countries" <https://ecowas.int/basic-information> (accessed 8 June 2023).

¹⁰³² The Southern African Customs Union (SACU) is the oldest in the world. It was established by the Customs Union Convention of 1889, which was signed by the British Colony of Cape of Good Hope and the Orange Free State Boer Republic. The Union of South Africa and the British High Commission Territories (HCTs) were included in a new agreement that was signed on June 29, 1910. These included Basutoland (Lesotho), Bechuanaland (Botswana), and Swaziland. Southwest Africa (Namibia) "was a *de facto* member, since it was administered as part of South Africa" before it became a *de jure* member. The main objective was to encourage economic development through regional trade coordination. Membership has remained constant over the years. See Southern African Customs Union (SACU) <https://www.sacu.int/show.php?id=394> (accessed. 8 June 2023).

¹⁰³³ Amonyia "The Future of Interdisciplinary Policy Research in Africa: A Case Study of the Transport Sector" 2010 *Proceedings of the Conference on Traffic and Transportation Studies ICTTS* 8.

05	Economic Community of West African States	(ECOWAS)	Free Trade Area
06	Inter-Governmental Authority on Development	(IGAD)	Free Trade Area
07	Southern African Development Community	(SADC)	Free Trade Area
08	Economic and Monetary Community of Central Africa	(CEMAC)	Customs Union
09	East African Community	(EAC)	Customs Union
10	Southern African Customs Union	(SACU)	Customs Union
11	West African Economic and Monetary Union	(UEMOA)	Customs Union

In other parts of the world, blocs like the European Union (EU),¹⁰³⁴ which is an economic and monetary union that encompasses greater convergence, including law, currency, trade policy, and so forth; the Eurasian Economic Union (EEU)¹⁰³⁵ and in Asia, the Association of Southeast Asian Nations (ASEAN);¹⁰³⁶ in America, there is the North American Free Trade Agreement (USMCA)¹⁰³⁷ formerly known as NAFTA. In all, there are about 13 major trading blocs around

¹⁰³⁴ 27 European nations make up the European Union (EU), an international organisation that sets common economic, social and security policies. The EU began a significant expansion into central and eastern Europe in the early 21st century after being limited to Western Europe at first. Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden are the countries that make up the European Union. In 2020, the UK, which had been one of the EU's founding members, departed from it. The Maastricht Treaty, which went into effect on 1 November 1993, is what established the EU. By establishing a single currency (the euro), a united foreign and security policy, common citizenship rights, and by strengthening cooperation in the fields of immigration, asylum and judicial affairs, the treaty was intended to further the political and economic unity of Europe. In honour of the EU's work to advance democracy and peace in Europe, the organisation received the Nobel Peace Prize in 2012. See Gabel "European Union" *Encyclopaedia Britannica* (8 June 2023) <https://www.britannica.com/topic/European-Union> (accessed 8 June 2023).

¹⁰³⁵ The Eurasian Economic Union (EAEU) unites Russia, Kazakhstan, Belarus, Kyrgyzstan and Armenia. It includes a common labour market (since 2015), a customs union (since 2011), and a common external customs tariff (since 2010). The Eurasian Economic Commission, the EAEU Court, the Eurasian Development Bank, and the Eurasian Fund for Stabilisation and Development are just a few institutions that have evolved to support and promote these processes. This success has its flaws, some related to Russia's dominant position in the union. Other problems relate to some political systems' authoritarian structure and reliance on oil and gas exports. See Chatham House "What is the Eurasian Economic Union?" <https://www.chathamhouse.org/2022/07/what-eurasian-economic-union> (accessed 8 June 2023).

¹⁰³⁶ According to the Council on Foreign Relations (CFR) site, the Association of Southeast Asian Nations (ASEAN) is a regional grouping that aims to promote economic and security cooperation among its 10 members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. ASEAN countries have a total population of 662 million and a combined gross domestic product (GDP) of \$3.2 trillion. The group has played a central role in Asian economic integration, joining negotiations to form the world's largest free trade agreement and signing six free trade deals with other regional economies. See Council on Foreign Relations "What is ASEAN?" <https://www.cfr.org/backgrounder/what-asean> (accessed 8 June 2023).

¹⁰³⁷ The US-Mexico-Canada Agreement (USMCA) is a trade agreement between the named parties that entered into force on July 1, 2020. See US-Mexico-Canada Agreement (USMCA) [#](https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA#) (accessed 28 November 2024).

the globe.¹⁰³⁸ This idea of consolidation is not new and has possibly existed in different forms from the dawn of civilisation, irrespective of ideological affiliations. For example, the Soviet Union created a trading bloc¹⁰³⁹ after the fall of the Iron Curtain in 1991. Across the millennia, it is an idea that has come and gone and that has been reinvented several times over. Regionalisation, as a process, results in establishing a single trading bloc which may be a precursor for further consolidation with larger blocs. Ultimately, in theory, at least, the idea is that the whole world should become one single country or trading bloc. Unfortunately, scholars in this area of academia tend to differ on the expected outcomes of regionalisation. While some scholars consider regionalisation to be an integral part of the globalisation process, scholars like Matveeva, Valievaa, Trubetskayaa, and Kislovb, view regionalism as an alternative to globalisation.¹⁰⁴⁰

Kacowicz posits that nationalism, regionalism, and globalization are the foundational forces shaping contemporary political systems. He emphasizes that these forces are interconnected,

¹⁰³⁸ Radziyevska *et al.* “Regionalisation of the World as the Key to Sustainable Future” (2020) 2–9 https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/26/e3sconf_icsf2020_13016.pdf (accessed 20 November 2022).

¹⁰³⁹ According to Spulber, foreign trade in the Soviet bloc was a state monopoly encompassing not only all the export and import operations of the economy, which was concentrated in the hands of state or specific chartered or designated agencies but extended to all the economic relations between each of the Soviet bloc countries including the rest of the world. So effectively the soviet government decided the volume, value, structure and direction of its trade to offer maximum protection to its national economy. Equally, economic and non-economic relations with other countries were handled based on the monopoly of foreign trade and the monopoly of foreign exchange. The main tasks of the monopoly of foreign trade were to ward off capitalist economic penetration, to provide “maximum assistance” to domestic capital formation, and to facilitate the eventual “coordination” of the economic plans of the bloc countries. All this was dependent on the economic plan. Tariffs thus played a secondary role in the bloc countries. See Spulber *The Soviet-Bloc Foreign Trade System* (1959). Following the Soviet Union’s disintegration in 1991, Russia attempted several integration initiatives through the Commonwealth of Independent States (CIS), the Soviet Union’s significantly less powerful successor organisation. However, this was problematic. While some CIS members preferred to work less closely with Russia, others did not. Many people in Ukraine believed that the group existed only to assist in a peaceful break from Russia. Other projects were launched outside the CIS, such as the 2003 Common Economic Space and the 2000 Eurasian Economic Community, including Russia, Belarus, Kazakhstan, Tajikistan and Kyrgyzstan. Russia started making more active, ambitious initiatives to establish commercial partnerships in former Soviet countries starting around 2010. These included the Single Economic Space, founded in 2012, and the Eurasian Customs Union, formed in 2010. Both the EU Eastern Partnership Policy (EaP) and the 2008 Financial Crisis served as catalysts for this work. See Chatham House “What is the Eurasian Economic Union?” <https://www.chathamhouse.org/2022/07/what-eurasian-economic-union> (accessed 8 June 2023).

¹⁰⁴⁰ Radziyevska (n 1039) 2–9. Other notable scholars include Yury *et al.* “Globalization and Regionalization” 2016 *International Electronic Journal of Mathematics Education* 3114–3126. There are several other sources where authors view regionalisation as separate from globalisation. See Sideri ‘Globalisation and Regional Integration’ in *Regions and Development* (2020) 7–43; Lähteenmäki-Smith *Globalisation, regionalization and the rest. Spatial Development Trends Stockholm* (2004) 23; Svetličič “Challenges of Globalisation and Regionalisation in the World” 1996 *Global Society: Journal of Interdisciplinary International Relations* 107–123.

*making it challenging to isolate and evaluate their individual effects.*¹⁰⁴¹ From Kacowicz's perspective, a *region* is defined as an area where multiple states are interconnected due to their geographic proximity and the potential for mutually beneficial relationships. Consequently, *regionalization* is understood as the growing interdependence among countries within a specific geographical area. This interconnectedness encompasses not only natural, social, and economic interactions but also intentional political cooperation. This process transforms regions into cohesive geopolitical entities and encourages the formation of regional communities, including those characterized by "pluralistic security communities," where states maintain their sovereignty but share a strong expectation of peaceful relations and dispute resolution without resorting to violence.¹⁰⁴²

It can also refer to the tendency for these countries to form groups to expand their resource bases and thus create joint, functional, and institutional arrangements where various actors not only share fundamental values and norms but create economic, cultural, scientific, and other networks.¹⁰⁴³ Regionalisation has been born out of the collapse of the world communist system, the shifting balance of power back to the pluralistic Western democratic ideals, and the push by third-world countries to improve their economic status on new terms to allay the demands of an impatient electorate. Soderbaum, in his work "Regionalism", supports this view. He posits that modern regionalism is intertwined with evolving global politics and increased globalisation. A trend involving nearly every government on the planet, including various non-governmental groups. This leads to a complex web of formal and informal regional governance structures and networks across numerous geopolitical areas. This complex and multifaceted nature of regionalism creates new and difficult questions for contemporary political systems to answer.¹⁰⁴⁴

Kacowicz, in his work, explains the interaction between globalisation, regionalisation, and nationalism. While nationalism is also mentioned in Kakowicz's work, this thesis will tend to concentrate more on the other two concepts he discusses, namely globalisation and regionalism. These arguments are also brought out strongly in Chapter III of the thesis on the Jurisprudential

¹⁰⁴¹ Kacowicz "Regionalisation, Globalisation and Nationalism: Convergent, Divergent or Overlapping, Working Paper No 262" Kellogg Institute (1998) 527–574.

¹⁰⁴² Ibid.

¹⁰⁴³ Kacowicz (n 1042) 540.

¹⁰⁴⁴ Soderbaum "Regionalism" (2011) 1–1520 https://www.researchgate.net/publication/260228052_Regionalism (accessed 9 November 2022).

Underpinnings.¹⁰⁴⁵ Thus, this section further consolidates and reinforces the chapter's argument.¹⁰⁴⁶

Kacowicz sees the interaction between globalisation, regionalisation, and nationalisation from a seven-point perspective.¹⁰⁴⁷ For each of the seven points, there are two opposing positions: a divergent and a convergent trend. Divergence appears to imply rejection and, thus, opposition to the system, while convergence means acceptance and, therefore, compliance.¹⁰⁴⁸ The various heads have been grouped rather than numbered consecutively for expediency. From this nexus, the following linkages are apparent in Kacowicz's work:

- a) For globalisation, where nation-states oppose globalisation, there is a divergent trend. The next force is where nationalism and new states are encouraged by forces of globalisation, which is deemed a convergent or positive response.¹⁰⁴⁹
- b) Similarly, for regionalisation, where nation-states oppose regionalisation, others feel that they can be strengthened by it.¹⁰⁵⁰
- c) The next category is where there is a tripartite relationship in which regionalisation coexists with nationalism and globalisation, or what Kacowicz refers to as "overlapping trends". It also applies where national states mediate between trends of regionalisation and globalisation.¹⁰⁵¹
- d) Ultimately, the last trend is where nation-states oppose globalisation through regionalisation. Again, this is considered a divergent trend.¹⁰⁵²

From the initial tests, it can be stated that most African regional groupings appear to be in stage "C", where there is still much overlap. There also seems to be little concern with the larger picture and its eventual outcome—that of globalisation.¹⁰⁵³ This has been left to the developed

¹⁰⁴⁵ See ch 3 para 3.3 sub para 3.1–3.8.

¹⁰⁴⁶ Kacowicz (n 1042) 540.

¹⁰⁴⁷ Kacowicz (n 1042) 540.

¹⁰⁴⁸ Kacowicz (n 1042) 540.

¹⁰⁴⁹ Kacowicz (n 1042) 540.

¹⁰⁵⁰ Kacowicz (n 1042) 540.

¹⁰⁵¹ Kacowicz (n 1042) 540.

¹⁰⁵² Kacowicz (n 1042) 540.

¹⁰⁵³ Kacowicz (n 1042) 540.

¹²⁵¹ Radziyevska (n 1039) 2–9.

countries to contend with. This casual attitude by policymakers is concerning because the ultimate global integration model has not yet been thoroughly evaluated.¹⁰⁵⁴ Even though regionalism and regional integration appear to be a foregone conclusion for most countries, in many instances, especially for developing African countries, it comes at a considerable cost, especially concerning sovereignty and resource allocation. Interestingly, it appears that many regional groupings are not the result of direct international pressure but rather local pressure from an overqualified and underemployed electorate that has accumulated in many African countries over the years.¹⁰⁵⁵

Pride, Smith, and Foster¹⁰⁵⁶ give an apt diagrammatic representation of the worldview, which is grounded on the Westphalian State,¹⁰⁵⁷ which has been the standard model of world governance for close to 400 years (1648 to 2023). With the transition to a more consolidated federal type of structure, this could cause untold problems, not least those surrounding sovereignty, resource use, and population movements.

¹²⁵² Radziyevska (n 1039) 2–9.

¹²⁵³ Pride *et al.*, “Decline of Westphalia in West Africa. How Decentralized Power in West Africa Can be a Rebirth of African Identity” 2017 *Inter-Agency Journal*. 92–104.

¹⁰⁵⁴ A precept in international law that each state has absolute authority over the area of land under its jurisdiction and is enshrined in the United Nations Charter, which states that, “...*nothing... shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state*” see United Nations Charter “Chapter I: Purposes and Principles” *United Nations* (1945) <https://www.un.org/en/about-us/un-charter/chapter-1> (accessed 13 February 2023).

Figure 6. Globalisation¹⁰⁵⁸



5.3 Other theories of integration

From the thesis perspective, the concern is more current now that some background has been given on what regional institutions are premised on. There is a need to look at the relationship between African regional bodies and the Basel Committee (BCBS) and how these institutions influence and interface with one another, especially with respect to received rules and international law. It is also essential to establish whether these regional bodies make the rules suitable for domestic use by member countries. For this purpose, two central regional bodies, SADC and COMESA, will be reviewed to try and establish whether the “sieving process”¹⁰⁵⁹ happens or if the sieve is broken. Equally, the central area of concentration will be the financial side of these regional bodies. It will not include a comprehensive examination of all the facets of these institutions *per se*.

5.4 Southern African Development Community (SADC)

The Southern African Development Community (hereinafter SADC) was set up mainly to achieve regional integration and eradicate poverty within the Southern African region.¹⁰⁶⁰ To accomplish this harmoniously, several legal and institutional instruments were promulgated. These instruments also acted to standardise the work of SADC with member states. The main

¹⁰⁵⁸ Pride (n 1253) 92–104.

¹⁰⁵⁹ The sieving process in this instance appears to have no current definition except in chemistry and milling. For purpose, this process alludes to the examination and removal of rules and clauses that would have a negative impact on a country, or a regions financial system as opposed to adopting conventions and rules and regulations hook-line-and-sinker from other jurisdictions.

¹⁰⁶⁰ Southern African Development Community (SADC) “Objectives” <https://www.sadc.int/pages/sadc-objectives> (accessed 8 November 2022).

implementation tools are the SADC Protocols, which provide the practices and procedures on the various issues the member states have agreed to be bound by. There are currently about 26 protocols in place, including those that have not yet entered into force.¹⁰⁶¹ Examples of protocols include protocols against corruption, energy, extradition, health, etc. For this thesis, we are interested mainly in the protocols that relate to or are connected to finance, particularly the protocols on finance and investment.¹⁰⁶²

It appears that these protocols depend on the achievement of the Monetary Union to be effective. In the Regional Indicative Strategic Developmental Plan (RISDP),¹⁰⁶³ the Monetary Union was established around 2016 after selecting the free trade area and a customs union. These milestones have been delayed considerably for various reasons, so the dates for the monetary union have been shifted forward to dates yet to be established.¹⁰⁶⁴

The plans for the Union are strongly supported by the SADC Committee of Central Bank Governors (CCBG)—the leading force among central banks in the region. In general, the work of this committee is to enhance regional and monetary cooperation, clearing and settlement

¹⁰⁶¹ Ibid. These protocols were not set up at once but were instituted at various stages as SADC was evolving: Protocol on the Treaty Establishing SADC on Immunities and Privileges (1992), Protocol on Energy (1996), Protocol against Combating Illicit Drug Trafficking (1996), Protocol on Education and Training (1997), Protocol on Mining (1997), Protocol on the Development of Tourism (1998), Protocol on Wildlife Conservation and Law Enforcement (1999), Protocol on Health (1999), Revised protocol on shared Water Courses (2000), Agreement Amending the Protocol on Trade (2000), Protocol on Legal Affairs (2000), Protocol Against Corruption (2001), Protocol on Control of Fire Arms Ammunition and other Materials (2001), Protocol on Politics, Defence and Security (2001), Protocol on Extradition (2002), Protocol on Forestry (2002), Protocol on Mutual Legal Assistance in Criminal Matters (2002), Protocol on Finance and Investment (2006), Protocol on Fisheries (2006), Protocol on Gender and Development (2008), Protocol on Science, Technology and Innovation (2008), Protocol on Trade Services (2012), Protocol on the Tribunal and Rules Thereof (2000), Revised Protocol on Shared Water Courses (2000). Southern African Development Community (SADC) “SADC Protocols” <https://www.sadc.int/pages/sadc-protocols> (accessed 23 June 2023).

¹⁰⁶² Southern African Development Community (SADC) “Protocol on Finance and Investment” <https://www.sadc.int/document/protocol-finance-and-and-investment-2006> (accessed 23 June 2023). The SADC Protocol on Finance and Investment’s main aim is to foster harmonisation of the financial and investment policies of member states. This is to ensure that where one country makes changes to its financial and investment policies, they do not impact negatively on the other member countries. It appears that at the time of writing the protocol was still being assessed in terms of its relevance in Industrialisation and deeper regional integration. See Senior officials from the SADC discuss the Finance and Investment Protocol in the Southern African Development Community (SADC).

¹⁰⁶³ Southern African Development Community (SADC) Regional Indicative Strategic Development Plan (RISDP 2020-2030), Gaborone, Botswana, 2020. The SADC Regional Indicative Strategic Development Plan (RISDP 2020-2030) and SADC Vision 2050 are two strategic plans that seek to deepen integration in the Southern African region by further integration and development. These two strategic plans were approved by the 40th Ordinary SADC Summit in Maputo, Mozambique, in 2020. See SADC: Regional Indicative Strategic Development Plan 2020-2030. Southern African Development Community (SADC) “Regional Indicative Strategic Development Plan 2020–2030” <https://www.sadc.int/pillars/regional-indicative-strategic-development-plan-2020-2030> (accessed 21 June 2023).

¹⁰⁶⁴ Ibid.

systems as well as to bring together the legal and operational frameworks for central banks, which includes introducing and enhancing best banking practices.¹⁰⁶⁵

Despite the delays in implementing the SADC Monetary Union, various other union areas are being worked on to bring them up to speed. These areas include the operationalisation of the payment clearing and settlement systems. Twelve SADC member states have implemented the Real-Time Gross Settlement (RTGS)¹⁰⁶⁶ system so far. It is clear from the style of the words and methods used in the SADC Model Law document that there are many similarities with the various sections and rules of the Basel Accords. For example, it can be argued that the emphasis on “relationships with banks and other financial institutions”¹⁰⁶⁷ is the hallmark of Principles 1 to 13 found in the “Core Principles for Effective Banking Supervision”.¹⁰⁶⁸

The following area of examination concerns implementing best banking practices, norms, and standards to harmonise banking supervision processes. Again, this is almost identical to the Basel Accord style. The idea is eerily close to the requirements of the Accords, especially considering that Mr Zeidy has been recently quoted as saying that “[T]he enhanced

¹⁰⁶⁵ To facilitate the implementation of the Protocol on Finance and Investment, SADC assembled two groups. The first group was the Committee of Central Bank Governors (CCBG) in 1995, followed shortly by the establishment of the Banking Association in 1998. The CCBG is a specialised body that assists in facilitating close cooperation between central bank member states. The bank governors of each member state are responsible for promoting the development of financial institutions and markets through cooperation and consensus on financial investment and foreign exchange policies. See Southern African Development Community (SADC) “Banking” <https://www.sadc.int/pillars/banking> (accessed 21 June 2023). For the Terms of Reference for the CCBG see Committee of Central Bank Governors “Bankers Terms of Reference for the Committee of Governors of Central Banks in SADC” <https://www.sadcbankers.org/Lists/News%20and%20Publications/Attachments/3/Terms%20of%20reference.pdf> (accessed 23 June 2023).

¹⁰⁶⁶ The Southern Africa Development Community Real Time Gross Settlement (SADC-RTGS) System according to the Bank of Zambia (BoZ) is an automated interbank settlement system that settles payment commitments between member banks in all SADC countries in real-time. For example, Zambia has been using the system since September 2014. Payments are currently settled in South African rands (ZAR) with plans to introduce more regional currencies to the system soon. The system was created to facilitate cash transfers for cross-border payments in the SADC area, hence promoting commerce and investment. This system is available to all businesses and people to make and receive payments to and from commercial partners within the SADC region. The transactions are completed in real-time, which means that the funds are delivered to the counterparty quickly and without delay. See Bank of Zambia (BoZ) “The Southern Africa Development Community Real Time Gross Settlement (SADC-RTGS) System” https://www.boz.zm/sadc_rtgs_system.pdf (accessed. 15 June 2023).

¹⁰⁶⁷ SADC Central Bank Model Law 2011 explanatory guide 66-67.

¹⁰⁶⁸ n 83. These principles fall under the main head of Supervisory Powers Responsibilities and Functions. Under this main head, there are 13 subheads. For example, Principle 1 covers responsibilities objectives and powers. Principle 2 covers independence, accountability, resourcing and legal protection for supervisors. Principle 3 covers cooperation and collaboration. Principle 4 covers permissible activities. Principle 5 covers licensing criteria. Principle 6 covers the transfer of significant ownership. Principle 7 covers major acquisitions. Principle 8 covers the supervisory approach. Principle 9 covers supervisory techniques and tools. Principle 10 speaks to supervisory reporting. Principle 11 covers the corrective and sanctioning powers of supervisors. Penultimately Principle 12 covers consolidated supervision. Lastly, Principle 13 covers home-host relationships. See Appendix 1 for a comparison.

implementation of Basel II will speed up the achievement of enhanced financial integration in the COMESA region.”¹⁰⁶⁹ One problem that arises from this is that some countries have already implemented the Western form of the Basel Accords to an advanced level. The concern is how these more advanced countries will adjust their regulations when the other countries fully implement these rules. Do more developed countries revert to the softer requirements or remain advanced, to their disadvantage? This is yet to be seen, as there is no indication of the way forward in the document.

The last policy introduced was the development of the institutional and legal framework. This began as early as 2009 when the Model Central Bank Law¹⁰⁷⁰ was introduced to harmonise exchange control policies and bank procedures.

Once again, the similarities with the Basel Capital Accords are unmistakable. Despite being implemented in 2019, the Model Central Bank Law lies prostrate, awaiting an opportunity to become active. Given that many African countries adopted the Western form of the Basel Accord first could imply that it was more appropriate at the time. The African clone was overshadowed for reasons that will become clear shortly. Why else would countries take on the Western model of bank regulation? From the preceding statements, the usual problem that afflicts African development is a lack of human resource capacity and, most importantly, funding. Allison summarises this very well when he talks about the challenges of the AU:

*“[It] operates under massive constraints which greatly limit the scope of its ability (if not its ambition, so often couched in the lofty rhetoric of Pan-Africanism). Firstly, it faces an immense financial challenge.”*¹⁰⁷¹

While the reference is made to the AU, it is submitted that the statement can equally be applied to most, if not all, African regional institutions, as they are all short of independent financing to move forward with their development policies and projects.

¹⁰⁶⁹ Common Market for Eastern and Southern Africa (COMESA) “Monetary Institute (CMI) Conducts Risk Training for Financial Sector” (2022) <https://cmi.comesa.int/cmi-conducts-risk-training-for-financial-sector/> (accessed. 8 June 2023).

¹⁰⁷⁰ n 1068, 66–67.

¹⁰⁷¹ Allison “Think Again: in Defence of the African Union” 2014 <http://issafrica.org/iss-today/think-again-in-defence-of-the-African-union> (accessed 20 November 2022).

5.4.1 SADC and the Central Bank Model Law (CBML)

The model law is the embodiment of the SADC rules, and is made up of 11 chapters which cover areas ranging from the name and objectives of the institution to the functions of the bank under Chapter I to the General Provisions in Chapter XI of the Model Law.¹⁰⁷²

From the background, the primary objective of the CCBG is to promote inter-regional cooperation with member states that will eventually lead to economic development and integration of the grouping. The CCBG's mandate is to enhance monetary policy and central bank activities in the SADC region.¹⁰⁷³ Among these will be the creation of a memorandum of understanding that will allow the harmonisation of the legal and operational framework of SADC central banks and ultimately lead to the creation of a model central bank statute that will be adopted regionally.¹⁰⁷⁴ This initiative appears not to be driven internally, as is clearly stated in the methodology of the document viz:

*“The Guide was prepared by the CBG steering committee on the legal and operational framework of SADC central banks, with the participation of legal and economic experts from all SADC central banks. The inputs were received at different stages with comments from BIS and the IMF and drafting enhancements by plain language legal draftsmen.”*¹⁰⁷⁵

This means, once again, the replication of the ideals of the Bretton Woods institution and the BCBS. Therefore, it is no surprise that the SADC training wing of the group is disseminating the Accords freely with little evaluation of their merits and the overall impact on African member economies. It is submitted that it is no surprise that the philosophy adopted by SADC is that of a market-led economy rather than a neutral approach.

An examination of Chapter VI of the Model Law, which deals with the relationship between banks and other financial institutions and appears to concentrate on reserve requirements for banks, mentions the following:

“5.1 Problem Statement

¹⁰⁷² Committee of Central Bank Governors “SADC Model Law Final Explanatory Guide” (2011) <https://www.sadcbankers.org/Lists/News%20and%20Publications/Attachments/178/Final%20Explanatory%20Guide%20English.pdf> (accessed 21 November 2022). See Appendix 3.

¹⁰⁷³ n 1068, 1.

¹⁰⁷⁴ n 1068, 2.

¹⁰⁷⁵ n 1068, 2.

SADC central banks prescribe and implement reserve requirements for banks in diverse ways.

5.2 Discussion

The central bank should be permitted, if deemed necessary, to prescribe required reserves to be maintained by each bank, whether through cash holdings by the bank or by deposits with the central bank as part of monetary policy and prudential requirements for the banks. The central bank may prescribe liquidity reserve requirements and different reserve ratios for other classes of deposits.

5.3 Proposal

The Model Law should incorporate issues related to the central bank prescribing reserves for banks (section 49 of the Model Law). ”¹⁰⁷⁶

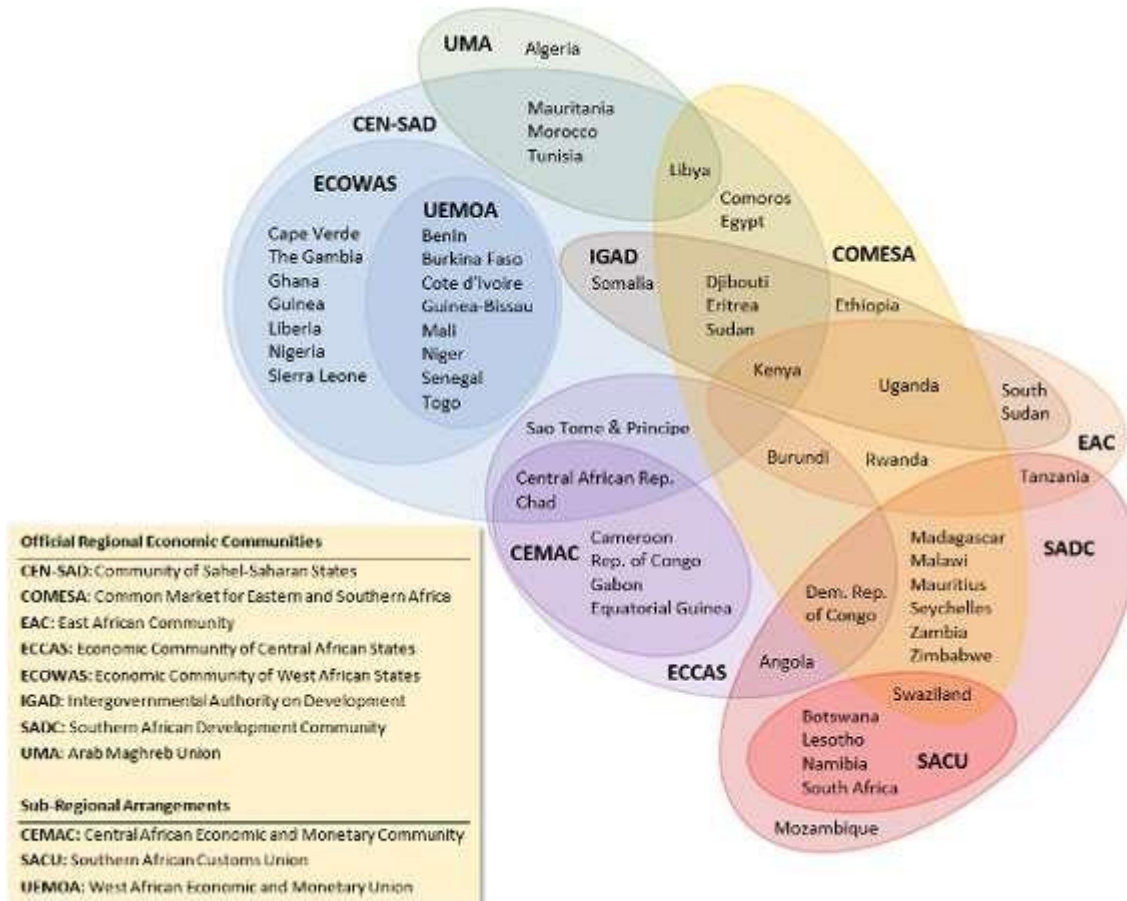
So, by interpretation, the Model Law does not necessarily rely on the Basel Accords as a yardstick to measure its relevance. It is thus submitted that there is an apparent inconsistency in this because the BIS and the IMF support SADC and COMESA in their endeavours to create regional common markets. The fact that some countries belong to both groups adds to the wastage of resources that could be used to address other pressing developmental issues that already plague these countries. This was recognised as a problem by Khandelwal, among others, when they looked at the Prospects and Challenges for Regional Trade Integration.¹⁰⁷⁷ They point out that the eastern and southern African region has multiple existing regional organisations, like COMESA, EAC, IOC, SADC, and SACU, with many countries participating in several simultaneously. For example, seven nations are members of both COMESA and SADC. Additionally, one EAC member also belongs to SADC, and two others

¹⁰⁷⁶ Section 49 of the Model Law deals with “Cash reserve requirements” for banks. Section 49: Cash reserve requirements for banks. The bank may prescribe by notice in the Government gazette and by written notice and by written notice to each bank in [name of 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 the purpose of 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 the proportion as the bank may prescribe. 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 the reserve ratio shall be uniform for all banks in the same class, but ratios may differ between different classes of banks and such prescription of, or change in the required reserve ratio shall be effective only after reasonable notice has been communicated to the banks...etc.

¹⁰⁷⁷ Khandelwal “COMESA and SADC: Prospects and Challenges for Regional Trade Integration” Working Paper IMF (2004) 4–34 <https://www.imf.org/external/pubs/ft/wp/2004/wp04227.pdf> (accessed 15 June 2023). See also Kritzingers-van Niekerk & Moreira “Regional Integration in Southern Africa: Overview of Recent Developments” World Bank Discussion Paper 2002; Iqbal & Khan (eds) *Trade Reform and Regional Integration in Africa* (1997).

are part of COMESA.¹⁰⁷⁸ These multiple memberships are reflected in Figure 7, which shows the interlinkages between African member countries and the overlapping of their memberships.

Figure 7. Overlapping regional economic communities in Africa¹⁰⁷⁹



Khandelwal points out that overlapping memberships by countries have implications in terms of administrative costs and membership fees. Added to this challenge is the element of having conflicting objectives between the different groupings, which has slowed progress in achieving the various intended outcomes of the groups.¹⁰⁸⁰ Khandelwal further admonishes the committee to resolve these conflicts quickly in order to accomplish the intended aims and objectives of

¹⁰⁷⁸ Khandelwal (n 1078) 1.

¹⁰⁷⁹ Official Regional Communities (graphic) <https://www.researchgate.net/profile/MessayGobena/publication/341279718/figure/fig1/AS:889649694244865@1589120424578/The-Spaghetti-bowl-of-overlapping-memberships-in-African-RECs.jpg> (accessed 2 May 2020).

¹⁰⁸⁰ Khandelwal (n 1078) 14.

the groupings to avoid the aims and objectives being impeded by political interference.¹⁰⁸¹ More controversially, questions should be asked about why, despite acknowledging the existing problems, countries continue to pursue the many-pronged membership approaches to achieving these milestones with the unbridled support of organisations like the IMF and the BIS. COMESA, another regional body closely related to the two organisations' objectives will be examined next. Note how closely the goals resemble one another, to the point of being almost identical.

5.5 Common Market for Eastern and Southern Africa (COMESA)

COMESA was born out of the ashes of the Preferential Trade Area (PTA)¹⁰⁸² in 1994. It was established as an organisation of free independent sovereign states that agreed to cooperate in developing their natural and human resources for the good of their people.¹⁰⁸³ COMESA has created a vast market covering almost two-thirds of the African continent, combining its 21 member states with a population of over 583 million people and a gross domestic product of 805 billion dollars.¹⁰⁸⁴

The structure of COMESA comprises the Committee of Governors of the Central Bank. The Committee of the Heads of Central Banks is the apex organ regarding economic linkages in the region and monitors the implementation of regional monetary and financial cooperation programmes.¹⁰⁸⁵ It consists of governors of the monetary authorities designated for that purpose

¹⁰⁸¹ Khandelwal (n 1078) 14–15.

¹⁰⁸² The Treaty establishing the Preferential Trade Area for Eastern and Southern Africa (PTA) was signed in December 1981, as a precursor to higher forms of regional economic cooperation and integration between Member States. The PTA was primarily funded by subscriptions paid by Member States. The PTA Treaty was signed on 21 September 1982 following ratification by more than seven signatory states as provided for in Article 50 of the treaty after which 22 states later became members including Angola, Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. The PTA was headquartered in Lusaka, Zambia. The PTA was a precursor to COMESA. See Food and Agricultural Organisation of the United States (FAO) “Appendix 2C: Preferential Trade Area of Eastern and Southern Africa” <https://www.fao.org/3/w5973e/w5973e06.htm> (accessed 8 June 2023).

¹⁰⁸³ Khandelwal (n 1078) 8.

¹⁰⁸⁴ Khandelwal (n 1078) 8–9.

¹⁰⁸⁵ Treaty Establishing The Common Market for Eastern and Southern Africa. Chapter Four. Organs of The Common Market. Article 7 Organs of the Common Market (d) the Committee of Governors of Central Banks; (undated) 28 https://www.comesa.int/wp-content/uploads/2019/02/comesa-treaty-revised-20092012_with-zaire_final.pdf (accessed 15 November 2024). See also Khandelwal (n 1078) 8–9.; Zhang “Supporting Macro Economic Convergence in African RECs” Regional Integration Policy Papers. African Development Bank (December 2012) https://www.afdb.org/fileadmin/uploads/afdb/Document/Publication/Regional_Integration_Policy_Papers_Supporting_Macroeconomic_Convergence_in_African_RECs.pdf (accessed 1 July 2023); Belle “Regional Economic Integration in SADC: Progress Prospects and Statistical Issues for Monetary Union” 85–95 <https://www.bis.org/ifc/pub/ifcb32e.pdf> (accessed 1 July 2023). The idea for the Monetary Union

by the Member States. The Committee is responsible for developing programmes and action plans in finance and economic cooperation, among other roles.¹⁰⁸⁶

The aims and objectives of the COMESA fall under Chapter 3 of the Treaty and are set out in Article 3. They include the following among the goals that they wish to attain:¹⁰⁸⁷

- a) To attain sustainable growth and development of member states by promoting a more balanced and harmonious development of its production and marketing structures.
- b) To promote joint development in all fields of economic activity and the common adoption of macro-economic policies and programmes to raise the standard of living of its people and to foster closer relations among its member states.
- c) To cooperate in the creation of an enabling environment for foreign cross-border and domestic investment, including the joint promotion of research and adoption of science and technology for development.
- d) To cooperate in the promotion of peace, security and stability among member states to enhance economic development in the region.
- e) To cooperate in strengthening the relations between the common market and the rest of the world and the adoption of common positions in international fora.
- f) To contribute towards the establishment of progress and realisation of the objectives of the African Economic Community.

These aims and objectives are general and very wide in their application and therefore focus on something other than the specific areas this thesis is interested in. As discussed below, articles 13 and 76 of the Treaty cover these in more depth.¹⁰⁸⁸ But even then, no clear writing can be identified with the regulation of banks as a subject.

was put forward in the SADC Treaty via Articles 21 and 22 and through its Finance and Development Protocol (FIP). Article 21 calls for cooperation by member states in areas like trade, industry, investment and finance, while Article 22 calls for members to not only complete protocols that support areas relating to cooperation and integration but for these countries to create relevant institutions that will assist in implementing regional integration programmes.

¹⁰⁸⁶ Khandelwal (n 1078) 8; Bell (n 1086) 85–95.

¹⁰⁸⁷ Common Market for Eastern and Southern Africa (COMESA) “Treaty Establishing the Common Market for Eastern and Southern Africa Treaty” (2012) 18 Comesa-treaty-revised-20092012_with-Zaire_final.pdf (accessed November 2022).

¹⁰⁸⁸ Ibid.

Looking at the Treaty in its entirety, the objectives agree with international standards and follow the market economy approach to increased investment, further liberalisation of the markets, reducing trade barriers, and so on.

Article 13 deals with the Committee of Central Bank Governors and its function. Article 76 covers “Monetary and Fiscal Policy Harmonisation”. It is a subheading under Chapter 10 of the Treaty, which deals with Monetary and Financial Cooperation. This article comes close to what is required but still falls short of the task, as is evident from the excerpt taken from the section of the document below:

1. The member states undertake to adopt collective policy measures through the monetary harmonisation programme, which is designed to achieve a harmonised monetary and fiscal system in the Common Market.
2. For paragraph one of this Article member states agree to:
 - (a) Remove all exchange restrictions on imports and exports within the common market.
 - (b) Make necessary adjustments to their exchange rates towards free market rates to improve their balance of payment positions and enhance the level of their international reserves.
 - (c) Adjust their fiscal policies and domestic credit to the government and the private sector designed to ensure monetary stability and the achievement of sustained economic growth.
 - (d) Liberalise their financial sector by freeing and deregulating interest rates or their equivalent to promote savings for investment and to enhance competition and efficiency in the financial system.
 - (e) To harmonise tax policies to remove distortions affecting commodity and factor movement to bring about a more efficient allocation of resources within the common market.¹⁰⁸⁹

Analysing the above Article, there is a significant gap in terms of the area of regulation of banks by the central banks of member states. Because the Treaty has adopted a market economy approach, there is little room for protective measures—particularly for the small emerging local banks. This approach may result in many countries losing their small banks to international

¹⁰⁸⁹ n 1088, 18.

competitors as seen under the mergers and acquisitions section of the thesis,¹⁰⁹⁰ leaving countries without indigenous banks to serve most of the populace.

It appears that where common market members face some impasse with institutions like the BCBS, they will not be able to lobby sufficiently on their behalf as the European Union countries can do for their members.

Once again, it appears that members are being asked to pick a particular ideology as and where their economic model does not conform to the standard required of the Common Market. This is a rather unsettling prospect. Interestingly, these sections have the hallmark of the IMF, which encourages market liberalisation as one of its central tenets. It can be safely concluded that, like its alter ego SADC, COMESA cannot mitigate any negative aspects that the Basel Accords may have on developing countries in Africa because it appears that they are also towing the line set by the BCBS.

This is evident from the fact that the COMESA Monetary Institute (CMI) held training for member countries in November 2015 to guide them on maintaining sufficient cash reserves to cover their operations.¹⁰⁹¹ The training covered Basel II and Basel III capital requirements and macro-prudential surveillance for central banks from the region. The CMI Director, Mr Zeidy, posited that with the global shift towards Basel III, it became crucial for the region to understand the rationale behind the training. The training initiative aimed to tackle implementation hurdles by determining the necessary steps for Basel II and III compliance. Mr Zeidy emphasised that improved adherence to these standards would accelerate financial integration within the COMESA region. The training provided participants with practical skills in calculating Basel I, II, and III capital requirements, credit risk-weighted assets, operational and market risk capital charges, and liquidity metrics like the LCR and NSFR.¹⁰⁹²

As alluded to earlier, the effect of competing memberships and the fact that some countries belong to more than one trade area make it difficult administratively for many of these regional groupings to move forward with their agendas for regional economic integration. Progress could be faster if these regional bodies worked independently and outside of the influences of

¹⁰⁹⁰ See ch 6 para 6.5.

¹⁰⁹¹ Common Market for Eastern and Southern Africa (COMESA) “Regional Bank Staff Trained to Prevent Institutional Failures” 12 November 2021 <https://www.comesa.int/training-staff-to-forestall-banks-failures/> (accessed 20 September 2022).

¹⁰⁹² Ibid.

organisations like the IMF and the BCBS. Their plans are closely linked to the development agendas of these regional groupings whose findings appear to be the mainstay of the regional systems.¹⁰⁹³ This assertion has been confirmed by the COMESA Monetary Institute,¹⁰⁹⁴ which unequivocally states that the Basel Accords are a cornerstone of the COMESA Monetary Co-operation Programme.¹⁰⁹⁵ In the author's view, coordination means organisations are working together at the same level. To be critical, this seems not to be the case in this instance, because the IMF, BIS and the BCBS are much stronger and therefore more able to influence policy outcomes easily, especially where they are providing funding and consulting services.

5.6 The protection offered by regional organisational groupings

This section of the thesis seeks to evaluate whether the regional bodies looked at above protect their member states against adverse external rules. For example, does the regional body provide any incentives or protection to members where they suffer potentially harmful consequences due to damaging policies introduced by international organisations? It also attempts to gauge whether regional bodies provide procedures and buffers to protect the weaker industries within the regions where they operate against competition from the larger, more developed Western competitors. Already, it is a notorious fact that Zambia has suffered due to trade in second-hand goods. The clothing and automotive industries have been extinguished because they cannot compete against these cheaper, dumped goods.¹⁰⁹⁶

5.7 Are regulators biased in implementing their rules?

The American system is no different. Véron shows that the Federal Reserve Bank of America (the Fed) has introduced new rules that breach the Basel III Accord by loosening some of its capital-to-asset ratio requirements for American banks.¹⁰⁹⁷ This involved, among others, a

¹⁰⁹³ n 1092.

¹⁰⁹⁴ The COMESA Monetary Institute (CMI) was established in 2011. Its main mandate was to grow the COMESA Monetary Cooperation Programme. The Institute has undertaken several programmes to enhance capacity building and research activities all aimed at improving the macroeconomic management and financial stability of member states in the Sub-Saharan region. See Common Market for Eastern and Southern Africa (COMESA) "COMESA Court of Justice" <https://comesacourt.org/comesa-monetary-institute/> (accessed 8 June 2023).

¹⁰⁹⁵ Ibid.

¹⁰⁹⁶ Bradley *Textile Visionaries: Innovation and Sustainability in Textile Design* (2013); Andre *Determination of South African Exports: Critical Policy Implications* (2005).

¹⁰⁹⁷ Veron "Is the United States Reneging on International Financial Standards?" (16 April 2020) <https://www.bruegel.org/2020/04/is-the-united-states-reneging-on-international-financial-standards/> (accessed 20 November 2022).

temporary change to a regulatory condition known as “the Supplementary Leverage Ratio,”¹⁰⁹⁸ which exempted all banks holding United States sovereign debt and deposits at the Fed from the asset total in the ratio calculations, which lasted until the end of Quarter 1, of 2021.¹⁰⁹⁹ The impact of these exemptions was to technically reduce the denominator and thus make it easier for banks to meet their minimum ratio requirements during this period but at the cost of deviating from the internationally agreed definition of what the leverage ratio should consist of.¹¹⁰⁰ Véron further points to other instances where the United States reneged on its Basel obligations before the 2007–2008 GFC despite insisting that other countries apply the accords almost verbatim to their economic sectors. They were averse to adopting provisions of the Basel II Accord for prudential reasons.¹¹⁰¹ But how does the above statement, which initially seems unrelated, fit in?

Given the above, it is apparent that the way the various regional bodies are handling the Basel Accords is different. There is no indication that the Accords are merely guidelines and are treated as such. Developing countries are forced to conform to the rules. For example, Basel III has been legislated in Zambia, meaning it no longer remains a soft law. The economies of developing countries have been stagnant and in recession for decades, but the Basel rules have continued to be implemented without any reprieve. Small local banks need support but instead are asked to increase their capital requirements even further, exacerbating their already weak positions—even at the cost of becoming insolvent. SADC and COMESA¹¹⁰² both appear to remain silent on these matters and do not offer continent-specific solutions, support or dialogue on applying the Accords to a third-world setting. So, effectively, it is submitted that these regional bodies have failed their members. Especially when compared to Western countries and groupings like the European Union.

¹⁰⁹⁸ The SLR is a capital measure used by US banks. It measures a bank’s Tier 1 capital relative to its total leverage exposure. The measure includes on-balance-sheet assets (including Treasuries and deposits at Federal Reserve Banks) and certain off-balance-sheet exposures. The Supplementary Leverage Ratio applies to depository institutions subsidiaries of US globally systemically important bank holding companies as well as to deposit institutions, particularly those institutions subject to Category II or Category III capital standards. See Office of the Controller of Currency “OCC Supplementary Leverage Ratio: Interim Final Rule” <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-52.html> (accessed 10 June 2023).

¹⁰⁹⁹ Veron (n 1098).

¹¹⁰⁰ Veron (n 1098).

¹¹⁰¹ Veron (n 1098).

¹¹⁰² See ch 5 para 5.1–5.7.

In his paper on European Union implementation in the shadow of the Euro Crisis,¹¹⁰³ Atik gives insights into how the European Union supports its members in a crisis.¹¹⁰⁴ As a case in point, Atik was examining the reaction of the ECB¹¹⁰⁵ to the Euro Crisis and the implementation of the Basel III Accord. While the European Union and Europe were among the originators of the Basel Accords and had already implemented Basel I and II almost seamlessly. When it came to introducing Basel III, the European Bank decided to take a different path to protect its members. The European Union resisted a Basel III result and elected a course of non-implementation described as “Basel *a la carte*,”¹¹⁰⁶ or picking a regulation according to what one desired, like what one would do with a restaurant menu. Additionally, the EU argued that banking regulation should have “a European character and reflect the realities of European politics.”¹¹⁰⁷

We do not see these African regional bodies requesting this type of flexibility to determine their affairs. Further in their defence, it proclaims that all Basel participants, including the European Union, enjoy considerable latitude in the manner and means of their implementation and that Basel rules serve as guides to national performance, the form of national implementation—whether by statute-regulation guidelines—is left to national discretion.¹¹⁰⁸ They argue further that while they could participate in Basel I and Basel II, the European Union could not do so entirely with Basel III, mainly due to politics that result from the power at each level of the law-making game. The main sticking point was financial conglomerates comprising part bank and part insurance company—otherwise known as “bank assurance companies.”¹¹⁰⁹

The United States and some other Basel participants have been accused of looseness in how they selectively implemented the Accords, keeping what they liked while ignoring different rules. The European Union central bank found it was necessary to water down some of the

¹¹⁰³ The Eurozone Debt Crisis was a period of economic uncertainty in the Eurozone countries beginning in 2009 triggered by high levels of public debt, particularly in the countries that were grouped under the acronym “PIIGS” (Portugal, Ireland, Italy, Greece and Spain). See Ray “*Euro-zone debt crisis*” 2023 <https://www.britannica.com/topic/euro-zone-debt-crisis> (accessed 8 June 2023).

¹¹⁰⁴ Atik “*EU Implementation of Basel III in the Shadow of Euro Crisis*” 2014 *Review of Banking and Financial Law* 287–345.

¹¹⁰⁵ Ibid.

¹¹⁰⁶ Atik (n 1105) 326.

¹¹⁰⁷ Atik (n 1105) 297–345.

¹¹⁰⁸ Atik (n 1105) 292.

¹¹⁰⁹ Atik (n 1105) 297–345.

Basel rules under the recent adverse political and economic climate that pervaded Europe due to the GFC. It thus decided that it was not a good idea to follow the rules of the Basel III Accord strictly—as to do so would be detrimental to major European Union businesses,¹¹¹⁰ mainly two of its big companies—like Société Générale, Credit Agricole¹¹¹¹ and similar firms that fell under the ambit of the bancassurance sector.¹¹¹²

The argument may be that this is a one-off due to the European Financial Crisis¹¹¹³, also called the Eurozone Crisis. But the fact remains that the West can manipulate the system to save businesses deemed sacred cows. But when African and developing countries are expected to take the full brunt of the impact of a financial crisis without any semblance of being able to relax the rules, they appear to be biased and inequitable, even to the most short-sighted person. This is especially so given that African economies are far weaker than developed economies, giving themselves regulatory breaks when they go through difficult economic times. It is submitted that a foolproof system should be flexible enough to work well during regular times and in a crisis. The rules should protect the members when times get hard and not result in them

¹¹¹⁰ Atik (n 1105) 325.

¹¹¹¹ Société Générale Group (or SocGen as it is sometimes called) is an investment bank founded in 1864 and headquartered in Paris, France. The firm focuses on capital markets, securities, underwriting, mergers and acquisitions, derivatives, and trading services. The firm also provides clearing, settlement, and custodial services. The firm caters to clients in sectors such as financial institutions, oil and gas, utilities, sports and gaming, media and telecom, aerospace and defence, and multinational corporations <https://pitchbook.com/profiles/advisor/55486-72#overview> (accessed 10 June 2023).

Crédit Agricole is a banking group based in France. It was founded in 1894 and the bank provides a wide array of services such as debt financing facilities such as revolving credit lines for the purpose of buyouts, corporate, debt refinancing, initial public offerings, later-stage venture capital, expansion, mergers and acquisitions, and secondary transaction –open market to small and middle-market companies. See Société Générale Group <https://pitchbook.com/profiles/advisor/55486-72#overview> (accessed 10 June 2023).

¹¹¹² Ibid. “Bancassurance is one of the most important collaboration models within the European financial service sector. The regulations that led to a distinct separation between banking and insurance have been relaxed in many countries during the last decades, leading to a more integrated financial sector in the European Union. For banks, additional revenue from selling insurance policies is significant in the current low-interest environment. In contrast, banks are a major distribution channel for insurance companies in some European countries, accounting for around 50% of all life insurance sales in 2017”. See Rauch “Bancassurance in the European Financial Sector: A Cross-Country Analysis” 2020 *International Journal of Managerial Studies and Research* 1–14; Altuntas *et al.* “Does One Size Fit All? Determinants of Insurer Capital Structure around the Globe” 2015 *Journal of Banking & Finance* 251–271.

¹¹¹³ The eurozone crisis was a result of fundamental flaws in the design of the European Monetary Union. The diverse economies within the eurozone, ranging from Germany to Greece, were not optimally suited for a single currency. This lack of economic homogeneity made them vulnerable to disparate economic shocks, which the single monetary policy and the absence of a fiscal union could not adequately address. Additionally, the perception of implicit guarantees for member states’ debts led to artificially low interest rates, encouraging excessive borrowing and unsustainable public spending. These factors combined to create a perfect storm, ultimately leading to the eurozone crisis. See Menzie *et al.* “The Eurozone in crisis: Origins and prospects” La Follette Policy Report (2012) 1–5.

having to water down the requirements to avoid the compliance bottlenecks imposed by the Accords.

5.8 Conclusion

To conclude this chapter, it is only trite to go back to the theme of the thesis as a means of stitching the patchwork of arguments together. To reiterate, the basis of the thesis centres around the small indigenous banks and the fact that they appear not to be given any preferential treatment and support by multilateral organisations like the BCBS and IMF. This is submitted despite small banks' structural uniqueness (i.e. small bank structures are delicate and vulnerable to large negative shifts in an economy) and economic importance in the financial development network of a developing country. It is further submitted that these small banks normally tend to cater to many citizens who fall outside of the corporate banking arena, that large corporate banks deem unbankable. These banks thus make available basic financial services at affordable costs to the disadvantaged and low-income segments of society, enhancing financial inclusion.¹¹¹⁴

These regional groupings also appear to have adopted a neo-classical approach to development that contends that competition will cure all a financial system's problems. They also appear to have been converted to globalists as they dream of a global village. It seems that the Basel Accords have put financial institutions and their sectors in straitjackets regarding operations. As such, weaker and smaller banks have no "protection". Small, undercapitalised banks are thus expected to fold without and direct support from governments or regional and international financial organisations, as they are not strong enough to compete in a market based on the neo-classical concept of "survival of the fittest" or, in this case, the "survival of the most efficient". Removing this stratum of banks is thus paving the way for more efficient institutions, mostly from developed countries, to take their place by buying up these banks and creating a niche for themselves in countries they could not enter. Equally, as policymakers, the Western international regulators are prone to quickly reneging on the Accords as soon as their environment becomes too difficult to operate in, to protect their industries—a luxury that developing countries appear not to have. In other words, developing countries must take it on

¹¹¹⁴ World Bank "Financial Inclusion" (2018) <https://www.worldbank.org/en/topic/financialinclusion> (accessed 16 November 2024). See also Adu *et al.*, "Mobile Money Agents and the Financial Inclusion Drive of Central Bank of Nigeria" 2022 *Abuja Journal of Economics and Allied Fields* 43–59.

the chin. It is submitted from the perspective of a “reasonable man”, that it is only logical to argue that the lack of growth in small banks can be attributed to either African policymakers not being inexperienced enough at regulating their country’s financial systems at the country or regional level or, indeed, that international regulators are inadvertently giving advice that is suitable for developed country markets rather than for a developing country. It is further submitted that this may result in the creation of financial regulations that are conducive for Western business environments to thrive in, but where local African banks fail in their jurisdictions because of onerous and inappropriate regulations. It could also mean that African policymakers are seeing development through Western eyes and thus using complex Western benchmarks to measure their developmental progress. The debate is still open with no clear contender yet. As such, it would need more research to establish the correct position.

What is clear, however, is that while regional bodies struggle to implement a growth-oriented adjustment strategy aimed at getting Africa out of a myriad of problems that include: tackling several issues like reducing impediments to deeper economic integration; boosting savings and reducing poverty; making efforts to restore peace and ensuring social and political stability; improving institutions and their performance; implementing policies to achieve policy coordination; harmonising and ensuring macroeconomic convergence; building and sustaining genuine democracy; maintaining the essential political will for integration; developing mechanisms to deal with challenges of globalisation and new membership; dealing with declining import revenues, dealing with supply-side constraints such as weak infrastructures and having built-in automaticity in the schedule for liberalisation so that tariff and non-tariff barriers are lowered automatically, among many other issues. Added to this, these countries have strict regulatory targets to achieve. At the same time, their Western counterparts can safely manoeuvre any crisis by opting to use home-grown solutions to address the issue. At the same time, it is evident that some actions are to save banks and insurance businesses from failure in the West. Whereas in developing countries, businesses must comply with the laws of demand and supply, for which there is no room for saving weak businesses. And while the Western regulator calls for a level playing field, it is submitted that the field is not level but biased in the West’s favour. There should be a concerted effort to sieve out the requirements from international institutions to make the rules more adaptable and equitable to their level of development and ensure that countries are not disadvantaged by being overrun by firms from the developed West at the expense of the internal growth of the local industry of that jurisdiction. These regional bodies should rightfully be able to lobby for better conditions and extended implementation dates, including different rules for developing countries whose

weakened and skewed economies are unable to absorb a concentrated dose of the Basel Accords.

The next chapter deals with the relationship between small banks and the BCBS. The chapter will consider the role and benefits of small local banks in an economy. It will also examine the concept of banking stability and its constituents.

CHAPTER 6

SMALL BANKS AND THE BASEL ACCORDS

6.1 Introduction

The previous chapter considered the impact of regionalism and theories of integration on local banks. It looked at the two most critical regional bodies to determine how they influence regulation in member countries and what protection they provide their members, if any. Before concluding the said chapter, an attempt was made to identify any bias in the way regional bodies and the Accord regulations were implemented. Chapter 6 deals with the arguments regarding the impact of the Basel Accords on small banks in developing countries. Once again, it must be stressed that the literature in this area is scant and, in some instances, does not exist at all. Despite this dearth in information, this chapter will endeavour to elucidate the importance of the relationship between small banks in developing countries and the Basel Accords.

First, small banks in developed countries are exempt from complying with some of the requirements set by the Accords, particularly American banks. Second, several academics have espoused that small banks are the cornerstone for developing countries' agendas and allow most of the populace to be banked. Third, small banks, if well-supported, are acorns that will grow the stock of indigenous banks in a country. Despite all these positive aspects, it will, however, be shown that the Basel Accords are silent in their effects on this area of banking, namely, small local banks.

An attempt will be made to look at small banks in developed countries and compare them with those in developing countries as a means of consolidating the argument that small banks in developing countries are treated differently by the BCBS from banks in developed countries. The factors that impact the stability of banks, like competition, concentration and so forth, will also be studied. Consideration will be given to the impact of the introduction of the Basel Accords, particularly concerning the increase in mergers and acquisitions between local and foreign banks. The final part of this chapter will deliberate on ways of protecting small banks, say, for example, by using concepts like the "infant-industry" argument, as explained in more detail later.

6.2 The role of banks in economic development

Previous chapters have not analysed a bank's critical role in an economy, be it developed or developing. While the jurisprudence on this has been covered in previous chapters already,

understanding where the ideas came from and the role that the banks play in a country's economic development is essential, without which all the arguments put forward in this thesis would not make sense. From the perspective of this thesis, it is crucial to revisit the roles that banks play, so that the understanding is lucid and connected to the previous ideas that were discussed in earlier chapters.

To start with, banks are said to play an essential role in an economy because they create wealth, and development flows from this. According to Chami *et al.*,¹¹¹⁵ it is well-established in both theoretical and empirical literature that financial development is generally good for growth. It entails the wider use of existing financial instruments as well as the creation and adoption of new ones for intermediating funds and managing risk. This process occurs in several ways, such as capital formation; credit creation; channelling funds to important investment projects (that would create further growth); pooling of resources to ensure that the funds are used more efficiently; managing the money supply to manage inflation downwards and control growth as well as financing government debt, to mention some of the main methods.¹¹¹⁶

6.2.1 The importance of banks in a country's development

It is important to understand the role of banks in an economy, particularly a developing one. Funyina states that commercial banks have been at the centre of stimulating economic activity across the globe by providing credit to private or business sectors, without which the expansion of an economy is not possible.¹¹¹⁷ It also eases financing constraints and allows for the growth of companies, which in turn leads to the growth of the economy.¹¹¹⁸ Banking, therefore, is an essential and integral part of any economy, more so for developing countries' economies. Banks create and stimulate development by accumulating capital, which borrowers later use to invest in projects that eventually lead to the development of an economy.¹¹¹⁹ Thus, according to Funyina access to credit is essential for economic growth, particularly in sub-Saharan Africa,

¹¹¹⁵ Chami *et al.*, "A Framework for Financial Market Development" 2010 *Journal of Economic Policy Reform* 107–35.

¹¹¹⁶ Levine 'Finance and Growth' in Aghion & Durlauf. (eds) *Handbook of Economic Growth* (2005) 865–934.

¹¹¹⁷ Funyina "Determinants of bank credit to the Private sector in Zambia" Bank of Zambia (BoZ) Working Paper WP/2020/3 (2020) 4–29 4 https://www.boz.zm/Determinants_of_Bank_Credit (accessed 29 November 2024); Beck *et al.* "Bank Competition and Access to Finance: International Evidence" 2004 *Journal of Money, Credit, and Banking* 627–648.

¹¹¹⁸ Beck (n 1118) 627–648. See in the same paper Mishkin *The Economics of Money and Financial Markets* (2007).

¹¹¹⁹ Funyina (n 1118) 4.

where many nations are navigating post-transition development. Bank loans, which fuel private sector growth, significantly impact economic stability. While increased domestic credit can stimulate economic expansion by directing savings into investments, it raises concerns about financial risks. This rapid credit expansion might lead to higher non-performing loans, systemic instability, and weakened bank solvency.¹¹²⁰

This idea is backed up further by work done by Montfort of the IMF on promoting inclusive and sustainable growth in sub-Saharan Africa.¹¹²¹ Chapter 7 of the thesis will attempt to show further that developing countries like Zambia, are underbanked, meaning that a significant portion of the country's population cannot access basic financial products in the traditional financial markets because of conservative banking practices by the majority of foreign banks in this market—thus impacting development negatively.

While the financial horizon is changing rapidly due to the impact of cell-phone banking in Zambia as well as in Africa as a whole, current statistics still reflect a deficit in terms of the estimated banking population.¹¹²² For example, a Zambian parliamentary submission on financial inclusion *vis-à-vis* the use of digital platforms in Zambia concluded that there is an average of 75 mobile money agents¹¹²³ per 100,000 adults. It also showed that 13 predominant rural districts, including Masaiti, Mpolokoso, and Kalabo, have fewer than 20 agents per 100,000 people. This reveals that for these 13 districts with an estimated population of about 1.4 million people, 93 per cent of them have never used mobile money at all,¹¹²⁴ one has access

¹¹²⁰ Funyina (n 1118) 4.

¹¹²¹ Mlachila *et al.* “Financial Development in Sub-Saharan Africa: Promoting Inclusive and Sustainable Growth” International Monetary Fund (IMF) African Department (2016) 1–57 <https://www.imf.org/external/pubs/ft/dp/2016/afr1605.pdf> (accessed 18 August 2023).

¹¹²² Aron “Mobile Money and the Economy: A Review of the Evidence” 2018 *World Bank Research Observer* 135–188.

¹¹²³ GSMA “Mobile Money for the Unbanked: Mobile Money Definitions” (July 2010) <https://www.gsma.com/solutions-and-impact/connectivity-for-good/mobile-for-development/wp-content/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf> (accessed 16 November 2024). A mobile money agent is an individual or business that provides services to mobile money users. The services typically include cash-in and cash-out, allowing users to deposit and withdraw money from their mobile money accounts. Agents often also register new customers and provide customer support, such as teaching users how to make transactions. Agents may be small-scale traders, microfinance institutions, chain stores, or bank branches, depending on local regulations. Some in the industry prefer terms like “merchant” or “retailer” to avoid legal implications associated with the term “agent.” In Zambia, these Agents are supported by Cell phone companies like Airtel, MTN and ZAMTEL.

¹¹²⁴ Cuts International “Parliamentary Submission: Financial Inclusion *vis-à-vis* the Use of Digital Payment Platforms in Zambia” (January 2020) 4 <https://cuts-lusaka.org/pdf/policy-brief-financial-inclusion-vis-a-vis-the-use-of-digital-payment-platforms-in-Zambia.pdf> (accessed 9 September 2023).

to formal banking services of any kind. The report thus rightly concludes that there is an enormous gap that needs to be filled to realise deeper financial inclusion for the masses.¹¹²⁵

Contrary to the trend that large banks normally avoid small businesses, the large foreign banks in Zambia appear to be changing their business focus and have slowly started funding this area of banking business over the last two decades¹¹²⁶ and thus are no longer merely agents of their flag-carrying businesses whose key objectives were not to bank or uplift the indigent populace, but to service and grow these particular foreign businesses in host countries. To support these bold assertions that foreign banks are averse to banking the majority of the local population it is trite to turn to the seminal work of authors like Brownbridge points out that the financial system in pre-independent Zambia in the mid-1960s was dominated largely by foreign commercial banks like Barclays, Standard Bank of South Africa and other smaller banks, mainly serving the credit needs of foreign and expatriate communities and businesses.¹¹²⁷ This status quo appears to have changed little from pre-independence days. It is submitted that the transition to a state where banking is universally available for all, is slow to emerge and banking for the local people is still seen as more of a goodwill gesture than anything else in Africa and many other developing countries including Zambia. For Zambia, there was clear evidence for this observation from independence right up to the 1980s, according to Maimbo, when foreign banks were justly accused of failing to lend to local communities and businesses.¹¹²⁸ To show that these assertions are not mere diatribes but have a sound and genuine basis, Maimbo took time to look at media reports concerning the same. For instance, in 1972 alone, Maimbo's paper indicates that there were several complaints in the press by Zambians about being unable to access funds from the majority of foreign commercial banks.¹¹²⁹ The situation was so serious that the President at the time, Kenneth Kaunda, had to intervene by providing alternative financial institutions for Zambians to access financing from, despite assurances from foreign

¹¹²⁵ Goldenburg & Ogba "Leveraging Data to Support the Expansion of Agent Networks in Rural Areas of Zambia" <https://uncdf.org/article/3377/leveraging-data-support-the-expansion-of-agent-networks-in-rural-areas-of-zambia#fn1> (accessed 9 September 2023).

¹¹²⁶ Standard Chartered Bank, First National Bank, Zambia National Commercial Bank and ABSA Bank all have SME funding. Some of these are given on the back of US government loan guarantees. See Government of the United States Embassy "Standard Chartered Bank, First National Bank, Zambia National Commercial Bank, ABSA Bank, all have SME funding" <https://zm.usembassy.gov/usaiddfc-loan-guarantee/> (accessed 9 September 2023).

¹¹²⁷ Brownbridge "Financial Policies and the Banking System in Zambia Summary" 1–26 <https://www.ids.ac.uk/download.php?file=files/Wp32.pdf> (accessed 9 September 2023).

¹¹²⁸ Maimbo (n 12) 11–63.

¹¹²⁹ Maimbo (n 12) 15–17.

banks that they were becoming more approachable.¹¹³⁰ It can be argued that the report that Maimbo based his arguments on is outdated. However, when one considers reports by the World Bank author de Luna Martinez,¹¹³¹ almost 30 years later, it becomes clear that the arguments above are a genuine cause for concern. Martinez points out that even though Zambia implemented significant financial reforms in the early 1990s as part of its structural adjustment programme under the IMF, the anticipated benefits of a market-driven banking system have not yet been fully realised. In fact, by 2005, the banking sector remained small and underdeveloped, with bank credit to the private sector only slightly lower than its 1990 level. Similarly, credit access was largely limited to large corporations and a small number of SMEs in 2006. Additionally, only a small fraction of the adult population had bank accounts in 2005. Furthermore, despite long-standing policies encouraging foreign bank participation, these institutions introduced few new financial products to cater to the needs of local individuals and businesses.¹¹³²

It is the author's view that these incidents call for a country to have its own local banks at whatever level to serve the interests of the specific local communities, without which genuine development is unlikely to occur. But with the inception of the Basel Accords, it appears that the capital rules introduced by the Accords are likely to continue this trend of domination by foreign banks, because, as we will see in the thesis, small banks may be killed off and replaced with efficient foreign international banks. Small banks are vulnerable and often viewed as being inefficient and undercapitalised in favour of the more well-capitalised foreign banks.

Further, due to constraints and disequilibria in many African economies, it is difficult for local entrepreneurs to obtain finance to incubate new indigenous banks or to recapitalise weaker ones where the need arises.

6.2.2 *Benefits of small local banks*

The term "small" is relative when considering banks. This idea will be expanded in later chapters when bank classification is considered. The bottom line is that what is deemed small in terms of capital in a developed country like the United States or indeed other Western

¹¹³⁰ Maimbo (n 12) 15–17.

¹¹³¹ de Luna Martinez "Access to Financial Services in Zambia" Working Paper "World Bank Policy Research (2006) 5. *Erratum* Note that the author Martinez refers to 30 core principles when there are only 29 (November 2006).

¹¹³² Ibid.

countries may be deemed to be a large bank in a developing country like Zambia. However, whichever way small banks are defined, the work will attempt to examine their importance in an economy.

6.2.3 Wider outreach of small local banks

First and foremost, local banks tend to operate in areas where the bigger banks cannot set up shop due to low returns on investment. This is usually in outlying or remote and inaccessible regions far away from the commercial hubs of a country. As a result, they provide services where the large banks find it uneconomical to do so.¹¹³³

6.2.4 Provision of tailor-made services

The products on offer by a particular bank may be tailor-made to the area of the community. For example, when there were still many multinational conglomerates and sovereigns domiciled in Zambia, foreign banks refused to deal with the small and medium enterprise (SME) sector,¹¹³⁴ viewing them as not only being too risky to service but also unprofitable. Local indigenous banks normally provide tailor-made services for this group of businesses.¹¹³⁵ However, as multinational corporations (MNCs) relocated their headquarters to South Africa and Europe after the fall of Apartheid, they had to look inward to find business

¹¹³³ de Luna Martinez (n 1132) 10.

¹¹³⁴ The Act that regulates SMEs in Zambia is the Small Enterprises Development Act Chapter 425 of the Laws of Zambia. The Act in Part 1 Section 2 says that a micro-enterprise “means any business enterprise: whose amount of total investment, excluding land and buildings does not exceed 10 million Kwacha (after the currency was about 10 000 Kwacha at today’s value) and whose annual turnover does not exceed twenty million Kwacha (or twenty thousand Kwacha) employing up to 10 persons”.

The OECD, meanwhile, classifies SMEs according to the number of people that it employs. For example, the most common number of people that are employed in a Small and medium-sized enterprise is 250 people. From this SMEs are further subdivided into micro enterprises (fewer than 10 employees), small enterprises (10 to 49 employees) Medium sized enterprises (50 to 249 employees) while large enterprises employ 250 or more people. See Organisation for Economic Co-operation and Development (OECD) “Enterprises by Business Size” <https://data.oecd.org/entrepreneur/enterprises-by-business-size.htm> (accessed 30 September 2023).

¹¹³⁵ International Labour Organisation (ILO) “Rural Development Through Decent Work: Empowering Rural Communities Through Financial Inclusion” https://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_159004.pdf (accessed 11 October 2023); Bhila *SMS Banking Creating a Competitive Advantage to Privately Owned Indigenous Commercial Banks in Zimbabwe Despite Eco Cash Transactions* (2018). This article tends to counter the arguments above that small banks provide finance to small businesses in the US. See Berger *et al.* “Do Small Businesses Still Prefer Community Banks?” Board of Governors of the Federal Reserve System. International Finance Discussion Papers (2013). However, the author of the thesis believes that the difference lies in the fact that larger banks in America can offer services to the small US because they are more robust and better managed than SMEs in developing countries. Herein may lie the difference between the two systems.

opportunities.¹¹³⁶ According to Hansen, firms that had manufactured locally pulled out at the height of Zambia's economic woes in the late 1980s, just before Zambia became a market economy in 1991. The businesses that suspended operations entirely included Dunlop Tyres, Colgate-Palmolive, Johnson & Johnson, and Lyons Brooke Bond, as well as many other foreign MNCs.¹¹³⁷

Foreign banks registered in Zambia were thus left with fewer large international corporate clients to service. To keep their profits healthy, these large banks were forced to enter the SME market, which had previously been a local bank stronghold. For example, a perusal of many of the large foreign banks' online profiles now shows that they have an SME desk to cater to these clients. This includes ZANACO, FNB, Access Bank Plc, Absa Bank, and Stanbic Bank, to name some of the big banks.¹¹³⁸ But despite doing this, their focus appears to be of a short-term nature rather than one that captures the life value of SME Accounts. The evidence for this is reflected in the fact that these big banks need external support and are not willing to provide

¹¹³⁶ While it appears that there are no academic references available to support the assertions made about the flight of the MNC companies to South Africa. This article taken from the Zambia Daily Mail gives a good example of how MNCs moved from Zambia to South Africa. The journalist Kelly Njombo reported that "Zambia's vast business opportunities and investor confidence has attracted Sumitomo Rubber South Africa (Pty) Limited to set up four retail and fitment centres in Lusaka at a cost of about US\$2 million to bridge the gap of tyres in the country. SRSA (Pty) Ltd, which is Dunlop brand owners, has partnered with Auto Tyre Worldwide Limited (ATWL) to invest in a retail and fitment centres to start the distribution of the brand in Zambia. SRSA chief executive officer Riaz Haffeejee said in an interview recently, that the company has decided to take advantage of the Zambian market because of its potential to develop various business opportunities. Haffeejees said the firm which is committed to contributing to economic development in Zambia, has so far created 30 direct jobs for the locals. We decided to figure out how we could bring back Dunlop to the Zambian market which had the potential and demand for our various products and services..." Njombo "SA Firm to Set Up Fitment Centre" *Zambia Daily Mail* (15 April 2016 <http://www.daily.mail.co.zm/sa-firm-to-set-up-fitment-centre/#> (accessed 30 September 2023)).

¹¹³⁷ Tranberg Hansen *et al.*, (eds) *Reconsidering Informality Perspectives from Urban Africa* (2004); Times of Zambia The "Zambia: 190 Lose Jobs as Dunlop Zambia Shuts Down" (5 September 1997) <https://allafrica.com/stories/199709050007.html> (accessed 30 September 2023): 190 lose jobs as Dunlop Zambia shuts down. Where it was reported in press that "More than 190 workers at Dunlop Zambia have been laid off after being sent on forced leave in April as the company closes because of the poor economic environment. Dunlop management confirmed the closure which is with immediate effect. 'Due to changes in the Zambian economic environment in recent years, manufacturing has become less viable, and it is therefore with deep regret that we announce that it has been decided to cease production at our Ndola plant immediately,' a statement from Dunlop said."

¹¹³⁸ See the following sites that confirm this position Zanaco *Annual Report 2021* https://luse.co.zm/wp-content/uploads/2022/06/Zanaco-annual-report-2021_pdf (accessed 30 September 2023); FNB Business SME Account <https://www.fnbzambia.co.zm/for=my-buisness/accounts/smeAccount.html> (accessed 30 September 2023); Access Bank has an SME zone advertise, see <https://www.accessbankplc.com/business> (accessed 30 September 2023); Zambia Business Times "ABSA Partners with ZDA to Facilitate SME Financing" <https://zambiabusinessetimes.com/absa-patrners-with-zda-to-facilitate-sme-fincing> (accessed 30 September 2023); Stanbic Bank "Annual Report 2022" (2022) https://www.stanbicbank.co.zm/staticfile/Zambia/filedownloads/SBZ_annualReport_2022.pdf (accessed 30 September 2023).

resources from their reserves. Large banks have had to access funds from the American government to provide funding to the SME sector.¹¹³⁹

The apparent aversion to small businesses thus appears to be consistent with how large foreign banks operate in developed countries. For example, research done by the University of Zambia and the Zambia Institute for Policy Analysis and Research in 2013 points out that SMEs in Zambia struggle to secure financial services, particularly working capital. The report indicates that almost half (49 per cent) of the SMEs viewed a lack of access to credit as impeding their business operations.¹¹⁴⁰ Despite this apparent aversion to SMEs, large banks in Zambia are being forced to be more responsive to funding SMEs as clients for three major reasons.

First, banking has become more competitive as a business. Second, recognition of the contribution that SMEs make to the economy in terms of jobs, growth, and innovations to a country's economy. Third, technological change is removing some of the cost impediments to banking large numbers of SME customers.¹¹⁴¹ Not surprisingly, the same can be said about large American banks operating within the United States, at least from what research shows. For example, Federal Deposit Insurance Corporation data¹¹⁴² for the third quarter of 2009 suggests that out of the 20 largest United States banks, which were estimated to command about 57 per cent of all assets, these large banks only lent out a paltry 18 per cent of their commercial

¹¹³⁹ A USD20 million loan guarantee programme was launched in June 2022 in collaboration with the Zambian Government to fund SMEs by the USAID and US International Development Finance Corporation (DFC). The facility will back 50% of each SME's loan value. See ADI-VOCA: \$20 Million Loan Guarantee for SMEs Launches in Zambia with Support of local government, donors and private sector. Access to finance, see ADI-VOCA "\$20 Million Loan Guarantee for SMEs Launches in Zambia with Support of Local Government, Donors and Private Sector (21 June 2022) <https://www.acdivoca.org/2022/06//20-miliion-loan-guarantee-for-smes-launches-in-zambia-with-support-of-local-government-donors-and-private-sector/> (accessed 30 September 2023).

¹¹⁴⁰ Formal Bank Credit to Micro, Small and Medium Enterprises in Zambia: Lessons and implications. University of Zambia and the Zambia Institute for Policy Analysis and Research 2013.1–102.

¹¹⁴¹ African Development Bank (ADB) "Bank Financing to Small and Medium Enterprises in East Africa: Findings of a Survey in Kenya, Tanzania, Uganda, and Zambia" Working Paper Series (2012) 4–41.

¹¹⁴² According to information on the site, the Federal Deposit Insurance Corporation (FDIC) is an independent agency created by Congress to maintain stability and public confidence in the nation's financial system. To accomplish this mission, the FDIC insures deposits; examines and supervises financial institutions for safety, soundness, and consumer protection; makes large and complex financial institutions resolvable; and manages receiverships. Federal Deposit Insurance Corporation (FDIC). The FDIC forms part of the United States Banking Act, which was enacted on June 16, 1933. The Banking Act came to be known as the Glass-Steagall Act, which essentially established a division between commercial banking and investment banking, while also establishing the Federal Deposit Insurance Corporation, among other provisions. The legislative action in question underwent extensive debate before its enactment into law by President Franklin D. Roosevelt in June of 1933. See Federal Deposit Insurance Corporation (FDIC) "About" <https://www.fdic.gov/about/> (accessed 6 October 2023).

loan portfolio to small businesses.¹¹⁴³ This trend appears to have continued and declined further according to research done by Chen *et al.*, in 2017.¹¹⁴⁴ Despite these sombre statistics about the hesitance of large banks to take on the SME sector fully, this behaviour indirectly support the argument of why small local banks should be established and protected so that they take up the mantle of servicing the emerging SME sector effectively given some of the positive attributes of small banks are as contained in Table 8 below.

Table 8. Attributes of local banks as compared to international banks¹¹⁴⁵

STRENGTHS	WEAKNESSES
Responsive Innovative Client-centred Efficient Competitive Good understanding of the market High level of customer loyalty	Product gaps Shortage of capital Unable to access international markets to borrow No support from the government Cost disadvantage Strong competitors Product follower
OPPORTUNITIES	THREATS
Can grow into a big bank Serve the majority of Zambian households Broaden product range Broaden geographic reach	Competition from large international banks Regulation Forced merger and acquisition activity Risky clients Emerging new entrants Other banks targeting product gaps

The same study highlights work by Craig and Hardee in 2007, which shows that where large banks dominate the market, small businesses have difficulty accessing credit.¹¹⁴⁶ So, logically speaking, it appears that where large banks dominate, they ignore small businesses because large banks tend to deal with large corporate entities rather than small and medium enterprises.¹¹⁴⁷ Effectively, larger banks' size objectives adversely affect small business growth, often the mainstay of many developing countries. Small and medium business enterprises are not only peculiar to developing countries but even to developed countries'

¹¹⁴³ Michell "Small Banks Make More Business Loans" (2010) <https://ilsr.org/banks-and-small-business-lending/> (accessed 6 October 2023).

¹¹⁴⁴ Chen *et al.*, "The Decline of Big Bank Lending to Small Businesses. Dynamic Impacts on Local Credit and Labour Markets, Working Paper 23843" National Bureau of Economic Research September 2017). 1–57.

¹¹⁴⁵ Marketing Study Guide "SWOT Analysis Ideas for a Small Bank" 1 <https://www.marketingstudyguide.com/swot-analysis-ideas-for-a-small-bank/> (accessed 6 October 2023).

¹¹⁴⁶ Craig & Hardee "The Impact of Bank Consolidation on Small Business Credit Availability" 2010 *Journal of Banking & Finance* 1237–1263.

¹¹⁴⁷ Ibid.

matrix of financial service provisions as well despite the existence of multi-billion-dollar corporations.

As pointed out by Pritchard, these small banks may, however, have less rigid fee structures and can loan out smaller amounts than the bigger banks consider economical. These banks also provide personal services, which are often lacking in the bigger banks. This may include getting to know the client better in terms of his business and his family.¹¹⁴⁸ The benefit of this type of banking is that the risk of repayment is understood beforehand and thus reduces the bank's risk profile. Small banks may further be involved in the community and therefore give back to the community without being forced to do so because of corporate social responsibility policies, while exercising flexibility and providing client-based solutions. Additionally, decisions are found to be made much quicker.¹¹⁴⁹

Now that the effects that small banks have on a country's economy have been considered, the next task will be to evaluate the impact of various factors, such as competition, concentration, risk-taking, consolidation, profitability, and stability, on these banks. The study will also attempt to evaluate the impact of the Basel Capital Accords on small banks.

It is submitted that there does not appear to be much work done by researchers in many of these areas. Much of the work that is referenced in this part of the thesis refers to advanced financial markets in developed countries. This area of research seems to be evolving alongside the growth and development of the Zambian and African financial industries. There are a few recent contributions that will be relied upon and from which inferences will be drawn for developing countries, even though, at times, this can be perilous because the skewed indices in developing countries do not make a good comparison with the developed countries' statistics and outcomes. On the positive side, however, it is fertile ground for other researchers to study these areas further. The approach to this part of the thesis is to establish the determinants that create banking system stability.

¹¹⁴⁸ Pritchard "The Benefits of Local Banks Versus the Big Banks" <https://www.bankbound.com/blog/why-bank-locally-1> (accessed 19 August 2023).

¹¹⁴⁹ Cheng & Degryse "The Impact of Bank and Non-Bank Financial Institutions on Local Economic Growth in China" 2010 *Journal of Financial Services Research* 37 179–199; Susanto *et al.* "Public Ownership and Local Bank Lending at the Time of the COVID–19C Pandemic: Evidence from Indonesia" 2023 *Pacific-Basin Finance Journal* 80 102072; Jagtiani *et al.* "How Important Are Local Community Banks to Small Business Lending? Evidence from Mergers and Acquisitions" 2022 *Journal of Mathematical Finance* 12 382–410.

6.2.5 *Challenges to the survival of small local banks*

The aggregate failure statistics and the recent behaviour of multinational banks might seem to suggest contradictory conclusions about the viability of the smallest banks. As indicated by Gilbert and Alton, two sets of evidence can help determine how viable the smallest banks are in today's market: statistical estimates of banking cost functions and actual performance data.¹¹⁵⁰

6.2.5.1 *Statistical estimates of banking cost*

Much controversy exists over the exact threshold of what is deemed to be an optimal size for a bank. Looking at Western banks, most studies exclude banks with total assets that are less than USD1 billion. These thresholds were eventually crystallised into statute by the Dodd-Frank Act of 2010, which was alluded to earlier.¹¹⁵¹ The study concludes that the minimum efficient scale lies somewhere in the range between USD50 million and USD200 million in total assets.¹¹⁵²

When compared with small African banks, these numbers are way beyond the standard for a small bank. In some instances, estimates fall outside of this range for United States banks. All studies agree that banks smaller than USD25 million in assets are, on average, less efficient than larger banks, and nearly all experts agree that the true minimum efficient scale is at least USD50 million.¹¹⁵³ At the same time, it is important to keep in mind that these patterns describe average banks in developed countries and do not rule out the possibility that some individual small banks in developed countries can be as cost-efficient as larger ones.¹¹⁵⁴ However, when a comparison is made from a developing country perspective, these numbers would signify a large bank when the minimum capital requirements are compared in terms of exchange rate and the statutory minimum capital requirements set by the central bank of a developing country like Zambia. For example, the official statutory capital requirement for foreign banks in Zambia is K520 million (or approximately USD21 million at a rate of K24.7/USD1), and for local Zambian banks, about K104 million (or approximately USD4.21 million). So, there is no comparison to speak of between a small bank in a developed country and a small bank in a

¹¹⁵⁰ Gilbert "Bank Market Structure and Competition: A Survey" 1984 *Journal of Money, Credit and Banking* 617–44.

¹¹⁵¹ See ch 4 para 7.3.

¹¹⁵² Shaffer "Scale Economies in Multiproduct Firms" 1984 *Bulletin of Economic Research*. 1 4.

¹¹⁵³ Shaffer "Revenue-Restricted Cost Study of 100 Large Banks, Federal Reserve Banks of New York, Research Paper No 8806" (1988).

¹¹⁵⁴ Ibid.

developing country. The variation is even more pronounced with fluctuations in the Zambian exchange rates over time. In Zambia, for instance, it is a notorious fact that the exchange rate has fluctuated considerably over the last 13 years (2010 to 2023), from about K10 to USD1 (2010) to a high of K24.7 to USD1 (as at 11 June 2025).¹¹⁵⁵

6.2.5.2 Small bank performance

There is more specific evidence that would either corroborate or refute the implication of the cost studies. As observed by Lee, it is sometimes claimed that there are at least two different types of banking customers. Some want a full array of services, while some want personalised services.¹¹⁵⁶ A large bank may have an advantage over a smaller one in the range of services it provides, but a small bank may have an advantage in terms of offering personalised services. In that case, a small bank, by catering to the second type of customer, may be able to match the profitability of a larger bank despite its overall cost structure.¹¹⁵⁷

The ideal measure of performance would, however reflect both profitability and risk since a riskier bank must earn a higher return to compensate its owners for bearing the risk. Hunter *et al.*, indicate that, in practice, no single statistic perfectly reflects these two factors fully, but a general picture can be obtained by looking at several measures. The rate of return on assets (RoA) reflects raw profitability unadjusted for risk.¹¹⁵⁸ The rate of return on equity (RoE) would adjust the rate of return on assets for one component of risk, the leverage ratio—if equity is measured by market value rather than book value; more often than not the true market value of equity is not available for all banks and there are other components of risk besides leverage. Therefore, while RoE is helpful when examined alongside RoA and other statistics, Mester

¹¹⁵⁵ Bank of Zambia statistics show an average exchange rate (selling) of 4.6 Kwacha to the US Dollar on 4th January 2010 which rose to an all-time high of 22.6 Kwacha to the US Dollar between 15 June 2021 and 16 July 2021. See Bank of Zambia (BoZ) “Average Exchange Rates” <https://www.boz.zm/average-exchange-rates.htm> (accessed 19 August 2023).

¹¹⁵⁶ Lee “Identification of a Competing Risks Model with Unknown Transformation of Latent Failure Times” Working Paper Institute of Fiscal Studies (2005). See also Agu *et al.* “Mergers and acquisitions: The Nigerian banking consolidation program” 2011 *International Journal of Banking and Finance* 19–46.

¹¹⁵⁷ Glick & Hutchison “Banking and Currency Crises: How Common are Twins Pacific Basin, Working Paper “Federal Reserve Bank of San Francisco (1999). See also Agu *et al.* “Mergers and Acquisitions: The Nigerian Banking Consolidation Program” *International 2011 Journal of Banking and Finance* 19–46.

¹¹⁵⁸ Hunter & Timme “Technical Change, Organizational Form, and the Structure of Bank Production” 1986 *Journal of Money, Credit and Banking* 152–66.

points out that it is not a satisfactory measure of performance *per se*.¹¹⁵⁹ This topic will be discussed further in Chapter 7 when it is applied practically to the Zambian model.¹¹⁶⁰

The rate of default on loans made by a bank indicates the average credit quality of its assets, the soundness of the bank's management and lending decisions, as well as the long-run prospects for the bank's survival. Two standard measures of default are "net charge-offs," reflecting actual defaults, and "non-current" loans that customers have stopped repaying according to schedule, but which have not yet been officially written off by the banks. Jeffrey, for instance, indicates that the number of failed banks within each size category provides an after-the-fact measure of bank health.¹¹⁶¹

The diagram below attempts to show some of the disadvantages that small banks suffer compared to their larger multinational competitors. The list is not exhaustive, but it is clear that small banks may suffer what the author deems a natural disadvantage, whether they like it or not, and that, if not well managed, it can quickly escalate into a meltdown. Further, the author theorises that natural disadvantage based on size may be more pronounced in small banks in developing countries because they are working in often unstable economies with undeveloped infrastructure and poor support mechanisms that small banks rely on. But while these ideas are implied in many of the works, they would need to be verified by empirical research to confirm the correctness or not of these assertions. Table 9 gives a general idea of the differences between small (local) and large (foreign) banks. The list is not exhaustive, but is intended to give a general idea of the disparity between the two types of banks.

Table 9. Small local banks versus international banks¹¹⁶²

LOCAL	INTERNATIONAL
High FX exposure due to shortage of FX in developing economies	Low FX exposure due to the flush of FX in developed economies
No policy support	Policy support from parent country
Narrow and expensive sources of finance	Wide and cheap sources of finance and sources of funding

¹¹⁵⁹ Mester "Efficient Production of Financial Services: Scale and Scope Economies" 1987 *This Business Review* 15–25.

¹¹⁶⁰ See ch 7 para 7.15.

¹¹⁶¹ Clark "Economies of Scale and Scope at Depository Financial Institutions: A Review of the Literature" 1988 *Federal Reserve Bank of Kansas City Economic Review* 16–33.

¹¹⁶² Various sources including author's personal banking experience.

No prospect or support to become an international player	All the support to enter into other countries via trade deals and agreements
Expertise limited to a small market	Wide international experience
Highly trained staff but little exposure to work in complex markets	Highly trained and specialised able to work in complex markets across borders
No cross-border transactions –limited to domestic market	Cross-border transactions in an international market are considered normal
Normally consists of a single branch or at most some sub-branches	Multiple branches both local and international
Usually buys secondary bank paper in domestic market	Creates its investment paper in the international financial markets
No appetite for the local banks’ paper from investors	Paper of a high calibre with huge appetite from investors
Not listed by international rating agencies so cannot borrow at fine rates or seek funding on international markets	Listed by rating agencies; can borrow at finer rates on international markets
Have closed policies to investment	Have open investment policies
Small banks receive little support from regulators or government	Big banks receive support from their home country
Weak liquidity and capital base	Strong liquidity and capital base

Despite the author’s gloomy outlook, some surveys from the financial press and other sources appear to suggest that small banks (or community banks as they are known in the United States) have been outperforming multinational banks, especially in the United States.¹¹⁶³ Researchers, like Miller, point out that such conclusions may be misleading, at least in part, because they are based on too coarse a gradation of size categories when classifying banks.¹¹⁶⁴ The difficulty in standardising bank size also contributes to the problem.

6.3 How to measure small banks

The argument for the existence and importance of small banks is based on the fact that they are more efficient at capturing and servicing smaller businesses than the bigger corporate banks.¹¹⁶⁵ However, the argument submitted is that despite their importance, these banks are often given less importance than larger banks. It is thus submitted that these small banks are barely considered important enough to be assigned their tier in the financial market, not only because

¹¹⁶³ Sanford “Small Banks Recover, Big Banks Languish” 1988 *American Banker* 1 4.

¹¹⁶⁴ Miller “Counterfactual Experiments of Deregulation on Banking Structure” 1988 *Quarterly Review of Economics and Business* 38–49.

¹¹⁶⁵ Chilembo *A Study of the Factors Affecting Small and Medium Enterprises (SMEs) Access to Finance. A Case of Lusaka based SMEs* (2021) 437–460.

the financial sector does not have a formal tiered structure in place but also because these small banks suffer reputational risk as a result of their vulnerability to bank failure.¹¹⁶⁶ This results in small banks being used by borrowers as a last resort when they are unable to get loans from the larger, more stable foreign corporate banks.

The trend is therefore to classify banks based on qualitative descriptions of what can be perceived of the bank. This may be based on qualitative models or other models that the bank employs.¹¹⁶⁷ Using this method to assess banks may cause complications when it comes to fitting banks into the various categories. So, to find a suitable method of classification, various models will be examined for such purpose, starting with American models.

As indicated, the main theme of this thesis centres around small banks. Unfortunately, it becomes tenuous to talk about small banks when there appears to be no absolute measures of what constitutes a small bank. Research literature on banks is bereft of a standard definition to classify banks. This problem is not peculiar to Zambia and affects all calibres of banks in developed and developing countries.

To start with, Schildbach provides insight into this area by pointing out the importance of gauging bank size. He posits that determining bank size is essential due to the banking sector's critical role in national financial systems and its heavy regulation. Further, bank size matters because: first, it supports all other economic sectors, with some clients preferring large banks; and second, its stability is crucial, as instability can severely impact both financial markets and the overall economy. Consequently, there is a strong focus on the "largest" banks, regardless of the specific definition used.¹¹⁶⁸

6.4 Models for classification of banks in the United States

In the United States, the term "community bank" or "main street bank" connotes banks that are not that sophisticated and that take deposits and give basic loans as compared to those categorised as "Wall Street" banks that are large and complex conglomerates that often carry

¹¹⁶⁶ Mbaio "The Determinants of Credit Default Risk in Zambia: Does Bank Size Matter?" Bank of Zambia Working Paper (2017) 2–24. See also Naqvi *et al.* "Bank Size and the Transmission of Monetary Policy: Revisiting the Lending Channel" 2023 *Journal of Banking & Finance* 146.

¹¹⁶⁷ Congressional Research Service "Tailoring Bank Regulations: Differences in Bank Size, Activities, and Capital Levels" (21 December 2017) 2 https://www.everycrsreport.com/files/20171221_R45051_47c4381dedef75e1685f83900702a2e8a904be22.pdf (accessed 16 October 2023).

¹¹⁶⁸ Schildbach "Large or Small How to Measure Banks Size. Horses for Courses" EU Monitor Global Financial Markets Deutsche Bank Research (2017) 1–24.

out non-traditional forms of banking such as mergers, acquisitions, issuing securities, and financing large-scale business projects.¹¹⁶⁹

For this thesis, classification is important to support the argument that small Zambian banks should be protected from complying fully with all tenets of the Basel Accords. In developed countries, regulators have recognised that appropriately regulating banks requires that banks with differing characteristics face differing regulatory regimes.¹¹⁷⁰

The regulator will then create classifications and ceilings that subject each bank to specific regulations. The regulator is thus able to alter the type of regulatory treatment that it provides to the specific bank depending on its size.

In the United States, for example, some bills would raise the existing assets threshold at which banks would be subject to more stringent regulation. The *Consumer Financial Protection Bureau Examination and Reporting Threshold Act of 2017 (HR 3072 and s.1499)* can increase the size at which the Consumer Financial Protection Bureau (CFPB)¹¹⁷¹ becomes a bank's primary consumer compliance supervisor from USD 10 billion to USD 50 billion¹¹⁷² The Small Bank Holding Company Relief Act (HR1948) and the Community Banks Relief (S1248) aimed to reduce regulatory burdens on smaller bank-holding companies. These Acts sought to increase the asset threshold for US Federal Reserve regulations, thus exempting more companies from specific debt restrictions and capital requirements under the Dodd-Frank Act. HR1948 proposed raising the threshold to \$10 billion, while S1248 suggested a \$5 billion limit.¹¹⁷³

Other bills would create new exemptions from certain regulations that banks would qualify for based on being below an asset threshold. For example, the Community Lending Enhancement and Regulatory Relief Act (S1002) aims to ease regulatory burdens on smaller banks. It

¹¹⁶⁹ n 1168, 4.

¹¹⁷⁰ n 1168, 5.

¹¹⁷¹ The Consumer Financial Protection Bureau (CFPB) is an independent U.S. government agency tasked with protecting consumers in the financial sector. The CFPB oversees a wide range of financial institutions, including banks, credit unions, investment firms, payday lenders, mortgage servicers, debt collectors, and for-profit colleges. It aims to ensure fairness and transparency in financial products and services like mortgages, credit cards, and others. The CFPB achieves this by enforcing consumer protection laws, monitoring market practices, and providing consumer education and assistance. It empowers consumers to make informed financial decisions by providing clear information and addressing complaints. See Consumer Financial Protection Bureau CFPB <http://www.consumerfinance.gov/> (accessed 28 November 2024).

¹¹⁷² n 1168, 24.

¹¹⁷³ n 1168, 24.

proposes to exempt banks with less than \$10 billion in assets from certain regulations, including the Volcker Rule and specific lending escrow requirements. Additionally, it would relax mortgage compliance standards for these banks. For banks with less than \$1 billion in assets, the bill would further simplify internal control requirements.¹¹⁷⁴

6.5 Classification of banks in the European Union (EU)

Schildbach brings out the problem of classifying banks by pointing out that comparing banks is tricky because there is no single agreed-upon method. Academic and government studies often look at a bank's total assets and liabilities. At the same time, industry analysts prefer market value or revenue, while private rankings, like The Banker/Financial Times' "Top 1000," use a bank's capital as their main yardstick.¹¹⁷⁵ He says that this variety can often lead to entirely different results. This was confirmed by assessing European and American banks and comparing their aggregate numbers based on 2016 results. The outcomes varied according to bank size, market structure, area of inclusion, and so on.¹¹⁷⁶ This resulted in different measures of bank size that are grouped into three main categories, as tabulated in Table 10 below:

Table 10. How to measure bank size¹¹⁷⁷

Category	Measure of Bank Size
Category 1 Market / Cash-Flow-Based Indicators	Includes: Market capitalisation, total revenues, and net income
Category 2 Accounting-Based Indicators	Includes: Total assets and shareholders' equity
Category 3 Regulation-Based Indicators	Includes: CET1/tier 1 capital and risk-weighted assets

Examining the constituents of each area of classification in a bit more detail by summarising the main headings according to Schildbach indicates that the best indicators for measuring bank size are revenues, equity, capital, total assets, and market capitalisation. This may be followed by RWA, net income, number of customers, employees, and branches, in that order.¹¹⁷⁸ The last set of indicators in measuring bank size is normally considered to be supplementary and

¹¹⁷⁴ n 1168, 24–25.

¹¹⁷⁵ Schildbach (n 1169) 2–24.

¹¹⁷⁶ Schildbach (n 1169) 3–4.

¹¹⁷⁷ Information taken from Schildbach "Large or Small How to Measure Banks Size. Horses for Courses" EU Monitor Global Financial Markets Deutsche Bank Research (2017) 2–24.

¹¹⁷⁸ Schildbach (n 1169) 2–24.

ancillary to the main indicators. These indicators are summarised in Table 11, below, for ease of understanding.

Table 11. Best indicators for measuring bank size—European Model¹¹⁷⁹

CATEGORY I	Meaning of Measure
Market Capitalisation	The market capitalisation is calculated by taking the outstanding shares of a listed company multiplied by the current stock price of the share which yields an absolute figure that can be converted into Euros or any other currency as a means of comparing banks from different jurisdictions.
Total Revenue	Total revenues refer to the total income, gross earnings, or the sum of: a. Net interest income b. Fee and commission income c. Trading income and d. Other income
CATEGORY II	
Total Assets	Total assets may be described as the total amount of assets that a bank has reflected on its formally audited consolidated balance sheet.
Capital and Equity	Like total assets, the book value of equity is a balance sheet figure. Regulatory measures of capital are also strictly defined.
CATEGORY III	
Risk-Weighted Assets	Risk-weighted assets (RWA) are considered the last of the main measures of bank size. RWA are regulatory measures that aim to gauge the risk involved in each position that a bank holds via a price tag, and to sum up these values to one overall figure.
SUPPLEMENTARY INDICATORS	
Other Indicators	These are considered as second rank or supplementary size indicators. These include: i) Net income ii) Number of customers iii) Number of employees iv) Number of branches v) Total lending volume vi) Gross value added

6.6 How some African banks are classified

6.6.1 Classification of Nigerian banks

In his paper, “Determining Bank Size in the Nigerian banking industry”, Ismaila seeks to find a general measure of bank size.¹¹⁸⁰ He contends that the various measures to classify the size

¹¹⁷⁹ Table constructed from information taken from Schilbach “Large or Small How to Measure Banks Size. Horses for Courses” EU Monitor Global Financial Markets Deutsche Bank Research (2017) 2–24.

¹¹⁸⁰ Ismailia “Determining Bank Size in The Nigerian Banking Industry: A Principal Component Analysis Approach” *Proceedings of the 5th Annual International Academic Conference* (2019) 769.

of a bank relate to a unique aspect of size. Each method of measurement has its own merits and demerits. Ismailia brings into focus popular measures like the use of total assets as a measure of bank size, but warns that using total assets as a measure for classification creates valuation problems as it fails to account for the differences in a bank's business model. This argument agrees with Schildbach's ideas on determining bank size.¹¹⁸¹ He notes that various control models have been used over time for the Nigerian banking sector. These have often been used either as explanatory or as a control variable, depending on the circumstances. Aside from total assets, the other most common forms of measure are those that use gross earnings, market capitalisation, total deposits, total loans, total equity, or indeed the number of employees per bank or the number of branches in existence as a standard.¹¹⁸² One of the main findings from similar studies is that when a multivariate data set is used for measurement, the same indicator mostly moves in the same direction. This brings out the importance of determining which of these combinations is ideal for measuring bank size by looking at the correlation between the variables. Subsequently, Ismailia goes on to present the different measures of bank size. These measures will not be covered here as they are already covered in some detail under "Determining bank size in the European Union (EU)" above,¹¹⁸³ the general outcome being that the mechanics of classifying banks appear to vary little between developed and developing countries.' The area of determining bank size will be discussed further in Chapter 7 from a practical perspective when applied to Zambian banks.¹¹⁸⁴

6.6.2 The concept of banking system stability

There appears to be no single definition for banking stability, although some authors tend to think of it as "the absence of a banking crisis."¹¹⁸⁵ Thus, the definition appears to be idiosyncratic in its application in that it depends on the view of the countries in question on what they think banking stability should include. This view affects whether stability defines only traditional bank activity or other activity that involves non-bank financial institutions and the plethora of institutions that fall outside of this ambit.¹¹⁸⁶ For reasons already mentioned

¹¹⁸¹ Ismailia (n 1181) 769–779.

¹¹⁸² Ismailia (n 1181) 769–779.

¹¹⁸³ See ch 6 para 5.

¹¹⁸⁴ See ch 7 para 7.15.

¹¹⁸⁵ Ozili "Banking Stability Determinants in Africa" 2018 *International Journal of Managerial Finance* 3.

¹¹⁸⁶ Ibid.

regarding the shortcomings that African and other developing countries face in research, there appears to be a dearth of information in this area, making it difficult to infer any clear relationships. Equally, the indifference by African researchers to investigate these salient relationships in banking and finance may stem from the fact that many of these countries have small and burgeoning financial systems that do not require detailed analysis yet because their financial systems lack sophistication akin to a developed country. But this situation is rapidly evolving as developing countries rapidly grow in stature and emerge from their status as a “backwater.” With the rapid development of financial systems, the spectre of a banking crisis has been brought into focus, and with it the fragility of African banking systems.¹¹⁸⁷ Based on the foregoing, it is thus important that these factors determine their impact on the economic stability of a country’s financial system and, where necessary, address any problems to avoid any unintended repercussions. In a nutshell, the determinants of banking stability can be classified into three main categories, according to Nadya and Kick, namely macroeconomic, financial, and structural variables.¹¹⁸⁸ Apart from this, international spill-over effects¹¹⁸⁹ play a significant role in stability across banking sectors. Ozili contends, as is trite, that banking stability is crucial for economic growth and financial development.¹¹⁹⁰ This assertion is considered in more detail below.

6.6.3 *Economic factors*

Ozili contends that economic factors normally depend on cycles that create boom and bust situations. These factors have a direct impact on banks and, therefore, on bank stability itself.¹¹⁹¹ This aligns with studies by academics like Segoviano and Goodhart¹¹⁹² that explore bank stability and regulation and attempt to identify the sources of potential factors that influence financial stability. Ozil Segoviano and Goodhart also appear to agree that banking

¹¹⁸⁷ Ozili (n 1186) 2.

¹¹⁸⁸ Nadya & Kick *Determinants of Banking System Stability: A Macro-Prudential Analysis* (2012) 2.

¹¹⁸⁹ International spillover effects refer to the external impact of sovereign risk and banking system risk on the economic and financial activities of a country. The main cause of the spillover is often rooted in the economic and financial relationships that countries not only have with one another but with the world at large. See Liqin Hu *et al.* “A Study on the Transnational Spillover Effects of Bank Risk and Sovereign Risk-From the Perspective of COVID-19 Epidemic Situation” 2022 *Frontiers of Public Health*.

¹¹⁹⁰ Ozili “Determinants of Banking Stability in Nigeria” 2019 *CBN Bullion* 2.

¹¹⁹¹ Ozili (n 1186) 2; n 1191, 2.

¹¹⁹² Segoviano “Banking Stability Measures” IMF Working Paper No 627 International Monetary Fund (2009). See also Ozili (n 1186) 2; n 1191, 2.

stability is interconnected. Banks rely on each other through interbank lending, syndicated loans, and exposure to common sectors and trading activities. This interdependence means that problems at one bank can potentially spread to others, affecting the overall stability of the banking system.

6.6.4 Unemployment

Ozili's research indicates that unemployment levels impact bank performance and consequently, bank stability. Unemployment is important to financial stability as it not only reduces aggregate demand but also increases customer default rates. Ozili's research relies in this regard on the outcomes of the work of Heffernan and Fu¹¹⁹³ who examined 96 Chinese banks over a seven-year period between 1999 and 2006. The researcher's outcomes found that there was a positive correlation between unemployment in the Chinese economy and bank performance. This positive correlation ultimately impacted bank stability.

6.6.5 Commercial bank ownership

A further factor that impacts bank stability has been identified by Ozili as commercial bank ownership. In reaching his conclusion about this factor, he relied on the work of Boateng,¹¹⁹⁴ who studied 111 Chinese commercial banks over 12 years between 2000 and 2012. This study revealed that foreign banks had fewer non-performing loans, although they suffered lower profitability than local Chinese banks. He also found that state banks tended to be more profitable than domestic and foreign banks. From observation, it is submitted that the local banks' profitability in Zambia appears to diverge in terms of results at this point, in that local banks in Zambia are generally less profitable than the international banks which tend to earn higher profits due to their size, sophistication, and strong capital as well as international connections.¹¹⁹⁵ Research by Mulendema and Sinkala points out that banks owned by foreign entities in Zambia dominate the financial industry's profitability, capturing an average of 82.6 per cent of profits between 2016 and 2018. This leaves a significantly smaller portion, only 17.4 per cent, for locally owned banks, often leading to a substantial outflow of financial sector

¹¹⁹³ Heffernan & Fu "The Determinants of Bank Performance in China" Working Paper Series WP-EMG-03-2008 Cass Business School City University (2008) 1-30. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1247713 (accessed 10 July 2023).

¹¹⁹⁴ Heffernan (n 1194) 1-30; Boateng *et al.*, "Commercial Bank Ownership and Performance in China" 2015 *Applied Economics* 5320-5336.

¹¹⁹⁵ Mulendema & Sinkala "An Analysis of the Performance of Banks: A Comparative Study of Domestic and Foreign Banks in Zambia" 2023 *Journal of Economics, Finance and Management Studies* 6 4.

profits from the country where these banks externalise their profits.¹¹⁹⁶ Bank ownership and profitability are very important factors in the performance of a bank and have been constantly emphasised in this thesis.

6.6.6 Regulation and supervision

Regulation and supervision have been identified as factors that affect bank stability. In this thesis, they are regarded by their standard definitions. Interestingly, some authors have tried to break down these definitions to provide more depth and description to their analysis. Barth's work is a case in point, where he breaks down regulation into two distinct but related components.¹¹⁹⁷ The first form of regulation that he refers to is called "incomplete regulation", while the second is called "ineffective supervision". Incomplete regulation refers to weak regulatory systems.¹¹⁹⁸ Ineffective supervision, on the other hand, implies the use of weak supervisory tools to manage banks. These are not necessarily new definitions of regulations and supervision *per se*. Rather, they are nuanced understandings of the dual concepts from Barth's perspective in his attempt to circumvent the rigidities of the standard definitions of regulation and supervision. Unfortunately, while these ideas may be well regarded, the research by other writers appears to give no conclusive outcome. Some studies indicate that strict regulation limits risk-taking, thus improving supervisory intervention when banks are at their most vulnerable, while other studies appear to show that strict supervision has no impact at all on bank stability.¹¹⁹⁹ This appears to be an area for further investigation, especially for developing countries.

Institutional factors have been found to influence the stability of a banking system; in particular, a country's governance qualities appear to be cardinal in influencing the type of regulation and supervision that a country chooses to adopt. That is to say that weak governance produces weak regulation and supervision cultures and vice versa.¹²⁰⁰

¹¹⁹⁶ Mulendema (n 1196) 2149–2154.

¹¹⁹⁷ Ozili (n 1186) 2.

¹¹⁹⁸ Ozili (n 1186) 2.

¹¹⁹⁹ Ozili (n 1186) 2; See, Delis & Staikouras Supervisory Effectiveness and Bank Risk. *Review of Finance* (2011) 15(3), 511–543.

¹²⁰⁰ Ozili (n 1186) 2.

6.6.7 *Bank financial structure*

Financial structure, in this instance, is looked at from the point of view of bank concentration. Bank concentration is defined by the National Bureau of Economic Research¹²⁰¹ as “the share of assets of a country’s three largest banks.”¹²⁰² Many authors claim that bank concentration influences the stability of the banking system because banks act differently given their concentration or lack of it. This argument will be brought up again shortly. Notwithstanding, there appear to be two contradicting and opposite views on the argument.

The first set of arguments made by authors and researchers, like Allen and Gale, and Repullo,¹²⁰³ is that where banks are more concentrated, they tend to reduce their risky lending behaviour because of lower competition in the market. The counterargument to the above suggests that in markets where there is a high bank concentration, bank failure results in other banks taking concerted measures to rescue the ailing bank as a means of averting bank failure arising from contagion.¹²⁰⁴ Further, it is proffered by Boyd and De Nicolo in their 2005 work that it may result in higher loan rates, forcing borrowers to invest in risky projects.¹²⁰⁵ This may impact the stability of a bank in the long run.

6.6.8 *Bank risk*

Bank risk has a direct bearing on bank stability. For instance, Tan supports the position that there is a significant relationship between risk and the efficiency of banks, and in turn, this relationship influences bank stability. Of particular interest are the results of Tan’s research on bank performance risk and competition in the Chinese financial system between 2003 and 2011.¹²⁰⁶ Research findings reveal that bank profits are higher in joint-stock companies than in city commercial banks, which leads city commercial banks to undertake higher credit risk. It

¹²⁰¹ The National Bureau of Economic Research (NBER) is a non-profit American organization dedicated to conducting and sharing objective economic research. Its findings are influential among policymakers, business leaders, and academics. The NBER is particularly recognized for its role in determining the beginning and end dates of U.S. recessions. See National Bureau of Economic Research <https://www.nber.org/> (accessed 28 November 2024).

¹²⁰² Beck *et al.* *Bank Concentration and Crisis. The Digest* (2004) 1–40.

¹²⁰³ Ozili (n 1186) 2.

¹²⁰⁴ Ozili (n 1186) 2.

¹²⁰⁵ Boyd & Nicolo “The Theory of Bank Risk Taking and Competition Revisited” (2005) 1329–1343.

¹²⁰⁶ Tan ‘Theory of Bank Efficiency and Bank Risk’ in *Investigating the Performance of Chinese Banks Efficiency and Risk Features* (2016) 1–200.

also shows that greater competition increases liquidity risk but decreases credit and insolvency risk.¹²⁰⁷

Miscellaneous factors that may affect banking stability

Other influences on banking stability have been identified as the regulatory style that the country's regulators take when regulating and supervising financial systems.¹²⁰⁸ It may also include deposit insurance, liquidity, and bank efficiency.¹²⁰⁹ For this thesis, these will not be considered in any detail as the main proof that is required to put an argument across for small banks. Suffice it to say the bulk of the studies are centred on the European and Asian models, which are more advanced than their African counterparts.¹²¹⁰ This opens the door for further scholarship in this area of research once again.

The next part of the thesis will take concepts from the discussion above and attempt to magnify areas of concern when it comes to banks, in general, with an emphasis on small banks to provide plausible answers for African banks, since the work in this area is quite thin on the ground. Where no clear answers are available, then inferences must be drawn to arrive at possible outcomes.

6.7 Competition, concentration, risk-taking, consolidation, and profit

The various issues mentioned above will now be considered. It will be noticed that for many of these issues, there is a dearth of information; therefore, in most instances, there are no clear-cut answers for the causal effects and their resultant outcomes. Equally, these issues are important to understand their impact not only on banks, generally, but on small banks, in particular. The dynamics that exist in developing countries' financial systems are quite different to those in developed countries. These differences have a great impact on the various outcomes of the research. What can however not be denied is that in the financial systems of both developed and developing countries, there are undisputed relationships between competition, profitability, stability, concentration and bank risk.

¹²⁰⁷ Tan (n 1207) 1–200.

¹²⁰⁸ Ayobami Ojeyinka & Enisan “Does Bank Size Affect Efficiency? Evidence from Commercial Banks in Nigeria” 2021 *Ilorin Journal of Economic Policy* 79–100; Abdulahi *et al.* “Factors Affecting Technical Efficiency of the Banking Sector: Evidence from Ethiopia Cogent Economics and Finance” 2023 *Cogent Economics & Finance* 1–26.

¹²⁰⁹ Ibid.

¹²¹⁰ Ayobami-Ojeyinka (n 1209) 1–26.

Aside from this, there are cultural influences that impact how banks in certain countries operate and how the populace of the country views and interacts with the financial system. This opinion impacts the level of risk that individuals tend to take and, in turn, their view on how they manage their portfolios in terms of risk. This understanding is particularly significant for local banks forced to implement and react to foreign-made rules.

Some of these important issues and outcomes from contemporary research are examined below, starting with the relationship between competition and the profitability of banks.

6.7.1 Competition and profitability in an unregulated environment

Competition has many and varied definitions. For purposes of this section of the thesis, competition in banking will be defined as “*the struggle for consumers of banking services and creation of such conditions for other participants, which do now allow them to have a decisive influence upon the market.*”¹²¹¹ The competition itself appears to be classified in different ways as well. Ilchenko, for example, classified bank competition into four distinct groups, namely: banking competition; competition between state and non-state banks; competition between banks and non-banking credit institutions; and competition between banks and non-financial institutions. For purposes of this thesis, it appears that Ilchenko’s first classification (that of banking competition) would be more applicable to the type of competition in Zambia and for which the definition given above appears to fit. Further, Ilchenko’s classification could be refined by breaking it down and adding competition between foreign and local banks to ensure that it is a perfect fit.

Commonly, bank profitability may be taken to mean the measure of a bank’s performance. Profitability is an essential indicator of a bank’s performance, especially in a market economy. That is to say that low profitability would indicate that a bank may be in trouble, and vice versa. Effectively, Ilchenko observes that profitability reflects the efficiency with which a bank has used its resources to generate a positive return on investment from its assets.¹²¹²

This issue of profitability appears to introduce an interesting area of conflict between the opposing forces of profitability that, often, entails profit maximisation and with it increased risky behaviour juxtaposed against what might be deemed to be necessary regulation to stop further crises from happening. All this should be done while balancing this against the push for

¹²¹¹ Ilchenko *Competition in the Banking System: Definition and Types* (2013) 385–389 385.

¹²¹² Ilchenko (n 1212) 385.

international free trade.¹²¹³ These two opposites have thus created an uneasy truce or relationship that pervades banks in both developed and developing countries. Often, much of the literature examined shows that the regulatory aspect appears to be muted or ignored while the free competition aspect is emphasised more, especially for emerging countries that are under restructuring from Cold War allegiances and models of government-controlled economies.¹²¹⁴ When looking at aspects of competition and profitability, Sarpong-Kumankoma and other researchers from the University of Ghana proffer that a healthy and profitable banking sector is more resilient to economic downturns and strengthens the overall financial system. Consequently, factors influencing bank profitability are of significant interest to researchers, bank executives, financial markets, and regulatory authorities.¹²¹⁵

Research done by this group of researchers shows that bank profitability, particularly in Africa, is an intricate issue and often tends to raise questions about issues surrounding the abuse of power by commercial banks and financial institutions, as well as the impact that it has on the risk profile of a bank *per se*.¹²¹⁶

The authors have in turn, referred to work done by authors, such as Chortareas¹²¹⁷ and others, conducted in 2011, who found that where profitability is the result of market power then the consumer could suffer negatively as a result of increased rates paid on loans, credit rationing and generally poor quality of banking services.¹²¹⁸ This may imply from their findings that where banks make high profits, it may require the regulator to intervene in the market to allow

¹²¹³ Martynova *et al.* “Bank Profitability and Risk-Taking”, Working Papers IMF (2015) <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Bank-Profitability-and-Risk-Taking-43421> (accessed 11 October 2023).

¹²¹⁴ See the following for example Allen *et al.* “Credit Market Competition and Capital Regulation” 2011 *Review of Financial Studies* 983–1018; Akins *et al.* “Bank Competition and Financial Stability: Evidence from the Financial Crisis” 2014 *Journal of Financial and Quantitative Analysis* (forthcoming); Beltratti & Stultz “The Credit Crisis Around the Globe: Why Did Some Banks Perform Better?” 2012 *Journal of Financial Economics* 1–17; Carlson & Mitchener “Bank Branching, Bank Competition, and Financial Stability” 2006 *Journal of Money, Credit, and Banking* 1293–1328; Giannone *et al.* “Market Freedom and the Global Recession” 2011 *IMF Economic Review* 111–135; Boyd & Nicolo “The Theory of Bank Risk Taking and Competition Revisited” (2005) 1329–1343; Cubillas & González “Financial Liberalization and Bank Risk-Taking: International Evidence” 2014 *Journal of Financial Stability* 32–48; Ashraf *et al.* “Trade Openness and Bank Risk-Taking Behavior: Evidence from Emerging Economies” 2017 *Journal of Risk and Financial Management*.

¹²¹⁵ Sarpong-Kumankoma *et al.* “Freedom Competition and Bank Profitability in Sub-Saharan Africa” 2018 *Journal of Financial Regulation and Compliance* 1–20.

¹²¹⁶ *Ibid.* 2–17.

¹²¹⁷ Sarpong-Kumankoma (n 1216) 2–17; Chortareas *et al.* “Banking Sector Performance in Latin America: Market Power Versus Efficiency” 2011 *Review of Development Economics* 307–325.

¹²¹⁸ Sarpong-Kumankoma (n 1216) 2–17.

more banks into a jurisdiction as a result of deliberately lowering the barriers to entry for other potential market players. Such policy interventions are said to not only increase competition but also reduce the overall market risk of the financial sector.¹²¹⁹

Further, it is suggested by Sarapong-Kumankoma *et al.*, that low bank profitability may be an indicator of one of two factors: either intense competition or inefficiency in the banking or financial sector itself. Once again, the solution appears to be to set up appropriate policy interventions that will address issues of competition, the quality of human capital, as well as the general cost of doing business.¹²²⁰

Despite the aforementioned outcomes, the work of Sarapong-Kumankoma *et al.*, in 2018, points out that results have not been consistent when it comes to empirical studies on establishing the relationship between competition and profitability and this is even more pronounced by its absence when trying to establish a nexus between the impact of economic freedom and its impact on commercial bank performance.¹²²¹ Sufian mentions that the links between economic freedom and bank performance are particularly lacking in banking literature, which he finds surprising given its importance and the impact that economic freedom is likely to have on the banking sector.¹²²² This dearth of academic research is particularly evident when compared to studies done in African countries.¹²²³ From studies done by Hafer, it is safe to establish that higher levels of financial freedom or “the measure of the degree of restrictions

¹²¹⁹ Sarapong-Kumankoma (n 1216) 2–17.

¹²²⁰ Sarapong-Kumankoma (n 1216) 2–17.

¹²²¹ Sarapong-Kumankoma (n 1216) 2–17. For example, those authors that are for include the following Tregenna “The Fat Years: The Structure and Profitability of the US Banking Sector in the Pre-Crisis Period” 2009 *Cambridge Journal of Economics* 609–632; Jeon & Miller “Bank Concentration and Performance, Working Paper” University of Connecticut Economics (2002) 25; Mirzaei & Moore “What are the Driving Forces of Bank Competition Across Different Income Groups of Countries?” 2014 *Journal of International Financial Markets, Institutions and Money* 38–71; Mirzaei *et al.* “Does Market Structure Matter on Banks’ Profitability and Stability? Emerging vs. Advanced Economies” 2013 *Journal of Banking and Finance* 2920–2937; Fu & Heffernan “The Effects of Reform on China’s Bank Structure and Performance” 2009 *Journal of Banking and Finance* 39–52. Those that have arguments against include the following authors Seelanatha “Market Structure, Efficiency and Performance of Banking Industry in Sri-Lanka” 2010 *Banks and Bank Systems* 20–31; Chortareas *et al.* “Banking Sector Performance in Latin America: Market Power Versus Efficiency” 2011 *Review of Development Economics* 307–325.

¹²²² Sufian “The Nexus Between Economic Freedom and Islamic Bank Performance: Empirical Evidence from the MENA Banking Sectors” 2014 *Contemporary Review of the Middle East* 411–439.

¹²²³ Ezeibekwe *Financial Development in Developing Countries* (master’s thesis, Eastern Illinois University, 2020) 3–55.

and controls in the financial sector”¹²²⁴ leads to greater development in the financial sector. This in turn results in greater economic growth for the financial sector and the economy.¹²²⁵

6.7.2 *Competition and stability*

According to the Deutsche (German) Bundesbank, banking system stability is “a steady state in which the financial system efficiently performs its key economic functions such as allocating resources and spreading risk as well as settling.”¹²²⁶

As far as bank competition and financial stability go, Beck indicates that these concerns are at the centre of banking policy debates.¹²²⁷ He contends that theoretical and empirical studies have failed to find a clear and conclusive relationship between competition and stability in banking systems. He asserts that there is a general perception that excessive competition can cause fragility in a banking system, and thus, particular fetters must be placed on competition to preserve stability in a banking system.¹²²⁸ Beck’s research that looks at “Bank Concentration and Crisis” may therefore not be a perfect fit for developing countries as it alludes to and deals with problems associated with the financial liberalisation of the American financial markets—a large complex and sophisticated financial market system—in the 1970s and 1980s that created unchecked competition in the financial markets which eventually led to first a “boom” and then finally to a “bust” in the subprime mortgage markets.¹²²⁹ The Subprime Mortgage Crisis is synonymous with the Lehman Brothers debacle that triggered the 2007–2008 GFC¹²³⁰ and which eventually led to a world recession after that, as the crisis slowly unravelled.¹²³¹

¹²²⁴ Sarapong-Kumankoma (n 1216) 2–17; Hafer “Economic Freedom and Financial Development: International Evidence” 2013 *Cato Journal* 111–126.

¹²²⁵ Sarapong-Kumankoma (n 1216) 2–17.

¹²²⁶ Nadya & Kick *Determinants of Banking System Stability: A Macro-Prudential Analysis* (2012) 2.

¹²²⁷ Beck (n 1118) 1–41.

¹²²⁸ Beck (n 1118) 1–41.

¹²²⁹ Beck (n 1118) 1–41. Note that a subprime mortgage is a type of home loan extended to a borrower with doubtful credit credentials. the increase in subprime lending that started in the 1990s was due in part to the aggressive marketing by mortgage brokers who were paid commissions based on the number of loans they brought in rather than the quality of the loan. This led to a rise in subprime mortgages as a percentage of all home loans grew from about 5% to around 15% of total home loans in the US, over the 2004–2007 period. See Bondarenko “Subprime Mortgages” <https://www.britannica.com/money/time-value-of-money-calculator> (accessed 19 August 2023).

¹²³⁰ See ch3 para 7.

¹²³¹ See ch 3 para 3.5.

The study may be useful in providing lessons that allow developing countries to identify and check (or tick) all the red flags that may result from an expanding and evolving financial sector and its markets.

6.7.3 *Bank consolidation and concentration*

Bank consolidation simply refers to a situation where one or more banks take over or merge with another for whatever reason. Whereas bank concentration, on the other hand has a different meaning according to Beck, Demirguc-Kunt and Levine. Bank concentration may be defined as:

*“[T]he share of assets of a country’s three largest banks. In their analysis, they control for international differences in deposit insurance practices, capital regulation, restrictions on bank activities and ownership and the overall economic environment.”*¹²³²

One of the most notable trends of this era of competition in the West has been the rapid consolidation of banks around the world using mergers or acquisitions. This means that small banks are taken up or swallowed up by much larger banks. The consequence of changing the dynamics of the financial system often leaves the larger, better-capitalised banks (and in the case of developed countries, normally international banks) to operate in the financial market, leading to “bank concentration”. Bank concentrations have thus become a topic of concern and debate in the West, particularly among institutions like the BIS, the IMF, the World Bank and the G10 countries.¹²³³

This phenomenon has become more apparent since the consolidation culture has spread its tentacles and become a cross-border phenomenon, meaning that these mergers and acquisitions are occurring with banks in other countries as foreign banks enter developing countries and countries that were under the former communist bloc after 1991. African countries, particularly those in the Commonwealth like Kenya, Ghana and Tanzania, have all seen a substantial increase in consolidations over the last decade.¹²³⁴ Zambia has not been spared either, despite

¹²³² Beck (n 1118) 1–41.

¹²³³ See ch 4 para 4.9.

¹²³⁴ Bowmans “Merger and Acquisition in Africa: Current Trends (2022) <https://bowmanslaw.com/wp-content/uploads/2022/03//MA-Review-2022-final.pdf> (accessed 13 October 2023).

being a latecomer to the party, it has seen a flurry of activity from around 2010, which will be discussed in more depth in the next chapter.

Nevertheless, the jury is still out on the efficacy of the bank consolidation process and its effects on competition generally. It has been argued by experts that while the benefits of a more efficient economy are desirable, this is countered by the fact that after the process of consolidation, the banks that emerge from the consolidation give rise to stability concerns. It is suggested that the size and complexity of the emergent institutions could directly impact the proper regulatory processes of financial markets, including connected regulatory authorities. This problem normally results after consolidation has taken place and is synonymous with the power that comes with larger banks and their influence across the various segments of a financial system. As such, this makes it difficult for authorities to intervene and close such large banks without repercussions on the economy, as their consolidation results in them becoming banks that are too big to fail (TBTF). This has a large impact on the stability of a financial system.¹²³⁵

6.7.4 Competition and banking risk

Risk is a central pillar of any banking activity; indeed, woe often betides those who ignore the rules of risk. But risk, like many other concepts, is multi-definitional. To narrow down the definition for this thesis, risk will be understood to mean the potential loss to a bank due to the occurrence of adverse or unfavourable events.

The explanation of the relationship between the two paradigms of risk and competition appears to indicate that increased competition increases bank risk. This relationship has caused enough concern to introduce prudential re-regulation to manage the problem. Re-regulation comes in the form of the BCBS Accords. This is quite contradictory and counterintuitive as the Basel Accords were introduced in an era when the world was in the process of deregulating financial systems.¹²³⁶ In this regard, Zhao and Murinde observe that the idea is that competition should eliminate banks' excessive profits, lessen the financial burden of failure, and encourage them

¹²³⁵ Omarova "The Too Big to Fail Problem" *Cornel Law School Legal Studies Research Paper Series*. (2019); Strahan "Too Big To Fail; Causes Consequences and Policy Responses" 2013 *Annual Review of Financial Economics* 43–61; Stefanos *et al.* "Too Big to Fail: Why Mega Banks Have Not Become Smaller Since the Global Financial Crisis?" 2019 *Review of Political Economy* 356–381.

¹²³⁶ Zhao & Murinde "Bank Competition, Risk-Taking and Productive Efficiency: Evidence from Nigeria's Banking reform experiments. Stirling Economics Discussion Paper 2009–23" (2009) 1–45 <http://www.economics.stir.ac.uk> (accessed 13 October 2023).

to take on more risk. However, while competition aims to reduce excessive risk and promote stability, increased regulatory oversight can raise costs and stifle competition. Therefore, this combination of deregulation and stricter regulation could, theoretically, lead to unintended consequences regarding bank behaviour, affecting competition, risk-taking, and operational efficiency.¹²³⁷

Zhao posits that from a theoretical point of view that deregulation should have a positive effect on a banking system because it reduces regulatory costs that are normally transferred to market participants and increases the cost of banking transactions; while at the same time relaxing regulatory requirements on banking competition by possibly making it easier to operate with fewer rules and regulations.¹²³⁸ The overall impact is to have a positive impact on competition.¹²³⁹ Zhao and Murinde point out that empirical evidence does not provide a consistent outcome, as research results tend to give mixed outcomes.¹²⁴⁰

6.7.5 Bank concentration and performance

The link between market concentration and bank performance began to receive a considerable amount of attention during the 1980s immediately after the financial industry began to be deregulated and a myriad of changes were ushered in the financial industry, mainly in the West.¹²⁴¹ In the United Kingdom, for example, it was more pronounced with the advent of the so-called “Big Bang”¹²⁴² in 1986, which is said to have changed the City of London forever.

¹²³⁷ Zhao (n 1237) 1–45.

¹²³⁸ Zhao (n 1237) 1–45.

¹²³⁹ Zhao (n 1237) 1–45.

¹²⁴⁰ Zhao (n 1237) 1–45.

¹²⁴¹ Financial deregulation ushered in many changes. for example, in the United States, one of the most significant changes was the removal of interest rate restrictions that could be offered by banks and thrift institutions which came into effect in April 1986 allowing these institutions to compete with nonbanking financial institutions for deposits free of artificial restrictions on interest rates. The second important change was the growth of regional interstate banking and the emergence of the super-regional banks. Canada like the UK had its own big bang before which Canada had one of the worlds most segmented markets. in Japan, it resulted in the creation of several new markets (such as the commercial paper market) and financial instruments. One of the major changes however was that the removal of all these barriers and restrictions resulted in increased competition across the globe in international financial markets. See Bradfield ‘Chapter 13 Deregulation of Banking: A Worldwide Phenomenon’ in *Current Legal Issues Affecting Central Banks* IMF eLibrary.

¹²⁴² In the United Kingdom technological and competitive pressures combined with other initiatives that were already underway in the UK resulted in the so-called ‘Big Bang’. The ‘Big Bang’ resulted in a new financial universe was included better protection for investors. It put an end to the restrictive market practices of the London Stock Exchange. Some of the results also included stiff competition from better capitalised foreign firms. This resulted in the removal of restrictions on corporate memberships on the stock exchange, including the restriction that prevented companies from acting as both Broker and dealer. See Bradfield ‘Chapter 13 Deregulation of Banking: A Worldwide Phenomenon’ in *Current Legal Issues Affecting Central Banks* IMF eLibrary.

Policymakers were particularly interested in finding out whether bank consolidation led to excessive market power in retail rather than wholesale markets.¹²⁴³

This research was further enhanced by Radecki, whose work on United States banks consolidated the link between concentration risk and profitability.¹²⁴⁴ From the author's point of view, the results should be approached cautiously as they are not by any means universal and apply mainly to the developed and complex financial market of the United States and possibly other developed countries rather than to developing countries. The first of three findings in Radecki's research suggests that large banks within a United States state post uniform prices for bank services across the whole state and no longer post different prices for different geographical areas within the same state.¹²⁴⁵

The outcome of this study indicates the importance of examining the links between bank concentration and bank performance on a state-by-state basis for countries that fit this mould rather than by country analysis.¹²⁴⁶ Intuitively, for countries with a small stock of banks that lack a federal system, the results are likely to be significantly different.

Secondly, Radecki's work suggests that smaller community banks are forced to compare their prices despite operating in a limited area. It is suggested that this behaviour equalises the prices of banking services across states, even though these small community banks may not operate in the whole state.¹²⁴⁷

Thirdly, Radecki found that where large banks operated in several American states, the reverse appeared to be true; namely, that large banks tended to charge different prices in different states.¹²⁴⁸

Concerning profit structure relationships, it appears that a strong correlation emerges between profitability and concentrations of market share according to researchers like Berger who contends that a positive relationship observed can be explained by two opposing viewpoints: market power or efficient structure. The market power theory itself contains two ideas:

¹²⁴³ Bradfield (n 1243) 259–278.

¹²⁴⁴ Radecki "The Expanding Geographic Reach of Retail Banking Markets" 1998 *Federal Reserve Bank of New York Economic Policy Review* 415–432.

¹²⁴⁵ Ibid; Jeon & Miller "Bank Concentration and Performance Working Paper" (2002) 25.

¹²⁴⁶ Radecki (n 1245) 415–432.

¹²⁴⁷ Radecki (n 1245) 415–432.

¹²⁴⁸ Radecki (n 1245) 415–432.

traditional structure-conduct-performance and relative market power. The first suggests that concentrated markets result in higher loan rates and lower deposit rates due to reduced competition. The second proposes that only large, well-known banks can control prices and increase profits.¹²⁴⁹

For the thesis, this may not be ideal given the depth of the Zambian and other developing country markets and the number of participants in them, most of whom are large multinational players that are resource-rich and able to play the market to the detriment of smaller banks. Equally, it can be argued that while banks can set uniform prices across the board, small banks by their nature, suffer from high risk and cost ratios that may be exacerbated by low profitability because of trying to compete with larger banks.

Bank profitability matters as it contributes to financial stability, especially since profits are the first line of defence against losses from credit impairment. Retained earnings, which are normally a result of accumulated profits, are an important source of capital for banks as they enable banks to build strong buffers to absorb additional losses as and where they occur. These buffers ensure that banks can provide financial services to households and businesses, even in the face of adverse economic developments. This helps to smooth out rather than amplify the impact of negative shocks on the economy. As a rule, banks with poor structural profitability tend to face higher funding costs and may be tempted to take on more risk than they should as a result.¹²⁵⁰ Equally, weak banks are also more likely to be connected to unprofitable firms because they tend to take unnecessary risks by lending to high-risk customers.¹²⁵¹ This reduces the flow of lending available to profitable firms that need funding to invest and grow their business. Thus, the resultant misallocation of capital¹²⁵² towards unproductive businesses weighs on long-run economic growth.¹²⁵³ Once again, the outcomes are not clear and as such,

¹²⁴⁹ Berger “The Profit Structure Relationship in Banking-Tests of Market Power and Sufficient Structure Hypothesis” 1995 *Journal of Money Credit and Banking* 404–431, Berger *et al.* “The Efficiency of Financial Institutions a review and preview of research past, present and future” 1993 *Journal of Banking and Finance* 221–249.

¹²⁵⁰ Babihuga & Spaltro “Bank Funding Costs for International Banks” 2014 IMF Working Papers.

¹²⁵¹ Andrews *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions* (2013) 1–19.

¹²⁵² Gopinath *et al.* “Capital Allocation and Productivity in South Europe” 2017 *Journal of Economics*. 1915–1967.

¹²⁵³ McGowan *et al.* “The Walking Dead? Zombie Firms and Productivity Performance in OECD Countries” 2018 *Economic Policy* 685–736.

this is an area where more work needs to be done, especially for small banks operating in developing countries.

6.7.6 Profit structure relationships

Jeon and Miller allude to the significant growth and complexity of regulation in the 1990s. This growth in regulation is unprecedented and has not been seen since the 1929 Great Depression in the United States of America, which was also hit with great turbulence in the way of savings debacles and mass failures of financial institutions. For example, between 1986 and 1995, 32 per cent of savings and loan associations in the United States failed. Consequently, the number of federally insured savings and loans in the United States declined sharply from 3,234 to 1,645, primarily because of unsound real estate lending.¹²⁵⁴ This meltdown of the savings and loans associations appears to have had a direct impact on banks, resulting in numerous banks failing. The last of which was Lehman Brothers debacle in 2008.¹²⁵⁵ For instance, for the period between 1980 and 1994, statistics show that more than 1,600 banks insured by the FDIC were closed or received FDIC assistance to stay afloat.¹²⁵⁶

It was also the reason why more attention was placed by academics and practitioners on studying the relationship between bank concentration and performance, which had been lightly regarded previously. This meant that the studies were more relevant to American banks and possibly other banks in the Western Hemisphere. As far as Africa and other developing nations go, there appear to be few or no research records in this area of banking. Therefore, it is only apt that some of the theories developed for the developed countries be extrapolated to try and make inferences for banks in developing countries, a task which is by no means an easy feat, especially with the dearth of statistical information for large periods.

Turning to the various issues under consideration in the FDIC study, the first thing that was apparent to many of the researchers was the fact that the regulatory freedom that allowed American banks, once restricted by state law to have branches in other American states, was that it created a flurry of mergers and acquisitions. Overall, this effect was viewed positively by many regulators, given what has been observed in the discussion above dealing with

¹²⁵⁴ Curry & Shibut “The Cost of the Savings and the Loan Crisis. Truth and Consequences” (2000) FDIC Review 26–34. See ch 4 para 4.8.2.

¹²⁵⁵ Ibid. See ch 3 para 3.4.

¹²⁵⁶ Federal Deposit Insurance Corporation (FDIC) ‘The Banking Crisis of the 1980s and Early 1990s. Summary and Implications’ in *An Examination of the Banking Crises of the 1980s and Early 1990s*, (1997) <https://www.fdic.gov/analysis/archived-research/banking-review/brspecial.pdf>. 1–84. (accessed 6 May 2019).

consolidation and concentration. Particular scholars, like Ely and Robinson,¹²⁵⁷ felt that the effects of consolidation would have a negative impact on loans to small businesses, in that when the larger consolidated bank that emerged from the merger and acquisition might refuse to lend to the smaller businesses because the new bank would no longer be interested in small clients.¹²⁵⁸ What was not considered, however, was the impact of all these changes on the various small banks. The analysis done on the various large American banks seems to imply that merger activity started in the early 1980s and subsided by the late 1990s. This activity was mainly precipitated by pressure within the banking industry itself.¹²⁵⁹ According to Calomiris and Karceski,¹²⁶⁰ deregulation placed a lot of pressure on American banks in the 1980s because of the United States opening up its financial markets to both out-of-state and international banks and financial organisations. For example, for the United States as a whole, the percentage of bank assets controlled by out-of-state banks rose from a mere two per cent in 1979 to 10 per cent in 1986 and then rocketed to a staggering 28 per cent by 1994. The consequence of the rapid consolidation was a reduction in the total number of banking organisations that fell from 12,463 in 1979 to 7,926 in 1994, while the percentage of assets controlled by banks with over USD100 billion in assets (in 1994 dollars) rose from 9.4 per cent to 18.8 per cent.¹²⁶¹ While deregulation has been a key and necessary condition for the wave of bank mergers in the United States, competition has also been a key exogenous factor in the increase in mergers. Increased global competition among banks and competition from non-bank providers were additional factors that spurred a reorganisation of financial services worldwide.

Technology also played a crucial role and contributed to changes that favoured the repackaging of bank loans as securities (securitisation). Computerisation changed the markets by allowing financial institutions to have greater access to consumers, thus helping to spur global competition. As late as 1980, America's securities transactions with foreigners (gross sales and purchases of stocks and bonds) amounted to only 9 per cent of the gross domestic product. By 1990, these transactions totalled 93 per cent of its GDP. Equally, it has been shown that

¹²⁵⁷ Ely & Robinson "Consolidation Technology and the Changing Structure of Small Banks' Small Business Lending" 2001 *Federal Reserve Bank of Dallas Economic and Financial Review* 23–32.

¹²⁵⁸ Ibid.

¹²⁵⁹ Ely (n 1258) 23–32.

¹²⁶⁰ Calomiris & Karceski "Is the Bank Merger Wave of the 1990s Efficient? Lessons from Nine Case Studies" in Kaplan (ed) *Mergers and Productivity* (2000) 93–178,

¹²⁶¹ Berger *et al.* "The Transformation of the U.S. Banking Industry: What a Long, Strange Trip It's Been" *Brookings Papers on Economic Activity* (1995) 55–218.

international bank lending worldwide rose from USD324 billion in 1980 to a phenomenal USD7.5 trillion in 1991.¹²⁶²

The importance of global competition in the new structure of the financial services industry was reflected in the international aspect of bank consolidation. This means that consolidation affected banks in many countries that did not share similar historic limitations on bank consolidation, like the United States. Notable examples of countries that benefited from consolidations because of increased competition pressure included countries like Germany and Switzerland, to name but a few. Furthermore, the deregulation that has allowed bank restructuring in countries like the United States largely reflects the effect of competitive pressure on regulators. In the new global environment that was created, domestic bank regulators were forced to choose between continuing to exert heavy regulation on a shrinking number of banks or opting for a healthier, deregulated domestic banking system. The lesson to be taken away from this is that, although banking distress can be credited with the relaxation of state branching laws, there are more fundamental long-run concerns that need to be looked at to shape the policy of the Federal Reserve, both on bank consolidation and on bank powers. These long-run concerns are, however, outside of the ambit of this study and thus will not be covered.

The Jeon and Millers study appears to confirm the argument made by other authors like Rhoades, who suggested that, despite the rise in concentration in the top 100 United States banks, the percentage of deposits held by the top three American banks¹²⁶³ did not change throughout the study.¹²⁶⁴ It is further argued that the results were affected by an unexpected factor: a robust economy. This resulted in high bank profits, which led to more profitable banks entering mergers that, in turn, led to a further concentration of the financial market as banks gobbled up the smaller and more vulnerable banks.¹²⁶⁵ This has indeed been the case for many of the small banks in Zambia as well, as shall be seen in Chapter 7 of the thesis. It is now necessary to consider some of the consequences of market concentration on banks.

¹²⁶² Crook “Fear of Finance” 1992 *Economist* 5–18.

¹²⁶³ The largest banks during this time were, JP Morgan Chase, Bank of America, Citigroup and Wells Fargo and US Bancorp.

¹²⁶⁴ Rhoades “Bank Mergers and Banking Structure in the United States, 1980–1998” Staff Study Federal Reserve System (2000) 1–30.

¹²⁶⁵ Ibid.

6.7.7 *The consequences of market concentration and competition*

It appears that one of the main consequences of market concentration and competition is increased merger and acquisition activity. Scholars have shown that this trend started in developed countries and has now shifted to other countries, including developing countries.¹²⁶⁶

Where there is a lot of activity and where there is a large stock of small banks, it appears that merger and acquisition activity increases gradually. In general, where developing countries have few indigenous small banks, often the merger and acquisition activity is quickly dissipated. Some of the theories surrounding mergers and acquisitions will now be considered.

6.8 Mergers and acquisitions

From 2010 to 2022, the Zambian banking system went under intense restructuring, and with it, an increasing number of bank mergers and acquisitions. As observed by Ahmad *et al.*, the main reasons prompting small banks to embark on mergers and acquisitions are manifold: first, the drive to adopt a policy of external growth aimed at economies of scale, enabling the institution to enter new markets or defend its local base of operations (strategic-territorial motivations). Second, the possibility of diversifying banks' activities, with the associated benefits in terms of risk control and income growth (strategic-operational motivations); third, the hope of achieving a sounder balance sheet situation in the face of operational imbalances (rescue motivations).¹²⁶⁷

According to Cybo and Murgia, the mix of motivations can vary considerably, depending on the operational position (in balance or not) and the role (active or passive) of the banks involved. Most mergers involving small banks are motivated by the drive to become more competitive (in the case of active banks) and to safeguard balance sheet stability and profitability (in the case of passive banks).¹²⁶⁸ Following this, it is now trite to analyse whether the numerous concentrations that have taken place in recent years between small banks have resulted in gains in operational and productive efficiency.¹²⁶⁹

¹²⁶⁶ Jeon (n 1246)) 2–23.

¹²⁶⁷ Ahmad *et al.* "Factors Determining Mergers of Banks in Malaysia's Banking Sector" 2007 *Multinational Finance Journal* 177–194.

¹²⁶⁸ Cybo-Ottone *et al.* *Merger and Acquisitions in the European Banking Markets* (1996) 831–859.

¹²⁶⁹ Ibid.

6.8.1 *Bank mergers and acquisitions*

A Merger is an agreement that combines two existing separate companies into one new entity. Most mergers are done to gain market share in the industry, leverage the economies of scale to reduce costs of operations, use the larger capital base to expand to new territories or product lines, or unite common products, all of which are aimed at obtaining a competitive advantage and ensuring sustainable growth. After a merger, shares of the new company are distributed to existing shareholders of both original businesses in pre-agreed proportions.¹²⁷⁰

An acquisition, unlike a merger, is a transaction where one company purchases a majority (normally more than 50 per cent) or, in some instances, all, of another company's shares to take control of the latter company. As part of the exchange, the acquiring company often purchases the target company's equity, which allows the acquiring company to make decisions regarding the use of the newly acquired assets, with or without the approval of the target company's shareholders, owing to the acquired majority holding in the target company. As pointed out by Ely and Song, companies often acquire other companies when they intend to achieve quick inorganic growth, which may be more attainable and does not pose any additional inefficiencies and logistic constraints that may arise from organic growth.¹²⁷¹

With the economic and financial crisis that started in mid-2007 with the subprime mortgage meltdown and reached a first high-water mark with the bankruptcy of Lehman Brothers, AIG, Fannie Mae and Freddie Mac in September 2008, large and complex banking groups (LCBGs), the so-called "big banks" were in the frontline of both huge losses and a virtually unlimited amount of support by sovereigns to keep them out of failure and oblivion.¹²⁷²

According to the BIS financial institutions that are deemed "too big to fail," mean their failure would cause widespread systemic risk, and pose a major problem to a country's financial system. Additionally, crisis-driven mergers and acquisitions may have inadvertently increased the number of these excessively large institutions. Regulatory officials now recognise that this concentration of size creates an unstable financial framework.¹²⁷³

¹²⁷⁰ O'Keefe "Banking Industry Consolidation: Financial Attributes of Merging Banks" 1996 *FDIC Banking Review* 1.

¹²⁷¹ Ely & Song "Acquisition of Large Depository Institutions in the 1990s: An Empirical Analysis of Motives" 2000 *Quarterly Review of Economics and Finance* 467–484.

¹²⁷² McDonald *et al.* *A Colossal Failure of Common Sense* (2009) 1–368.

¹²⁷³ Bank for International Settlements (BIS) *74th Annual Report* (2009) 1–241.

Correspondingly, with the economic and financial crisis that started in mid-2007 and the credit crisis that added itself to an already precarious situation in September 2008, the LCBGs grew even bigger.¹²⁷⁴ By doing so, they sowed the seeds of the next crisis unless sovereigns bent over to pull them out of the abyss using an unlimited amount of taxpayer money to extend “bailouts.”¹²⁷⁵ A bailout may be defined differently, but it is normally associated with the provision of money or resources to an institution that is failing. A bailout is intended to prevent the consequences that arise from a business failure. It is a deliberate act by a government, a central bank or indeed other public national or international organisations supported by governments, such as the IMF, the European Commission¹²⁷⁶ and the European Stability Mechanism (ESM)¹²⁷⁷ to a particular sector.¹²⁷⁸

This is unlike a “bail-in,” where the business shareholders take responsibility for the business failure. According to Avgouleas *et al.*, in “Critical reflections on bank bail-ins,” bailouts are an important mechanism to stop what is called contagion, where the failure of the bank resonates with other banks causing them to fail as well and ultimately causing a financial crisis in that sector.¹²⁷⁹

As far as bailouts are concerned, the United States has a long history of dealing with them from as far back as 1792. Since then, there have been several instances of bank bailouts by the United States government, including the United States insurance giants, American International Group

¹²⁷⁴ Chorafas *Capitalism without Capital* (2009) 1–264.

¹²⁷⁵ Mayeur & Reberieux *The Third Republic from Its Origins to the Great War 1871–1914* (1984).

¹²⁷⁶ The European Commission is the governing body of the European Union. Its primary responsibilities include proposing new laws and policies, overseeing their implementation, and managing the EU’s budget. The Commission also plays a crucial role in ensuring that EU regulations are uniformly applied across all member states. Additionally, it negotiates international agreements on behalf of the EU, distributes EU funds, and represents the EU’s interests on the global stage, promoting a unified EU stance in international affairs. See the European Commission https://commission.europa.eu/about-european-commission_en (accessed 28 November 2024). See also (albeit a more detailed but dated) European Commission *How the European Union Works: Your Guide to the EU Institutions* (2005) 3–56.

¹²⁷⁷ The European Stability Mechanism (ESM) was established in 2012 in Luxembourg. Its mandate was to safeguard the financial stability of the eurozone. It also acts as a lender of last resort, providing financial assistance to eurozone countries facing severe financial difficulties. The ESM succeeded the European Financial Stability Facility (EFSF), which played a crucial role in addressing the eurozone debt crisis. The ESM gets its funds to support eurozone countries by issuing bonds and bills. This form of raising funds assures taxpayers in these countries that their tax contributions will not be used to support struggling countries. The ESM’s role is expected to expand with the ratification of the ESM treaty to include backstopping the Single Resolution Fund and playing a more proactive role in crisis prevention and economic adjustment programs. See European Stability Mechanism (ESM) https://www.esm.europa.eu/about-us#headline-who_we_are (accessed 28 November 2024).

¹²⁷⁸ Berger & Raluca ‘Introduction to Bank Bailouts, Bail-Ins and Related Topics Covered’ in *The Book. TARP and other Bank Bailouts and Bail-Ins around the World* (2020) 5–41.

¹²⁷⁹ Avgouleas *et al.*, “Critical Reflections on Bank Bail-Ins” 2015 *Journal of Financial Regulation* 3–29.

(AIG), Freddie Mac and Fannie Mae. The United States government also acted to protect financial institutions during the 2008 “too big to fail” bailout¹²⁸⁰ that resulted in the promulgation into law of the Emergency Economic Stabilisation Act of 2008 (EESA)¹²⁸¹ by President George. W. Bush. This led to the creation of the Troubled Asset Relief Programme (TARP) in 2008, which was authorised by the Emergency Economic Stabilisation Act of 2008 (EESA).¹²⁸² TARP allowed for the disbursement of roughly USD700 billion to enable the government to buy toxic assets from the balance sheets of dozens of United States financial institutions that were affected by the 2008 meltdown. TARP disbursed over USD 443 billion by the end of the crisis, one of the largest bailouts in financial history to date.¹²⁸³ TARP ended in September 2023 when the US Treasury repaid its last remaining investment. While no troubled assets remain, the lifetime cost of TARP is \$31 billion.

Alternatively, financial institutions can bail themselves out by creating capital buffers well beyond their shareholders’ money, including bondholders and other parties—these are known as “bail-ins”. Bail-ins force creditors and shareholders to foot the bill for a bank’s failure instead of using taxpayer money.¹²⁸⁴ However, it is highly doubtful if Lehman Brothers could have had available USD150 billion in bail-in money. If it did, then it would not have become insolvent.¹²⁸⁵ What it means is that when it comes to LCBGs there are no miracle solutions.¹²⁸⁶ Nor is what happened in September 2008 and thereafter, both in the United States and in Europe, salvaging many of these amalgams of huge credit-and-gambling institutions with

¹²⁸⁰ The 2007–2008 GFC crisis prompted the G20 to implement reforms aimed at strengthening the global financial system. The main aim of these reforms was to address the “too-big-to-fail” problem. This problem normally arises when large financial institutions become increasingly interconnected so much so that their failure could destabilize an entire economy. To mitigate this risk, the G20 introduced measures like increased capital requirements, enhanced supervision, and improved resolution regimes. It was hoped that by strengthening the resilience of these large banks, moral hazard, and systemic risk would be reduced in the market, thereby promoting a more stable and sustainable global financial system. See Buch “Implications of the Too-Big-to-Fail Reforms for Global Banking” remarks by the Vice-President of Deutsche Bundesbank prepared for the IIF-BPI Colloquium on Cross-Border Resolution & Regulation <https://www.bis.org/review/r200804a.pdf> (accessed 28 November 2024) 1.

¹²⁸¹ US Congress Public Law 110–343 Emergency Economic Stabilisation Act of 2008 <https://www.congress.gov/110/plaws/publ343/plaw-110publ343.htm> (accessed 2 May 2024).

¹²⁸² Emergency Economic Stabilization Act of 2008, Pub. L. No 110–343, 122 Stat. 3765 (2008).

¹²⁸³ Congressional Budget Office “Report on the Troubled Asset Relief Programme” (July 2021) <https://www.cbo.gov/publications/57341> (accessed 28 November 2024).

¹²⁸⁴ Amel & Rhoades “Empirical Evidence on the Motives for Bank Mergers” 1989 *Eastern Economic Journal*. 95–139.

¹²⁸⁵ Chorafas *Alternative Investments and the Mismanagement of Risk* (2003) 1–260.

¹²⁸⁶ Chorafas *Breaking Up the Euro: The End of a Common Currency* (2013) 1–221; Chorafas *Public Debt Dynamics in Europe and the US* (2014). 3–371.

public (taxpayers) money by way of mergers between teetering big banks arranged by the sovereign authorities a longer-term solution.¹²⁸⁷ The result was that the survivors of this debacle emerged from the turmoil with strengthened market positions.¹²⁸⁸

Before the GFC, from 1994 to 2008, the top five American banks beefed up their combined share of deposits from 7.9 per cent to 34.3 per cent. This is a nearly 434 per cent increase in market share. It is also a concentration, the direct result of mergers and acquisitions that have largely taken place after the collapse of Lehman Brothers in September 2008, pulling down into the abyss mortgage banks like Countrywide Financial, significant savings and loans like Washington Mutual, and investment banks like Merrill Lynch and Bear Stearns.¹²⁸⁹ Therefore, bank consolidation of that magnitude reduces competition and is a prosperous channel for the beneficial effects of diversification.¹²⁹⁰

Finally, the striking turn of mergers was announced on 7 April 1998, and concluded in October of that year; the merger of Citicorp with Travellers, a large conglomerate led by Sanford Weill, was supposed to be one of the equals. At least superficially, early on, it appeared to be so, but past the first impression, it did not take long until the fiction showed up in the boardroom. By the year 2000, mergers and acquisitions in the banking industry had increased. In 2000, Belgium's Fortis Bank took over BGL of Luxembourg; in 2001, Dexia acquired Kempen and Bavaria's HVB, Bank Austria; in 2005, ABN Amro bought Antonveneta and Unicredit acquired HVB (the larger of these mergers valued at €13.3-billion [approximately USD17.7 billion]); in 2006 BNP Paribas paid €10 billion (USD13 billion) for Italy's Banca Nazionale del Lavoro and Credit Agricole purchased Emporiki, paying way above what the Greek bank was worth.¹²⁹¹ However, these mergers and acquisitions were not solely a European or American phenomenon. Other countries were also carrying out similar transactions, as will be illustrated shortly.

¹²⁸⁷ Hannah & Rhoades "Acquisition Targets and Motives: The Case of the Banking Industry" 1978 *Review of Economics and Statistics* 67–74.

¹²⁸⁸ Mayeur & Reberieux *The Third Republic from Its Origins to the Great War 1871–1914* (1984) 1–383.

¹²⁸⁹ Chorafas *Financial Boom and Gloom: The Credit and Banking Crisis of 2007–2009 and Beyond* (2009) 3–273.

¹²⁹⁰ Chorafas *Basel III, the Devil and Global Banking* (2012) 3–282.

¹²⁹¹ Wall Street Journal Europe, The 14–15 April 2000.

6.8.2 Bank mergers and acquisitions in other countries

This part of the chapter examines mergers and acquisitions in other countries. The listed countries have been selected to provide a comparative study for the next chapter of the thesis and to bring out certain concepts that are necessary to understand this area of finance. The nexus between the Basel Accords and mergers and acquisitions must be made clear from the outset. Particularly, mergers and acquisitions are seen as a mechanism for weaker banks to use as a survival mechanism if they are unable to meet their capital requirements that have been dictated by the BCBS. The following countries will be examined: India, Kenya, Nigeria and Tanzania. These countries have been chosen, first, to show how an active mergers and acquisitions market operates in a large financial market, as in the case of India. It also attempts to showcase how some of the African countries listed above are using mergers and acquisitions to support their weaker banks and the consequences of this. This information is important in that it will be used in the next chapter when discussing Zambia's mergers and acquisition activity and its impact on the banking sector, particularly small banks.

6.8.2.1 India

Mergers and acquisitions of banks in India and their effects on the Indian economy and the financial system of the country have become topical. Many bank mergers in India in 2020 have resulted in the creation of seven large public sector banks in terms of scale and national reach. Each amalgamated entity resulted in the creation of large businesses on a scale comparable to that of global banks and capable of competing effectively in both the local Indian market as well as the international global markets. The players in this mega consolidation plan, the Oriental Bank of Commerce and the United Bank of India, merged into Punjab National Bank (PNB); while the Syndicate Bank merged into Canara Bank. This followed by the merger of the Andhra Bank and Corporation Bank into the Union Bank of India, while the Allahabad Bank became part of the Indian Bank.¹²⁹² The mergers and acquisitions were assumed to be particularly significant as they took place under the grip of the COVID-19 pandemic. This

¹²⁹² Srivastava "A Study of Mergers and Acquisitions in Indian Banking Sector" 2022 *Journal of Education*; Leepsa & Mishra "Post Merger Financial Performance: A Study with Reference to Select Manufacturing Companies in India" 2019 *International Research Journal of Finance and Economics*; Beena "An Analysis of Merger in the Private Corporate Sector in India" 2019 *Journal of Scientific & Industrial Research*. 34–51; Bhoi "Mergers and Acquisitions: An Indian Experience" Reserve Bank of India Occasional Papers (2000).

There is also a blog post written by Kashish Goel who is an advocate at the following site while blogs are not reliable sources the post gives some current ideas that are not found in academic papers. the information is supported by other reputable academic sources. See Sharma & Mohapatra "Mergers and Acquisitions in the Banking Sector of India" (30 November 2021) <https://blog.ipleaders.in/mergers-and-acquisitions-in-the-banking-sector-of-india/> (accessed 5 June 2023).

made experts doubt that the mergers would occur seamlessly for the merging companies. However, despite these impediments, heads of the anchor banks appear to have confidently managed the takeover process well with only minor modifications in the implementation stages. Additionally, the consolidation of these banks provided the impetus to merge entities and to further increase their ability to support more extensive ticket-size¹²⁹³ lending (or lending large amounts to one individual) and have competitive operations by greater financial capacity.¹²⁹⁴

Studies conducted on Indian mergers and acquisitions show that most of the mergers done in the past have proved to be a success for the weaker banks. There are very few, if any, concrete studies carried out to verify this position, however. Going by the track record of the number of mergers and acquisitions carried out between Indian banks, however, it appears to be a fruitful venture for the Indian economy.¹²⁹⁵ This position is echoed by Kumari and Kumari in their work on mergers and Acquisitions in the Indian banking sector over five years (2018–2022).¹²⁹⁶

6.8.3 *Positive aspects of bank mergers in India*

Mergers help in improving the professional standards of banks, according to the work of Gachigo *et al.*, on the effect of mergers and acquisitions strategies on the financial performance of commercial banks in Kenya, found that consolidation enhances organisational efficiency by disciplining the ineffective manager, a concept under this study.¹²⁹⁷ A consolidation strategy can also be used to mop up excess cash flow at the manager's disposal, who may opportunistically utilise the cash. The reduction of the cash flow tames managers' behaviour by ensuring that they do not take unnecessary business risks, thus enhancing the institution's efficiency. Improved decision-making processes are created and, in turn, result in reduced lending requirements for the merged bank as the merger has provided the necessary capital, as

¹²⁹³ The phrase "ticket size" in finance connotes a measure that looks at the dollar amount of sales per customer. Normally the average ticket size. The average ticket size is equivalent to calculating the mean, which is calculated by taking the total sales divided by the number of customers.

¹²⁹⁴ Kumari & Kumari "Merger and Acquisitions in Indian Banking Sector of Five Years (2018–2022): A Review" 2022 *International Journal of Science and Research*. 10.

¹²⁹⁵ Ibid.

¹²⁹⁶ Kumari (n 1295) 10. See other papers that talk about the success of Indian Mergers and Acquisitions Ravi "Recent Mergers and Acquisitions in Indian Banking Sector –A study" 2019 *Journal of Emerging Technologies and Innovative Research*; Kashyap "Merger and Acquisition in Indian Banking Sector: A Case Study of the Bank of Baroda" 2021 *SSRN*.

¹²⁹⁷ Gachigo *et al.*, "The Effect of Mergers and Acquisitions Strategies on Financial Performance of Commercial Banks in Kenya" 2022 *European Scientific Journal* 110.

well as retaining and enhancing its identity as a larger bank.¹²⁹⁸ These are not the only benefits that accrue to a bank after a merger.

Other benefits generated out of a merger are the immense gains of a brand-new customer base for the business, powering the business, and increasing its hold on the market share, while providing an opportunity for the business to acquire a technological upgrade. Thus, it provides a better efficiency ratio for business and banking operations, which is beneficial for the whole economy. Further, the minimisation of overall risk is due to mergers and acquisitions, which is always good from the business point of view. This increases profitability and helps raise the standard of living, which is crucial for a country like India.¹²⁹⁹

In addition, the chances of survival of underperforming banks increase; hence, customer trust remains intact, which is vital for the economy. The weaker bank gets merged into a stronger one and receives the benefit of large-scale operations. Furthermore, financial inclusion and broadening the geographical reach of banking can be achieved better with the merger of large public sector banks and leveraging on their expertise. With the large-scale expertise available in every sphere of a banking operation, the scale of inefficiency, which is more prevalent in the case of small banks, will be minimised.¹³⁰⁰ But despite these positive attributes, mergers are not without their challenges, as indicated in the paragraph below.

6.8.3.1 . Challenges of bank mergers and acquisitions in India

According to Klok *et al.*, most of the problems arising from mergers and acquisitions are based more on emotional and social factors than actual technical or managerial problems.¹³⁰¹ The major issue that arises is that compliance is needed in every decision, which might not be favourable as different organisations' thinking, perspectives, and risk-taking abilities are different. It leads to friction and rifts, which, if not managed well, may lead to the downfall of the organisation.

Further, banks can be merged only on paper. Their people and culture are difficult to change. It is a recipe for disaster as it leads to a poor cultural fit that is not ideal for the organisation or the economy. Therefore, the risk of failure increases if the executives are not committed enough

¹²⁹⁸ Ibid.

¹²⁹⁹ Gachigo (n 1298) 110.

¹³⁰⁰ Kashyap (n 552) 1.

¹³⁰¹ Klok *et al.*, "The Role of Emotions During Mergers and Acquisitions: A Review of The Past and A Glimpse into The Future" 2023 *International Journal of Management Reviews* 587–613.

to bringing the merger platforms together for the merger and takeover of the bank. Such failure may prove harsh for the economy. In addition, the impact on customers of banking mergers or acquisitions is often quite emotional, according to Klok *et al.* If customer perception is not managed with frequent and careful communication, it may lead to loss of business, which is never good for the economy.¹³⁰²

6.8.3.2 Kenya

Consolidations have picked up in the Kenyan banking sector, according to a 2019 report by Cytonn. The report indicates that smaller banks are being acquired by larger banks while somewhat larger banks merge and form partnerships with one another.¹³⁰³ The acquisitions have picked up, as the smaller Tier 2 and Tier 3 banks have found it difficult to operate in Kenya due to:

- i) The implementation of the Kenyan Banks Amendment Act, 2015 saw the capping of interest chargeable on loans to four per cent above the central bank rate (CBR). This compressed banks' net interest margins, as they were unable to price loans higher for their riskier clients, and yet they had higher costs of deposits, which consequently resulted in most banks struggling to sustain their profitability.¹³⁰⁴
- ii) The implementation of the Act saw the larger banks venture into the small banks' niche markets such as small and medium enterprises (SMEs) banking, and consequently, most have struggled to operate on declining top-line revenue, leading to increased operational inefficiency and operating losses, which depleted capital.¹³⁰⁵
- iii) A challenging operating environment caused by an abrasive political climate and prolonged droughts has made it even more challenging to operate, as it consequently leads to a deterioration in asset quality.¹³⁰⁶
- iv) The failure of Kenya's Imperial Bank¹³⁰⁷ prompted a flight to safety, making it hard for Tier 2 and 3 banks to operate. This has led to the acquisition of Tier 3 banks, such as Habib

¹³⁰² Ibid.

¹³⁰³ Cytonn Investments Report "Consolidation in Kenya's Banking Sector to Continue" (February 2019) <https://cytonnreport.com/topics/consolidation-in-kenyas-banking-sector-to-continue>. 1 (accessed 10 March 2019).

¹³⁰⁴ Ibid.

¹³⁰⁵ n 1304, 1.

¹³⁰⁶ n 1304, 1.

¹³⁰⁷ On 13 October 2015, the Central Bank of Kenya (CBK) appointed the Kenya Deposit Insurance Corporation (KDIC) as receiver for Imperial Bank Limited (IBL) pursuant to the provisions of Sections 43(1), 43(2) and 53(1)

Bank Kenya, by Diamond Trust Bank (DTBK)¹³⁰⁸ and mergers of Tier 2 and Tier 1 banks, such as the NIC and CBA deal.¹³⁰⁹

Thus, to maintain a competitive edge and fast-track their growth, large Kenyan banks acquired their smaller counterparts, forming strategic partnerships or merging to leverage the synergies that were created to provide an adequate capital base, which it was hoped would drive long-term growth.¹³¹⁰ Table 12 shows some of the mergers over five years up to 2019.

Table 12. Mergers of Kenyan banks 2014–2019¹³¹¹

ACQUIRER	BANK ACQUIRED	B. V. AT ACQUISITION (KSHS BNS)	TRANSACTION STAKE PER CENT	TRANSACTION VALUE (KSHS BNS)	P/BV MULTI-PLE	DATE 2019
CBA Group	Jamii Bora Bank	3.4	100	1.4	0.4x	19-Jan*
AfricInvest Azure	Prime Bank	21.2	24.20	5.1	1.0x	19-Jan

of the Kenya Deposit Insurance Act, 2012. Due to what the Central Bank of Kenya deemed “unsafe and unsound business practices” within the Bank. The Central Bank of Kenya placed Imperial Bank under the management and control of the Kenya Deposit Insurance Corporation. The action was prompted by an internal fraud scheme. The Central Bank of Kenya had hoped that Imperial Bank’s owners would provide financial support for the organisation, but this did not happen. On December 7, 2021, KDIC submitted the Receivership Report to CBK recommending that IBLIR be liquidated. The report indicates that, considering the weak status of IBLIR’s financial position, liquidation is the only feasible option. Central Bank of Kenya “Press Release –Liquidation of Imperial Bank Limited (in receivership)” https://www.centralbank.go.ke/uploads/press_releases/1065588915_Press%20Release%20-%20Imperial%20Bank%20%20Liquidation-December%202021.pdf (accessed 10 March 2019).

¹³⁰⁸ Diamond Trust Bank Group is an African banking group with operations in Burundi, Kenya, Tanzania, and Uganda. Its flagship, Diamond Trust Bank Kenya, is licensed by the Central Bank of Kenya. As of December 2013, the group was ranked the eighth largest commercial bank in Kenya, with assets of approximately US\$1.924 billion. In 2017, the group acquired 100% ownership of Habib Bank Limited Kenya (HBLK), a subsidiary of Habib Bank Limited (HBL), which is based in Pakistan. The acquisition was approved by the Central Bank of Kenya and DTB, resulting in HBLK ceasing to be a bank licensed. See Central Bank Kenya “Press Release – Acquisition of Habib Bank Kenya Branch” https://www.centralbank.go.ke/uploads/press_releases/2093481458_Press%20Release%20-%20Acquisition%20of%20Habib%20Bank%20Kenya%20Branch%20by%20Diamond%20Trust%20Bank.pdf (accessed 11 July 2019).

¹³⁰⁹ Competition Authority of Kenya (CAK) “Mergers and Acquisitions” <https://www.cak.go.ke/mergers/overview>. The Central Bank of Kenya and the National Treasury have approved the merger of NIC Group PLC (NIC) and Commercial Bank of Africa Limited (CBA). This approval paves the way for the creation of Kenya’s 3rd largest bank by assets. The approval was published in the Kenya Gazette on Friday, 27 September 2019. The amalgamation shall take effect on Monday, 30 September 2019. The newly merged group will be called NCBA Group PLC, and the Kenya operating bank will be known as NCBA Bank Kenya PLC. NIC Group Plc and Commercial Bank of Africa Limited Merger Receives Final Approval. See Central Bank of Kenya Group Holding “Company will be Known as NCBA Group Plc” <https://ke.ncbagroup.com/nic-group-plc-and-commercial-bank-of-africa-limited-merger-receives-final-approval-from-central-bank-of-kenya/> (accessed 1 August, 2019).

¹³¹⁰ n 1310, 1.

¹³¹¹ Cytonn Investments Report “Consolidation in Kenya’s Banking Sector to Continue” (February 2019) <https://cytonnreport.com/topicals/consolidation-in-kenyas-banking-sector-to-continue> 1 (accessed 20 March 2021).

CBA Group	NIC Group	33.5**	53:47***	Undisclosed	N/A	19-Jan*
KCB Group	Imperial Bank****	Unknown	Undisclosed	Undisclosed	N/A	18-Dec*
SBM Bank Kenya	Chase Bank Ltd	Unknown	75	Undisclosed	N/A	18-Aug
DTBK	Habib Bank Kenya	2.4	100	1.8	0.8x	17-Mar
SBM Holdings	Fidelity Commercial Bank	1.8	100	2.8	1.6x	16-Nov
M Bank	Oriental Commercial Bank	1.8	51	1.3	1.4x	16-Jun
I&M Holdings	Giro Commercial Bank	3.0	100	5	1.7x	16-Jun
Mwalimu SACCO	Equatorial Commercial Bank	1.2	75	2.6	2.3x	15-Mar
Centum	K-Rep Bank	2.1	66	2.5	1.8x	14-Jul
GT Bank	Fina Bank Group	3.9	70	8.6	3.2x	13-Nov
Average			76.10		1.6x	
* Announcement date.						
** Book Value (BV) as of the announcement date.						
*** Shareholder swap ratio between CBA and NIC, respectively.						
**** KCB acquired certain assets and liabilities of Imperial Bank; hence, Imperial Bank remains in existence.						

Consequently, increased consolidation in the sector should see the formation of banks that have an adequate capital base, which will provide them with the requisite cover to partake in core banking activities, thereby catalysing economic growth and development in the country. Furthermore, with an aggregate adequate capital cover, the banking sector will remain resilient against any internal or external systemic shocks that may affect the Kenyan banking sector. Thus, it would be ideal for the sector to have fewer, but stronger players.¹³¹²

The position is that Kenya remains overbanked when compared to other major economies in Africa, and there is a need to trim the number of banks to get fewer, more stable players in the market. Furthermore, regulation, monitoring, and oversight of the sector by the Central Bank of Kenya (CBK) would be made even easier with fewer players, thus reducing cases of fraud,

¹³¹² n 1310, 1.

poor governance, and malpractice as witnessed in banks such as Imperial Bank Ltd and Chase Bank Ltd¹³¹³ which forced the banks into receivership.¹³¹⁴

The Imperial Bank Limited was placed into receivership on 13 October 2015, after the Central Bank of Kenya discovered major fraud committed by the bank's managers or administrators through illicit transactions that cost the bank Sh34 billion. Chase Bank was placed under receivership by the Central Bank of Kenya on 7 April 2016, making it the third bank to be placed under receivership in twelve months. This was mostly due to the underreporting of insider loans and failure to meet statutory banking ratios. Chase Bank reopened on 27 April 2016, with KCB serving as receiver.¹³¹⁵

Investment decisions, by both the acquiring and the target banks, that are driven by potential synergies may arise from their mergers.¹³¹⁶ Empirical evidence distinguishes between bank-specific characteristics that increase the likelihood of a bank acquiring another bank, be it a takeover target or a failed bank. A large, well-capitalised and efficient bank has a greater likelihood of acquiring a smaller, less efficient, low-capitalised bank. Illiquid banks that have low-quality assets or low capital are more likely to fail.¹³¹⁷

¹³¹³ The Imperial Bank Limited was placed into receivership on October 13, 2015, after the Central Bank of Kenya discovered major frauds committed by the bank's managers or administrators through illicit transactions that cost the bank Sh34 billion. See Central Bank of Kenya "Press Release –Imperial Bank Liquidation" (20 December 2021) https://www.centralbank.go.ke/uploads/press_releases/1065588915_Press%20Release%20-%20Imperial%20Bank%20-%20Liquidation-December%202021.pdf (accessed 10 March 2019).

Chase Bank was placed under receivership by the Central Bank of Kenya on April 7, 2016, making it the third bank to be placed under receivership in twelve months. This was mostly due to underreporting of insider loans and failure to meet statutory banking ratios. Chase Bank reopened on April 27, 2016, with KCB serving as receiver. See Central Bank of Kenya "Press Release –liquidation of Chase Bank Limited (in receivership)" https://www.centralbank.go.ke/uploads/press_releases/706595395_Press%20Release%20-%20Chase%20Bank%20-%20Liquidation.pdf (accessed 25 April 2019).

¹³¹⁴ Competition Authority of Kenya (CAK) "Mergers and Acquisitions" <https://www.cak.go.ke/mergers/overview> (accessed 15 June 2019).

¹³¹⁵ Central Bank of Kenya "Press Release Imperial Bank Limited (In Receivership)" October 27, 2015 <https://www.centralbank.go.ke/images/docs/media/2015/ImperialBank27102015.pdf> (accessed 27 November 2024).

¹³¹⁶ Central Bank of Nigeria "Press Release –Bank Consolidation: 25 Banks Meet December 31st Deadline" Governor's Office (3 January 2006) 1–4 <https://www.cbn.gov.ng/documents/pressreleases.asp?beginrec=161&endrec=180&keyword=&from=&tod=> (accessed 12 June 2023).

¹³¹⁷ Ezeoha "Structural Effects of Banking Industry Consolidation in Nigeria: A review" 2007 *Journal of Banking Regulation* 159–176.

6.8.3.3 *Nigeria*

The Nigerian banking consolidation exercise represents an unprecedented change in the institutional context in which bank mergers and acquisitions, as well as failures, occur.¹³¹⁸ First, it represents a regulatory policy-induced bank consolidation accompanied by a framework of facilitating incentives that permit banks to exit the industry through either merger and acquisition or failure. This differs markedly from the conventional situation in which bank mergers and acquisitions result from voluntary decisions of the affected banks.¹³¹⁹ The exit process in the Nigerian exercise was induced as part of an overall sectoral reform policy. Also, the regulatory authority provided a range of incentives to assist banks in the exit process.¹³²⁰ This differs from the commonly observed situations where the regulatory authority merely approves the merger and acquisition decisions or liquidates failed banks.¹³²¹

6.8.3.4 *Tanzania*

Mergers and acquisitions have been big news in the banking sector in Tanzania since the banking sector was liberalised in June 1999. Besides regulatory measures taken by the Bank of Tanzania (BoT) to merge certain local banks over capital adequacy, the sector has continued to receive more mergers and acquisitions involving local and foreign banks. Analysts say the mergers and acquisitions will automatically change the landscape and improve the banking sector in Tanzania by consolidating assets and deposits and improving its capital base.¹³²²

The Bank of Tanzania notes that mergers and acquisitions have been undertaken to improve oversight and build solid financial institutions, thereby expanding the performance of banks owned by the government. Before this, the National Bank of Commerce (NBC), Cooperative Rural Development Bank (CRDB), Tanzania Investment Bank, Tanzania Housing Bank, and Tanzania Postal Bank were the most prominent public-owned banks in Tanzania throughout the 1970s and 1980s after the nationalisation of all private banks. This resulted in directed

¹³¹⁸ Ogubunka “Banking Sector Reforms and Bank Consolidation: The Experience of Turkey, Bullion” 2005 *Central Bank of Nigeria* 17–25.

¹³¹⁹ Imala “Challenges of Banking Sector Reforms and Bank Consolidation” 2005 *Nigeria Central Bank of Nigeria* 2. 26–37.

¹³²⁰ Central Bank of Nigeria. Banking Sector Consolidation: Special Incentives to Encourage Weaker Banks (2005). 47–54.

¹³²¹ van den Berg “Competing Risks Models, Working Paper” (2005). 2–8.

¹³²² International Comparative Legal Guides (ICLG) “Mergers and Acquisitions, Laws and Regulations” <https://iclg.com/practice-areas/mergers-and-acquisitions-laws-and-regulations/tanzania> (accessed 13 June 2023).

lending by these state-owned banks to loss-making public firms with dire consequences to the economy.¹³²³

Most notably, this eventually led to persistent non-performing loans in the financial sector, which hampered the Tanzanian financial industry. Consequently, NBC and CRDB were privatised by the government, and the banking system was opened to privately-owned domestic and foreign banks because of market-based reforms implemented in the mid-1990s. Since then, the number of banks in Tanzania has steadily increased thanks to the BoT's lenient licensing policies.¹³²⁴ As of 2019, the number of state-owned banks stood at three, namely CRDB Bank, National Bank of Commerce and National Microfinance Bank, where the Tanzanian government holds only minority shares. Further, mergers and acquisitions have enhanced the economy by creating a strong capital and liquidity base, which helps cushion the banking industry's risks.¹³²⁵

6.8.4 Benefits of bank mergers and acquisitions

The major benefits of mergers and acquisitions are many and include efficiency, filling business gaps, as well as scale and talent upgrades. These are considered in turn below.

6.8.4.1 Efficiency

Acquisitions also scale the bank more efficiently, not just in terms of efficiency ratio, but also in terms of banking operations. Every bank has an infrastructure in place for compliance, risk management, accounting, operations and IT. Once the two banks have become one, it is apparent that the banks can more efficiently consolidate and administer those operational infrastructures. Financially, a larger bank has a lower aggregated risk profile since a larger number of similar-risk, complementary loans decreases institutional risk.¹³²⁶

¹³²³ n 1326.

¹³²⁴ International Monetary Fund Washington (IMF) *Country Report: United Republic of Tanzania Selected Issues – Macroeconomic Issues*. International Monetary Fund Publication Services (2016) <https://www.elibrary.imf.org/view/journals/002/2016/255/article-A000-en.xml> (accessed 13 June 2023).

¹³²⁵ Ibid.

¹³²⁶ DeYoung “Determinants of Cost Efficiencies in Bank Mergers, Working Paper “ Office of the Controller of the Currency in Washington DC (1993) <https://www.occ.gov/publications-and-resources/publications/economics/working-papers-archived/economic-working-paper-1993-1.html> (accessed 13 June 2023).

6.8.4.2 Business gaps filled

Bank mergers and acquisitions empower businesses to fill product or technology gaps. Acquiring a smaller bank that offers a unique revenue model or financial product is sometimes easier than building that business unit from scratch. From a technology perspective, being acquired by a larger bank might allow the institution to upgrade its technology platform significantly.¹³²⁷

6.8.4.3 Scale

A bank merger helps an institution scale up quickly and gain many new customers instantly. Not only does an acquisition give the bank more capital to work with when it comes to lending and investments, but it also provides a broader geographic footprint in which to operate to achieve growth goals quickly.¹³²⁸

6.8.4.4 Talent and team upgrade

While not a factor on the balance sheet, every bank benefits from a merger or acquisition because of the increase in talent at the leadership's disposal according to Hardlock *et al.*, An acquisition presents the possibility of bolstering the sales team or strengthening the set of top managers and this human element should not be ignored or downplayed.¹³²⁹

Unfortunately, mergers and acquisitions are not risk-free. They carry significant risk and if not effected properly, can result in disaster for both the merging parties. Some of the risks are outlined briefly below.

6.8.5 Risks of bank mergers and acquisitions

A report by KPMG shows that as much as 83 per cent of merger deals do not boost shareholder returns because of mismanagement of risk, price, strategy, cultures or management capacity.¹³³⁰

¹³²⁷ Andrade *et al.* "New Evidence and Perspectives on Mergers" 2001 *Journal of Economic Perspectives* 103–120.

¹³²⁸ Berger & Humphrey "Bank Scales Economics, Mergers. Concentration and the efficiency: The U.S. Experience" Working Paper Financial Institution Centre (1994). 1–26.

¹³²⁹ Hardlock *et al.* "The Role of Managerial Incentives in Bank Acquisitions" 1999 *Journal of Banking and Finance*. 221–249.

¹³³⁰ KPMG "Mergers and Acquisitions: Unlocking Shareholder Value: The Keys to Success" Global Research Report LLC 29 (November 1999) <https://pages.stern.nyu.edu/~adamodar/pdfiles/eqnotes/KPMGM&A.pdf> (accessed 15 June 2019); Bradt "83% of Mergers Fail –Leverage a 100-day Action Plan for Success Instead"

Many studies show that up to 70 per cent of merger and acquisition transactions do not achieve the financial and strategic results expected of them.¹³³¹ The reasons for this have been attributed to various aspects, ranging from flawed assumptions to insufficient planning and poor execution of the merger and acquisition. These problems may impact shareholder returns negatively. Average failure rates for mergers and acquisitions are estimated to be between 70 per cent and 90 per cent, especially where inadequate due diligence is carried out by the merger and acquisition teams, ultimately resulting in the mergers and acquisitions team failing to uncover hidden problems¹³³² by providing a false sense of security concerning the possible synergies and strengths that may result from merging the businesses. Also, the lack of involvement of low-level management, who may have deeper insights into the day-to-day operations of the company, may be a source of problems at times. For instance, where this group of managers has certain critical information about the business operations that may not have been brought to the attention of the mergers and acquisition team, they should adjust their decisions to suit the prevailing circumstances after the information is provided.¹³³³ This is especially pertinent if the information that is being held by these managers is negative.

Some of the possible risks that may stem from mergers and acquisitions are considered below. These include the creation of larger banks, a poor culture fit, insufficient commitment, customer impact and perception as well as compliance and risk consistency.

6.9 Regulatory implications of mergers and acquisitions

To examine the regulatory implications of mergers and acquisitions the following headings will be looked at: creating large banks from mergers and acquisitions; contagion risk; systemic risk; lender of last resort assistance; too big to fail factor; poor culture fit; compliance and risk consistency; and the concepts of unassisted and assisted bank consolidation.

Forbes (27 January 2015) <https://www.forbes.com/sites/georgebradt/2015/01/27/83-mergers-fail-leverage-a-100-day-value-acceleration-plan-for-success-instead/> (accessed 15 June 2019).

¹³³¹ Some of the work examined that shows a high failure rate in mergers and acquisitions includes work by Allred *et al.* *Corporations as Stepfamilies: A New Metaphor for Explaining the Fate of Merged and Acquired Companies* (2005); Jemison & Sitkin "Corporate Acquisitions: A Process Perspective" 1986 *Academy of Management Review* 1; Straub *Reasons for Frequent Failures in Mergers and Acquisitions: A Comprehensive Analysis* (2007); Lynch *et al.* "Escaping merger and acquisition madness" 2002 *Strategy & Leadership* 5–12.

¹³³² Lakelet Capital "Reasons Why Mergers and Acquisitions Fail to Succeed" <https://lakeletcapital.com/reasons-why-mergers-acquisitions-fail-and-succeed/> (accessed 15 June 2019).

¹³³³ *Ibid.*

6.9.1 *The creation of larger banks*

It appears that one of the outcomes of merger and acquisition activity is the creation of bigger banks, especially when a small bank has been taken over by a larger multinational bank. This may result in the creation of a bank which becomes systemically important, particularly where the bank that has acquired the small bank is itself weak. This is corroborated to some extent in a study done by Laeven *et al.*, which has shown that larger banks tend to suffer from higher “systemic risk” than small banks¹³³⁴ because they tend to have lower capital, less stable funding, and more market-based activities while creating a more complex organisation as a whole.¹³³⁵ These factors, when considered together, may result in a fragile business model for big banks that may ultimately lead to bank failure if left unchecked. Failure of these larger banks that have resulted from the merger and acquisition can be more disruptive than the failure of a smaller bank, as it creates greater liquidity stress in the economy.¹³³⁶

It is suggested that the reduction of systemic risk in big banks may require traditional bank regulation that focuses on individual banks to be reassessed and replaced with additional forms of regulation that rely on systemic risk considerations to deal with the externalities of the distress caused by these banks. These may include capital surcharges¹³³⁷ on large banks as well as measures to reduce their involvement in market-based activities and their organisational complexity.¹³³⁸ For developing countries, given the diminutive size of their financial markets, it may take a while before banks on this scale are created. Systemic risk is nonetheless pervasive and can still affect a bank, no matter its size. Therefore, the argument submitted is that by increasing the size of banks via merger and acquisition activity, we are creating Leviathans for the size of these economies, which could easily result in systemic risk instability soon.

The 2007–2008 GFC opened the debate on what an optimally sized bank should consist of, given that banks have continued to innovate and develop because of innovation in technology

¹³³⁴ Systemic Risk has been defined variously by different authors however, in the simplest sense of the word and when applied to a financial system, refers to the risk of cascading failure of other banks as a result a single bank that has linkages with these banks failing, and thus creating a ripple or domino effect of failures for other banks. Often, the result is a severe economic downturn in that country or extreme cases, international financial crises for the world.

¹³³⁵ Laeven *et al.* “Bank Size and Systemic Risk” IMF Discussion Papers (2014) 4–29.

¹³³⁶ Ibid.

¹³³⁷ Capital surcharges refer to policies that include stricter supervision, stress testing liquidity requirements additional leverage ratios and recovery and resolution requirements for globally important systematically important banks or G-SIBs.

¹³³⁸ Laeven (n 1339) 4–29.

and deregulation. Surprisingly, as also mentioned before, there appears to be no standard measures for the different sizes of banks in existence in the financial industry worldwide.¹³³⁹ Research suggests that for Africa, Nigeria appears to be the only country in Africa that has differentiated its banks according to the size and strength of each bank's assets. Kenya closely follows this. The lack of standardisation makes it difficult to determine the exact economies of scale that banks should adopt according to their size. Comparing banks in similar categories—like with like—also becomes challenging because there is no standard measure to gauge similar banks against. It thus appears that while the debate brought out many valid issues on bank size, most of which are not relevant to the arguments in this section, the consensus appears to be that a globally coordinated policy must be implemented as a matter of urgency to provide global standards to measure bank sizes. Global coordination was emphasised as a means of preventing spillovers across international jurisdictions and thus ensuring that global financial standards prevail.¹³⁴⁰

It should be noted that large banks create more systemic risk the more they engage in market activities or if they are organisationally complex. Laeven *et al.*, proffer that the risk would be adequately addressed by introducing micro-prudential regulation frameworks.¹³⁴¹ They warn of being too simplistic in the analysis, as there are many causes of bank failure—not just systemic risk—including market inefficiencies and credit leverage cycles.

In considering the risk of large banks, one can look at their size, lower capital, less stable funding (or the funding that is not expected to be reliable over a period, such as short-term wholesale funding),¹³⁴² as well as their capital-based activities and complexity. However, given its importance in a bank's risk profile, it is recommended that economies of scale be considered when assessing bank risk. Previous studies in developed countries indicate that economies of scale were present in small banks only and not large banks,¹³⁴³ although more recent studies

¹³³⁹ Laeven (n 1339) 4–29.

¹³⁴⁰ Laeven (n 1339) 4–29.

¹³⁴¹ Laeven (n 1339) 4–29.

¹³⁴² Less stable funding is different from stable funding in that it is expected to be reliable over a period of time, such as customer deposits and long-term wholesale funding. See BIS Basel Committee on Banking Supervision (BCBS) “Basel III: The Net Stable Funding Ratio” (October 2014) 1–13 <https://www.bis.org/bcbs/publ/d295.pdf> (accessed 16 November 2024).

¹³⁴³ Asongu & Odhiambo “Size, Efficiency, Market Power, and Economies of Scale in The African Banking Sector” 2019 *Finance Innovation* 4.

have shown that even large banks can have economies of scale. This growth resulted, as we saw earlier, from advances in information technology and scalable market-based operations.¹³⁴⁴

The next challenge that large banks face relates to corporate governance. As it stands, developing countries' corporate governance structures are weak as they are still evolving. From an administrative perspective, it is submitted that the dearth of funding does not enable regulators to take charge fully in terms of regulation. The consequence of this is that many issues may be overlooked. From the perspective of this thesis, it is argued that merger and acquisition activity will increase the number of large banks and, with it, the challenges in corporate governance, thus making banks riskier where there is increased merger and acquisition activity. Therefore, the corporate governance model is to ensure that firms operate in the interests of shareholders. It is found that corporate governance models, particularly the Anglo-Saxon model,¹³⁴⁵ are efficient when ownership is concentrated and when they operate in an environment where there are active "take-over" markets.¹³⁴⁶

Conversely, two challenges emanate from this idea. First, banks are constrained by a concentration of ownership and takeovers and second, where banks are highly leveraged, shareholders may practice aggressive business policies and practices by opting for high-risk investment strategies that are not in the interest of the stakeholders, namely the depositors, creditors and government of the jurisdiction in which it operates. Laeven aptly observes, "*Where stakeholders take more control, they [also] take more risk.*"¹³⁴⁷

Another problem with the big banks that could impact a country after a merger and acquisition is uncontrolled risk. That is to say that the risk associated with these banks is sometimes

¹³⁴⁴ See also, Blatter & Fuster "Scale Effects on Efficiency and Profitability in the Swiss Banking Sector" 2022 *Swiss Journal of Economics Statistics* 12; Wheelock & Wilson "Do Large Banks Have Lower Costs? New Estimates of Returns to Scale for US Banks" 2012 *Journal of Money, Credit and Banking* 171–199; Benston "Economies of Scale of Financial Institutions" 1972 *Journal of Money, Credit and Banking* 312–41; Baltensperger "Economies of Scale, Firm Size, and Concentration in Banking" 1972 *Journal of Money, Credit and Banking* 467–488.

¹³⁴⁵ Ungureanu "Models and Practices of Corporate Governance Worldwide" Working Papers " (2012) 625–635. The Anglo-Saxon model is distinguished by the dominance of independent individuals and individual shareholders in a company. The manager is accountable to the board of directors and the shareholders, who are particularly interested in lucrative activities and receive dividends. It ensures investment mobility and placement from inefficient to developed areas, but it suffers from a lack of strategic development. The continental European model on the other hand, is distinguished by a high level of capital concentration. Shareholders share the organization's interests and participate in its management and governance. Managers are accountable to a broader range of stakeholders, in addition to shareholders, such as unions, business partners, and so on.

¹³⁴⁶ Ibid.

¹³⁴⁷ Ungureanu (n 1349) 625–635.

difficult to control either by the shareholders or indeed by the bank's managers. These types of risks are said to have a lot of leeway to manufacture what are called "tails risks" that are hard to qualify in normal terms and which are difficult to assess risk-wise. This is particularly evident in large banks, which are not only highly leveraged but also engage in trading activities and have a complex business structure.¹³⁴⁸

It can be argued that while the rescue of the small, weaker banks in a developing country jurisdiction could be viewed as positive, the resultant form of the bank created after the merger and acquisition may not be conducive for the country. It could introduce a much bigger problem into the financial system by way of greater systemic risk, which would outweigh the risk that a weaker bank without systemic risk might pose, especially given that systemic risk is not a problem associated solely with large banks but includes small banks too. The caveat is that there is very little empirical information in this area for developing countries, and as such it is difficult to give a clear result for banks in these countries. Once again, it leaves this topic open to further research.

Gill Marcus, the former governor of the South African Reserve Bank (SARB) sounded the following warning about creating large financial conglomerates. She believes that the trend is towards blurring of the boundaries between different financial sectors, like commercial banking, investment banking, and insurance, making them less defined. As a result, this is leading to the potential creation of massive financial conglomerates.¹³⁴⁹ She further went on to outline the regulatory concerns of the South African Reserve Bank. These included contagion risk, systemic risk, lender of last resort assistance, and the too-big-to-fail factor.¹³⁵⁰

6.9.2 Contagion risk

The idea of bank contagion risk was first ascribed to Bagehot in 1873 in his seminal work, "Lombard Street," where he stated, "*In wild periods of alarm, one failure makes many, and the best way to prevent the derivative failures is to arrest the primary failure which causes them.*"¹³⁵¹ Since then, regulation has become more complex and banks more prolific, but the

¹³⁴⁸ Ungureanu (n 1349) 625–635.

¹³⁴⁹ Marcus "Issues for Consideration in Mergers and Takeovers from a Regulatory Perspective" speech to the Institute for International Research 9th Annual Conference (8 July 2000) 1–12.

¹³⁵⁰ Ibid.

¹³⁵¹ Schoenmaker "Contagion Risk in Banking" (1996) 86–104 https://www.researchgate.net/publication/252724304_Contagion_Risk_in_Banking (accessed 3 October 2023).

idea of contagion risk has remained constant, even though its definition has been modernised. Schoenmaker brings this out when he defines contagion risk as “the risk that financial difficulties at one or more banks spill over to a large number of other banks or the financial system as a whole.”¹³⁵² It has also been described as the risk that one or more problems in associate entities or banks or financial institutions could contaminate the bank, leading to negative perceptions about the bank. Where it is severe, it can lead to a run on the bank and to its failure.¹³⁵³ However, despite its apparent importance, Kaufman believes many concerns may be greatly exaggerated.¹³⁵⁴

6.9.3 Systemic risk

Systemic risk is the possibility that the failure of one bank to settle transactions with other banks will trigger a chain reaction. This is because systemic risk deprives the other banks of funds, effectively preventing them from closing their positions and ultimately leading to a loss of confidence in the financial system that can ultimately lead to bank failures.¹³⁵⁵ Gill Marcus observes:

*“The effect of conglomeration on systemic risk may not be viewed lightly. If risk is not managed properly within a conglomerate, the repercussions could extend beyond a single institution and, even, into the whole financial sector. The regulators’ ability to monitor and supervise the group risk management practices within banks and banking groups is therefore becoming increasingly important.”*¹³⁵⁶

In terms of definition, Schoenmaker believes that systemic risk and contagion risk are the same.¹³⁵⁷ However, not everyone agrees with this. Research work done by the European Central Bank shows that there is a slight difference between the two concepts. They contend that systemic risk can be defined as the occurrence of the simultaneous failure of a significant number of institutions by looking at significant financial crises in the United States spanning the years 1934 to 2014. Their research shows that during periods of financial crises, a

¹³⁵² Ibid.

¹³⁵³ Marcus (n 1353) 1–12.

¹³⁵⁴ Kaufman “Bank Contagion: A Review of the Theory and Evidence” 1994 *Journal of Financial Services Research* 123–150.

¹³⁵⁵ Marcus (n 1353) 1–12.

¹³⁵⁶ Marcus (n 1353) 2.

¹³⁵⁷ Schoenmaker (n 1355) 86–104.

significant proportion of banks (exceeding 3 per cent in magnitude) experienced default simultaneously.

Drawing from this underlying understanding, their research proposes a metric for assessing systemic risk in the banking sector. This is done by advocating for the utilisation of Value-at-Risk (VaR), which entails determining the proportion of institutions that experience simultaneous failure within a specified timeframe and at a predetermined degree of confidence. Thus, to calculate the systemic VaR, they use a probability distribution to determine the number of potential bank failures. Within this theoretical paradigm, the phenomenon that gives rise to “fat tails” in a distribution that results in systemic risk is referred to as “contagion”. More specifically, the transmission of contagion occurs through the occurrence of “fire sales” and is influenced by the interconnectedness of banks’ shared risks within the network.¹³⁵⁸ Hence, the two risks have been treated separately in the thesis as well.

6.9.4 Lender of last resort assistance

The main aim of the “lender of last resort” is not to save a bank in distress but to evaluate the effect that the bank will have on the financial system and to protect the system from contagion. Banks that are in distress could be contaminated by non-bank activity, leading to the regulator having to extend assistance to a wider range of activities raising the competitive neutrality. To add more to the explanation, it is trite to look at Tucker’s work on the lender of last resort,¹³⁵⁹ to get a more detailed definition of what a lender of last resort is.

Tucker posits that central banks provide liquidity insurance to the rest of the economy, including households and businesses. Central banks are, by nature, reinsurers. This mandate to provide insurance stems from the fact that a central bank’s main liabilities are made up of money from the private sector to a large extent.¹³⁶⁰ It is thus the relationship with the private sector that gives rise to the central bank’s function of being a lender of last resort.

¹³⁵⁸ European Central Bank “Systemic Risk, Contagion and Financial Networks” https://www.ecb.europa.eu/pub/pdf/fsr/art/ecb.fsrart201511_03.en.pdf (accessed 3 October 2023).

¹³⁵⁹ Tucker “The Lender of Last Resort and Modern Central Banking: Principles and Reconstruction, BIS Paper No 79b” (September 2014) <https://ssrn.com/abstract=2504686>. (accessed 3 October 2023).10–42.

¹³⁶⁰ Tucker (n 1363) 10–42.

6.9.5 “Too big to fail” factor

As seen below,¹³⁶¹ a business is deemed to be “too big to fail” (TBTF) if it is so big that it makes up a large portion of a country’s payment system. Because of the size and influence of the financial institution concerned, any disruption that the business suffers may have a catastrophic impact on the economy and may result in the institution being granted special protections and subsidies to keep it afloat. This may inadvertently shift the focus of regulation from market discipline¹³⁶² to regulatory discipline, which may result in a less efficient market.

So, all in all, there are risks in creating larger banks through mergers and acquisitions, and as such, they are not a panacea to resolving weak liquidity suffered by weak small banks. Other aspects that impact mergers and acquisitions are examined below in more detail.

6.10 Customer impact and perception

While banks are undergoing mergers and acquisitions, attention must be paid to the impact they have on their respective customers, especially in small banks. Han and Hausman observe that customers here often respond very emotionally to a bank acquisition; hence, their perception

¹³⁶¹ See ch 6 para 6.10.

¹³⁶² Market discipline is the process by which market participants—such as uninsured lenders, shareholders, and rating agencies—monitor the risks and financial positions of banks and act to guide, limit, and price banks’ risk-taking. See Open Knowledge Repository “World Bank” <https://openknowledge.worldbank.org/server/api/core/bitstreams/ac35e46b-1f8c-5167-82a2-a50a1dbaf5a2/content> (accessed 3 October 2023).

While there appears to be no clear definition of Regulatory discipline it generally refers to the regulation that results from complying with statutory regulation imposed by a regulator. the two forms of regulation normally work together to achieve market efficiency. For example, Billett *et al.* “The Cost of Market Versus Regulatory Discipline in Banking” https://www.biz.uiowa.edu/faculty/jgarfinkel/pubs/mkt_reg_disc.pdf (accessed 3 October 2023).

Commercial banks operate in a regulated environment where they are subject to both regulatory and market discipline. The cost of taking risks by a bank is a function of both sorts of discipline. When banks take on more risk, the market responds by making debt financing more expensive and restricting the sorts of claims they can make. Risk-based capital and insurance premiums, increased examinations, and restraining orders are all ways that regulators enforce discipline. Risk premia may exist for uninsured bank liabilities, as suggested by empirical studies of bank market discipline. However, the combined costs of regulatory and market discipline on a bank’s preference for risk have not been studied. Banks will have an incentive to switch between regulatory and market discipline in response to fluctuating risk if the two entail different costs. The ratio of the bank’s insured deposits to its uninsured liabilities can be adjusted to achieve this substitution. The findings show that shareholders in banks view regulatory discipline costs as being less sensitive to rises in risk than market discipline costs. Our research shows that as the level of risk rises, financial institutions take advantage of this distinction by increasing their reliance on insured deposit funding. However, the idea that market discipline can be an effective disincentive against excessive risk-taking is undermined by the fact that banks can and do change their exposure to insured and uninsured deposits and liabilities. See Billett *et al.* “The Cost of Market Versus Regulatory Discipline in Banking” https://www.biz.uiowa.edu/faculty/jgarfinkel/pubs/mkt_reg_disc.pdf (accessed 3 October 2023).

must be managed with regular and careful communication.¹³⁶³ Once the merger or acquisition is fully underway, it is important to consider the impact it might have on the customers at every stage; anything from changing technology platforms to financial products could impact customers negatively if not handled with care.¹³⁶⁴

6.10.1 Poor culture fit

Authors like Warter and Warter posit that many prospective bank mergers and acquisitions only look at the two banks on paper, without taking their people or culture into account. Failure to assess cultural fit (not just financial fit) is one reason why many bank mergers fail. Throughout the merger and acquisition process, it is recommended to thoroughly communicate and evaluate the various elements that make for a strong consolidation.¹³⁶⁵

6.10.2 Compliance and risk consistency

A final risk to consider during the stages of a merger or acquisition is the risk and compliance culture of each bank involved. Every financial institution handles banking compliance and banking regulations differently, but the two merging banks must agree on their approach moving forward.¹³⁶⁶ When two mismatched risk cultures clash during a bank merger, it negatively affects the profitability of the business down the road if they have not come to a working solution. Therefore, Hausman cautions that bank mergers and acquisitions are complex procedures with the possibility of extraordinary payoff or extraordinary peril. Consequently, such issues must be handled with care.¹³⁶⁷

6.10.3 The concepts of unassisted and assisted bank consolidation

The concepts of unassisted and assisted bank mergers and acquisitions are central to understanding the influence of the regulatory environment on the merger and acquisition decisions of banks. Banking mergers and acquisitions are potentially beneficial to the extent

¹³⁶³ Han & Hausman “Semiparametric Estimator of Duration and Competing Risk Models, Working Paper” MIT (1986).

¹³⁶⁴ Van der Berg “Competing Risks Models, Working Paper” (2005).

¹³⁶⁵ Warter & Warter ‘Implications of M&As for Banking Industry: From Cultural Fit to Cultural Clashes’ in Roman *et al.* (eds) *Euro and the European Banking System: Evolutions and Challenges* (2015) 367–376.

¹³⁶⁶ Han & Hausman “Flexible Parametric Estimation of Duration and Competing Risk Models” 1990 *Journal of Applied Econometrics*. 1–28.

¹³⁶⁷ Ibid.

that they yield synergies and reduce the cost of doing business and the sector's competitiveness locally and globally.¹³⁶⁸

Synergies potentially arising from merger and acquisition activity can also raise issues of public policy interest. Bank consolidation through mergers and acquisitions will alter the banking market structure, which may give rise to antitrust (competition) concerns.¹³⁶⁹ Antitrust concerns arise if consolidation results in a concentration of the local market in the hands of a few large banks and increases their market power. An increase in market power, in turn, may increase the prices of banking services.¹³⁷⁰ Also, the emergence of a few megabanks increases the potential for systemic risks arising from exposure to default risk.¹³⁷¹

Normally, unassisted mergers and acquisitions take place under a high degree of regulatory oversight, in which merger and acquisition decisions are jointly undertaken by the controlling directors and shareholders of the acquiring and target banks.¹³⁷² In this case, the banking regulator merely approves the merger and acquisition transaction, having satisfied itself that the merger and acquisition is unlikely to raise public concerns. On the other hand, O'Keefe indicates that merger and acquisition decisions are assisted when the regulatory authority assists in facilitating mergers and acquisitions between acquiring and target banks. Such assistance has the benefit of reducing uncertainties and costs associated with information asymmetries (by adverse selection) during merger negotiations. Assistance can take numerous forms, including

¹³⁶⁸ Soludo "Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century" address at the Bankers' Committee Central Bank of Nigeria, BIS Review (6 July 2004). 1–6.

¹³⁶⁹ Uchendu "Banking Sector Reforms and Bank Consolidation: The Malaysian Experience" 2005 *Central Bank of Nigeria* 12–16. Note that the Sherman Antitrust Act (1890) was the first piece of federal law intended to weaken economic monopolies and protect consumers. It was named after U.S. Senator John Sherman of Ohio, an authority on commercial regulation. The act's fundamental section prohibits all combinations that restrict interstate or international trade. Not only are formal cartels prohibited, but so are informal agreements to engage in price fixing, output restrictions, market allocation, or the elimination of competition. The second fundamental clause forbids any kind of monopolisation in trade or commerce within the United States. The US Department of Justice can go to court to enforce these two clauses of the Sherman Act, which are its meat and potatoes. The courts have the authority to dissolve companies that have broken the law and to issue injunctions to prevent such violations. There are legal consequences for breaking this rule. In addition, victims of infractions can seek three times their actual losses in court.

¹³⁷⁰ Chukwuma *et al.*, "Mergers and Acquisitions: The Nigerian Banking Consolidation Program" (2011) *International Journal of Banking and Finance* 19–46.

¹³⁷¹ Kwan "Banking consolidation" Federal Reserve Bank of San Francisco 2004. 1–3.

¹³⁷² Soyibo *et al.*, "A Positive and Normative Analysis of Bank Supervision in Nigeria" Research Paper 2004 African Economic Research Consortium.

facilitating liquidation procedures, writing off debts, and compensating the creditors/depositors of the failing bank.¹³⁷³

6.11 Justification for competition in banking

It is always important to follow a concept through to try and see its nascence and evolution as this analysis gives a much clearer view and understanding of the concept in question. Similarly, with competition policy, the thread of evolution needs to be examined. From the various research work examined, there is very little work on developing countries, therefore it is reasonable that the results are extrapolated and applied to small banks where possible.

To begin the discussion, Hasan and Marinč¹³⁷⁴ claim, as do others, that historically the banking industry has been exempt from the strict application of competition policy.¹³⁷⁵ This was due mainly to the disjointed nature of banks given that each country had its own set of rules which were themselves not strict. The competition was weak because the banking system and policymakers at the time felt that competition was undesirable. After all, it was thought to create instabilities in the financial markets. More recently however, especially after the 2007–2008 GFC, the perspectives of the policymakers, particularly in developed Western countries, have made a complete turn-around in terms of the significance and the perceived role that competition plays in a financial market.¹³⁷⁶

6.11.1 *The pros and cons of competition in a financial system*

Competition is seen as an efficient allocator of resources according to the classical, neoclassical, and neoliberal tenets of economics.¹³⁷⁷ Competition is therefore seen to assist in

¹³⁷³ O’Keefe “Banking Industry Consolidation: Financial Attributes of Merging Banks” 1996 *FDIC Banking Review* 1.

¹³⁷⁴ Hasan & Marinč “Should Competition Policy in Banking be Amended During Crises? Lessons from the EU:” Bank of Finland Research Discussion Paper 2013 *European Journal of Law and Economics* 1–34.

¹³⁷⁵ See for example the following authors: Stiroh & Strahan “Competitive Dynamics of Deregulation: Evidence from U.S. Banking” 2003 *Journal of Money, Credit, and Banking* 5 801–828; Carlson & Mitchener “Bank Branching, Bank Competition, and Financial Stability” 2006 *Journal of Money, Credit, and Banking* 1293–1328; Berger & Hannan “The Efficiency Cost of Market Power in the Banking Industry: A Test of the ‘Quiet Life’ and Related Hypotheses” 1998 *The Review of Economics and Statistics* 454–465; Mester “Multiple Market Contact between Savings and Loans” 1987 *Journal of Money, Credit, and Banking* 538–549; Jayaratne & Strahan “Entry Restrictions, Industry Evolution, and Dynamic Efficiency: Evidence from Commercial Banking” 1998 *Journal of Law & Economics* 239–273; Evanoff & Ors “The Competitive Dynamics of Geographic Deregulation in Banking: Implications for Productive Efficiency” 2008 *Journal of Money, Credit and Banking* 897–928.

¹³⁷⁶ Hasan (n 1378) 1–34.

¹³⁷⁷ See ch 3 para 3.2.

ensuring that businesses remain healthy and viable through efficiency. In other words, stiff competition ensures that banks run efficiently and profitably. If they do not do this, the banks concerned are likely to become unprofitable and eventually fall out of the market by becoming insolvent, according to the laws of supply and demand. This ensures that only healthy businesses operate in the market. For these banks, the main kinds of efficiency that are of concern are mainly cost, productive, and allocative efficiency, to name but a few of the important ones.¹³⁷⁸ Therefore, given that competition encourages efficiency, it must be good for banks. Based on this premise, many studies show that competition is good for the financial industry *per se*. Stiroh and Stratham's 2005 empirical study shows that deregulation spurred a shift in the market share from less efficient to more efficient banks.¹³⁷⁹ These outcomes appear to have also been confirmed by Carlson and Michner by showing that competition positively affects the stability of the banking system and that higher competition usually weeds out inefficient banks, making the banks that survive not only stronger but also more stable as well.¹³⁸⁰ These benefits ultimately percolate down to the consumer by lowering interest rates and improving access to credit.

Competition has been seen to enhance monitoring and credit allocation. Where banks face stiff competition, they tend to engage in activities that are less likely to attract competition and sanction, thus leading in most cases to specialisation.¹³⁸¹

On the downside, it appears that banks that are in a highly competitive market may become riskier, thus decreasing the stability brought about by competition in the first place. Vives indicates that one of the problems of stronger market competition is that it creates a higher probability of a bank run. This results from the fact that where competition is strong, banks

¹³⁷⁸ Hasan (n 1378) 1–34. According to Hasan and Mainc, cost efficiency can be viewed as the impact that increased competition has on banks. It results from what is called cost reduction pressures or the process whereby banks strive to gain a larger market share to increase profits. They are forced to reduce their costs at the same time, resulting in an improvement in overall cost efficiency for both the bank and the market. Productive efficiency is normally associated with the impact that innovation has on efficiency. Increased competition can stimulate innovation, leading to efficiencies as a bank seeks to differentiate itself in the marketplace, ultimately resulting in reduced costs. Allocative efficiency speaks to the allocation of resources in a firm and suggests that an efficient allocation of resources, because of competition, occurs as customers invest in more profitable ventures. In conclusion, the relationship between competition policy and efficiency is nuanced. While competition can promote efficiency, it can also exacerbate systemic risk. Hasan and Marinc argue for a balanced approach that considers both the short-term stability and long-term efficiency of the financial system.

¹³⁷⁹ Hasan (n 1378) 1–34.

¹³⁸⁰ Carlson & Mitchener "Bank Branching, Bank Competition, and Financial Stability" 2006 *Journal of Money, Credit, and Banking* 1293–1328.

¹³⁸¹ Ibid.

tend to find it difficult to mitigate excessive withdrawals by clients and thus fall prey to a bank run.¹³⁸² Under these circumstances, Vives suggests that regulators strengthen bank capital requirements in tandem with the increase in competition to ensure that financial stability is maintained.¹³⁸³

Notably, Keeley argues that competition is a source of risk-taking. This results in the erosion of the franchise value of the bank. Where a bank loses its franchise value it is then deemed to have nothing to lose and may try and make profits by taking higher risks to make a profit.¹³⁸⁴

The competition argument is that it often helps the stronger banks to gain a larger share of the market. From this, it is said that the stronger the banks in a market, the more stable a banking system is supposed to be.¹³⁸⁵ However, this now raises the question of what will happen to weaker banks? Is there no reprieve for them? In general, the relationship between competition and stability is inconclusive.¹³⁸⁶ This aspect will be examined further for developing countries like Zambia later in Chapter 7 of the thesis.

6.11.2 Competition between small and large local banks and multi-national banks

Competition is seen to be the driver of efficiency in industry based on *laissez faire* principles. The banking and financial industry is no different. Research shows that competition affects market players differently depending on their size, market capitalisation, and risk profile. It is therefore important to examine how competition between various-sized banks impacts the market generally. Since the object of the thesis is to examine the impact of competition on small indigenous banks, it is important to look at the interplay between the various-sized banks

¹³⁸² Vives “Competition in the Changing World of Banking” 2001 *Oxford Review of Economic Policy* 535–547; Vives “Competition and Stability in Banking, Working Paper Series 3050” CESifo Group Munich (2010); Vives “Competition Policy in Banking” 2011 *Oxford Review of Economic Policy* 476–497. According to George Kaufman, Professor of Finance and Economics at Loyola University in Chicago a run on a bank occurs when: “a large number of depositors, fearing that their bank will be unable to repay their deposits in full and on time, simultaneously try to withdraw their funds immediately. This may create a problem because banks keep only a small fraction of deposits on hand in cash; they lend out most deposits to borrowers or use the funds to purchase other interest-bearing assets such as government securities. When a run comes, a bank must quickly increase its cash to meet depositors’ demands. It does so primarily by selling assets, often hastily and at fire-sale prices. As banks hold little capital and are highly leveraged, losses on these sales can drive a bank into insolvency.” See George “Kaufman Bank Runs” <https://www.econlib.org/library/Enc/BankRuns.html> (accessed 26 September 2023).

¹³⁸³ Ibid.

¹³⁸⁴ Keeley “Deposit Insurance, Risk, and Market Power in Banking” 1990 *American Economic Review* 1183–1200.

¹³⁸⁵ Ibid.

¹³⁸⁶ Keeley (n 1388) 1183–1200.

against the range of theories that surround the area of competition between banks. This area of the study will assist in consolidating the outcome of whether these small banks can stand the competition from other-sized banks or not.

To begin with, competition among banks is seen to be positive as it tends to not only drive efficiency but also ensure that, to survive, a bank or financial institution will allocate its resources efficiently to survive. This is a notorious or well-known fact in economics. Further, it is posited that if a bank does not do this, then it will automatically fail following the tenets of the theory of the survival of the fittest. This neo-classical theory assumes that there is perfect competition in the market, and as such, the market is highly efficient. This is synonymous with a developed market that has reached some level of maturity.

Since developing countries have not yet attained this level of development and efficiency, it is unfair to paint banks in developing countries with the same brush. Again, it is a well-known fact that markets, including financial markets, in developing countries are in disequilibrium and therefore do not conform to this perfect model. Despite this, analysts still use the steady-state model¹³⁸⁷ to describe how competition should work and what its overall impact is on banks and the banking system.

Given this skewed position, it is hypothesised that competition among banks strengthens a banking system, which results in long-term stability and fortitude. In the short run, competition is said to create instability because, in the short run, banks are unable to adjust to the new environment that results from inter-bank competition.¹³⁸⁸ To use an analogy of a ship, that is about to dock; a bank, like the ship, cannot turn around immediately, instead, it takes a while for it to turn around or react to the new circumstances.

So effectively, Iftekhhar and Marinc claim that their research reveals a strong correlation between competition and the stability of a bank. The researchers also contend that their findings demonstrate a strong relationship between competition and the fragility of a bank. This is particularly pronounced where a bank operates in a less competitive environment. Normally,

¹³⁸⁷ The steady-state model is based on John Stuart Mill's economic theory from the 19th century, which forms the basis for the "steady state" economy. The concept is a cornerstone of sustainability science, but it wasn't widely employed until after World War II. Growth limits, ecological economics, and degrowth are all part of this larger philosophical fabric that spans from classical economics to neo-althusianism. There is no consensus in sustainability research on whether a steady-state economy is desirable or even possible. See University of Maine "Steady State Economics" <https://umaine.edu/soe/wp-content/uploads/sites/199/2013/01/Economics-Steady-State.pdf> (accessed 26 June 2019).

¹³⁸⁸ Hasan (n 1378) 1–34.

when this happens, the amount of fragility that a bank suffers is said to also reduce concurrently. This would normally occur where a bank has sound capital ratios and adequate profitable business opportunities that would stop it from taking unnecessary risks in a market.¹³⁸⁹

Secondly, they assert that the market power of banks results in higher interest rates for consumers of banking services, making it difficult for them to pay back loans. This ultimately results in increased loan defaults, which then creates an unstable financial system with high fragility if it is widely spread in the market.¹³⁹⁰

Liu and Wilson have found that competition has negative effects on small banks which in general have a lower level of stability than larger banks. In this scenario, it appears that the consequence of increased competition between banks will result in the higher fragility of small banks.¹³⁹¹ This appears to result from the fact that competition drives down loan rates, and with it the Net Interest Margin¹³⁹² of the bank. Effectively, large banks in a competitive banking system tend to exhibit a higher level of stability as they can respond to competition by taking more risks to enhance profits. On the other hand, banks tend to be less stable and, as such, they focus more on protecting their franchise value rather than taking risks to enhance their profitability in a competitive environment.¹³⁹³

Despite this destructive behaviour, it is still regarded that competition amongst various-sized banks enables stability in the financial system. As indicated earlier,¹³⁹⁴ the premise is based on the neo-classical and, more recently, neoliberal idea that intense competition weeds out inefficient players and results in a more stable banking system at the end of the day.¹³⁹⁵ The so-called “multimarket” or having banks of various sizes, increases competition, and while inefficient banks fail, the ultimate victor in the game is the consumer, as he not only obtains the best services available but also obtains them at the lowest price possible.¹³⁹⁶ This in itself is a vexing assumption and one that will be criticised in Chapter 7 and, in many respects, is the

¹³⁸⁹ Hasan (n 1378) 1–34.

¹³⁹⁰ Liu & Wilson *Bank Type, Competition and Stability in Japanese Banking* (2011) 1–33.

¹³⁹¹ Ibid.

¹³⁹² Liu (n 1394) 1–33. Net Interest Margin (NIM) is defined as the difference between the interest income earned and the interest paid by a bank or financial institution relative to its interest-earning assets like cash.

¹³⁹³ Liu (n 1394) 1–33.

¹³⁹⁴ See ch 6 para 10.4.

¹³⁹⁵ See ch 3 para 3.3.1.

¹³⁹⁶ Liu (n 1394) 1–33.

basis of this thesis, especially given that in developing countries these small banks are the seeds for the creation of bigger indigenous banks. Furthermore, the effects of competition on stability impact the interbank market and the payment system of a country. Perfect competition¹³⁹⁷ has been blamed for stopping banks from sourcing liquidity when they have temporary shortages of liquidity. According to Beck,¹³⁹⁸ this is particularly pronounced when a bank is small and weaker than the other banks it is competing against.

Beck contends that competition increases risk-taking amongst banks, especially where competition is high.¹³⁹⁹ Competition creates an environment that normally increases the pressure to make more profits. This drives banks to take on more risk than is necessary because of the higher incentives created from dealing in riskier products. Further, Mahawiya, *et al.*, postulate that where banks are forced to compete with international banks when markets are liberalised, it often leads to bank failures as the domestic banks become less profitable.¹⁴⁰⁰ Despite this negative effect, the authors argue that the long-term impact of international banks is to bring stability into a market and to enhance competition in the financial markets.¹⁴⁰¹ The impact of switching to a market system in Zambia will be discussed in Chapter 7 when the Zambian experience is examined. Suffice it to say that competitive environments created by the entry of international banks erode the franchise value of local banks and encourage them to be less risk-averse to keep their profits at the same level or indeed to push them higher because of pressure from the boardrooms to increase bank profits further. Hassan and Marinc appear to be proponents of the idea that competition lowers interest rates and that this makes it safer for the borrower, as lower interest rates make it easier to pay back loans.¹⁴⁰² Logically, this is supposed to make banks safer as well, but the smaller banks tend to earn less from their client

¹³⁹⁷ A world with “perfect competition” would be ideal from an economic perspective. In this hypothetical market setup, numerous tiny businesses existed alongside one another, each making output selections in response to the unique demands of consumers. However, this ideal scenario was contingent on increased returns to scale, which enable organisations to reduce expenses as they grow. As a result, perfect competition theory predicted that some of the smaller businesses would collapse. In addition to giving rise to the field of law and economics, “The Problem of Social Cost” also paved the way for the new institutionalism in industrial organisation that we discussed earlier. See Britannica Money “International Economics” <https://www.britannica.com/money/topic/economics/International-economics#ref837671> (accessed 20 November 2023).

¹³⁹⁸ Beck (n 1854) 1–40.

¹³⁹⁹ Beck (n 1854) 1–40.

¹⁴⁰⁰ Mahawiya *et al.* “Foreign Bank Inflows: Implications for Bank Stability in Sub-Saharan Africa” 2018 *African Review of Economics and Finance* 54–81.

¹⁴⁰¹ Ibid.

¹⁴⁰² Hasan (n 1378) 1–34.

relationships, thus reducing their incentives to properly service borrowers, thereby increasing the risk of fragility.¹⁴⁰³

Competition also increases the monitoring of the banking system. As such, management is pressured to make revenue for the various stakeholders. As observed by Mumbi, where competition is stiff, banks tend to become riskier in terms of their behaviour, thus increasing banks' systemic risk.¹⁴⁰⁴ Competition, therefore, appears to worsen the adverse selection problem in the financial market. Additionally, bank screening costs are high, increasing the probability of bad borrowers obtaining loans, resulting in poor loan portfolio quality.¹⁴⁰⁵ This may not only harm a small bank, but also impact the overall soundness of the banking system.

The argument thus becomes that large, well-capitalised banks tend to have more market dominance and enjoy a larger proportion of bank safety and soundness in the financial market. Competitive banking environments are therefore beneficial to large banks, particularly the large international multinational banks with high capitalisation and international parentage and superior management skill sets that are adept at managing and mitigating risk.¹⁴⁰⁶

Building on this, Jimenez points out that where a few large banks are competing with one another, competition may be fierce. However, when banks are geographically small and separate, competition tends to be limited. But where competition becomes excessive and it begins to threaten the solvency of banking institutions, then this may affect the stability of the whole banking system of a country, particularly when an aggregate level of competition is reached.¹⁴⁰⁷

This position will become clearer when competition in the Zambian market is discussed in Chapter 7¹⁴⁰⁸ is considered apart from minor nuances, such as the international banks have always been a part of the Zambian banking system since the country's independence.

¹⁴⁰³ Hasan (n 1378) 1–34.

¹⁴⁰⁴ Mumbi “Bank Competition and Financial System Stability in a Developing Economy: Does Bank Capitalisation and Size Matter? Working Paper “ BoZ (2017) (unpaginated).

¹⁴⁰⁵ Ibid.

¹⁴⁰⁶ Mumbi (n 1408).

¹⁴⁰⁷ Jimenez *et al.* How does competition impact bank risk-taking? 2010 *Banco de Espana Working Papers* 9–36.

¹⁴⁰⁸ See ch 7 para 13.1–3: para 13.5.

6.12 Impact of the Basel Accords on bank competition

Looking at the impact of competition among banks using general theories that underpin them, the impact and effect of the introduction of the Basel Accords into banking systems will now be considered. Once again, while competition will be looked at generally, the focus is to look at the impact on small indigenous banks, in particular. This is important because the small bank has become a rare commodity in many developing countries, including Zambia. Small banks have slowly begun to disappear as they are being assimilated into larger banks via mergers and acquisitions. In Zambia, the markets have seen various mergers and acquisitions recently, mirroring international, continental, and regional trends. This has resulted in many banks being rebranded with a widened operational and service scope to meet the requirements of the “one-size-fits-all” Basel Accord model. Whether these changes will bear fruit for the foreign “merger” bank remains to be seen.

6.12.1 *Basel Accords and competition*

Most readers understand Basel Accords according to the initial three Accords (now four with the introduction of Basel IV).¹⁴⁰⁹ Often, when questioned, they will refer to the various ratios that the Accords espouse. This thesis would like to go further and show that the Basel Accords are not merely policies or regulations that are good to have, but by relying on Tarullo’s work will argue that while the policies created by the Accords appear to be *prima facie* neutral in their application these instruments appear to also have a dichotomous purpose that includes a

¹⁴⁰⁹ Basel IV is the last of the Basel Accords. The Basel Committee for Banking Supervision (BCBS) established Basel III standards in reaction to the GFC, which aimed at rectifying deficiencies in the regulatory framework that existed before the crisis. This new prudential framework increases the amount and quality of regulatory capital, laying the regulatory groundwork for a robust and stable banking sector. By adding the prudential framework, the BCBS improved Basel III even more. The primary goal of this was to lessen the excessive variability found in risk-weighted assets (RWAs) and risk-based capital ratios. This was motivated by several empirical assessments that showed a notable degree of variation in the RWA calculations made by banks. Both banks and regulators were deeply concerned about this fluctuation. The regulators and banks were deeply concerned about this variability, which led to a decline in trust in the regulatory capital ratios that the banks reported. As a result, the Basel III framework was modified once again to account for these inadequacies. The banking and financial sector now refers to this last phase of the Basel III framework as “Basel IV.” The BCBS released Basel IV in December 2017. Basel IV essentially consists of measures designed to improve the risk sensitivity and robustness of standardised methods (SA) for operational and credit risk. Furthermore, it eliminates the use of internal modelling methodologies and restricts the application of internal ratings-based (IRB) approaches to credit risk. Operational risks resulting from the computation of regulatory capital requirements and revisions to credit valuation adjustment (CVA) standards. Due to COVID-19, the implementation deadline of January 2022 was postponed by one year to January 2023. Feridun & Özün “Basel IV Implementation: A Review of the Case of the European Union” 2020 *Journal of Capital Markets Studies* 7–24; KPMG “Basel IV Credit Risk Standardised Approach (SA) January 2021 Considerations for Implementation” (January 2021) <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2021/02/basel-iv-credit-risk-standardised-approach.pdf> (accessed 23 November 2023). See ch 4 para 4.6.

subtle competitive element that is used as a means of amassing market share in international financial markets where the BCBS member countries lack a presence.¹⁴¹⁰

To do this, the West and particularly the United States of America, under the Washington Consensus,¹⁴¹¹ must introduce rules that will give it a competitive edge against other financial systems and banks. Under Basel I, as evidenced in Chapter 4,¹⁴¹² the BCBS was clear in its intentions for “*the overriding need for a multinational accord to strengthen the stability of the international bank system to remove a source of competitive inequality arising from differences in national capital requirements.*”¹⁴¹³ To back this claim, it is only trite that evidence in support is considered. We need to look at the Japanese question to see how the United States of America watered down local Japanese bank regulation by using what is called the “level playing field” approach or argument. The corollary is that, if it can be done to a developed country like Japan, how much more likely is it capable of being done in respect of developing countries that are economically weak and unstable?

According to Tarullo,¹⁴¹⁴ the origins of the Basel Accord were premised on two interacting concerns: first, the risk posed to the stability of the global financial system by low capital levels of internationally active banks and second, the competitive advantage accruing to banks subject to lower capital requirements.¹⁴¹⁵ Of particular concern were the Japanese banks that had grown rapidly in the preceding decade and continued to do so while the government of Japan was negotiating the Basel I Accord. Tarullo mentions that back in 1974, when the Basel Committee was established, only one of the world’s ten biggest banks was from Japan. However, the growth of Japanese banks in the global financial landscape was remarkable. In 1981, they held only a quarter of the assets of the top 20 global banks, but by 1988, their share had skyrocketed exponentially to over 70 per cent.¹⁴¹⁶ This rise in prominence by the Japanese banks had been mirrored by a decline in the position of banks in the United States. America’s largest banks, Bank of America, Citibank, and Chase Manhattan (now called JPMorgan Chase) were the three largest banks in the world during the 1980s, as they still are today. By 1981, they had kept their

¹⁴¹⁰ Tarullo (n 195) 75–214.

¹⁴¹¹ See ch 3 para 3.3.

¹⁴¹² See ch 4 para 4.3.1.

¹⁴¹³ n 258.

¹⁴¹⁴ Tarullo (n 195) 49, 76–77, 85.

¹⁴¹⁵ Tarullo (n 195) 46–48, 142.

¹⁴¹⁶ Tarullo (n 195) 46.

positions except for Chase Manhattan, which had fallen to 15th position in the world. By 1988, these three largest American Banks were ranked the 11th, 39th, and 41st largest banks in the world, respectively.¹⁴¹⁷ Equally, Tarullo points out that the share of assets of the world's top 20 banks declined from 18.2 per cent in 1981 to 4.45 per cent in 1988.¹⁴¹⁸

These phenomenal growth rates came under the scrutiny of the United States' bankers and policymakers, and an examination of capital ratios was carried out. This examination revealed that, while Japanese banks had grown phenomenally, the capital ratios for these banks had reduced from 3 per cent to 2.5 per cent effectively. This was against an increase in capital ratios by the American, French, British, and German banks.¹⁴¹⁹

It is said that the concerns about Japanese banks were very much part of other complaints that surrounded trade issues, including Japanese steel, autos, and semiconductor companies, and the unfair advantage that Japanese firms enjoyed in terms of market share. For Japanese banks, in particular, the unfair advantage was twofold. First, banks had advantages in terms of the tight safety net provided by the Bank of Japan, and second, the Japanese culture of *Keiretsu*.¹⁴²⁰ *Keiretsu*, or "headless combine," is based on Japanese commercial customs which replaced the powerful Japanese business families called *Zaibatsus* that held sway before 1945, but which were later broken up by the United States after World War II, as the practice of *Zaibatsu* was seen as encouraging monopolistic economic behaviour.¹⁴²¹ Under *Keiretsu*, businesses create relationships between the banks and their industrial concerns. The industrial concern assured the banks of much of their financing business as these banks expanded rapidly abroad. This did not sit well with the American banks, as they felt that their access to Japanese financial markets was impaired since the Japanese banks were protected.¹⁴²² Thus, the United States felt it suffered an undue disadvantage because Japanese banks were afforded the protection of a

¹⁴¹⁷ Tarullo (n 195) 46–48.

¹⁴¹⁸ Tarullo (n 195) 45–48.

¹⁴¹⁹ Tarullo (n 195) 49, 76–77, 85.

¹⁴²⁰ Tarullo (n 195) 49. See also, Dyer "How Chrysler Created an American Keiretsu" 1996 *Harvard Business Review* 42–52; Katsuki & Lennerfors "The New Improved Keiretsu" 2013 *Harvard Business Review* 109–113. Note: Keiretsu Relationships mean group relationships. In Japanese business circles, the word is synonymous with a partnership, alliance, or extended enterprise. Normally, it allows a manufacturer to establish stable, long-term relationships. These relationships are beneficial because they help the business stay lean and focused on its core business. The same concept was used in banking relationships, much to the displeasure of the US regulators who felt that the level playing field was not level for them.

¹⁴²¹ Dyer (n 1424) 42–52; Katsuki (n 1424) 109–113.

¹⁴²² Dyer (n 1424) 42–52; Katsuki (n 1424) 109–113.

“...tight safety net provided by the Bank of Japan [and] Keiretsu relationships between banks and industrial concerns...”¹⁴²³

It is said that the process of addressing the issues was very similar to a trade dispute, as the issues were raised and required congressional responses to the complaints. The US Department of Trade, using section 301 of the US Trade Act of 1974 and the tenets of the Basel Accords, threatened non-compliant countries with unilateral action against their businesses if they did not accede to the terms of the agreements.¹⁴²⁴

In the trade arena, this well-known course of action was associated with the use of section 301 of the Trade Act of 1974¹⁴²⁵ and various offshoots such as “Super 301”¹⁴²⁶ and “Special

¹⁴²³ Tarullo (n 195) 48.

¹⁴²⁴ Tarullo (n 195) 48.

¹⁴²⁵ Section 301 of the US Trade Act of 1974 [Public Law 93–618, as amended] [As Amended Through P.L. 117–286, Enacted December 27, 2022] Title III—Relief from Unfair Trade Practices, Sec. 301.

The section reads as follows: Title III—Relief from Unfair Trade Practices Chapter 1—Enforcement of United States Rights Under Trade Agreements and Response To Certain Foreign Trade Practices Sec. 301. Actions By United States Trade Representative (a) Mandatory Action.—If the United States Trade Representative determines under section 304(a)(1) that—(A) the rights of the United States under any trade agreement are being denied; or (B) an act, policy, or practice of a foreign country—(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (ii) is unjustifiable and burdens or restricts United States commerce; the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with a foreign country. See Government of the United States “Trade Act of 1974 Public Law 93–618 (as amended through P.L. 117–286, enacted 27 December 2022)” <https://www.govinfo.gov/content/pkg/COMPS-10384/pdf/COMPS-10384.pdf> (accessed 6 October 2023).

¹⁴²⁶ The “Super 301” provision. The clause enacted in 1988, known as “Super 301”, mandated that the Office of the United States Trade Representative (USTR) identify and commence Section 301 investigations on priority trade practices during the years 1989 and 1990. The implementation of “Super 301” was driven by the apprehension of Congress regarding the involvement of specific foreign nations, particularly Japan, in extensive and continuous unfair practices. These practices are aimed at keeping their domestic markets free from substantial competition posed by American and other international markets. Section 301 investigations were authorised by Congress with the intention of providing the US President with significant power in negotiating the cessation of unfair trade practices conducted by foreign nations. It is worth noting that the Super 301 provision, which served a similar purpose, has been temporarily discontinued. Nevertheless, numerous endeavours have been made to revive them. See Grier “The Use of Section 301 to Open Japanese Markets to Foreign Firms” 1992 *North Carolina Journal of International Law and Commercial Regulation* 1.

301.”¹⁴²⁷ The banking agencies played an analogous card, specifically directed, as so many such measures were in the 1980s, against Japan.”¹⁴²⁸

Within a few months, the Japanese Ministry of Finance had agreed to subscribe to the agreement despite opposition from many of the large Japanese banks, and for its troubles, it was granted concessions from the rest of the Basel Committee for agreeing to join the Basel Accord Club.¹⁴²⁹ These concessions included allowing Japanese banks some leeway in terms of not complying with certain parts of the Basel II Accord.

Notably, the Basel Accords are not about getting all countries on the same level because it is good for them. Rather, it is submitted that it is about creating a level playing field for Western countries to penetrate developing and other countries to establish their bases of trade control.¹⁴³⁰ If an economic power, such as Japan, can buckle under the pressure from Basel member

¹⁴²⁷ “Special” 301 is a part of the Section 301 remedy that focuses on intellectual property rights (IPR) and that relies upon the same statutory enforcement authority in “normal” Section 301. Special 301 requires the U.S. Trade Representative (USTR) to go through the process of identifying countries that: (A) deny adequate protection for intellectual property rights (IPR) as provided for under any of a series of bilateral and multilateral agreements; or (B) deny fair and equitable market access for U.S. persons who rely on IPR. Countries identified under either of these provisions are then subject to investigation and enforcement proceedings under the normal Section 301 provisions. Just as in the case of a normal Section 301 action, the Special 301 provides for consultations that are designed to permit a resolution of the matter through negotiation. If, however, such Special 301 negotiations fail, then a normal Section 301 action is triggered automatically, which can result in the imposition of trade sanctions by the U.S.”. See the Allen Dunn Bill Fennel Brief comparison of Section 301 and Special 301 Trade Laws https://ftac.net/7-Special_301.pdf / (accessed 16 October 2023).

¹⁴²⁸ Tarullo (n 195) 50.

¹⁴²⁹ Tarullo (n 195) 70–75.

¹⁴³⁰ To strengthen the argument that the BCBS and the Basel Accords are extensions of the other international organisations like the WTO that are controlling trade and competition, excerpts from an article in The Washington Post “Where’s Japan’s Level Playing Field?” (1992) <https://www.washingtonpost.com/archive/opinions/1992/06/15/wheres-japans-level-playing-field/45351508-9d08-42a7-adc6-7defb2decb7f/> / (accessed 16 October 2023).

“The keiretsu system ensures that Japanese car manufacturers have a ready supply of Japanese-controlled parts, no matter where their factories are located. Parts purchased from transplanted keiretsu parts makers augment imported parts, so Japanese transplant vehicle assemblers virtually ignore the cost-advantage and world-class quality of American-owned parts suppliers. The Commerce Department recognized the harmful impact of the keiretsu system when it ruled in May that some Japanese car manufacturers are dumping minivans into the United States. It found that keiretsu suppliers charged lower prices for the parts that went into exports than for parts intended for domestic vehicles...The U.S. auto parts industry and the national economy have been severely damaged by this system. For every U.S. job and dollar added by Japanese auto transplants, two jobs and two dollars have been lost. The closed system is responsible for the U.S. trade deficit in auto parts; indeed, if it were not for the \$9.2 billion deficit with Japan, the U.S. auto parts industry would have enjoyed a \$3.7 billion global surplus in 1991.” See The Washington Post, “Where’s Japan’s Level Playing Field?” (1992) <https://www.washingtonpost.com/archive/opinions/1992/06/15/wheres-japans-level-playing-field/45351508-9d08-42a7-adc6-7defb2decb7f/> / (accessed 16 October 2023).

countries, what about weaker, resource-rich, developing countries that are dependent on assistance to keep their economies afloat?

Now that the point has been brought out regarding why competition is important and why the emphasis on the concept of the level playing field is integral to liberalising banks, it is time to consider in some detail the impact of the Accords on small banks. For this examination, the impact of Basel III will be used to bring out the salient points of the argument in this area.

6.12.2 Impact of the Basel Accords on competition: the American experience

The American experience with the Basel III Accord indicates that the Basel requirements adversely impact small banks not only in terms of competition but also in terms of survival amid heightened capital requirements. As a means of forestalling the crisis in this area, the United States policymakers, including the Federal Reserve Bank, adopted the United States Capital Regulatory Framework for Bank Size for Small Banks,¹⁴³¹ rejecting the “one-size-fits-all” approach for its small banks.¹⁴³² US policymakers have argued that adopting a different size for smaller banks is anchored on the “observable upward adjustments”¹⁴³³ of the Basel III Accord. There appears to be a bias towards small American banks when it comes to addressing the issue of applying the Basel Accords to financial institutions. As observed before, the fact remains, that a bank might be deemed to be a small bank in the United States but when compared to a small bank in a developing country, these so-called “small” American banks easily fit into what may be deemed as a large bank category in developing countries in terms of statutory capital requirements and capital base; which says a lot about the actual size of some of the developed country banks when compared to banks in developing countries using the United States definition of bank size. To require that small banks in developing countries be

¹⁴³¹ Labonte & Perkins “Over the Line: Asset Thresholds in Bank Regulation” (3 May 2021) <https://sgp.fas.org/crs/misc/R46779.pdf> (accessed 16 October 2023); Congressional Research Service “Tailoring Bank Regulations: Differences in Bank Size, Activities, and Capital Levels” (21 December 2017) https://www.everycrsreport.com/files/20171221_R45051_47c4381dedef75e1685f83900702a2e8a904be22.pdf/ (accessed 16 October 2023).

¹⁴³² Labonte “An Analysis of the Regulatory Burden on Small Banks Congressional Research Services” (updated 22 April 2015) <https://crsreports.congress.gov/product/pdf/R/R43999> (accessed 16 October 2023).

¹⁴³³ “Observable upward adjustment” refers to a practice where financial institutions normally increase their regulatory capital requirements in line with observable risks that may not be adequately captured by the standard risk-weighted model calculations. This practice ensures that the bank has sufficient capital to always meet the risk. See: European Central Bank (ECB) “ECB Guide to Internal Models” (February 2024) 1–280 https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisory_guides202402_internalmodels.en.pdf (accessed 19 December 2024).

included in the range of banks that must be fully compliant with the Basel Accords is nothing short of a death sentence—even for the relatively strong and resilient small banks in African and developing countries.

The thrust of the argument in this thesis is that these small indigenous banks should not be merged and should not be subjected to the strict rules of the Basel Accords until they have “come of age” in terms of competitiveness. But these arguments require solutions that would tentatively allow such banks to grow separately from the main competition, comprising mainly larger foreign banks, until they are ready to emerge from their small bank status into fully-fledged financial institutions.

6.12.3 The impact of Basel III on mergers and acquisitions in European and African countries

The introduction of Basel III in Europe and Africa has had similar outcomes for smaller banks and has been said to have ratcheted up the mergers of this category of banks. In Europe, the blog post-Finextra¹⁴³⁴ observes that Basel III regulations are unexpectedly pushing banks, particularly those with international operations, towards mergers and acquisitions to quickly strengthen their financial positions. While this is not feasible for banks limited to a single country, it might soon result in increased collaboration and mergers among globally operating banks as larger institutions pursue global consolidation.¹⁴³⁵

Similar results have been reported in countries like Nigeria and Kenya when Basel III was introduced. In Nigeria, Solanke noted that Basel III policies affected Tier 2 and Tier 3 banks and that the likely outcome was that these banks would decide to merge to strengthen their capital positions, especially in terms of meeting the capital buffer standards.¹⁴³⁶ As aptly observed by Solanke, as smaller banks lose market share to larger ones, they become prime targets for mergers and acquisitions, particularly among themselves due to their diminished

¹⁴³⁴ Finextra Blog “Basel III –Driving Mergers and Acquisitions” (20 September 2010) <https://www.finextra.com> (accessed 16 October 2023) Finextra is a prominent autonomous newswire and information provider catering to the global financial technology community. Finextra comprehensively reports on noteworthy technological developments within the domains of wholesale and retail banking, capital markets, and insurance. In addition to its primary content, Finextra also disseminates a diverse array of research articles, features, white papers, and case studies.

¹⁴³⁵ Ibid.

¹⁴³⁶ Ayodele “Basel III to Spur Banks ‘Merger and Acquisition’ Renaissance Capital Limited RenCap” *Business Day Nigeria* (10 December 2021) <https://businessday.ng/companies/article/basel-iii-to-spur-banks-ma-rencap/> 1 (accessed 16 October 2023).

size. This consolidation would likely encourage these banks to raise capital and adopt a more cautious approach to loan expansion and dividend distributions in the immediate future.¹⁴³⁷

In Kenya, while there appears to have been an active mergers and acquisitions culture since independence in the country, the introduction of the Basel III Accord has quickened the pace of mergers and acquisitions, resulting in a major reorganisation of the Kenyan banking sector.¹⁴³⁸ The capital adequacy requirements set by the Kenyan central bank prompted small, weaker banks with low capital bases to seek alternative measures for survival, including mergers and acquisitions and listing shares on the Kenyan stock exchange. One of these deals that was accelerated by the Basel III Accord was the merger of Kenyan Commercial Bank (KCB) and National Bank of Kenya (NBK), which started as a state-owned bank.¹⁴³⁹

It appears that while the mood surrounding mergers and acquisitions appears to be that it is a panacea for financially struggling banks, especially those that may impact a financial sector negatively with systemic risk if it fails; the reality is that mergers and acquisitions activity does not always guarantee a favourable outcome in the way of improved performance.¹⁴⁴⁰ Even the most well-thought-out mergers and acquisitions can be fraught with unforeseen problems which may cause a dip in the new conglomerate's performance indicators. This can result from friction resulting from variances in the different objectives and strategies of the merged organisations. Equally, poor due diligence has been identified as another cause of conglomerate failure.¹⁴⁴¹ These are but a few of the many problems that are faced by banks when they undertake mergers and acquisitions, including small banks.

Most of the work in the thesis finds fault with the adoption of the Basel Accords and the consequences of the adoption. However, sometimes countries will encourage the adoption of the Accords for various other reasons. The thesis will examine some of these other causes for adoption that can be widely described as centring on reputation and competition.

¹⁴³⁷ Ayodele (n 1440) 1.

¹⁴³⁸ Kenya Institute for Public Policy Research and Analysis (KIPPRA) "Mergers and Acquisitions: Experience in Kenyan Banking Industry" (2020) <http://kippra.or.ke/mergers-and-acquisitions-the-experience-in-kenya-banking-industry/>. Blog 1 (accessed 16 October 2023).

¹⁴³⁹ Ibid.

¹⁴⁴⁰ N 1442, 1.

¹⁴⁴¹ n 1442, 1.

6.12.4 Competition and reputation

It is said that regulators do not just adopt the Basel standards because they are a source of stability for a country's banking and financial system. Instead, there are other considerations, like concerns about reputation and competition, that are important in influencing the adoption process. According to Jones and Zeits,¹⁴⁴² in their 2018 paper, "Regulatory Convergence in the Financial Periphery: How Interdependence Shapes Regulators' Decisions," five major factors influence the adoption of the Basel Accords, especially Basel II and Basel III. These factors include signalling to international investors, reassuring host regulators, and facilitating the home-host relationship.¹⁴⁴³ Peer learning and peer pressure have also been identified as possible factors that play a part in the process of adopting the Accords. The last factor involves technical advice (TA) from the IMF and World Bank.¹⁴⁴⁴ Each of these factors is considered in more detail below.

6.12.5 Technical advice from the IMF and World Bank

Technical advice from the World Bank and the IMF appears to be one of the main means of getting developing countries to adopt the Basel Accords. Jones and Zeits have found evidence in their research that shows that the IMF and the World Bank tend to influence regulators to adopt the Basel Accords as a means of stabilising the country's banking system, and in some instances, they give categorical recommendations on how it should be done.¹⁴⁴⁵ It may be questioned as to why assistance from Bretton Woods Institutions and, in particular, the IMF should be a source of criticism when these institutions appear to be simply seeking to create stability in developing country economies. The long-held argument among academics and

¹⁴⁴² Jones & Zeitz *Regulatory Convergence in the Financial Periphery: How Interdependence Shapes Regulators' Decisions* (2018) 1–15.

¹⁴⁴³ Ibid.

¹⁴⁴⁴ Technical assistance and training are only two of the many ways the IMF helps its member nations. Other areas of competence include central banking, monetary and exchange rate policy, tax policy and administration, and official statistics. The goal is to help increase capabilities in institutions, including finance ministries, central banks, and statistical agencies so that members may better design and implement economic policies. The IMF has also helped nations rebuild their government structures after experiencing civil turmoil or war. See International Monetary Fund (IMF) "Technical Assistance" <https://www.imf.org/external/about/techasst.htm>; International Monetary Fund (IMF) "Technical Assistance Country Reports" <https://www.imf.org/en/Publications/SPROLLs/Technical-assistance-country-reports#sort=%40imfdate%20descending> (accessed 16 October 2023).

¹⁴⁴⁵ Jones & Zeitz "The Limits of Globalizing Basel Banking Standards" 2017 *Journal of Financial Regulation* 89–124; Jones *et al.* "Basel Standards and Developing Countries: A difficult Relationship" VoxEU Centre for Economic Policy Research (CEPR) Policy Portal (2018) <https://voxeu.org/article/basel-standards-and-developing-countries> (accessed 16 October 2023); Jones & Knaack "Global Financial Regulation: Shortcomings and Reform options" 2019 *Global Policy* 193–206.

practitioners alike has not changed much; that is this assistance comes with strings attached and these strings sometimes result in a country becoming worse off.¹⁴⁴⁶ Biglaiser and Gauvran, in their work that investigated the effects of IMF loan conditionalities on poverty in the developing world, used a sample of over 80 developing countries from 1986 to 2016, and found that the IMF loan arrangements contained structural reforms that contributed to more people getting trapped in poverty cycles.¹⁴⁴⁷ This was attributed to the fact that the reforms involved significant changes to tend to raise a country's unemployment level, lower government revenue, and increase costs of basic services while restructuring tax collections as well as pensions and social security programmes. This leads some academics like Biglaiser and Gauvran to argue critically that although the IMF appeared to respond to the criticisms made against it and has begun to implement a "borrower ownership" programme in the 2000s, many studies show that IMF loans continue to harm borrower states.¹⁴⁴⁸ In conclusion, Biglaiser and Gauvran remark that as the IMF and its staff continue to require structural conditions, the likelihood is that the borrower countries will see increased poverty, regardless of whether the fund and its staff imposed the policies to further the interests of powerful member-states or they are truly unintended effects of the policies.¹⁴⁴⁹ These ideas and criticisms are not new and are supported by a large body of literature. Among the prominent authors are academics like Thacker¹⁴⁵⁰ and Copelovitch.¹⁴⁵¹

6.12.6 Signalling international investors

The next driver is signalling to international investors, as foreign investment is often a key driver for the developing country to grow its economy. As such, a country may adopt the Basel standards to indicate that the country is sophisticated enough to market and accommodate

¹⁴⁴⁶ Biglaiser & Gauvran "The Effects of IMF Loan Conditions on Poverty in the Developing World" 2022 *Journal of International Relations and Development* 25 806–833.

¹⁴⁴⁷ Ibid.

¹⁴⁴⁸ Biglaiser (n 1450) 806–833. Bird & Rowlands *The International Monetary Fund: Distinguishing Reality from Rhetoric* (2016) 12; Stubbs & Kentikelenis 'Conditionality and Sovereign Debt: An Overview of Human Rights Implications' in Bantekas & Lumina (eds) *Sovereign Debt and Human Rights* (2018) 359–80; Nelson 'The International Monetary Fund's Evolving Role in Global Economic Governance' in Moschella & Weaver (eds) *Handbook of Global Economic Governance* (2014) 156–170; Vetterlein "Paradigm Maintenance: The IMF and Social Policies After the Financial Crisis" 2015 *Global Social Policy* 85–88.

¹⁴⁴⁹ Biglaiser (n 1450) 806–833.

¹⁴⁵⁰ Thacker Strom "The High Politics of IMF Lending" 1999 *World Politics* 38–75.

¹⁴⁵¹ Copelovitch "Master or Servant? Common Agency and The Political Economy of IMF Lending" 2000 *International Studies Quarterly* 54.

foreign investors. Several African countries mentioned below have adopted measures to be more attractive to the international market players. For instance, in Ghana, Rwanda, and Kenya, political leaders have pushed for the implementation of Basel II and III, along with other financial standards, to position their countries as financial centres. However, implementation can be selective. For instance, Kenya's central bank has improved its regulatory framework using international standards but chose the simpler Basel II approach over the more complex internal ratings-based methods. Also, Kenya's liquidity rules are less complex than those of Basel III, but they are arguably more suitable for the country's specific banking environment.¹⁴⁵²

No doubt, the argument can also go the other way; that is to say, a country can decide to act on its policies and try and grow using internal investors rather than catering to international investors. It appears to boil down to what philosophical path the government in power decides to take.

6.12.7 Reassuring host regulators

The next factor is where a developing country adopts the Basel Accords as part of a strategy to expand internationally.¹⁴⁵³ This is called "reassuring the host regulators". When a country is keen to open to international financial institutions and it needs to assure the international banks and regulators of its competencies in managing the cross-border risk that results from these international relationships, it is referred to as "facilitating home-host supervision".¹⁴⁵⁴ This normally gives countries a positive image and rating as being cooperative and open to change and development.

6.12.8 Peer pressure and peer learning

The last one of these factors is what Jones and Zeits call "peer learning and peer pressure".¹⁴⁵⁵ This is where a developing country's regulators see the Basel Accords as a golden standard despite their shortcomings. This is the peer learning part. The peer pressure part, according to these two authors, is where these countries are put under pressure to meet standards by

¹⁴⁵² Jones *et al.* "Basel Standards and Developing Countries: A Difficult Relationship" Vox EU 1–124.

¹⁴⁵³ Ibid.

¹⁴⁵⁴ Jones (n 1456) 89–124.

¹⁴⁵⁵ Jones (n 1456) 89–124.

international institutions and policy circles.¹⁴⁵⁶ This may involve a situation where a country or a group of countries belonging to a particular regional grouping plan to adopt the Basel Accords with the help of institutions like the IMF, much to the disinterest of the local banks that have little or no international experience.¹⁴⁵⁷ This may result, for example, in the interested country having to consult with those countries that are already using the Accords to see how they can be applied in their countries and learn from that. Countries will normally be influenced by more than one of the aforementioned factors. In the next chapter, an attempt will be made to evaluate what the motivation was for Zambia to adopt the Basel Accords.

To proceed to the next part of the argument, it is necessary to revisit the objectives of the thesis, particularly the argument that small banks are under threat and need to be saved from becoming extinct. One way of doing this is by using protective trade measures, like the United States and other highly developed countries, to develop their local industries. The only problem with this is that this protectionism now flies in the face of these multilateral organisations and has become an unmentionable word. The so-called “infant-industry” argument that built many of the industries, which developed countries are known for, has now become a pariah solution which is no longer workable. The arguments for and against protecting these banks until they are ready to emerge or evolve into medium or large banks are discussed below.

6.13 The infant industry argument

The above arguments now beg the question of what the best way of protecting small banks is. The socialist argument is obvious and in countries like China and other socialist states, the state or the “superstructure”—to use the correct Marxian term—is responsible for protecting the sovereign assets of the state, like local banks, by creating conducive policies, normally for a fixed period of time, to ensure the growth and eventual maturation of the particular industry under consideration.¹⁴⁵⁸

¹⁴⁵⁶ Jones (n 1456) 89–124.

¹⁴⁵⁷ Jones (n 1456) 89–124.

¹⁴⁵⁸ Italian communist leader Antonio Gramsci argued that the superstructure is comprised both the political society (including the state its police and the military and other institutional structures and civil society. While Civil Society includes social norms, gender roles, culture and the arts all of which help in complex ways to maintain capitalist cultural hegemony. See Full Marx “What are the ‘Base’ and ‘Superstructure’ of Society?” Morning Star <https://morningstaronline.co.uk/article/c/what-are-base-and-superstructure-society> (accessed 25 April 2024).

The neo-classical,¹⁴⁵⁹ and later, the neoliberal schools of thought tend to frown upon state intervention. Milton Friedman famously stated in a *New York Times Magazine* article that “the business of business is business,” which has been interpreted variously as “the state should not be in the business of doing business.” This cliché guides the philosophy of the *laissez-faire* system of business and government.¹⁴⁶⁰ Equally, it is an anathema to protect an inefficient industry that is losing money, even if the populace benefits from it. The ethos is “survival of the fittest”; it is often heard that competition will weed out the inefficient players and leave the efficient players, who will provide more benefits to the citizenry than in a controlled market. Equally, the emphasis on getting rid of trade and non-tariff barriers harkens back to the classical tenets of the Smithian and Ricardian¹⁴⁶¹ principles of how trade should use comparative advantage as a means of getting benefits from international trade and ensuring that perfect competition is the mainstay of the economy.

In short, if a business cannot sustain itself because it is unable to compete effectively, then it should cease to exist. There should be no means of resuscitating the firm or business because to do so would involve some sort of cost, seen or unseen, to society at large.

Despite the current neoliberal view that pervades the global psyche, history has proven that some of the concepts that have now become redundant were hatched in the nests of capitalism. One of these concepts that, despite its age, still raises the heckler’s voice as to its merit or not is that of infant industry protection, which refers to the situation where a state or country decides to protect some of its industries against the harshness of the competitive environment by deeming them weak and growing and thus vulnerable. It is intended to examine this concept in detail further in this thesis to explore whether certain small banks in developing countries can use the concept to protect their banks from international competition while they are growing, as a means of giving them some respite and support from cold capitalist intent.

This section will rely in part on the ideas of the American, Alexander Hamilton, who initially proposed the idea of protecting an infant industry as a means of countering imports from Great Britain in 1791; followed by the seminal work of the German academic Friedrich List, who not

¹⁴⁵⁹ See ch 3 para 3.3.

¹⁴⁶⁰ Gwera “Business of Business is Business” https://www.academia.edu/36505921/Business_of_Business_is_Business_Seth_E_G_docx (accessed 25 April 2024).

¹⁴⁶¹ See ch 3 para 3.3.

only resurrected the idea but provided empirical evidence on the concept.¹⁴⁶² The rest is history. The concept has been widely used over the years by many countries, including those with Marxist leanings in protecting their industries. In its modern-day refinement, the infant-industry argument has become part of the area of international economics and is used to describe industries that are newly developing and are struggling to compete with established international rivals due to their smaller size and limited experience. They often exhibit inefficiencies, lack competitiveness, and are highly susceptible to sudden market fluctuations.¹⁴⁶³

Reading the caption, one might easily conclude that it was written specifically for small banks in developing countries. The “infant-industry” argument has many positive attributes. The main ones are that protecting infant industries helps to embolden domestic production. One of the main arguments that applies to this theory is the promotion of national security and self-sufficiency, as it reduces dependence on foreign production. It is also argued that the country imposing the infant-industry policy stands to benefit in terms of taxation in the long run when the infant industry reaches maturity. It is said to improve employment statistics positively because of growth in the stock of local businesses, with more local production and goods being available for local consumption.¹⁴⁶⁴

Despite these positive attributes, it can, however, also be declared that protecting infant industries has its downside as well. This includes the fact that many of these industries suffer from some kind of moral hazard,¹⁴⁶⁵ which results in inefficiencies in production that may be a drain on already depleted government coffers. Many authors argue that once an industry is given initial protection by the government, then in the long run the industry will fight to keep its status.¹⁴⁶⁶ Indeed, the industry may end up never growing because of the “special benefits” they receive. It is argued that they cost a country substantial amounts of money that could otherwise be used in other areas of the economy to boost more efficient production in a less

¹⁴⁶² Corporate Finance Institute (CFI) “Infant Industry Argument: New Industries Need Protection from International Competitors in The Infancy Stage” <https://corporatefinanceinstitute.com/resources/economics/infant-industry-argument/> (accessed 5 November 2023); Melitz “When and How Should Infant Industries Be Protected?” 2005 *Journal of International Economics* 178.

¹⁴⁶³ Ibid.

¹⁴⁶⁴ n1466; Melitz (n 1466) 178.

¹⁴⁶⁵ See ch 3 para 3.4.

¹⁴⁶⁶ n 1466; Melitz (n 1466) 178.

burdensome way,¹⁴⁶⁷ speaking from a neoliberal perspective.¹⁴⁶⁸ The usual way of protecting the infant industry is by way of tariff imposition on specific goods; the provision of production subsidies as well as imposing quotas on a range of goods that the country feels it can produce on its own or not import.¹⁴⁶⁹

For banking, this is where the problem begins when it comes to the discussion of protecting banks as an infant industry, as there is no specific provision that shows that banks can be classified as an infant industry. Added to this, there is very little empirical or academic data that speaks to the protection of small banks using a standard definition or infant-industry model. It may be suggested that, with banks, for the definition of protection to be effective, it may have to include other considerations as well. But before the argument delves into this area, it is apposite to consider various authors' views on the "infant-industry" argument and trade liberalisation in developing countries.

There are two main contentions for the "infant-industry" argument from the neoliberal perspective or viewpoint: a static argument and a dynamic argument. The static argument refers to the work of Tybout.¹⁴⁷⁰ An examination of both arguments is necessary to bring out the main points against the protection of infant industries. The reader should be careful to note that the words that are used are indicative of the Tybouts view of the world and are biased towards the neoliberal school of thought, which ties in perfectly to current policy stipulations made by institutions like the IMF and the BCBS. An examination of the two arguments now follows.

6.13.1 The static view for infant-industry protection

Tybout espouses that under the static group, there is a two-pronged argument. First, those arguments that address competitive pressures facing firms in developing countries, and second, those arguments that address the size of the markets in which the firms operate.¹⁴⁷¹

This appears to be closer to the area of banks as it also deals with issues relating to competition and not just the size of the markets.

¹⁴⁶⁷ n 1466; Melitz (n 1466) 178.

¹⁴⁶⁸ See ch 3 para 3.3.

¹⁴⁶⁹ n 1466; Melitz (n 1466) 178.

¹⁴⁷⁰ Tybout "Manufacturing Firms in Developing Countries: How Well Do They Do, and Why?" 2000 *Journal of Economic Literature*. 11–44.

¹⁴⁷¹ Slaughter *Infant Industry Protection and Trade Liberalisation in Developing Countries* (2004) 1–39 https://pdf.usaid.gov/pdf_docs/pnacx950.pdf (accessed 7 November 2023).

6.13.2 Competitive pressure

The theory supports the idea that international trade, when combined with foreign direct investment, squeezes the profitability of firms in developing countries, thereby limiting their investment in cost-reducing capital and technology, which results in the failure of capital markets in providing finance to firms. As a result, firms must rely upon retained earnings as a source of finance. Under these circumstances, protection is said to boost domestic firms' prices and profitability and help them invest in capital and technology. Once they have acquired the new technology, it assists the firm to reduce costs, further adding to the efficiency of the business. Once the barriers are removed from the infant industry, the domestic firm is more able to compete on an equal footing.¹⁴⁷² This is from a theoretical perspective, of course, in practice, outcomes may be different.

Scale arguments proffer that trade protection can boost the market size of domestic firms.¹⁴⁷³ Where the firm has a larger market, it is said to be more likely to increase its scale of operations by investing in technologies that provide increasing returns to scale.¹⁴⁷⁴ But, it is contended that even without these investments, larger and more efficient firms can also lower their cost curves, especially if they have a fixed-cost component. External increasing returns to scale might further reduce costs.¹⁴⁷⁵

6.13.3 The dynamic argument for infant-industry protection

In addition to the foregoing, the dynamic argument maintains that firms can stimulate dynamic gains through a process called "learning by doing". The theory effectively states that, despite the firm knowing what to do to achieve efficiency, it must go through a "learning phase". In other words, they must make mistakes and correct them. Under this argument, it is said that protecting the industry allows it to learn from its mistakes before competing with foreign firms, particularly in knowledge-intensive industries.¹⁴⁷⁶ While the theoretical part of the work paints

¹⁴⁷² Slaughter (n 1475) 1–39.

¹⁴⁷³ Slaughter (n 1475) 1–39.

¹⁴⁷⁴ Slaughter (n 1475) 1–39.

¹⁴⁷⁵ Slaughter (n 1475) 1–39.

¹⁴⁷⁶ Slaughter (n 1475) 1–39.

a positive picture of the various aspects of adopting an infant industry, empirical studies on infant-industry protection appear to show a mixed picture.¹⁴⁷⁷

The policy and academic booster are now considered to provide detailed evidence to answer the question of whether data shows the positivity of the infant industry. Many case studies examined the impact of changes in trade policy or focused on the performance of particular firms, industries, or countries, so generality is of special concern for the analysis of trade policies given their theoretical ambiguity.¹⁴⁷⁸ Indeed, Slaughter mentions that many econometric tests have shown that the infant-industry argument is redundant.¹⁴⁷⁹ It is contended that FDI and infant-industry protection against open trade, more often than not, hurts a developing country rather than assists it to develop.¹⁴⁸⁰ It is submitted that the argument has come full circle from when it was first propounded in the United States in the 1700s, from being a panacea to development in 1700 to being a toxin almost 400 years later, in the 21st century.

From the empirical studies done, three practical problems have been identified, namely:¹⁴⁸¹

- 1) Infant industry policies inhibit the ability of firms to operate efficiently.
- 2) Introducing infant industries normally introduces unintended costs.
- 3) Infant industry policies ignore the elements of comparative advantage.

Empirical evidence has been shown to indicate that, rather than giving positive feedback, learning by doing often causes inefficiencies that not only misdirect capital investments but misdirect research and development leading to the underproductivity of a firm. Studies in developing countries have revealed the following:

¹⁴⁷⁷ See the following for the various mixed outcomes: Harrison “Productivity, Imperfect Competition, and Trade Reform” 1994 *Journal of International Economics* 53–73; Levinsohn “Testing the Imports-as-Market-Discipline Hypothesis” 1993 *Journal of International Economics* 1–22; Yeats & Ng “Open Economies Work Better! Did Africa’s Protectionist Policies Cause Its Marginalization in World Trade?”, World Bank Research Papers (1996) <https://www.sciencedirect.com/science/article/pii/S0305750X97000119> (accessed 17 May 2023); Krishna & Mitra “Trade Liberalization, Market Discipline and Productivity Growth: New Evidence from India” 1998 *Journal of Development Economics* 447462; Gauthier *et al.* “A Firm’s-Eye View of Commercial Policy and Fiscal Reforms in Cameroon” *World Bank Economic Review*; Fernandes “Trade Policy, Trade Volumes and Plant-Level Productivity in Colombian Manufacturing Industries, Working Papers” World Bank Research (2003).

¹⁴⁷⁸ Slaughter (n 1475) 1–39.

¹⁴⁷⁹ Slaughter (n 1475) 1–39.

¹⁴⁸⁰ Slaughter (n 1475) 1–39.

¹⁴⁸¹ Slaughter (n 1475) 1–39.

- (a) Protection increases market power,¹⁴⁸² which in turn impacts the price-cost margins of the protected firms.
- (b) Results also show that protection of the industry reduces productivity and inefficiency,¹⁴⁸³ and this shows that protecting a business has negative connotations. To counter these negativities, it is suggested that foreign direct investment (FDI) and foreign competition be allowed to operate in the economy so that: “...[F]oreign competition drives inefficient domestic producers to exploit small scale economies, eliminate waste adopt best practice technologies or shut down.”¹⁴⁸⁴
- (c) Further, it is argued that protection fails to show evidence that it spawns large-scale economies or indeed the process of “learning by doing.”¹⁴⁸⁵ “Learning by doing” has been found to complement, and not substitute, international stock knowledge. Learning by doing is, therefore, gained more readily by engaging in international trade and foreign direct investment. Further, it is argued from results, which empirical data confirms, that it is impossible for small economies that characterise many developing countries to transition to large-scale economies given their compactness relative to developed economies.

The consensus on the matter is that infant industry protection hinders the productivity and efficiency of a developing country’s firms rather than enhances it.¹⁴⁸⁶ In the words of Tybout, “...the case for fostering growth by protecting learning industries seems weak...”¹⁴⁸⁷

The thesis draws attention to the fact that protected industries providing the highest returns are normally deemed to be a political liability,¹⁴⁸⁸ even though many of the infant industry models assume away government interest. It has been observed that governments are forced to alter their policies to accommodate these industries. Often, this leads to the creation of more complex policies in an attempt to curtail cheating which leads to further inefficiencies.¹⁴⁸⁹ Leith and

¹⁴⁸² Slaughter (n 1475) 1–39.

¹⁴⁸³ Slaughter (n 1475) 1–39.

¹⁴⁸⁴ Slaughter (n 1475) 1–39.

¹⁴⁸⁵ Slaughter (n 1475) 1–39.

¹⁴⁸⁶ Tybout (n 1474) 11–44.

¹⁴⁸⁷ Tybout (n 1474) 11–44.

¹⁴⁸⁸ Tybout (n 1474) 11–44.

¹⁴⁸⁹ Tybout (n 1474) 11–44.

Lofchies' study,¹⁴⁹⁰ shows some of the problems that may be caused by creating infant industries in an economy. The study argues that the problem with Ghana's post-independence economic strategy failure was due to its undisciplined execution. Instead of gradually protecting emerging industries while exposing them to some international competition, protected industries were completely shielded from both foreign and local competition by the government. Added to this, state-owned enterprises lacked the financial constraints of a market-driven economy. These issues culminated in unintentional government support for particular or favoured industries, and in some extreme cases, created a system where companies destroyed rather than built value, even in the domestic market itself.¹⁴⁹¹

The authors, Srinivasan and Tendulka, criticise infant industry policies in India, leading them to conclude that policies that help protect local industries once implemented can result in costly and inefficient outcomes, not to mention corrupt practices in the form of bribes and other illicit rewards. As such, they argue that the infant-industry argument rarely produces efficient outcomes, let alone does the system accept liberalisation.¹⁴⁹²

Slaughter's work on infant industries also looks at the element of what is called the "foregone comparative advantage."¹⁴⁹³ Comparative advantage, as we saw earlier, is a neo-classical Ricardian and Smithian argument¹⁴⁹⁴ on why trade should occur between countries and, in many respects, is the cornerstone of international trade law and the root of many neoliberal policies. Slaughter's report discloses that national income is reduced and, together with it, the welfare effect of not facing world prices, which comes with the competition from a country's comparative advantage.¹⁴⁹⁵ Instead, where industry is protected, individuals could face higher prices that may lead to reduced consumption. He contends that these are the concrete costs which curtail a higher standard of living, and these costs must be compared to the actual gains

¹⁴⁹⁰ Leith & Lofchies 'The Political Economy of Structural Adjustment in Ghana' in Bates & Krueger (eds) *Political and Economic Interactions in Economic Policy Reform: Evidence from Eight Countries* (1993) 225–293.

¹⁴⁹¹ Ibid.

¹⁴⁹² Srinivasan & Tendulkar *Reintegrating India with the World Economy* (2002) 1–152.

¹⁴⁹³ Slaughter (n 1475) 1–39.

¹⁴⁹⁴ See ch 3 para 3.3.

¹⁴⁹⁵ Slaughter (n 1475) 1–39. Comparative advantage is an economic theory created by Adam Smith's disciple David Ricardo in the 19th century. The theory postulates that countries can benefit from trading with each other by focusing on making things that they are best at making or where they have a comparative advantage. While proposing that they import things that they are not good at making themselves or things that will be costlier to manufacture at home. Thus, by focusing on their strengths each country can produce more efficiently to the benefit of both countries.

received from protecting a country's infant industries. Additionally, for infant industries to work, Slaughter appears to assert that the product produced should be large enough to influence world market commodity prices. But, since developing countries only make up a very small percentage of the international markets, they barely meet this criterion.¹⁴⁹⁶

The evidence that infant industries' success is born from not competing with global business and concomitant domestic technology and capital is misplaced. The reality is that they are not workable.

Authors, like Rekiso,¹⁴⁹⁷ counter this view, however, and debunk some of the views made against "infant industry" protection, and instead make a strong case for it in African countries. Rekiso does not believe that addressing Africa's poor economic performance policies calls for strong property rights, fiscal responsibility, neutral tax, and spending, open financial markets, competitive exchange rates, free trade, privatisation, and deregulation are necessary. Thus, challenging the absolute superiority of free trade, and its proponents like the Washington Consensus, who argue that it remains the best policy because government intervention in trade is highly susceptible to misuse.¹⁴⁹⁸

Authors from countries that used the "infant industry" argument, like the United States and the United Kingdom, to grow their economies, are now the same ones opposing the protection of infant industries in developing countries. They used protection at some point in time to grow their industries and protect them from the cut-throat competition of other countries. Rekiso's work covers the United Kingdom, the United States, Japan, South Korea and Taiwan.¹⁴⁹⁹

¹⁴⁹⁶ Slaughter (n 1475) 1–39.

¹⁴⁹⁷ Rekiso *Tried and Tested: The Infant Industry Theory and its Relevance for Africa* (2009) 2–25.

¹⁴⁹⁸ Ibid.

¹⁴⁹⁹ Rekiso (n 1501) 2–25. British industrial development policy focused on selective infant industry protection and promotion. Around 1850, Britain began a free trade policy after a gradual tariff reduction. Domestic market protection allowed for cost reduction and international competition. Complementary measures like capital market development and agricultural sector development also played a role. List argues that England's commercial policy is a fallacy as if England abandoned business and refrained from regulation, it would still be a sheep pasture of the Hanseatic League. Alexander Hamilton, the first Secretary of the Treasury, was influential in American protectionism and infant industry promotion. Despite being the most protectionist during this period, the US was the fastest-growing economy globally. List, the intellectual father of the German Customs Union, was a key architect of industrial and trade policies. Japan's economic development was a key part of nation-building, with a strong government driving industrialization and modernization. However, until 1911, Japan couldn't use trade protection due to unequal treaties. Instead, it used model factories, infrastructure development, and foreign technology transfer. After recovering tariff autonomy, the government introduced tariff reforms to protect infant industries, make imported raw materials more affordable, and control luxury consumer goods. The post-WWII Japanese government was not just interventionist but also coordinated, focusing on sectors requiring intensive capital and technology employment. The government's industrial policy aimed to guide the market and create a competitive advantage in areas where world demand was likely to rise rapidly. The Japanese economy operated under rigorous import controls, but export promotion was crucial in expanding market shares and encouraging

Britain, the mother of the Industrial Revolution, introduced policies in 1721 to promote its manufacturing industries. Britain's first Prime Minister, Sir Robert Walpole, pronounced in the British parliament that, "it is evident that nothing so much contributes to promote the public wellbeing as the exportation of manufactured goods and the importation of foreign raw materials".¹⁵⁰⁰ This action was taken mainly to protect home manufacturers from competition with foreign finished products and to secure the export of finished articles. Protection was effected by bounties and allowances, and supremacy to stifle the development of industries in other countries while expanding its markets.¹⁵⁰¹ As observed by List:

*"The proposition that England has not reached her actual commercial grandeur by virtue of, but in spite of her commercial policy, is in our belief one of the greatest fallacies of our time. If the English had abandoned business to its own channels if they had refrained from reforming all regulation, as required by the reigning school [classical school of economic thought... England would still be the sheep-pasture of the [Hanseatic] League as Portugal, by virtue of the stratagem of diplomatic cunning, became and continues to be the vineyard of England."*¹⁵⁰²

Further, despite the United States being considered the intellectual father and bastion of modern protectionism, "the importance of infant industry protection in US development cannot be overestimated."¹⁵⁰³ Chang pointed out the fact that during this period of protectionism (from about the 1800s to the 1920s), the United States was the fastest-growing economy in the world; a feat that can hardly be disassociated from the high level of protectionism that still pervades the American economy at the time.¹⁵⁰⁴ These countries are only two of many examples. Further examples include Japan which operated under strict import controls in the 1950s and 1960s

efficient production. In the 1940s to 1950s, Taiwan used trade and exchange rate policies to control foreign competition, with quantitative restrictions on imports and high tariffs in place. The government heavily influenced the textile, plastics, and synthetic fibre industries. In 1958–1962, an export-oriented industrialization strategy was adopted, promoting skill- and capital-intensive industries through trade and foreign direct investment.

¹⁵⁰⁰ Rekiso (n 1501) 2–25.

¹⁵⁰¹ Rekiso (n 1501) 2–25.

¹⁵⁰² List *The Natural System of Political Economy* (1983). 1–208. Note that while List's book was initially published in German in 1841 and was only translated into English in 1983. See: Editors of Encyclopaedia Britannica "Friedrich List" (2024-11-26) *Encyclopaedia Britannica* available at <https://www.britannica.com/money/Friedrich-List> (accessed 19 December 2024).

¹⁵⁰³ Rekiso (n 1501) 2–25.

¹⁵⁰⁴ Chang "Kicking Away the Ladder: Development Strategy in Historical Perspective" 2002 *World Development* 775–788.

right up to the late 1970s.¹⁵⁰⁵ Similarly, South Korea practised systematic industrial policies right up to the mid-1980s, according to Chang.¹⁵⁰⁶ Taiwan used trade and exchange rate policies to control foreign competition and restrict import policies as well, in its journey to development.¹⁵⁰⁷

6.13.4 The African experience

Scholars like Lind, decry the double standards that are applied to the African countries by what he terms as “kicking away the ladder.”¹⁵⁰⁸ He claims that developed countries used the “infant industry” ladder to climb to where they are now in terms of development. Instead of allowing the concept to be used by developing countries, developed countries have replaced it with the doctrine of free trade and deregulation that favours the more developed and richer countries. African countries are thus encouraged to reconsider the merits of “selective dynamic, predictable, feasible and performance-based as well as time-bound protection and promotion of industries together with necessary willingness and ability to withdraw protection and promotion of an industry when deemed necessary”¹⁵⁰⁹ as it is the only way to fast-track modernisation.

6.13.5 Conclusion

This chapter dealt with the issue of the importance of small banks in developing countries and their contribution to the development of a country, particularly in developing countries. The benefits of local banks were also considered to explain how they cover the gaps that are left by the larger banks. And from this, we have drawn the following inferences from statistical cost studies, failure rates, and performance data that appear to indicate that many of the nations’ smallest banks across the globe are facing a significant challenge to their long-term survival. Specialised market niches can offer some protection to these banks, and there are

¹⁵⁰⁵ Chang (n 1508) 775–788.

¹⁵⁰⁶ Chang (n 1508) 775–788.

¹⁵⁰⁷ Finextra Blog “Basel III–Driving Mergers and Acquisitions” (20 September 2010) <https://www.finextra.com/blogposting/4468/basel-iii---driving-mergers-and-acquisitions> (accessed 16 May 2023).

¹⁵⁰⁸ Chang (n 1508) 775–788; Hakemy *An Analysis of Ha-Joon Chang’s Kicking Away the Ladder: Development Strategy in Historical Perspective* 1st ed (2017) 4.

¹⁵⁰⁹ Chang (n 1508) 775–788.

other defensive steps they can take, but current findings on asset quality and failure rates indicate that the challenge has not been adequately met.¹⁵¹⁰

The reality appears to be that a substantial number of banks may disappear from the industry over the next decade or so. Small banks must realise it is no longer “business as usual” and take greater advantage of the possible opportunities. Bank regulators, when considering mergers and acquisitions involving small banks, have already been assessing what the cost of a blocked merger proposal will have on the health or survival of the banks involved.¹⁵¹¹

At least part of the challenge to small banks appears to stem from intrinsically higher costs than what large banks face. What translates this cost handicap into a challenge for survival is the ever-increasing competition in banking markets, especially with the larger, well-capitalised foreign multinational banks. This trend of the past few decades cannot be reversed, nor even the trend of the past decade toward deregulation of the banking industry. Even if these trends could be reversed, it would not be advisable to do so. To the extent that true inefficiencies exist, it is for the common good to replace them with efficiently provided banking services.¹⁵¹²

In any case, the degree of consolidation anticipated should not lessen competition. Rather, what should emerge from the process is a stronger, more cost-efficient industry that meets a nation’s financial needs even more effectively than before.¹⁵¹³

Further, this chapter considered a bank’s reaction to competition and profitability. It also considered how bank concentration affects performance. While studies are not readily conclusive for other, more developed countries and are lacking for developing countries, it appears that for developing countries, the impact of concentration may appear to have some sort of impact. The extent and depth of the impact can, however, only be left to more detailed studies. Bank concentration also considers how concentration impacts the stability of the financial system. Concentration appears to show that it has a positive outcome on the general stability of the financial sector, even though the study used to gather data was concentrated in most instances on China, which has a wide range of banks, including state banks. This made it

¹⁵¹⁰ Tannuri-Pianto & Sales “The Use of Duration Models to Explain Bank Failures in Brazil (1994–1998)” *Banco Central do Brasil* (2005) 24.

¹⁵¹¹ Chorafas (n 1275) 1-264.

¹⁵¹² McDonald *et al.* A Colossal Failure of Common Sense (2009) 1–351.

¹⁵¹³ Rosholm & Svarer “Structurally Dependent Competing Risks” 2001 *Economics Letters* 169–173.

difficult to come to a firm conclusion on what the correlation is for developing countries, and whether the impact is significant enough to raise concern. The works also consider bank consolidation and the concentration of banks under these conditions. Here, the outcome appears to reflect a clearer outcome, showing that concentration tends to result in consolidation. Results are consistent and show that concentration risk often results in a flurry of merger and acquisition activity. This result varies little between developed and developing countries. The study also appears to reflect that there is normally a time lag of between 10 and 20 years from the time policies are implemented in the developed country to the time they impact the less developed economies.¹⁵¹⁴ Further, it considers the impact that competition has on bank risk. This area is fraught with a lack of adequate research, and where research has been carried out, the results may show clear inconsistencies in the outcomes, creating confusion in the process as to the correct approach to take. But, generally, it can be inferred that competition induces small banks to become riskier as they compete with the leviathans of industry, often to their detriment.

The chapter also takes into consideration some of the consequences of bank concentration and profitability in the banking sector. One of the clearest outcomes so far observed is the increase in merger and acquisition activity in developing countries. Evidence is seen in terms of the number of mergers in commonwealth countries such as Ghana, Kenya, Tanzania and Zambia. Merger activity in Zambia has been increasing slowly despite the small stock of banks that can be merged. This will be covered in more detail in Chapter 7 of the thesis.¹⁵¹⁵ In this chapter, the work examined various areas of mergers and acquisitions, such as the benefits and challenges of affecting them. After this, the justification for competition was considered, and since the thesis is about the impact of the Basel Accords, the impact of the Basel Accords on competition was consequently examined. High on the agenda in this area is the question of whether the Accords are contributing to the extinction of small banks or not, given the strict capital and regulatory regimen that banks must follow when engaging the Accords. After discussing this topic, an examination followed of the ways of protecting or preserving small banks, one of which was by the “infant industry” argument. While the argument is deemed to be archaic by most of the neoliberal schools of thought, the Marxists and Socialist schools of thought still believe the model to have considerable merit,¹⁵¹⁶ particularly for developing countries that suffer from low-income, skewed economic indices and financial markets that

¹⁵¹⁴ Rosholm (n 1517) 169–173.

¹⁵¹⁵ See ch 7 para 7.14.

¹⁵¹⁶ Bogatzky “Socialist Industrialisation and the Infant Industry Argument” 2017 *ResearchGate* 1–24.

lack both depth and breadth and as a result are too small and too simple to make any impact on the world markets.

This chapter is the last of five chapters that attempt to create the theoretical groundwork necessary to support the work of the next penultimate chapter of the thesis. Chapter 7 concentrates on the Zambian financial system, endeavouring to examine and establish the impact of the Basel Accords on small banks in Zambia.

CHAPTER 7

THE IMPACT OF THE BASEL ACCORDS ON SMALL BANKS: THE CASE OF ZAMBIA

7.1 Introduction

Chapter 6 of this thesis focused on the general ideas of the relationship between small banks and the Basel Accords. It looked at the various impacts this relationship has on developing and developed countries, which include the benefits of small banks, the concept of banking stability, banks' reaction to competition, concentration, risk-taking, consolidation, and profitability. This was followed by the impact of the Basel Accords on competition. Lastly, the infant-industry argument was examined before concluding the chapter.

This chapter is the culmination of all the ideas and problems considered in Chapters 2 to 6 of the thesis. These issues are now being examined against the Zambian backdrop. This chapter will begin by providing an overview of the country's historical landscape from 1991. It will look at the evolution of various banking Acts that have influenced the regulation of Zambian banks. In this vein, it will examine: the growth of local banks, the impact of globalisation, the impact of the Accords on Zambia, the consequences of market concentration and competition as well as the problems faced by small Zambian banks.

The Zambian banking system will now be examined, keeping in mind the position of the small banks in Zambia and the impact that policies like the Basel Accords have had on the small banks in terms of stability, profitability and competition, including the effect of large foreign banks in Zambia on these small banks and their growth. This will be done by looking at the impetus for these changes, which started in 1991 with the change in dispensation from a controlled economy to a market-led economy.

7.2 The banking setup in Zambia at the start of 1991

Before the multi-party dispensation, Maimbo noted that the Zambian banking sector was characterised by three main banking groups, namely foreign, state-owned and local banks. These are outlined below as follows:

7.2.1 Foreign banks

Table 13. Foreign banks operating in Zambia 1906–1991¹⁵¹⁷

Name of Bank	Date Established in Zambia
Standard Bank (now Standard Chartered Bank)	(1906)
Barclays Bank (now Absa Bank Zambia Plc.)	(1918)
Stanbic Bank	(1956)
Citibank Bank	(1979)

Foreign banks included banks such as the then Standard Bank of South Africa (SBSA) (now called Standard Chartered), which historically was the first bank to set up a branch in Northern Rhodesia¹⁵¹⁸ and offer banking services in the country under the ambit of BSACo in March 1906.¹⁵¹⁹ This was followed by the establishment of Barclays Bank DCO,¹⁵²⁰ which started operating in Zambia in 1918.¹⁵²¹ Grindlays Bank International Zambia Limited (GBIL) was set up almost 40 years later in 1956. GBIL became ANZ Grindlays Bank after being sold to the Australia and New Zealand Banking Corporation around 1988.¹⁵²² (At the time of writing the only healthy banks remaining from the banks above was Standard Chartered Bank, as Grindlays' interests were sold off to Stanbic in 1990 and, as observed above, Barclays Bank Zambia Limited rebranded its name to Absa Bank Zambia Plc., on 10 February 2020¹⁵²³ in which it had acquired substantial shares). A further wave of foreign banks established themselves between 1979 and 1985, including Citibank, which entered the Zambian banking market in a small way, concentrating on a niche market for corporate finance for high-net-worth individuals and multinational corporations. Other banks that followed were the Bank of Credit and Commerce International (BCCI) and a collaboration between the Zambian and Indian

¹⁵¹⁷ Maimbo (n 12) 20–21; Brownbridge (n 273) 151; Bank of Zambia www.boz.zm; Ailola (n 180) 57. See also other authors that have referred to this area in their work like Musokotwane “Bank Competitiveness, Restructuring and Privatisation in Zambia” *Proceedings of the first Commonwealth Policy Seminar on Bank Competitiveness, Restructuring and Privatisation* (1–4 July 1997) 1. See also Muke ‘Investment Opportunities in the Banking Sector and the Effects of Bank Closures’ 1998 *Proceedings of Zambia Investment Promotion Mission in South Africa* 2 8–23. See also Simatele & Ndulo *Financial Services Sector in Zambia* (1998) 6.

¹⁵¹⁸ See ch 2 para 2.7.

¹⁵¹⁹ Maimbo (n 12) 20–21; Brownbridge (n 273) 151; n 1521; Ailola (n 180) 57.

¹⁵²⁰ DCO means: Dominion, Colonial and Overseas.

¹⁵²¹ Maimbo (n 12) 20–21; Brownbridge (n 273) 151; n 1521; Ailola (n 180) 57–58.

¹⁵²² Maimbo (n 12) 33–39; Brownbridge (n 273) 151;). Ailola (n 180) 57–58.

¹⁵²³ Bank of Zambia (BoZ): Official Launch of ABSA Bank Zambia Plc. Speech by Francis Chipimo Deputy Governor –Operations, Bank of Zambia. Monday, 10 February 2020. Sarovar Neelkanth Hotel, Lusaka. See Bank of Zambia (BoZ) “Speech for the Official Launch of Absa Bank Zambia PLC by Francis Chipimo” (10 February 2020) https://www.boz.zm/DGO_Absa_Launch.pdf 1. (accessed 10 September 2023)

governments through the Indo-Zambia Bank (IZB). BCCI failed in 1991 and was later bought up by the Union Bank of Zambia (TUBZ), which will be revisited in this chapter.¹⁵²⁴

7.2.2 *State-owned banks*

Table 14. Restructured and liquidated government financial institutions 1972–1990¹⁵²⁵

Zambia National Building Society (ZNBS)	Restructured
National Savings and Credit Bank (ZNSCB)	Restructured
Cooperative Bank	Liquidated
Lima Bank	Liquidated

The Zambian government set up its banks to cater to the local populace, as the foreign banks were reluctant to lend to local entrepreneurs.¹⁵²⁶ The banks that were created because of this action included the Zambia National Commercial Bank (ZANACO) in 1969, followed by the National Savings and Credit Bank (NSCB) in 1972. This was followed by the creation of the Lima Bank and the Co-Operative Bank in 1987 and 1989, respectively. Apart from ZANACO and the National Savings and Credit Bank, the other banks had either closed or become insolvent.¹⁵²⁷

7.2.3 *Local banks*

Table 15. Local Zambian banks 1991¹⁵²⁸

Bank	Date Established
ZANACO	(1968)
Union Bank	(1979)
Meridien BIAO Bank	(1984)
Indo-Zambia Bank	(1985)
Manifold Bank	(1987)
Finance Bank	(1988)
New Capital Bank	(1989)
Cavmont Bank	(1993)
Credit Africa Bank	(1994)
First Merchant Bank	(1994)
Prudence Bank	(1994)
First Alliance Bank	(1995)
Invest Trust Bank	(1995)

¹⁵²⁴ Maimbo (n 12) 33–39.

¹⁵²⁵ Maimbo (n 12) 33–39.

¹⁵²⁶ Maimbo (n 12) 33–39.

¹⁵²⁷ Maimbo (n 12) 33–39.

¹⁵²⁸ Maimbo (n 12) 33–39; Brownbridge (n 273) 51.

Chase Trust Bank	(1995)
United Bank of Zambia	(1997)

Between 1987 and 1989, several banks established themselves in the market, including Finance Bank, African Commercial Bank, New Capital Bank, and Manifold Investment Bank, which were all attracted by the low capital requirements and unregulated nature of the market.¹⁵²⁹

7.3 The position after the change in government to a market economy

Table 16. Types of banks operating in Zambia in 1991¹⁵³⁰

Foreign Banks and date established		Local Banks and date established	
Standard Chartered Bank	(1906)	ZANACO	(1968)
Barclays Bank	(1918)	Union Bank	(1979)
Stanbic Bank	(1956)	Meridien BIAO Bank	(1984)
Citibank Bank	(1979)	Indo-Zambia Bank	(1985)
		Manifold Bank	(1987)
		Finance Bank	(1988)
		New Capital Bank	(1989)
		Cavmont Bank	(1993)
		Credit Africa Bank	(1994)
		First Merchant Bank	(1994)
		Prudence Bank	(1994)
		First Alliance Bank	(1995)
		Invest Trust Bank	(1995)
		Chase Trust Bank	(1995)
		United Bank of Zambia	(1997)

The re-entry into democracy and multi-party politics was nothing short of a baptism by fire for Zambia.¹⁵³¹ After almost 27 years of gradual economic decline, more pronounced after the first oil shock of 1973,¹⁵³² the country emerged exhausted from a failed African socialist

¹⁵²⁹ Maimbo (n 12) 11–63.

¹⁵³⁰ Maimbo (n 12) 11–63.

¹⁵³¹ Baylies “Democratization and the 1991 Elections in Zambia” in *Voting for Democracy* “(2019) 83–109; Bartlett “Civil Society and Democracy: A Zambian Case Study” 2000 *Journal of Southern African Studies* 3 429–446; Ihonvbere “The Crisis of Democratic Consolidation in Zambia” 1996 *Civilisations, Revue Internationale d’Anthropologie et de Sciences Humaines* 83–109.

¹⁵³² Andersson & Kayizzi-Mugerwa “External Shocks and the Search for Diversification in Zambia” in *Economic Crisis in Africa* (2002) 134–151.

philosophy,¹⁵³³ a mono-economy that found itself in the *maelstrom* of the AIDS pandemic,¹⁵³⁴ the geo-politics of the Cold War and the regional politics of liberation wars that sapped almost all her energy,¹⁵³⁵ leaving very little for her people. Hyperinflation had eroded the earnings of the Zambian middle class by the time the economy re-established itself.¹⁵³⁶ This was followed by the bitter pill of further austerity measures prescribed by the IMF's restructuring programme in 1992/1993.¹⁵³⁷ The pill was sweetened by the prospect that multi-party politics brought with it and the freedom from censorship that had marked the previous 26 years.¹⁵³⁸ Table 17 below lists the banks that were operating at the start of the 1990s.

Table 17. Types of banks operating in Zambia in 1991¹⁵³⁹

Foreign Banks		Local Banks	
Standard Chartered Bank	(1906)	ZANACO	(1968)
Barclays Bank	(1918)	Union Bank	(1979)
Stanbic Bank	(1956)	Meridien BIAO Bank	(1984)
Citibank Bank	(1979)	Indo-Zambia Bank	(1985)
		Manifold Bank	(1987)
		Finance Bank	(1988)
		New Capital Bank	(1989)
		Cavmont Bank	(1993)
		Credit Africa Bank	(1994)
		First Merchant Bank	(1994)
		Prudence Bank	(1994)
		First Alliance Bank	(1995)
		Invest Trust Bank	(1995)
		Chase Trust Bank	(1995)
		United Bank of Zambia	(1997)

¹⁵³³ Sekwat "Beyond African Humanism: Economic Reform in Post-Independent Zambia" 2000 *International Journal of Organization Theory & Behavior* 3 521–546; Kanu "Kenneth Kaunda and the Quest for an African Humanist Philosophy" 2014 *International Journal of Scientific Research* 375–377.

¹⁵³⁴ Siameja *Measuring the Impact of HIV/AIDS on Economic Development in Zambia* (doctoral dissertation, University of Waikato, 2011); Simpson & Bond "Narratives of Nationhood and HIV/AIDS: Reflections on Multidisciplinary Research on the HIV/AIDS Epidemic in Zambia over the last 30 years" 2014 *Journal of Southern African Studies* 1065–1089.

¹⁵³⁵ Dunning "Conditioning the Effects of Aid: Cold War Politics, Donor Credibility, and Democracy in Africa" 2004 *International Organization* 409–423.

¹⁵³⁶ Adam "Fiscal Adjustment, Financial Liberalization, and the Dynamics of Inflation: Some Evidence from Zambia" 1995 *World Development* 735–750.

¹⁵³⁷ White "Zambia in the 1990s as a Case of Adjustment in Africa" 1997 *African Development Review* 56–87.

¹⁵³⁸ Burnell 'Taking Stock of Democracy in Zambia' in *Democracy and Political Change in the Third World* (2003) 150–169.

¹⁵³⁹ Maimbo (n 12) 23–25.

The IMF Structural Adjustment Programmes (SAPs) of 1992/1993¹⁵⁴⁰ ushered in a barrage of reforms, as the name suggests, including legal and bank regulatory reforms among others, to prepare the country to accept and accommodate the requirements imposed by the donor community as a means of resuscitating the economy.¹⁵⁴¹ In particular, it appears to have been aimed directly at attracting fastidious foreign investors who mostly viewed African countries with scepticism,¹⁵⁴² especially after the West's historical experience with many of these countries in terms of nationalisation and appropriation of their assets.

7.3.1 *Regulatory changes to the Zambian financial framework*

The changes to a democratic dispensation promulgated large-scale reforms to the banking and financial sector. This was necessary, according to Brownbridge, because like many African nations, Zambia's colonial and early post-independence banking regulations were insufficient for the evolving banking system, particularly during the 1980s. The Bank of Zambia (BOZ) lacked both effective banking laws and sufficient supervisory capabilities. Before the 1990s reforms, the BOZ primarily focused on enforcing government-mandated credit allocation, neglecting prudential regulation. While a Bank inspectorate was in place, inspections mainly verified compliance with foreign exchange, interest rate controls, and statutory liquidity requirements.¹⁵⁴³

To some extent, the lack of emphasis given to prudential regulation was justifiable by the central bank. This justification can be explained by the fact that until the entry of Bank of Credit and Commerce Zambia (BCCZ) and Meridien into the Zambian banking market in the early 1980s, most banks operating in Zambia were either owned by well-established foreign banking conglomerates or the Zambian government and thus were reasonably secure in terms of the safety of deposits. It was also the case that the controlled economy¹⁵⁴⁴ provided a relatively

¹⁵⁴⁰ Muuka "Wrong-Footing MNCs and Local Manufacturing: Zambia's 1992–1994 Structural Adjustment Program" 1997 *International Business Review* 667–687.

¹⁵⁴¹ Maimbo (n 12) 23–25.

¹⁵⁴² Maimbo (n 12) 23–25.

¹⁵⁴³ Brownbridge "Financial Policies & the Banking System in Zambia" in Brownbridge & Harvey (eds) *Banking in Africa. The Impact of Financial Sector Reform Since Independence* (1998) 143–162. See also Brownbridge "Financial Policies and the Banking System in Zambia Summary" <https://www.ids.ac.uk/download.php?file=files/Wp32.pdf>. (accessed 5 December 2023)

¹⁵⁴⁴ Controlled economies or command economies are those in which the means of production are owned by the public and economic activity is regulated by a single body that also distributes raw materials to profitable businesses and sets quantitative production targets. The percentage of the total product used for investment as opposed to consumption becomes a politically determined decision in such a system. Following this determination, the central planners determine the range of products to be manufactured as well as the allotted amounts for every business. If planners examine the surpluses and shortages that have emerged in the market, consumers may have

safe environment for bank lending.¹⁵⁴⁵ With the advent of BCCZ and other local banks, however, a much more purposeful approach to prudential regulation and supervision was required, as many new banks did not have parental support like the large foreign banks. Instead, they were stand-alone businesses with no external support. The fact that reforms to the prudential system were delayed until 1994 almost certainly cost the taxpayers heavily as a result of the Meridien BIAO Bank Zambia collapse on 19 May 1995¹⁵⁴⁶ and may have resulted in further costs as more of the local banks began to fail.¹⁵⁴⁷ It is the author's personal view and experience that the potential fragility among the local banks is at least partly attributable to the fact that the revisions to the banking legislation, and thus formal regulation, took three years to implement. Before this, banks operated in a more liberal environment with minimal reporting requirements. This created a perfect storm because of the introduction of new legislation and the time lag that resulted in the delayed implementation of the regulation, which eventually resulted in further banks failing. Additionally, new banks were allowed to join the banking industry before adequate prudential legislation and supervisory capacities had been put in place by the central bank.

7.3.2 From government control to liberalisation and then financial regulation

The financial reforms that were introduced were refreshing after the claustrophobia of a controlled economy. In Zambia, the impact of financial liberalisation was evidenced by a lack of controls in foreign exchange and interest rates, to name but a few changes brought about by the IMF SAPs' conditionalities that the country had to comply with. This short-lived freedom was soon replaced with strict regulations, albeit three years after the fact, some of it in the form of the required implementation of the Basel Accords.

Some of the reasons that caused financial liberalisation to fail is debatable, but Brownbridge attributes it to various factors,¹⁵⁴⁸ including:

an indirect influence on their decisions. However, consumers only have direct control over the already-produced goods. See Britannica Money "Command Economy" <https://www.britannica.com/money/command-economy> (accessed 5 December 2023)

¹⁵⁴⁵ Brownbridge (n 1547) 143–162.

¹⁵⁴⁶ Maimbo (n 12) 34.

¹⁵⁴⁷ Brownbridge (n 1547) 143–162.

¹⁵⁴⁸ Brownbridge (n 1547) 143–162.

- (a) The removal of exchange controls allowed economic agents to hold foreign currency assets. It also enabled banks to get foreign currency loans from foreign banks outside of Zambia by the relaxation of foreign exchange regulations. This arrangement later backfired when the local currency began to depreciate rapidly, making it more difficult for these banks to pay back these foreign loans.
- (b) Banks tended to invest their deposits in treasury bills as their yields were much higher than bank deposit interest rates. Banks were thus opting to lend less to borrowers because, from a risk and interest perspective, it was not rational to do so given that treasury bills were almost zero-rated in terms of risk. Instead, it was much safer to invest deposits in government treasury bills and bonds that provided low risk and high returns for the banks. This was especially pertinent as interest rates on treasury bills during this period were relatively high because of the liberalisation of interest rates. Interest rates during this period increased from around 40 per cent in 1992 to *circa* 192 per cent in June 1993, which led to a concomitant rise in interest rates on loans and government securities.¹⁵⁴⁹ Similarly, an OECD paper shows that:

*“[i]n 2001, the central bank tightened its monetary policy by increasing statutory cash reserve requirements and by pursuing more aggressive open-market operations. This resulted in a sharp increase in interest rates (on 91-day treasury bills) from 34 per cent at the end of 2000 to about 45-50 per cent during the latter part of 2001, in a real appreciation of the Kwacha against the US dollar.”*¹⁵⁵⁰

This created a situation where, with the eventual reduction of support, banks began to make less money and had to get back into the business of banking quickly to continue being profitable. Anecdotally, it is submitted that banks were under immense pressure from their directors (in an era before the advent of corporate governance) to make the same profits as before. One of the strategies that the banks employed was to water down the strict lending procedure to garner more clients. Since the economy was still in recovery mode, most of the clients they lent to ended up being bad debtors, resulting in massive losses and eventual insolvency for many smaller banks.

¹⁵⁴⁹ Maimbo (n 12) 30.

¹⁵⁵⁰ Organisation for Economic Co-operation and Development (OECD) “African Economic Outlook AfDB” (2003) 353 <https://www.oecd.org/countries/zambia/2497663.pdf> (accessed 6 December 2023).

- (c) There was also pressure from the IMF to implement financial policies that included the Basel Accords as part of the conditionalities, as best practice, and as a way of trying to forestall future bank instability by ensuring that banks were adequately capitalised. It is submitted that these requirements came as a shock to the commercial banks, which had up until now operated with very little regulatory interference from the Zambian central bank.

7.3.3 Correcting the bottlenecks in the old Banking Act

BFSA (1994)¹⁵⁵¹ was promulgated on 3 June 1994 to repeal the outdated Banking Act 1972 Cap 700 of the Laws of Zambia¹⁵⁵² and to change some of the bottlenecks that impeded the independence that the central bank needed to act efficiently and decisively when dealing with errant commercial banks. The fact that some major decisions were tied to the Ministry of Finance (MoF), which was not directly involved in the day-to-day running of the bank's business, meant that they were out of their depth when it came to deciding the fate of these commercial banks.¹⁵⁵³ Major decisions that involved the licensing of banks and determining which insolvent banks should be wound up were in the hands of the MoF. This created a gap in the decision-making process between the central bank and the MoF.¹⁵⁵⁴ The new Act thus allowed the central bank significant independence in terms of deciding on regulatory matters. For example, Chapter II of the Act titled: "Licensing of Banks and Financial Institutions. Part 1—Licensing of Banks," in sections 4 to 9 of Part 1, allowed the Zambian central bank, BoZ, to license banks; determine applications for licenses; refuse to license banks that do not meet the criteria; investigate applicants and authorise activities of banks in addition to taking deposits. Additionally, Chapter VII of the Act, which covered "Insolvency Dissolution and Liquidation of Banks and Financial Institutions" under parts 1 to 4 and covering sections 85–110B gave the central bank the powers that the MoF previously had in terms of licensing and liquidating banks. While the 1994 version of the BFSA has since been repealed and replaced by the BFSA (2017),¹⁵⁵⁵ these powers have not been reduced by any means, and the central bank remains in charge of these areas.

¹⁵⁵¹ Banking and Financial Services Act 1994 Chapter 387 of the Laws of Zambia (promulgated on 3 June 1994).

¹⁵⁵² Banking Act 1972 Cap 700 of the Laws of Zambia. See also Chiumya "Banking Sector Reform and Financial Regulation: Its Effects on Access to Financial Services by Low-Income Households in Zambia" 2005 15.

¹⁵⁵³ Brownbridge (n 1547)143–162.

¹⁵⁵⁴ Brownbridge (n 1547)143–162.

¹⁵⁵⁵ Banking and Financial Services Act 2017 (Act No.7 of 2017).

Second, the authority of the BoZ to deal with the crisis appears to have been severely constrained by the government, which suggests that the Bank of Zambia Act has done little to clarify their respective roles. The MoF is reported to have overruled the BoZ Governor on several occasions on matters of regulation and licensing.¹⁵⁵⁶ To add to this, it appears that the central bank was slow in issuing limits and depended on insider lending guidelines only, rather than as formal regulations that would allow the central bank to sanction commercial banks that circumvented the rules.¹⁵⁵⁷ This position swiftly changed with the issuance in rapid succession of formal limits on the back of two Statutory Instruments (SIs) on insider lending, namely SI No 96 of 1996, titled the “Banking and Financial Services (Large Loans Exposures) Regulations, 1996,”¹⁵⁵⁸ and SI No 97 of 1996, titled the “Banking and Financial Services (Insider Lending) Regulations, 1996”¹⁵⁵⁹ that was followed by a reminder by the issuance of “Commercial Bank Circular Number 9/96, titled: Insider Lending and Large Credit Exposures” on 11 July 1996.¹⁵⁶⁰ The overall impact of correcting this oversight resulted in many banks falling foul of the rule. It was one of many causes that led to bank closures after 1996 because many banks were involved in the practice.¹⁵⁶¹

7.4 The evolution and growth of Zambian banking Acts 1994–2017

After independence, as earlier indicated, the legislation did not change significantly apart from changing the names of the country from Northern Rhodesia to Zambia in 1964. There were two sets of legislation that regulated banking. The first Act was called the Banking Act, and the other Act was the BoZ Act. The Former Act was promulgated in 1959 as part of the Federal Acts. It was amended in 1961 when it became the Banking (Amendment) Act. At independence, the Act continued to operate almost *verbatim* to the 1961 Act, as few changes were made to it at independence in 1964. In 1965, however, the new government decided to make amendments to the Act by to issuing the Banking Act No. 1 of 1965. This Act was quickly repealed and

¹⁵⁵⁶ Brownbridge (n 1547)143–162.

¹⁵⁵⁷ Brownbridge (n 1547) 143–162.

¹⁵⁵⁸ Banking and Financial Services (Large Loans Exposures) Regulations SI No 96 of 1996 (Large Loans Exposures) Regulations, 1996.

¹⁵⁵⁹ Bank of Zambia (BoZ) Commercial Bank *Circular Number 9/96*, titled: Insider Lending and Large Credit Exposures, on 11 July 1996.

¹⁵⁶⁰ Bank of Zambia (BoZ) *Commercial Banks Circular Number 9/96* (11 July 1996).

¹⁵⁶¹ Brownbridge (n 1547) 143–162.

replaced by the Banking Act No.43 of 1971, Cap 700¹⁵⁶² of the Laws of Zambia, soon after. The Banking Act also had sections dealing with savings and was sometimes unofficially referred to as the Banking and Savings Act. The Banking Act was then repealed and replaced by the BFSA (1994) Cap 387 of the Laws of Zambia. Since its inception as the BFSA, the Act has been amended at various points in time to accommodate specific regulatory and administrative requirements. In 2000, the Act was amended by amended No.18 of 2000, then again in 2005 by the BFSA No.25 of 2005, after which the whole Act was ultimately repealed and replaced by the BFSA (2017) (No.7 of 2017).¹⁵⁶³

The BoZ Act has a much longer and richer history than the Banking Act, as it was born out of the remnants of the 1937 Southern Rhodesia Currency Board. The Southern African Currency Board changed its name to the Currency Board of Rhodesia and Nyasaland after the creation of the Federation of Rhodesia and Nyasaland. It further evolved into the Bank of Rhodesia and Nyasaland Act and, eventually, in 1963, it was renamed the Bank of Northern Rhodesia Ordinance. At independence, it was designated the Bank of Northern Rhodesia Ordinance No.24 of 1964, after which it immediately changed its name to the BoZ Act No.37 of 1964. The BoZ Act was amended in 1971 to take cognisance of the new structural developments that were affecting the Zambian central bank. This Act appears to have stood the test of time until 1985 when it was repealed and replaced by the BoZ Act 1985 (No.24 of 1985), Cap 699 of the Laws of Zambia. The BoZ Act was repealed ten years later and replaced by the BoZ Act 1996 No.43. Cap 699¹⁵⁶⁴ had a component of the Currency Act under Cap 59 contained in it, which was repealed by the BoZ Act section 63(1) 1996. These repeals brought the BoZ Act update to its current position respectively.¹⁵⁶⁵

It is pertinent to consider some of the reasons why the two pre-1991 Acts—the BOZ Act Cap 699 and the Banking Act Cap 700 fell short of their mandate to protect banks and ensure Banks deliver services to their customers to a high level in the new democratic dispensation.

¹⁵⁶² Banking Act Cap 700 of 1971 of the Laws of Zambia.

¹⁵⁶³ See Appendix 4.

¹⁵⁶⁴ Bank of Zambia Act 1985 No 24 of 1985 (or the Currency Act) Cap. 699 of the Laws of Zambia.

¹⁵⁶⁵ See Appendix 4.

7.4.1 *Shortcomings of Banking Act Cap 700 and BoZ Act Cap 699*

These Acts were short-sighted and did not consider the effects of wider impact of the application of the statutes would have on the operations of the central bank and licensing. Brownbridge identified three main shortcomings of the Banking Act Cap 700 and BoZ Act Cap 699 of the laws of Zambia as outlined in the paragraphs below. This includes licensing of banks, lack of authority by the BoZ, and directors' credentials.¹⁵⁶⁶

7.4.2 *Licensing of banks*

The first shortcoming lay with licensing and with the fact that the authority to license banks and to withdraw licenses lay not with the BoZ but with the Registrar of Banks. The Registrar of Banks was appointed by the Ministry of Finance (MoF).¹⁵⁶⁷ This meant that the central bank did not have full authority over the regulation of Zambian commercial banks. To add to the complexity of the matter, the Registrar of Banks was often out of touch with what was going on in the financial sector. It also added an extra layer of bureaucracy to the licensing process of banks because the arrangement often meant that the Registrar of Banks had to get information from the central bank, while the central bank had to chase for feedback from the Registrar on issues where time was of the essence.¹⁵⁶⁸ This was not conducive to efficient bank regulation.

7.4.3 *Lack of authority by the Bank of Zambia*

The second shortcoming identified was the fact that the Banking Act 1971 did not provide the BoZ with sufficient authority to issue or update regulations for prudential requirements.¹⁵⁶⁹ This resulted in the minimum capital requirements remaining unchanged from 1971 to 1989 and were only revised in 1994.¹⁵⁷⁰ One of the major reasons for this appears to be Zambia's push to a controlled economy that did not require constant revision of its laws.

¹⁵⁶⁶ Brownbridge (n 1547) 143–162.

¹⁵⁶⁷ Brownbridge (n 1547) 143–162.

¹⁵⁶⁸ Brownbridge (n 1547) 143–162.

¹⁵⁶⁹ Brownbridge (n 1547) 143–162.

¹⁵⁷⁰ Brownbridge (n 1547) 143–162.

7.4.4 Directors' credentials

The third shortcoming was the lack of clarity in the Banking Act Chapter 700 with respect to what criteria and qualifications directors and managers should have when applying for licenses in terms of qualifications, experience, and so on, i.e., fit and proper requirements. The Act was also vague in terms of what grounds applications for licensing could be rejected on.¹⁵⁷¹

7.4.5 Decentralisation in banking: a response to over-regulation

The 2020 “Zambia Bank and Non-Bank Industry Survey” by PWC¹⁵⁷² refers to an article written by Rubenstein in October 2020, which appears to sound the death knell for banking as we know it.¹⁵⁷³ Rubenstein mentions the fact that banks across the globe are in some form of trouble. Zambia appears to need urgent attention to avoid possible bank closures and mergers. He states that the investor value of banks is reflected by the fact that the stock prices for banks are at the level they were almost 25 years ago.¹⁵⁷⁴ On closer examination, it is submitted that this statement appears to be made generally and out of context as far as Zambian banks are concerned, particularly since very few if any Zambian Banks were listed on the stock exchange at the time the statement was made because the Zambian Stock Exchange called the Lusaka Securities Exchange (LuSE)¹⁵⁷⁵ had just been established at the time. It is thus likely that Rubinstein was talking generally and included other countries that had stock exchanges at the time, like Kenya.

7.4.6 Lack of prudential legislation in Banking Act Cap 700

The Banking Act, Chapter 700 of the Laws of Zambia, had several areas of weakness identified in it. Weaknesses included the absence of clearly crafted prudential rules. For example, while the Banking Act Cap 700 set out capital adequacy standards relating to capital and reserves, these provisions were largely irrelevant, however, without meaningful provisioning rules for

¹⁵⁷¹ Brownbridge (n 1547) 143–162.

¹⁵⁷² n 1690, 38.

¹⁵⁷³ Rubinstein “The End of Banking” NetInterest.co <https://www.netinterest.co/p/the-end-of-banking> (accessed 15 October 2023).

¹⁵⁷⁴ Rubenstein (n 1577).

¹⁵⁷⁵ The Lusaka Stock Exchange (LuSE) now Lusaka Securities Exchange, was established with preparatory technical assistance from the International Finance Corporation (IFC) and the World Bank in 1993. The Exchange opened on 21st February 1994. In its first two years of operation the LuSE and Securities and Exchange Commission (SEC) were funded by the UNDP and Government of Zambia as a project on financial and capital market development in Zambia under the multi-component private sector development program. See Lusaka Securities Exchange (LuSE) “About us” <https://www.luse.co.zm/about-us/ourstory> (accessed 12 April 2024).

doubtful debts and non-accrual of unpaid interest.¹⁵⁷⁶ Because of these oversights, paradoxically, a bank that appeared to be well-capitalised could technically be insolvent. The Banking Act also overlooked any references to insider lending and loan concentration, which increased the risk of insolvency of a bank.¹⁵⁷⁷ Also, the Act appeared to concentrate more on administrative issues such as registration issues (Part II); maintenance of the principal office, display of names (Part III); capital issues (Part IV); limitation of transactions (Part V); statements (Part VI); administration of the bank by the Minister and the Registrar (Part VII); issues relating to auditors and directors (Part VIII); and lastly matters of a miscellaneous nature (Part IX).¹⁵⁷⁸

While this appears inadequate, at best, this Act only serves to edify the previous arguments made that under a socialist dispensation, there was no actual requirement for prudential regulation, especially in the Zambian case, where most banks were, and still are, international subsidiaries. They are thus better able to withstand financial crises better than the small local banks. For example, under Part VI section 28(1) of the Act, which concerns the reporting of statements,¹⁵⁷⁹ a commercial bank was required to submit monthly statements to the Registrar:

“Every registered accepting house and every registered commercial bank shall prepare and submit in triplicate to the registrar on the appropriate forms prescribed-

a) within twenty-one days after the last day of every calendar month a statement showing at the close of the last business day of that month-

i) the liabilities to the public of its offices and branches in Zambia; and

ii) the amount of each of the liquid assets specified in sub-section (4) of section 21 held by its offices and branches in Zambia, the aggregate holding of such assets and the proportion which the aggregate holding of such assets bears to its liabilities to the public at the close of the last business day of that month.

¹⁵⁷⁶ Brownbridge (n 1547) 18.

¹⁵⁷⁷ Brownbridge (n 1547) 18.

¹⁵⁷⁸ Banking Act Chapter 700 of the Laws of Zambia 8–35.

¹⁵⁷⁹ The word ‘Statement’ is undefined in section 2 of the Banking Act Cap 700, but by applying the literal rule of interpretation it would appear to mean a statement of the monthly position of a particular commercial bank.

*b) within twenty-eight days after the last day of every calendar month, a statement of the assets and liabilities of its offices and branches in Zambia at the close of the last business day of that month.*¹⁵⁸⁰

This section of the BoZ Act clearly shows that the elements of prudential regulation were lacking during this period of banking history. Banks reported their liquidity positions monthly to the central bank, and as a result, it was much harder to tell if a bank was on the brink of insolvency or not. Despite this apparent relaxed approach to reporting their liquidity positions, it is surprising that banks did not suffer insolvencies regularly. It should also be understood that during the period in question, banks worked in manual, non-computerised environments, unlike today. This manual system increased the overall processing risk because adverse information could be withheld if banks wanted to, as banks were not mandated to report to the central banks as regularly as they do today.¹⁵⁸¹

Given the foregoing, it can be argued that good regulation is more about the management of commercial banks rather than the amount of capital that the bank holds. Looked at differently, it is submitted that the international banks were, and still are, well ahead of local banks in terms of regulation, mainly as a direct result of the benefit they receive from the advanced reporting and compliance measures that their parent banks must meet. These regulations then automatically trickle down to the international bank subsidiaries in two ways directly (by policy statements) and indirectly (by a bank's operating culture). It is submitted that one of the reasons why foreign banks appeared to be robust may be because of their advanced bank regulatory rules acquired from their parent. It is further submitted that this may explain why there were no historical insolvencies affecting these foreign bank subsidiaries operating in Zambia during the 1990s. So, it can be argued that these subsidiaries had to meet stricter compliance from the international parent banks rather than from strict compliance with the regulations set by BoZ

¹⁵⁸⁰ Banking Act Cap 700 of the Laws of Zambia, PART VI section 28(1).

¹⁵⁸¹ Bank for International Settlements (BIS) says in its document: 'Overview of the National Payment System in Zambia, that very little was done to modernise the payment system, given its economic and political background of a centrally controlled, command economy. With the advent of the liberalised market in 1991 serious work started with the help of international organisations like the IMF and the world Bank to look at payment system issues. This modernisation program has since resulted in the following improvements in the banking system by introducing a national payment system: the introduction of an independent clearing house; the reduction in clearing times for cheques and the development of an electronic clearing house and new supervisory standards. See Bank for International Settlements (BIS) "Payment System in Zambia" 225 <https://www.bis.org/cpmi/paysys/Zambia.pdf> (accessed 13 April 2024).

per se, which was at a much lower standard than that which they had already attained because of adhering to policies from international parent banks.

The sections of this Act can be deemed to be more of a growth Act that helped to establish rules for a nascent country's banks rather than for enforcing legislation on an already established banking system, of which there was none in 1964. Over time, the change in political ideology meant that there was little or no need to enhance or amend the statute further, given the country's socialist leanings. All these deficiencies came to bear the bitter fruit of insolvency for many smaller local banks after 1991. Weaknesses in the licensing rules allowed poorly capitalised and badly managed banks to open in the late 1980s and early 1990s. While the Banking Act included capital adequacy standards and reserve requirements, these were ineffective due to the absence of rules on loan loss provisions and unpaid interest accrual. This allowed insolvent banks to appear financially sound. Crucially, the Banking Act failed to address insider lending and loan concentration, which are critical risk factors.¹⁵⁸²

7.4.7 Opening the floodgates for bank failure

Despite the attempt at modernising the banking system with the introduction of the BFSa (1994), it appears that it was already too late in terms of saving some of the banks in Zambia. It is also debatable as to whether the introduction of the BFSa (1994) was the cause of the failures or whether the banks were already so weakened by economic factors that the new regulatory requirements became the proverbial "last straw that broke the camel's back." Whatever the reason, banks began to fail as outlined in Table 17, starting with Capital Bank. Brownbridge, who studied the phenomenon in depth, attributes these failures to a range of issues including: preventing banks from becoming insolvent (i.e. banks that were technically insolvent but were kept afloat as a result of various factors like political interference); lack of decisiveness in closing some of these banks and weak regulation as a result of the subservient position of BoZ to the Minister of Finance, which resulted in the inappropriate structure in the regulatory architecture.¹⁵⁸³

7.4.7.1 Regulatory transformation in an era of instability

It appears that the priority for the new dispensation was to rearrange the law to accommodate and protect the market economy and its participants.—These objectives are found in the BFSa

¹⁵⁸² Brownbridge (n 1547) 143–162.

¹⁵⁸³ Brownbridge (n 1547) 143–162.

(1994) in the preamble to the Act which states that the BFSA (1994) is “*An Act to provide for the regulation of the conduct of banking and financial services; to provide safeguards for investors in and customers of banks and financial institutions; and to provide for matters connected with or incidental to the foregoing.*”¹⁵⁸⁴ The central bank that had lain dormant from 1973 and been relegated to the wings of the theatre, analogically speaking, now took its rightful place at the helm of the economy. Policy measures to do this included, amongst others, the creation of the BoZ Act No.43 of 1996, and the Banking and Financial Services Act (1994) Cap 387 of the Laws of Zambia, which aimed at modernising and streamlining the banking system.

According to Brownbridge, several significant changes were made to the Banking and Financial Services Act (1994) to bring it up to date with the tenets of modern banking practice.¹⁵⁸⁵ In terms of the powers that the central bank could exercise without consultation with the MoF, the previous Act required the central bank to consult on matters of licensing,¹⁵⁸⁶ insolvency¹⁵⁸⁷ and other banking matters. The central bank was given quasi-independence and more flexibility to make in-house decisions on issues of setting prudential regulation.¹⁵⁸⁸ One of the immediate issues that was addressed was the issue for commercial banks to start providing mandatory reporting to the central bank with regular reporting requirements often on a daily, monthly, quarterly, half-yearly, and yearly basis.¹⁵⁸⁹ This was more in line with the introduction of prudential management. Maimbo observes that the enactment of the BFSA (1994) led to the introduction of standardised accounting and reporting practices as well as improved BoZ oversight capabilities. Banks must provide more frequent and extensive financial reports. In addition, BoZ released statutory instruments regarding large loans, insider lending and capital adequacy, disclosure of fixed asset interests, loan categorisation, and loan provisioning.¹⁵⁹⁰

¹⁵⁸⁴ n 1555.

¹⁵⁸⁵ Brownbridge (n 1547) 158–159.

¹⁵⁸⁶ Chapter II. Licensing of Banks and Financial Part 1–5 ss 4–22. BFSA (1994) Cap 387 of the Laws of Zambia.

¹⁵⁸⁷ Chapter VII Insolvency and Liquidation of Banks Part 1–3 ss 85–110 BFSA (1994) Cap 387 of the Laws of Zambia.

¹⁵⁸⁸ Chapter VI Supervision and Prudential Regulation Part 1–2 ss6–84, BFSA (1994) Cap 387 of the Laws of Zambia.

¹⁵⁸⁹ Central Bank Circular 05/23 to all heads of Commercial Banks and Designated Payment System Entities (13 December 2023) 1–2.

¹⁵⁹⁰ See CB Circular 13/96 Classification and Provisioning of Loans Regulations CB Circular 09/1996 Insider Lending and Large Credit Exposures. CB Circular 07/1996 / Minimum Capital Requirements. CB Circular 05/

At first, this proved difficult because of capacity issues, but over time, the central bank had declined significantly because of issues of understaffing, lack of finances, low morale, and lack of means to monitor and evaluate commercial banks' reports and information flows. As such, the central bank was unable to monitor banks more closely.¹⁵⁹¹ To emphasise the seriousness of this period, Maimbo points out that during this period, some of the central bank staff were sharing desks and outdated computers.¹⁵⁹² Departmentally, the central bank had not created a separate department for these important central bank staff to work in.¹⁵⁹³ These teething problems were remedied over time with the assistance of funds from the Bretton Woods Institutions as part of the Structural Adjustment Programme.¹⁵⁹⁴ It is submitted that there are two explanations for the bank failures in the author's view: first, assistance may have come too late to save the commercial banks that became insolvent.¹⁵⁹⁵ Second, the bank failure was caused by overzealous bureaucrats bent on impressing the donor nations of their sincerity and worth in carrying out the IMF reforms to their fullest, resulting in overly rigid rules and short adjustment timelines that banks could not justifiably meet given the state of the economy at the time.¹⁵⁹⁶ This process of being zealous is what Beck, Jones, and Knaack call "reassuring host regulators".¹⁵⁹⁷

The BFSA (1994) was also able to demand more from the financial institutions and their directors. For instance, the Registrar was required to take into account various aspects of the applicants before granting a license to them. Applicants needed to disclose their financial resources, experience, and the character of the intended directors. Furthermore, the Act imposed restrictions on loan exposure and insider lending.¹⁵⁹⁸ Under its new mandate provided for by Chapter VI. Supervision And Prudential Regulations. Part 1.-Provisions Relating to

1996 Capital Adequacy Requirements CB Circular 03/ 1996 Capital Adequacy Requirements. CB Circular 12/1998 correspondent relationships. CB Circular 04/1998 Classification and Provisioning of Loans Regulation CB Circular 1&2 submission of prudential returns see Bank of Zambia "Circulars" <https://www.boz.zm/circulars> (accessed 27 November 2025). See also Maimbo (n 12) 59.

¹⁵⁹¹ Maimbo (n 12) 59.

¹⁵⁹² Maimbo (n 12) 59.

¹⁵⁹³ Maimbo (n 12) 61.

¹⁵⁹⁴ Maimbo (n 12) 25.

¹⁵⁹⁵ Maimbo (n 12) 62–63.

¹⁵⁹⁶ Beck (n 1854) 4.

¹⁵⁹⁷ Beck (n 1854) 4.

¹⁵⁹⁸ Bank of Zambia (BoZ) *Commercial Bank Circular No 9/96* (11 July 1996) <https://www.boz.zm> (accessed 27 November 2025). 1.

Financial Service Providers. Section 83 of the BFSA (1994) Act allowed the BoZ to increase its minimum capital for a bank, which had thus far remained unchanged for several decades, to ZMK1.25 billion Kwacha (or roughly USD1.3 million).¹⁵⁹⁹ The central bank also acquired powers to appoint a curator when it felt that a bank's operations were in question, according to Part 4-Compulsory Liquidation, Winding-up or Dissolution. Section 103 of the BFSA (1994) Act. (The position of curator was consequently done away with.¹⁶⁰⁰) Where a bank appeared to be heading into insolvency, the central bank was now able to take possession of the bank without having to refer the matter to the Registrar of Banks and Minister of Finance for them to decide on the matter first. Section 84A of the BFSA (1994) titled, "Powers and Duties of the BoZ upon taking Possession," provides:

*"The Bank of Zambia upon taking possession of a financial service provider under paragraph (a) of sub section (2) of section eighty-one shall be vested with full and exclusive powers of management and control of the financial service provider, including the power- (a) to continue or discontinue any operations..."*¹⁶⁰¹

The main objective of creating two separate Acts was to ensure that the regulatory and governing function of the central bank was kept separate from the Central bank's supervisory function of the commercial banks including the financial institutions that were supervised by the BoZ. But it appears that it was also an attempt to conform to the initial 25 (now 29)¹⁶⁰² Core Principles for Effective Banking Supervision, which was issued as part of the foundation for

¹⁵⁹⁹ BFSA (1994) section 83. See also: Brownbridge "The Causes of Financial Distress in Local Banks in Africa and Implications for Prudential Policy" (March 1998) 1–23.

¹⁶⁰⁰ Research shows that Curator was removed in name only not in and not functionally. Equally, there is no indication of a formal repeal of the name. For example, the original BFSA (1994) Act says under part 3- Seiz of Banks section 94 (1) that "an officer of the Bank of Zambia or any person acceptable to the Bank Zambia and willing to act may be a receiver for the purpose of this part (2)The bank of Zambia may by resolution appoint and direct a receiver to take possession of any bank that in the opinion of the Bank of Zambia is insolvent. Banking and Financial Services Act (1994) This section was repealed and replaced by Act No 18 of 2000 and reads at Part 4 –Compulsory Liquidation, Winding Up or Dissolution, Section 102 under. Powers of Bank of Zambia to appoint agent that "The Bank of Zambia may appoint an agent to carry out any of its functions under this Part. The BFS 2017 under Part X Insolvency, Dissolution and Liquidation of Financial Service Providers does not provide for the appointment of an agent at all.

¹⁶⁰¹ BFSA (1994) Cap 387 of the laws of Zambia

¹⁶⁰² A supervisory system must adhere to 29 core principles to be effective, according to BCBS criteria. These core principles are divided into two main groups. The first group consists of principles 1 through 13 and deals with the authority, duties, and roles of supervisors, while the second group covering principles 14 through 29 deals with prudential rules and specifications for banks. Initially, there were only 25 principles but because principle 1 was discovered to be made up of three distinct principles, including additional principles on corporate governance, disclosure, and openness there are now 29 Principles instead of the original 25. See Bank for International Settlements (BIS) "Core Principles for Effective Banking Supervision" (2012) 21 <https://www.bis.org/publ/bcbs230.pdf> (accessed 13 April 2024).

the Basel I Accord and by implication required a separation between the regulator (the central bank) and its regulatees (the commercial banks and other financial institutions) The revised Core Principles define 29 Principles needed for a supervisory system to be effective. The principles are broadly categorised into two main groups. The first group (Principles 1 to 13) focuses on powers, responsibilities, and functions of the supervisor, while the second group (Principles 14 to 29) focuses on prudential regulations and requirements for banks.¹⁶⁰³

The BoZ appears to have formally adopted this method in 1999 with the issuance of a circular to all the commercial banks titled “Risk-Based Approach to Inspections” to enhance the effectiveness of the supervision process for Zambian commercial banks.¹⁶⁰⁴

The critique of the adoption of these core principles is not based on their efficacy but on the fact that according to the initial paper called the Concordat issued in 1975,¹⁶⁰⁵ these Accords were supposed to be performed by advanced and emerging market banks that were trading across borders—of which Zambia at the time fell into neither of the categories. The financial market in existence from 1991 to 1994 was undeveloped and lacked depth,¹⁶⁰⁶ providing only basic banking services to its clients. It is hard to understand how a country, just coming out of a 20-year recession, can be subjected to further strict regulation without first establishing the necessary boundaries to stabilise its economy. Suffice it to say that bank failures, which were unheard of during the socialist or controlled economy era, became a common feature of the banking and financial sector after the introduction of the BFSa (1994) for reasons that are still not wholly understood nor deeply researched.¹⁶⁰⁷ The BFSa (1994) replaced the Banking Act (1972), which, up until then, was general in its approach to regulation. From 1994 to 1997, several banks collapsed and introduced major uncertainty in the local banking community as

¹⁶⁰³ Ibid. 9.

¹⁶⁰⁴ Bank of Zambia (BoZ) *Circular Number 1/99* (14 January 1999); *Circular Number 2/2000* (10 April 2000).

¹⁶⁰⁵ See ch 1 para 1.1.

¹⁶⁰⁶ A plain vanilla market refers to a basic or ordinary market that lacks sophistication in terms of the types of transactions it carries out. Following the 2007 financial crisis, there was a strong movement to reform the financial system in the US, to make it more secure and equitable leading to the enactment of the Dodd-Frank Act in 2010, and ultimately to the establishment of the Consumer Financial Protection Bureau (CFPB) which plays a crucial role in safeguarding consumers by overseeing financial products and services. It regulates those products that require straightforward, easy-to-understand terms like the plain vanilla products. See: Federal Trade Commission “Dodd-Frank Wall Street Reform and Consumer Protection Act, Titles X and XIV” available at <https://www.ftc.gov/legal-library/browse/statutes/dodd-frank-wall-street-reform-consumer-protection-act-titles-x-xiv> (accessed 19 December 2024).

¹⁶⁰⁷ Maimbo (n 12) 15–21.

depositors moved their money from the failing local banks to the strong international banks.¹⁶⁰⁸ In the finance industry, this is called a “flight to quality” and refers to a scenario in which investors shift their holdings from riskier to safer investments. When referring to bank deposits, it can mean that clients transfer their funds from a weaker bank to a stronger one that customers believe has a reduced chance of failure.¹⁶⁰⁹

In stark contrast to the BFSA (1994), which emphasised the elements of prudential regulation, the partnership created with the IMF because of the 1992/93 SAPs meant that implicitly all the tenets of the Basel I Accord that focused on capital adequacy were adopted immediately by the legislative draftsman. This can be seen by the emphasis on the commercial bank’s capital base that is evident in the Banking and Financial Services Act (1994) under its various sections, as discussed below. These are identified by interpreting the statute rather than by the existence of a circular to this effect.

The focus of this Act was to ensure that the licensing rules were firmly in place. This appears to be an attempt to ensure that the central bank covers all the loopholes that an international bank may use to acquire a local bank. It also exhibits all the requirements of the Basel Core Principles.¹⁶¹⁰ It is no surprise that a large portion of the Act was dedicated to the licensing of a financial institution, as evidenced by Chapter II under the heading “Licensing of banks”. This is a clear adoption of Core Principle 5 of the Core Principles that deals with “Licensing Criteria”, in particular, the entity responsible for issuing licenses can establish standards and deny applications that do not meet those standards. At the very least, the licensing process evaluates the bank’s ownership and governance structure, its strategic and operational plans, internal controls, risk management, and projected financial health, including its capital. If the proposed owner or parent company is a foreign bank, approval from its home country’s regulatory authority is required.¹⁶¹¹

Licensing covered aspects of the licensing of financial institutions under Part 2 of the BFSA (1994). Under this section, subheadings included “Operation of Licenses” (Part 3) and

¹⁶⁰⁸ Brownbridge (n 1547) 154.

¹⁶⁰⁹ In the finance industry, this is called a “flight to quality” and refers to a scenario in which investors shift their holdings from riskier to safer investments. When referring to bank deposits, it can mean that clients transfer their funds from a weaker bank to a stronger one that they believe has a reduced chance of failing. See Oxford Reference “Flight to Quality” <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095824998> (accessed 13 April 2024).

¹⁶¹⁰ See Appendix 2.

¹⁶¹¹ n 1606, 10.

“Prohibition of Unlicensed Business” (Part 4). Many parts of this section echo Principle 4 of the Core Principles that deal with permissible activities, i.e., the activities that banks are permitted to engage in.¹⁶¹² Chapter IX titled “Miscellaneous,” and in particular section 117(1) controls who can use the word “bank” in an attempt to streamline which juristic person can use the word (i.e. and can engage in the business of banking of which the hallmark is taking deposits from the public) and therefore prevent the proliferation of bogus financial institutions that are carrying on their business as banks. According to Chapter III Part 4 of the Act, under the heading: “Directors and Managers of Banks and Incorporated Financial Institutions,” strict licensing rules also appear to have been introduced to control fraudulent directors and directors suffering legal disabilities from directing new banks. This was done by the draftsman first, referring to the director’s qualifications as stated in PART X. Directors and Secretary Division 10.1 Appointment and Powers. Section 207 (1) of the Companies Act (1994), which has now been repealed and replaced by the Companies Act (2017).¹⁶¹³ under section 31(1) and then repeating the same qualifications in section 31(2) almost verbatim. It is submitted that the reason for the repetition is not clear, but it appears that the drafters of the statute were seeking to emphasise the seriousness of bank directors’ qualifications in both statutes. Equally, it is submitted that some of these strict regulations were implemented to ensure that the new investors in Zambia had confidence in the financial institutions, without which they would not invest their money in the Zambian market. It is further submitted that some of these measures had a double-edged effect, other than ensuring a well-regulated system of banks. After all, it must be understood that the period of high inflation had all but wiped out the country’s middle-class entrepreneurs, and thus the only source of capital would tentatively have to come from outside sources like foreign investors. Sadly, despite all the work put into ensuring that banks were safe for external investors, there was a tepid response to these changes by international investors. Some primary reasons why the level of competition in the Zambian banking sector appears not to have changed appreciably over time according to research done by Simpasa propose that aside from monopolistic competition, regulatory barriers needed to be further reduced or removed to improve competitive circumstances for foreign banks to permit these banks greater participation and thus encourage competitive behaviour in the banking sector.¹⁶¹⁴

¹⁶¹² n 1606,10; BFSa 2017 (Act 7 of 2017)181–272.

¹⁶¹³ Companies Act (1994) Cap 388 of the Laws of Zambia now repealed and replaced by the Companies Act No 10 of 2017. 393–34.

¹⁶¹⁴ Simpasa “Competition and Market Structure in the Zambian Banking Sector” Working Paper Series African Development Bank (2013) 23–24.

Equally, it is submitted that residual issues from not addressing all investor issues, uncertain outcomes of the implementation of these new laws, and lingering scepticism about the government's long-term commitment to a free-market approach might have all played a role as well, leading to a wait-and-see approach by foreign investors.

Chapter III of the Act concentrated on "Organisation and Administration," including the "Ownership and Control of Banks"(sections 23–24A) and the "Amalgamation and Restructuring of Banks" (sections 25–29). A large part of this section also focused on directors and managers and their legal duties. (sections 30A–37B) This section is implicitly connected to the licensing part as it deals with directors' qualifications, duties of the directors as well as their suspension and dismissal, to name but a few obligations.

Chapter IV of the Act under the heading "Operations," included matters relating to uncompetitive behaviour (particularly sections 40–42) while Chapter V concentrated on "Financial Accountability"(sections 56–67) as a means of encouraging transparency and accountability in the banking and financial system; requirements which were completely absent from the previous Banking Act.

It is surprising that, given the central bank's emphasis on capital and liquidity, the legislative draftsmen decided to put Chapter VI of the Act, which deals with "Supervision and Prudential Regulation," towards the end of the Act. (sections 69–84I) This part was implicitly a reflection of the 1974 Basel I capital requirements¹⁶¹⁵ that were adopted almost a decade after they were issued by the Basel Committee. Some of the sections from the Act led to a significant debate on section 69 on "Reserves and Liquid Assets" and, in particular, section 77 on "Unsafe and Unsound Banking Practices", which was Mwenda's¹⁶¹⁶ area of interest for the duration of the life of the first BFSa (1994) as it raised some interesting lacunas that made the definition of what constituted "unsafe and unsound" banking practice difficult to interpret in certain

¹⁶¹⁵ See ch 4 para 4.4.1.

¹⁶¹⁶ Kenneth Kaoma Mwenda has had a long and distinguished academic career. Besides holding the esteemed position of Extraordinary Professor of Law at the University of Pretoria, South Africa, he has been bestowed with the distinguished academic and other excellence awards. The PIMA award from Zambia has been given to him in recognition of his outstanding services to the legal profession, which is demonstrated by his numerous academic works. With over ninety articles published in prestigious academic publications and law reviews worldwide, along with twenty-five scholarly volumes, Mwenda is widely recognised as a preminent figure in his area. His scholarly achievements include higher doctorate degrees from the University of Hull (DSc (Econ)) in 2014 and Rhodes University (LLD) in 2008. Throughout his career, Mwenda has held significant roles at the World Bank in Washington DC, where he has served as Senior Counsel and currently leads the World Bank Voice Secondment Program (VSP).

instances. Mwenda believed that Zambian courts had missed several opportunities at defining the concept clearly.¹⁶¹⁷ An excerpt from the section evidences this disability:

*“Where in the opinion of the Bank of Zambia a bank or any person on behalf of a bank the bank any act or course of conduct is committing or pursuing or is about to commit or pursue on behalf of the bank any act that or course of conduct that is considered by the Bank of Zambia as unsafe and unsound practice the bank of Zambia may enter into one or more written agreements with the bank or its board of directors to establish a programme of action to counteract the unsafe and unsound practice and to establish or maintain safe and sound practices in the conduct of the business of banks.”*¹⁶¹⁸

Without attempting to critique the section in detail, what constitutes “unsafe and unsound banking practice” is vague for all intents and purposes. It is no surprise that the amended Act attempted to correct the glaring lacuna, but to little effect. Suffice it to say that the concept is regularly used in the Basel Committee and by other regulators in their documentation.¹⁶¹⁹ The criticism is that some of the concepts that are hatched by external regulators may not be fully understood in the target jurisdictions in which they are being adopted. For instance, Matsieli and Soorymoorthy¹⁶²⁰ show that the implementation of external policy is neither continuous, linear, nor coherent in poor nations. Instead, policy adoption is often fractured and constantly interrupted. The most important variables influencing the non-adoption of policy include opposition to change, policy and regulatory laws, vision, strategic planning, leadership, and policy.

Section 82 provides for “Special Reserves or Liability Insurance” and lastly “Capital Adequacy” which is covered under Principle 16 of the 29 Basel Core Principles.¹⁶²¹ Chapter

¹⁶¹⁷ Mwenda “Legal Aspects of Banking Regulation: Common Law Perspective” in *PULP* (2010) 203–223.

¹⁶¹⁸ Ibid.

¹⁶¹⁹ Safety and soundness in banking means that bank regulators monitor and assess how well banks manage and control their risks as well as the strength of their financial and managerial resources. This is what is referred to as the “safety and soundness” of banks. See Federal Reserve Bank “Understanding Federal Reserve Supervision” (2023) <https://www.federalreserve.gov/supervisionreg/understanding-federal-reserve-supervision.htm> (accessed 20 April 2024); see also DeYoung “Safety, Soundness, and the Evolution of the US Banking Industry” 2007 *Economic Review-Federal Reserve Bank of Atlanta* 41; Peihani “The Basel Committee on Banking Supervision: A Post-Crisis Assessment of Governance and Accountability” 2015 *Canadian Foreign Policy Journal* 146–163.

¹⁶²⁰ Matsieli *et al.* “Why is Public Policy Implementation Difficult in Developing Countries? Analysis of E-Government Implementation in Lesotho” (2023) 2; Makinde “Problems of Policy Implementation in Developing Nations: The Nigerian Experience” 2005 *Journal of Social Sciences* 11 63–69.

¹⁶²¹ n 1606; BFSa (2017) (Act 7 of 2017).

VII “Insolvency and Liquidation of Banks” (section 85–110B) guides the central bank and commercial banks on how to effect insolvency procedures for a bank. This was important as the insolvency rules for limited companies could not be applied to banks due to their special relationship with the public. Sections 94–100 also dealt with the seizure of banks, presumably when they commit tortious acts. This section on seizure of banks was ultimately repealed and replaced by Act 18 of 2000, amended by Act No.25 of 2005.

The Act itself can also be criticised for not recognising the hierarchy of banks and for failing to put in place rules for each tier or level of banks as a way of accommodating the various strata of financial institutions in the country.

In concluding the discussion on this statute, the Act was important in establishing rules for the country to be seen as forward-looking and to create an environment suitable for both foreign and local investors, more likely to be biased towards the foreign investor with deeper pockets. It was also clear that the first BFSa (1994) had adopted the rules in Basel I on capital adequacy and many of the then 25 Basel Core Principles. Unfortunately, the massive failure of banks during this period (1994–1997)¹⁶²² led to a revision of the Act, resulting in it being repealed and replaced with the Banking and Financial Act (1994) (as amended 2000) which as will be seen below, further enhances the adoption of the then 25 Basel Core Principles and tries to correct the definitional inconsistencies of section 77 on what “unsafe and unsound banking practice” means.

Some other points to note are that the Act was general in nature. The Act did not classify the banks into tiers and base the rules of regulation on each group of banks. This can be criticised as the usual “one-size-fits-all” approach that is characteristic of the IMF policies, which, it is submitted, often do more harm than good to the smaller, more vulnerable banks because their nuances are not taken into account or indeed overlooked at the expense of the bigger, more successful banks. It appears that due to a lag in the BoZ administrative system that resulted from the change in dispensation from a controlled to a market-led economy, it took some time for the BoZ¹⁶²³ staff to become acquainted with the new rules of supervision and regulation under the BFSa (1994).¹⁶²⁴ Several banks failed in 1995,¹⁶²⁵ starting with the largest local bank

¹⁶²² Maimbo (n 12) 33–42.

¹⁶²³ Maimbo (n 12) 63.

¹⁶²⁴ Maimbo (n 12) 63.

¹⁶²⁵ Maimbo (n 12) 33–38. Other banks that failed in 1995 include African Commercial Bank which was seized on 13 November 1995 and placed into compulsory liquidation on 21 August 1997. Commerce Bank Zambia

at the time, Meridian BIAO.¹⁶²⁶ The next set of bank insolvencies occurred in 1997 when Credit Africa Bank (CAB) went into liquidation, followed by two other banks, first Prudence Bank (PBZL) and thereafter Manifold Investment Bank (MIB).¹⁶²⁷

7.4.7.2 *Bank contagion for African and Zambian banks*

Interestingly, using the theories of international regulation to assess the impact of the failure of Bank of Credit and Commerce International (BCCI) and Meridien BIAO Bank on the international communities, one would have expected to see a significant impact on the international financial system, given that some of these banks were internationally active. A plausible reason why the failure of BCCI did not create a GFC is attributed to three criteria according to Truell and Gurwin¹⁶²⁸ a limited deposit base, limited interbank exposure, and lastly, early problem identification and intervention by both US and UK regulators. While BCCI was spread out internationally, its deposit base was not extensive. Thus, while its collapse caused losses to its depositors,¹⁶²⁹ the losses were not large enough to trigger a systemic crisis in the international markets that could bring down other international financial institutions.¹⁶³⁰ The impact of BCCI's collapse was further buffered because BCCI's interbank relationships with major banks were not extensive, thus further limiting the impact of the bank's collapse.¹⁶³¹ In other words, it was not highly connected to other international banks. Lastly, regulatory authorities in the US and the UK picked up the problem relatively early, thus containing the

Limited was seized on 29 November 1995, restructured, and reopened on 5 December 1997, but it eventually succumbed in 2000 when it was again placed under curatorship.

¹⁶²⁶ The jury is out as to whether Meridien could be deemed to be a genuine Zambian bank or not, as it had been registered in the Bahamas with its headquarters in Luxembourg before being moved to Zambia in January 1995 and therefore did not have an authentic Zambian domicile badge to show for it.

¹⁶²⁷ Maimbo (n 12) 63; Brownbridge (n 1547) 154.

¹⁶²⁸ Truell & Gurwin *False Profits: The Inside Story of BCCI, The World's Most Corrupt Financial Empire* (1992) 1–560.

¹⁶²⁹ In the USA, BCCI paid USD 10 Million in fines and forfeited all USD 550 million of its American assets—recording one of the biggest forfeitures ever obtained by the US federal prosecutors. The money obtained was used to repay losses to first American and independence Banks as well as making restitution to some of BCCIs depositors. Similarly, in the UK, the House of Commons (HoC) set up an inquiry into the BCCI matter. Chaired by Lord Justice Bingham, it produced a paper in October, 1992 called, 'Inquiry into the Supervision of the Bank of Credit and Commerce.' On the back this report Deloitte Touche filed a lawsuit in the Tort of misfeasance in public office and claimed for £850m from the BoE. Deloitte and Touche eventually withdrew its claims after the UK High Court ruled that it was no longer in the best interests of creditors for the litigation to continue. They eventually paid the Bank £73m in legal costs—the most expensive case in British legal history, to date. See Gray "Court Castigates BCCI liquidators' Claim Against Bank of England" 2006 *Journal of Financial Regulation and Compliance* 411–417; Adenas & Fairgrieve "Bingham and the Transformation of the Law" (2009) 209.

¹⁶³⁰ Truell (n 1632) 155–181.

¹⁶³¹ Truell (n 1632) 155–181.

damage and preventing it from creating cross-border contamination.¹⁶³² Given the foregoing, there were no ripple effects to cause another GFC. Similarly, for banks like Meridien BIAO, UK regulators asked them to pull out of the UK, and as such, its international branches had little international exposure; there were thus very few effects at the international level outside of the losses suffered by depositors.¹⁶³³ It is submitted that the main reason for this appears to be that the Zambian financial system was not linked to the global economic system at the time. Equally, it is surmised that Zambia, as a developing country, lacked the essential elements to make it a haven for international investors like the Western international markets, therefore, the ripple effects were easily contained within the country's borders. The point of the argument is that most developing countries do not currently have the means to attract international investors due to their unsophisticated and limited investment product ranges and investment incentives to make them candidates for triggering GFCs. This assertion is backed by Andersson, Bigsten, and Persson.¹⁶³⁴ Since the publication of their paper in 2000, there has not been much change in foreign investor perception. They remain cautious about African countries outside of South Africa. For them to invest in these countries, they need reassurance from governments that new policies will last. They also want a predictable economy and government. This means that controlling inflation, reducing overall economic uncertainty, making it easier to get loans and other financial services (financial deepening) as well as keeping government borrowing under control, are paramount considerations for these countries to achieve. Investors also want stable exchange rates that are easy to predict. Until African countries can convince investors they have achieved these goals, investors are likely to put their money in safer places like Asia. Investors will thus avoid undertaking irreversible investments, such as investments in production capital until long-term stability is credible. This means Africa might miss out on investment opportunities because investors are unwilling to take big risks in these countries.¹⁶³⁵ While the report may be dated it is still relevant to many developing countries in explaining why they are not receiving large-scale foreign investment into their countries.

As far as financial products in Zambia go, there is no risk that they could create an international meltdown. Apart from government bonds and treasury bills issued by the central bank, the

¹⁶³² Truell (n 1632) 155–181.

¹⁶³³ Truell (n 1632) 155–181.

¹⁶³⁴ Andersson *et al.* *Foreign Aid, Debt, and Growth in Zambia* (2000) 112 1–133.

¹⁶³⁵ *Ibid.*

country does not have a large sophisticated market in other financial paper or derivative products that would interest foreign investors in sufficient quantities to cause a global financial system meltdown.

It is therefore submitted that claiming that “if someone sneezes in Buenos Aires, it will cause a world pandemic financial flu across the globe.”¹⁶³⁶ It is highly tenuous and not wholly applicable to developing countries. On the other hand, what appears to be a more plausible argument is that globalisation by opening these less developed economies to the vagaries of Western international markets will eventually cause developing countries to become more vulnerable to these international flus, as they become more entrenched in the international financial system. Unfortunately, even with all the regulatory boxes ticked, most countries are not spared from these crises as and when they occur.

Capital Bank was the first to close in May 1991. According to Brownbridge, its closure may have resulted from political undertones because its owners were said to be members of an opposition political party.¹⁶³⁷ This had an immediate impact on the bank’s liquidity, forcing it to seek help from the central bank and eventually close down in May 1991.¹⁶³⁸ Meridien BIAO Zambia (MBZ), the Zambian subsidiary of Meridien BIAO, was closed in April 1995 following the closure of Meridien subsidiaries in Swaziland and Kenya. Meridien BIAO was closed due to undercapitalisation and expanding too rapidly. There were also unsubstantiated claims of “doctoring” financial data, amongst other things.¹⁶³⁹ African Commercial Bank (ACB) and Commerce Bank were closed in 1995 because of liquidity problems and corporate governance issues.¹⁶⁴⁰ Maimbo has aptly summarised the various reasons that led to the failure of some of these banks in Table 18 below.

¹⁶³⁶ The phrase is an adaptation of a much older one, which states, “When France Sneezes the whole of Europe catches a cold”. It was originally made by a Prussian diplomat, Klemens Wenzel Furst von Metternich. He felt that other European countries thought, the political changes in France were fascinating especially the ideals of democracy, equality, and fraternity not to mention the French Revolution. Many European countries tended to follow what happened in France and often replicated similar incidents in other European nations. For example, Belgium and the Netherlands split apart because of the garment uprising in France that was ignited by the July Revolution. The phrase is now used quite generally as in the case above. See UN Academy “Explain the Statement: When France Sneezes, the Rest of Europe Catches a Cold” <https://unacademy.com/content/question-answer/gk/explain-the-statement-when-france-sneezes-the-rest-of-europe-catches-a-cold/>. (accessed 14 February 2023)

¹⁶³⁷ Brownbridge (n 1547) 143–162.

¹⁶³⁸ Brownbridge (n 1547) 143–162.

¹⁶³⁹ Bull & Simpson “End of the Road for Meridien” 1995 *Profit* 6.

¹⁶⁴⁰ Brownbridge (n 1547) 143–162.

Table 18. The main causes of bank failures between 1994–1998¹⁶⁴¹

No.	Bank	Main Reasons for Liquidation
1	Meridian Bio Bank Zambia Ltd Date Liquidated: 18/08/1995	- Under capitalisation - Excessive lending to related parties - Malpractice by directors - Lending without adequate security or surety
2	African Commercial Bank Date Liquidated: 21/08/1997	- Non- performing loans - High insider borrowing - Interference by shareholders and directors
3	Commerce Bank Zambia Ltd Date Liquidated: 30/11/1995	- Under capitalisation - Poor lending practices - High lever insider borrowing - Common shareholders with A.C. Bank
4	Credit Africa Bank Zambia Ltd Date Liquidated: 6/03/1998	- Non- performing loans with foreign parent bank - High level of non- performing loans - High level of insider borrowing
5	Prudence Bank Zambia Ltd Date Liquidated: 18/01/1998	- Inexperienced board and management - Controlled by family
6	Manifold Investment Bank Date Liquidated: 6/03/1998	- Under capitalisation - High level of non- performing loans
7	First Merchant Bank Zambia Ltd Date Liquidated: 2/02/1998	- Under capitalisation - Malpractice by directors - Negative annual reports leading to decrease of deposits

7.4.7.3 Towards stabilisation: BFSA (1994) (as amended 2000)

As alluded to above, one of the most significant changes to the Zambian financial system was the introduction of the BFSA (1994). However, as also alluded to, the flaws in the Act became apparent with the failure of eight banks in the space of three years. It was therefore necessary to go back to the drawing board to amend some of the errant legislation and to further strengthen some of the regulatory clauses in it. The Act was amended in 2000 to cover all institutions that provide financial services as defined in the Act, including micro-finance institutions (MFIs), as the provisions of the BFSA (1994) focused mainly on the banking sector and were unclear in its application when it came to non-bank financial institutions (NBFIs).

This exercise led to regulators removing large sections from the BFSA (1994) and amending it.¹⁶⁴² The Act was reissued as BFSA (1994) (as amended 2000).¹⁶⁴³

¹⁶⁴¹ Maimbo (n 12) 33.

¹⁶⁴² Chapter V Financial Accountability Part 3 Section 68 of the Act was repealed by Act No.18 of 2000 and Chapter VII Insolvency, Dissolution and Liquidation of Banks and Financial Institutions Part 3 titled Seizure of Banks, covering sections 94 to 100, was repealed by Act No.18 of 2000.

¹⁶⁴³ BFSA (1994) (as amended by Acts No.13 of 1994 and 18 of 2000).

It appears that by 2000, the central bank had stabilised the local commercial banks sufficiently against the effects of the bank closures of the previous decade. This was evidenced by the fact that from 1998 to 2000 there were no bank failures reported. This position is confirmed by Hinfelaar who posits that “there was an upward trend in overall financial stability only established itself after the turn of the century around 2002, with financial stability improving by 6.7 percentage points per year on average on the financial development (FD) index.”¹⁶⁴⁴ Suffice it to say that the international banks operating in the Zambian financial market were not affected by this instability in the market as they were far ahead in terms of regulation since their foreign parent banks had already adopted advanced regulatory requirements by virtue of them being required to comply with international regulatory requirements implemented in the parent’s jurisdiction. It could be argued that the meltdown of the local banks consolidated resident foreign banks’ positions further in the financial sector. Customers moved their deposits from the failing banks to foreign banks to escape the effects of the meltdown. Especially since foreign banks were seen to be more stable and better capitalised. This effect is explained earlier in the chapter under “flight to quality.”¹⁶⁴⁵ The result of the higher capital ratios that the local commercial banks had to meet was to relegate them to the bottom of the rung in terms of riskiness because of their size. In many cases, these small banks took time or failed to meet the minimum standards set by the central bank. As observed earlier, this shifted their client base significantly as clients migrated to the more stable and compliant foreign banks. This shift by customers to foreign banks by small bank customers not only reduced business for these banks but also weakened them further in the process.

On the international scene, there was still a lot of instability in the international financial markets in the late 1990s, which the Basel Committee was trying to address. This was mainly attributed to the Latin American Debt Crisis of the 1980s and the Asian Crisis of 1997.¹⁶⁴⁶ This

¹⁶⁴⁴ Hinfelaar “Bank of Zambia’s Autonomy Amongst Political Turnovers in Zambia. Pockets of Effectiveness. Working Paper” 2020 8 <http://www.effective-states.org> accessed 24 April 2024) The financial development index (FD) is a relative ranking of countries on the depth, access, and efficiency of their financial institutions and financial markets. It is an aggregate of the financial institutions’ index and the financial markets index. See International Monetary Fund (IMF) “Financial Development –IMF Data –International Monetary Fund” <https://data.imf.org/?sk=f8032e80-b36c-43b1-ac26-493c5b1cd33b&sid=1480712464593> (accessed 24 April 2024).

¹⁶⁴⁵ Oxford Reference “Flight to Quality” <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095824998> (accessed 13 April 2024).

¹⁶⁴⁶ Ocampo ‘The Latin American Debt Crisis in Historical Perspective’ in Stiglitz & Heymann (eds) *Life After Debt* (2014). The Latin American Debt Crisis was the most devastating economic disaster in Latin America’s economic history in the 1980s. As a result of the crisis, the region had a decline in its per capita GDP from 34% to 26% of developed countries’ GDP and from 112% to 98 per cent of the global average during the “lost decade” it caused. The only instance that comes close to matching its severe negative impacts is the “lost half-decade” of

led to the release of the Basel II Accord. The preliminaries to the Basel II Accord started in 1999 when revisions were made to the Basel I Accord because the BCBS issued a proposal for a new capital adequacy framework to improve on it. This eventually resulted in the “Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework—Comprehensive Version.”¹⁶⁴⁷ This Accord focused on banks’ trading books and was issued on the back of the 2007–2008 GFC because of the collapse of Lehman Brothers.¹⁶⁴⁸ It is submitted that the direct impact of the failure of Lehman Brothers was not significant, to say the least, and for most banks in Zambia, it was business as usual. This position is confirmed by Sen,¹⁶⁴⁹ who points out that while Central and Eastern European and Latin American countries were the worst affected by the 2007–2008 GFC. While the Middle East and North Africa (MENA countries), sub-Saharan African, and Asian countries were least affected, in contrast.¹⁶⁵⁰ The Zambian central bank’s reaction to this crisis was to incorporate it into the legislation via the BFSa (1994), and to this end, it issued Commercial Bank Circular No 05/2007 to formally declare the adoption of the Basel II Accord in Zambia. To quote the opening paragraph of the Circular:

“The Bank of Zambia wishes to advise all commercial banks operating in Zambia that the Basel Committee on Banking and Supervision finalized the new capital adequacy framework commonly known as Basel II, in June 2004. Subsequent to this and in line with world-wide trends and international best practice, the Bank of Zambia has decided

1998–2003, which was brought on by a series of developing nation crises that started in East Asia in 1997. (Ibid Ocampo) The Asian financial crisis started in Thailand in July 1997 and spread across East Asia, wreaking havoc on economies in the region and leading to spillover effects in Latin America and Eastern Europe in 1998. On July 2, 1997, Thailand devalued its currency relative to the U.S. dollar. See Federal Reserve History “Asian Financial Crisis July 1997 to December 1998” <https://www.federalreservehistory.org/essays/asian-financial-crisis> (accessed 22 April 2024). See also Bank of Zambia (BoZ) “Issues on the Zambian Economy” *The BoZ Reader* (2004) 2 <https://www.boz.zm/thereader2004.pdf> (accessed 24 April 2024); Davies *Financial Data Needs for Macprudential Surveillance. What are the Key Indicators of Risks to Domestic Financial Stability?* (1999).

¹⁶⁴⁷ Bank for International Settlements (BIS) “BIS International Convergence of Capital Measurement and Capital Standards A Revised Framework” 1–228 (June 2004) <https://www.bis.org/publ/bcbs107.htm> (accessed 7 March 2024). According to the BIS site, this document has since been incorporated in the comprehensive version of International Convergence of Capital Measurement and Capital Standards: A Revised Framework, including the elements of the 1988 Accord that were not revised during the Basel II process, the 1996 Amendment to the Capital Accord to Incorporate Market Risks, and the 2005 paper on The Application of Basel II to Trading Activities and the Treatment of Double Default Effects.

¹⁶⁴⁸ See ch 4 para 4.4.

¹⁶⁴⁹ Sen “A Hard Rain’s a-Gonna Fall’: The Global Financial Crisis and Developing Countries” 2011 *New Political Economy* 399–413.

¹⁶⁵⁰ Sen (n 1653) 400.

to introduce Basel II as a basis for regulatory measurement for all banks operating in Zambia.”¹⁶⁵¹

The circular went on to describe the elements of the Basel II Accord and the methodologies that banks should use to adopt and compute their regulatory capital and the time frame for its adoption.¹⁶⁵² It is submitted that this action was more a cautionary act rather than one that resulted directly from the effects of the GFC within the country. Once again, it appears that the fact that the country’s financial institutions were not linked directly to the international financial hubs became a saving grace, as it acted as a buffer to the GFC’s effects.

Despite implementing the Core Principles as a means of improving the regulatory framework of the banking sector, the Financial Sector Assessment Programme (FSAP) carried out by the IMF and the World Bank in 2002 found that Zambia had complied with many of the Basel Core Principles on Effective Banking Supervision. Of the then 25 principles assessed against the Core Principles, Zambia was found to be compliant with 19 of them.¹⁶⁵³ These weaknesses were addressed in the Financial Sector Development Plan (FSDP) issued by the Zambian government for the period from 2004 to 2010.¹⁶⁵⁴

7.4.8 *Legislating the Accords into law*

The Basel III framework included several innovations such as an additional layer of Common Equity, a Counter-Cyclical Capital Buffer, a Leverage Ratio, Liquidity requirements, and additional proposals for systemically important banks.¹⁶⁵⁵ Those changes promulgated modifications to the Zambian BFSA (1994) (as amended 2000),¹⁶⁵⁶ and eventually resulting in

¹⁶⁵¹ n 1521.

¹⁶⁵² n 1521.

¹⁶⁵³ n 1606, 9–13.

¹⁶⁵⁴ Bank of Zambia (BoZ) “Financial Sector Development Plan 2004–2009” (2004) <https://www.boz.zm/financial-sector-development.htm> (accessed 9 July 2020); Luna Martinez, de “Access to Financial Services in Zambia” Working Paper World Bank Policy Research (2006) 5. *Erratum* Note that the author de Martinez refers to 30 core principles when there are only 29 (November 2006).

¹⁶⁵⁵ Bank for International Settlements (BIS) & Basel Committee on Banking Supervision (BCBS) “Basel III International Framework for Liquidity Risk Measurement, Standards and Monitoring” (2010) 3–25; Basel Committee on Banking Supervision (BCBS) “Basel III a Global Regulatory Framework for More Resilient Banks and Banking Systems” (December 2010, rev June 2011) <https://www.bis.org/publ/bcbs189.pdf> (accessed 9 July 2020). The Basel III reforms have now been integrated into the consolidated Basel Framework, which comprises all of the current and forthcoming standards of the Basel Committee on Banking Supervision https://www.bis.org/basel_framework/index.htm. See ch 4 para 5.

¹⁶⁵⁶ BFSA (1994) (as amended 2000) (date of assent 11 May 1994 18 of 2000).

the BFSA (2017).¹⁶⁵⁷ The innovations mentioned above will now be examined in more detail in with respect to the BFSA, starting with the Additional Layer of Common Equity.

7.4.8.1 *Additional layer of common equity*

Some of the major inclusions in this area appeared under Part VI of the Act and under Prudential Regulation and Supervision. For example, under minimum capital requirements, section 52(1) states that:

- (1) “ *The bank shall prescribe the minimum paid up capital, minimum common equity tier one minimum primary capital and minimum regulatory capital requirements for financial service providers.* ” ¹⁶⁵⁸

As can be seen, this is extracted almost verbatim from the Basel III Accord.¹⁶⁵⁹ Further, the Capital Conservation Buffer, which appears under section 53 (1)–(4) of the BFSA and correlates with “Basel III: A Global Regulatory Framework for More Resilient Banks and

¹⁶⁵⁷ BFSA (2017) No 7 of 2017, promulgated on 13 April 2017.

¹⁶⁵⁸ n 1661.

Minimum Primary Capital: means the sum of the—(a) common equity tier one; and (b) additional tier one capital, as prescribed by the Bank by rules issued in accordance with the Banking and Financial Services Act (BFSA) (2017) (No 7 of 2017)

Minimum Common Equity Tier One: means the sum of the following: (a) paid-up common shares issued by a financial service provider; (b) share premium, resulting from the issue of common shares; (c) Retained Earnings; (d) accumulated comprehensive income and other disclosed reserves; (e) common shares issued by consolidated subsidiaries of the financial service provider and held by a third party that meets the criteria prescribed by the Bank, for inclusion in common equity tier one capital; and (f) regulatory adjustments, applied in the calculation of the common equity tier one, as prescribed by the Bank. See (BIS) Financial Stability Institute FSI Connect: “Definition of Capital in Basel III –Executive Summary” 1–2. https://www.bis.org/fsi/fsisummaries/defcap_b3.pdf (accessed 19 December 2024).

Minimum Regulatory Capital means the legal capital prescribed by the Bank in terms of money or assets invested or available for investment in the business that is sufficient for the sustainability of the financial service provider. See: (BIS) Financial Stability Institute FSI Connect: “Definition of Capital in Basel III –Executive Summary” 1–2 available at https://www.bis.org/fsi/fsisummaries/defcap_b3.pdf (accessed 19 December 2024). Capital Conservation Buffer means the mandatory capital that financial institutions are required to hold, in addition to minimum capital requirements, as prescribed, to be drawn down when losses are incurred during periods of stress. See: BIS. Financial Stability Institute FSI Connect “The capital buffers in Basel III –Executive Summary” https://www.bis.org/fsi/fsisummaries/b3_capital.pdf (accessed 19 December 2024) 1–2. See also BFSA (2017) 189.

Minimum Paid-Up (Share) Capital defines the number of shares the company has allocated to its shareholders. Note that both the Companies Act and the BFSA do not have a definition for this. See Cleartax “Paid Up Capital” <https://cleartax.in/glossary/paid-up-capital/> (accessed 25 April 2024).

¹⁶⁵⁹ This is covered by Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems at I Definition of Capital at pages 12 to 16 of the Basel III document. See BIS https://www.bis.org/publ/bcbs189_dec2010.pdf (accessed 2 May 2024).

Banking Systems at III Capital Conservation Buffer” on pages 54 to 57 of the Basel document¹⁶⁶⁰ states that:

- “(1) A financial services provider shall build up a capital conservation buffer*
- (2) The capital conservation buffer shall be in the form of Common Equity Tier 1 as prescribed by the bank*
- (3) The bank shall prescribe different buffer requirements for the difference categories of financial service providers*
- (4) A financial service provider shall not declare credit or pay any dividends, or make other discretionary payments or make any transfer from retained earnings, if in doing so would result in failure to provide for, or maintain, the required capital conservation buffer.”*¹⁶⁶¹

From the foregoing, section 53¹⁶⁶² has been complied with, exactly as specified in the Basel III Accord.¹⁶⁶³ One interesting point to note is that the Act allows different buffer requirements for different categories of financial service providers without necessarily elucidating which financial service providers are being referred to and how the categories are being determined. For example, is it by size, capital structure, client base, profitability and so on? This leaves the section open to interpretation which is not the best way of drafting the section if one wants it to be effective.

¹⁶⁶⁰ n 1663 54–57.

¹⁶⁶¹ n 1661, 223.

¹⁶⁶² n 1661, 223.

¹⁶⁶³ The December 2010 versions for liquidity risk measurement were set out in and the section on Capital Conservation Buffer appears in the second document at IV Countercyclical Capital Buffer 57–60.

7.4.8.2 Counter-cyclical capital buffer

Section 54 deals with the Counter-Cyclical Capital Buffer¹⁶⁶⁴ and the section reads as follows:

*“(1) Subject to section (3) the Bank may require banks and financial institutions to maintain a counter-cyclical capital buffer in their risk-weighted assets as a form of common equity capital tier one.”*¹⁶⁶⁵

*“(2) Where the bank adjusts the counter cyclical capital buffer the bank shall announce the decision at least 30 days in advance of the effective date, except that a decision to decrease the level of the counter cyclical capital buffer shall take effect immediately.”*¹⁶⁶⁶

*“(3) The counter cyclical capital buffer shall not be required where the bank determines that the capital released shall help to absorb losses in a bank or financial institution that pose a risk to financial stability.”*¹⁶⁶⁷

The possible interpretation of the section appears to mean that under part (1) of section 54, the Counter-Cyclical Capital Buffer (CCyCB) is not a mandatory requirement but discretionary in nature by inclusion of the word “may”. It is not clear whether this is deliberate, as it would appear to fly in the face of the Basel III Accord,¹⁶⁶⁸ which, when read literally, gives the appearance that the buffer is a mandatory requirement once adopted by banks. Part 2 of section 54 above appears to emphasise the lack of permanence of the buffer implying that the buffer itself may fluctuate depending on the circumstances at hand and not be required at all in some

¹⁶⁶⁴ Counter-Cyclical Capital Buffer (CCyCB) according to the BFSa (2017), means an amount of capital prescribed by the Bank to be maintained by banks and financial institutions where there is an excessive build-up of credit that is likely to lead to a system-wide risk. Part VI of the BFSa (2017) Act (No7 of 2017), titled “Prudential Regulation and Supervision” says at section 54 page 223:

“(1) Subject to subsection (3), the Bank may require banks and financial institutions to maintain a counter-cyclical capital buffer in their risk-weighted assets and forms of common equity capital tier one.

“(2) Where the Bank adjusts the counter-cyclical capital buffer, the Bank shall announce the decision at least thirty days in advance of the effective date, except that a decision to decrease the level of the countercyclical capital buffer shall take effect immediately.

“(3) A counter-cyclical capital buffer shall not be required where the Bank determines that the capital released shall help to absorb losses in a bank or financial institution that pose a risk to financial stability.”

¹⁶⁶⁵ n 1661, 223.

¹⁶⁶⁶ n 1661, 223.

¹⁶⁶⁷ n 1661, 223.

¹⁶⁶⁸ See ch 4 para 5.

circumstances such as in part 3 of section 54 where the bank is satisfied that the capital released shall help to absorb losses that pose a risk to financial stability.

7.4.8.3 *Leverage ratio*

The next section of the Act that appears to be taken directly from the Basel III Accord is section 56, which deals with the leverage ratio. Under this section, “[T]he bank may require banks and financial institutions to maintain common equity tier one to total on and off-balance sheet assets as a ratio prescribed by the bank.”¹⁶⁶⁹ Although the intention is to maintain a reasonable ratio, the question lies in the sophistication of some, but not all, banks in terms of the definition for Tier 1 Capital. From a Zambian perspective, it can be argued that the Zambian financial market lacks sophistication not only in terms of basic investment vehicles but also in simple ones like common equity. The stock exchange is equally illiquid to be a source of investment in equity so the question that begs a response is: where will the liquidity come from to cover these extra requirements that the Accords demand?¹⁶⁷⁰

While it appears that the central bank is adopting the Basel III Accord on a step-by-step basis, the *status quo* has not changed much from independence in that foreign banks are still far ahead of the requirements of the Basel III Accord, and that the smaller and weaker, less capitalised local banks must bear the brunt of adopting and implementing the tenets of the Basel III Accord. This is the result of the presence of the large foreign banks that are highly competitive, while the market lacks sufficient capital for the small banks to find alternative and additional sources of capital in the market.¹⁶⁷¹ It is submitted that this may have resulted in some of the smaller banks like Intermarket Banking Corporation, declaring insolvency because of its inability to fund itself in 2016.¹⁶⁷²

Intermarket Banking Corporation is the only bank to tarnish the almost 20 year unblemished record of the central bank of no commercial bank failures. What started off as the first discount house in Zambia in 1991 eventually grew into a boutique bank. Unfortunately, the bank needed urgent recapitalisation due to several events, including political interference in the country of origin, that affected the owners ability to recapitalise the bank and led to a perfect storm that

¹⁶⁶⁹ Banking and Financial Services Act No 7 of 2017 224.

¹⁶⁷⁰ See ch 7 para 7.16.

¹⁶⁷¹ Simpasa “Competition and Market Structure in the Zambian Banking Sector” Working Paper Series African Development Bank (2013). 1–5.

¹⁶⁷² See para 7.13.5–6.

sank the bank eventually, as can be seen in the paragraph on “Consequences of Market Concentration.”¹⁶⁷³ This problem started with political interference in the parent or home country, Zimbabwe, resulting in the owners being unable to recapitalise the bank. Several consortia looked at taking over the bank after 2007; however, as will be seen later, only a short time after being acquired by Afriland First Bank of Cameroon, Intermarket Bank was declared insolvent in 2016 by the central bank. This will be discussed later and in more detail under the discussion on mergers.¹⁶⁷⁴ This now brings into focus the issue of the growth of local Zambian banks, particularly the smaller ones.

Since these changes were made the BFSA (2017) and the BoZ Act (1996) have gone through further amendments and repeals. BFSA (2017) had sections 2 and 137(3) amended. New sections consisting of sections 21 (3) and 62A were inserted into the Act, while sections 72 and 74 of the Act were repealed.

Section 2 amended the definition of Insolvency by its deletion and replacement with a wider definition of insolvency that includes in its definition that where a financial service provider is unable to pay its debts as they fall due or where assets are insufficient to meet liabilities; and where the financial service provider has a regulatory capital which is Zero or lower. Section 137(3) amended the Act by deleting the words or set aside by a tribunal on appeal or by the Court”. New sections consisting of sections 21 (3) the bank may maintain an electronic register in electronic form or any other form determined by the bank and 62 A, a section on Anti-Money Laundering and counter financing of terrorism supervision were also inserted into the Act, while sections 72 and 74 of the Act were repealed.¹⁶⁷⁵

¹⁶⁷³ See ch 6 para 10.7.

¹⁶⁷⁴ Afriland First Group Annual Report (2014) 22 <https://www.afrilandfirstgroup.com/images/docs/AfrilandFB-RA2014-ENG.pdf> (accessed 27 November 2024). To quote from the report: “Intermarket Banking Corporation (Zambia) Ltd On October 9, 2009 and as approved by the Bank of Zambia, the Company took an irrevocable commitment to subscribe to 3,390,921 ordinary shares of Intermarket Banking Corporation (Zambia) Ltd, which represents 19.95% of the issued ordinary shares of the Bank. It was agreed that on the third anniversary of the Closing date, which took place on March 5, 2010, an amount of USD 800,000 would be due at the “exit date”, which was March 4, 2013. This amount was never paid. As Zambian regulations prevent Afriland First Group from having 100% ownership in a local bank as it is not listed on a stock exchange, this commitment to purchase the remaining 19.95% of the issued ordinary shares in the Bank was suspended. Afriland First Group SA granted irrevocably to the seller a put option on the remaining shares, which in case of exercise of the put shall be equal to 19.95% of 1.25 times the book value of the Bank as at the “exit date”. The Seller has the right to exercise the put during a three-month period from the “exit date”. Afriland First Group had no commitment as at December 31, 2013 and 2014.” See ch 7 para 14.

¹⁶⁷⁵ Banking and Financial Services Act (Amendment) Act No 7 of 2020 115–119.

Meanwhile, the BoZ Act 1996 was completely repealed and replaced by the BoZ Act 2022, according to section 75 of the BoZ Act 2022. According to the Parliamentary Site¹⁶⁷⁶ and the Preamble to the Act, the main objectives for repealing the 1996 Act were mainly to redefine the BoZ's roles in terms of its operations and management. This included establishing the composition and functions of its Board of Directors as well as creating the Monetary Policy and Financial Stability Committees (MPFSC) and defining its various responsibilities.¹⁶⁷⁷

In particular, the Act provides additional functions, operations, and management under Part II of the Act. Titled Administration of the BoZ. (sections 4–15) This includes provisions for the composition of the BoZ's Board of Directors and the various functions associated with it according to sections 7 and 8. The Act has also expanded the law on what constitutes legal tender in Zambia under Part III, Titled “Monetary Unit Bank Notes and Coin Issue,” sections 16–26. These sections restate the position of the Kwacha and ngwee as the sole legal tender in the Republic. The repealed Act also gives the BoZ the power to define what can be considered a domestic transaction. Additionally, the Act also establishes the Monetary Policy Committee under Part IV of the Act titled “Monetary Policy” under sections 27–30 and the Financial Stability Committee under Part V, titled “Financial Stability” under sections 31–34, including their various functions.¹⁶⁷⁸

7.5 The growth in local banks from 1984 to 1994

According to various authors like Brownbridge and Maimbo, the first private banks that were not affiliated to any foreign multinational banks were registered by the BoZ in 1994 with the establishment of Meridien BIAO Bank. The number of these banks grew steadily, and by 1995, there were around 13 local banks registered by the central bank. These banks were established by local private investors. It is interesting to note that these banks were established when the economy was facing a deep recession.¹⁶⁷⁹ Also interesting is that there was a similar pattern of

¹⁶⁷⁶ National Assembly of Zambia “The Bank of Zambia Act, No 5 of 2022” <https://www.parliament.gov.zm/node/10309>. (accessed 27 November 2024).

¹⁶⁷⁷ Bank of Zambia Act No 5 of 2022.

¹⁶⁷⁸ Bank of Zambia Act No 5 of 2022.

¹⁶⁷⁹ Brownbridge (n 1547) 151.

growth in local banks in other countries, like Nigeria, when looking at studies done by Brownbridge for a similar period.¹⁶⁸⁰

Most local Zambian banks were established at a time when, from an economically rational point of view, it made no sense to do so. Under the Second Republic,¹⁶⁸¹ the controlled economy managed the entry and licensing of banks very tightly. It is suggested that political connections played a large role in who was granted a banking license.¹⁶⁸² Apart from the tight regulation of the economy, as we saw at the beginning of this chapter, many banks had low profit margins that resulted from strict control over bank interest rates. The window of opportunity appears to have been the lowering of the entry bar to start a bank because of hyperinflation that significantly reduced the initial capital amount required to open a bank from around USD50,000 in 1991 to USD30,000 in 1992.¹⁶⁸³ Furthermore, incentives appear to include the opportunity cost of dealing in foreign exchange and the returns on the almost risk-free treasury bill rates that were prevailing at the time.¹⁶⁸⁴ These windows of opportunity were later to cause the unravelling of many of these banks, as will be discussed below.

¹⁶⁸⁰ Brownbridge “The causes of financial distress in local banks in Africa and implications for prudential policy” (March 1998) 9–15, which is a paper presented at the United Nations Conference on Trade and Development, Geneva. Similarities between Nigeria and Zambia in 1998 in terms of the causes of financial distress among local Nigerian banks included insider lending to high-risk borrowing macroeconomic instability, liquidity support, and prudential regulation.

¹⁶⁸¹ Brownbridge (n 1547) 151. Zambia’s history is divided into three distinct periods, known as the First, Second, and Third Republics. These periods may be broken down as follows: First Republic (1964–1972): This period began with Zambia’s independence from Britain in 1964. The United National Independence Party (UNIP) dominated the political landscape under President Kenneth Kaunda. Zambia initially functioned as a multi-party democracy. The economy was a mixed system, leaning towards socialism after 1972. Second Republic (1972–1991): In 1972, Zambia became a one-party state with UNIP as the sole legal party. After which the Second Republic (one-party state) was formally inaugurated on January 1, 1973. This shift was motivated by concerns about national unity and economic challenges. The government adopted a more centralized socialist approach. Third Republic (1991–present): In 1991, Zambia re-introduced multi-party democracy. The Movement for Multiparty Democracy (MMD) won the first multi-party elections, defeating UNIP. Since then, Zambia has had several peaceful transitions of power between different political parties. The economy has shifted towards a more market-oriented system. See various Authors in this area such as Pettman “Zambia’s Second Republic –the Establishment of a One-Party State” 1974 *Journal of Modern African Studies* 2 231–244; Erdmann & Simutanyi *Transition in Zambia: The Hybridisation of the Third Republic* (2003) 3; Encyclopaedia of the Nations “Country Overview: Republic of Zambia” <https://www.nationsencyclopedia.com/economies/Africa/Zambia.html> (accessed 2 May 2024).

¹⁶⁸² Brownbridge (n 1547) 143–147.

¹⁶⁸³ Brownbridge (n 1547) 143–147.

¹⁶⁸⁴ Brownbridge (n 1547) 158.

7.5.1 *Declining growth in small banks in Zambia since 2000*

Since the initial growth bubble in Zambian banks during the late 1980s and early 1990s¹⁶⁸⁵ there has been little growth in the small bank sector in Zambia. This situation is evidenced by the lack of research on small banks and their growth. It is submitted that the reason for this can be attributed to the high cost of capital required to open a bank, which pushed the entry-level back up and beyond what local investors could afford. Equally, it is surmised that the heavy regulation that is meted out by the central bank is an obstacle to the entry of new small banks into the market. While large foreign banks in Zambia are seen as having a positive impact on the financial market, they may impact the markets negatively in terms of competition. By inference, one can surmise that the impact of the various Basel Accords also played a significant role in the ability of small banks to establish themselves due to the unnecessarily high standards set. The shift in capital requirements resulted in stringent capital benchmarks and the implementation of the core principles for effective banking supervision. It is submitted that this appears to have forced potential financial players out of the market due to the high barriers of entry that were outside the reach of the many small banks seeking entry into the Zambian financial market.

A recent study conducted in 2020 by Price Waterhouse Coopers (PwC) suggests that there is an element of decentralisation taking place in the Zambian banking sector that is changing the shape of banking in Zambia.¹⁶⁸⁶ The attributes for these changes do not speak about the Accords as being partly responsible for the changes, rather it gives alternative arguments such as the advancement of Fintech in the financial market.¹⁶⁸⁷ Equally, they concentrate on the bigger banks and hardly make any mention of the plight of the smaller banks.

¹⁶⁸⁵ Brownbridge (n 1547) 151.

¹⁶⁸⁶ PWC “Zambia Bank and Non-Bank Industry Survey” (2020) 38 <https://www.pwc.com/zm/en/publications/zambia-bank-and-non-bank-industry-survey.html> (accessed 15 October 2023).

¹⁶⁸⁷ n 1690, 38.

7.6 Zambia's current economic outlook

A current 2022 World Bank report describes Zambia as a large landlocked country positioned at the centre of Southern Africa that is endowed with many resources and a young population.¹⁶⁸⁸

The Zambian economy appears to be growing again after it suffered a decline during the COVID-19 pandemic of 2020. The growth is the result of positive copper prices and a newly elected government in power.¹⁶⁸⁹ In 2021, the Zambian economy bounced back, registering a growth in GDP of 4.6 per cent from the previous 2.8 per cent in 2020.¹⁶⁹⁰ Other factors that impacted positively on the economy include confidence in the markets because of elections that introduced a new government and a strong performance in agriculture.¹⁶⁹¹

According to the World Bank report, the country's GDP is expected to grow by 3.8 per cent between 2022 and 2024.¹⁶⁹² This is reliant on an improved macroeconomic environment and improved electricity supply. Part of the economic changes made to the macro-economic environment to bring about growth in the economy include the introduction of macro-fiscal reforms aimed at restoring fiscal sustainability and credibility, re-orienting expenditure, and bringing services closer to the communities. Structural reforms will aim at removing market distortions and bringing financial sustainability to the energy sector,¹⁶⁹³ improve transparency and fight corruption. They will also address comprehensive debt structuring under the G-20 Common Framework for Debt Treatment.¹⁶⁹⁴

¹⁶⁸⁸ World Bank in Zambia “Zambia Overview” (2022) 1
<https://www.worldbank.org/en/country/zambia/overview> (accessed 12 April 2024).

¹⁶⁸⁹ n 1692, 1.

¹⁶⁹⁰ n 1692, 1.

¹⁶⁹¹ World Bank Group. The World Bank in Zambia. Overview
<https://www.worldbank.org/en/country/zambia/overview> (accessed 9 November 2024).

¹⁶⁹² n 1692, 1.

¹⁶⁹³ n 1692, 1. The G20 introduced the Common Framework for Debt Treatment (CF) to go beyond the Debt Service Suspension Initiative (DSSI) in response to growing issues. It is the sole multilateral instrument available for restructuring and pardoning national debt. It would be preferable to have an international structure to address sovereign insolvency in a methodical manner at the time of writing Germany's Federal Government was the first country to endorse and support the idea. See Siaba “Governance: How to Improve the G20 Common Framework for Debt Treatment” (2023) <https://www.dandc.eu/en/article/all-countries-become-able-rise-challenges-current-polycrisis-debt-restructuring-needed> (accessed 12 April 2024).

¹⁶⁹⁴ n 1692, 1.

7.7 Current Zambian financial landscape

According to the International Finance Corporation (IFC),¹⁶⁹⁵ the Zambian financial landscape includes banks, building societies, forex bureaux, micro-finance institutions, leasing companies, and other financial institutions.¹⁶⁹⁶ It is important to examine some of these financial actors to consolidate the reader's knowledge of the country's financial system and Table 19 below serves to provide a useful outline.

Table 19. Zambian banking and financial landscape 2016–2022¹⁶⁹⁷

BANKS	BUILDING SOCIETIES	LEASING COMPANIES
There were 19 now 16, commercial banks licensed by the Bank of Zambia (BOZ) (See the lists provided later)	There is a total of 4 Building Societies under BOZ supervision, namely:	There are eight leasing companies licensed by BOZ, namely
	i. Meanwood Financial Services Limited	1. Alios Finance Zambia Limited
	ii. Finance Building Society	2. Focus Financial Services Limited
BRANCH NETWORK	iii. Pan African Building Society	3. Business Partners International Zambia Limited
There are at least 561 commercial bank branches across the country	iv. Zambian National Building Society	4. JUMO Zambia Limited
		5. Zambia Home Loans Limited
		6. Greenbelt Finance Zambia Limited
FOREIGN BANKS		7. Tsusho Capital Zambia Limited
The financial sector is dominated by foreign banks, mostly South African, most of which have not pursued the mass market. The top four banks in terms of market share are:		8. Leasing Finance Company Limited
a. Stanbic Bank Zambia Ltd,		
b. Barclays (Now ABSA)		
c. Standard Chartered Bank		
	FOREX BUREAUX	
	Foreign exchange services are available at 73 locations across Zambia	
		OTHER FINANCIAL INSTITUTIONS

¹⁶⁹⁵ The International Finance Corporation (IFC), finances private industry investment in developing nations worldwide. Associated with the World Bank, it additionally offers consulting services aimed at promoting the growth of private industry in countries that may be deficient in the infrastructure or liquidity required for companies to obtain funding. IFC was founded in 1956 and is owned by 186 member-nations, who together set our policies. The programmes and operations of IFC are overseen by member nations via a Board of Directors and a Board of Governors. See International Finance Corporation (IFC) "Governance and Financial Sustainability" <https://www.ifc.org/en/about/governance-and-financial-sustainability> (accessed 1 December 2023); World Bank "Archives Celebrating the International Finance Corporation's 60th Anniversary" [https://www.worldbank.org/en/archive/history/exhibits/Celebrating-IFC-60th Anniversary](https://www.worldbank.org/en/archive/history/exhibits/Celebrating-IFC-60th-Anniversary) (accessed 1 December 2023).

¹⁶⁹⁶ Babkova *et al.*, "Mobile Money Scoping Country Report Zambia" International Finance Corporation (IFC) 1-10 1 (2016) <https://www.ifc.org> (accessed 12 April 2024).

¹⁶⁹⁷ Babkova (n 1700) 1. Note Report updated in 2022.

d First National Bank with about 14 per cent of the market share			National Savings and Credit Bank Credit Reference Bureau Africa Limited Development Bank of Zambia
LOCAL BANKS	MICRO-FINANCE INSTITUTIONS		
Some of the local banks have emerged in the market of which a few have recently begun to introduce alternative delivery channels such as ZANACO and Investrust with respectively 13.7 per cent and 3.3 per cent market share	There are at least 34 microfinance institutions in Zambia. Payroll-based consumer lenders and conventional microfinance. The largest being: 1. FINCA 2. EFC Pulse 3. Micro Bankers Trust 4. Vision fund		Notes: There have been some changes to the banking landscape with the inclusion of banks like First National Bank of South Africa (FNB) into the cohort of leading foreign banks since the document was made. And some reduction in local banks because of insolvencies and M&As bringing the total number of banks to 16 from 19 previously.

The financial landscape in Zambia has remained relatively static over the years. Table 19 above exemplifies this lack of growth. The most active areas of the financial landscape are the banks and financial institutions.¹⁶⁹⁸ These are, *inter alia*, made up of foreign and local banks. The most current actors are those listed in Table 20. As regards the position of non-bank financial institutions in Zambia, their position is reflected in Table 20.

7.8 The Regulatory Landscape of Zambia's Financial Sector

Understanding the regulatory environment is crucial when examining the challenges and opportunities faced by local banks in Zambia with respect to the Basel Accords. BoZ, sits at the apex of a partially unified financial regulatory structure. The BFSA empowers BoZ to formulate and implement monetary and supervisory policies aimed at maintaining price and financial system stability. The regulatory purview of the central bank is wide and not only extends to the licensing, supervision, and regulation of commercial banks but also to the regulation and oversight of a diverse range of other smaller financial institutions, including microfinance institutions and bureaux de change, as seen in Table 19 above. This reflects a

¹⁶⁹⁸ Financial Institutions (FIs) are included as part of the definition of banks in the BFSA (2017). In the BFSA (2017) they are defined as a company, other than a bank, providing a financial service. See BFSA 2017 194. Since these are other financial institutions and not Banks in the pure sense, FIs will thus not be included in the study in any detail as the concentration lies with banks generally and small banks.

move towards consolidated supervision intended to foster systemic stability and consumer protection across a significant portion of the Zambian financial sector.

However, the regulatory landscape in Zambia also features a distinct second pillar of partial unification by way of the Pensions and Insurance Authority (PIA). The PIA was established under the Pension Scheme Regulation Act [Chapter 255 of the Laws of Zambia, amended by Act No.27 of 2005] and the Insurance Act [No.27 of 1997, also amended]. These Acts mandate the PIA to regulate and supervise both the insurance and pensions industries under a single authority. This consolidation recognises the interconnectedness of these long-term savings sectors with the banking system and aims to create synergies in regulatory oversight to promote efficiency and a more holistic approach to managing financial risks within these specific segments of the Zambian Financial sector.

As a result of the adoption of the Basel Accords and the Core Principles for Effective Banking Supervision, the BFSA contains provisions aimed at ensuring the safe and sound operation of all Zambian financial institutions. Safety and soundness principles protect depositors against practices such as the levying of mandatory “health insurance fees” by banks not licensed as health insurance providers. Such actions underscore the critical role that the central bank plays in enforcing the BFSA to safeguard consumer interests and maintain confidence in the Zambian financial system.

This partial unified regulatory structure, defined by the BoZ Act, the BFSA, and other financial institutions under BoZ, and the Pension Scheme Regulation Act (PSRA) and the Insurance Act for the PIA, forms the backdrop against which some banks that have co-mingled business and offer quasi-banking services. The interconnectedness of financial entities under the BoZ’s purview necessitates a nuanced regulatory approach that addresses both the specific vulnerabilities of these financial institutions and the broader systemic risks within the partially unified Zambian financial framework.

For this thesis, however, the effect of co-mingling and the offer of quasi-banking services by banks will not be considered in any detail, as it is outside the thesis area of interest. It does, however, provide a gap for further research.

Table 20. Total number of non-bank financial institutions: 2016–2023¹⁶⁹⁹

	2016	2017	2018	2019	2020	2021	2022	2023
Institution								
Kwacha/Dollar Sell Rate	10.99	9.94	10.06	11.96	14.18	21.19	16.71	18.14
Micro Finance Institutions	33	34	35	33	32	38	37	35
Leasing Companies	8	8	8	7	7	8	7	6
Bureau De Change	73	80	80	75	73	74	74	68
Building Societies	4	3	1	1	1	2	2	2
Development Banks	1	1	1	1	1	1	1	1
Savings and Credit Institutions	1	1	1	1	1	1	1	1
Credit Reference Bureau	1	1	1	1	1	1	1	1
TOTAL	121	128	129	119	116	125	123	114

The position has fluctuated over the last eight years due to various factors. Micro-finance institutions appear to be making the most headway with the addition of six organisations over the period 2016 to 2021 and then slowly declining by three to 35 in 2023, due to liquidation and possession of some of the organisations, such as Access Financial Services Limited, CETZAM, and Genesis Finance Limited.¹⁷⁰⁰

7.8.1 *Bureau de changes*

Foreign exchange bureaux seem to have fluctuated significantly from 2016 to 2021, but then returned to where it was in 2016. It then further declined by six to 68 bureaux for the 2022–2023 period. Some of the main causes of decline appear to be attributed in part to the scarcity of foreign exchange on the market as reflected by the increase in the Kwacha/Dollar exchange rates on the market,¹⁷⁰¹ mainly as a result of the economic downturn caused by the COVID-19 pandemic.¹⁷⁰²

Foreign banks present in Zambia control over 14 per cent of the Zambian market. Barclays recently exited the Zambian financial market on 10 February 2020, when it rebranded itself as

¹⁶⁹⁹ Bank of Zambia (BoZ) “Non-Bank Financial Institutions (NBFIs)” (31 October 2023) <https://www.boz.zm/non-banks.htm> (accessed 1 December 2023).

¹⁷⁰⁰ n 1703.

¹⁷⁰¹ n 1703.

¹⁷⁰² n 1703; Bank of Zambia (BoZ) “BoZ Responds to Deteriorating Macro Economic Environment & COVID–19” 2020 *Zambian Journal*. 3.

Absa Bank.¹⁷⁰³ The relationship between Absa and Barclays goes back to the apartheid era in South Africa, when popular international opinion forced Barclays to sell its shares before it exited the South African market.¹⁷⁰⁴

Table 210. Banks operating in Zambia as of January 2023¹⁷⁰⁵

NAME OF BANK	SIZE OF BANK	SIZE OF PARENT	LOCAL OR FOREIGN BANK
Absa Bank Zambia Plc	Large	Large	Foreign Pedigree
Access Bank Zambia Ltd ^[2]	Large	Medium	Foreign Pedigree
AB Bank Zambia Limited	Medium	Large	Foreign Pedigree
Atlas Mara Bank Zambia Ltd ^[3]	Large	Medium	Foreign Pedigree
Bank of China Zambia Ltd	Medium	Large MNC	Foreign Pedigree
Citibank Zambia Ltd	Medium	Large MNC	Foreign Pedigree
Ecobank Zambia Limited	Medium	Medium	Foreign Pedigree

¹⁷⁰³ Chipimo “Official Launch of ABSA Bank Zambia Plc” speech by Deputy Governor Operations (10 February 2020) 1 https://www.boz.zm/DGO_Absa_Launch.pdf (accessed 4 April 2024).

¹⁷⁰⁴ In November 1986, Barclays sold its stake in Barclays National, its South African subsidiary. Activists wanted proof of Barclays’ sale of their South African subsidiary and called for the boycott to continue until they were assured that Barclays was indeed out of South Africa. See Leitner “British Students Force End of Barclays Banks Investments in South African Apartheid 1969–1987” (8 February 2014) <https://nvdatabase.swarthmore.edu/content/british-students-force-end-barclays-bank-s-investments-south-african-apartheid-1969-1987> (accessed 7 May 2024).

Barclays had to sell its shares at a steep discount to Anglo American and its two associates, De Beers Consolidated Mines Ltd. and the Southern Life Assn. Ltd. which had been minority stockholders. but will take payment in “financial rands”. These are worth less than half the value of “commercial rands” but are the only way that capital could have been withdrawn from the country. See Parks “Barclays’ Exit Biggest Pullout Yet in South Africa” (25 November 1986) *Los Angeles Times* <https://www.latimes.com/archives/la-xpm-1986-11-25-mn-13169-story.html> (accessed 7 May 2024).

The bank was renamed “First National Bank of Southern Africa Limited” on 30 September 1987 and became a South African bank owned by Anglo-American Corporation. See Musiker & Musiker “Historical Dictionary of Greater Johannesburg” (1999); Barclays Archives “ABSA Group: Amalgamated Banks of South Africa” (2006) <https://www.archive.barclays.com/items/show/5402> (accessed 7 May 2024).

In 2005 Barclays acquired a 62.3 per cent majority stake in ABSA, and Barclays’ existing subsidiary in South Africa and Barclays Capital’s business were subsequently operated under the ABSA brand. Twelve other financial subsidiaries in 11 sub-Saharan African countries were made part of the group. Absa Group changed its name to Barclays Africa Group. See Musiker & Musiker “Historical Dictionary of Greater Johannesburg” (1999); Barclays Archives “ABSA Group: Amalgamated Banks of South Africa” (2006) <https://www.archive.barclays.com/items/show/5402> (accessed 7 May 2024).

Archived from the original on 28 March 2020. Barclays Bank Plc owned 14.9 per cent of Absa Group Limited in 2018. Thus, in March 2018, Barclays Africa announced that the group’s name would revert to Absa Group Limited, effective 30 May 2018. After which the company underwent rebranding in 2018, inclusive of a new logo and slogans. See Barclays Africa Group “Proposed Change of Name” (1 March 2018) <https://www.barclaysafrica.com/content/dam/barclays-africa/bagl/pdf/sens/2018/jan-jun/barclays-africa-group-name-change.pdf>; (accessed 7 May 2024). BusinessTech “Here is Absa’s Brand-New Look” (11 July 2018) <https://businesstech.co.za/news/banking/257755/here-is-absas-brand-new-look/> (accessed 7 May 2024).

¹⁷⁰⁵ Bank of Zambia (BoZ) “Registered Commercial Banks” <https://www.boz.zm/registered-commercial-banks.htm> (accessed 7 May 2024).

First Alliance Bank Zambia Ltd	Small	NA	Local
First Capital Bank Zambia Ltd	Small	Medium/Small	Foreign Pedigree
First National Bank of Zambia Ltd ^[4]	Large	Large	Foreign Pedigree
Indo-Zambia Bank Ltd	Medium	Large	Collaboration
Investrust Bank Zambia Ltd	Medium	Large	Local
Stanbic Bank Zambia Ltd	Large	Large MNC	Foreign Pedigree
Standard Chartered Bank Zambia Plc	Large	Large MNC	Foreign Pedigree
United Bank for Africa Zambia Ltd ^[5]	small	Medium	Foreign Pedigree
Zambia Industrial Commercial Bank Ltd	Small	NA	Local
Zambia National Commercial Bank Plc	Large	Large	Local

As can be seen, the number of local banks has declined drastically in number from 1994 levels. Added to this, many of the banks have been merged with foreign banks, thereby reducing numbers even further.

7.8.2 *Micro-finance institutions*

Micro-finance institutions (MFIs) are regulated by the Banking and Financial Services (Microfinance) Regulations 2006 and are subsidiary to the BFSA (1994) and (2017) according to Part II of the Act titled “Authority of the BoZ”¹⁷⁰⁶ started as a vibrant industry in the early 1990s, but as a result of the introduction of strict regulation, these micro-finance institutions reduced in number.¹⁷⁰⁷ This area of finance is not growing as rapidly as it should, and appears to have been stifled by excessive regulation. A clear example of this is where MFIs are required to be registered as limited companies for them to carry on business.¹⁷⁰⁸ They are supposed to comply with the Companies Act,¹⁷⁰⁹ under section 7 of the Act and in particular under section 7(2)(a) and (b)¹⁷¹⁰ as a minimum, apart from being compliant with central bank regulation as stipulated in the BFSA (2017) to which it is subservient.

¹⁷⁰⁶ 4. (1) The Bank of Zambia shall, for the purposes of these Regulations, be the regulatory authority. (2) The Bank of Zambia may, subject to such conditions as, the Bank of Zambia may consider necessary, delegate to any person the performance of any of the powers conferred upon the Bank of Zambia, in these Regulations. 5. The Bank of Zambia may require a microfinance institution to furnish details of any of its operations.

¹⁷⁰⁷ Maimbo (n 12) 68–110.

¹⁷⁰⁸ The Banking and Financial Services (Microfinance) Regulations (2006). Part III. Licensing. Section 7(2)(a) and (b). 24.

¹⁷⁰⁹ Companies Act 2017 No 10 of 2017 393. So, section 7 should be read together with PART II Incorporation and Registration of Companies sections 9 and 12 of the Act.

¹⁷¹⁰ Section 7, which deals with ‘Application for a Licence’ says: 7. (I) A person who intends to establish a microfinance institution shall apply to the Registrar for a licence in Fann MFI, as set out in the First Schedule. (2)

7.8.3 Building societies

Building societies have had a chequered history in Zambia since independence. Initially, they were inactive during the socialist era because they lacked the long-term financing necessary to issue mortgages, which resulted in a severe shortage of housing in the country. After 1991, the number of building societies grew from one institution, the Zambia National Building Society (ZNBS), to four over time, but has since decreased to two presently, according to Table 16.¹⁷¹¹ Because building societies require large capital outlays due to the long-term nature of mortgages, most building societies are normally undercapitalised.¹⁷¹² Malilwe and Haabazoka, posit that:

*“Unlike commercial banks, building societies cannot readily raise external capital, making them more risk-averse and conservative this characteristic contributes to the overall stability of the financial sector but poses challenges for expansion due to limited capital. The capital and funding challenges highlight the need for regulatory flexibility to enhance building societies’ resilience and growth.”*¹⁷¹³

This is reflected by the low number of loans that are disbursed to clients and the low stock of housing under their portfolios, according to Table 2.¹⁷¹⁴ This gap is being filled by some banks in the current setting, which is out of character for commercial banks.

An application for a licence shall be accompanied by a non-refundable application fee and the following documentation or information:

- (a) evidence of incorporation, where applicable;
- (b) designation of voting rights;
- (c) physical and postal address of its head office;
- (d) a directors’ questionnaire in Form MF2, as set out in the First Schedule;
- (e) a copy of the business plan;
- (f) the name and address of the person’s auditors who shall be subject to the approval of the Bank of Zambia;
- (g) the name and address of the person’s bankers; and
- (h) any other information that the Bank of Zambia may require.

¹⁷¹¹ n 1709.

¹⁷¹² n 1709.

¹⁷¹³ Malilwe & Haabazoka “A Study of the Factors Affecting the Growth of Building Societies in Zambia: A Case Study of Building Societies, Banks and Micro-Finance Institutions in Lusaka” 2024 *Open Journal of Business and Management* 12 993–1020; Ayadi *et al.* “Investigating Diversity in the Banking Sector in Europe: The Performance and Role of Savings Banks” Centre for European Policy Studies (2009) <https://doi.org/10.2139/ssrn.1427753> (accessed 10 May 2023).

¹⁷¹⁴ n 1703.

7.8.4 *Leasing companies*

Leasing companies have remained constant over the period as it appears that the type and tenor of the leases are constrained by these companies' lack of capital depth.¹⁷¹⁵ Several factors are hindering the growth of the leasing industry in Zambia, according to Chimuka. Among these factors are the following: first, there is a lack of clear rules and regulations. The country does not have specific leasing laws or policies that encourage the industry's development. This makes it difficult for lease providers to operate in the country and limits incentives for them to invest in the sector.¹⁷¹⁶ Second, regulators lack the proper expertise to manage the lease portfolios adequately. Added to these drawbacks, the Bank of Zambia (BoZ) does not have enough qualified staff to effectively oversee lease providers, which creates uncertainty and increased risk for both lease providers and potential customers.¹⁷¹⁷ Third, Zambia faces a challenge with loan defaults. People and businesses sometimes borrow money but then do not repay their loans (non-performing loans). This is especially risky for leasing companies because the upfront costs of acquiring equipment are high. If a lease falls through, the company may struggle to recover its investment,¹⁷¹⁸ and, finally, many lease providers simply do not have adequate capital, which limits their ability to compete with other financial institutions and offer attractive lease deals.¹⁷¹⁹

Other financial institutions in existence are the Development Bank of Zambia (DBZ), the National Savings and Credit Bank, and the Credit Reference Bureau. DBZ is the country's development finance flagship, which reports to the central bank. It was promulgated in 1973 by the DBZ Act with its main objective being to foster economic development.¹⁷²⁰ DBZ has been under the possession of the central bank since 21 July 2023.¹⁷²¹ The National Savings and Credit Bank started as the Post Bank, eventually separating itself from the Post Office via the

¹⁷¹⁵ Chimuka "A Study of the Development of the Leasing Industry in Zambia" 2013 *International Journal of Sciences: Basic and Applied Research* 1–19.

¹⁷¹⁶ Ibid. 1–15.

¹⁷¹⁷ Chimuka (n 1719) 1–15.

¹⁷¹⁸ Chimuka (n 1719) 1–15.

¹⁷¹⁹ Chimuka (n 1719) 1–15.

¹⁷²⁰ Development Bank of Zambia (DBZ) Act (1973) Chapter 363 of the Laws of Zambia. (Read together with the amendment to the Act-DBZ Act No 24 of 2005. Assented on 28 September 2005 and promulgated on 7 October 2005).

¹⁷²¹ BoZ Press Statement. BOZ Takes possession of DBZ 21 July 2023 https://www.boz.zm/Public_Notice_DBZ.pdf (accessed 25 April 2024).

National Savings and Credit Bank of Zambia (Dissolution) Act¹⁷²² and turning itself into an independent parastatal savings bank.¹⁷²³ It has also suffered from capital deficits over the years because of poor loan repayment culture, forcing the government to recapitalise the institution on more than one occasion.¹⁷²⁴

7.8.5 *Loans disbursed per economic sector by banks*

An examination of the loans disbursed per sector is given by the Zambian banking and financial landscape in Table 22 below.

Table 22. Loans and advances [sector proportions] 2016 –2022¹⁷²⁵

	Dec–16	Dec–17	Dec–18	Dec–19	Dec–20	Dec–21	June–22
Agriculture, forestry, Fishing & Hunting	17.16	20.33	16.93	16.43	16.42	11.60	11.31
Mining & Quarrying	6.31	6.31	7.03	7.44	6.24	3.77	5.62
Manufacturing	12.68	7.80	9.16	8.93	10.20	11.23	15.49
Electricity, gas, water and energy	2.20	3.06	3.00	4.34	4.53	4.26	3.69
Construction	3.86	4.39	3.00	2.16	1.73	1.85	1.85
Wholesale & retail trade	10.26	11.38	11.09	11.46	8.50	8.93	9.04
Restaurants & hotels	1.60	1.47	1.26	0.95	1.03	0.65	0.70
Transport, storage & communications	4.62	4.66	6.16	8.76	8.50	8.42	9.22
Financial services	1.78	2.23	4.14	2.06	1.84	1.28	0.84
Community, social & personal services	1.73	4.15	4.78	6.57	12.21	24.08	19.00
Real estate	3.53	3.52	3.46	3.24	4.52	3.29	3.27

¹⁷²² National Savings and Credit Bank of Zambia (Dissolution) Act Chapter 426 of the Laws of Zambia. The National Assembly Official site says that “the Act provided for the winding-up and dissolution of the National Savings and Credit Bank of Zambia; to provide for the vesting of the undertaking of the National Savings and Credit Bank of Zambia in the Post Bank Limited; to repeal the National Savings and Credit Act; and to provide for matters connected with or incidental to the foregoing.” See National Assembly of Zambia “National Savings and Credit Bank of Zambia (Dissolution)” <https://www.parliament.gov.zm/node/1450> (accessed 25 April 2024).

¹⁷²³ National Savings and Credit Act Chapter 423 of the Laws of Zambia.

¹⁷²⁴ For example, from 2017 there have been various statements made by both the press and institutions like the IMF on the recapitalising of National Savings and Credit Bank. See for example the 2022 report by International Monetary Fund (IMF) “Zambia’s Request for an Arrangement Under the Extended Credit Facility –Press Release, IMF Country Report No 22/292” (September 2022) <https://www.elibrary.imf.org/view/journals/002/2022/292/article-A000-en.xml> (accessed 25 April 2024); Making Finance Work for Africa “Zambia: MPs –Natsave Needs Recapitalising” (2017) <https://www.mfw4a.org/news/zambia-mps-natsave-needs-recapitalising> (accessed 25 April 2024). (The MFW4A Secretariat was established as the executive arm of the Partnership and works to advance the goals of the Partnership. Operating as an independent entity, the Secretariat is hosted within the African Development Bank (AfDB) in Abidjan, Côte d’Ivoire.)

¹⁷²⁵ n 1703.

Personal Loans	27.45	28.02	27.85	24.99	19.66	17.43	17.86
Other sectors	6.83	2.67	2.13	2.68	4.62	3.20	2.10
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00

Table 20 indicates that the largest sector for loans is the personal sector. Numbers have fluctuated over the period, starting from a high of around 27 per cent and then falling to 17 per cent. The changes appear to be from the growth in other forms of finance that have affected the uptake of loans in formal institutions. It could also be attributed to the outbreak of COVID-19, which restricted the movement of people. The BoZ, on its website, points out that COVID-19 created significant macroeconomic challenges that resulted in low economic growth, high fiscal deficits, rising debt service, and inflation, including low international reserves.¹⁷²⁶ Researchers like Sinkala,¹⁷²⁷ remark that most commercial banks were compelled to implement moratoriums on loan repayments, including banks like Absa.¹⁷²⁸ This agrees with what was happening internationally. According to Colak and Ztekin,¹⁷²⁹ many countries implemented lockdown measures to prevent the spread of the virus, which caused a reduction in business and thus forced businesses into liquidity problems, resulting in increased debtors. In their research, Colak and Ztekin evaluated 125 countries to assess the impact of the pandemic on global lending patterns. They found that the impact of COVID-19 on bank loan growth depended on bank and country-specific conditions, and that the hardest hit banks were the small banks, foreign and government-backed banks as well as institutions with a lower Return on Assets (ROA) ratio. This ultimately resulted in credit constraints.¹⁷³⁰

¹⁷²⁶ Bank of Zambia (BoZ) “COVID Intervention Measures” <https://www.boz.zm/covid-19interventions.htm> (accessed 30 April 2024).

¹⁷²⁷ Sinkala *et al.* “An Assessment of the Effects of COVID-19 on Credit Risk Management in Banking Industry: A Case of Selected Commercial Banks in Lusaka Zambia” 2022 *Journal of Economics Management and Trade* 20–28.

¹⁷²⁸ Ibid. 20–22.

¹⁷²⁹ Colak & Öztekin “The Impact of COVID-19 Pandemic on Bank Lending Around the World” 2020 1–52. See also other research work on the same Goldstein *et al.* “COVID-19 and Its Impact on Financial Markets and the Real Economy” 2021 6; Elnahass *et al.* “Global Banking Stability in the Shadow of COVID-19 Outbreak” 2021 *Journal of International Financial Markets, Institutions and Money*; Duan *et al.* “Bank Systemic Risk around COVID-19: A Cross-Country Analysis” 2021 *Journal of Banking & Finance*, to name but a few.

¹⁷³⁰ Ibid. 1–2.

7.8.6 Loans to agriculture

The next sector that accesses loans is the agricultural sector. Table 20 shows agriculture started off very strong in 2016 at around 17 per cent, climbed to 20 per cent in 2017, and then dropped sharply to 11 per cent by 2021. This appears to be in part because agriculture is not only cyclical but is impacted largely by weather conditions like drought and floods, making it a risky venture for smaller banks to take on in a big way.

7.8.7 Loans to manufacturing

Manufacturing is the next best performer in terms of loans and advances, as it appears from Table 20. In December 2016, it was at 12 per cent and then reduced slightly, and then strengthened again, ending at 11.23 per cent, slightly short of its 2016 position. Manufacturing climbed to 15.49 per cent in June 2022, showing its resilience and its ability to rebound in a short period.

7.8.8 Loans to wholesale and retail trade

Table 20 shows that loans and advances to wholesale and retail trade were the third-best performers. The statistics show that from a strong position of 10.26 per cent, the total loans dropped to about nine per cent. Again, the most common factor that impacted loans and advances in this area over the relevant period is the COVID–19 pandemic.¹⁷³¹

Table 113. Sectorial private sector credit share (per cent end of period) 2004–2014¹⁷³²

Sectors		Agriculture	Mining	Manufacturing	Energy	Construction	Wholesale & Retail Trade	Others	Total
Bank Size Cluster									
Large		34.4	4.0	11.5	7.2	1.8	13.6	27.6	100.0
Medium	2004	30.3	4.5	13.0	6.2	2.0	13.9	30.1	100.0
Small		18.9	9.0	6.9	0.0	5.2	6.2	53.8	100.0
Total		31.5	4.5	12.1	6.3	2.1	13.5	30.1	100.0
Large	2007	22.1	2.8	11.0	2.7	3.0	11.2	47.1	100.0
Medium		21.9	4.2	11.2	3.0	3.7	11.3	44.8	100.0

¹⁷³¹ The negative impact on loans was further mitigated by the central bank under Bank of Zambia (BoZ) *Circular No 13/2020: Bank of Zambia Prudential Relief Measures in View of COVID–19 CB* (14 April 2020) <https://www.boz.zm/cbcircularno13of2020bankofzambiaprudentialreliefmeasuresinviewofcovid19.pdf> (accessed 25 April 2024).

¹⁷³² Simpasa (n 1618) 10.

Small	2009	10.4	8.4	8.5	0.1	5.4	6.7	60.6	100.0
Total		21.7	3.7	11.0	2.8	3.4	11.2	46.1	100.0
Large		21.3	3.4	10.1	1.7	1.1	11.9	50.5	100.0
Medium		20.0	4.4	12.9	1.8	3.1	10.6	47.2	100.0
Small	2011	6.5	6.1	7.2	1.7	6.4	10.7	61.3	100.0
Total		19.8	4.1	11.5	1.8	2.5	11.1	49.2	100.0
Large		18.5	3.6	13.2	0.8	2.4	10.2	51.3	100.0
Medium		18.1	4.1	12.3	1.7	3.7	11.1	49.0	100.0
Small	2014	2.7	6.4	6.5	2.1	6.4	10.7	65.2	100.0
Total		17.7	4.0	12.4	1.4	3.3	10.7	50.5	100.0
Large		16.8	6.1	12.3	1.1	1.2	7.7	54.8	100.0
Medium		20.4	3.1	8.6	0.8	5.3	12.7	47.9	100.0
Small	2014	6.3	3.5	12.0	4.6	13.7	13.8	46.1	100.0
Total		13.3	4.0	11.0	2.5	7.9	11.9	48.5	100.0

Notes: Trade –Whole and retail trade; Others: Restaurants and Hotels; Transport and communications; Financial Services; Community and Social Services; Real Estate; Other unclassified sectors

It is submitted that small banks are unable to participate in the large loan sector and tend to concentrate more on personal loans from community and social services, restaurants, hotels, and wholesale and retail trade. When the loan requirement becomes large, these small banks are unable to lend much due to the possibility of breaching their portfolio sector limits set by the central bank. From Table 22 (it is further submitted that small banks normally provide very little finance to large-scale government, construction, electricity, and mining projects that normally have long payback periods and large loan capital requirements because of the size of their base.¹⁷³³ This appears to agree with the findings by Mulendema and Sinkala posit that leverage plays a significant part in determining the financial performance of banks (including lending) in Zambia. Therefore, it is essential to lay a strong emphasis on the significance of bank capital structure, since this is a major decision considering funding for every business.¹⁷³⁴

Equally, the study has found no evidence of small banks forming consortia with other banks to give out large loans to the various sectors that are not well represented. The statistics in Simpasa and Plas, Table 22 above, show this trend clearly. For example, agriculture over the period has been declining on average, although there appears to be some resurgence in 2015. Mining shows a similar trend, even though percentages on average are lower than for agriculture.

¹⁷³³ Simpasa (n 1618) 10.

¹⁷³⁴ Mulendema & Sinkala "An Analysis of the Performance of Banks: A Comparative Study of Domestic and Foreign Banks in Zambia" 2023 *Journal of Economics, Finance and Management Studies* 2149–2154.

Manufacturing appears to be growing gradually as expected and is ending up among the top performers. Simpasa and Pla provide more insight by mentioning that increased lending to manufacturing, particularly by smaller banks specialising in SME loans, is a positive development for Zambia's economy. This shift has the potential to boost economic diversification, productivity, and job creation. Maintaining this focus on manufacturing could significantly revitalise the economy, potentially raising the sector's contribution to GDP beyond its current 10%. Conversely, while the wholesale and retail sector also features many SMEs, these businesses are often family-run, operate informally, and have limited potential for productivity and employment growth.¹⁷³⁵ This statement further consolidates, strengthens, and justifies the argument for small banks and their existence in the Zambian financial system.

Table 22 further indicates that the sector shows a lower-than-average trend because of the huge capital outlays required by the industry. The statistics on construction in the same table appear to indicate that the industry is among the top sectors that are funded by small banks. This can be easily explained by identifying the specific area of construction that is being funded. That is to say that the small banks are funding small private construction projects rather than funding large construction companies, which require a large loan base. Table 22 also reflects that the wholesale and retail trade come out very strongly in terms of businesses that are financed by small banks. It is a notorious fact that Zambia has turned to trading over the years with the wane in agriculture and manufacturing, and this appears to be reflected in the statistics. Equally, traders come in various sizes that are easy for small banks to fund.

One of the interesting statistics is the sector that is designated as "others". For an understanding of the sectors covered in this category, one should refer to Table 21 on loans and advances. From an analytical perspective, it is clear to see that it falls under the less important sector or subservient sectors of the economy. Statistics, as evidenced in Table 21, show that this is where there is the largest growth for small banks. From these numbers, it logically reflects the lesser role that small banks play in the main economy. But more importantly, the small banks are important to keep these marginalised sectors alive, as the larger banks do not pay much attention to them in terms of funding. This once again reiterates the position of the small bank in the Zambian economy. The statistics deal with only private credit and not government credit as evidenced in Table 22. Government credit will normally be obtained by the government via the issuance of treasury bills and bonds, so it is not significant for purposes of this thesis.

¹⁷³⁵ Simpasa (n 1618) 10.

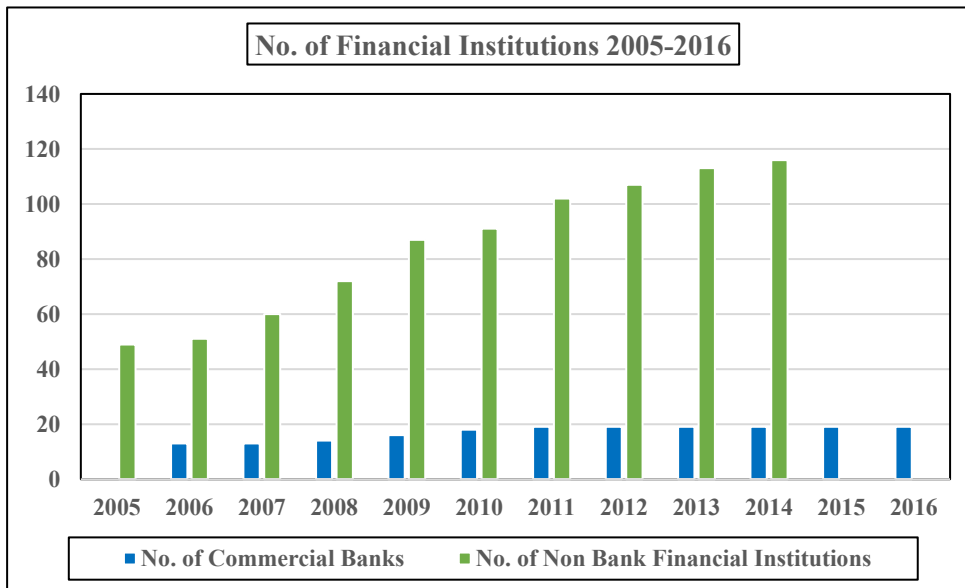
7.9 The gradual transition towards digitalisation

In terms of presence and footprint, the Zambian banking landscape has changed marginally since the IFC Report. On the service delivery front, however, banks are revolutionising the delivery of banking services with the assistance of computer technology. This is slowly doing away with the traditional banking hall and costly bank buildings model of banking and being replaced with a more dynamic and customer-responsive model, resulting in a considerable reduction in costs for many banks with large branch networks.

Table 24. Foreign and failed local banks 1991–2000¹⁷³⁶

FOREIGN BANKS	LOCAL BANKS	FAILED LOCAL BANKS (1994-1998)
Bank of China (1997) Barclays Bank (1918) Citibank Bank (1979) Stanbic Bank (1956) Standard Chartered Bank (1906)	Cavmont Bank (1993) Finance Bank (1988) First Alliance Bank (1995) Indo-Zambia Bank (1985) Invest Trust Bank (1995) New Capital Bank (1989) Union Bank (1979) United Bank of Zambia (1997) ZANACO (1968)	Chase Trust Bank (1995 –97) Credit Africa Bank (1994 –97) First Merchant Bank (1994–98) Manifold Bank (1987–97) Prudence Bank (1994 –97) Meridien BIAO Bank (1984–95) Intermarket Banking Corporation Zambia Ltd (2016)

Figure 8. Growth of non-bank financial institutions in Zambia¹⁷³⁷



¹⁷³⁶ Maimbo (n 12) 15–20; n 1679.

¹⁷³⁷ n 1521.

Data collected by Finscope in 2020¹⁷³⁸ indicates that the use of traditional forms of banking has plummeted by four per cent to 20 per cent over five years, starting in 2015.¹⁷³⁹ This period saw the increased use of digital financial services from 14 per cent to 59 per cent of the total population.¹⁷⁴⁰ Over this period, there have *been* “forced bank mergers” possibly as a means of avoiding insolvency.¹⁷⁴¹ At the same time, research shows that banks are abandoning their expensive and extensive branch networks in favour of mobile money operations.¹⁷⁴² For example, banks like Standard Chartered Bank have opted to downsize their branch networks and increase their mobile outlets.¹⁷⁴³

¹⁷³⁸ Finscope Zambia “2020 Survey Report” (2020) 1–92 <https://www.boz.zm/FinScope-2020-Survey-Report.pdf> (accessed 22 April 2024). Finscope 2020 was created by the Bank of Zambia to assess the level of financial inclusion in the country. the Bank of Zambia in collaboration with other financial sector stakeholders implemented the FinScope 2020 Survey, in September –October 2020. The FinScope Survey is an important research tool developed by FinMark Trust to provide credible national information on the demand, access, use of, and behaviour towards financial services by the adult population.

¹⁷³⁹ Ibid.

¹⁷⁴⁰ n 1742, 1–92.

¹⁷⁴¹ See ch 6.

¹⁷⁴² n 1742, 1–92.

¹⁷⁴³ There are few formal statements made by the chief executive bank of Standard Chartered Bank Zambia about its downsizing, however, these are mentioned in some of the Zambian Press like the Lusaka Star. To back this statement further additional references have been provided to show that the decision is continent wide. Strangely Zambia is not mentioned in the international reports even though Standard Chartered is closing Branches. Kampamba says Standard Chartered Bank Zambia closed five branches across the country –Mongu, Kasama, Chililabombwe, and Luanshya. In Lusaka, their Crossroads Mall branch will join forces with the Kabulonga branch. This shift reflects the bank’s focus on offering services through digital channels. According to a client notice issued in January 2020, Standard Chartered Head Retail and Marketing for Zambia and Southern Africa Deepal Singh stated that the changes would take effect on January 1, 2020. “The bank wishes to inform its clients and members of the public of the following changes to our branch network: Mongu branch will close, Kasama branch will close, Chililabombwe branch will close, Luanshya branch will close, crossroads branch will merge with Kabulonga branch. these changes are effective from 1 January 2020.”

See Kabamba “Standard Chartered Closes Five Branches, opts to go Digital” Lusaka Star (19 November 2020) <https://lusakastar.com/news/standard-chartered-closes-five-branches-opts-to-go-digital> (accessed 3 May 2024); Whites “StanChart Cuts Seven Minnow Businesses in Africa and Middle East” Reuters (14 April 2022) <https://www.reuters.com/business/stanchart-exits-7-markets-africa-middle-east-2022-04-14/> (accessed 3 May 2024). Standard Chartered is leaving Zimbabwe, Angola, Cameroon, Gambia, Jordan, Lebanon, and Sierra Leone altogether. They will also reduce their presence in Tanzania and Ivory Coast, only providing banking services to large businesses there. According to Reuters, the bank made this decision because these markets brought in very little profit (only 1% of their total income in 2021).

See also Muhamba “Standard Chartered is leaving Zimbabwe but it is Not Happening Overnight” Techzim (14 April 2022) <https://www.techzim.co.zw/2022/04/standard-chartered-is-leaving-zimbabwe-but-its-not-happening-overnight/> (accessed 3 May 2024). Muhamba quotes Bill Winters, Standard Bank Chief Executive, who states: “We are sharpening our focus on the most significant opportunities for growth while also simplifying our business. We remain excited by several opportunities we see in the AME region, as illustrated by our new markets, but remain disciplined in our assessment of where we can deliver significantly improved shareholder returns. We are grateful to our colleagues and partners in each of these impacted markets for their hard work and dedication and are committed to supporting them through this transition.”

Rubenstein brings out the fact that these banks need to spend more time analysing their client data to create better services, especially given that data is considered the “new gold” in banking. Despite this, banks do not go this far because of secrecy fears from competitors.¹⁷⁴⁴ Zambian banks are accused of creating products in the boardroom rather than from market data. As a result, these banks end up concentrating on corporate clients and high-net-worth individuals. Rubenstein states: “It appears that they think that clients want relationship bankers rather than the ability to handle their needs online or by text.”¹⁷⁴⁵ It is submitted that this section appears to refer to the larger foreign banks rather than to the smaller banks. Rubenstein points out that the problem with banks across the globe, including Zambia, is that there is no longer any value in being a complex financial entity, as customers have the means to identify and circumvent it. It is these tools that are creating the most value, according to Rubenstein. He observes that:

*“In addition, innovation generally comes from the coal face: from people who deal regularly with clients and understand their needs and whatever they complain about. But local ownership and empowerment at the mid-level staff level actively innovate and improve products and services, which is increasingly common in successful businesses generally and largely missing in Zambian banks.”*¹⁷⁴⁶

At this point in the paper, it is trite to address the problems that these small Zambian banks face and why they are unable to rise to the challenges that have been pointed out by Rubenstein above. It is submitted that many of the problems have to do with historical trends, as we will see shortly. Other problems are created by an unsophisticated market that lacks financial products that the banks can use not only to issue but to buy, financial paper as a means of managing their investment portfolios and risk profiles. Notably, the central bank has not introduced many financial products for the banks to use. For example, under Commercial Bank Circular 15/2013,¹⁷⁴⁷ foreign exchange swaps¹⁷⁴⁸ were introduced as instruments of monetary policy for commercial banks to use in managing some of their risks.

¹⁷⁴⁴ n 1742, 1–92.

¹⁷⁴⁵ Rubenstein (n 1577) 1.

¹⁷⁴⁶ Rubenstein (n 1577) 1.

¹⁷⁴⁷ Bank of Zambia (BoZ) *Commercial Bank Circular 15/2013* (25 July 2013).

¹⁷⁴⁸ A foreign exchange swap (also known as an FX swap) is an agreement to simultaneously borrow one currency and lend another at an initial date, then exchanging the amounts at maturity. It is useful for risk-free lending, as the swapped amounts are used as collateral for repayment. See Corporate Finance Institute “What is a Foreign Exchange Swap?” <https://corporatefinanceinstitute.com/resources/derivatives/foreign-currency-swap> (accessed 22 April 2024).

It is submitted that most of the Zambian populace are not financially savvy about banking products that are outside of the basic traditional framework, like savings accounts, time deposit accounts, treasury bills, and bonds. Equally, it is further submitted that it appears that the percentage of wealthy individuals as a percentage of the total population is negligible; so even where banks could issue private bonds, a full subscription would likely be difficult to achieve without resulting in investor fatigue in terms of buying these private bonds and other financial instruments issued by commercial banks.

While digitisation appears positive, there are supervisory implications for both banks and supervisors, according to BIS. These include monitoring evolving risks and adopting a responsible approach to innovation; safeguarding data and implementing robust risk processes; and securing the necessary resources to assess and mitigate risks from new technologies and business models. Digitisation is itself driven by globalisation as it enhances global interconnectedness and international exchange of data.

7.10 The impact of globalisation on Zambia

The intention in this part of the work is to test whether Zambia is affected by globalisation and its connection to policies like the Basel Accords. There is very little information available in this area, and what is available is unfortunately quite out of date. However, to try and reach a conclusion, an attempt will be made to evaluate the impact of globalisation on Zambia and bring some of the information up to date.

7.10.1 Globalisation and the Declining Role of the State

Some positive aspects of the impact of globalisation have been said to result from technology transfer, improvements in productivity, as well as capital transfer from Western countries.¹⁷⁴⁹ From the foregoing, it can be inferred that improvements in banking and its development are positive in terms of their impact. Equally, the science behind better productivity can be said to be a positive result of globalisation as it improves efficiency and therefore reduces the wastage of scarce resources. So, effectively, the Basel Accords can be defended as being positive introductions from this point of view.

¹⁷⁴⁹ Momba “Globalisation and Emerging Political Contradictions: The Challenges of the New Millennium, in Globalisation and Development in Zambia: Challenges and Prospects” (10 May 2001) 1–29 5.

It is submitted that the downside to this is that efficiency without the human element attached to it can result in negative consequences. For example, where efficiency is implemented at the cost of labour reduction or lower wages and, ultimately, welfare benefits. This effect has been witnessed as Zambian banks downsize their labour force in preference for what is called “branchless banking services” This strategy has been recognised as far back as 2011 by the central bank.¹⁷⁵⁰ It is further submitted that the movement of the decision-making centres to global centres like South Africa or Dubai leaves local staff with no opportunity to learn important management skills, consequently reducing their international mobility.

Renick shows that the extensive privatisation of the 1990s led to significant industrial decline in Zambia. The manufacturing sector, especially textile production in Lusaka, suffered greatly due to a surge in imported used clothing called *Salaula*. Simultaneously, falling copper prices and mining privatisations caused over 25,000 job losses in the Zambian economy. Slow economic growth, coupled with the rising informal economy as a primary source of urban employment, thus hindered the expansion of the middle class.¹⁷⁵¹

Globalisation is also said to affect the sovereignty of a country, which results in the declining role of the state. International global institutions have implemented regulations that do not consider a particular country’s views or concerns, or indeed philosophy. Slowly, these institutions are taking more control of economies, so much so that the global economic institutions have greatly undermined the African state.¹⁷⁵² States are unable to resolve their own problems and are forced to turn to the West for assistance, both in terms of monetary support and consultancy services to meet the standards that the West sets for them. Ultimately, this dependency has resulted in unprecedented poverty and unemployment, widening the North-South divide rather than closing it.

¹⁷⁵⁰ Bank of Zambia “Annual Report 2011” 1–120 <https://www.boz.zm/bozannualreport2011.pdf> (accessed 3 May 2024). From as far back as 2011 the Bank of Zambia has been creating an official framework to regulate how financial service providers engage third parties (agents) to offer financial services on their behalf. While the framework for branchless banking is still being developed, the Bank of Zambia has persistently approved initiatives by commercial banks that seek to enhance access to financial services.

¹⁷⁵¹ Resnick “The Middle Class and Democratic Consolidation in Zambia. Journal of international development special issue: The Political Economy of Africa’s Middle Class” 2015 *Journal of International Development* 5. 693-715; McCulloch *et al.* “Poverty Inequality and the Growth in Zambia During the 1990s, Working Paper” University of Sussex (2000) 1–47.

¹⁷⁵² Oji & Ozioko “Effect of Globalization on Sovereignty of States” 2011 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 256–270.

7.10.2 Liberalisation and globalisation

Globalisation has always been associated with the neoliberal ideal of liberalisation and a free market economy. But the question that must be asked is for whom is the market economy free? Zambia's experience of this concept appears not to be as positive as one would expect given that in the early 1990s, the Zambian government implemented free market economic policies to integrate into the global economy, aiming to attract investment and stimulate growth. This resulted in Zambia becoming a primary source of raw materials and a market for manufactured goods from other countries.¹⁷⁵³

The conclusion appears to show that the Zambian economy and, therefore, the financial system that goes with it, is fully entrenched in the concept of globalisation. This point is also brought forth strongly by looking at the Globalisation Index for Zambia as reflected in Table 25 below.

Table 25. Globalisation indices for Zambia¹⁷⁵⁴

GLOBALISATION INDICES	MEASURE	LATEST VALUE	REFERENCE	FREQUENCY	TIME COVERAGE
Globalisation Index [0–100]	Points	57.60	2019	Annual	1970–2019
Economic Globalisation Index [0–100]	Points	55.80	2019	Annual	1970–2019
Political Globalisation Index [0–100]	Points	70.19	2019	Annual	1970–2019
Social Globalisation Index [0–100]	Points	46.81	2019	Annual	1970–2019

From the table above, it is clear to see that Zambia is almost 60 per cent compliant with the Globalisation Index requirements. This piece of data further confirms that Zambia is likely to take on further policies to bring it in line with the rest of the world. The apparent danger with this lies in the fact that it opens the economy to the vagaries of the international financial markets which can have a severe impact on the growth and development of a country.

¹⁷⁵³ GlobalEconomy.com “Zambia: Economic Globalisation”
https://www.theglobaleconomy.com/Zambia/kof_econ_glob/ (accessed 3 May 2024).

¹⁷⁵⁴ Ibid.

Equally, neoliberal ideals¹⁷⁵⁵ are part of the jurisprudence of the law. This is further secured by the fact that the regional organisations have also taken up the policies as tools of development as will be seen from the discussion below.

7.10.3 Impact of globalisation on small local banks

The impact of globalisation on small local banks in Zambia appears to be negative. The whole idea of globalisation is to ensure that Western multinational corporations can access developing country markets without any constraints. It can be argued that small local banks are the seeds that will eventually grow into larger local banks that would be in direct competition with these multinationals. To ensure that all competition is removed, international multinationals with the support of international institutions, create policies that discourage and prevent the growth of these small banks in developing countries. Some of these rules, like the Basel Accords, cannot be met by sophisticated international banks but are expected to be complied with by banks that would not even be classified as small in the international arenas and countries with distorted economies. This was seen in previous chapters, indicating the apparent bias of these institutions, which allow international banks to change the rules to protect and suit their business institutions but not institutions in developing countries. Where third-world banks cannot meet the set standards, then winding-up or liquidation becomes the only solution, based on the neoliberal efficiency theories.¹⁷⁵⁶ Given the Zambian experience, there are very few small local banks left in operation in the country. Suffice it to say that merger and acquisition activity has reduced the numbers even further. From five banks to four after the demise of Investrust Bank Zambia Limited in April 2024.¹⁷⁵⁷

To understand the current attributes of local banks, it is necessary to start from a historical perspective by going back to 1991 to evaluate what the attributes of local banks were then and thereafter comparing the current position to see if there have been any changes in the characteristics of these local banks.

Local banks that were established before and after the 1991 political watershed were dynamic and customer-centred. Banks, such as Meridien BIAO Bank Zambia Limited (established in

¹⁷⁵⁵ See ch 3 para 3.3.1.

¹⁷⁵⁶ See ch3 para 3.3.1.

¹⁷⁵⁷ Bank of Zambia (BoZ) “List of Licensed Commercial Banks As of 3 May 2024” <https://www.boz.zm/> (accessed 3 May 2024). Note that the four remaining small banks are: First Alliance Bank Zambia Limited, First Capital Bank Zambia Limited, United Bank for Africa Zambia Limited, Zambia Industrial Commercial Bank Limited (Ex Intermarket Bank). See ch 6 para 6.5.

1984) and Finance Bank of Zambia Limited (established in 1988), started as small banks but grew their clientele significantly over the period at the behest of the larger international banks that felt threatened. These banks were dynamic in terms of service delivery and reaching out to the unbanked Zambian public.¹⁷⁵⁸ International banks were often aloof and difficult to deal with in terms of opening accounts and getting access to services like loans and overdrafts.¹⁷⁵⁹ From experience, these large banks would ask for minimum deposits ranging from 500 Kwacha to 1000 Kwacha from clients before they could open accounts for potential clients, much to the displeasure of small clients. According to de Luna Martinez “...most commercial banks in Zambia have adopted high balances to open or maintain an account, making it impossible for most people to have a savings or deposit account. As outlined in table 4.2, five banks require customers to have a minimum balance of \$16 to \$78 to open a savings account. In a group of five other banks, the minimum balance to open an account ranges from \$156 to \$313. In the context of Zambia, where 71 per cent of the population lives on less than \$1 a day, the minimum balances currently required by banks are high and prevent most people from having access to basic banking services.”¹⁷⁶⁰

With the establishment of local banks, ordinary clients were able to access basic financial services, loans, and other services without providing a minimum balance to open an account. In short, other than the international banks, these local banks were indeed client-centred.

This client-focused approach helped some of the local banks become major participants in the banking sector. For example, Brownbridge observes that before its collapse in 1995, Meridien BIAO Bank had not only become the fourth largest bank in Zambia, but also spread its branches in line with its aim of being a Pan-African bank (PAB).¹⁷⁶¹

Finance Bank (FBZ) was incorporated in Zambia on 23 September 1986, under Company Registration Number LCO15083, and was then licensed by the Bank of Zambia to conduct banking business in Zambia on 6 August 1986. From these humble beginnings, it grew rapidly in terms of market share and by 1995 had captured more than six per cent of the market. It

¹⁷⁵⁸ Brownbridge (n 1547) 153–154.

¹⁷⁵⁹ Brownbridge (n 1547) 153–154.

¹⁷⁶⁰ de Luna Martinez ‘Financial Services: Dealing with Limited and Unequal Access’ in Mattoo & Payton (eds) *Services Trade and Development: The Experience of Zambia* (2007) 1–314 164.

¹⁷⁶¹ Brownbridge (n 1547); Pan African Banks (PABs). There is no specific definition for a PAB. Pan-African Banks include all banking groups and banks with cross-border operations headquartered in sub-Saharan Africa (SSA) or North Africa. Major PABs are defined as the seven largest banking groups that have subsidiaries in 10 or more African countries. See Charles Enoch *et al.* “Pan-African Banks: Opportunities and Challenges for Cross-Border Oversight” International Monetary Fund (2015) (accessed 3 April 2024).

purchased rural branches from Standard Chartered Bank in 1995 to facilitate its expansion into the rural areas. It also opened branches in Malawi.¹⁷⁶² Similarly, Union Bank, established in 1979, demonstrated significant strength initially by taking over the local operations of Bank of Credit and Commerce Zambia in 1991 when the latter bank failed.¹⁷⁶³ All the examples are reflective of the abilities of these banks in serving the smaller clients.

7.11 The impact of regionalisation on small Zambian banks

Table 26. SADC banking sector indicators¹⁷⁶⁴

	Country	Private Sector Credit Percentage of GDP Average (1995–2015)	Broad Money Percentage of GDP Average (1995–2015)
1	Angola	9.68	25.46
2	Botswana	-18.85	39.30
3	DRC	3.42	6.75
4	Lesotho	-3.38	35.53
5	Madagascar	13.9	21.65
6	Malawi	18.87	21.78
7	Mauritius	89.22	92.04
8	Mozambique	14.35	29.73
9	Namibia	48.20	45.67
10	Seychelles	74.86	78.03
11	South Africa	162.81	64.96
12	Swaziland	13.51	23.12
13	Tanzania	12.72	21.75
14	Zambia	31.01	20.65
15	Zimbabwe	46.92	133.36

Regionalisation on the pretext of taking advantage of synergies has locked many countries into an irreversible one-way track to globalisation. As we saw in the previous chapter, most of the prudential rules are taken from the international regulators rather than from homegrown solutions that work for Africa. These international regulators prefer to talk about the need for standardising best practice across the globe to create a level playing field rather than saying

¹⁷⁶² Brownbridge (n 1547) 153.

¹⁷⁶³ Brownbridge (n 1547) 153.

¹⁷⁶⁴ Tembo & Makina “Regional Financial Integration and Its Impact on Banking Development: Evidence from Southern African Development Community Countries” 2020 *Business Strategy and Development*. 356–368.

that they enforce rules strictly. But authors, like Tarullo, question who the level playing field is supposed to benefit.¹⁷⁶⁵ It is submitted that the field is already uneven, given that the association is between rich and poor countries. It is submitted that many developing countries are lulled into a false sense of achievement by being given points for achieving certain milestones in a “carrot and stick” approach to development.

There is no indication that these institutions are helping to grow the smaller banks by giving them the support they need to fortify and turn them into viable local African banks. Equally, regional organisations’ hands are tied because they have neither the resources nor the expertise to make local decisions for themselves. They are reliant on Western consultants, who though they may be brilliant, have little knowledge of how Africa works.¹⁷⁶⁶ The regional bodies do not lobby as the big Western banks do to ease the severity of the Basel requirements for their banks because they are not even members of this elite club. Logically, they have no voice at all. In many instances, it appears that these regional bodies are afraid to upset the donors or advisors who are a source of support in hard times. It is also interesting to see how a country like Zambia belongs to so many regional bodies.¹⁷⁶⁷ Surely under the neoliberal view¹⁷⁶⁸ this is expensive and inefficient. Why then is the country not asked to pick only one regional body to work with? It is submitted that this allows for the country to be caught up in a never-ending list of requirements that at the end of the day only delays the whole development agenda.

7.12 The impact of the Basel Accords on Zambia

7.12.1 *Basel I Accord*

It is difficult to determine whether the Basel I Accord has been formally adopted or not in Zambia. There appears to be no express documentation or pronouncements by the central bank acknowledging such adoption. Despite this, some of the tenets we saw earlier are visible in the BFSa (1994).¹⁷⁶⁹ Equally, the insistence on increased capital appears to indicate its adoption, at least *de facto*. According to Commercial Bank Circular 3/96, for instance:

¹⁷⁶⁵ Tarullo “Norms and Institutions in Global Competition Policy” 2000 *American Journal of International Law* 478–504.

¹⁷⁶⁶ Poncian “The Persistence of Western Negative Perceptions About Africa: Factoring in the Role of Africans” 2015 *Journal of African Studies and Development* 3 72–80.

¹⁷⁶⁷ See ch 5.

¹⁷⁶⁸ See ch 3 para 3.3.1.

¹⁷⁶⁹ See para 7.4.7.

“For new banks commencing operations, an unimpaired primary (tier1) paid-up capital of K2 billion is required before a license can be issued by the central bank. For existing banks, the minimum capital requirement of K1,250 billion by June 30 and K 2.0 billion by December 11 of this year as specified in the banks letter of 3 October 1995 is on the basis of the calculation made using the second schedule of the capital adequacy regulations (item (0) of the tier 1 calculation) the regulations provide that these minimums are subject to periodic revision and maybe increased by the BoZ as need arise

Also, adequate provisions on the non-performing loans should be deducted from the gross capital in this calculation if these are not already backed in order to reflect the realistic values of the bank’s loans portfolio. As the supervisory authority the bank will in its evaluation of any calculation of tier 1 capital adjust existing provisions to a level which it considers sufficient and reasonable under current circumstances. Banks are also advised that they are required to maintain this minimum level of capitalisation at all times and should not under any circumstances, fall below this level.

In cases where a bank fails to meet or maintain the minimum capital requirement including the minimum 10 per cent of total and 5 per cent core(tier1) capital ratio, it will be required to make good on the deficiency.”¹⁷⁷⁰

In terms of its impact on the banking sector, its effects are visible from the massive bank failures that resulted from the requirement to have a certain amount of capital. It appears that the deduction of bad debts from capital hurt bank capital significantly, especially in an era when banks had a large portfolio of bad debts.¹⁷⁷¹ Most of the local banks that were affected were unable to recapitalise their positions immediately, resulting in them being declared insolvent.¹⁷⁷² It is submitted that this was not the only reason for bank failure in the Zambian financial system, but it was nevertheless one of the major reasons for it.

¹⁷⁷⁰ Bank of Zambia (BoZ) “CB Circular No 3/96: Minimum Capital Requirements” (21 February 1996).

¹⁷⁷¹ Brownbridge (n 1547) 154–155.

¹⁷⁷² Brownbridge (n 1547) 154–155.

7.12.2 *Basel II Accord*

This area appears to have very little work done on it, bar for a paper presented by Phiri-Mambo in 2015, titled “Impact of Basel II Implementation: A Case Study of Zambia.”¹⁷⁷³ This discussion of the application of Basel II in Zambia will rely a great deal on this document, as it provides an in-depth analysis of many of the Zambian banks. Equally, the objective of the thesis should not be forgotten, in that this thesis is addressing the issue of the effect of the Basel Accords on small banks, whereas Phiri-Mambo’s¹⁷⁷⁴ work centres on the general impact of Basel II on all Zambian banks. Once again, there may be grey areas where the study will need to make inferences based on experiences in other countries.

According to Phiri-Mambo, the implementation of Basel II was supposed to prove beneficial for the Zambian financial sector. Not only for the supervised banking entities, and for the BoZ as supervisor and regulator. The benefits accruing include stability and soundness of the whole financial system.¹⁷⁷⁵ These are expected and not actual results. This means that the outcomes are yet to be evaluated. Equally, the benefits that are expected to accrue to these countries, when critically analysed, show that there is a tendency to expect standard outcomes instead of sorting out the problems that a country has individually. Basel II shows that it uses this trend for all countries irrespective of their idiosyncrasies. Once again, the one-size-fits-all approach appears to be used by the BCBS, which, from a historical standpoint, has not worked well for IMF policies around the world.¹⁷⁷⁶ So it is doubtful if it will work for the BCBSs' Basel

¹⁷⁷³ Phiri-Mambo “Impact of Basel II Implementation: A Case Study on Zambia” Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI) (2015) 1–66.

¹⁷⁷⁴ Ibid.

¹⁷⁷⁵ Phiri-Mambo (1777) 1–66.

¹⁷⁷⁶ To drive home the point that the criticism is justified see the comments by Larry Elliott and Alex Brummer GlobalPolicy.org “A Leak in the Global Economy Has Turned into a Flood Larry Elliott and Alex Brummer Audit the Plumbers” <https://archive.globalpolicy.org/socecon/bwi-wto/imf/1998/elliott.htm> (accessed 4 April 2024). In this article:

“The IMF has come under fire from economists of right, left and centre. Nobel laureate Milton Friedman led the charge from the right. He accused the IMF of being interventionist; its meddling with the invisible hand of the free market prevents economies from correcting themselves. From the economics mainstream came the charge that the IMF made a series of bad decisions. Reacting to its closure of Indonesian banks last autumn the Harvard economist Jeffrey Sachs said: ‘Instead of dousing the fire, the IMF in effect screamed fire in the theatre’. (1). [See primary source Sachs “The IMF and Asian Flu” American Prospect March-April (1998)]. From the left, two lines of attack. First, the IMF got it wrong about globalisation and, second, that it is in cahoots with the US Treasury to force Asian countries to adopt one-size-fits-all American capitalism. The big currency devaluations have made Asian assets cheap, while moves to secure complete liberalisation of capital will make it child’s play for American companies to pick up viable companies at bargain basement prices. Faced with these criticisms, the Fund fought back. In the Financial Times earlier this year, the IMF’s managing director, Michel Camdessus was asked why it had imposed its same old belt-tightening adjustment programmes on Thailand, Indonesia and Korea –programmes that were quite inappropriate to their present needs. (2). [See primary source: Financial Times: February 9, 1998.] ‘Mr Camdessus became indignant. The new agreements represented a marked departure from the IMF’s traditional

Accords. Equally, there is very little reference to individual country problems. Additionally, it should be realised that the Basel Accords come as a package that includes various other policy measures in it like sound and sustainable macro-economic policies;¹⁷⁷⁷ a well-established framework for financial stability policy formulations;¹⁷⁷⁸ well-developed public infrastructure; a clear framework for crisis management recovery and resolution;¹⁷⁷⁹ an appropriate level of systemic protection and effective market discipline.¹⁷⁸⁰ Once again, the thread that pervades this thesis comes through—that to adopt these Accords, one must have a neoliberal economic system. The requirements upon which the Accords are based are by no means neutral, philosophically or jurisprudentially speaking. However, objectively speaking, not everything about the Basel II Accords is negative. Some of the possible benefits that might accrue from implementing Basel II are as follows:

7.12.2.1 Financial stability

It is submitted that the Accords would have led to increased stability in the financial system as the bureaucrats would better understand the risks that are inherent in the financial system and how to manage them. Unfortunately, things work together in this instance. If politics takes over, then financial stability may be cast to the wind. This was evident from the actions of politicians in the last Zambian government run by the Patriotic Front, where the central bank Governor, Dr Denny Kalyalya, was dismissed and replaced by Christopher Mvunga by President Edgar

approach. They were built not on a set of austerity measures, but rather on far-reaching structural reforms to strengthen financial systems, increase transparency, open markets and restore market confidence'. These are not universally held views, even within the IMF. Joseph Stiglitz, chief economist of the World Bank, has given voice to the misgivings of the dissidents. At the start of this year, he made his feelings about the IMF austerity packages plain enough when he argued that 'you don't want to push these countries into severe recession. One ought to focus on things that caused the crisis, not on things that make it more difficult to deal with.' (3). [See primary source: The Wall Street Journal (8 January 1998). The IMF –not used to having its behaviour challenged –snapped back. Stiglitz would not be silenced. (4). [See primary source Stiglitz "Moving Towards the Post-Washington Consensus" Helsinki Lecture (January 1998). One by one, he laid into the sacred cows of the IMF. First, the cavalier way in which the emphasis on macro-economic stability ignored growth and jobs. Then there was the Camdessus argument that the need to restore confidence to the currency necessitated high interest rates. 'Are measures that weaken the economy, especially the financial system, likely to restore confidence?' There was more. Macro-economic policy needed to be expanded beyond 'a single-minded focus on inflation and budget deficits; the set of policies that underlay the Washington consensus are not sufficient for macroeconomic stability or long-term development.' The IMF is not used to such scorn. It has long enjoyed the reputation of a lean and focused bureaucracy with the world's best economic and financial staff. The Fund's view has been that the economy of one country is very much like any other and that by applying its rational, neoliberal economic model, it could restore a measure of economic stability."

¹⁷⁷⁷ n 1606, 14.

¹⁷⁷⁸ n 1606, 14.

¹⁷⁷⁹ n 1606, 14.

¹⁷⁸⁰ n 1606, 14.

Lungu, without considering the consequences of their action on the Basel Rules and the economy at large.¹⁷⁸¹ This was in the midst of a debt crisis, a downturn in the economy and an accumulation of USD11 billion of government debt¹⁷⁸² and on the back of the COVID-19 pandemic, that saw the Zambian economy enter into one of its deepest recessions in history, shrinking by 4.2 per cent in 2020;¹⁷⁸³ the first time since 1998 that the Zambian economy had contracted to this extent.¹⁷⁸⁴ The moral of the story is that the Basel Accords are only as good as the environment in which they operate in and the political support they garner from the government of the day. They do not have a rulebook that deals with exceptional circumstances as and when they occur. For example, the IMF has policies on what is called “exceptional access”, which countries can call on in times of crisis, even though it has been slow to evolve and has few precedents to rely on apart from the Mexican, Russian, and Brazilian crises of the 1990s.¹⁷⁸⁵ It is submitted that no procedures currently exist to assist a country in handling possible negative impacts on the financial sector and the country at large that may result from adopting the Accords. It is further submitted that this implies that the Accords are problem-free, which they are not, judging from the number of revisions to the Accords from their inception in 1975.

It was claimed that countries that did not adopt Basel II may find themselves competitively disadvantaged when accessing international capital.¹⁷⁸⁶ This argument appears to have some merit to it and was the reason why countries that were not members of the BCBS were still willing to implement the Accords, irrespective of their possible negative impacts. Nevertheless, it is trite to say that there are still exogenous factors that can impact the competitive standing of a country, despite having all the Basel Accords in place. Once again, politics has been seen to play a big role in a country’s competitive standing. This may occur, for instance, where a government that is anti-IMF and BCBS may take steps to distance itself from the policies of

¹⁷⁸¹ Central Banking “Zambian President Fires Central Bank Governor” (24 Aug 2020) <https://www.centralbanking.com/central-banks/governance/people/7671141/zambian-president-fires-central-bank-governor> (accessed 20 January 2024).

¹⁷⁸² Cotterill “Zambia’s President Under Fire For Sacking Bank Governor” *The Financial Times* <https://www.ft.com/content/47896075-7590-4e59-a2ea-1c36961df655> (accessed 9 February 1998).

¹⁷⁸³ Republic of Zambia *Report of the Committee on National Economy, Trade and Labour Matters on the Impact of the COVID-19 Pandemic on Zambia’s Economy* Fifth Session of The Twelfth National Assembly (2017).

¹⁷⁸⁴ Ibid.

¹⁷⁸⁵ Schwartz & Shinji ‘Chapter 2 Living with Rules: The IMFs Exceptional Access Framework and the 2010 Stand-By Arrangement with Greece’ (2017).

¹⁷⁸⁶ Ibid.

the organisations. This was evident in the actions of the Zambian government that was in power from 2011 to 2021. Seeking rather to deal with “friendly countries” like China, instead. More recently, the government of Tunisia **rejected** a USD1.9 billion bailout loan from the IMF, citing that “*A third bailout package will not provide long-term assurances for Tunisia’s economy and will exacerbate inequalities*”. This action by the Tunisian government sent shockwaves through the international community.¹⁷⁸⁷ These aspects bring home the argument that regulation created by the BCBS should aim at being as neutral as possible to avoid governments chopping and changing their economic and financial policies because of changes in a government’s political philosophy.

7.12.2.2 Non-conformity with sound market-based banking system

As a standard, banks require strong prudential regulation and supervision by a regulator; a well-developed and proper legal framework; and strong governance accounting and disclosure regimes, without which international banks may be hesitant to enter into correspondent banking relationships with banks from developing countries because they are not in line with the international supervisory standards and thus seen as risky to deal with.¹⁷⁸⁸ Once again, this does not consider countries that are hostile to standards set by institutions like the IMF and BCBS as interference with the sovereignty of a country in deciding its affairs.¹⁷⁸⁹ Such a regime will strive to set its standards regardless of the consequences.

7.12.2.3 Enhanced international perception

It is claimed that to be part of the “international clique,” to remain competitive, countries should adopt international best practices in the form of Basel I, II, and III that would allow solvency in a country’s banking sector to be measured.¹⁷⁹⁰ It can be argued that this perception is only important for internationally active banks and not for small local Zambian banks. When one compares the size of Zambian banks¹⁷⁹¹ to small international banks abroad like the American banks, Zambian banks would pale in comparison, and do not even come near small US banks

¹⁷⁸⁷ Pavia “Tunisia Was Right to Reject the IMF Deal” (2023) <https://foreignpolicy.com/2023/04/19/tunisia-imf-loan-bailout-deal-economy-saied/> (accessed 30 April 2024).

¹⁷⁸⁸ World Bank “Are Banks Cutting Off Customers in Developing and Emerging Economies?” (May 2018) <https://www.worldbank.org/en/news/feature/2018/05/02are-global-banks-cutting-off-customers-in-developing-and-emerging-economies> (accessed 14 May 2024).

¹⁷⁸⁹ See para 7.12.2.2.

¹⁷⁹⁰ n 1792.

¹⁷⁹¹ See Table 9.

in terms of their regulatory capital. Most of these small Zambian banks are not sophisticated enough in terms of the products and the services that these banks can offer as correspondent services to international banks, and as such, it is submitted that their primary aim is to survive in their own environments rather than compete with other international banks. Given time, they may be able to build themselves up and seek to carry out cross-border transactions and establish themselves in other jurisdictions, including those in developed countries. This has happened with Nigerian banks like Access bank and other local Nigerian banks,¹⁷⁹² and small Zambian banks can achieve the same soon. Therefore, it can be argued that for Zambia, many local banks have not attained the stage of development, to use Schumpeterian analogy,¹⁷⁹³ where international competition has become an important consideration for their operations, as most small banks provide basic services and are thus not sophisticated operationally.

The impact of the Accords on banks in developing countries has not yet been fully assessed at all. It is therefore trite to suggest that further in-depth assessments be made on the impact of each one of the Accords to determine their individual as well as joint impacts on these banks in general and small banks in particular. Especially that Basel III has now been adopted, implemented, and enshrined in the BFSA (2017).¹⁷⁹⁴

It appears that Basel II had the greatest bearing and influence on the Zambian financial sector. The Accord was introduced via circular BoZ Circular No 05/2007. The central bank had several seminars to educate bankers on the rudiments of the Basel II Accord, since the international banking sector has undergone significant transformations since the 1988 Capital Accord. This was driven by technological progress, financial innovation, globalisation, and improved international risk management. This evolution increased banks' complexity and risk-taking, rendering the 1988 Accord insufficient for accurately measuring all banking risks and creating systemic instability. Basel II was therefore a necessary addition to the Accords as it offered a more nuanced approach to risk, covering a broader spectrum and providing banks with a more flexible way of calculating capital risk. It also promotes stronger risk management by rewarding banks with superior practices.¹⁷⁹⁵

¹⁷⁹² Amungo & Buck "International Expansion of Nigerian Banks. Which Theories of Internationalisation prevailed?" 2017 *Nile Journal of Business and Economics* 79–96.

¹⁷⁹³ Schumpeter (n 254) 57–94.

¹⁷⁹⁴ BFSA (2017) Section 10 that deals with supervisory issues.

¹⁷⁹⁵ Bank of Zambia (BoZ) *Commercial Bank Circular No 05/2007: Implementation of the New Basel Capital Accord (Basel II) in Zambia* (2007).

Equally, the central bank focused a lot of attention on the “three pillars” of the Basel II Accord, namely (1) minimum capital requirements (addressing risk), (2) supervisory review and (3) market discipline, but more so on the element of capitalisation. In a short period of time, the minimum capital requirements were pushed to extreme levels that only the larger international banks could attain. Despite the central bank of Zambia creating a two-pronged capital approach, which provided a lower regulatory capital amount for locally incorporated Zambian banks than for international banks,¹⁷⁹⁶ the amount required for Zambian banks of 104 million Kwacha¹⁷⁹⁷ was still excessive in many respects. The immediate impact was on the small Zambian banks that were unable to recapitalise themselves fast enough due to an unsophisticated economy with not many sources of funding and a weak position from a business point of view.¹⁷⁹⁸ This put the larger, mostly foreign banks in a much stronger competitive position. The foreign banks were particularly dominant given that their parent companies were able to quickly recapitalise their subsidiaries' positions and the fact that most international banks had already attained the basic requirements for Basel II from their parent banks abroad.¹⁷⁹⁹

It must be admitted that most bank risk sensitivity was improved significantly because of the introduction of the Basel Accords. Although empirical studies in this area appear to be scant, anecdotal evidence appears to suggest that the impact of the Basel Accord on the financial sector for capital and risk management practices had a marked improvement in the capital management of Zambian banks. There appears to be more discipline in managing the banking business than previously characterised in the early 1990s, which led to over eight bank failures.¹⁸⁰⁰ But while banks performed better management-wise, they struggled in other areas as confirmed by Quirk.¹⁸⁰¹ Using in-depth panel data at the bank level, he tried to assess whether the BoZ's objectives of bolstering the financial system and expanding lending were met by the Basel Accord II. According to Quirk's results, banks were generally able to raise capital to comply with the legal requirement for statutory capital by the BoZ, which led to an

¹⁷⁹⁶ See para above.

¹⁷⁹⁷ BoZ Circular CB No.02/2012. 1.

¹⁷⁹⁸ Brownbridge (n 1547) 157–160.

¹⁷⁹⁹ Mishkin “Financial Stability and Globalisation: Getting it Right” presented at the Bank of Spain Conference (2006) 1–48 https://www.bde.es/f/webbde/Agenda/Eventos/06/Jun/Fic/Mishkin_BdE.pdf (accessed 5 March 2020).

¹⁸⁰⁰ See ch 7 para 4.6.

¹⁸⁰¹ Quirk “When Basel-Inspired Capital Regulations are Insufficient: Evidence from Zambia's use of Absolute Minimum Bank Capital Requirements” (2022) <http://dx.doi.org/10.2139/ssrn.4095879> (accessed 5 March 2020).

improvement in most banks' short-term capitalisation rates. More significantly, however, Quirk's work demonstrates that bigger banks expanded more after recapitalisation, which appears to have had an impact on the market share of smaller banks overall. This outcome is not difficult to predict and makes sense given that, since small banks generally have a higher risk profile than larger banks, it may impact their sources of capital when banks seek to recapitalise their capital positions. For Zambian banks, it is submitted that external funds are difficult to access in the market because the Zambian market currently lacks sophisticated financial instruments to support long-term funding. This puts small banks under immense pressure in terms of sourcing funds to recapitalise. The winners appear to be larger foreign banks once again. Phiri-Mambo appears to confirm this submission from her findings. In part of the conclusion to her paper, titled "Impact of Basel II Implementation: a Case Study of Zambia", she states that the paper has established that implementation of Basel II will not have the same impact on all the banks as the impact will depend on each bank's risk profile and business model.¹⁸⁰² Of equal note is the fact that the Zambian central bank's Basel II circular was released in 2007 but, according to Phiri-Mambo, had still not been implemented by 2013.¹⁸⁰³

7.12.3 *Basel III Accord*

The Basel III Accord was adopted via the BFSa (2017).¹⁸⁰⁴ Surprisingly, there was no prior indication of this through a bank circular, as had been done with the introduction of Basel II in June 2007 under Commercial Bank Circular 05/2007. Zambia's reaction to Basel III appears to have been uneventful. It is submitted that there was barely any discussion surrounding its introduction by media houses or indeed market players. This is not uncommon for developing countries. According to a Global Standards Proportionality Working Group (GSPWG) survey, more than 73 per cent of the respondents indicated that they currently do not have any mechanism to measure the impact of the Basel standards.¹⁸⁰⁵ While the survey was to measure the impact of the Basel Accords on financial inclusion, it provides a broad idea of the problems developing countries face when measuring the impacts of statistical outcomes. Equally, there

¹⁸⁰² Phiri-Mambo (n 1777) 50.

¹⁸⁰³ Phiri-Mambo (n 1777) 8.

¹⁸⁰⁴ n 1661. See in particular Part VI. Prudential Regulation and Supervision Sections 52–57.

¹⁸⁰⁵ Global Standards Proportionality (GSP) "WG Survey Report on the Implementation of The Basel Framework" (2018) 8 https://www.afi-global.org/sites/default/files/publications/2018-09/AFI%20GSP_WG_basel%20survey_AW_digital.pdf (accessed 8 March 2024).

has been very little empirical work done on the effects of the Accords in Zambia. Its overall impact appears to have been more pronounced on small local indigenous banks.¹⁸⁰⁶ As they were forced to meet the requisite central bank statutory capital requirements in a short period, often to a bank's detriment. Leaving the foreign banks that were already compliant by virtue of their connection to their international parent banks abroad in charge of the financial market. The adoption of the Basel Framework thus acts as a double-edged sword. On the one hand, tighter controls on capital and liquidity contribute to a stronger banking system that is less vulnerable to crisis, as it theoretically results in smaller output fluctuations and, thus, leads to improved safety and soundness of a financial system.¹⁸⁰⁷ The downside, on the other hand, is that money set aside by banks to increase regulatory capital can be expensive for financial institutions, particularly small ones, and may limit a bank's ability to obtain financing from capital and other financial markets due to banks suffering higher borrowing costs, lower loan volumes and increased risk.¹⁸⁰⁸ Thus, while any economy can suffer from a reduction in credit, developing countries are particularly vulnerable because of their less-developed financial systems which more often than not result in higher rates of financial exclusion.¹⁸⁰⁹

An empirical study done by Mashamba in 2018 for Zimbabwe tends to discredit this generally held view that increased capital hurts banks.

Mashaba's findings suggest that the Liquidity Coverage Ratio (LCR) does not negatively impact these banks, and contrary to popular belief, holding more liquid assets can be advantageous to banks. The study further suggests that bank profitability in emerging markets is more influenced by funding structures than asset allocation. Therefore, the implementation of Basel III liquidity regulations in these economies appears to be beneficial to the banking sector.¹⁸¹⁰

¹⁸⁰⁶ See for example the recent work of authors like Thomas Quirk in Quirk "When Basel-Inspired Capital Regulations are Insufficient: Evidence from Zambia's use of Absolute Minimum Bank Capital Requirements" (15 January 2022) <http://dx.doi.org/10.2139/ssrn.4095879> (accessed 8 March 2024).

¹⁸⁰⁷ n 1809, 8.

¹⁸⁰⁸ n 1809, 8.

¹⁸⁰⁹ n 1809, 8.

¹⁸¹⁰ Mashamba "The Effects of Basel III liquidity Regulations on Banks' Profitability" 2018 *Journal of Governance & Regulation* 2. 34–48.

7.12.4 *Basel IV Accord*

Although commonly called Basel IV, this framework is also known by various other names in different countries. In the UK, it is called “Basel 3.1” by the Bank of England. In the US, it is called “Basel III Endgame” by bodies such as the US Federal Reserve. The Originators of the framework, the BCBS, call it the “Final changes to Basel III”, the term being used by the BCBS to refer to the updates. At the time of writing this dissertation, the Basel IV Accord has not yet come into force in Zambia. It is more advanced than Basel III because it develops the previous Basel III framework further by introducing key changes and enhancements to the Basel III Accords. Included in these improvements are enhanced risk management practices, improved capital requirements, as well as further increased consistency in measuring and reporting banks’ risk exposures.¹⁸¹¹ Although not yet implemented in Zambia, it is submitted that given the various comments by experts in the area, Basel IV, when introduced, will mean that further and higher ratios will be imposed on Zambian banks. Small banks will likely not be able to comply with these further increases in capital amounts, especially since many of them are still struggling to meet the Basel III requirements.¹⁸¹² However, Tapia¹⁸¹³ shows different findings. He found that tougher capital requirements, because of the introduction of Basel IV, could be a good thing for African banks, leading them to invest more capital into their businesses. The benefit is that stricter capital rules could also boost securitisation (or selling loans as investments) and make banks more willing to take on risks, even though there might be some downsides to managing those risks. The counter to these findings is that until Basel IV is tested, the real outcome cannot be known. As such, it is more logical to see the impact of further increases in capital as having a positive impact on the large, well-capitalised banks, while for small banks it is likely to have a negative outcome.¹⁸¹⁴

It is submitted that Zambian banks, especially the small ones, may require more time to meet the latest Basel IV standards if they are to remain viable. As for the foreign banks, most have already met, or are close to meeting, these targets vicariously through their foreign parents, at

¹⁸¹¹ BIS. Basel Committee on Banking Supervision. “Basel III: Finalising post-crisis reforms” December 2017 <https://www.bis.org/bcbs/publ/d424.pdf> (accessed 11 November 2024). See also Magnus *et al.* “Upgrading the Basel Standards: From Basel III to Basel IV” Briefing. European Parliament (2017) [https://www.europarl.europa.eu/RegData/etudes/BRIEF/2016/587361/IPOL_BRI\(2016_587361_EN.P](https://www.europarl.europa.eu/RegData/etudes/BRIEF/2016/587361/IPOL_BRI(2016_587361_EN.P) (accessed 23 January 2023) 2–14.

¹⁸¹² Magnus (n 1815) 2–14.

¹⁸¹³ Tapja *Basel IV Capital Requirements and the Performance of Commercial Banks in Africa* (doctoral dissertation, Alpen-Adria-Universität Klagenfurt, 2022) 62.

¹⁸¹⁴ Ibid.

a more advanced level, and are therefore already ahead of the game. This is because foreign banks have a more diversified portfolio and have access to sources of funds from all over the world through their parent companies. According to Mishkin, this diversification means that foreign banks experience less risk and, therefore, are affected less by shocks in the financial system of their host countries.¹⁸¹⁵ What this means is that Basel IV will very likely result in the unbundling of most, if not all, of the small local Zambian banks, giving way to international banks in terms of competition; a *fait accompli* for international banks who already control over 65 per cent of the country's banking business by volume. According to an IMF study, at the end of 2022, the Zambian banking sector comprised 17 commercial banks dominated by five large banks, which collectively accounted for 65 per cent of the total financial sector assets and deposits in the Zambian economy.¹⁸¹⁶

7.13 Zambian bank's reaction to market forces

7.13.1 Competition and concentration

Once again, there is very little research done in this area for Zambia. One of the notable studies was done by Simpasa.¹⁸¹⁷ The work is almost ten years old, but it is still relevant when examining competition in developing countries like Zambia, given the dearth in empirical studies.

Simpasa contends that the Zambian banking system has a market that is highly concentrated, segmented, and controlled by a few large foreign banks.¹⁸¹⁸ He justifies his statement by showing that in 2006, out of 13 banks that existed at the time, seven (thus more than half) were subsidiaries of foreign banks. These numbers grew further in 2008 when six additional foreign subsidiaries registered themselves, increasing the number of foreign-owned banks to 14 out of a total number of 19 banks, meaning that only five banks had a local footprint.¹⁸¹⁹ Mumbi agrees with these findings in his work, which examines the relationship between risk and

¹⁸¹⁵ Mishkin "Financial Stability and Globalisation: Getting it Right" presented at the Bank of Spain Conference (8-9 June 2006) 1–48 https://www.bde.es/f/webbde/Agenda/Eventos/06/Jun/Fic/Mishkin_BdE.pdf (accessed 23 January 2023).

¹⁸¹⁶ Guzman *et al.* *IMF Country Reports* 23/257 Chitambo Bupe Zambia Selected Issues (July 2023) 4–46.

¹⁸¹⁷ Simpasa "Competition and Market Structure in the Zambian Banking Sector" Working Paper Series African Development Bank (2013) 1–29.

¹⁸¹⁸ Ibid. 1–28.

¹⁸¹⁹ Simpasa (n 1821) 1–28.

competition. Mumbi proposes that despite growth in the number of commercial banks in Zambia, the banking sector remains dominated by a few major foreign players. Market concentration data from his research reveals that bank concentration has resulted in limited competition within the banking sector, with the four largest banks, which are mostly foreign, controlling approximately two-thirds of the market.¹⁸²⁰ He substantiates his findings with Table 27:

Table 27. Firm concentration ratio since 1998¹⁸²¹

	1998	2000	2002	2004	2006	2008	2010	2012	2013	2014	2015	2016
Loans	80.9	78.3	76.2	75.5	73.6	75.7	62.9	66.4	85.6	62.6	62.3	61.7
Deposits	75.5	78.0	74.9	73.8	66.9	67.3	73.8	65.7	61.7	60.2	57.9	59.8
Assets	77.8	74.7	64.0	70.8	63.5	67.3	62.9	61.5	57.9	55.5	57.0	58.1
Bonds & Securities	58.9	58.6	69.8	71.5	60.7	62.2	64.9	66.7	62.1	54.8	59.8	60.1

Simpasa's research shows that, in terms of assets and deposits held by banks, four of the largest banks accounted for two-thirds of these assets between 2002 and 2011. Loans and advances had much higher concentrations consistent with the expansion of these banks' loan books. It shows especially that the macroeconomic conditions had shown positive improvements over this period. Despite the gains made by the big banks in terms of deposits and assets, new entrants in the form of smaller banks reduced the gains made by the large banks by as much as three per cent of the deposit market.

Table 28. Bank profitability measures, by ownership category (1998–2011)¹⁸²²

	Return on assets, ROA (per cent)				Net interest margin, NIM (per cent)			
	Foreign	Domestic	Public	All banks	Foreign	Domestic	Public	All banks
1998	4.80	0.85	2.75	3.89	5.47	2.29	0.39	3.86
1999	7.92	0.47	0.17	5.61	4.53	1.01	1.81	2.97
2000	9.99	3.12	4.32	8.16	6.72	4.17	1.66	5.74
2001	7.48	5.93	-7.16	4.7	5.65	4.81	1.82	5.35
2002	7.15	7.60	6.43	7.05	4.64	5.68	5.29	5.35
2003	5.65	6.27	0.93	4.76	2.85	5.80	0.09	3.70

¹⁸²⁰ Mumbi "Bank Competition and Financial System Stability in a Developing Economy: Does Bank Capitalisation and Size Matter? Working Paper 5/2017" BoZ (2017) 2–27.

¹⁸²¹ Simpasa (n 1821) 1–28.

¹⁸²² Simpasa (n 1821) 1–28.

2004	3.14	4.94	1.31	3.02	5.10	7.54	5.01	6.00
2005	6.52	6.99	3.15	6.00	5.25	7.71	9.15	6.70
2006	3.98	5.27	1.33	3.68	4.75	4.84	7.18	5.60
2007	2.68	3.63	..	2.83	7.07	7.26	..	7.10
2008	2.60	6.67	..	3.17	7.22	7.92	..	7.32
2009	1.37	6.10	..	1.99	8.20	7.94	..	8.16
2010	2.45	0.50	..	2.25	6.30	6.88	..	6.36
2011	3.30	0.11	..	3.40	6.33	3.95	..	6.10
Average	4.93	4.17	1.47	4.32	5.72	5.56	3.60	5.74
Note: means not applicable								

To evaluate the profitability and intensity of competitive pressures, Simpasa measured the Return on Assets (ROA)¹⁸²³ and the Net Interest Margin (NIM).¹⁸²⁴ The outcome appears to show that there is no marked difference between foreign bank subsidiaries and the domestic private banks.¹⁸²⁵ He proffers further that concentration ratios in themselves do not provide conclusive explanations for bank behaviour. Where they are relied upon, they may lead to incorrect outcomes. He believes instead that to assess banking competition, one should look at market contestability arising from the presence or absence of entry barriers.¹⁸²⁶

Conclusions from his work indicate that there was a significant element of monopolistic competitive behaviour exhibited in the Zambian banking system and that increased foreign banks' presence "*may have heightened competition as new banks priced their products below marginal cost, the initial subsidisation effect used to capture the market.*"¹⁸²⁷ It is submitted that the outcome of his study agrees with what researchers in other countries have found that

¹⁸²³ Return on Assets (ROA) is a type of return on investment (ROI) metric that measures the profitability of a business to its total assets. This ratio indicates how well a company performs by comparing the profit (net income) it generates to the capital it invests in assets. The higher the return, the more productive and efficient management utilizes economic resources. See Corporate Finance Institute (CFI) "Return on Assets Formula" <https://corporatefinanceinstitute.com/resources/accounting/return-on-assets-roa-formula/> (accessed 18 April 2024).

¹⁸²⁴ Net Interest Margin (NIM) is the difference between the interest income generated and the amount of interest paid out to lenders. It is an industry-specific profitability ratio for banks and other financial institutions that lend out interest-earning assets; Ibid. (CFI Return on Assets).

¹⁸²⁵ Simpasa (n 1821) 1–28.

¹⁸²⁶ Simpasa (n 1821) 1.

¹⁸²⁷ Simpasa (n 1821) 1.

foreign banks stimulate competition in the banking industry that they penetrate, including Zambia's. Some of these authors include Clarke *et al.*¹⁸²⁸

Yin also looked at the issue of foreign bank entry and bank competition based on cross-country heterogeneity.¹⁸²⁹

Given the analysis above, it is natural to expect that where rules like the Basel Accords increase the minimum capital required by banks to operate, this will lead to concentration in the financial market by reducing the number of banks in operation. Since 2000, there has been an increase in the number of international banks functioning in Zambia, but a reduction in the total number of small local banks in the market. It is submitted that over about six years (*circa* 2018–2024), four banks, namely Bank ABC, Atlas Mara, Finance Bank Zambia Limited, and Cavmont Merchant Bank have been taken over directly or indirectly by merger and acquisition by Access Bank and one bank has gone into liquidation substantiating Yins findings that concentration and competition reduce the number of banks in a financial market.

7.13.2 Competition and profitability

Once again in this area, the seminal work of Brownbridge¹⁸³⁰ will be relied upon, particularly for the post–1991 years. After 1991, research by Brownbridge shows that with the increased competition, there was a concomitant increase in demand for deposits so that Zambian banks could lend out more. This kind of competition, to use Ilchenko's taxonomy of types of bank competition,¹⁸³¹ alluded to earlier, would fit into what is deemed the “bank competition” category.¹⁸³² Equally, with increased competition, some small Zambian banks felt the need to

¹⁸²⁸ Clarke *et al.* “Foreign Bank Entry: Experience, Implications for Developing Economies, and Agenda for Further Research” 2003 *World Bank Research Observer* 25–59.

¹⁸²⁹ Yin “Foreign Bank Entry and Bank Competition: Cross-Country Heterogeneity” 2021 *Global Finance Journal*; Chen *et al.* “Bank Competition, Foreign Bank Entry, and Risk-Taking Behavior” 2019 *Cross Country Evidence* 106; Naaborg *Foreign Bank Entry and Performance with a Focus on Central and Eastern Europe* (internal thesis, University of Groningen, 2007).

¹⁸³⁰ Brownbridge has written extensively in these areas. Some of the works include Brownbridge's “The Causes of Financial Distress in Local Banks in Africa and Implications for Prudential Policy” (March 1998). See para 7.4. above.

The causes of financial distress in local banks in Africa and implications for prudential policy. See Brownbridge & Gockel *Banking in Africa: The Impact of Financial Sector Reform Since Independence* (1998); Brownbridge “Financial Distress in Local Banks in Kenya, Nigeria, Uganda, and Zambia Causes and Implications for Regulatory policy” 1998 *Development Policy Review* 173–188. See also even though it is more related to Ghana some areas relate to Zambia and developing countries.

¹⁸³¹ Ilchenko *Competition in the Banking System: Definition and Types* (2013) 385–389 385.

¹⁸³² See ch 6 para 6.4.4.

expand their branch networks as a means of soaking up all the possible client deposits that had been left unattended by other bigger banks,¹⁸³³ including the large foreign banks.¹⁸³⁴ As a means of attracting deposits, these banks used a range of strategies that included offering higher rates on deposits. As banks could now freely operate foreign exchange accounts under the new dispensation,¹⁸³⁵ they not only offered foreign exchange accounts but also gave better rates than foreign banks for foreign currency trades as a means of attracting depositors.¹⁸³⁶ This was as a result of the central bank taking bold steps in 1993 towards a more market-oriented financial system, according to Maimbo and Mavrotas.¹⁸³⁷ These steps involved the following changes to the operations of the BoZ:

1. **Interest rates.** The BoZ transitioned from directly setting interest rates to holding weekly auctions for treasury bills. This allowed the market to determine interest rates.¹⁸³⁸
2. **Bank regulations.** The BoZ loosened restrictions on the amount of cash banks were required to hold (liquidity ratios). They also began using open market operations through the sale and repurchase of bank deposits to influence market interest rates.¹⁸³⁹
3. **Lending and deposits.** By 1993, banks gained the freedom to set their own interest rates for loans and deposits.¹⁸⁴⁰
4. **Exchange rates.** The Kwacha's value became more flexible, reflecting its actual market value. Weekly auctions were introduced to determine the exchange rate.¹⁸⁴¹

¹⁸³³ Brownbridge (n 1547) 151–155.

¹⁸³⁴ Brownbridge (n 1547) 151–155.

¹⁸³⁵ Brownbridge (n 1547) 151–155.

¹⁸³⁶ Brownbridge (n 1547) 151–155.

¹⁸³⁷ Maimbo & Mavrotas “Financial Sector Reforms and Savings Mobilization in Zambia” WIDER Discussion Paper (2003) 1–23.

¹⁸³⁸ Ibid. 6.

¹⁸³⁹ Maimbo (n 1841) 7.

¹⁸³⁹ Maimbo (n 1841) 7.

¹⁸⁴⁰ Kani “Central Banking and Macroeconomic Stability” paper presented at the Bank of Zambia International Conference (1996) 21.

¹⁸⁴¹ Muke ‘The State of Banks in Zambia’ paper presented at a Senior Auditors Seminar in Siavonga, Bank of Zambia, Lusaka (1996). 2.

5. **Foreign exchange controls.** By early 1994, all limitations on foreign exchange were lifted. Businesses no longer needed licenses to import or export, and exporters, including the Zambia Consolidated Copper Mines (ZCCM), could retain all their foreign earnings.¹⁸⁴²

All these changes aimed to create a more open and market-driven financial system in Zambia. They also allowed depositors to withdraw their money before the term, as opposed to the foreign banks that were more inflexible in this regard.¹⁸⁴³ Meridien BIAO was the first bank in Zambia to offer a debit card with a chip in it that could hold various foreign currencies.¹⁸⁴⁴ Local banks also tried to be more flexible and innovative when it came to offering services to the customers, much to the ire of the big foreign banks.¹⁸⁴⁵ Some of the competitive approaches that were used were not efficient, but a threat to the very viability of the banks using them. Some of these practices included offering customers higher deposit rates than the average rates pertaining to the Zambian financial market.¹⁸⁴⁶ This type of behaviour appears to agree with Chorafas' findings, where he posited that low bank profitability may be an indicator of one of two things—either intense competition or inefficiency in the banking or financial sector itself.¹⁸⁴⁷ In the case of Zambia, both elements appear to have been present. The suggested solution to address the problem by allowing the regulator to intervene.

7.13.2.1 The position after 2000

After 2000, there appeared to be more stability in the financial sector because of the intervention of the BoZ as the regulator. Most of the very competitive local banks had failed between 1995 and 31 December 1999, essentially reducing the stock of local banks considerably. The small local banks that survived had fewer customers as most depositors moved their business to the larger foreign banks, which were considered more stable and less risky. The cost of these bank failures was high in terms of their impact on the reputation and

¹⁸⁴² Kani (n 1844) 21.

¹⁸⁴³ Brownbridge (n 1547) 154.

¹⁸⁴⁴ Brownbridge (n 1547) 154.

¹⁸⁴⁵ Brownbridge (n 1547) 154.

¹⁸⁴⁶ Brownbridge (n 1547) 154.

¹⁸⁴⁷ Chorafas (n 1275). See ch 6 par 5.

credibility of the central bank, especially since it resulted in commercial bank overdrawn accounts with the central bank in excess of USD30 million.¹⁸⁴⁸ Table 29 shows these changes.

Table 29. Bank profitability measures by ownership category (1998–2011)¹⁸⁴⁹

	RETURN ON ASSETS, ROA (PER CENT)				NET INTEREST MARGIN, NIM (PER CENT)			
Year	Foreign	Domestic	Public	All banks	Foreign	Domestic	Public	All banks
1998	4.80	0.85	2.75	3.89	5.47	2.29	0.39	3.86
1999	7.92	0.47	0.17	5.61	4.53	1.01	1.81	2.97
2000	9.99	3.12	4.32	8.16	6.72	4.17	1.66	5.74
2001	7.48	5.93	-7.16	4.7	5.65	4.81	1.82	5.35
2002	7.15	7.60	6.43	7.05	4.64	5.68	5.29	5.35
2003	5.65	6.27	0.93	4.76	2.85	5.80	0.09	3.70
2004	3.14	4.94	1.31	3.02	5.10	7.54	5.01	6.00
2005	6.52	6.99	3.15	6.00	5.25	7.71	9.15	6.70
2006	3.98	5.27	1.33	3.68	4.75	4.84	7.18	5.60
2007	2.68	3.63	..	2.83	7.07	7.26	..	7.10
2008	2.60	6.67	..	3.17	7.22	7.92	..	7.32
2009	1.37	6.10	..	1.99	8.20	7.94	..	8.16
2010	2.45	0.50	..	2.25	6.30	6.88	..	6.36
2011	3.30	0.11	..	3.40	6.33	3.95	..	6.10
Average	4.93	4.17	1.47	4.32	5.72	5.56	3.60	5.74
Note: means not applicable								

7.13.3 Competition and stability

While Beck¹⁸⁵⁰ failed to find a clear and conclusive relationship between bank competition and financial instability generally, the case for Zambia appears to indicate that competition created instability and bank failure, especially for the period 1994 to 1998. His findings show that excessive competition can cause fragility in a banking system, as the competition-fragility theory postulates that banks in banking systems with intense competition are less concentrated and have less market power, which will weaken the banks' charter values.¹⁸⁵¹ It also agrees

¹⁸⁴⁸ Maimbo "The Diagnoses and Prediction of Bank failure in Zambia. 1990–1998" 2002 *Development Policy Review* 261–278.

¹⁸⁴⁹ Simpasa "Competition and Market Structure in the Zambian Banking Sector" Working Paper Series African Development Bank (2013) 1–69.

¹⁸⁵⁰ Beck *et al.* *Bank Concentration and Crisis: The Digest* (2004) 1–42 <https://www.nber.org/digest/feb04/bank-concentration-and-crisis> (accessed 21 December 2022) See ch 6 para 3.3.

¹⁸⁵¹ Alam *et al.* "Does Competition Make Banks Riskier in Dual Banking System?" 2019 *Borsa Istanbul Review* 34–43.

with Beck's other findings that when this kind of instability takes place, it may be necessary to place certain fetters on competition to reduce it in order to preserve stability in a banking system.¹⁸⁵²

Regardless, it can be argued that from 2000 to date, the correlation between competition and stability has become unclear once again. It is thus submitted that it may be that competition has to be at a very high level and occur in a free market for it to affect the stability of a financial system substantially.

One point that can be strongly argued, however, is that when competition is stiff, the regulator should put fetters on the market. It can be argued that the central bank should put fetters in terms of protecting small, vulnerable banks from extinction. It can also be argued that by introducing the Basel Accords, the large foreign banks are given undue advantage because of their strong support from very liquid parent banks against which small banks cannot compete.

7.13.4 Bank consolidation and concentration

As we saw in Chapter 6,¹⁸⁵³ bank consolidation simply means when one or more banks take over or merge with another bank for various reasons. On the other hand, "bank concentration", according to Beck *et al.*, may be defined as the share of assets of a country's three largest banks.¹⁸⁵⁴ To try and put this into perspective, one should take the current share of the three largest banks to assess their size and influence in terms of concentration. In terms of ranking, the top 10 banks are First National Bank of South Africa (FNB), Standard Chartered Bank (SCB), ZANACO, Absa, Stanbic Bank, Atlas Mara, Indo Zambia Bank, AB Bank, Access Bank, and Natsave (Bank).

This shows that Zambia follows very closely behind Western countries in terms of the rapid consolidation of banks through mergers or acquisitions. While the large foreign banks appear to have remained stable in Zambia, small banks continue to be swallowed up by the much larger banks, leaving the larger better-capitalised banks to operate in the market, thus increasing bank concentration following the rules laid down by authors such as Beck, Demiurgic-Kunt, and

¹⁸⁵² Beck (n 1854) 1. See ch 6 para 4.2.

¹⁸⁵³ See para 4, 3.

¹⁸⁵⁴ Haakantu "Effects of Mergers and Acquisitions on the Financial Performance of Commercial Banks in Developing Countries –A Case of Zambia" 2022 *Open Journal of Business and Management* 3114–3131.

Levine in their paper, “Concentration and Crisis”, alluded to in Chapter 6¹⁸⁵⁵ of this thesis. As Zambian banks are still settling down after several mergers, it is too soon to determine what the eventual outcome will be. Once again, this is a very fertile ground for further research and investigation.

Notably, later in this thesis, it will be argued that the Basel Accords are responsible for “forced” mergers and acquisitions,¹⁸⁵⁶ particularly after the introduction of Basel III in November 2010.

7.13.5 Competition and banking risk

While taking risks is a central pillar of any banking activity, it is surprising that not much work has been done in Zambia, let alone in other African or developing countries. Researchers, such as Akande *et al.*, have attempted to examine competition and risk in their work,¹⁸⁵⁷ and have concluded in their findings that credit and overall default risk are positively correlated in the sub-Saharan region and that these risks tend to add to the fragility of banks in a competitive banking environment.¹⁸⁵⁸ This would suggest that banks would be weakened by competition. Anecdotal evidence appears to show otherwise. The bank failure rate for Zambia has been significantly low with only one bank—Intermarket Banking Corporation (IBC)—failing as a result of the central bank taking possession of it on 28 November 2016¹⁸⁵⁹ because it could not “pay its debts as they fell due”, which according to experts in insolvency law, like Finch and Goode, indicates that a business and, in our case a bank, is insolvent.¹⁸⁶⁰ This was after a protracted battle with low capital levels as a result of cross-border issues and political interference in the parent bank’s country of domicile. Interestingly, IBC did not attract any suitors and was eventually taken over by the Industrial Development Corporation (IDC), a

¹⁸⁵⁵ See para 3.4.

¹⁸⁵⁶ See ch 6 para 6.5.

¹⁸⁵⁷ Akande *et al.* “Competition and Commercial Banks Risk-Taking: Evidence from Sub-Saharan Africa Region” 2018 *Applied Economics* 4774–4787.

¹⁸⁵⁸ Akande (n 1861) 4774–4787.

¹⁸⁵⁹ Bank of Zambia site <https://www.boz.zm/> (accessed 27 November 2024)

¹⁸⁶⁰ Finch & Milman *Corporate Insolvency Law: Perspectives and Principles* 3 ed (2017) 119. A company is insolvent for the purpose of the law if it is unable to pay its debts See Van Zwieten Goode *on Principles of Corporate Insolvency Law* 5 student ed (2019). According to the Zambian Corporate Insolvency Act 2017 Part I Preliminary Provisions Section 2. Interpretation at page 293, “insolvent” means having liabilities that exceed the value of assets, having stopped paying debts in the ordinary course of business or being unable to pay them as they fall due.

state-owned enterprise (SOE) set up by the Zambian government and whose mandate is to spearhead Zambian government investment agendas.¹⁸⁶¹

Mwape appears to debunk the idea that competition increases risk-taking behaviour. He believes that competition is good in that it reduces the cost of borrowing.¹⁸⁶² He argues that in Zambia, the banking sector is segmented, which leads to differentiation in terms of good products and services. So, when a new bank enters the market, the effect on competition will be different depending on which segment is entered. For instance, if the entrant enters the dominant segment, comprising mainly of subsidiaries and large international banks, this is likely to yield a positive result on competition in general.¹⁸⁶³ Generally, if the entrant decides to enter the tail end of the sector, such a new entrant may not have any significant impact at all and may end up being a cost in terms of supervision.¹⁸⁶⁴ Overall, Mwape appears to confirm that the argument for entrance into the financial sector is not clear-cut for Zambia.¹⁸⁶⁵ He also acknowledges that the market needs new players in some of the segments to balance competition out.¹⁸⁶⁶ He remarks that whether to allow new banks into Zambia's market is a complex issue with no simple resolution. Assessing competition and market saturation requires a nuanced, sector-specific approach. While certain market segments would benefit from new entrants to increase competition, entry into other segments should be carefully managed due to the existing limited competition and the increased regulatory burden associated with new banks.¹⁸⁶⁷

7.13.5.1 Bank concentration and performance

Going back to Radecki,¹⁸⁶⁸ who consolidated the link between concentration risk and profitability, an attempt will now be made to evaluate Zambia's position for concentration risk and performance. For this, the thesis will rely on the findings made by Simpasa and Pla's study

¹⁸⁶¹ IDC home page <https://www.idc.co.zm>.(accessed 27 November 2024)

¹⁸⁶² Mwape 'Post-crisis Financial System Regulation: Implications for Zambia' in Adam *et al.* (eds) *Zambia: Building Prosperity from Resource Wealth, Africa: Policies for Prosperity* (2014).

¹⁸⁶³ Mwape (n 1866) 169.

¹⁸⁶⁴ Mwape (n 1866) 169.

¹⁸⁶⁵ Mwape (n 1866) 169.

¹⁸⁶⁶ Mwape (n 1866) 169.

¹⁸⁶⁷ Mwape (n 1866) 169.

¹⁸⁶⁸ See ch 6 para 6.4.5.

on Zambia.¹⁸⁶⁹ As a whole, the outcome of their research confirms that bank lending in Zambia is highly concentrated. Notably, the research examined concentration from a sectoral perspective rather than from a total perspective. This makes sense as developing countries normally do not have activity in all sectors of the economy, which may affect the research results. To drive the point home: when we examine sectoral activity in loans and advances in Table 18, some sectors of the economy are inactive, especially more specialised areas like technology. The research outcomes show that for construction, manufacturing, agriculture, and energy, very few banks accounted for the major credit allocated to this sector. One of the possible reasons may be the size of the loans and possible policy measures that may stop a government institution from dealing with private financial institutions. However, this assertion needs to be proven empirically to validate it. It was also found that small banks have the least diversified credit portfolios. Their exposure to the manufacturing, construction, agriculture, and energy sectors was lower than for other bank categories by less than five per cent of the total loans to the banking industry.¹⁸⁷⁰ This appears to reinforce the statistics in Table 18.

The outcome of this study seems to indicate the importance of examining the links between bank concentration and bank performance on a sector-by-sector basis, rather than a country-by-country basis, as was suggested by Radecki. The findings obtained appear to corroborate research findings for countries with small banks, suggesting that the results are likely to be different. In terms of the profit structure relationship, it is submitted *prima facie* that profitability and concentrations of market share tend to follow Berger's research findings as discussed in Chapter 6.¹⁸⁷¹ Nevertheless, more research still needs to be done on small banks to confirm these assertions empirically.

In concluding their findings, Simpasa and Pla posit that reform of the financial sector shows inconsistencies between policy reform expectations and the actual outcome that was expected.¹⁸⁷² They maintain that credit provision to the private sector has remained low and concentrated in a few sectors only. Of these, small banks tend to have less diversified credit portfolios than medium and large banks.¹⁸⁷³ This is particularly concerning because banks were

¹⁸⁶⁹ Simpasa *et al.* *Sectoral credit concentration and bank performance in Zambia. Working Paper* (2017) 1–24.

¹⁸⁷⁰ Ibid 13.

¹⁸⁷¹ See ch 6 para 4.5.

¹⁸⁷² Simpasa (n 1873) 13.

¹⁸⁷³ Simpasa (n 1873) 13.

seen to view “putting their eggs in one basket” as the best strategy. Simpasa and Pla appear to suggest that policymakers emphasise additional risk mitigation measures rather than merely prescribing limits on sectoral exposures.¹⁸⁷⁴ They warn that particular attention must be given to small banks, which in general have a low credit risk.¹⁸⁷⁵ The last statement fortifies the notion that small banks must be protected as they are useful to an economy in terms of service provision and ultimately the development of the small-scale sectors of the country.

7.13.6 Profit structure relationships

As far as Jeon and Miller’s study¹⁸⁷⁶ goes, there are few or no research records in this area of banking. It is only trite, therefore, to extrapolate their findings and try and make inferences for banks in Zambia. Such a task is by no means an easy feat, especially with the dearth of statistical information for longer periods. Effectively when applying Jeon and Miller’s findings to Zambia, it appears that they agree in part, with the idea that, despite the rise in concentration in the top banks, the percentage of deposits held by the top three banks in Zambia did not change significantly during the period associated with mergers and acquisitions activity in Zambia.¹⁸⁷⁷

It is further argued by Jeon and Miller that higher bank profits lead to more profitable banks entering mergers. The new bank entries lead to a further concentration of the financial market as these new banks merge with smaller and more vulnerable banks.¹⁸⁷⁸ This appears to be the case for many of the small banks in Zambia. However, it is not very clear whether the profits that were used to carry out the mergers and acquisitions¹⁸⁷⁹ were generated outside of Zambia or from internal activities, and this aspect would need to be investigated further.

7.14 The consequences of market concentration and competition

It appears that one of the main consequences of market concentration and competition is increased merger and acquisition activity. Scholars have shown that this trend started in developed countries and has now shifted to developing countries. Where there is a lot of activity and where there is a large stock of small banks, it appears that mergers and acquisitions activity

¹⁸⁷⁴ Simpasa (n 1873) 13.

¹⁸⁷⁵ Simpasa (n 1873) 13.

¹⁸⁷⁶ See ch 6 para 4.6.

¹⁸⁷⁷ Jeon (n 1246) 2–23.

¹⁸⁷⁸ Jeon (n 1246) 2–23.

¹⁸⁷⁹ See ch 6 para 6.5.

increase gradually. However, many developing countries have few indigenous small banks, and often, the activity is quickly ended. In Zambia, it appears that mergers and acquisitions activity is a result of the need to survive rather than from direct competition itself. Small banks appear to have suffered because of the increased capital requirements set by the central bank, thus making them easy targets for stronger, more robust banks looking to get a foothold in the Zambian financial market via mergers and acquisitions.

As stated in previous chapters of the work, it cannot be denied from what we have seen, that the introduction of the Basel III Accord was a catalyst that helped to open the floodgates to merger and acquisition activity in the Zambian banking sector as it did in the other countries like Kenya and Nigeria that were seen previously. Due to the small number of banks in Zambia, the feeding frenzy was short-lived and over in a relatively short time. It is not clear what the overall impact of these mergers will be in the long run, as these are new transactions and the outcomes have yet to be determined. The caveats that were provided in the last chapter are likely to come to pass for some but not all of these mergers. What is important, however, is its impact on the stock of small Zambian banks. The next section of the work will examine the various mergers and acquisitions that have occurred in Zambia since 2010.

7.14.1 The merger between Atlas Mara Limited and Finance Bank Zambia Limited

Atlas Mara Limited formally acquired Finance Bank on 30 June 2016, to become the fifth largest bank in Zambia in terms of combined assets of approximately USD567 million and with a branch footprint of 65 branches, 176 automated teller machines, and 23 agencies.¹⁸⁸⁰ A brief history of the individual banks that were merging can be seen below.

7.14.2 History of Finance Bank Zambia Limited

Finance Bank Zambia (FBZ) was incorporated in Zambia on 23 September 1986. It was licensed by the BoZ on 6 August 1986.¹⁸⁸¹ After operating for many years in the market, the bank was plagued by a combination of political interference and corporate governance

¹⁸⁸⁰ AtlasMara “Two Banks have Become One” http://atlasmarazambia.com/wp-content/uploads/2018/01/ATMA-INSERT-final_A4.pdf. See also “Atlas to Build Zambia Largest Bank with Acquisition of Finance Bank” (10 November 2015) <https://www.zambiainvest.com/finance/banking/atlas-to-build-zambia-largest-bank-with-acquisition-of-finance-bank/> (accessed 13 October 2022); AtlasMaraZambia.com “About” <https://atlasmarazambia.com/about-atlas-mara/> (accessed 13 October 2022).

¹⁸⁸¹ Finance Bank (LinkedIn presence) <https://www.linkedin.com/company/finance-bank-z-ltd/?originalSubdomain=zm> (accessed 13 October 2022).

issues.¹⁸⁸² The Economics Intelligence Unit (EIU) felt that it was more a sign that the central bank was carrying out its supervisory responsibilities effectively, rather than it being a case of political interference.¹⁸⁸³ As a result of the foregoing, the central bank ended up seizing the bank from its shareholders in 2010. Anecdotal evidence seems to suggest that some of the breaches in banking procedures that were purportedly committed included elements of insider lending. The director of bank supervision at BoZ at the time said that the insider borrowing involved some shareholders, directors, and senior management.¹⁸⁸⁴ There were also issues

¹⁸⁸² For example, the Watchdog Newspaper in their article titled: Finance Bank profitability exposes MMD selfish motives- Chikwanda. Quoted the finance minister Mr Alexander Chikwanda as saying that “Their (FBZ’s) profitability reveals that people (MMD) had ill-conceived motives. It had nothing to do with the performance of the bank and that is why we restored the ownership to the previous owners.

¹⁸⁸³ Economist Intelligence Unit (EIU) “The Central Bank Takes Over the Operations of FBZ” (1 January 2011) <https://country.eiu.com/article.aspx?articleid=647727649&Country=Zambia&topic=Economy&subtopic=Recent+developments&subsubtopic=Economic+performance:+The+central+bank+takes+over+the+operations+of+FBZ> (accessed 13 October 2022).

¹⁸⁸⁴ Part of the Gazette reported some of the gave the rationale for the possession of Finance Bank Zambia Limited by BoZ as continued failure, and weak corporate governance coupled with risk management systems, Finance Bank through its shareholders, directors or senior management, either collectively or individually, violated various provisions of the BFSFA and its Statutory instruments (SI). These included:

Section 23 (2) (Limitation on voting control) Dr Mahtani, through Finsbury Investments Limited, with shares held by nominees or otherwise, effectively controlled 56.5 per cent shareholding in contravention of the 25 per cent limit.

Section 35 of the BSFA (disclosure of Interest) –failure to disclose interests relating to contracts, facilities, proposed contracts or facilities with Finance Bank.

Section 33 (conduct of directors, chief executive officers and managers) where these failed to act in the best interest of Finance Bank and failure to exercise due care, diligence and skill by allowing indiscriminate approvals and granting of loans to insiders contrary to sound lending practices.

Section 73 of the BFSFA and SI 96 on limitations of granting of loans exposed Finance Bank to a single risk exposure of 62 per cent being an exposure in excess of the statutory limit of 25 per cent of regulatory capital as evidenced by the aggregate exposure of three borrowers, who were Zambezi Portland Limited, Cladava Mining and Ital Terrazzo as a common enterprise.

Section 77 on unsafe and unsound banking practices where the bank’s lending relationship with insider companies departed from sound lending principles and breaches of banking regulations. In addition, management repeatedly failed to comply with the provisions of the law and recommendations from previous inspection reports.

Section 52, breach on credit administration as it failed to keep required credit information on credit files.

Section 36 (a) and CB circular 01/2009 on submission of prudential return where the bank was issuing false or misleading statements through returns, especially on insider loans classification and provisioning.

Finance Bank was in breach of regulation nine of SI 97 of 1996 (insider lending) in which it failed to maintain, adduce or procure board resolutions and supporting credit appraisal documentation to evidence participation by other board members in the approval of the loans to all insiders as prescribed.

It was in breach of regulations 17 (I) and 18 (I) of SI 142 (classification and provisional loans) as it failed to classify non-performing loans and advances as required by regulation 17 (I) and as a result the bank’s provisions fell short of the minimum provisioning requirements as provided for in regulation 18 (I).The bank failed to maintain, adduce or procure an effective loan review system, thereby violating regulation 5 (I) of SI 142 (classification and provisioning of loans). The Gazette Notice concluded that the shareholders, directors and senior management, whether acting individually or collectively, perpetuated breaches of various provisions of the BFSFA,

relating to a breach in shareholding by key shareholders that led to the termination of shareholder interests in the bank. The shareholding, when examined, appeared to be a convoluted arrangement. Shares were held in finance banks by Finsbury, Clarkwell Limited, and JAT Samuel, by complex trust and transfer arrangements. When looked at in more detail, it turned out that the beneficial ownership in the bank was not that of the declared shareholders and trustees, but ownership pointed to the executive chairman of Finsbury-Rajan Mahtani.¹⁸⁸⁵ Consequently, BoZ took possession of the bank on 10 December 2010. The bank was later sold for US\$5.4 million to South Africa's First Rand Merchant Bank, giving the South African bank a foothold in Zambia. Unfortunately, this decision was reversed on 7 October 2011, without giving clear reasons for doing so.¹⁸⁸⁶ The Bank was later handed back to the previous shareholders and continued to operate normally.¹⁸⁸⁷

7.14.3 *BancABC*

To understand the impact of the merger, we need to understand the genesis of BancABC before it merged with Atlas Mara and Finance Bank. Initially, BancABC fell under ABC Holdings, which is domiciled in Botswana. The holding company established itself by merging two banks in Botswana in 1997: First Merchant Bank and Heritage Investments Limited (HIB). Outside of Botswana, the business was spread sparsely across Southern and Eastern Africa in Mozambique, Tanzania, Zambia, and Zimbabwe. Before the merger, BancABC Group's assets were valued at about USD1.81 billion. In Zambia, BancABC was originally known as African Banking Corporation.¹⁸⁸⁸

other applicable legislation and statutory instruments and that the shareholders, directors and senior management, whether acting individually or collectively were, therefore, not fit and proper persons to discharge their responsibilities in the best interest of Finance Bank. With the foregoing, the BoZ decided to take prompt remedial measures through possession. The characterisation of this action as nationalisation, therefore, appears to have been an attempt to politicise this action, while the hysterical prediction of a run, and possible closure of the bank, must have been meant to mask facts which may be known sooner than later. See Government of Zambia "Government Gazette No 5943 Gazette Notice No 815 of 2010. Vol XLII No 97" (31 December 2010) 813–816 <https://zambiandemocracy.wordpress.com/wp-content/uploads/2012/06/government-goazette-31-dec-2010.pdf> (accessed 15 May 2024).

¹⁸⁸⁵ Bank of Zambia (BoZ) "Annual Report 2010" 50 (2010) <https://www.boz.zm/BOZAnnualReport2010.pdf>. (accessed 15 May 2024).

¹⁸⁸⁶ Reuters "South Africa's FirstRand to pay \$5.4 million for Zambian assets" <https://www.reuters.com/article/ozabs-firststrand-zambia-20110912-idAFJ0E78B0F620110912> (accessed 15 May 2024).

¹⁸⁸⁷ n 1890.

¹⁸⁸⁸ Bank ABC profile https://www.bancabc.com/documents/comp_profile_2013.pdf (accessed 27 November 2024).

Atlas Mara was founded on November 28, 2013, by former Barclays Bank executive Bob Diamond, and Ashish Thakkar through Atlas Merchant Capital LLC and Mara Group Holdings Limited. Atlas Merchant held 80 per cent while Mara Group held 20 per cent of the venture. Atlas Mara Limited, a relative newcomer to the African Banking scene, started out as Atlas Mara Co-invest Limited. Its specific mandate was to acquire target banks in Africa.¹⁸⁸⁹

Atlas Mara Limited is a majority stakeholder in ABC Holdings, the parent company of sub-Saharan African banks operating under the BancABC brand. In 2016, Atlas Mara as part of the sub-Saharan African financial services group, acquired 100 per cent of Finance Bank of Zambia Plc (FBZ), subject to selected conditions precedent and requisite regulatory approvals. FBZ was at the time, Zambia's sixth-largest bank. During its 30-year history and roots as an independent Zambian financial institution, FBZ created a formidable retail franchise. The acquisition positioned the merged bank as one of the largest banks in terms of branch footprint in Zambia, with an increase in the physical presence. Therefore, the combination of FBZ with Atlas Mara's Zambian subsidiary, African Banking Corporation Zambia Limited (BancABC Zambia), resulted in the creation of Zambia's largest bank by branch network and the fifth-largest bank by asset size with combined assets of approximately US\$ 418 million.¹⁸⁹⁰ It created the largest branch network in the country. The merger facilitates Atlas Mara's goal of increasing financial inclusion and providing customers with enhanced access to an expanded suite of innovative products, such as co-branded fuel cards with Puma Energy, an "e-voucher" programme for small farmers, and pre-paid disbursement cards for pensioners. The acquisition of FBZ is another important step in the execution of Atlas Mara's strategy to build sub-Saharan Africa's premier financial institution, in part, by becoming a large-scale participant in the countries of operation.¹⁸⁹¹ However, in January 2024, Atlas Mara was acquired by Access Bank Zambia. This immediately put Access Bank Zambia in the top five banks in Zambia when measured in terms of total assets, with further predictions by its senior management that it is

¹⁸⁸⁹ BancABC site <https://www.bancabc.com> (accessed 13 October 2022).

¹⁸⁹⁰ AtlasMaraZambia.com "About" <https://atlasmarazambia.com/about-atlas-mara/> (accessed 13 October 2022).

¹⁸⁹¹ DLA Piper "Mergers and Acquisitions" <https://www.dlapiperafrica.com/en/zambia/services/corporate/mergers.html> (accessed 13 October 2022).

likely to be ranked in the top three banks in Zambia by 2027.¹⁸⁹² Commenting on the merger, Dr Herbert Wigwe, the Group Chief Executive Officer of Access Holdings, mentioned that Access Bank's goal of becoming the leading African bank in Africa takes a major step forward with the achievement of this merger, as it combines the strengths and values of both the merged organisations, which further positions the business to create opportunities for Bank stakeholders both in Zambia and the wider Southern African region as well.¹⁸⁹³

7.14.4 The merger between Access Bank and Cavmont Bank

On 6 January 2021, Access Bank acquired Zambia's Cavmont Bank.¹⁸⁹⁴ This enabled Access Bank to emerge as a stronger and well-capitalised banking franchise with improved scale and capacity to deliver sustainable and best-in-class financial services in the Zambian market. Growing its presence in Zambia remains a strategic priority for Access Bank, and with the conclusion of the proposed merger with Cavmont, the bank looks forward to realising the synergies from the transaction and achieving further growth of the combined platform to the benefit of all stakeholders. This merger and acquisition placed the Zambian subsidiary into one of the top 10 banks in Zambia, adding that Access Bank Zambia now acquires the entire issued ordinary share capital, assets, and liabilities of Cavmont Bank.¹⁸⁹⁵

This merger provides Access Bank Zambia's customers with access to a wider branch network across the country, while Cavmont Bank's customers benefit from Access Bank's best-in-class digital capability, trade finance expertise and international banking, including products such as

¹⁸⁹² Access Bank. *Press Release: Completion of the Acquisition of Atlas Mara Zambia by Access Bank (Zambia) Limited*. January 8, 2024, Lagos, Nigeria. <https://www.theaccesscorporation.com/2024/01/08/completion-of-the-acquisition-of-atlas-mara-zambia-by-access-bank-zambia-limited/> (accessed 10 December 2024).

¹⁸⁹³ Ibid.

¹⁸⁹⁴ Before being acquired Cavmont Bank was a registered commercial bank established in 2004 and based in Lusaka, Zambia. Cavmont's services included personal banking, business banking services, and treasury management. The Bank was established following a merger between Cavmont Merchant Bank and New Capital Bank. Following a merger between Cavmont Merchant Bank Ltd and New Capital Bank Plc in 2004 and later merged with Capricorn Holdings in 2008. Cavmont Bank grew its presence as a commercial bank in Zambia with a geographic coverage that included 19 branches across Zambia in major towns and districts like Lusaka, Chingola, Ndola, Kitwe, Chililabombwe, Mbala, Mpulungu, Solwezi, Chipata, Kasama, Mansa, Mwense and Mufumbwe. The Bank had more than 50,000 clients and 240 employees at the time of its acquisition. Cavmont was listed on the Lusaka Securities Exchange before it was acquired by Access Bank (NSA: ACCE) on February 7, 2021. Cavmont Bank: Bringing International Standards to Zambia. Published 26 June 2015 <https://www.africaoutlookmag.com/company-profiles/448-cavmont-bank> (accessed 4 November 2024).

¹⁸⁹⁵ Access Bank Zambia "Access Bank Zambia and Cavmont Capital Holdings" <https://zambia.accessbankplc.com/pages/media/access-news/Access-Bank-Zambia-and-Cavmont-Capital-Holdings-Za.aspx> (accessed 13 October 2022).

Access-Africa that allows customers to instantaneously send and receive money across Africa and beyond. Through this merger, Access Bank Zambia and Cavmont Bank play a bigger role in Zambia's economic recovery by building on Cavmont Bank's contributions to develop small and medium enterprises (SMEs) and making Access Bank's trade finance, treasury, and corporate lending expertise available to Zambian multi-national corporations (MNCs) and SMEs via the enhanced distribution network.

7.14.5 The merger between Investrust Bank and Bank of Nevis International

Lusaka Securities Exchange (LuSE) listed Investrust Bank Plc to have a new shareholder, Bank of Nevis International (BONI), which has successfully purchased 24.08 per cent of the indigenous bank's stake. Nevis is the smaller of the two islands comprising the nation of Saint Kitts and Nevis in the Caribbean, West Indies. BONI, a bank incorporated under the Nevis Companies Ordinance, Cap 7.06 of the laws of St. Christopher and Nevis in 1998, between March 05–15, 2021, acquired 1966 199 ordinary shares representing a 24.08 per cent stake in Investrust Bank Plc.¹⁸⁹⁶

The Investrust case signals that the structure of the Zambian banking industry does not favour local start-up bank growth. Investrust Bank Plc has struggled to grow its client base and as such, grappled to drive growth to the extent that the new shareholder has had to rethink the bank's penetration strategy. It is submitted that the central bank will have to assist the indigenous banks to grow through accommodative policies that focus on servicing local clients as opposed to competing with international banks that are well-capitalised. This could provide a license restructuring requirement. Investrust tried to grow too fast in too short a space, which cost the financial institution performance. Ultimately, BONI's decision to acquire the stake and invest in the bank is driven by the long-term positive economic outlook for Zambia and reflects its confidence in the investment climate of the country in a post-COVID-19 world. This, however, was not sufficient to save the bank, and it was possessed on April 2, 2024, due to its insolvency, which was followed promptly by compulsory liquidation on July 8, 2024, by the BoZ.¹⁸⁹⁷

¹⁸⁹⁶ Financial Insight Zambia "Bank of Nevis acquires 24.08% of Investrust Bank" <https://fizambia.com/bank-of-nevis-acquires-24-08-of-investrust-bank/> (accessed 13 October 2022).

¹⁸⁹⁷ Bank of Zambia "Notice of Taking Possession of Investrust Bank" Press Statement https://www.boz.zm/Investrust_Notice.pdf (accessed 4 November 2024).

7.14.6 *The merger between Intermarket, Sabre Capital and Afriland*

Intermarket started off as a discount house—Intermarket Discount House (IMDHL)—at a time when bonds and treasury bill rates were high. It was set up mainly as an intermediary between financial institutions and trading or making markets in various money market instruments. Initially, it was proposed that the IFC take a 20 per cent stake in the business to give the business credibility however, this did not materialise.¹⁸⁹⁸ Intermarket Discount House (IMDHL) had to change its strategy with the eventual reduction in the BoZ’s bond and treasury bill rates. Interestingly, the central bank could not provide them with a specific license to be a discount house; instead, they had to acquire a full banking license to operate. While this initially seemed to be disadvantageous, in the long run, it meant that the discount house could easily convert into a fully-fledged bank in the future, if it wished to do so. The IMDHL eventually used the ace that it was holding to become a full-time bank. However, the transition was not smooth, and there were some bottlenecks along the way that contributed to the eventual demise of the business. Firstly, the parent company, which was domiciled in Zimbabwe, could not recapitalise the business as required because of political interference that resulted in the owner eventually seeking asylum in South Africa. The bank then sought to sell shares to interested conglomerates as a means of achieving this objective.¹⁸⁹⁹

In 2008, Sabre Capital Worldwide injected USD100 million into Intermarket Banking Corporation, which allowed the bank to embark on an expansion programme. Sabre Capital Worldwide later bought a stake in the business.¹⁹⁰⁰ However, it seems that for whatever reason, this injection of capital was insufficient, so additional stakeholders were sought. In 2010, Afriland First Bank, a Nigerian bank, bought into Intermarket Banking Corporation by acquiring 80 per cent shares in the business.¹⁹⁰¹ As of March 2010, the bank’s stock was owned by the following corporate entities in Table 30:

¹⁸⁹⁸ International Finance Corporation (IFC) “Project Information & Data Portal Disclosures” <https://disclosures.ifc.org/> (accessed 13 October 2022).

¹⁸⁹⁹ “Mr. Vingirai and Econet Wireless Limited are challenging the take-over of the Intermarket group of companies by ZB a decade ago. They are suing ZB and the Reserve Bank of Zimbabwe... Then the RBZ Governor Dr Gideon Gono said the central bank had no objections in the former regaining his banking assets after clearing the once exiled businessman of externalisation charges and that he did not flee the country as was popularly thought”. See Fidelis “Vingirai Fights On” *The Herald* <https://www.herald.co.zw/vingirai-fights-on-2/> (accessed 13 October 2022).

¹⁹⁰⁰ Sabre Capital Worldwide “First Invested in Intermarket Bank in 2008” <http://maravi.blogspot.com/2008/10/intermarket-embarks-on-expansion.html> (accessed 13 October 2022).

¹⁹⁰¹ Wayback Machine “History of Intermarket Bank” (archived 11 September 2012) (accessed 3 March 2023).

Table 30. Intermarket bank stock ownership¹⁹⁰²

RANK	NAME OF OWNER	PER CENTAGE OWNERSHIP
1.	Afriland First Bank of Cameroon	80.00
2.	Sabre Capital Worldwide Inc. of United Kingdom	20.00
	Total	100.00

Despite these capital injections, the bank still found it difficult to honour its obligations to its depositors. It was then seized and closed by the central bank in 2016.¹⁹⁰³ In 2017, the central bank stated that it would restructure the bank to enable it to reopen. This did not happen, and the bank was put under receivership. On 23 October 2018, the bank was reopened as Zambia Industrial Commercial Bank under the Industrial Development Corporation (IDC)—effectively turning it into a parastatal bank.¹⁹⁰⁴

This problem was not peculiar to Zambia only and 2016 was noted as being a year in which the latent fragility of Africa’s banking sectors was exposed, with bank failures occurring in DR Congo (BIAC), Mozambique (Moza Banco), Tanzania (Twiga Bank Corp), Kenya (Chase Bank) and Uganda (Crane Bank).¹⁹⁰⁵ The major causes of these failures were identified as lapses in bank governance and political interference rather than due to economic downturns. It appears that insider lending—one of the major causes of bank failures in the mid-1990s was, once again, raising its head and being blamed for the failure of banks in 2016. For Intermarket, some of the tabloids placed the blame squarely on the BoZ for not acting quickly enough to sort out issues affecting the bank.¹⁹⁰⁶

The Intermarket story fits in very well with some of the problems that arise with the acquisitions that we saw earlier. Clearly, despite the best efforts of the consortia to recapitalise the bank,

¹⁹⁰² Ibid.

¹⁹⁰³ n 1905.

¹⁹⁰⁴ Moonga “Zambia Industrial Commercial Bank, Mastercard Forge Partnership” The Mast Online (28 November 2019) (accessed 13 February 2020).

¹⁹⁰⁵ Financial Sector Deepening Africa (FSD Africa) “Harbingers of Doom: Bank failures in Africa –How to Interpret These” <http://www.fsdafrica.org> (accessed 13 October 2022).

¹⁹⁰⁶ The Diggers News for example, is reported as saying that: -”An investigation has revealed that bank of Zambia was careless in the handling of the intermarket bank- leading to its downfall. This was made clear when you analyse what happened to intermarket bank...Simukonde did not respond to specific questions about why the central bank did not intervene quickly enough and even his response was after a string of appointment deferments by his senior and several references to other central bank offices...Clearly the, the bank of Zambia realised that intermarket Bank was not properly supervised but did not want to take the blame for its downfall. See Mafa “Intermarket Probe Exposes BoZ Negligence” Diggers News (20 April 2017 <https://diggers.news/business/2017/04/20/intermarket-probe-exposes-boz-negligence/> (accessed 15 May 2024).

that was not sufficient. It also brings out the issue that small banks are not always easy to take on, especially if they have underlying problems in the bank, such as operational and governance issues, and not just undercapitalisation. Added to this, the human element plays a huge role in the success of mergers and acquisitions activity. A combination of human action and strict regulation may not be ideal, especially where the learning curve is steep. It is submitted that there is still the risk of bank failures because of over-zealous supervisory actions by the central bank may cause a loss of faith in the banking system by depositors. This reaction to stricter regulation may result in the removal of smaller banks and leaving only a few bigger banks that would have an impact on competition and access to banking services. This example also highlights clearly how small banks are slowly becoming extinct, as they are expected to conform, merge, or die under the new regulatory measures. It is submitted that the survival of the fittest principle—a key component of the neoclassical theory—runs counterintuitively in a system that now encourages resuscitation of businesses through concepts in insolvency law, like resuscitation as one of the means of keeping these banks alive. For example, most insolvency Acts around the world speak about business resuscitation for limited companies and not mergers and acquisitions as solutions to weak businesses.¹⁹⁰⁷ Why is the same logic not applied to banks, and in particular, small banks?

Table 31. Zambian bank mergers 2008–2021¹⁹⁰⁸

DATE	MERGEE	MERGOR OR ACQUIRER	NAME CHANGE
2008	Intermarket Banking Corporation	Sabre Capital Partners	Intermarket Banking Corporation
2010	Intermarket Banking Corporation	Afriland First Bank of Cameroon and Sabre Capital World-wide Inc.	Intermarket Banking Corporation
2015	BancABC	Atlas Mara	Atlas Mara/BancABC
2016	Intermarket Banking Corporation	A consortium of industrial development corporation IDC and the Madison group of companies	Zambia Industrial Commercial Bank (ZICB)
2016	Finance Bank	Atlas Mara	Atlas Mara Zambia Ltd
2021	Investrust Bank Plc	Bank of Nevis International	ZCCM IH
2021	Cavmont Merchant Bank Plc	Access Bank	Access Bank Zambia

¹⁹⁰⁷ Corporate Insolvency Act No 9 of 2017 Part III Business Rescue Proceedings. Sections 21–45. 305–326.

¹⁹⁰⁸ Created by author from Information gathered from Research.

7.15 Classification of Zambian banks

This area has been covered in Chapter 6 generally.¹⁹⁰⁹ The thesis will now consider how the classification of banks, or lack thereof, impacts the banking sector in Zambia. Literature appears to be lacking with respect to the classification of banks in Zambia. The first mention of a classification of banks in Zambia appears to be in 2015 with Phiri-Mambo's work, where she considered the distribution of assets in the banking sector in evaluating the impact of the Basel II Accords on the Zambian financial system.¹⁹¹⁰ Phiri-Mambo broke down the various banks by size using a tiered system and defined the tiers as follows:¹⁹¹¹

- (a) Tier 1: Comprise banks with assets >ZMW 5 billion or USD 910 million
- (b) Tier 2: Comprise banks with assets greater or $\geq$ ZMW1 billion but <K5 billion or $\geq$ USD182 million but <USD910 million.
- (c) Tier 3: Comprise of banks with assets <ZMW 1 billion or <USD 182 million.¹⁹¹²

Phiri-Mambo's analysis begins rightly with the top-ranked banks in the country. These are designated as the Tier 1 banks. It covers banks with assets greater than ZMW5 billion or approximately USD 910 million. There were four banks placed in this category with total assets of around ZMW24.389 million or USD4.436 million.¹⁹¹³ These banks by implication, are designated as the "Big Four" banks in Zambia and hold a significant portion of the financial sector's primary and regulatory capital. According to Phiri-Mambo, this amounts to about 45 per cent of the bank's primary capital and 57 per cent of the bank's regulatory capital, respectively.¹⁹¹⁴ A caveat is necessary in terms of the numbers, as Phiri-Mambo's study was done using data as of 31 December 2013, which is a decade ago. There have been quite a few changes in terms of banks since then. For example, Barclays Bank became ABSA on 10 February 2022 (because of a name change).¹⁹¹⁵ So, this may have an impact on the numbers as

¹⁹⁰⁹ See ch 6 para 6.5–6.7.

¹⁹¹⁰ Phiri-Mambo (n 1777) 41–44.

¹⁹¹¹ Phiri-Mambo (n 1777) 42.

¹⁹¹² Phiri-Mambo (n 1777) 42. Also compare with the asset size thresholds used in the Community Reinvestment Act: Bank type determinations, distressed and underserved areas, and banking industry compensation provisions of the June 202 CRA. OCC Bulletin 2021–5 29 January 2021.

¹⁹¹³ Phiri-Maimbo (n 1777) 42.

¹⁹¹⁴ Phiri-Maimbo (n 1777) 42.

¹⁹¹⁵ Official Launch of Absa Bank Zambia Plc Speech By Francis Chipimo Deputy Governor –Operations, Bank of Zambia on Monday, 10th February 2020 at Sarovar Neelkanth Hotel, Lusaka where the Deputy Governor Operations said. "We gather this morning to witness the official name change of Barclays Bank PLC to Absa Bank

the new entrants may be at different levels in terms of their asset bases.¹⁹¹⁶ It is, however, submitted that these changes appear marginal and are unlikely to create large movements in these classifications. The study therefore remains relevant.

Table 32. Measuring bank size based on assets¹⁹¹⁷

Tier 1 Banks

Name		Total Assets ZWM (1000)	Notes & coins	Balances with BOZ	Balances with local banks	Balances with banks abroad	Investments & Securities	Loans & Advances	Other Assets	Total per cent
TIER 1 BANKS	A	6857437	3%	10%	1%	3%	33%	42%	8%	100
	B	6309725	3%	15%	0%	14%	14%	51%	3%	100
	C	5630837	4%	9%	0%	4%	28%	49%	5%	100
	D	5600061	6%	10%	0%	8%	15%	54%	8%	100
	Total	24398060	4%	11%	0%	7%	23%	49%	6%	100

At the time of measuring Tier 1 banks, the Zambian banking sector consisted of four banks accounting for approximately 24,398 million Kwacha in aggregate terms.¹⁹¹⁸ These banks, according to Phiri-Mambo's findings, revealed that they accounted for approximately 45 per cent of the banking sector's primary capital and 57 per cent of its total regulatory capital.¹⁹¹⁹ The main asset categories, as appears in Table 29, consisted of loans and advances at 49 per cent and investment in government securities at 23 per cent. This tier included the large foreign banks, mainly.¹⁹²⁰ As pointed out, from the date of Phiri-Mambo's study, several new foreign banks have entered the market, and this may have watered down the market marginally and

Zambia PLC, which is effective today Monday 10 February 2020. In addition to the name change is the adoption of the Absa brand flagship "...Bringing your possibilities to life." This is an important and indeed historic event in Zambia's financial and economic history. Absa Bank PLC is built on a long and rich history in Zambia, having been established in 1918 as a branch of Barclays Bank Plc, U.K. and later as a fully incorporated company and licensed bank in 1971. This makes Absa Bank PLC, at over 100 years, one of the oldest banks in Zambia..." See Chipimo "Official Launch of ABSA Bank Zambia Plc" speech by Deputy Governor Operations (10 February 2020) https://www.boz.zm/DGO_Absa_Launch.pdf (accessed 4 April 2024).

¹⁹¹⁶ Asset bases according to the Cambridge dictionary is a noun that simply refers to the total value of a company or organisation's assets. See Cambridge Dictionary "Asset Base" <https://dictionary.cambridge.org/dictionary/English/asset-base> (accessed 18 April 2024).

¹⁹¹⁷ Phiri-Mambo (n 1777) 42.

¹⁹¹⁸ Phiri-Mambo (n 1777) 43.

¹⁹¹⁹ Phiri-Mambo (n 1777) 42.

¹⁹²⁰ Phiri-Mambo (n 1777) 42.

increased the number of banks in the category. But the fact remains that these are the top-performing banks in the economy.

7.15.1 Tier 2 banks

It is presumed that this Tier represents medium-sized banks. Only seven banks made it into this tier. At the time of the study, they accounted for 34 per cent of the assets in the Zambian banking sector. Equally, this group of banks was said to account for up to 43 per cent of the primary capital and 35 per cent of the regulatory capital.

Table 33. Measuring bank size based on assets (Tier 2 banks)¹⁹²¹

Name		Total Assets ZWM (1000)	Notes & coins	Balances with BoZ	Balances with local banks	Balances with banks abroad	Investments & Securities	Loans & Advances	Other Assets	Total per cent
Tier 2 Banks	E	3,002,132	0%	23%	0%	49%	18%	9%	2%	100%
	F	2,363,426	4%	18%	0%	15%	16%	38%	8%	100%
	G	2,320,972	1%	19%	1%	15%	51%	12%	2%	100%
	H	2099881	4%	7%	0%	4%	21%	56%	8%	100%
	I	1962720	4%	17%	1%	2%	23%	44%	9%	100%
	J	1371908	1%	4%	7%	18%	9 %	56 %	6 %	100 %
	K	1323253	3 %	5 %	0 %	7 %	20 %	54 %	11 %	100 %
	TOTAL	14444291	2 %	16 %	1 %	18	23 %	34 %	6 %	100 %

7.15.2 Tier 3 banks

Tier 3 banks would appear to be the lowest on the rung and logically would encompass the small banks. At the time of the research, this Tier consisted of eight banks with a total asset profile of less than ZMW1 billion Kwacha or USD182 million in hard currency. They are said to account for around seven per cent of the total banking sector assets. Similarly, their contribution to primary capital and total regulatory capital accounts for a meagre 12 per cent and eight per cent, respectively.

Table 34. Measuring bank size based on assets (Tier 3 banks)¹⁹²²

Name	Total Assets	Notes & coins	Balances with BOZ	Balances with	Balances with	Investments & Securities	Loans & Advances	Other Assets	Total per cent

¹⁹²¹ Phiri-Mambo (n 1777) 43.

¹⁹²² Phiri-Mambo (n 1777) 44.

		ZWM (1000)			local banks	banks abroad				
Tier 3 Banks	L	818642	7 %	12 %	13 %	8 %	20 %	31 %	10 %	100
	M	558076	4 %	7 %	11 %	10 %	13 %	39 %	16 %	100
	N	407239	1 %	6 %	22 %	3 %	33 %	12 %	23 %	100
	O	383842	8 %	8 %	6 %	6 %	13 %	53 %	6 %	100
	P	370831	2 %	14 %	0 %	8 %	19 %	26 %	32 %	100
	Q	303278	3 %	9 %	2 %	14 %	7 %	45 %	20 %	100
	R	217211	2 %	16 %	8 %	13 %	18 %	30 %	13 %	100
	S	51548	4	6 %	0 %	1 %	5 %	46 %	37 %	100
	TOTAL	3110687	4	10 %	10 %	8 %	18 %	34 %	18 %	100

This type of classification has its flaws, aside from issues of reliability and validity, in that it does not give a whole picture of what such a bank is made up of. For example, can Tier 3 mean a weak bank and Tier 1 a strong one? It can be argued that one of the flaws of this measurement is that the classification measures what it wants to measure and not what it is *supposed* to measure. This is the standard problem behind creating classifications, and probably why they are uncommon. This problem is made worse as the complexity of an organisation increases. Consequently, this “measurand” or the quantity intended to be measured¹⁹²³ is a sufficient starting point in attempting to evaluate Zambian banks for now, especially since they tend to be operationally unsophisticated, hence the key parameters are easily identifiable. Additionally, as in the case of the Nigerian bank classification, it appears that Phiri-Mambo was influenced by the work of both Schildbach (using the European model) and the American model for classifying small American banks.¹⁹²⁴

Now that the classification of a small bank has been established, it can be determined what the impact of Basel I and II on these small banks was by estimating the Risk Weighted Assets (RWA) of the small banks and evaluating the outcome. Looking at Phiri-Mambo’s numbers, it is indicative that the impact of the RWA was significant.

¹⁹²³ Strom & Tabatadze Why ‘Measurand’ Is the First Scientific Word We Should Teach Health Physicists” 2022 *Health Physics* 607–613.

¹⁹²⁴ See ch 6 para 4

Table 35. Measuring bank size based on RWA (Tier 3 banks)¹⁹²⁵

Name		BASEL I RWA	Basel II RWA	RWA INCREASE/ DECREASE	CREDIT RISK RWA	OPERATIONAL RISK RWA	MARKET RISK RWA	Total %
Tier 3 Banks	L	440894	388868	(52026)	91 %	8 %	1 %	100
	M	277560	364425	86865	81 %	16 %	3 %	100
	N	222704	178019	(44685)	88 %	12 %	0 %	100
	O	282130	337052	54922	81 %	17 %	2 %	100
	P	229939	299470	69531	81 %	19 %	1 %	100
	Q	217214	275318	58104	86 %	13 %	0 %	100
	R	133762	109710	(24052)	85 %	10 %	5 %	100
	S	46029	49942	3913	81 %	19 %	1 %	100
	TOTAL	1860232	2002804	162672	86 %	14 %	1 %	100

Looking at Table 31, Phiri-Mambo was comparing the two risk weightings given by the Basel I Accord and the Basel II Accord as a means of evaluating if there are any significant differences between them. However, the fact that Basel II includes additional parameters or pillars may render the comparison futile in terms of measuring what it is supposed to measure. Nonetheless, despite these shortcomings, the same data will be used to show the impact of the Basel I and II Accords on small banks. The problem is that small banks have small amounts of assets against their risk profiles, which impacts their capital negatively, and this weakness tends to make them more vulnerable to the vagaries of the market. They are thus more prone to insolvency.

7.15.3 Possible reasons for not classifying banks

While the push is to have a standard by which to classify banks, it is submitted that sometimes classification can be a double-edged sword. Classification might result in negative outcomes where customers view classification from a point of weakness. It is submitted that this could create a tendency where clients end up shunning banks that are of a lower classification. The solution under these circumstances may be to internalise the classification. Notwithstanding, it is submitted that clients are rational and can make comparisons using other methods like asset size and strength, from freely available information.

¹⁹²⁵ Phiri-Mambo “Impact of Basel II Implementation: A Case Study on Zambia” Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI) (2015) 1–66.

7.16 Problem of sourcing financing for small banks

It is submitted that one of the problems that small banks in developing countries face is identifying a reliable source of long-term funds for small banks to use if banks need to recapitalise their positions without resorting to traditional forms of finance like shareholder contributions or listing on the stock exchange. This source of funding falls outside of the emergency funds that may be required from the central bank in emergencies, as the lender of last resort.¹⁹²⁶

It is submitted that local financial markets lack the sophistication to cater to the needs of the financial system, as the market for the issue of private paper is not well-developed in Zambia. Mwape gives indications of how to measure this sophistication by looking at three indicators, namely¹⁹²⁷ Financial Depth, Development and Complexity Indicator. Looking at each one in turn, we see that:

- (a) **The Financial Depth Indicator (FDI)** ¹⁹²⁸ for Zambia has been steadily increasing since its fall in 2005 after the banking crisis. In 2012, it reached a level of 23.8 per cent. Notwithstanding, it has never gone beyond 32 per cent, which is the African average. When compared to other countries, this figure indicates a significant lack of financial depth in the financial sector, especially when contrasted with averages in the Asia-Pacific region, which stood at around 49 per cent for the same period. The contrast becomes more significant when evaluated against high-income countries, where it is at 100 per cent.¹⁹²⁹
- (b) **The Financial Development Indicator (FDI)** indicates “the extent to which economic activity in the private sector and the economy is financed by the banking system.”¹⁹³⁰ Like the financial depth ratio, it has also fluctuated between 11.4 per cent and 10.7 per cent between 2009 and 2010, respectively. Generally, the ratio appears to be on the low side, indicating that a large portion of the population is still unbanked. Mwape,

¹⁹²⁶ See ch 6 para 11.4.

¹⁹²⁷ Mwape ‘Post-crisis Financial System Regulation: Implications for Zambia’ in Adam *et al.*, (eds) *Zambia: Building Prosperity from Resource Wealth, Africa: Policies for Prosperity* (2014).

¹⁹²⁸ The Financial Depth Ratio, according to the World Bank, captures the financial sector relative to the economy. It is the size of banks, other financial institutions, and financial markets in a country, taken together and compared to a measure of economic output. See World Bank “Financial Depth” <https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/financial-depth> (accessed 4 April 2024).

¹⁹²⁹ Mwape (n 1931) 158–197.

¹⁹³⁰ Mwape (n 1931) 158–197.

however, has not given any indication of what the ratio for developed countries should be. Nonetheless, it is expected that the ratio may have increased with the improvement in banking services, albeit marginally.

- (c) **Financial Complexity Ratio (FCR)** The last ratio that tries to make a case for the statement to show that the Zambian financial market is not sophisticated is the financial complexity ratio (FCR).¹⁹³¹ Mwape argues that the Zambian financial sector has become more complex over the years.¹⁹³² He does this by measuring the ratio of currency to M1 money. As with all the ratios, there was an initial decline in the ratio to start with, but it eventually rallied to reach 33.8 per cent in 2012. By extrapolating these results to the present, it can be inferred that the ratio has increased, but once again, only marginally. Mwape does not provide any standards to compare against, so it is difficult to assess how complex the Zambian financial market is compared to other countries.

The second problem relates to the basic calibre of investors in the Zambian market. Many investors are not well-versed in the mechanics of a vibrant financial market, but they also lack the requisite funding to carry out substantial deals.¹⁹³³

The Zambian stock exchange—Lusaka Stock Exchange, now Lusaka Securities Exchange (LuSE),¹⁹³⁴ which is entering its 3rd decade of operation soon, has still not taken off and while some banks have opted to list their shares on the Bourse, it still appears to lack depth and

¹⁹³¹ Célérier and Vallée define the financial complexity ratio as the complexity level of a given product as its total number of features. The rationale of our approach is that the more features a product has, the more complex it is for the investor to understand and compare. See Célérier & Vallée “What Drives Financial Complexity? A Look into the Retail Market for Structured Products, Working Paper” Conference in Harvard Business School (2013) 3.

¹⁹³² Mwape (n 1931) 158–197.

¹⁹³³ Mwape (n 1931) 158–197.

¹⁹³⁴ The Lusaka Stock Exchange, now called the Lusaka Securities Exchange Plc. (LuSE), was opened on 21 February 1994 in Lusaka with technical assistance from the International Finance Corporation (IFC) and the World Bank in 1993. For the first two years of its operations, the LuSE and its regulator the Securities and Exchange Commission (SEC) were funded jointly by the UNDP and the Government of Zambia to develop and reform the financial and capital market in Zambia, to not only enhance local private sector initiative but to attract foreign portfolio investment as well. It was also used as a vehicle to facilitate the divestiture of Government ownership in parastatals. Exchange activities are self-regulated and overseen by the Securities and Exchange Commission (SEC). See Lusaka Securities Exchange (LuSE) “About us” <https://www.luse.co.zm/about-us/ourstory> (accessed 12 April 2024).

breadth and has a low turnover.¹⁹³⁵ Research shows that the demand for stocks, in general, is on the low side. Marone indicates that this often makes trades uncompetitive and volatile.¹⁹³⁶

*“The LuSE appears to be making little if any contribution to the Zambian economy...there is little or no savings to be allocated to the few existing firms. Savings are low because earnings are low and because Zambians can only expect to live for only 38 years. Those who can afford to save will search for better returns and safer portfolio investments.”*¹⁹³⁷

While this statement was made in 2003, it is submitted that it still appears to hold true today, as there has been only marginal improvement in the depth and breadth of the Exchange.¹⁹³⁸ This is substantiated by the 2017 National Financial Sector Development Policy, which states:

*“In summary, the Zambian capital markets remain largely underdeveloped and are characterized by low issuances, illiquidity, low turnover, lack of depth, erosion in value on some stocks, and low interest from both potential investors and issuers.”*¹⁹³⁹

Other issues that affect banks' operations is being torn between maintaining private ownership and making the bank public by listing on the stock exchange. Conversely, for a bank to list its shares on the stock exchange, it must often meet stringent requirements that may be untenable for an already financially weak bank. This may result in the bank listing its shares initially, but because of the lack of profits, it may drive the price of the shares down further, which could give negative signals to the market about the viability of the bank. Research has shown that there is limited interest from domestic and foreign investors in buying shares of companies traded on the LuSE because they are not available in large enough quantities.¹⁹⁴⁰ Given that the

¹⁹³⁵ Chola *Factors Influencing the Utilisation of the Capital Market in Zambia* (doctoral dissertation, University of Zambia, 2020) 71–79–80; Mahonye *Capital Markets Development, Financial Structure and Economic Development in Africa* (doctoral dissertation, University of the Witwatersrand, 2014); Du Toit *African Frontier Markets: Extent of Illiquidity and Inherent Private Equity Investment Opportunities* (doctoral dissertation, University of the Witwatersrand, 2013) 52.

¹⁹³⁶ Marone “Small African Stock Markets –The Case of the Lusaka Stock Exchange IMF eLibrary (2003) 1–28 <http://www.elibrary.imf.org> (accessed 12 April 2024); Tyson “Policy Priorities for Sub-Saharan Africa’s Financial Development, Policy Brief 1” ODI Research Series for Financial Development in Africa (2021) https://cdn.odi.org/media/documents/ODI_Policy_brief_1_FINAL_clean.pdf.2–71 (accessed 12 April 2024).

¹⁹³⁷ Ibid 11.

¹⁹³⁸ Marone (n 1940) 8–11.

¹⁹³⁹ Bank of Zambia (BoZ) *National Financial Sector Development Policy* (2017) 7 <https://www.boz.zm/National-Financial-Sector-Development-Policy-2017.pdf> (accessed 12 April 2024).

¹⁹⁴⁰ Marone (n 1940) 11.

information for listed companies is in the public domain, any negative announcement could easily result in a run on a listed bank by its shareholders.

Outside sources of funding are equally risky. After 1992/93, the foreign exchange market was liberalised.¹⁹⁴¹ Unfortunately, a volatile local currency meant that when the Kwacha depreciated, these loans doubled or trebled in size and eroded the capital to the same extent, weakening the bank further.¹⁹⁴²

Issuing international bonds and other types of short and long-term paper¹⁹⁴³ appears to be a viable option at first glance; nevertheless, this area of financing would require banks that wish to take up these instruments to be internationally rated. Given the small size of the average Zambian bank, it is submitted that this prospect would not only be daunting but also highly expensive, easily outweighing the cost-benefit of the intended purpose.

Given the above, a stable source of funding must be created for small banks to access. This stems from the five general criticisms of bank bailouts. According to Scott, bailouts are frowned upon because they cause taxpayers to suffer losses because the government has to bail out a bank.¹⁹⁴⁴ Secondly, bailouts may not work or be prolonged.¹⁹⁴⁵ A good example of this is the Meridien BIAO bailout by BoZ that cost taxpayers dearly and did not work, and despite every effort to save the bank, it still folded up. Thirdly, bailouts create a moral hazard.¹⁹⁴⁶ According to Scott, the concept of moral hazard raises the strongest arguments against bailouts as it allows firms to take on excessive risks that a bank would not normally take if it were not bailed out.

¹⁹⁴¹ McCulloch *et al.* *Globalisation, Poverty and Inequality in Zambia during the 1990s* (2000) 5–6.

According to McCulloch, Baulch, and Cherel-Robso, Zambia's exchange rate had been mostly set by the government until 1991. However, the deregulation or liberalisation of the exchange rate was one of the requirements imposed on the country by the IMF to obtain support as part of its restructuring measures. As a result, both the exchange rate and the distribution of foreign currency were allowed to be set by the market, beginning with the establishment of a bureau de change market to set the market exchange rate. The 1992 Zambian budget introduced a rapid depreciation program, which led to a decline in the Real Effective Exchange Rate (REER) when paired with negative real interest rates. Most foreign exchange restrictions on current operations had been lifted by the central bank by March 1993 (p5–6). See also Ibid. (Brownbridge). 15; Odhiambo *The Impact of Financial Liberalisation in Developing Countries: Experiences from Four SADC Countries* (2011).

¹⁹⁴² Brownbridge (n 1547) 155–160.

¹⁹⁴³ Long and short-term paper include things like see Caprio & Demirgüç-Kunt "The Role of Long-Term Finance: Theory and Evidence" 1998 *World Bank Research Observer* 171–89; Demirgüç-Kunt & Maksimovic "Law, Finance, and Firm Growth" 1998 *Journal of Finance* 6 2107–2137; Demirgüç-Kunt & Maksimovic "Institutions, Financial Markets and Firm Debt Maturity" 1999 *Journal of Financial Economics* 3 295–336.

¹⁹⁴⁴ Scott *Criticisms of Bailouts generally, Connectedness and Contagion: Protecting the Financial System From Panics* (2017) 265–272 265.

¹⁹⁴⁵ Ibid. 269.

¹⁹⁴⁶ Scott (n 1948) 272.

The next argument against bailouts is that when government decisions are made over bailouts, they may become politically motivated and *ad hoc*.¹⁹⁴⁷ Again, this element of political interference was evident in the bailout of Meridien BIAO in Zambia because many politicians had interests in the bank, as the owner was well-connected. Lastly, bailouts are said to deter lending activities.¹⁹⁴⁸ This happens because bailout efforts serve the twin purpose of stabilising a financial system and alleviating the adverse impacts on the real economy caused by the collapse of the lending market.¹⁹⁴⁹ In fact, comments by former FDIC chair Sheila Blair show the sentiment clearly when she is quoted as saying that “*Banks fail. It’s okay.*”¹⁹⁵⁰

Table 36. Banking sector funding of assets (per cent of total assets) 2019–2021¹⁹⁵¹

	2019	2020	2021
Customer deposits	74.0	76.6	72.0
Shareholder funds	11.4	8.7	11.1
Borrowings	8.1	8.5	10.7
All other liabilities	6.4	6.1	6.2
Total Funding	100	100	100

7.17 Gaps in the financial architecture that impact local banks

Research has identified that there are notable gaps in the sub-Saharan financial architecture. These gaps have impeded intermediation between the banks because of the interbank markets and bureaux lack of robustness.¹⁹⁵² Tyson remarks that banks are constrained when it comes to managing their risk, as the markets that they operate in are most often illiquid, as they do not have markets to support their requirements. Markets such as foreign exchange markets and other markets like interest rate derivatives help the banks manage their interest rate risk from

¹⁹⁴⁷ Scott (n 1948) 276.

¹⁹⁴⁸ Scott (n 1948) 277.

¹⁹⁴⁹ Scott (n 1948) 277.

¹⁹⁵⁰ Wiltermuth “Banks Fail. It’s OK,” says former FDIC chair Sheila Bair” MarketWatch (11 October 2023) <https://www.marketwatch.com/story/when-money-is-free-you-squander-it-says-former-fdic-chair-sheila-bair-50a4764> (accessed 1 May 2024).

¹⁹⁵¹ n 1521.

¹⁹⁵² Tyson “Policy Priorities for Sub-Saharan Africa’s Financial Development” Policy Brief 1 ODI Research Series for Financial Development in Africa (2021) https://cdn.odi.org/media/documents/ODI_Policy_brief_1_FINAL_clean.pdf. 2–71 (accessed 1 May 2024).

day to day.¹⁹⁵³ She further points out that remittances and payment systems remain expensive, especially for small transactions. These gaps, according to Tyson, have been identified as possible sources of inefficiency in the financial sector that can make the sector more fragile and but also more susceptible to financial shocks.¹⁹⁵⁴

Given that they have been identified as possible gaps for all banks in sub-Saharan Africa, it is submitted that this position is dire for small banks, given that they are normally not well-capitalised and because of their small size and higher-than-normal risk, not obviating the impact of stringent competition. It is submitted that the inclusion of the markets mentioned above would go a long way in enabling the small banks to have access to products that mitigate risk and would thus lead to better financing sources that would stabilise them so that they are not forced to enter mergers and acquisitions transactions.

7.18 The case of different regulations for different-sized banks

The argument for having different capital regulations for different-sized banks has been implicit throughout this thesis. The argument stems from the fact that the American financial regulators had exempted their small banks from complying with the rules of the Basel II Accord. American small banks, being much bigger than Zambian big banks, raise the question of why small local Zambian banks that are minuscule by American standards are expected to comply fully with the Basel Accords. The requirement lacks rationality. Research has shown that even the European Union is now arguing for what is called “greater proportionality” in regulation. For example, Lautenschläger in her speech to the IMF ¹⁹⁵⁵ said that “the call for greater proportionality in banking regulation and supervision is growing louder—not just in the United States and Europe but also globally.”¹⁹⁵⁶ This indicates that the problem is real and current, and as such needs to be addressed urgently. The problem is not only for developing countries but for banks in developed countries as well, particularly where the “one-size-fits-all” principle is used.

¹⁹⁵³ Ibid.

¹⁹⁵⁴ Tyson (n 1956) 2–71.

¹⁹⁵⁵ Lautenschläger “Is Small beautiful? Supervision, Regulation and the size of banks” statement made by member of the Executive Board of the European Central Bank and Vice-Chair of the supervisory Board of the European central bank at an IMF seminar (14 October 2017) 1–2.

¹⁹⁵⁶ Ibid.

Lautenschläger is of the view that proportionality results from where regulators apply different sets of rules to banks operating in the same financial market. She cautions that when differentiating the rules, it is necessary to consider the various objectives pursued by banks concerned as well as the resultant cost benefits associated with making the changes.¹⁹⁵⁷ According to Lautenschläger, the most critical areas to consider are the financial stability risk posed by individual banks or indeed a group of banks.¹⁹⁵⁸

Further, Lautenschläger remarks that the costs of regulation and supervision need to be examined closely, especially since small banks tend to have greater difficulties in complying with complex regulation, which often puts them at an undue disadvantage in terms of costs, thus reducing diversity in the banking sector as a whole.¹⁹⁵⁹ This is an important point because small and medium banks tend to add to the diversity of the financial system, thus making it more stable.

The African, and indeed the Zambian, experience appears to indicate that all banks are regulated the same, especially since they are not classified like Nigerian banks.¹⁹⁶⁰ This approach needs to change if small banks are to be allowed to thrive and compete as integral facets of the Zambian kaleidoscope of banking institutions.

7.19 The impact of the jurisprudential underpinnings of the Accords on Zambian banks

Jurisprudential underpinnings were included in the thesis to show some of the main underlying theories on which the Basel Accords are premised and understood. These underpinnings are important as it is primarily how academics and practitioners from the liberal school of thought explain the working of these theories and how they ultimately impact a financial market when certain conditions prevail. The following general areas were examined to establish some of these underpinnings like: the role of capital and credit in a money market; the theories of what causes financial crises; the theories of liquidity in banking; the justification of bank regulation:

¹⁹⁵⁷ Lautenschläger (n 1959) 1–2.

¹⁹⁵⁸ Lautenschläger (n 1959) 1–2.

¹⁹⁵⁹ Lautenschläger (n 1959) 1–2.

¹⁹⁶⁰ Yusuf “Determining Bank Size in The Nigerian Banking Industry: A Principal Component Analysis Approach” *Proceedings of the 5th Annual International Academic Conference* (2019) 769; Odeh *et al.* “Effect of Loan Assets Classification on Financial Performance of Nigerian Listed Deposit Money Banks” 2023 *British Journal of Multidisciplinary and Advanced Studies* 38–50.

and lastly The Diamond-Dybvig model's core insights about the inherent risks of maturity mismatch (funding long-term illiquid assets with short-term liquid deposits) and the potential for bank runs are highly applicable to Zambian banks in general.

The role of capital and credit

This theory provides a broad context for understanding the role of finance in development and the influence of international financial institutions and neoliberal ideologies. These concepts are relevant to the Zambian banking sector. However, small Zambian banks, due to their potentially limited resources and market position, might experience these influences and challenges in distinct and potentially more pronounced ways, particularly concerning access to capital, navigating policy shifts, and managing the risks of financialisation and globalisation.

The role of capital, credit, and the money market in economic development, drawing on the ideas of Joseph Schumpeter.¹⁹⁶¹ It then shifts to the ethos of international financial regulators, focusing on the Bretton Woods institutions (IMF and World Bank) and their promotion of neoliberal policies through conditionality, structural adjustment programs (SAPs), and the Washington Consensus.¹⁹⁶² Finally, it critiques neoliberalism, highlighting concepts like financialisation, corporatocracy, and globalisation, and their potential negative impacts.¹⁹⁶³

Applicability to Zambian banks in general:

- (a) **Credit and Development:** Schumpeter's emphasis on credit as a fundamental driver of entrepreneurial activity and economic development.¹⁹⁶⁴ It is relevant to Zambia. Banks play a crucial role in providing credit, and the efficiency and accessibility of credit directly impacts the nation's development trajectory. The money market, as a source of short-term funding, is also vital for Zambian banks to manage their liquidity and support lending activities.
- (b) **International Financial Institutions and Neoliberalism:** The discussion of the IMF and World Bank's influence through neoliberal policies and SAPs¹⁹⁶⁵ is pertinent. Zambia, like many developing nations, has likely been subject to the conditionalities associated with borrowing from these institutions. This could have influenced the

¹⁹⁶¹ Schumpeter (n 254) 102.

¹⁹⁶² Irwin (n 304).

¹⁹⁶³ Scholte (n 314) 3–31.

¹⁹⁶⁴ Schumpeter (n 254) 102.

¹⁹⁶⁵ Rowden (n 337).

regulatory environment and the overall economic policies within which Zambian banks operate, including liberalisation and deregulation efforts.

- (c) **Financialisation and Globalisation:** The potential downsides of financialisation, such as the financial sector growing at the expense of the real economy and increasing income inequality.¹⁹⁶⁶ There are risks that Zambian banks and the broader economy need to be mindful of as Zambia integrates further into the global financial system. Similarly, the uneven impacts of globalisation on developing countries¹⁹⁶⁷ could affect different segments of the Zambian banking sector and its clientele.

Applicability to small Zambian banks in particular:

- (a) **Access to Credit and the Money Market:** Small Zambian banks might face challenges in accessing credit and participating in the money market compared to larger institutions. Schumpeter's point about entrepreneurs needing credit to develop¹⁹⁶⁸ can be paralleled with small banks needing access to capital and funding to grow and serve their niche markets.
- (b) **Influence of IFIs and SAPs:** It is submitted that smaller Zambian banks might be more vulnerable to broad policy shifts driven by the conditionalities of international financial institutions. SAPs, with their emphasis on liberalisation and deregulation, could create a more competitive landscape where smaller banks with fewer resources might struggle to compete with larger, potentially foreign-owned, entities.
- (c) **Vulnerability to Financialisation and Globalisation:** Small Zambian banks might have less capacity to navigate the complexities and potential risks associated with increasing financialisation and globalisation. They could be more susceptible to external economic shocks and the competitive pressures arising from greater integration with the global financial system. The potential for increased inequality due to financialisation could also impact their local customer base.

The relevance of theories of financial crisis to Zambia

¹⁹⁶⁶ Karwowski (n 341) 60–86.

¹⁹⁶⁷ Harold (n 347); Ouatarra (n 349) 1; Epstein (n 342) 1.

¹⁹⁶⁸ Schumpeter (n 254) 102.

The theories of financial crisis are another set of theories discussed in Chapter 3 that are broadly applicable to Zambian banks, both large and small. They highlight the inherent risks in the banking business, the importance of prudent lending practices, effective regulation, and maintaining depositor confidence. For small Zambian banks, these risks might be amplified due to their size and resource limitations, underscoring the need for robust risk management practices and a strong regulatory framework tailored to their specific vulnerabilities.

Several theories attempt to explain the occurrence of financial crises in a financial market that references the 2007–2008 GFC as a recent example of a financial crisis. This spurred interest in understanding the causes of such cataclysmic events in a financial system.¹⁹⁶⁹ The theories that try to explain this are categorised into cyclical¹⁹⁷⁰ (financial instability and business cycle) and non-cyclical (asymmetric information) theories.¹⁹⁷¹

Applicability to Zambian banks in general:

- (a) **Financial Instability Theory:** Minsky’s theory, which links financial instability to increased borrowing during stable times, leading to decreased liquidity and eventual instability.¹⁹⁷² It is relevant to Zambian banks as the Zambian economy experiences periods of growth, banks might increase lending, potentially stretching their liquidity and increasing systemic risk. The concepts of hedge, speculative, and Ponzi financing¹⁹⁷³ can help analyse the risk profiles of Zambian banks’ loan portfolios and their vulnerability to economic downturns.
- (b) **Business Cycle Theory:** The expansionary phase, driven by innovation and credit creation,¹⁹⁷⁴ and the subsequent contraction phase triggered by central bank intervention to curb inflation, are dynamics that likely affect Zambian banks. Over-optimism and speculative behaviour during economic booms could lead to asset price inflation and increased credit demand, followed by potential loan losses during contractions. The risk of “Asset Fire Sales” during downturns is also a concern for Zambian banks.

¹⁹⁶⁹ Mishkin (n 356) 49–70.

¹⁹⁷⁰ Hendrickson (n 361) 13.

¹⁹⁷¹ Binaku (n 393) 11; Kindleberger (n 408) 1–271.

¹⁹⁷² Hendrickson (n 361) 13.

¹⁹⁷³ Hendrickson (n 361) 13.

¹⁹⁷⁴ Garrison (n 378) 3–29.

- (c) **Asymmetric Information Theory:** The problems of adverse selection (attracting risky borrowers) and moral hazard (borrowers taking on more risk after obtaining loans) due to information imbalances¹⁹⁷⁵ are pertinent to lending practices in Zambia. Zambian banks need to develop mechanisms to mitigate these issues, as highlighted by the suggestion of private information production. Bank panics, driven by depositors' inability to distinguish between a solvent and an insolvent bank, are a risk in Zambia as well, especially in the absence of a fully established and trusted deposit insurance scheme (as noted in the previous summary).
- (d) **Speculative Investment Theories (Kindleberger Cycle):** The stages of mania, over-trading, the "Minsky moment," and the "Torschlusspanik wave"¹⁹⁷⁶ offer a framework for understanding potential asset bubbles and subsequent crashes in the Zambian context, particularly in emerging sectors or asset classes. While the scale might differ from global examples, the behavioural dynamics of speculation and panic can still apply to Zambian markets and affect banks' asset valuations and loan security.

Applicability to small Zambian banks in particular:

- (a) **Increased Vulnerability:** Small Zambian banks might be more susceptible to the effects described by these theories due to their potentially less diversified loan portfolios, smaller capital reserves, and limited access to liquidity support compared to larger banks.
- (b) **Information Asymmetries:** Smaller banks might face greater challenges in gathering and analysing information about borrowers, exacerbating adverse selection and moral hazard. Their depositors might also be more prone to panic withdrawals based on rumours or limited information about the bank's stability.
- (c) **Impact of Economic Cycles:** Small Zambian banks could be disproportionately affected by economic downturns and asset price deflation, leading to higher non-performing loan ratios and potential insolvency. Their ability to withstand "Asset Fire Sales" in the market might also be limited. It is submitted that because these cycles are

¹⁹⁷⁵ Binaku (n 393) 11.

¹⁹⁷⁶ Kindleberger (n 425) 1–340.

related to the economic activity in a country they are more likely to occur in developing countries that have weak economic indices.

- (d) **Speculative Bubbles:** While potentially less involved in large-scale speculative investments, small Zambian banks could still be affected by the laws of asset bubbles (e.g., in real estate) that impact their borrowers and the value of their collateral. The “*Torschlusspanik* wave” could lead to significant deposit outflows if a small bank faces solvency concerns. Realistically however given Zambia’s status as a developing country bubbles are uncommon when compared to developed economies.

The justification of liquidity theories to the Zambian Financial Market.

The theories of liquidity discussed in Chapter 3 provide a valuable framework for understanding liquidity management in Zambian banks, both generally and specifically for smaller institutions. They highlight the interplay between depositor behaviour, lending practices, and the need for banks to balance liquidity provision with profitability. For small Zambian banks, maintaining adequate liquidity is particularly critical for their stability and survival, requiring careful consideration of these theoretical underpinnings in their operational and strategic decision-making.

Theories of liquidity in banking, emphasising its crucial role, especially in the context of the 2007–2008 GFC and the subsequent Basel III liquidity requirements, like the Liquidity Coverage Ratio (LCR)¹⁹⁷⁷ and the Net Stable Funding Ratio (NSFR).¹⁹⁷⁸ It discusses the importance of bank liquidity in meeting depositors’ demands and in liquidity transformation. The Liquidity Preference Theory,¹⁹⁷⁹ the Liquidity Premium Theory,¹⁹⁸⁰ and the Anticipated Income Theory¹⁹⁸¹ are the main theories that are used to explain factors influencing liquidity management in in general banks. They are thus applicable to Zambian banks as well by default.

Applicability to Zambian banks in general:

- (a) **Importance of Liquidity:** The fundamental importance of liquidity for all banks, as highlighted in the introduction, directly applies to Zambian banks. One of the key

¹⁹⁷⁷ n 435, 12–13.

¹⁹⁷⁸ n 436, 2.

¹⁹⁷⁹ Keynes (n 443) 4–190.

¹⁹⁸⁰ Pilbeam (n 444) 93.

¹⁹⁸¹ Prochnow (n 455) 298–314.

requirements that ensures adequate liquidity in a bank is through minimum bank requirements. In Zambia the minimum capital for a local bank is 104 million Kwacha. Adequate liquidity ensures that banks can meet withdrawals by depositors and to fund their daily operations. The liquidity principles enshrined in the Basel III Accord are now in force in Zambia through BFSA 2017 and serve as a benchmark for sound liquidity risk management.

- (b) **Liquidity Preference Theory:** This theory, suggesting investors prefer liquid short-term assets due to uncertainty about future interest rates,¹⁹⁸² can influence deposit behaviour in Zambia. If depositors become uncertain about the economic outlook or interest rate movements, they might prefer to hold more liquid deposits, impacting Zambian banks' funding structures.
- (c) **Liquidity Premium Theory:** The idea that lenders demand a premium for holding less liquid long-term assets¹⁹⁸³ is relevant to how Zambian banks manage their funding costs. To attract long-term deposits, they might need to offer higher interest rates as a liquidity premium. Conversely, their preference for short-term funding to match short-term deposits can also be analysed through this lens.
- (d) **Anticipated Income Theory:** This theory focuses on a borrowers' future income as the basis for loan repayment.¹⁹⁸⁴ It is central to lending practices both internationally and in Zambia. Assessing the anticipated income of loan applicants is crucial for managing credit risk and ensuring a steady flow of repayments, which in turn contributes to the bank's liquidity.¹⁹⁸⁵ The instalment-based repayment model prevalent in Zambia aligns with this theory.¹⁹⁸⁶ The theory's limitations, such as the assumption of timely repayments and potential mismatches between instalment dates and immediate liquidity needs are also relevant considerations for Zambian banks.

Applicability to small Zambian banks in particular:

¹⁹⁸² Keynes (n 443) 4–190.

¹⁹⁸³ Pilbeam (n 444) 93.

¹⁹⁸⁴ Prochnow (n 455) 298–314.

¹⁹⁸⁵ Kaufman (n 459) 1–48.

¹⁹⁸⁶ Mohammad (n 463) 1–13.

- (a) **Heightened Liquidity Sensitivity:** Small Zambian banks might be more sensitive to liquidity fluctuations due to their potentially smaller deposit bases and limited access to wholesale funding markets compared to larger banks. The principles of the LCR and NSFR, emphasising sufficient liquid assets and stable funding, are particularly important for their resilience.
- (b) **Liquidity Preference:** Depositors in smaller Zambian banks might exhibit stronger liquidity preferences due to perceived higher risk or limited information about the bank's stability, potentially leading to more volatile deposit flows.
- (c) **Liquidity Premium:** Small Zambian banks might need to offer more competitive liquidity premiums to attract and retain deposits, potentially increasing their funding costs.
- (d) **Anticipated Income:** While the core principle of lending based on anticipated income applies, smaller banks might have less sophisticated credit assessment tools, potentially increasing their exposure to repayment risks and impacting their liquidity. The challenges of relying solely on monthly instalments to meet immediate liquidity needs could be more pronounced for smaller banks with thinner liquidity buffers.

Justification of bank regulation to Zambian

The justifications and theories of regulation are especially relevant to the Zambian banking sector. They underscore the necessity of regulation to maintain stability and protect the public and other market players, while highlighting potential challenges such as regulatory capture and the need for efficient and equitable rules. For small Zambian banks, a regulatory environment that is both robust and mindful of their specific challenges and contributions is crucial for their sustainability and the overall health of the Zambian financial system in general.

Bank regulation, in its broadest sense focuses on the definition and nature of regulation in the banking context. This focus highlights regulations dual nature as both a set of rules and the continuous monitoring for compliance otherwise known as prudential regulation¹⁹⁸⁷ The relevance and purpose of regulation are explored through the lens of statutory intent and the traditional economic theory of regulation, which posits that regulation aims to constrain monopoly power, protect the public from information asymmetry, and address externalities.¹⁹⁸⁸

¹⁹⁸⁷ Mitnick (n 466) 4.

¹⁹⁸⁸ Wilson (n 482) 135–168.

Regulatory theories cover Public Interest Theory¹⁹⁸⁹ and Capture Theory which are viewed from the critical view of the Marxist Muckraker theory and political science perspective¹⁹⁹⁰

Applicability to Zambian banks in general:

- (a) **Need for Regulation:** The fundamental justification for regulation—to prevent bank failures and maintain financial stability due to the inherent risks in the financial system—is directly applicable to Zambian banks. As financial intermediaries, they are susceptible to instability, necessitating oversight to protect depositors and the broader economy.
- (b) **Purposes of Regulation:** The three purposes outlined by the Traditional Economic Theory of Regulation are relevant to the Zambian context:
 - **Constraining Monopoly Power:** While the Zambian banking sector has several players, regulation can prevent dominant banks from engaging in practices that harm competition or consumers.
 - **Protecting the Public:** Addressing information asymmetry between banks and depositors is crucial in Zambia, where financial literacy levels may vary. Regulations on disclosure and fair practices can help protect depositors.
 - **Addressing Externalities:** While not explicitly detailed in the excerpt in a banking context, the principle of addressing negative externalities could relate to systemic risk, where the failure of one bank could impact others. Regulation aims to mitigate such risks.
- (c) **Regulatory Theories:**
 - **Public Interest Theory:** The idea that regulation should serve the public good is the stated aim of Zambian banking regulations, typically enacted by the government and enforced by the BoZ. However, the Public Choice critique, highlighting the potential for self-interest among political actors and regulators, serves as a cautionary note for ensuring the regulatory framework genuinely serves the public.

¹⁹⁸⁹ Butler (n 489) 20.

¹⁹⁹⁰ Etzioni (n 520) 319–323.

- **Capture Theory:** The risk of regulated entities influencing regulations to their benefit is a concern for the Zambian banking sector. Larger or more well-established banks might have greater lobbying power, potentially shaping regulations in ways that favour them over smaller institutions or the broader public interest. The Marxist view suggests that regulation can serve capitalist interests¹⁹⁹¹, and the political science view, focusing on elite capture, both highlight potential challenges for ensuring equitable and effective regulation in Zambia.
- (d) **Criticisms of Regulation:** The criticisms of regulation, such as serving special interests¹⁹⁹² or leading to bureaucratic inefficiencies¹⁹⁹³ are valid considerations for Zambia. It is important for Zambian regulatory bodies to be mindful of these potential pitfalls and strive for regulations that are effective, efficient, and genuinely serve the public interest rather than being unduly influenced by vested interests.

Applicability to small Zambian banks in particular:

- (a) **Vulnerability to Regulatory Capture:** Small Zambian banks might have less capacity to influence regulatory decisions compared to larger banks, making them potentially more vulnerable to regulations that disproportionately affect them or favor larger competitors.
- (b) **Impact of Inefficient Regulation:** Inefficient or overly burdensome regulations could disproportionately impact small banks with fewer resources to comply, potentially hindering their growth and competitiveness.
- (c) **Public Trust:** For smaller banks, maintaining public trust is crucial. Effective regulation that ensures the stability and fairness of the banking system benefits smaller banks by providing a level playing field and reassuring depositors.
- (d) **Balancing Public Interest and Development:** Regulation in Zambian banks needs to balance the need to protect the public interest with the need to foster the economic growth and development of the Zambian financial sector, including the smaller banks

¹⁹⁹¹ Etzioni (n 520) 319–323.

¹⁹⁹² Stigler (n 531) 3–21.

¹⁹⁹³ Niskanen (n 533) 3–231.

that play a vital role in financial inclusion and serving communities that the large banks fail to, or are not interested in serving.

The Diamond-Dybvig model's relevance to Zambian financial markets

The Diamond-Dybvig model provides a valuable framework for understanding the inherent vulnerabilities of Zambian banks, particularly smaller ones, to bank runs. The model emphasises deposit insurance and liquidity regulation as crucial policy considerations for strengthening the resilience of the Zambian financial sector and safeguarding depositor trust. The absence of a government-backed deposit insurance scheme in Zambia, is a notable point of concern when viewed through the lens of the Diamond-Dybvig model.

The Diamond-Dybvig model's core insights about the inherent risks of maturity mismatch (funding long-term illiquid assets with short-term liquid deposits) and the potential for bank runs are highly applicable to Zambian banks in general because of weak capital bases. Like banks globally, Zambian banks engage in liquidity transformation, making them susceptible to sudden withdrawals if depositors lose confidence in them.¹⁹⁹⁴ The model's explanation of how panic can trigger a run, even without fundamental issues, underscores the importance of maintaining depositor confidence in the Zambian financial sector.¹⁹⁹⁵

For small Zambian banks in particular, the applicability of the Diamond-Dybvig model is perhaps even more pronounced. Smaller banks often have less diversified funding sources and may be more vulnerable to localised shocks or rumours that could trigger a run.¹⁹⁹⁶ Their capacity to absorb large, unexpected withdrawals by liquidating assets quickly and without significant losses might be more limited compared to larger institutions.

The solutions proposed by the Diamond-Dybvig model also have specific relevance to Zambia:

- (a) **Deposit Insurance:** The text explicitly notes that Zambia *does not* yet have a government-backed deposit insurance scheme, unlike South Africa.¹⁹⁹⁷ The model's argument for government deposit insurance as a crucial tool to prevent runs and safeguard depositor savings highlights a potential gap in Zambia's financial safety net.

¹⁹⁹⁴ Diamond (n 548) 189.

¹⁹⁹⁵ Diamond (n 548) 189.

¹⁹⁹⁶ Diamond (n 548) 189.

¹⁹⁹⁷ n 563.

Establishing such a scheme could significantly boost confidence in Zambian banks, especially smaller ones, and reduce the likelihood of runs.

- (b) **Liquidity Requirements:** Zambian banks subscribe to minimum liquidity requirements in its BFSa (2017) and central bank circulars. This aligns fully with the model's suggestion that regulatory measures are necessary to ensure banks hold enough liquid assets to withstand potential withdrawals.¹⁹⁹⁸ These requirements are vital for all Zambian banks, but particularly so for smaller banks with potentially thinner liquidity buffers.
- (c) **Government Intervention:** The model's proposition of government intervention, including potential taxation to support the financial system,¹⁹⁹⁹ underscores the role of the Zambian government and the BoZ in maintaining financial stability. This is especially critical for smaller banks that might lack the resources to independently manage severe liquidity crises.

The 2007–2008 GFC, as explained through the lens of the Diamond-Dybvig model, serves as a cautionary tale for Zambian banks. While the specifics of the Zambian financial market differ with the international financial markets, the underlying principle that funding longer-term assets with short-term debt is risky remains valid for all banks operating in the country, including smaller ones.²⁰⁰⁰ The regulatory responses to the 2007–2008 GFC, by regulators like the BCBS was to introduce stricter liquidity rules, which are also relevant to Zambian banks as they continue to align in terms of financial regulations with international best practices.

In conclusion it is evident that the jurisprudential underpinnings of what makes up the Accords applies to international financial institutions as much as they do to banks in Zambia, irrespective of their size or business model. Jurisprudential underpinnings as theories are the holy grail that tries to understand and explain the various cause and effects that occur in a functioning financial system based on a market economy. Based on the *laissez faire* ethos, the BCBS uses these theories to make rules like the Basel Accords to predict and counter the adverse cause and effects from happening in a financial system. This is done to protect depositors and provide confidence in a financial system, by preventing depositors from suffering adverse outcomes like bank failure. The difference between the two is that while the underpinnings are applicable

¹⁹⁹⁸ Diamond (n 548) 189.

¹⁹⁹⁹ Diamond (n 548) 189.

²⁰⁰⁰ Diamond (n 548) 189.

to a financial system universally—the Basel Accords are specific rules that attempt to prevent these adverse outcomes from happening before they do, using a blanket or a one size fits all approach. This singular approach often has the effect of killing of the patient that takes the Basel Accord medicine rather than curing them—especially small banks.

7.20 Conclusion

The focus of this chapter was to examine the concepts that were introduced in prior chapters from the Zambian standpoint. To reiterate, the basis of this thesis is to examine and establish the position of the small banks in Zambia after the introduction of the Basel Accords. To do this, it was necessary to go back to the watershed position of 1991 and work backwards from that point to the present, without which it would be impossible to reach a rational conclusion. The findings and assumptions indicate that the results are not as clear-cut as expected.

Most banks in Zambia experienced high bank failure rates between 1994 and 1998, when at least eight banks became insolvent within six years²⁰⁰¹. Among these banks, there were mainly small local banks apart from Meridien BIAO, which, at the time of its insolvency, was deemed to be the fifth largest bank in Zambia. The impact of these closures was far-reaching and impacted all Zambian banks in one way or another.

This chapter of the thesis also attempts to bring out the proactivity on the part of the Zambian central bank with consistent revisions to the BFSAs. The initial two BFSAs,²⁰⁰² namely BFSA (1994) and BFSA (1994) (as amended 2000) do not explicitly mention the introduction of the Core Principles of Banking Supervision or indeed when the Basel I Capital Accord was introduced into legislation via the BFSA. From the evidence presented, these rules appear to have been issued via a central bank circular. The initial impact of these Accords was to introduce regulation into the financial system in an era of deregulation. The impact of regulation on small local banks is not wholly clear. Some studies indicate that the Basel Accords had, and continue to have, a positive effect on small banks and all banks in general, while other authors claim that the contrary is true. It appears that at an academic level, it all boils down to one's perspective and school of thought.

²⁰⁰¹ See ch 7 para. 4.6.3.

²⁰⁰² See ch 7 para 4.6.3.

The impact of globalisation and regionalisation was closely examined, and all studies indicate that Zambia has scored highly in this area at over 50 per cent.²⁰⁰³ Equally, Zambia is one of the key players at the regional level, meaning that globalisation and regionalisation are well-rooted in the Zambian economy.²⁰⁰⁴ As a corollary, the banking sector is well on its way to becoming part of the international financial system and all its vagaries.

The impact of the Basel Accords on Zambian banks was questioned, and the results were not clear as to what the impact of the Accords has been, as there are very few empirical studies that outline the effects of the Accords on Zambian banks generally and small local banks in particular.²⁰⁰⁵ It appears that the result is based on idiosyncratic outcomes in that results appear to differ with each financial institution. What is revealed, however, is that the Basel Core Principles for Effective Banking Supervision²⁰⁰⁶ have been a stabilising factor for many Zambian banks, both large and small. However, as pointed out, for the Basel Accords, the result is unclear.

From what has been gathered from the study, the initial Accord, namely Basel I, appears to have sat well with commercial banks and helped to improve commercial bank positions overall in terms of capitalisation. From a critical point of view, however, it needs to be questioned whether the first Accord caused the 1994–97 bank failures because administrators were overly strict and rigid in terms of administering the Accord that ultimately led to the failure of the eight banks, for example, by not giving enough time for banks to recapitalise themselves. Alternatively, it could also be viewed as resulting from a combination of factors that preceded the Accord, including banks having inadequate capital, defective management, and poor governance issues. Or, indeed, it may be asked whether subsequent Accords, namely Basel II and Basel III, appear to put too much pressure on some, but not all, local banks, including the small ones, by further increasing the minimum capital ratios for banks. What comes out strongly is the fact that there are no specific procedures in place by the central bank to protect small banks, or at least buffer them, against the introduction of higher capital requirements. This appears to be especially prominent in developing economies with relatively undeveloped financial markets—Zambia included. There is anecdotal evidence suggesting that the Zambian

²⁰⁰³ See ch 4 para 14.5.

²⁰⁰⁴ See ch 5 para 2.

²⁰⁰⁵ See ch 4 para 3.

²⁰⁰⁶ n 1606, 1–14.

central bank, and possibly central banks in other African countries, have managed some of the banks that were tottering on the edge of insolvency, but since there are no clear sources to rely on, the outcomes are uncertain. Instead, it is submitted that the position taken by the author of this thesis is that the Accords put small banks under stress and increase the likelihood of future insolvencies because of inherent distortions in developing countries' economies.

Further, Zambian banks' reaction to competition, concentration, risk-taking, profitability, and stability was investigated, and it was found that there was a strong correlation between competition and profitability.²⁰⁰⁷ It was also discovered that concentration risk hurt local small banks.²⁰⁰⁸

All the above factors impacted bank stability to some extent. The consequences of market and thus bank concentration and competition were to encourage small, under-capitalised banks to merge.²⁰⁰⁹ Not all mergers were panaceas to the capital dilemma. Sometimes mergers can go wrong and result in the merging banks becoming insolvent, as happened to Intermarket Banking Corporation (IBC) ²⁰¹⁰.

The work in this chapter examined the problems faced by these small banks. Some of the major problems identified were the classification of banks, problems of sourcing financing in an unsophisticated market, and some of the gaps in the financial architecture. It was found that there is no ready source of funds in the local markets for small banks to access in times of need, and this may put banks at risk of insolvency where they cannot procure sufficient funds to cover the banks' capital deficit.

This chapter has identified that small banks are locked into the system and have very little influence internationally in terms of lobbying the BCBS at an international level. Regional bodies appear to be satisfied with taking on the tenets of the Basel Accords without challenging them or actively lobbying for less stringent and more meaningful rules for their member countries' banks, as the influential international banks do.²⁰¹¹

²⁰⁰⁷ See ch 6 para 4.

²⁰⁰⁸ See ch 6 para 6.4.5.

²⁰⁰⁹ See ch 6 para 4.5.

²⁰¹⁰ See ch 7 par 14.6.

²⁰¹¹ See ch 4 para 3.

The research in this chapter has shown that because of the stringent capital requirements resulting from the Basel Accords, small banks are often short of capital and cannot readily access capital in the local markets because these markets lack depth and breadth.²⁰¹² They are equally constrained because most of them are not internationally rated, therefore, they cannot access international credit markets. Equally, small banks tend to suffer higher risk, making it more expensive to borrow money locally or internationally. Further, the only viable solution that the research done in this study has brought out is that banks that do not have sufficient capital must enter into merger and acquisition agreements with other more robust local or foreign banks. In Zambia, merger and acquisition activity has shifted ownership of banks from local to international banks, further reducing the stock of small local banks in the country.²⁰¹³

Notably, explicit deposit insurance has still not been introduced in Zambia as a means of evening out the competition between the small local banks and allowing small banks to once again regain the confidence that they lost because of the 1994–98 bank insolvencies.²⁰¹⁴ According to Anginer and Demirguc-Kunt, deposit insurance is claimed to enhance banking competition, which, in turn, strengthens financial stability by lowering overall Bank risk. Because without deposit insurance, depositors tend to favour large banks due to their perceived safety, hindering smaller banks' ability to attract funds. Deposit insurance thus creates a more equitable environment, in terms of allowing smaller banks to compete with larger banks. It also allows private banks to better compete against state-owned banks, which often have inherent government backing, and helps domestic banks compete with foreign banks that offer their own deposit insurance.²⁰¹⁵

The next chapter will be the concluding chapter of the thesis and will provide the conclusion and recommendations to the problems that have been identified in the study.

²⁰¹² Mulendema & Sinkala “An Analysis of the Performance of Banks: A Comparative Study of Domestic and Foreign Banks in Zambia” 2023 *Journal of Economics, Finance and Management Studies* 2149 –2154; Mwape (n 1866) 158–197.

²⁰¹³ See ch 6 para 5.

²⁰¹⁴ See ch 7 para 4.6.3.

²⁰¹⁵ Anginer & Demirguc-Kunt “Bank Runs and Moral Hazard A Review of Deposit Insurance, Policy Research Working Paper” (2018) 2–29 <https://documents1.worldbank.org/curated/en/548031537377082747/pdf/WPS8589.pdf> (accessed 8 March 2024).

CHAPTER 8

SUMMARY, RECOMMENDATIONS, AND CONCLUSION

8.1 Introduction

Chapter 7 began by giving a historical landscape of Zambia from 1991. The evolution of various Banking Acts that have influenced the regulation of Zambian banks was considered. In particular, the chapter examined the: growth of local banks; impact of globalisation; impact of the three Basel Accords on Zambia; consequences of market concentration and competition as well as problems faced by small banks in Zambia followed by a concise chapter conclusion.

Chapter 8 is the epilogue to the work. It will gather all the main points examined previously in the work and attempt to consolidate them into an objective conclusion on what the impact of the Basel Accords has been on small indigenous banks in Zambia. To this end, the problem statement of the thesis will be examined to see if it is consistent with the aspects addressed in the study. The main contents of various chapters of the thesis will be summarised to capture the essence of their subjects. The specific research objectives and questions stated in Chapter 1 will be revisited to see if they have been answered. The results will be considered together. This will be followed by short sections on the hypothesis and the limitations of the study. The key sections of the chapter will be the research findings and the recommendations for reform.

8.2 Title of the thesis

The title of the thesis is “The Impact of the Basel Accord on Small Indigenous Banks in Developing Countries: The Case of Zambia”. The object of the thesis was to try and evaluate, from a legal perspective, the possible impact that the Basel Accords have had on small banks in Zambia as a focus of the study.

8.3 The problem statement

The problem statement centred on the Zambian context, which intended to critically investigate the impact of the Basel Accords on small banks in developing countries where the Accords have been implemented. This sought to investigate whether the Basel Accord requirements are conducive or obstructive to establishing and growing small banks in Zambia. This involved determining whether the present approach to the regulation of small banks in Zambia is appropriate and, if not, to make substantive recommendations on how to remedy any

inconsistencies identified. To this end, various issues and viewpoints were considered throughout the thesis in attempting to answer the problem question.

8.4 Review of chapters

Chapter 1 provided the background and rationale for the study, the research problem, the research questions, the hypothesis, the research methodology, and the layout of the chapter. Chapter 1 thus set the groundwork for the research upon which the research relied and to ensure that the study did not stray into unnecessary areas.

Chapter 2 of the thesis considered the historical development of regulation in Zambia, starting from about 1900 up to 1964, when Zambia gained independence. The chapter proceeded to examine the evolution of regulation up to 1991, when there was a significant change in the politics of the country as it shed its socialist cloak for a market economy. This chapter is important to show the evolution of banking in Zambia and to bring out nuances in the Zambian banking system. In terms of the problem, it shows why indigenous Zambian banks have remained small and in decline. It also provides a brief background on Zambian banking to consolidate and help raise the various arguments.

Chapter 3 considered the jurisprudential underpinnings of the study. This part of the thesis provided an understanding of the various factors and theories that explain the worldview of institutions like the IMF, World Bank, BIS, and the BCBS. It explained the concept of neoliberalism and the various theories that are associated with this school of thought, which includes concepts such as Financialisation, Corporatocracy, and Globalisation.²⁰¹⁶ It considered some of the theories of financial crisis and considered the justification for bank regulation. The chapter further considered the central theme of the work—the BCBS and the Basel Accords. In this chapter, the various Basel Accords were examined, where the Basel Accords fit in terms of international law, and whether the Basel Accords can be characterised as part of international law. This examination helps to explain the Basel Accords' complex and technical terms that can only be understood from their jurisprudential foundations.

Chapter 4 detailed the evolution of BCBS, having covered its jurisprudential framework in Chapter 3, as well as the Basel Accords, in more detail. It began by looking at financial regulation before the introduction of the Basel Accords and then went on to examine Basel I in detail, including the concept of the “level playing field”, capital ratios and the “one-size-fits-

²⁰¹⁶ See ch 4 para 14; ch 7 para 5.2.

all” approach. The chapter examined Basel II starting with the three pillars. The Basel II Accord is then criticised from an international perspective. The chapter also considered the European reaction to Basel II. The chapter then discussed the Basel III and IV Accords and their critics. After this, the chapter reflected on the Western response to the Basel Accords from the US and European perspective, included a discussion on the Dodd Frank Act. It further considered the nexus between BIS, BCBS, and the Bretton Woods Institutions. Finally, the work contemplated various issues surrounding the Basel Accords. Chapter 4 is thus the cornerstone on which the research problem is based. This chapter then fed into Chapter 5, which looked at how the Basel Accords are dealt with at the regional level.

Chapter 5 interrogated the role of two regional groupings, namely SADC and COMESA in attempting to mitigate the harshness of the Basel Accords on African member countries in general. It further analysed how the concept of regionalisation fits into the overall theory of globalisation and attempts to criticise the operations of these regional institutions as possible agents of the globalisation process in Africa. Regional groupings cannot be left out of the equation because they are integral to the operation of banks, and indeed to the problem statement itself, due to the influence and impact of these organisations on small banks because of the march of regionalisation and globalisation in the world generally. After Chapter 5, the study started to focus more on the research problem then feeds into the main crux of the thesis: small banks and the Basel Accords.

Chapter 6 assessed the impact of the Basel Accords on bank competition and, in turn, how this relationship impacts small banks. The chapter began by looking at the importance of small banks in a developing economy and why it is necessary to protect these institutions. The study further attempted to analyse various relationships, such as the relationship between competition and stability, competition, and profitability, competition, and banking risk to outline some of the important factors that affect banking stability. Afterwards, some of the consequences of market concentration and competition that lead to relationships like mergers and acquisitions was considered. The study further reflected on the impact of the Accords on competition as a means of examining their possible effects on banks in general and small banks in particular. The final part of the chapter examined ways of protecting small banks via the “infant-industry” argument, which is that small banks need to be given some kind of protection from the government for them to grow into medium- and large-sized banks. This general discussion on small banks then flows into Chapter 7 by considering the case of Zambia to determine the impact that the Accords have had on small Zambian banks.

As stated above, Chapter 7 looked at a case study of Zambia and the impact that the Basel Accords have had on small Zambian banks. Many of the concepts from previous chapters were reintroduced to ascertain if the results were different from how other developing countries suffered due to the introduction of the Basel Accords. To do this, it was important to consider the historical background of supervision in Zambia from 1964 (the historical position before 1964 is given in Chapter 1),²⁰¹⁷ which included looking at the banking set-up at the start of 1991 and the regulatory changes in the Zambian financial framework from a controlled economy to a liberalised one. This was done by looking at the various Acts like the Banking Act Cap 700 and the BoZ Act Cap 699 of the Laws of Zambia, and the BFSA (1994) (as amended 2000) and the BFSA (2017). It also covered bank contagion and the failure of Zambian banks. After this, the study considered Zambia's current financial landscape, covering the modern banking sector, which included issues of globalisation and its impact on Zambia. An examination of the impact of the Basel Accords on Zambian banks, and small banks in particular, followed. The chapter reconsidered factors that impact bank stability as seen in Chapter 6, but this time the impact is considered in relation to Zambian banks. This discussion topic leads into mergers and acquisitions and an examination of whether the Basel Accords caused an increase in mergers and acquisitions of small banks in Zambia or not. The study attempted to address the issue of what bank size is and utilised some of the measurement models used to measure banks internationally. The chapter closes by outlining some of the gaps in financial architecture that affect small banks.

The final chapter, Chapter 8, provides the conclusion and recommendations of the work and attempts to arrive at an answer for the statement of the problem: to critically investigate the impact of the Basel Accords on small banks in developing countries where the Accords have been implemented. The outcome of the research appears to be inconclusive, as different parameters give different outcomes.

8.5 Research objectives and questions

- a) The first objective of the research is to evaluate how small, medium and large banks are regulated in Zambia generally, and how the adoption of the Basel Accords by BoZ has impacted them. This objective appears to have been met as the study shows that all banks in Zambia, including small ones, have been affected by the adoption of the Basel Accords.

²⁰¹⁷ See ch 2 para 2.4–2.9.

While the Basel I Accord appears to have had a positive impact on small banks initially, later Accords, in the form of Basel II and III, however, appear to have had a two-pronged effect on banks. On the one hand, it produced a negative outcome for some small, weaker banks, while for the stronger, better-capitalised foreign banks, the rules appear to provide a more positive outcome.

- b) The second objective was to examine how the Basel Accords operate with respect to developing countries, and whether the rules used to regulate small banks' capital requirements in these countries' banks are significantly different from what is expected of larger Zambian banks. The research results show that the Basel Accords are not simplified for small banks (by the central bank) as there are no alternative capital rules to cater to small banks that have small capital bases compared to the medium and large banks operating in the market.
- c) The third objective was to research what the main tenets of the Accords are, and what effect each one has on small developing banks' ability to operate in the Zambian financial market. This objective was easily met.
- d) The fourth objective was to assess how the Core Principles for Effective Banking Supervision interface with the Basel Accords. Once again, this objective was easily met because the core principles were the initial precepts that the central bank had to achieve before introducing the Basel Accords. Thus, the initial 25, then the subsequently revised 29 Core Principles for Effective Banking Supervision, were the foundation upon which the four Basel Accords were built.
- e) The fifth objective was to propose alternative solutions for developing countries to allow the building of a stable and robust selection of small indigenous banks. There appear to be several solutions that are available, as evidenced by the recommendations proposed at the end of the chapter.²⁰¹⁸ Additionally, many authors, including those from various schools of thought, including the leftist school, appear to believe that the neoliberal solution is not the only answer to building robust banks. For example, authors such as Brunnermeier, Hansen, Kashyap, Krishnamurthy, and Lo in works such as "Modelling and Measuring Systemic Risk"²⁰¹⁹ and Harvey in his book "The Enigma of Capital and the Crises of Capitalism."²⁰²⁰

²⁰¹⁸ See para 8.9–8.9.7.

²⁰¹⁹ Brunnermeier *et al.* *Modelling and Measuring Systemic Risk* (2011) 1–5.

²⁰²⁰ Harvey *The Enigma of Capital: And the Crises of Capitalism* (2010) 1–268.

Hudson is also a prominent critic of modern finance from a post-Keynesian²⁰²¹ perspective. While he did not focus directly on the Basel Accords, his work, “Financial Warfare: The Use of Finance to Wage Economic Warfare,”²⁰²² is still relevant as it critiques the nuts and bolts of Financialisation and the power dynamics within the international financial system. Many former senior members of the IMF, like Stiglitz,²⁰²³ have also been critical of the policies of these institutions which has resulted in several academic papers and publications. The “infant, industry” argument is a case in point and is covered by authors such as Gwera, Melitz, Tybout and Slaughter, to name but a few authors.²⁰²⁴

- f) The sixth objective was to assess the position that regional groupings play (for example, SADC and COMESA) in adopting the Basel Accords, if any, and what regional initiatives exist to support small to medium-scale banks regionally and in Zambia in particular. Regional groupings have been criticised by various scholars as not offering solutions to neoliberal regulatory rules. Instead, they appear to have adopted the rules in their entirety without even trying to lobby for the smaller banks to be exempt from the rules or to create less onerous continental rules that are pertinent and workable for small African banks. The fact that these regional institutions are reliant on donor support for funding and consultancy services makes it difficult for them to make independent decisions that go against the advice of the consulting partners, who are most often the donors.

In general, the thesis answered most of the research questions that were posed. However, certain questions may need a more in-depth empirical study to extricate deeper, profound analysis, especially in certain instances, like mergers and acquisitions and the relationship between large and small banks that were examined. Research question a) needs more investigation because there is no clear answer on what the impact of the Basel Accords on small banks in Zambia has been.

²⁰²¹ The Keynesian perspective looks at price rigidities and how fluctuations in any component of spending, including consumption, investment, or government expenditure, cause output to change in an economy. For instance, output rises if government expenditure rises while all other spending factors stay the same. See Sarwat “Back to Basics. What Is Keynesian Economics?” 2014 *IMF Finance & Development* 9. 3.

²⁰²² Hudson *Finance as Warfare* (2015) 1–162.

²⁰²³ See, for example, Stiglitz *Globalization and Its Discontents* (2003) 1–304.

²⁰²⁴ See ch 6 para 6.91–6.94.

8.6 Research hypothesis

There is a significant relationship between developing countries adopting the Basel Accords and the stifled growth and development of such countries' small indigenous banks. The argument, therefore, is one for developing national institutions rather than depending on foreign institutions as the basis for a country's economic and financial development.

Given the above assumption, it is submitted that small banks should have their own rules to enable them to develop and flourish within a jurisdiction without being relegated to the back of the economy and ultimately insolvency, due to the unfair competitive disadvantage small banks have over the larger, more established banks. Some authors contend that the larger banks can easily manipulate the Basel Accords to their advantage.²⁰²⁵ Since lobbying by large international banks can influence the outcome of the Basel Accord rules, it is submitted that these same organisations can use their influence to affect regulatory policy as a means of weeding out competition in the jurisdictions in which they operate or have and interest on the pretext of enforcing prudential regulation using the idea of the Washington Consensus theory. It is further submitted that for low-income countries undergoing structural adjustment under the IMF, it could easily impact the smaller, more vulnerable indigenous banks by removing them from the local financial market because they are unable to meet the basic requirements of the Accords, leaving room for the large international banks to operate unreservedly. Thus, the ultimate cost of the loss of the small indigenous banks will be to the indigent society that these small banks serve and ultimately to their development and the development of the economy.

Additionally, high capital requirements in their various forms appear to impact smaller banks negatively because their capital is locked away, effectively stifling growth in loans and consequently the banks' profitability. Large foreign banks, unlike their smaller counterparts, have been shown to have large capital reserves because of being subsidiaries of multinational banking corporations.²⁰²⁶ Equally, because the smaller banks are deemed to be riskier than the larger banks in the eyes of the customer, small banks tend to attract smaller, riskier borrowers who cannot normally get loans from the bigger banks. These clients are thus less likely to pay off their loans because of their poor credit rating because of being riskier. Smaller banks also tend to attract deposits from less liquid depositors, unlike large banks. Small banks who are competing for deposits with the larger, less risky banks often must provide higher rates of

²⁰²⁵ See ch 4 para 12.8.

²⁰²⁶ See ch 7.

interest to attract depositors, which may strain the small banks' income in the long run, making them vulnerable to cyclical and other risks. Additional capital requirements appear to constrain some small banks' abilities to lend out money because it is difficult for them to increase their capital to keep lending at the same level, which may result in lower profitability and riskier client portfolios for small banks. Ultimately, the smaller banks are thus unable to compete fairly in the market and may, in turn, resort to riskier behaviour where they are not well regulated by the central bank.²⁰²⁷

All things being equal, the additional capital requirements are supposed to level the playing field and not make it uneven. It is supposed to give the clients assurance that the smaller banks are safer and sounder. However, due to information asymmetry in low-income countries, it is doubtful that the Basel Capital Accords have had this impact on customer confidence. Since small banks generally deal with less sophisticated clients, it is submitted that financial market customers who shop around for financial services from small banks are mostly unaware of what the Basel Accords are and their overall effect on stabilising small banks. Thus, lack of awareness takes away the benefit to a customer of the "levelling the playing field" effect between the medium and large banks and the small banks. The changes in client perception about the stability of the bank are small to non-existent when it comes to small banks benefiting from the increased capital requirements that the Basel Accords demand, to act as a benefit to smaller banks. The status quo between small banks and other-sized banks does not change as small banks are still viewed as risky. The Basel Accords have not been sufficiently communicated to the masses, including the financially erudite citizenry in the country.

8.7 Limitations of the study

The main limitation of the study was the absence of research data in this research area for Zambia. Much of the research that has been carried out on the capacity of small banks focuses on the financially advanced countries, and as a result, there was very little, if any, information on Zambia and other African countries. Hopefully, this thesis will jumpstart further research in the area where these gaps exist.

²⁰²⁷ See ch 7 para 7.12.3.

8.8 Research findings

The research findings of this thesis identify that small banks are the elephant in the room. Despite there being so much discourse about small and medium businesses, there appears to be very little research and discussion on the role that small local banks play in the growth of less-developed economies, including Zambia. As a result of this, findings on the impact of the Basel Accords on small Zambian banks appear to be unclear²⁰²⁸ due in part to the dearth of empirical research data available to sway the outcome of the research in a particular direction. From the various studies that have been examined,²⁰²⁹ it is indicative that for some, but not all, small Zambian banks, the Basel Accords have impacted positively in certain instances while in other cases they have had the opposite effect. From inference, it appears that each one of the Basel Accords has had a peculiar outcome for small banks. For example, the Basel I implementation was not widely publicised per se; nonetheless, central bank circulars appear to indicate that some of the tenets were adopted between 1994 and 2000, particularly the Capital Accord.²⁰³⁰ The overall outcome appears to have been the unprecedented failure of seven commercial banks between 1994²⁰³¹ and 1997.²⁰³² This is despite the blame being put squarely on these local banks' poor governance and lending practices.²⁰³³ Basel II appears to have had a more positive impact on both large and small banks overall.²⁰³⁴ While Basel III appears to have served the interests of the larger foreign banks better.²⁰³⁵ But Basel's call for more refined capital limits pushed small banks to the edge to the extent that many banks opted to be taken over by larger foreign banks who were either looking to enter the Zambian financial sector or consolidate and grow their portfolio in the country.²⁰³⁶

What comes out strongly from the study is the fact that the Zambian financial system is gradually becoming an attendant to the global financial economy, judging from the high global

²⁰²⁸ See ch 7 para 12.

²⁰²⁹ For example, work done by authors such as Simpasa, Phiri-Mambo, de Luna Martinez, Brownbridge, Quirk and so on.

²⁰³⁰ See ch 4 para 4.1

²⁰³¹ Maimbo (n 12) 33–39.

²⁰³² See ch 7 para 7.4.

²⁰³³ See ch 7 para 3.7.4.

²⁰³⁴ See ch 7 para 12.

²⁰³⁵ See ch 7 para 12.3.

²⁰³⁶ See ch 7 para 14.

index recorded by Zambia.²⁰³⁷ This is a result of a couple of things, including the adoption of the Basel Accords and other international financial standards, but also the rapid rate of regionalisation taking place across the Southern African region.²⁰³⁸ Zambia and many developing countries initially escaped the international financial meltdowns in the West because of their disconnectedness. By strengthening the link with international financial centres, it is predicted that there is likely to be increased instability in the financial sector going forward. Obstfeld posits that despite extensive research, there is a lack of robust evidence showing that financial liberalisation directly improves economic welfare or growth in developing countries. The statistical difficulties in proving this are significant, exceeding those found in trade openness studies. Furthermore, the expected indirect benefits, such as institutional improvements, are not well-supported. Conversely, financial opening appears to increase the risk and severity of economic crises.²⁰³⁹ As a result, Zambian banks are likely to become more prone to the vagaries of the international financial markets to the detriment of the country. The study also brings out the fact that the BoZ has not classified Zambian banks according to size as a means of managing them better. This lack of definition means that the BoZ is applying standard policies across the board irrespective of the bank's size. This does not bode well for the development, growth, and protection of banks in the sector as different-sized banks have different needs and risks associated with them. Some of these arguments can also be identified from the theories that underpin the Jurisprudential basis of the Accords as outlined below.

While the concentration of the thesis is on the Basel Accords it is important to show the relevance of the various theories in the jurisprudential underpinnings that anchor the Basel Accords within the Zambian context. Where any of these theories are inconsistent or not applicable to Zambia, this may result in the Accords being inapplicable to Zambia, depending on the extent of the inconsistency. More profoundly, it is submitted that there should also be a clear differentiation between applicability and outcome. That is to say that while the concept or theory is applicable to a country, its use does not always guarantee a positive outcome. Added to this, it should always be kept in mind that some theories or doctrines work better in the advanced markets that they were often created for, rather than for developing country

²⁰³⁷ See ch 7 para 10.2.

²⁰³⁸ See ch 5 para 2–7.

²⁰³⁹ International Monetary Fund (IMF) “International Finance and Growth in Developing Countries: What Have We Learned?” (2009) 63–111 <https://www.elibrary.imf.org/view/journals/024/2009/001/article-A003-en.xml> (accessed 15 April 2024).

financial markets that are followers. This inconsistency and lack of acknowledgment of a country's idiosyncrasies by using a one-size-fits-all approach to regulation has often attracted the criticism of the Marxist and socialist schools of thought.

From examination of work by various authors mentioned below it is clear that all market-based theories mentioned in Chapter 3 on jurisprudential underpinnings appear to apply to their full extent to market economies like Zambia. This is so, because the basis of the theories and their rules, predicates, and sustains the standard modern market economy model of a country, including Zambia. It is thus evident that the theories that speak to the dynamics of economic development, the potential for financial crises, and the critical role of liquidity in a financial system are used in some measure by the BCBS to create a robust regulatory framework via the Basel accords. For example, Schumpeter's emphasis on credit²⁰⁴⁰ as a driver of development for Zambia's entrepreneurial landscape is shaped by the global financial architecture promoted by the BCBS, based on neoliberal ideals and principles that have historically drawn Marxist critique regarding their potential to exacerbate inequalities. The BCBS rules, designed to mitigate risks identified by theories of financial crisis²⁰⁴¹—from cyclical instability to non-cyclical asymmetric information and speculative investment²⁰⁴²—interface directly with the prudential requirements imposed on Zambian banks. Minsky's Financial Instability Theory²⁰⁴³ and the potential for bank runs as highlighted by the Diamond-Dybvig model, underscore the need for these regulations. However, the application of stringent BCBS standards, particularly the increased capital and liquidity requirements (e.g., LCR²⁰⁴⁴ and NSFR²⁰⁴⁵) stemming from liquidity theories can negatively strain the limited resources of smaller Zambian banks, potentially hindering their ability to extend credit to local businesses and compete with larger, often international, institutions that may be better equipped to meet these demands. Conversely, the adoption of internationally recognised BCBS standards can positively enhance the credibility and stability of a banking sector, potentially fostering greater trust in the country by the international community. Yet, from a Marxist perspective, there remains a concern that these global standards, often shaped by the interests of more developed economies, could

²⁰⁴⁰ Schumpeter (n 254) 102.

²⁰⁴¹ Mishkin (n 356) 49–70.

²⁰⁴² Kindleberger (n 425) 1–340.

²⁰⁴³ Hendrickson (n 361) 13.

²⁰⁴⁴ n 435, 12–13.

²⁰⁴⁵ n 436, 2.

disproportionately burden smaller banks in developing nations like Zambia, potentially hindering their growth and contributing to a financial system that favours larger capital holders. Ultimately, the justification for prudential or forward-looking regulation, the BCBS guidelines seek to enhance the safety and soundness of the financial system as a means of protecting and mitigating the public from potential market failures. While this may appear to be a noble ideal, the outcome of achieving these goals may not always be positive. As such it is important to take cognisance of the effective translation of these global standards carefully for countries like Zambia and consider the specific vulnerabilities highlighted by the Diamond-Dybvig model and the potential for uneven impacts on smaller banks, as critiqued by Marxist perspectives, to ensure that the pursuit of financial stability does not inadvertently stifle financial inclusion and local economic development.²⁰⁴⁶

8.9 Research recommendations

The recommendations are split into two main areas: micro and macro recommendations. As suggested, the micro recommendations deal with suggestions that Zambian regulators, such as the central bank, should consider, while the macro recommendations are mainly considerations for international regulators. The recommendations are based on personal views and experience as well as ideas gathered from contemporary authors in the area.

8.9.1 Recommendation One: Regional institutions

Regional intervention and support are necessary from regional institutions like ADB, COMESA, SADC, and other regional bodies to support small local and regional banks and grow them into medium-sized banks within a specific period. This should be done by providing small banks with appropriate incentives to strengthen and grow them.

Regional institutions should be at the forefront of lobbying the various international financial regulators to provide more ideologically neutral rules that will support small banks and not destroy them.

Regional institutions should spend time questioning and sieving the various rules that they receive from international financial regulators. They should attempt to make appropriate changes to various rules given by these international regulators as and where necessary, to ensure that they are a better fit for small developing banks.

²⁰⁴⁶ Diamond (n 548) 189.

Regional institutions should be more proactive in seeking out homegrown solutions and be more in tune with a recipient country's development like the Nordic model.²⁰⁴⁷ The continent has many experts who can easily provide more workable solutions that may rival Western ideals, which more often than not stifle the growth of developing countries based on the “one-size-fits-all” yardstick that is normally used for any country that is not within the G7 and G20.²⁰⁴⁸ More radically, regional institutions, if they are worth their salt, should create an alter ego to these regulatory institutions and rules that will ensure that not only the country, but also continental development objectives, are met and exceeded using local resources and knowledge.

8.9.2 *Recommendation Two: The Central Bank*

The central bank is currently the regulator for the Zambian financial sector, and as such, it is responsible for all the banks operating under its jurisdiction. As a regulator, it is therefore responsible for ensuring that banks are properly regulated. It has a greater mandate to protect local Zambian banks. It must therefore ensure that these banks are treated fairly when it comes to adopting rules from the international regulators. The central bank should be more active in lobbying for better conditions for small local banks to operate from the BCBS and other multilateral organisations. The central bank should therefore be cautious of adopting “cut and paste” policies that may not be workable in a developing country environment like Zambia. Where a country adopts rules *verbatim*, it is submitted that there are often unseen distortions that occur that may well have serious consequences, more serious than what the rules intended to correct in the first place. As it is, it is submitted that the Basel Accords are competition-based and best utilised by developed countries. Even so, the architects of these Accords still appear to water down a lot of the rules as a result of the lobby groups that they use to soften some of the international banks, according to authors like Chalmers and also Norris, and Benzel.²⁰⁴⁹ So if this is true, then, logically speaking, it means that banks in developed Western countries can

²⁰⁴⁷ Balasubramanian *et al.* “Is There a One Size Fits All Approach to Inclusive Growth? A Case Study” IMF Working Paper (2021) 2–30. The Nordic financial regulatory bodies have independently interpreted global banking standards, like Basel III, to suit their specific national contexts. This has resulted in varying regulatory requirements for banks operating across the Nordic region. They are slowly harmonising their rules with international standards despite this apparent independence. See Deloitte “Regulatory landscapes in the Nordics” <https://www2.deloitte.com/content/dam/Deloitte/dk/Documents/risk/Regulatory-landscape-in-the-Nordics.pdf> (accessed 26 November 2024).

²⁰⁴⁸ Ibid.

²⁰⁴⁹ Chalmers “When Banks Lobby: The Effects of Organizational Characteristics and Banking Regulations on International Bank Lobbying” 2017 *Business and Politics* 1 107–134; Conor & Maxwell “Learning from The Financial Crisis” 2020 *Quarterly Journal of Finance and Accounting* 3 77–106.

shirk their regulatory responsibility by lobbying and thus create a less robust regulatory system for Western banks while expecting banks in developing countries to carry the burden of being good global citizens by following the Basel rules to the letter.

It is further submitted that the concept of the “level playing field” is a misnomer to start with. Technically, it should not be applied to developing countries at all. The “level playing field” concept can only be applied where countries are at the same level in terms of development and other socio-economic indicators. It is submitted that the fact that countries are called “developing” is sufficient proof that these countries cannot meet the criteria sufficiently to be judged as a “level playing field” participant; *ergo* they should be exempt from the rules of the Basel Accords until such time that they do. In the meantime, the central bank or regulator should be tasked with the following undertakings to strengthen not only small local banks but banks in general:

- a) Recognising small banks, first and foremost, as separate important players in the financial market with different requirements from the medium and big banks.
- b) Encouraging the establishment of a primary and secondary market in low-cost Commercial Paper (CP)²⁰⁵⁰ for banks to invest in assist in giving credence to paper issued by these small banks. As Beck posits, different policy goals such as deepening, broadening and stability of financial systems are important to understand where there are trade-offs across different policy goals concerning competition.²⁰⁵¹
- c) Providing small banks with long-term low-interest loans to support their growth and transformation into medium-sized banks in the medium- to long-term; especially since private equity and venture capital funding plays an insignificant role.²⁰⁵²
- d) The Legislator should work together with the central bank in establishing a separate Banking and Financial Services Act to regulate small banks more closely and efficiently.
- e) Providing key personnel with advanced training by sending them on exchange programmes to other world-class financial institutions to get “hands-on” experience in advanced financial regulation.

²⁰⁵⁰ Low-cost commercial paper: A short-term, unsecured debt obligation known as “commercial paper” is offered by banks and big businesses as a cheaper alternative to more expensive funding options. It is a money market instrument having a maximum maturity of 270 days in most cases. See Corporate Finance Institute (CFI) “Commercial Paper” <https://corporatefinanceinstitute.com/resources/fixed-income/commercial-paper/> (accessed 6 April 2024).

²⁰⁵¹ Beck (n 1118) 627–648.

²⁰⁵² Ayyagari *et al.* “Financing of Firms in developing countries: Lessons from research, Policy Research Working Paper 6036” World Bank Development Research Group Finance and Private Sector Development (2012) 1–97.

- f) Lobby to delink the Accords from being part of structural adjustment support for developing countries like Zambia. And replace it with less stringent tailor-made rules for Zambia that will consider the country's financial nuances and support its growth. Since the Accords often come as part of the IMF austerity package, linked to structural adjustment, it is difficult for countries to avoid them. Countries are thus forced into accepting the Accords as part of the austerity package for fear of the consequences that may result if they do not. It can be argued by some that countries go ahead with these austerity measures because they need the money, and equally that the IMF cannot just be dishing out money anyhow to errant countries. However, when it is appreciated that the money is not free, since each member country contributes to a pool of resources proportionate to its economic size and strength, like a credit union, and that is supposed to assist countries in times of need,²⁰⁵³ then surely moderate rather than harsh measures should be applied, given that these are often the poorest countries on the planet.
- g) The central banks should seek out other non-Basel-based solutions to strengthen banks. Given the array of regulatory policies at the disposal of policymakers, it is important to understand how they affect competition and financial stability, as well as how they vary across different competitive environments in their effect on financial stability.²⁰⁵⁴ For example, work done by Demirgüç-Kunt and Detragiache, in "Corporate Governance and Financial Sector Stability", shows a strong correlation between good corporate governance and stability in banks.²⁰⁵⁵ This is especially pertinent when one considers that corporate governance is a significant part of the Accords themselves, albeit at a more advanced level. The argument is that developing countries are not advocating reneging on the adoption of the Basel Accords, but are being allowed sufficient time to take baby steps first to allow them to build capacity and strengthen themselves before they take on the more onerous task of adopting the Accords fully.

8.9.2.1 Introduction of formal bank classification

One of the problems that has been identified by the thesis is the lack of a formal classification of banks. This problem makes it difficult to identify which banks need special assistance and which do not. It is thus submitted that the central bank should introduce formal classification

²⁰⁵³ Driscoll "The IMF and the World Bank: How Do They Differ?" (1 June 1995) 1–14.

²⁰⁵⁴ Ibid.

²⁰⁵⁵ Demirgüç-Kunt *et al.* "Corporate Governance and financial Sector Stability" 2005 *Journal of Development Economics* 291–322.

mechanisms to make it easier to identify the various classes of banks in terms of size and monitor the performance of the various categories against an expected standard set by the central bank or regulator where a country has a separate regulator from the central bank as in the case of South Africa which has recently adopted the Twin Peaks Model of regulation.²⁰⁵⁶

There is no single clear definition of what a “small bank” is in much of the literature reviewed. It would therefore be trite for the central bank to classify small banks based on risk calculations (using RWA) or, more simply, by looking at the bank's Risk Weighted Assets²⁰⁵⁷ or indeed any other accounting measure that BoZ would deem appropriate to differentiate the various sizes of the bank in the country. Other than the literature reviewed on Nigerian banks, Phiri-Mambo appears to be the first Zambian researcher to talk about “Tiers” as a means of classifying banks. However, on closer examination, her method appears to have been used solely to explain her research work rather than as a formal method of classification that is formally adopted by the central bank to measure bank sizes. This is unexpected because the market is replete with ways of classifying banks. A clear example is Gartner’s classification of banks by tiers: Gartner’s research divides banks into 11 regions: four mature markets and seven emerging markets. Countries within each region share similar economic and business characteristics, allowing for a fair comparison between the largest banks in different regions. The specific size criteria for each bank tier vary by region.²⁰⁵⁸

8.9.2.2 Finding niche markets

The dilemma of the small bank is not unique to developing countries alone, it affects small banks in developed countries as well.²⁰⁵⁹ As pointed out under “The Consequences of Market Concentration and Competition,”²⁰⁶⁰ one of the greatest dilemmas of small banks is being bought up by large banks. But, depending on various demand factors, it is submitted that there may be ways in which small banks could respond to these challenges more creatively. For

²⁰⁵⁶ van Heerden “The Legislative and Institutional Framework for South Africa’s New Twin Peaks Model of Financial Regulation” 2018 *Proceedings of Law and Political Sciences Conferences*.

²⁰⁵⁷ See ch 4 para 4.4.2.

²⁰⁵⁸ Gartner “Definition of Bank Tiers” <https://www.gartner.com/en/information-technology/glossary/bank-tier>. (accessed 27 November 2024)

²⁰⁵⁹ Jayadev *et al.*, “Small Finance Banks: Challenges” 2017 *IIMB Management Review* 311–325 311.

²⁰⁶⁰ See ch 7 para 14.

example: there may be a subset of banking services that a small bank could easily provide but which large banks are unable to offer with the same level of cost-efficiency.²⁰⁶¹

If favourable conditions exist, then a small bank could try to identify and stake out a profitable market niche. The key is for a small bank not to attempt everything that a large bank might do in terms of product provision, but rather to focus its business in a way that capitalises on the specialised expertise of its staff. It is submitted that this strategy is useful whether a bank hopes to overcome an overall cost disadvantage or appeal to a particular group of consumers.²⁰⁶² Studies have found evidence that certain types of specialisation by small banks (such as locating branches in a small geographic market and deemphasising large commercial and industrial loans) may overcome overall cost disadvantages.²⁰⁶³ Unfortunately, there is very little empirical evidence on which subsets of banking services work best to minimise or reverse the cost disadvantage for a small bank.²⁰⁶⁴

But even if specialisation fails to reduce costs, a small bank may find specialisation beneficial if certain customers are willing to pay extra for the special things that a small bank can do better than a large bank. The point here is not just about which services are offered but how a service is offered. This was evidenced in the way some of the small Zambian banks operated during the 1991–1998 period when they were competing with the larger foreign banks;²⁰⁶⁵ except in their case, it appears that they did not niche themselves sufficiently and wanted to compete with the “Big Boys” in the market, causing them to strain their capital ratios. This advantage not only allows the bank to offer more personalised service, which to some customers is worth a bit extra, but also confers a potential edge in terms of credit quality control or the evaluation of the ability of the person (natural and juristic) to repay their debts as they fall due when compared to the relatively anonymous screening procedures of the larger banks.²⁰⁶⁶

²⁰⁶¹ Ely & Song “Acquisition of Large Depository Institutions in the 1990s: An Empirical Analysis of Motives” 2000 Quarterly Review of Economics and Finance 467–484.

²⁰⁶² Shaffer “Competition, Economies of Scale, and Diversity of Firm Sizes” 1985 Applied Economics 467–476.

²⁰⁶³ Ibid.

²⁰⁶⁴ Shaffer (n 2067) 467–476.

²⁰⁶⁵ Brownbridge (n 1547) 150–153. See ch 7 para 3.2.

²⁰⁶⁶ Brownbridge (n 1547) 150–153.

8.9.2.3 Embracing technology

Over and above any specialisation, it is submitted that small banks must learn to embrace new technological developments that could allow them to reduce costs and risks, thereby allowing them to compete on a more even footing with larger institutions. The argument comes down to costs at the end of the day. Indeed, information technology is not cheap. To argue that small, undercapitalised banks invest in technology appears unreasonable. However, it can be done with the development of relatively inexpensive desktop computers that provide capabilities formerly limited to expensive mainframes and associated software that is now available with the maturity of the IT market systems.²⁰⁶⁷ With these tools, it is submitted that some back-office operations could be performed more efficiently, including the risky areas of evaluation of loan applications, improving the control of credit risk. Whether such innovations would narrow the existing gap between large and small banks' costs and performance or merely prevent further erosion of the position of small banks, is however, not clear yet.²⁰⁶⁸

8.9.2.4 The need for more financial instruments in the market

On the financial side, it is submitted that there is a need to introduce an array of new financial instruments. This would allow small banks much better control of interest rate exposure and other forms of risk. For example, small banks may also stand to benefit from the appropriate use of interest rate swaps²⁰⁶⁹ and even asset securitisation²⁰⁷⁰ where they exist.²⁰⁷¹ These new instruments, and others like them, may well become part of every banker's standard tool kit for managing its various risks. Small banks need to learn not only the potential but also the pitfalls of the techniques behind such instruments. As an initial step, some of the techniques can be effectively implemented using only one or a few standardised instruments, such as Treasury

²⁰⁶⁷ Fisher "Ending Too Big to Fail" Speech at the Conservative Political Action Conference (March 2013) 1–6.

²⁰⁶⁸ Ibid.

²⁰⁶⁹ Interest rate swaps involve two parties exchanging interest payments on a principal amount, transforming liabilities from fixed to floating or vice versa. There are two main types: fixed-for-floating and forward-rate agreement. Interest rate swaps are the most common form, with \$993 trillion of swaps cleared in 2022. Currency swaps involve the exchange of cash flows denominated in different currencies, allowing entities to manage foreign exchange risk and gain exposure to foreign markets. See Logue "The Swaps Market: How Companies Manage Interest Rate and Other Risks with OTC Derivatives" (1 September 2023) <https://www.britannica.com/money/types-of-otc-derivatives> (accessed 29 March 2024).

²⁰⁷⁰ Asset Securitization is defined as the practice of pooling together various types of debt instruments (assets) such as mortgages and other consumer loans and selling them as bonds to investors. A bond compiled in this way is generally called an asset-backed security (ABS) or collateralized debt obligation (CDO). See Bondarenko "Securitization" (24 March 2023) <https://www.britannica.com/money/securitization> (accessed 29 March 2024).

²⁰⁷¹ Findlay "Swap Applications for Community Banks" 1987 *Journal of Commercial Bank Lending* 9–14.

Bill Futures (TBFs)²⁰⁷² to hedge interest rate risk. The sophistication of this sort of instrument may not benefit a small bank more than a large bank, but at least it could help a small bank maintain its position against larger banks in the market.²⁰⁷³

8.9.2.5 Farming out of non-core bank services to reduce cost

Finally, Sherill and Shaffer indicate that it is possible to take advantage of networking economies while remaining a small bank. Using a third-party vendor for some services, such as payroll data processing, can sometimes cut costs. A “bankers’ bank”, a correspondent bank, or even a central bank can sometimes provide certain back-room services at a savings.²⁰⁷⁴ According to Hunter and Timme, a more ambitious step would be to affiliate with several other like-minded small banks by forming a multibank holding company, an alternative that many small banks would view as preferable to being absorbed into an existing large organisation with an incompatible focus.²⁰⁷⁵

8.9.2.6 Revisiting the infant-industry argument

In the previous chapters, consideration was given to protecting small banks by using the “infant industry” argument.²⁰⁷⁶ This is one of the more workable solutions if managed properly to avoid the common pitfalls of the system. As we saw in previous chapters, most small Zambian banks have been taken up by mergers and acquisitions,²⁰⁷⁷ so this will effectively mean very few banks would benefit from such a programme if it were to be implemented. To quote Stiglitz: “One of the main lessons from the financial crisis is that the state must play a key role in sustaining economic development.”²⁰⁷⁸ He claims that theories advocating deregulation and

²⁰⁷² A Treasury Bill future is an exchange-traded, standardised contract that requires the buyer to buy a certain Treasury bill (T-bill) at a fixed price on a future settlement date. See Little ‘What Are Financial Futures?’ in Rothstein & Little (eds) *The Handbook of Financial Futures* (1984) 35–66.

²⁰⁷³ Sales & Tannuri-Pianto “The Use of Duration Models to Explain Bank Failures in Brazil. Paper 1994–1998” Central Bank of Brazil (2005).

²⁰⁷⁴ Shaffer (n 2020) 467–76.

²⁰⁷⁵ Hunter & Timme “Technical Change, Organizational Form, and the Structure of Bank Production” 1986 *Journal of Money, Credit and Banking* 152–66.

²⁰⁷⁶ See ch 6 para 9.

²⁰⁷⁷ See ch 6 para 5.5.1.

²⁰⁷⁸ Stiglitz “One of the Main Lessons from the Financial Crisis is that the State must play a Key Role in Sustaining Economic Development” <https://www.afdb.org/en/news-and-events/joseph-stiglitz-one-of-the-main-lessons-from-the-financial-crisis-is-that-the-state-must-play-a-key-role-in-sustaining-economic-development-5524#> (accessed 14 May 2024).

opening markets are ineffective. He also posits that the state has a role to play even if that role should depend on places and circumstances.²⁰⁷⁹

8.9.3 Recommendation Three: Options for standard-setting bodies

Reforms have been suggested for the institution itself to ensure that it gets in touch with less-developed countries. Jones and Knaack suggest some reform options for these standard-setting bodies that include increasing the voice of the developing countries in standard-setting and establishing a completely new standard-setting body with a dual mandate altogether.²⁰⁸⁰

8.9.4 Recommendation Four: Allowing developing countries more say

Jones and Knaack, for example, opine that the prevailing financial regulatory system is rigidly divided between the standard setters and the standard takers.²⁰⁸¹ This grouping infringes on the equivalence principle found in global governance, which states that “all jurisdictions affected by a global good (or bad) should have a say in its provisions and regulations.”²⁰⁸² This makes a lot of sense given that the work shows developing countries and their regional organisations (the standard takers) have little or no voice in the BCBS and other organisations that influence international financial regulation. As a result, these international standard setters have been accused of forcing developing countries to adopt rules in which they have no say at all and which, at the end of the day, do not produce the desired outcomes. Khor remarks that wealthy nations use their control over organisations like the WTO, World Bank, and the IMF to force developing countries to open their markets up to the West by liberalising them, while the West keeps its own markets closed, thus creating an unfair trade advantage between the rich and poor countries.²⁰⁸³

²⁰⁷⁹ Jones & Knaack “Global Financial Regulation: Shortcomings and Reform options” 2019 *Global Policy* 193–206.

²⁰⁸⁰ Ibid.

²⁰⁸¹ Jones (n 2084) 193–206.

²⁰⁸² Held *et al.* “The World Crisis: Global Financial Governance: Principles of Reform” https://www.researchgate.net/publication/254436255_The_world_crisis_global_financial_governance_principles_of_reform#fullTextFileContent (accessed 12 November 2024) 1–7. See also Ibid. (Jones *et al.* 2019). 193–206.

²⁰⁸³ Khor *Rethinking Globalisation: Critical Issues and Policy Choices* (2001); Oxfam “Rigged Rules and Double Standards: Trade, Globalisation, and the Fight Against Poverty” (2002) 1–276 <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/112391/cr-rigged-rules-double-standards-010502-en.pdf> (accessed 6 April 2024). While these papers are dated, their criticisms are still pertinent in the author’s views.

Adding to Khor's criticism, Andrews appears to support the idea that many institutional reforms in developing countries have limited success because they are not introduced to gain long-term support.²⁰⁸⁴ The signals thus tend to introduce unrealistic best practices that do not fit a developing country context and are not considered relevant by implementing agents, and the result is a set of new forms that do not function.²⁰⁸⁵

To make things worse, most developing countries face challenges in that they are not members of international institutions like the BCBS.²⁰⁸⁶ However, the dilemma arises when a developing country wants to access international financial assistance from these organisations for large developmental projects. These developing countries need the goodwill and support of these institutions to access funds for projects that include the likes of infrastructure development, education, healthcare, and public administration. The problem is that to receive this assistance, developing countries must comply with a complex set of regulatory rules like the Basel standards. Unfortunately, the adoption of these standards may cause financial shocks to Banks and the Banking system of a country, as these developing countries normally have unsophisticated banking systems that are often ill-prepared to adapt these stringent regulations into their local financial regulatory frameworks.

To allow for the equivalence principle²⁰⁸⁷ to be adhered to, it was suggested by the Warwick Commission²⁰⁸⁸ in 2009 that there should be a shift away from a singular global financial governance regime to allow greater autonomy along national and regional lines. This autonomy would allow each country to tailor its standards to their peculiar financial markets, which,

²⁰⁸⁴ Andrews *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions* (2013) 1–19.

²⁰⁸⁵ Ibid.

²⁰⁸⁶ Bank for International Settlements (BIS) “Basel Committee Membership” <http://www.bis.org/bcbs/membership.htm> (accessed 19 June 2023).

²⁰⁸⁷ According to Jones and Knaack the concept ‘equivalence principle’ in global governance is where all jurisdictions affected by global good (or bad) should have a say in its provision regulation. See Jones (n 2037) 193–206.

²⁰⁸⁸ Centre for International Governance Innovation “The Warwick Commission on International Financial Reform: In Praise of Uneven Playing Fields: The Report of the Second Warwick Commission” University of Warwick and the Centre for International Governance Innovation (CIGI) (2009). The Warwick Commission was established by the University of Warwick in 2007. It brings together academics, policymakers, and practitioners to tackle important global challenges. The Commission conducts independent analyses of these issues and proposes practical solutions. Their goal is to stimulate debate and help policymakers find solutions to complex problems. By combining scholarly research with real-world experience, the Commission demonstrates the value of social science in shaping good public policy. See Warwick Research “Warwick Commission” <https://warwick.ac.uk/research/warwickcommission/> (accessed 27 April 2024).

theoretically, would help to achieve a balance between financial stability and inclusive growth, outside of the fears of cross-border arbitrage as happened with Japan and the West.²⁰⁸⁹

It is submitted that the standard-setting bodies should be reformed to make them more representative by involving the less-developed countries in decision-making. In this vein, the FSB took modest steps in 2014 when they rearranged the plenary to give more seats to the officials from emerging market member jurisdictions and reduced the seats of international organisations such as the IMF and the World Bank, and according to Jones and Knaack, “...could in principle represent developing country voices, but in practice have done so with negligible effectiveness.”²⁰⁹⁰

On the more radical side, it has been proposed by scholars like King,²⁰⁹¹ that financial governance bodies be merged and formalised, with calls for the G20 countries to transform themselves into a governing council for the IMF or indeed, merge the FSB with the IMF and World Bank financial committees.²⁰⁹² Yet other scholars, including Stiglitz and Claessens, are of the view that a new inter-governmental organisation should be created that would provide some kind of universal membership in a constituency system akin to that of the IMF or World Bank, where members of the governing board represent several member countries.²⁰⁹³

8.9.5 Recommendation Five: Alternatives to ameliorating reforms

The sad reality is that despite all the proposals made since the 2007–2008 GFC, there has been no consensus or change in the international systems. Many of the proposals have been rejected.

²⁰⁸⁹Tarullo (n 195). 76–77 85.

²⁰⁹⁰ Jones (n 2084) 193–206.

²⁰⁹¹ King “Speech at the University of Exeter.” (January 2010). <http://www.bankofengland.co.uk/archive/Documents/historicpubs/speeches/2010/speech419.pdf>. 1–10 (accessed 27 April 2024). King “Governor of the Bank of England” speech at the University of Exeter (19 January 2010). Governor of the Bank of England. Speech at the University of Exeter, January, 19. Mervyn Allister King, is a British economist who served as the Governor of the Bank of England from 2003 to 2013. He studied economics at Cambridge and Harvard University. He became a professor of economics at the London School of Economics. He joined the Bank of England in 1990 and became the chief economist in 1991. In 1998, he became a deputy governor of the bank and a member of the Group of Thirty. King was appointed as governor of the Bank of England in 2003, succeeding Edward George. Most notably, he oversaw the bank during the financial crisis of 2007–2008 and the Great Recession. King retired from his office as governor in June 2013, and was succeeded by Mark Carney. Since September 2014 he has served as a professor of economics and law with a joint appointment at New York University’s Stern School of Business and School of Law. See King “Alan Greenspan Professor of Economics” (2017). <https://web.archive.org/web/20170920044505/> (accessed 27 April 2024).

²⁰⁹² Ibid.

²⁰⁹³ Stiglitz “Democratizing the International Monetary Fund and the World Bank: Governance and Accountability” (2003) 111–139.

Despite these rejections, it is proposed that more moderate changes are made to ensure that international regulatory standards have more meaning and fewer adverse effects for developing countries.

From the foregoing, it appears that many scholars and practitioners like Jones, Knaack Stiglitz and Claessens feel that the Bretton Woods Institutions should amend their charters to recognise the need for the existence of different standards when dealing with developing countries so that the rules can be adapted for use in a wide range of countries and institutions, particularly regional institutions.²⁰⁹⁴

More importantly for the purposes of this thesis, it is suggested that the Basel Consultative Group (BCG)²⁰⁹⁵ could review its membership to broaden its presentation and thus invite new members from low- and medium-income countries, which is sorely lacking now. This would help to ameliorate the current situation where the BCG works on a top-down basis of regulation. They tell the countries what to do, and the country implements it without any bottom-up consultation. This assumes that these institutions know what the country needs best, rather than building on what a country needs—the proverbial “one-size-fits-all” policies that Washington Consensus Institutions are known and criticised for.²⁰⁹⁶ This criticism is not mere rhetoric and can be well-justified. For example, the Deaton Report published in 2006 criticised the Bank (World Bank) and the Fund (IMF)²⁰⁹⁷ for failing to implement the Independent Evaluation Office (IEO)²⁰⁹⁸ and the Independent Evaluation Group (IEG)²⁰⁹⁹ recommendations respectively. In fact:

²⁰⁹⁴ See ch 4 para 3.

²⁰⁹⁵ The Basel Consultative Group (BCG) provides a forum for deepening the Committee’s engagement with supervisors around the world on banking supervisory issues. It facilitates broad supervisory dialogue with non-member countries on new Committee initiatives early in the process by gathering senior representatives from various countries, international institutions, and regional groups of banking supervisors who are not members of the Committee. See Bank for International Settlements (BIS) “The BCG” <https://www.bis.org/bcbs/mesc.htm> (accessed 27 April 2024).

²⁰⁹⁶ Stone “The Political Economy of IMF Lending in Africa” 2004 *American Political Science Review* 577–591 577.

²⁰⁹⁷ Deaton *Global patterns of income and health: facts, interpretations, and policies* (2006).

²⁰⁹⁸ Independent Evaluation Office (IEO). The Independent Evaluation Office (IEO) was established in 2001 to conduct independent and objective evaluations of Fund policies and activities. Under its Terms of Reference, it is fully independent from the Management of the IMF and operates at arm’s length from the Board of Executive Directors. See Independent Evaluation Office (IEO) of the International Monetary Fund (IMF) <https://ieo.imf.org/> (accessed 27 April 2024).

²⁰⁹⁹ Independent Evaluation Group (IEG). The Independent Evaluation Group (IEG) evaluates the development effectiveness of the World Bank Group. Our work provides evaluative evidence to help the World Bank Group deliver better services and results to its clients. We do so by generating lessons from experience and accountability to shareholders and stakeholders. IEG is independent of the Management of the World Bank Group and reports

“In the case of the bank, this reflects larger criticism of staff incentives being misaligned with its twin goals and the bank having an insular self—referential approach to knowledge productions, which—according to the landmark Deaton Report²¹⁰⁰ published in 2006—sometimes borders on ‘parody’ (see Observer Summer 2018²¹⁰¹) Meanwhile a third independent evaluation of the IEO itself, published in 2018 found that the IEO’s recommendations continue to ‘lack traction’ within the fund (see Observer Autumn 2018²¹⁰²) This echoes the findings of the previous evaluations of the IEO amidst accusations of ‘groupthink’ at the IMF, which the IEO deemed partially the cause of the Fund not foreseeing the 2008 global financial crisis, arguably the most important job and clearest recent failure (see Update Issue 74²¹⁰³).”²¹⁰⁴

The recommendations are that developing country regulators should be assisted to strengthen the evidence base that would allow them to make meaningful proposals for their own countries, especially since they have a much weaker basis to draw on than developed countries, because they have less experienced bureaucrats. The weakness that countries have in collecting economic evidence often leads developing countries to produce weaker and less robust proposals when making standard-setting proposals.²¹⁰⁵

It is submitted that developing country regulators should come together to strengthen their alliances. This will ensure that, as an interest group, it will act as a catalyst for lobbying

directly to the Executive Board. See Independent Evaluation Group (IEG) of the World Bank <https://ieg.worldbankgroup.org/> (accessed 27 April 2024).

²¹⁰⁰ Deaton *Global patterns of income and health: facts, interpretations, and policies* (2006). See also Banerjee *et al.* “An Evaluation of World Bank Research, 1998–2005” SSRN 1–165 (2006). *Caveat*: The Deaton Report appears to be a misnomer as the real name is the evaluation of World Bank research. However, it is called such because Deaton had a substantial input in the report.

²¹⁰¹ Bretton Woods Project “IEG Findings Cast Doubt on Bank’s Ability to Deliver on General Capital Increase” (2018) 1. <https://www.brettonwoodsproject.org/2018/07/ieg-findings-cast-doubt-banks-ability-deliver-general-capital-increase/> (accessed 27 April 2024).

²¹⁰² Bretton Woods Project “Independent Evaluations Continue to Lack Traction at IMF” (26 September 2018) 1. <https://www.brettonwoodsproject.org/2018/09/independent-evaluations-continue-lack-traction-imf/> (accessed 27 April 2024).

²¹⁰³ Bretton Woods Project “‘Groupthink’ IMF Slammed for Mistakes Before Crisis” (2011) 1. <https://www.brettonwoodsproject.org/2011/02/art-567577/> (accessed 27 April 2024).

²¹⁰⁴ Bretton Woods Project “What are the Main Criticisms of the World Bank and the IMF?” (2019) 1–10 5. <https://www.brettonwoodsproject.org/2019/06/what-are-the-main-criticisms-of-the-world-bank-and-the-imf/> (accessed 27 April 2024).

²¹⁰⁵ Ibid.

international regulators. In this way, developing countries may be able to influence the global standard-setting processes like their counterparts in the developed countries.

In alignment with the second set of reforms that were suggested by Jones and Knaack of what they term “a new standard-setting body for fintech with a dual mandate”, it is recommended that with the advent of digital financial services there is an opportunity to create a brand-new standard-setting body for the prudential regulation of digital financial services rather than rely on the old organisations which are resistant to reforms and developing new modern regulations. This new regulatory body would take the regulation forward when it comes to dealing with the next generational challenges of financial service regulation.²¹⁰⁶ This is especially pertinent given that many Zambian banks are taking on digital financial services, which are likely to come under the scrutiny of both local and international regulators.²¹⁰⁷ This new body should be able to balance financial stability with growth. According to Jones and Knaack:

*“The foundations of such a standard setter can be found in the joint work of the Global Partnership for Financial Inclusion, the Chinese central bank and the World Bank who developed the 2016 High-Level Principles for Digital Financial Inclusion. The Principles were endorsed by the G20 leaders at the Hangzhou Summit in September 2016, along with a plethora of other incentives and action plans that promote fintech and digital financial inclusion.”*²¹⁰⁸

The focus on digital financial services is said to have two main advantages: that of allowing regulators to concentrate on the financial sector and that of reducing inequalities in the regulatory experience and capacity between developed and developing country regulators.²¹⁰⁹

8.9.6 Recommendation Six: Simplifying regulation for smaller banks

It has been argued for a long time by several authors, like Demirgüç-Kunt, Asli, Levine,²¹¹⁰ and Barth *et al.*, that small banks should not be included in the stringent regulatory rules such as the Basel Accords. However, it is often felt by these developing banks that the general response from multilateral organisations has been slow and not as positive as it has been

²¹⁰⁶ Jones (n 2084) 203.

²¹⁰⁷ Jones (n 2084) 203; n 1690, 38.

²¹⁰⁸ Jones (n 2084) 203.

²¹⁰⁹ n 1690, 38.

²¹¹⁰ Caprio (n 1947) 1–59.

towards developed banks in Western countries. They often complain that while Western countries are providing their vulnerable banks with protection in the form of reduced compliance requirements and temporary exemptions on certain rules, including reduced disclosure and reporting requirements, very little is done for developing countries in times of need.²¹¹¹ It is submitted that by implication, there is a dichotomy in terms of the application of the Basel standards: one for the developed countries and one for the developing countries. The call for greater proportionality in banking regulation and supervision is growing louder—not just in the United States and Europe, but also globally, as evidenced by a member of the executive board of the European Central Bank (ECB), Lautenschlager’s 2017 statement to the IMF. Lautenschlager’s statement calls for greater proportionality in banking for small European banks. She points out that the European Central Bank (ECB) is working to reduce compliance costs for small banks by simplifying some of the rules that the small banks have to follow.²¹¹² For example, Lautenschlager proposed that banks with trading books below EUR50 million would be eligible for exemptions from certain obligations like having a prudential trading book, given their small size.²¹¹³ Similarly, banks that have trading books of below EUR300 could be given simpler approaches to calculating market risk.²¹¹⁴ Developing countries and Zambian banks could also lobby their central banks or regulators for similar conditions that suit them better. It is submitted that this could include relaxing of the reporting requirements for some of the smaller banks. It has also been proposed that small banks’ disclosure obligations should be reduced, particularly for non-listed banks.²¹¹⁵ It is argued that this would reduce the small bank’s administrative burden, which forms a significant part of the bank’s total costs. Further, the European Central Bank is discussing exempting small European banks from some of the remuneration rules starting from 2017.²¹¹⁶ African regulators can take a leaf from this for their own small banks.

²¹¹¹ Caprio (n 1947) 1–59.

²¹¹² Lautenschläger “Is Small Beautiful? Supervision, Regulation and the Size of Banks” statement by Member and Vice-Chair of the Supervisory Board of the European Central Bank (2017) 1–2.

²¹¹³ Ibid.

²¹¹⁴ Lautenschläger (n 2117) 1–2.

²¹¹⁵ Lautenschläger (n 2117) 1–2.

²¹¹⁶ Lautenschläger (n 2117) 1–2. According to Zalewska there has been substantial progress with the reforms of some of the small banks regarding the remuneration rules. However, the reforms were a double-edged sword in that while some rules were softened, others were more stringent: “Following from the difficulties with the interpretation and implementation of CRD IV, the CRD V regulations were published in May 2019. They softened some remuneration rules, especially for smaller banks, but tightened others. For instance, CRD V stated that institutions with average asset value not exceeding €5 billion over the 4-year period immediately preceding a given

From the preceding, it is clear to see that the central banks in the West are not standing still, they are reacting to the needs of the banks under their supervision. In Zambia, the central bank ensures that commercial banks comply with the rules to the letter, as they have very little opportunity to lobby for better conditions.²¹¹⁷ Equally, it is submitted that it could arguably be a case of the developing countries trying to show that they can meet the Basel challenges without asking for concessions as a means of gaining respect from the international regulators, even at the cost of losing their banks.

The apparent dichotomy in terms of regulation does not bode well for an international financial system that expects developing countries to operate on a so-called “level playing field” but expects developing countries to comply with the letter of the regulatory rules that have been created by Western countries and introduced into developing countries almost as an inflexible standard; while Western countries can “chop-and-change” their own rules at will to suit the prevailing situation.²¹¹⁸ It is submitted that countries must be able to determine how best to use regulatory rules for themselves to be effective and to reap their benefits. It is further submitted that dichotomy and rigidity of regulations only stand to create distrust, non-conformity, and criticism of the regulatory rules, like the Basel Accords, when they become onerous, especially when the more advanced party can manipulate the rules to their advantage.

8.9.7 Recommendation Seven: Adapting for developing countries

In essence, it can be conceded that the Basel Accords are not harmful in themselves—they have, however, come too early for banks in developing countries that are just starting to evolve, not only financially but economically as well. It is thus argued that placing complex rules in non-complex financial systems only stands to stunt the growth of these local banks particularly small ones. This is especially pertinent when one considers that Basel Accords were made to enhance the risk management systems of large complex financial organisations (LCFO) like Citigroup, Deutsche Bank and ABN Ambro who are some of the most complex and internationally active banks. According to Gups²¹¹⁹ in “The Effects of Basel II on Developing

financial year were exempt from the application of payment in instruments, retention, and deferral specified in CRD IV”. See Zalewska “Bankers’ Remuneration Reforms and New Challenges” 2023 *Corporate Governance: An International Review* 1 161–177. 164.

²¹¹⁷ See ch 4 para 14.

²¹¹⁸ Mügge (n 359).

²¹¹⁹ Gup *The Effects of Basel II on Developing Countries. A summary of a Global Public Goods Network forum on Basel II* (2006) 10–15.

Countries. A summary of a Global Public Goods Network forum on Basel II, ” because the Accords were made for complex organisations, they failed or neglected to consider the less complex needs of developing countries.²¹²⁰ Equally, the BCBS intended to cater to internationally active banks but found that within a short time, more than 182 countries with varying complexities of financial institutions were adopting these rules even without being members of the BCBS.²¹²¹ Thus Beck, Jones and Knaack, point out, that governments may adopt the Basel Accords for five main reasons, namely a) signalling to international investors; b) reassuring host regulators; c) facilitating home host supervision; d) peer learning and peer pressure and e) lastly and more importantly technical advice from the International Monetary Fund and the World Bank plays an important role in shaping the incentives for politician and regulators in developing countries.²¹²² Further analysis shows that none of the reasons for adopting the Accords is for the sole purpose of ensuring that a developing country’s financial system is well-regulated. Rather, the Accords appear to have been adopted because of outside rather than internal influences, and because it was good for business and a country’s status—that is, it shows sophistication that is attractive to the external investor and the outside world.²¹²³ There are risks to the full implementation of the Basel Accords, however, particularly, Basel II and Basel III for these countries. These come in the form of a divergence between the international Basel Standards and the *sui generis*²¹²⁴ regulations that would be most appropriate for most countries; the divergence being particularly stark for low and lower-middle-income countries.²¹²⁵ It is argued, therefore, that refinements to the Accords are needed in the interim to encourage the growth and development of indigenous banks. To borrow once again from Beck, Jones and Knaack, in terms of recommendations, countries can choose the optimal approach: options for developing countries’ regulators which include:

- a) **Identify incentives and distinguish between prudential, reputational, and competitive models.** In addition to determining what is best from a technical standpoint, authorities

²¹²⁰ Gup (n 2124) 10–15.

²¹²¹ n 34, 1.

²¹²² Beck (n 1118) 1. (This article is based on a research project led by Emily Jones, Ngaire Woods and Thorsten Beck and funded by ESRC/DFID between 2015 and 2018.).

²¹²³ Beck (n 1118) 1.

²¹²⁴ *Sui generis* is the Latin phrase meaning “of its own kind.” It describes something unique to itself, belonging to the same kind or class. *Sui generis* refers to a separate legal classification in legal circumstances. See Legal Information Institute (LII) “*Sui Generis*” https://www.law.cornell.edu/wex/sui_generis (accessed 1 April 2024).

²¹²⁵ Beck (n 1118) 1.

must also take competitiveness and reputational concerns into account when determining whether to adopt Basel II and III. Governments, regulators, and the financial sector are examples of stakeholder groups whose motivations may or may not align. For example, governments eager to position their nation as a financial services hub may overlook the expenses associated with adopting an off-the-shelf Basel system, which affects both the banking industry and the regulatory body. However, domestic banks with an international focus might pressure the government to implement Basel II or III since they hope to gain from it in terms of reputation and competitiveness, particularly in comparison to smaller banks.²¹²⁶

- b) **Tailor basic standards to national circumstances.** Outside of the Basel Committee on Banking Supervision, regulatory bodies are not subject to peer review processes or regulations. This flexibility can be used by regulators on the financial periphery to modify international norms to satisfy local regulatory requirements. Regulators can customise Basel implementation to local conditions in several ways. This will help them use the advantages of international banking standards while mitigating the risk and expense associated with adopting Basel II and III off-the-shelf.²¹²⁷
- c) **Proportional rules implementation.** Regulators can avoid copying prudential requirements from the Basel II and III rulebooks. They can instead implement a simplified framework that is adequate for the bank's exposure relevant to the market. This can include using domestic rules that are appropriate for the nature and early stage of development of a country's market.²¹²⁸

One of the other recommendations that would appear to be workable for small banks in Zambia, and which is taken from the European perspective, is the proposals made by the Centre for European Policy Studies (CEPS). Their study proposes that the best way to deal with the problem of regulating smaller banks is by simplifying the whole process of bank regulations of their prudential systems as a means of reducing the distortion resulting from regulatory compliance. Simplification can be done in five main ways as follows:²¹²⁹

²¹²⁶ Beck (n 1118) 1.

²¹²⁷ Beck (n 1118) 1.

²¹²⁸ Beck (n 1118) 1.

²¹²⁹ Carmassi & Micossi *Time to Set Banking Regulation Right* (2012) 1–73.

First, capital requirements should be set as a straight ratio between common equity and total assets. It is recommended that the level should be (gradually) raised to between 7 per cent and 10 per cent of total assets, based on systemic stability considerations. Further in line with their recommendations, the new capital ratio with equity valued at market rates should be used as a reference in both Pillar 2 (supervisory review) and Pillar 3 (market discipline).²¹³⁰

It is further recommended, following their guidelines, that as a second measure, under Pillar 2, prudential capital ratios should be used to trigger enhanced supervisory review and bind supervisors to a set of predetermined corrective actions of increasing severity, when the bank's capital ratio falls below certain pre-specified thresholds, as under the current US Federal Deposit Insurance system of Prompt Corrective Action (PCA).²¹³¹

Third, to eradicate moral hazard,²¹³² it is recommended in line with the Centre for European Policy Studies (CEPS) that the system must be closed by a procedure for bank resolution, to be triggered when a bank's capital falls beyond repair. Under this recommendation, the resolution costs would fall primarily on shareholders and unsecured creditors, but even secured creditors and uninsured depositors would not be sure to escape.²¹³³

Fourth, the recommendation to simplify the supervision of small banks in line with CEPS suggestions would involve the correction for risk-taking by individual banks by entrusting it to deposit insurance, which would cover retail depositors and only up to a maximum amount. Fees would be determined based on banks' overall risk profile and systemic relevance, as will be described below.²¹³⁴

Fifth, and the last recommendation following CEPS guidelines under Pillar 3 (market discipline), solvency rules would involve small banks issuing a substantial amount of contingent capital securities (CoCos),²¹³⁵ i.e. debentures convertible into equity; conversion

²¹³⁰ Carmassi (n 2134) 1–73.

²¹³¹ Section 38 of the Federal Deposit Insurance (FDI) Act, 12 U.S.C. 1831o, Prompt Corrective Action (PCA), Federal Deposit Insurance Act. Section 38. Prompt Corrective Action <https://www.fdic.gov/federal-deposit-insurance-act/section-38-prompt-corrective-action> (accessed 4 November 2024).

²¹³² See ch 3 para 3.8.3.

²¹³³ Carmassi (n 2134) 1–73.

²¹³⁴ Carmassi (n 2134) 1–73.

²¹³⁵ COCO bonds or contingent convertible capital instruments is also known as an enhanced capital note (ECN), is a fixed-income instrument that is convertible into equity if a pre-specified trigger event occurs. The concept of COCO has been particularly discussed in the context of crisis management in the banking industry. See Banco

must be triggered automatically upon crossing certain market-based capital indicators and not be left to supervisory discretion.²¹³⁶ This would complete the regulation process. Under this system, there would be no need for special rules on liquidity or funding structures, whose adequacy would be concretely verified within the supervisory review of the banks covering the overall business model, its riskiness, and its sustainability. There would also be no need for special restrictions on activities and operations since supervisors would be able to penalise risk-taking as needed with deposit insurance fees.

8.9.8 Conclusion

The outcome of this research indicates that the Basel Accords' impact on small banks in Zambia is not clear. The various outcomes will depend on how and what parameters are being measured. Having said that, it appears that one view, judging from the various research work,²¹³⁷ is that the first Accords had a more stabilising effect on the Zambian banking system after the mass insolvencies during the 1994–97 period. A second, and more critical view, would be that the strict changes in capital requirements led to the mass insolvencies. This idea has been evidenced by Dang and Stone, where the researchers were investigating whose interests are served by IMF conditional lending. The paper posited that while this study does not prove US banks dictate IMF conditions or actively lobby for them, it's widely recognised that US financial institutions have sway within US policy circles, which in turn influences the IMF. Their research now provides concrete evidence, which was previously only implied, that US financial institutions benefit directly from the IMF's financial conditions imposed on countries under SAPs. Moreover, these benefits are primarily concentrated among the US and a few European institutions. This suggests that the assumed informal influence of US banks is indeed potent.”²¹³⁸

The idea may seem far-fetched at first, but when one considers that some of these banks were operating normally before 1991 and became insolvent between one and three years after the introduction of IMF conditionalities in 1992/1993 defies logic.²¹³⁹ In their favour, it could be argued that Basel I had not been formally adopted at the time. The central bank did not make a

Bilbao Vizcaya Argentaria “COCO Bonds: A Definition” <https://www.bbva.com/en/economy-and-finance/additional-tier-1-securities-a-definition/> (accessed 29 April 2024).

²¹³⁶ Carmassi (n 2134) 1–73.

²¹³⁷ See ch 7 para 7.12.1.

²¹³⁸ Dang & Stone “Multinational Banks and IMF Conditionality” 2021 *International Studies Quarterly* 375–386.

²¹³⁹ Maimbo (n 12) 21.

formal announcement on its adoption. Thus, it appears that only rudimentary rules like those associated with bank's regulatory capital were enforced. However, these rules were effectively a precursor to more stringent regulatory rules. As indicated earlier, Basel III was introduced in Zambia on the back of the Lehman Brothers failure and the resulting GFC collapse in September 2008.²¹⁴⁰ Nevertheless, due to weak investment linkages to international financial markets, Zambia was not heavily impacted by the GFC,²¹⁴¹ especially because Zambia relied mostly on domestic finance and had little exposure to external credit lines. As a result, the country saw relatively little direct financial impact (meltdown) from the GFC of 2008. The two main impacts related to portfolio withdrawals by customers forced the central bank to raise interest rates significantly to keep the deposits. Second, there was a sharp decline in copper prices worldwide, which had the biggest impact on the Zambian economy. Zambia's growth, which averaged about six per cent over the last five years before the GFC, was largely a result of copper exports, which made up nearly 80 per cent of all exports in 2007. In 2008, the decline in copper prices led to a notable devaluation of the national currency and more than doubled the deficit in the external current account. The declining price of copper weakened the country's fiscal condition further.²¹⁴²

Despite the delayed implementation of the Basel II Accord, it appears to have had a two-pronged effect on the financial sector. On the one hand, it further strengthened many of the strong (foreign) banks' capital positions. On the other hand, results show that the positive effects were not sector-wide, as some of the banks' capital positions were shown to plummet because of the introduction of the Accord, particularly the small banks, according to results obtained by Phiri-Mambo.²¹⁴³

As pointed out above,²¹⁴⁴ the entry of Basel III began to take its toll on the smaller weaker banks because of the stringent regulations that they had to comply with and resulted in a small flood of mergers and acquisitions activity as many banks had no option other than merging with bigger more liquid foreign banks to stay afloat or face insolvency.²¹⁴⁵ The first set relates

²¹⁴⁰ See ch 4 para 5.

²¹⁴¹ Ndulo *et al.* "Global Financial Crisis" Zambia Phase 2 Discussion Series Paper (2010) 1–32.

²¹⁴² Ibid.

²¹⁴³ See ch 7 para 4.5.

²¹⁴⁴ See ch 7 para 4.5.

²¹⁴⁵ See ch 7 para 14.

to the role the central banks should play as regulators.²¹⁴⁶ Central banks in Africa are reluctant to lobby for simpler rules and longer implementation times for small banks to meet the Basel Accord requirements. It is submitted that this may indicate the priority of small local banks in the kaleidoscope of the development agenda, in fact for a country that wants to urgently develop the small and medium sectors of the economy, this is an anathema because in Zambia the large foreign banks are unlikely to rise to the occasion for this sector.²¹⁴⁷ Indeed, small banks are scarcely mentioned in central bank literature, nor is policy made to directly encourage these banks to grow into bigger and better banks. Instead, they are grouped with all banks. One of the most telling signs of this oversight is the fact that banks are not classified by size. All banks are treated alike.²¹⁴⁸ Next comes the regional and international organisations.²¹⁴⁹ The various regional organisations like SADC and COMESA tend to take rules directly from the hubs of international financial regulation without much ado.²¹⁵⁰ As research has attempted to bring out, these organisations are once again tied to international organisations by the financial and advisory support they receive.²¹⁵¹ There is little scope for varying the conditions that Western consultants propose when the West is paying for the entire project. Despite this, it is recommended that the regional organisations need to be more vocal so that local solutions can be found for local banking problems. The international financial regulators need to give developing countries a voice by encouraging them to join some of the groupings, not as observers, but as participants, for their voices to be heard.²¹⁵² It is suggested that these international organisations must ensure that, when they make recommendations, such recommendations are country-specific and do not harm small, burgeoning economies.²¹⁵³ They also must revisit their worldview. From much of the research, the neoliberal view and globalisation are good for some, but not for all. The level playing field calls for fairness and each country to be treated according to its idiosyncrasies. As an epilogue to the thesis, it must be recognised that small banks do not partake in international cross-border transactions, they

²¹⁴⁶ See Recommendation Two at 8.9.2.

²¹⁴⁷ de Luna Martinez 'Financial Services: Dealing with Limited and Unequal Access' in Mattoo & Payton (eds) *Services Trade and Development: The Experience of Zambia* (2007) 1–314. 164.

²¹⁴⁸ See Recommendations One above at 8.9.1.

²¹⁴⁹ See Recommendation One above at 8.9.1.

²¹⁵⁰ See ch 5 para 5.6.

²¹⁵¹ See ch 5 para 5.7.

²¹⁵² See Recommendation Four at 8.9.4.

²¹⁵³ See Recommendation Six and Seven at 8.9.6. and 8.9.7.

do not have much of an impact on the international financial markets, and therefore they should not be subjected to the full force of the Basel Accords. Instead, they could be used as a testing ground for a lower-level implementation of the rules that is less restrictive but will see these small banks grow into being able to improve compliance with the Accords over time, without which the small banks' financial and economic development stands to be doomed.

BIBLIOGRAPHY

The following headings will be used in the Bibliography:

- Books and chapters in books.
- Discussion documents.
- Government policy documents.
- Internet references.
- Interviews, speeches, papers and presentations.
- Journal articles.
- Media.
- Regulations.
- Reports.

TABLE OF STATUTES

United States

Dodd-Frank Wall Street Reform and Consumer Protection Act. Public Law 111–203 July 21 2010.

Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155.

Zambia

Ordinances²¹⁵⁴

The Bank of Rhodesia and Nyasaland Act (1956).

The Bank of Rhodesia and Nyasaland (Amendment) Act (1959).

The Federation of Rhodesia and Nyasaland (Dissolution) Order in Council (1963) No 2085.

The Zambia Independence Order-in-Council of (1964).

Laws

Bank of Zambia (Amendment) Act 1971.

Bank of Zambia (Foreign Currency) Regulations 1994. Statutory instrument No. 44 dated 4 March 1994.

Bank of Zambia Act Cap 699 of the Laws of Zambia.

Bank of Zambia Act No. 24 of 1985.

Bank of Zambia Act No. 43 of 1996 (Repealed).

Bank of Zambia Act No. 5 of 2022.

Banking Act Chapter 700 of the Laws of Zambia.

Banking and Financial Services Act No. 7 of 2017.

Banking and Financial Services Act (BFSA) (1994) Chapter 387 of the Laws of Zambia.

²¹⁵⁴ The British government established a system of laws known as colonial ordinances to control Northern Rhodesia before it became Zambia in 1964. These laws were put in place beginning in the late 1800s and early 1900s and often prioritized British interests while hindering the aspirations of Zambian people for independence. For instance, the 1902 Crown Lands Ordinance effectively transferred ownership of all land to the British Crown, dispossessing local Africans. Another example is the Native Courts Ordinance of 1936, which created a court system for Africans based on their customs but under British oversight. The early imposition of these ordinances coincided with the influence of the BSACo and was formalized after the British Colonial Office took over the administration of Northern Rhodesia in 1924. See: Chanock *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge University Press Cambridge 1985); Roberts *A History of Zambia* (Heinemann Educational Books London 1976) and Mamdani *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press Princeton 1996).

Banking and Financial Services Act 1994 (amended 2000).

Bretton Woods Agreement Act Chapter 367 of the Laws of Zambia.

Constitution of Zambia Chapter 1 of the Laws of Zambia.

Exchange Control Act Chapter 593 of the Laws of Zambia

TABLE OF CASES

Attorney General and MMD v Akashambatwa Mbikusita Lewanika and 4 Others (1994) (SCZ judgement 2 of 1994) [1994] ZMSC3 (09 February 1994).

Matildah Mutale v Emmanuel Munaile. SCZ Judgement No 14 of 2007; [2007] ZMSC 188 (25 July 2007) 118–131

Woods v Martins Bank Limited [1959] 1 QB 55

United Dominions Trust v Kirkwood (1966) 2QB 431–437

Books, chapters in books, theses

African Development Bank Group *Financial Sector Integration in Three Regions of Africa: How Regional Financial Integration can support Growth, Development, and Poverty Reduction. Sildar Tunis* (2010) xv.

Ahuja *Principles of Microeconomics* 16 ed 487.

Ailola *The Regulation of Commercial Banks in Zambia and their Role in Development* (doctoral thesis, University of Warwick, 1988) 93.

Aliber & Kindleberger ‘Speculative Manias’ in *Manias, Panics, and Crashes* (2015).

Allred *et al. Corporations as Stepfamilies: A New Metaphor for Explaining the Fate of Merged and Acquired Companies* (2005).

Andersson & Kayizzi-Mugerwa ‘External Shocks and the Search for Diversification in Zambia’ in *Economic Crisis in Africa* (2002) 134–151.

Andersson *et al. Foreign Aid, Debt, and Growth in Zambia* (2000) 112 1–133.

Andre *Determination of South African Exports: Critical Policy Implications* (2005).

Andrews *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions* (2013) 1–19.

Babb & Kentikelenis Alexander International Financial Institutions as Agents of Neoliberalism’ in *The SAGE Handbook of Neoliberalism* (2018).

Bannock & Baxter *The Penguin Dictionary of Economics: The Essential Guide for Understanding Economic Terms* (2011) 227–331.

Barnes *Banking Regulation and the Basel III Accord: An Examination of the Short Comings of Basel III* (doctoral thesis, University of Wolverhampton, 2019).

Baxter ‘Understanding Regulatory Capture: An Academic Perspective from the United States’ in Pagliari (ed) *The Making of Good Financial Regulation* (2012) 31–39.

- Baylies ‘Democratization and the 1991 Elections in Zambia’ in *Voting for Democracy* (2019) 83–109.
- Beck *et al.* *Bank Concentration and Crisis. The Digest No 2* (2004).
- Begg *et al.* *Economics* African Edition 11 ed (2013) 276–277.
- Bentham *Introduction to the Principles of Morals and Legislation* (1780).
- Berger & Raluca ‘Introduction to Bank Bailouts, Bail-Ins and Related Topics Covered’ in *The Book. TARP and other Bank Bailouts and Bail-Ins around the World* (2020) 5–41.
- Best ‘Introduction: Pathologies of Power and the Rise of the Global Industrial Complex’ in Best *et al.* (eds) *The Global Industrial Complex: Systems of Domination* (2011) xxiii.
- Bhila *SMS Banking Creating a Competitive Advantage to Privately Owned Indigenous Commercial Banks in Zimbabwe Despite Eco Cash Transactions* (2018).
- Bhole *Financial Institutions and Markets* (2009) 914.
- Binaku & Niklas *The Anatomy of Financial Crises and the Current One’s Effects on the Swedish Economy* (bachelor thesis, Umeå School of Business, 2009) 11.
- Bird & Rowlands *The International Monetary Fund: Distinguishing Reality from Rhetoric* (2016) 12.
- Blake *Financial Market Analysis* 2 ed (2000) 153.
- Blau *et al.* *Lobbying and lending by banks around the financial crisis by Public Choice* (2022) 377–397.
- Bradfield ‘Chapter 13 Deregulation of Banking: A Worldwide Phenomenon’ in *Current Legal Issues Affecting Central Banks* IMF eLibrary.
- Bradley *Textile Visionaries: Innovation and Sustainability in Textile Design* (2013).
- Briault ‘Regulatory Capture, Political Dominance or collective intellectual Failure? A View from a Former UK Regulator’ in Pagliari (ed) *Making Good Financial Regulation: Towards a Policy Response to Regulatory Capture* (2012).
- Brownbridge & Gockel *Banking in Africa: The Impact of Financial Sector Reform Since Independence* (1998).
- Brownbridge ‘Financial Policies and the Banking System in Zambia’ in Brownbridge & Harvey (eds) *Banking in Africa. The Impact of Financial Sector Reform Since Independence* (1998) 143–162.
- Brownbridge *et al.* *Progress, Constraints and Limitations of Financial Sector Reforms in the Least Developed Countries* (1999) 48.
- Brunnermeier *et al.* *Modelling and Measuring Systemic Risk* (2011, January 1)
- Burnell ‘Taking Stock of Democracy in Zambia’ in *Democracy and Political Change in the Third World* (2003) 150–169.
- Burns & Mitchell *Measuring Business Cycles* (1946) 1.
- Butler *Public Choice—A Primer* (2012) 20.
- Calomiris & Karceski ‘Is the Bank Merger Wave of the 1990s Efficient? Lessons from Nine Case Studies in Kaplan (ed) *Mergers and Productivity* (2000) 93–178.

- Carmassi & Micossi *Time to Set Banking Regulation Right* (2012) 1–73.
- Cassidy *Dot.con: How America Lost Its Mind and Money in the Internet Era* (2003).
- Casu *et al. Introduction to Banking* 2 ed (2015) 14–15.
- Chabal & Daloz *Africa Works: Disorder as Political Instrument* (1999).
- Chang ‘Kicking away the ladder–globalisation and economic development in historical perspective’ in *The Handbook of Globalisation* (2019) 392–399.
- Charles Money *Greed & Risk. Why Financial Crisis and Crashes Happen* (1999) 3.
- Chilembo *A Study of the Factors Affecting Small and Medium Enterprises (SMEs) Access to Finance. A Case of Lusaka based SMEs* (2021) 437–460.
- Chirozva *Financial Intermediation and Economic Performance in Zimbabwe* (master’s thesis, Edith Cowan University, 2001).
- Cho *Why Do Countries Implement Basel II. An Analysis of the Global Diffusion of Basel II Implementation* (doctoral thesis, London School of Economics and Political Science, 2013) 49–55.
- Chola *Factors Influencing the Utilisation of the Capital Market in Zambia* (doctoral dissertation, University of Zambia, 2020) 71 79–80.
- Chorafas *Alternative Investments and the Mismanagement of Risk* (2003).
- Chorafas *Basel III, the Devil and Global Banking* (2012).
- Chorafas *Breaking Up the Euro: The End of a Common Currency* (2013).
- Chorafas *Capitalism without Capital* (2009).
- Chorafas *Financial Boom and Gloom: The Credit and Banking Crisis of 2007–2009 and Beyond* (2009).
- Chorafas *Public Debt Dynamics in Europe and the US* (2014).
- Clark & Lofchie ‘The Political Economy of Structural Adjustment in Ghana’ in Bates & Krueger (eds) *Political and Economic Interactions in Economic Policy Reform: Evidence from Eight Countries* (1993).
- Clarke ‘The Neo-liberal Theory of Society’ in *The Ideological Foundations of Neo-Liberalism. A Critical Reader* (2005) 50–59 [https://home pages.warwick.ac.uk](https://home.pages.warwick.ac.uk) (accessed 11 April 2021).
- Clough ‘The Treaty of Versailles’ in *Economic History of Europe: Twentieth Century* (1968) 65–86.
- Collins Dictionary of Law* 2 ed.
- Collins English Dictionary*; compare also *Black’s Law Dictionary* 8 ed 113.
- Cybo Ottone & Murgia *Merger and Acquisitions in the European Banking Markets* (1996).
- Davies *Financial Data Needs for Macprudential Surveillance. What are the Key Indicators of Risks to Domestic Financial Stability?* (1999).
- Deaton *Global patterns of income and health: facts, interpretations, and policies* (2006).

- Decamps *et al.* *The Three Pillars of Basel II: Optimising the mix in continuous time model* (2002).
- Dornbussch Park Yung: *Stijn Claessens Contagion Understanding How it Spreads* (2000) 177–179.
- Douma *What is Classical Liberal History?* (2018).
- Du Toit *African Frontier Markets: Extent of Illiquidity and Inherent Private Equity Investment Opportunities* (doctoral dissertation, University of the Witwatersrand, 2013) 52.
- Epstein *Financialisation, Rentier, and Central Bank Policy, Manuscript, Department of Economics* (master's thesis, University of Massachusetts) (2001) 1.
- Erdmann & Simutanyi *Transition in Zambia: The Hybridisation of the Third Republic* (2003) 3.
- European Commission *How the European Union Works: Your Guide to the EU Institutions* (2005) 3–56.
- Ezeibekwe *Financial Development in Developing Countries* (master's thesis, Eastern Illinois University, 2020).
- Fatton *Predatory Rule: State and Civil Society in Africa* (1992).
- Federal Deposit Insurance Corporation (FDIC) 'The Banking Crisis of the 1980s and Early 1990s. Summary and Implications' in *An Examination of the Banking Crises of the 1980s and Early 1990s*, Vol 11 (1997) <https://www.fdic.gov/analysis/archived-research/banking-review/brspecial.pdf> (accessed 6 May 2019).
- Ferguson *et al.* (eds) "The Shock of the Global: The 1970s in Perspective" (2011).
- Finch & Milman *Corporate Insolvency Law: Perspectives and Principles* 3 ed (2017) 119.
- Fisher *The Purchasing Power of Money: Its Determination and Relation to Credit, Interest and Crises* (1911) 818–829.
- Fofack "Dawn of a Second Cold War and the 'Scramble for Africa'" 2022 *Africa Growth Initiative at Brookings* 4–5.
- Fry 'Ghost in the Machine: The Keynesian Full Employment Welfare State' in *The Politics of Decline* (2005) 3.
- Garner *Black's Law Dictionary* 8 ed (2004).
- Glasner *Hawtrey's Good and Bad Trade: A Centenary Retrospective* (2021) 263–296.
- Goodhart *The Basel Committee on Banking Supervision; A History of the Early Years 1974–1997* (2011) 542.
- Greenberg & Leighton Paisner (eds) *Craies on Legislation: A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation* 10 ed (2012) 713.
- Gulde "8 Liquid Asset Requirements: Role and Reform" in *Instruments of Monetary Management* (1997).
- Gup *The Effects of Basel II on Developing Countries. A summary of a Global Public Goods Network forum on Basel II* (2006) 10–15
- Guy *Tudor England* (1988) 32.

- Hakemy *An Analysis of Ha-Joon Chang's Kicking Away the Ladder: Development Strategy in Historical Perspective* (2017) 4.
- Harvey *The Enigma of Capital: And the Crises of Capitalism* (2010).
- Harvey *A Brief History of Neoliberalism* (2007); Chomsky 'Profit over people' in *The Applied Theatre Reader* (2020) 186–192.
- Hawtrey *Good and Bad Trade* 2 ed (1926).
- Hayek *Prices and Production* (1931); *Collected Works of F.A. Hayek* 7 (2012) 1–547.
- Heffernan 'The Causes of Bank Failures' in *Handbook of International Banking* (2003) 366.
- Hendrickson *Theories of Financial Crises* (2013) 13.
- Howarth & Quaglia 'Banking Regulation and the Single Rulebook' in *The Political Economy of European Banking Union* (2016) <https://doi.org/10.1093/acprof:oso/9780198727927.003.0009> (accessed 27 June 2024).
- Hudson *Finance as Warfare* (2015).
- Hwanyuck & Moeck *The Long Shadow of The Big Push* (unpublished manuscript) (2021).
- Igan *et al.* "A Fistful of Dollars: Lobbying and the Financial Crisis" *NBER Macroeconomics Annual* (2016) 26 195–230.
- Ilchenko *Competition in the Banking System: Definition and Types. Department of Mathematical Modeling of Economic Systems* (2013) 385–389 385.
- Iqbal & Khan (eds) *Trade Reform and Regional Integration in Africa* (1997).
- Jones & Zeitz *Regulatory Convergence in the Financial Periphery: How Interdependence Shapes Regulators' Decisions* (2018).
- Karekwaivenani *A history of the Rhodesian Stock Exchange: The formative years, 1946–1952* Zambezia (2003).
- Kaufman 'The Truth About Bank Runs' in England & Huertas (eds) *The Financial Services Revolution: Policy Directions for the Future* (1998) 1–48.
- Kempton *Soviet Strategy Toward Southern Africa: The National Liberation Movement Connection* (1989).
- Keynes *A Monetary Theory of Production: Collected Writings, Vol. XIII* (1973).
- Keynes *The General Theory of Employment, Interest and Money* (1936).
- Keynes *Treatise on Money, Vol. I: The Pure Theory of Money* (1930).
- Khor *Rethinking Globalisation: Critical Issues and Policy Choices* (2001).
- Kibazo *African Business* (1995).
- Kindleberger & Aliber *Manias, Panics, and Crashes: A History of Financial Crises* 5 ed (2005) 1–340.
- Kindleberger *Manias, Panics, and Crashes: A History of Financial Crises* (1976).
- Klebaner *The Failure of the Franklin National Bank: Challenge to the International Banking System* (1981).

- Lähteenmäki-Smith *Globalisation, regionalization and the rest. Spatial Development Trends Stockholm* (2004) 23.
- Lastra *Central Banking and Banking Regulation* (1996).
- Leckow 'Conditionality in the International Monetary Fund' in *Current Developments in Monetary and Financial Law* (2002) 53–64.
- Legvold *Soviet Policy in West Africa* (1970).
- Leith & Lofchies 'The Political Economy of Structural Adjustment in Ghana' in Bates & Krueger (eds) *Political and Economic Interactions in Economic Policy Reform: Evidence from Eight Countries* (1993) 225–293.
- Lemmen *An Introduction to the Diamond Dybvig Model (1983)* (1994).
- Leuffen *et al.* (eds) 'Constructivism' in *Integration and Differentiation in the European Union* (2022).
- Levine 'Finance and Growth' in Aghion & Durlauf (eds) *Handbook of Economic Growth* (2005).
- List (1841) *National System of Political Economy* (1974).
- List *The Natural System of Political Economy* (1983).
- Little 'What Are Financial Futures?' in Rothstejn & Little (eds) *The Handbook of Financial Futures* (1984) 35–66.
- Liu & Wilson *Bank Type, Competition and Stability in Japanese Banking* (2011).
- Luna Martinez, de 'Financial Services: Dealing with Limited and Unequal Access' in Mattoo & Payton (eds) *Services Trade and Development: The Experience of Zambia* (2007) 1–314 164.
- Mahonye *Capital Markets Development, Financial Structure and Economic Development in Africa* (doctoral dissertation, University of the Witwatersrand, 2014).
- Maimbo 'Design and Development of the Zambian Banking Regulatory and Supervisory Frameworks (1970–2000)' in Mwenda Kenneth (ed) *Banking and Micro-Finance Regulation and Supervision: Lessons from Zambia* (2002) 11–63.
- Maimbo 'Regulation and Supervision of Microfinance Institutions in Zambia' in Mwenda (ed) *Banking and Micro-Finance Regulation and Supervision: Lessons from Zambia* (2002) 68–110.
- Maimbo *Regulation and Supervision of Commercial Banks in Zambia: A Study of the Design, Development and Implementation of Prudential Regulations by the Bank of Zambia between 1980 and 2000* (doctoral thesis, University of Manchester, 2001) 22.
- Mankiw *Principles of Economics: International Edition* 6 ed (2012) 621.
- Mason & Asher *The World Bank Since Bretton Woods: The Origins, Policies, Operations and Impact of the International Bank for Reconstruction* (1973) 29.
- Mayeur & Reberieux *The Third Republic from Its Origins to the Great War 1871–1914* (1984).
- McCulloch *et al.* *Globalisation, Poverty and Inequality in Zambia during the 1990s* (2000) 5–6.
- McDonald & Robinson *A Colossal Failure of Common Sense* (2009).

- Melo *et al.* *Revised Basel Core Principles for Effective Banking Supervision* (2024).
- Mill *Principles of Political Economy* (1848) 542.
- Minsky *Can “It” Happen Again? Essays on Instability and Finance* (1982) 344.
- Mises *et al.* *The Austrian Theory of the Trade Cycle and Other Essays* (1983).
- Mises *The Theory of Money and Credit* (1953) 9–487.
- Mishkin *The Economics of Money, Banking, and Financial Markets* (2007).
- Mitnick *Creating, Designing, and Removing Regulatory Forms: The Political Economy of Regulation* (1980) 3–4.
- Mohan *et al.* ‘Structural Adjustment’ in *International Encyclopedia of Human Geography* (2020) 61–69.
- Morck *Kindleberger Cycles: Method in the Madness of Crowds?* (2021) 563–578 573.
- Morris *Money, Greed, and Risk. Why Financial Crises and Crashes Happen* (1999) 3.
- Morris *The Law of Financial Services Groups* (2019) 57.
- Morris *et al.* *Analysis of the Dot-Com Bubble of the 1990s* (2008).
- Mwangala *Found a Modern Nation-State on Christian Values?: A Theological Assessment of Zambian Humanism* (doctoral dissertation, University of KwaZulu-Natal, 2009).
- Mwangi *An Assessment of the Extent of Implementation of Basel II Accord in Kenyan Commercial Banks and its Implication on their Profitability* (2013).
- Mwape ‘Post-crisis Financial System Regulation: Implications for Zambia’ in Adam *et al.* (eds) *Zambia: Building Prosperity from Resource Wealth, Africa: Policies for Prosperity* (2014).
- Mwenda “Legal Aspects of Banking Regulation: Common Law Perspective” in *PULP* (2010) 203–223.
- Naaborg *Foreign Bank Entry and Performance with a Focus on Central and Eastern Europe* (internal thesis, University of Groningen, 2007).
- Nadya & Kick *Determinants of Banking System Stability: A Macro-Prudential Analysis* (2012) 2.
- Nelson ‘The International Monetary Fund’s Evolving Role in Global Economic Governance’ in Moschella & Weaver (eds) *Handbook of Global Economic Governance* (2014) 156–170.
- Niskanen *Bureaucracy and Representative Government* (1971).
- Niskanen *Bureaucracy: Servant or Master?* (1973) 3–231.
- Ocampo ‘The Latin American Debt Crisis in Historical Perspective’ in Stiglitz & Heymann (eds) *Life After Debt* (2014).
- Odhiambo *The Impact of Financial Liberalisation in Developing Countries: Experiences from Four SADC Countries* (2011).
- Ogus (ed) ‘Introduction’ in *Regulation: Legal Form and Economic Theory* (2004) 1–12.
- Ogus *Regulation Legal Form and Economic Theory* (1994) 2–7.
- Oxford Paperback Dictionary* 4 ed 674.

- Pelaez & Pelaez *Regulation of Banks and Finance: Theory and Policy after the Credit Crisis* (2009) 58.
- Pike *Globalization and its Discontents* 2004 321–324.
- Pilbeam *Finance and Financial Markets* 3 ed (2005) 93, 460.
- Ping *Banking Regulation in China: Banking Regulatory Theories* (2014) 28.
- Quaglia *The European Union and Global Financial Regulation* (2014).
- Rienner & Ferguson *Global Shadows: Africa in the Neoliberal World Order* (2006).
- Rigobon *International Financial Contagion: Theory and Evidence in Evolution* (2002).
- Robertson *et al. Encyclopedia of US Political History* (2010).
- Roberts-Wray *Commonwealth a Colonial Law* (1966).
- Rowden ‘If the Washington Consensus was Really over what would that Look Like for Development Strategy’ in *Critical Perspective on Development Economics* (2021) <https://developingeconomics.org/2021/06/24/if-the-washington-consensus-was-really-over-what-would-that-look-like-for-development-strategy/> (accessed 15 June 2020).
- Rowden *From the Washington Consensus to the Wall Street Consensus: The Financialization Initiative of the World Bank and Multilateral Development Banks* (2019).
- Samaro *Tried and Tested: The Infant Industry Theory and its Relevance for Africa* (2009) 2–25.
- Samuelson *Economics* International student ed (1970).
- Saunders *et al. The Cold War and Southern Africa, 1976–1990* (2010) 222–243.
- Schumacher ‘The 1973 Oil Crisis and Its Aftermath’ in *Energy: Crisis or Opportunity?* (1985) 21–41.
- Schumpeter *The Theory of Economic Development* (1934) 107.
- Schumpeter *Theorie der Wirtschaftlichen Entwicklung* (1911); English translation as *The Theory of Economic Development—An Inquiry into Profits, Capital, Credit, Interest, and the Business Cycle* (1934); reprinted (1961).
- Schütze *European Union Law* (2021).
- Schwartz & Shinji ‘Chapter 2: Living with Rules: The IMF’s Exceptional Access Framework and the 2010 Stand-By Arrangement with Greece’ (2017).
- Scott *Criticisms of Bailouts generally, Connectedness and Contagion: Protecting the Financial System From Panics* (2017) 265–272.
- Sengupta *et al. Schumpeterian Innovation. Theory of Innovation: A New Paradigm of Growth* (2014) 63–77.
- Setiawan *The Future of Islamic Banking and Finance in Indonesia: Performance, Risk and Regulation* (2023).
- Shughart & Mazzolini (eds) *The Elgar Companion to Public Choice* (2001) 1–776.
- Siameja *Measuring the Impact of HIV/AIDS on Economic Development in Zambia* (doctoral dissertation, University of Waikato, 2011).

- Sideri 'Globalisation and Regional Integration' in *Regions and Development* (2020) 7–43.
- Simatele & Ndulo *Financial Services Sector in Zambia* (1998) 6.
- Skonieczny *Interrupting Inevitability: Globalization and Resistance* ProQuest 347845517 (2010).
- Smith *An Inquiry into the Nature & Causes of the Wealth of Nations* (1776).
- Smith *The Wealth of Nations* (1776) 11–537.
- Smith *The World's Wasted Wealth 2* (1994) 127–139.
- Spulber *The Soviet-Bloc Foreign Trade System* (1959).
- Srinivasan & Tendulkar *Reintegrating India with the World Economy* (2002).
- Stiglitz *The Price of Inequality* (2012).
- Stiglitz *Globalization and Its Discontents* (2003).
- Strake *An introduction to International Law* (1984).
- Straub *Reasons for Frequent Failures in Mergers and Acquisitions: A Comprehensive Analysis* (2007).
- Stubs & Kentikelenis 'Conditionality and Sovereign Debt: An Overview of Human Rights Implications' in Bantekas & Lumina (eds) *Sovereign Debt and Human Rights* (2018) 359–80.
- Tan 'Theory of Bank Efficiency and Bank Risk' in *Investigating the Performance of Chinese Banks Efficiency and Risk Features* (2016).
- Tanzi *Argentina: An Economic Chronicle. How One of the Richest Countries in the World Lost Its Wealth* (2007).
- Tapja *Basel IV Capital Requirements and the Performance of Commercial Banks in Africa* (doctoral dissertation, Alpen-Adria-Universität Klagenfurt, 2022) 62.
- Tarullo *Banking on Basel: The Future of International Financial Regulation* (2008).
- Tegwi *Banking and Finance for Professionals 2* ed (2010).
- Tembo *The Impact of the Second World War on Northern Rhodesia (Zambia) 1939–1953* (doctoral dissertation, University of the Free State, 2015).
- Tranberg Hansen & Vaa Nordiska (eds) *Reconsidering Informality Perspectives from Urban Africa* (2004).
- Truell & Gurwin *False Profits: The Inside Story of BCCI, The World's Most Corrupt Financial Empire* (1992) 1–560.
- Turnbull *et al.* (eds) *Oxford Advanced Learner's Dictionary* 8 ed (2010) 1283.
- Turok (eds) *Development in Zambia* (1979).
- Van Zwieten *Goode on Principles of Corporate Insolvency Law* 5 student ed (2019).
- Wadsley & Penn *Penn & Shea: The Law Relating to Domestic Banking Vol 1* 2 ed (2000) 91.
- Walsh *History in Focus* 2 ed (2001) 86–91.

Warter & Warter ‘Implications of M&As for Banking Industry: From Cultural Fit to Cultural Clashes’ in Roman *et al.* (eds) *Euro and the European Banking System: Evolutions and Challenges* (January 2015) 367–376.

Weidtmann ‘The philosophy of Ubuntu and the notion of vital force’ in *Ubuntu and the Reconstitution of Community* (2019) 98–113.

Werter “A Study of The Different Mechanisms of Banks to Influence International Financial Regulation” in *Global Financial Governance: The Power and the Resources of Banks* (2017).

Wilson ‘The Politics of Regulation’ in McKie (ed) *Social Responsibility and the Business Predicament* (1974) 135–168.

Discussion documents

Adams & Tower “Theories of Regulation: Some Reflections on the Statutory Supervision of Insurance Companies in Anglo-American Countries” Geneva Papers on Risk and Insurance 19 No 71 (April 1994) 156–177
<https://link.springer.com/content/pdf/10.1057%2Fgpp.1994.13.pdf> (accessed 30 March 2021).

African Development Bank (ADB) “Bank Financing to Small and Medium Enterprises in East Africa: Findings of a Survey in Kenya Tanzania Uganda and Zambia” Working Paper Series (2012) 4–41.

Andrews & Petroulakis “Breaking the Shackles: Zombie Firms, Weak Banks and Depressed Restructuring in Europe, ECB Working Paper Series No 2240” (2019).

Anginer & Demirguc-Kunt “Bank Runs and Moral Hazard A Review of Deposit Insurance, Policy Research Working Paper 8589” (2018) 2–29
<https://documents1.worldbank.org/curated/en/548031537377082747/pdf/WPS8589.pdf> (accessed 8 March 2024),

Babihuga & Spaltro “Bank Funding Costs for International Banks, IMF Working Papers 14/71” (2014).

Baitshepi “The Failure and Collapse of Lehman Brothers” (2012).

Balasubramanian *et al.* “Is There a One Size Fits All Approach to Inclusive Growth? A Case Study” IMF Working Paper (2021) 2–30.

Basel Committee on Banking Supervision (BCBS) “Consultative Document International framework for Liquidity Risk Measurement, Standards and Monitoring” (16 April 2010) 3–19.

Basel Committee on Banking Supervision “Bank Failures in Mature Economies Working Paper” (April 2004) https://www.bis.org/publ/bcbs_wp13.pdf (accessed 30 November 2024).

Beaugrand “And Schumpeter Said, ‘This is How Thou Shalt Grow’: the further quest for economic Growth in poor countries IMF, Working Papers WP/04/40” (December 2004) <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/And-Schumpeter-Said-This-is-How-Thou-Shalt-Grow-Further-Quest-for-Economic-Growth-in-Poor-17134>. 3–21 (accessed 24 June 2023).

Berger & Humphrey “Bank Scales Economics, Mergers. Concentration and the efficiency: The US Experience, Working Paper 94–25” Financial Institution Centre (1994).

- Berger *et al.* “Do Small Businesses Still Prefer Community Banks?” Board of Governors of the Federal Reserve System. International Finance Discussion Papers No 1096 (December 2013).
- Berger *et al.* “The Transformation of the US Banking Industry: What a Long, Strange Trip It’s Been” Brookings Papers on Economic Activity 2 (1995) 55–218.
- Berrospide *et al.* “Un-used Bank Capital Buffers and Credit Supply Shocks at SMEs during the Pandemic, Finance and Economics Discussion Series 2021–043” (2021) Board of Governors of the Federal Reserve System <https://doi.org/10.17016/FEDS.2021.043> (accessed 5 August 2022).
- Bhoi “Mergers and Acquisitions: An Indian Experience” Reserve Bank of India Occasional Papers No 1 (2000).
- Caballero “Hyman Minsky and Financial Instability” Portland State University Economics, Working Paper No 23 (15 June 2019).
- Célérrier & Vallée “What Drives Financial Complexity? A Look into the Retail Market for Structured Products, Working Paper” Conference in Harvard Business School (2013) 3.
- Chen *et al.* “The Decline of Big Bank Lending to Small Businesses. Dynamic Impacts on Local Credit and Labour Markets, Working Paper 23843” National Bureau of Economic Research September (2017).
- Committee on the Global Financial System “CGFS Papers No 60 “Structural Changes in Banking After the Crisis Report” (January 2018) 1–119.
- Den Hertog “Review of Economic Theories of Regulation” Tjalling C Koopmans Research Institute, Utrecht School of Economics Discussion Paper Series No 10–18 (2018) http://www.uu.nl/rebo/economie/discussion_papers (accessed March 30, 2021).
- Detzer & Herr “Theories of Financial Crises: An Overview, Working Paper No 32/2014” Hochschule für Wirtschaft und Recht Berlin (2014).
- DeYoung “Determinants of Cost Efficiencies in Bank Mergers, Working Paper 93–1” Office of the Controller of the Currency in Washington DC (1993) <https://www.occ.gov/publications-and-resources/publications/economics/working-papers-archived/economic-working-paper-1993-1.html> (accessed 13 June 2023).
- Fernandes “Trade Policy, Trade Volumes and Plant-Level Productivity in Colombian Manufacturing Industries, Working Paper No 3064” World Bank Research (2003).
- Funyina “Determinants of Bank Credit to the Private sector in Zambia” Bank of Zambia (BoZ) Working Paper WP/2020/3 (2020) [4https://www.boz.zm/Determinants_of_Bank_Credit_to_the_Private_Sector_in_Zambia.pdf](https://www.boz.zm/Determinants_of_Bank_Credit_to_the_Private_Sector_in_Zambia.pdf) accessed 29 November 2024).
- Glick & Hutchison “Banking and Currency Crises: How Common are Twins Pacific Basin, Working Paper 99–07” Federal Reserve Bank of San Francisco (1999).
- Government of the United States Office of the Comptroller of the Currency (OCC) “Bulletin 2021–2025” (29 January 2021).
- Han & Hausman “Semiparametric Estimator of Duration and Competing Risk Models, Working Paper” MIT (1986).

- Heffernan & Fu “The Determinants of Bank Performance in China” Working Paper Series WP-EMG-03-2008 Cass Business School City University (2008) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1247713 (accessed 10 July 2023).
- Hinfelaar “Bank of Zambia’s Autonomy Amongst Political Turnovers in Zambia, Working Paper No 153” University of Manchester ESID (2020) 8 <http://www.effective-states.org> (accessed 20 March 2023).
- Jeon & Miller “Bank Concentration and Performance, Working Paper” University of Connecticut Economics (2002) 25.
- Jimenez *et al.* “How does competition impact bank risk-taking?” Working Papers Banco de Espana (2010) 9–36.
- Kacowicz “Regionalisation, Globalisation and Nationalism: Convergent, Divergent or Overlapping, Working Paper No 262” Kellogg Institute (1998).
- Khandelwal “COMESA and SADC: Prospects and Challenges for Regional Trade Integration, Working Paper WP/04/227” IMF (2004) <https://www.imf.org/external/pubs/ft/wp/2004/wp04227.pdf> (accessed 15 June 2023).
- Kritzinger-van Niekerk & Moreira “Regional Integration in Southern Africa: Overview of Recent Developments” World Bank Discussion Paper (2002).
- Laeven *et al.* “Bank Size and Systemic Risk IMF Discussion Papers” (2014).
- Laidler “Milton Friedman and the Evolution of Macroeconomics” Working Paper (2006) 43.
- Lee “Identification of a Competing Risks Model with Unknown Transformation of Latent Failure Times” Working Paper CWP17/05 Institute of Fiscal Studies (2005).
- Luna Martinez, de “Access to Financial Services in Zambia, Working Paper 4061” World Bank Policy Research (2006) 5. *Erratum* Note that the author Martinez refers to 30 core principles when there are only 29 (November 2006).
- Luna Martinez, de “World Bank Policy Research, Working Paper 4061” (November 2006) <https://documents.worldbank.org/curated/en/657441468334748787/pdf/wps4061.pdf> (accessed 9 September 2023).
- Maimbo & Mavrotas “Financial Sector Reforms and Savings Mobilization in Zambia No 2003/13” WIDER Discussion Paper (2003) 1–23.
- Mare *et al.* “Bailouts and Fiscal Contingent Liabilities” Policy Research Working Paper (2023) 1–39.
- Martynova *et al.* “Bank Profitability and Risk-Taking, Working Papers WP/15/249” IMF (25 November 2015) <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Bank-Profitability-and-Risk-Taking-43421> (accessed 11 October 2023).
- Mbao “The Determinants of Credit Default Risk in Zambia: Does Bank Size Matter?” Bank of Zambia Working Paper (2017) 2–24.
- McCulloch & Min-Teh. “Government Deposit Insurance and the Diamond-Dybvig Model: The Geneva Papers on Risk and Insurance Review” Geneva Association (1998) 139–149 <https://link.springer.com/content/pdf/10.1023/A:1008626211411.pdf> (accessed 11 April 2021).
- McCulloch *et al.* “Poverty Inequality and the Growth in Zambia During the 1990s, Working Paper” University of Sussex (2000) 1–47.

- Mishkin “Anatomy of Financial Crisis, Working Paper No 3934” NBER (December 1991) 1-24 <https://ssrn.com/abstract=227370> (accessed 11 April 2021).
- Mumbi “Bank Competition and Financial System Stability in a Developing Economy: Does Bank Capitalisation and Size Matter? Working Paper 5/2017” BoZ (2017).
- Ndulo *et al.* “GFC” Zambia Phase 2 Discussion Series Paper 22 (2010) 1–32.
- Olajide “The Changing Banking Environment in Nigeria and Emerging Public Policy Issues” Initiative of Public Policy Analysis, Central Bank of Nigeria Discussion Paper (2005).
- Omarova “The Too Big to Fail Problem” Cornell Law School Legal Studies Paper Series Research. Paper No 19–06 (2019).
- Osugi ‘Japan’s Experience of Financial Deregulation Since 1984’ in *An International Perspective*. BIS Economic Paper No 26 (January 1990) <https://www.bis.org/publ/econ26.pdf> (accessed 8 January 2020).
- Pally “Financialisation: What It Is and Why It Matters” Working Paper No 525 (2007) 3–31 <https://www.levyinstitute.org> (accessed 26 August 2020).
- Pavia “Tunisia Was Right to Reject the IMF Deal” (2023) <https://foreignpolicy.com/2023/04/19/tunisia-imf-loan-bailout-deal-economy-saied/> (accessed April 2023).
- Sachs “The IMF and Asian Flu” American Prospect March-April (1998).
- SADC Central Bank Model Law 2011 explanatory guide 66–67.
- Seekings *et al.* “The Economic History of Zambia” Working Paper April (2022) 1–36.
- Segoviano “Banking Stability Measures” IMF Working Paper No 627 International Monetary Fund (2009).
- Sharma “The EU and Global Banking Regulation” (2014).
- Simpasa “Competition and Market Structure in the Zambian Banking Sector” Working Paper Series No 168 African Development Bank (2013).
- Ungureanu “Models and Practices of Corporate Governance Worldwide, Working Papers IASI 3a” *CES* (2012) 625–635.
- Van den Berg “Competing Risks Models, Working Paper” (2005).
- Vibert ‘Independent Agencies: No Fixed Boundaries’ in Lodge (ed) *Regulatory Agencies Under Challenge. Centre for Analysis of Risk and Regulation* (CARR) London School of Economics and Political Science. Discussion paper No 81 (January 2016) <https://www.lse.ac.uk/accounting/assets/CARR/documents/Regulatory-Agencies-under-Challenge/CARR-DP81-Frank-Vibert.pdf> (accessed 13 May 2021).
- Vives “Competition and Stability in Banking, Working Paper Series 3050” CESifo Group Munich (2010).
- Ward “The New Basel Accord and Developing Countries: Problems and Alternatives, Working Paper No 4 ESRC” Centre for Business Research (2002).
- Wiggins “The Lehman Brothers Bankruptcy A: Overview” Yale Program on Financial Stability Case Study (2014).

Wray “The 1966 Financial Crisis: A case of Minskian Instability?, Working Paper No 262” Levy Economics Institute (January 1999) <https://www.levyinstitute.org/publications/the-1966-fiancial-crisis> (accessed 11 April 2021).

Zhang “Regional Integration Policy Papers” No 001 (2012) https://www.afdb.org/sites/default/files/documents/publications/regional_integration_policy_papers_supporting_macro-economic_convergence_in_african_recs.pdf (accessed 1 July 2023).

Zubair “Basel Accords and Islamic Banking: A Critical Evaluation” MPRA Paper No 56446 (8 June 2014) <https://mpa.ub.uni-muenchen.de/56446> (accessed 19 June 2023).

Government policy documents

Allen Dunn Bill Fennel Brief comparison of section 301 and Special 301 Trade Laws https://ftac.net/7-Special_301.pdf (accessed 16 October 2023). Articles of Agreement of the International Monetary Fund 22 July 1944 Article I(v).

Bank of Rhodesia and Nyasaland (amendment) Act 1959.

Bank of Rhodesia and Nyasaland Act 1956.

Bank of Zambia (Amendment) Act of 1971.

Bank of Zambia (Foreign Currency) Regulations 1994. Statutory Instrument No 44 dated 4 March 1994.

Bank of Zambia Act No 24 of 1985.

Bank of Zambia Act of 1985 No 24 of 1985 (or the Currency Act) Cap. 699 of the Laws of Zambia.

Bank Restriction Act 1797, 37 Geo. III C45.

Banking Act Cap 700 of 1971 of the Laws of Zambia.

Banking Act Chapter 700 of the Laws of Zambia 8–35.

Banking Act of 1971 Part 1 section 2(1); Chapter 700 of the Laws of Zambia.

Banking and Financial Services (Microfinance) Regulations 2006 24.

Banking and Financial Services Act (1994) Cap 387 of the Laws of Zambia.

Banking and Financial Services Act (Amendment) Act No 7 of 2020 115–119.

Banking and Financial Services Act (BFSA) “Part 1 of Preliminary Provisions in section 2” 2017.

Banking and Financial Services Act (BFSA) “Part VI Prudential Regulation and Supervision” 2017 223.

Banking and Financial Services Act 1994 (amended by Act No 18 of 2000) CAP 387 of the Laws of Zambia.

Banking and Financial Services Act No 7 of 2017.

Basel Committee on Banking Supervision “Consultative Document Pillar 3 (Market Discipline) Supporting Document to the New Basel Capital Accord” https://www.bis.org/publ/bcb_sca10.pdf (accessed 4 November 2024).

Bretton Woods Agreement Act Chapter 367 of the Laws of Zambia.

Bretton Woods Agreement US Department of State June 2016.

Bubble Act (1720) 6 Geo.1.c 18 (also, Royal Exchange and London Assurance Corporation Act 1719).

Companies Act (1994) Cap 388 of the Laws of Zambia; repealed and replaced by Companies Act No 10 of 2017.

Companies Act 2017 No 10 of 2017 393.

Constitution of Zambia (Amendment) Article 266, Number 2 of 2016.

Corporate Insolvency Act No 9 of 2017 Part III Business Rescue Proceedings sections 21–45 305–326.

Currency and Banking Act No 31 of 1920.

Development Bank of Zambia (DBZ) Act (1973) Chapter 363 of the Laws of Zambia (read together with the amendment to the Act-DBZ Act No 24 of 2005 (assented on 28 September 2005 and promulgated on 7 October 2005).

Dodd-Frank Financial Regulation Legislation Summary
<https://corpgov.law.harvard.edu/2010/07/07/summary-of-dodd-frank-financial-regulation-legislation/> (accessed 13 November 2014).

Dodd-Frank Wall Street Reform and Consumer Protection Act section 116 Reports Public Law 111–203 (21 July 2010).

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 PL111–203.

Exchange Control Act Chapter 593 of the Laws of Zambia Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 No 2085.

Financial Stability Act of 2010, 12 USC 5301.

Government of United States Trade Act of 1974 section 301 (Public Law 93–618 [as amended through P.L. 117–286] enacted December 27, 2022) Title III—Relief from Unfair Trade Practices, section 301.

Lusaka Declaration on Peace Independence Development, Co-Operation and Democratisation of International Relations 10 September 1970 194–203.

National Assembly of Zambia “The Bank of Zambia Act, No 5 of 2022”
<https://www.parliament.gov.zm/node/10309> (accessed 27 November 2024).

National Savings and Credit Act Chapter 423 of the Laws of Zambia.

National Savings and Credit Bank of Zambia (Dissolution) Act, Chapter 426 of the Laws of Zambia.

SCZ Judgement 2 of 1994; ZMSC3 (9 February 1994)

SCZ Judgement No 14 of 2007; ZMSC 188 (25 July 2007) 118–131

Small Enterprises Development Act Chapter 425 of the Laws of Zambia. The Act

UK Bank of Rhodesia and Nyasaland Act No 2 of 1956

US Congress Public Law 110-343 Emergency Economic Stabilisation Act of 2008
<https://www.congrss.gov/110/plaws/publ343/plaw-110publ343.htm> (accessed 2 May 2024).Zambian Corporate Insolvency Act of 2017 Part I Preliminary Provisions section 2

Internet references

Access Bank “Access Bank has an SME Zone Advertised”
<https://www.accessbankplc.com/business> (accessed 30 September 2023).

Access Bank Zambia “Access Bank Zambia and Cavmont Capital Holdings”
<https://zambia.accessbankplc.com/pages/media/access-news/Access-Bank-Zambia-and-Cavmont-Capital-Holdings-Za.aspx> (accessed 13 October 2022).

ADI-VOCA “\$20 Million Loan Guarantee for SMEs Launches in Zambia with Support of Local Government, Donors and Private Sector (21 June 2022).
<https://www.acdivoca.org/2022/06//20-million-loan-guarantee-for-smes-launches-in-zambia-with-support-of-local-government-donors-and-private-sector/> (accessed 30 September 2023).

African Social Network “Kenneth Buchizya Kaunda” <https://african-socialwork.net/kenneth-buchizya-kaunda> (accessed 20 March 2023).

Allan “Found Insolvent by US and Taken Over” *New York Times* (9 October 1974)
<https://www.nytimes.com/1974/10/09/archives/franklin-found-insolvent-by-us-and-taken-over-european-group-in.html> (accessed: 20 July 2023).

Allen *et al.* “Event Study Analysis of Too-Big-to-Fail after the Dodd-Frank Act: Who is Too Big to Fail?” (September 4, 2018) <http://dx.doi.org/10.2139/ssrn.3942887>.

Allison “Think Again: In Defence of the African Union” (2014) <http://issafrica.org/iss-today/think-again-in-defence-of-the-african-union> (accessed 20 November 2022).

Atlas Obscura “Mbala Surrender Monument” <https://www.atlasobscura.com/places/mbala-wwi-surrender-monument> (accessed 20 March 2023).

AtlasMara “Two Banks have Become One” http://atlasmarazambia.com/wp-content/uploads/2018/01/ATMA-INSERT-final_A4.pdf (see also “Atlas to Build Zambia Largest Bank with Acquisition of Finance Bank” (10 November 2015).
<https://www.zambiainvest.com/finance/banking/atlas-to-build-zambia-largest-bank-with-acquisition-of-finance-bank/> (accessed 13 October 2022).

AtlasMaraZambia.com “About” <https://atlasmarazambia.com/about-atlas-mara/> (accessed 13 October 2022).

Australian Government “Best Practice Regulation Handbook” Department of Finance (2010) 9
<https://www.finance.gov.au/obpr/proposal/better-regulation-draft-handbook.html> (accessed March 30, 2021).

Australian Prudential Regulation Authority (APRA) “What is Prudential Regulation?”
<https://www.apra.gov.au/what-prudential-regulation> (accessed 16 March 2023).

Australian Transaction Reports and Analysis Centre (AUSTRAC) “Correspondent Banking Relationship” <https://www.austrac.gov.au/glossary/correspondent-banking-relationship#> (accessed 17 June 2023).

BancABC <https://www.bancabc.com> (accessed 13 October 2022).

Banco Bilbao Vizcaya Argentaria “COCO Bonds: A Definition”
<https://www.bbva.com/en/economy-and-finance/additional-tier-1-securities-a-definition/> (accessed 29 April 2024).

Bank ABC profile https://www.bancabc.com/documents/comp_profile_2013.pdf (accessed 27 November 2024).

- Bank for International Settlements (BIS) “Amendment to the Capital Accord to Incorporate Market Risks” 9 (1996) <https://www.bis.org/publ/bcbs24.pdf> (accessed 14 November 2024). Bank for International Settlements (BIS) & Basel Committee on Banking Supervision “A Brief History of the Basel Committee” (2015) <http://www.bis.org/about/contact.htm?m=1%7c81> (accessed 16 June 2017).
- Bank for International Settlements (BIS) “29 Core Principles for Effective Banking Supervision” (2012) 9 <https://www.bis.org/publ/bcbs230.pdf> (accessed 13 April 2024).
- Bank for International Settlements (BIS) “Amendment to the Capital Accord to Incorporate Market Risks” updated November 2005 <https://www.bis.org/publ/bcbs119.pdf> (accessed 14 November 2024).
- Bank for International Settlements (BIS) “Basel Committee Membership” <http://www.bis.org/bcbs/membership.htm> (accessed 19 June 2023).
- Bank for International Settlements (BIS) “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems at I Definition of Capital” 12-16 BIS, Basel (December 2010) https://www.bis.org/publ/bcbs189_dec2010.pdf (accessed 2 May 2024).
- Bank for International Settlements (BIS) “Basel III: International Regulatory Framework for Banks” <https://www.bis.org/bcbs/basel3> (accessed 3 March 2023).
- Bank for International Settlements (BIS) “BIS International Convergence of Capital Measurement and Capital Standards A Revised Framework” 1–228 (June 2004) <https://www.bis.org/publ/bcbs107.htm> (accessed 7 March 2024).
- Bank for International Settlements (BIS) “Core Principles for Effective Banking Supervision” (December 2011) <https://www.bis.org/publ/bcbs213.pdf> (accessed 16 June 2017).
- Bank for International Settlements (BIS) “Finalising Basel III in brief” https://www.bis.org/bcbs/publ/d424_inbrief.pdf (accessed 7 August 2023).
- Bank for International Settlements (BIS) “Finalising Basel in Brief” https://www.bis.org/bcbs/publ/d24_in_brief.pdf (accessed 17 August 2022).
- Bank for International Settlements (BIS) “History—Overview” <https://www.bis.org/about/history.htm> (accessed 16 February 2020).
- Bank for International Settlements (BIS) “History of the Basel Committee” <https://www.bis.org/bcbs/history.htm> (accessed 13 July 2018). Bank for International Settlements (BIS) “History: Foundation and Crisis (1930-1939)” https://www.bis.org/about/history_1foundation.htm (accessed 4 November 2024).
- Bank for International Settlements (BIS) “Overview of the New Capital Accord. Basel Committee on Banking Supervision” Consultative Document (January 2001) <https://www.bis.org/index.htm?> (accessed 3 Mar. 2023).
- Bank for International Settlements (BIS) “Payment System in Zambia” 225 <https://www.bis.org/cpmi/paysys/Zambia.pdf> (accessed 13 April 2024).
- Bank for International Settlements (BIS) “Principles for Sound Liquidity Risk Management and Supervision” BIS, Basel (January 2008) https://www.bis.org/list/bcbs/spp_12/from_01012008/index.htm (accessed April 18, 2021).
- Bank for International Settlements (BIS) “The BCG” <https://www.bis.org/bcbs/mesc.htm> (accessed 27 April 2024).

- Bank for International Settlements (BIS) “The Capital Buffers in Basel III- Executive Summary” (28 November 2019) https://www.bis.org/fsi/fsi_summaries/b3_capital.htm (accessed 3 March 2023).
- Bank for International Settlements (BIS) “The History of the Basel Accords” <https://www.bis.org/bcbs/history.htm> (see also Federal Reserve History: Creation of the Bretton Woods System) (July 1944) <https://www.federalreservehistory.org/essays/bretton-woods-created> (accessed 3 March 2023).
- Bank for International Settlements (BIS) “The Internal Ratings Based Approach—supporting document to the New Basel Capital Accord” <https://www.bis.org/pub/bcbsca05.pdf> (accessed 17 June 2023).
- Bank for International Settlements (BIS) “To Err Is Human: Rating Agencies and the Interwar Foreign Government Debt Crisis” (2011) 30–31. <https://www.graduateinstitute.ch/library/publications-institute/err-human-us-rating-agencies-and-interwar-foreign-government-debt> (accessed 13 May 2021)
- Bank of Zambia (BoZ) “Annual Report 2010” 50 (2010) <https://www.boz.zm/BOZAnnualReport2010.pdf> (accessed 15 May 2024).
- Bank of Zambia (BoZ) “Average Exchange Rates” <https://www.boz.zm/average-exchange-rates.htm> (accessed 19 August 2023).
- Bank of Zambia (BoZ) “Bank of Zambia Background” <https://www.boz.zm/about/background.htm> (accessed 20 March 2023).
- Bank of Zambia (BoZ) “COVID Intervention Measures” <https://www.boz.zm/COVID-19/interventions.htm> (accessed 30 April 2024).
- Bank of Zambia (BoZ) “Financial Sector Development Plan 2004-2009” (2004) <https://www.boz.zm/financial-sector-development.htm> (accessed 9 July 2020). Bank of Zambia (BoZ) “History of Zambian Currency” <https://www.boz.zm/currency-history.htm> (accessed 3 March 2023).
- Bank of Zambia (BoZ) “Issues on the Zambian Economy” *The BoZ Reader* (2004) 2 <https://www.boz.zm/thereader2004.pdf> (accessed 24 April 2024),
- Bank of Zambia (BoZ) “List of Licensed Commercial Banks As of 3 May 2024” <https://www.boz.zm/> (accessed 3 May 2024),
- Bank of Zambia (BoZ) “New Capital Adequacy Framework” <https://www.boz.zm/232013CAPITAL.pdf> (accessed 20 July 2023),
- Bank of Zambia (BoZ) “Press Release—Takes Possession of DBZ” (21 July 2023) https://www.boz.zm/Public_Notice_DBZ.pdf (accessed 25 April 2024),
- Bank of Zambia (BoZ) “Registered Commercial Banks” <https://www.boz.zm/registered-commercial-banks.htm> (accessed 7 May 2024).
- Bank of Zambia (BoZ) “The Southern Africa Development Community Real Time Gross Settlement (SADC-RTGS) System” https://www.boz.zm/sadc_rtgs_system.pdf (accessed. 15 June 2023) (accessed. 15 June 2023).
- Bank of Zambia (BoZ) <https://www.boz.zm> (accessed 20 March 2019). Bankers of Tomorrow “Theories of Banking” (21 July 2015) (accessed April 16, 2021) <http://bankersoftomorrow.blogspot.com/2015/07/theories-of-banking.html> (accessed 16 April 2021).

- Barclays Africa Group “Proposed Change of Name” (1 March 2018) <https://www.barclaysafrica.com/content/dam/barclays-africa/bagl/pdf/sens/2018/jan-jun/barclays-africa-group-name-change.pdf> (accessed 7 May 2024). Bartleby Research “Advantages of Liquidity Premium Theory” <https://www.bartleby.com/essay/Advantages-Of-Liquidity-Premium-Theory-PJSAGEBSNR> (accessed 23 April 2021).
- Basel Committee for Banking Supervision (BCBS) “Overview” <https://www.bis.org/bcbs/index.htm> (accessed 6 November 2024).
- Basel Committee on Banking Supervision (BCBS) “Basel III: The Net Stable Funding Ratio” (October 2014) 1–13 <https://www.bis.org/bcbs/publ/d295.pdf> (accessed 16 November 2024).
- Basel Committee on Banking Supervision (BCBS) “Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework” (June 2004) <https://www.bis.org/publ/bcbs107.pdf> (accessed 7 March 2024). Basel Committee on Banking Supervision (BCBS) “Basel III a Global Regulatory Framework for more Resilient Banks and Banking Systems” (December 2010, rev June 2011) <https://www.bis.org/publ/bcbs189.pdf> (accessed 9 July 2020).
- Basel Committee on Banking Supervision (BCBS) “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring” <https://www.bis.org/publ/bcbs188.pdf> (accessed 9 July 2020).
- Basel Committee on Banking Supervision (BCBS) “Core Principles for Effective Banking Supervision” (2012) 21 <https://www.bis.org/publ/bcbs230.pdf> (accessed 24 October 2024).
- Basel Committee on Banking Supervision (BCBS) “Explanatory Note on the Revised Minimum Capital Requirements for Market Risk” (January 2016) https://www.bis.org/bcbs/publ/d352_note.pdf (accessed 5 August 2022).
- Basel Committee on Banking Supervision (BCBS) “International Convergence of Capital Measurement and Capital Standards A Revised Framework, Comprehensive Version” (June 2006) <https://www.bis.org/publ/bcbs128.pdf> (accessed 10 May 2023).
- Basel Committee on Banking Supervision (BCBS) “International Convergence of Capital Measurement and Capital Standards” 1–28 (July 1988) <https://www.bis.org/publ/bcbs04a.pdf> (accessed 10 January 2020).
- Basel Committee on Banking Supervision (BCBS) “The Application of Basel II to Trading Activities and the Treatment of Double Default Effects” (July 2005) <https://www.bis.org/publ/bcbs111.htm> (accessed 10 May 2023).
- Basel Committee on Banking Supervision (BCBS) “The Market Risk Framework in Brief” (January 2019) 2 https://www.bis.org/bcbs/publ/d457_inbrief.pdf (accessed 15 November 2024).
- Basel Committee on Banking Supervision “Basel III: Leverage ratio framework and disclosure requirements” (January 2014) <https://www.bis.org/publ/bcbs270.pdf> (accessed 5 December 2024).
- Basel Committee on Banking Supervision “Basel III: Finalising post-crisis reforms” December 2017 <https://www.bis.org/bcbs/publ/d424.pdf> (accessed 11 November 2024).
- Basel Committee on Banking Supervision “The Core Principles for Effective Banking Supervision” 14 Sept 2012 <https://www.bis.org/bcbs/publ/d573.pdf> (accessed 17 November 2024).

- Basel Committee on Banking Supervision Issued for comment by 30 November 1999 Basel (July 1999) 1 1–27 <https://www.bis.org/publ/bcbs54.pdf> (accessed 15 November 2024).
- Basel Committee on Banking Supervision. “Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools” January 2013 12–13 <https://www.bis.org/publ/bcbs238.pdf> (accessed 7 November 2024).
- Basel Committee on Banking Supervision (BCBS) “Minimum Standards for The Supervision of International Banking Groups and Their Cross-Border Establishments” (July 1992) www.bis.org/publ/bcbsc314.pdf (accessed 14 November 2024).
- Basel Committee on Banking Supervision (BCBS) “The Capital Buffers in Basel III—Executive Summary” (November 2019) 2 28. https://www.bis.org/fsi/fsisummaries/b3_capital.pdf (accessed 9 July 2020)
- Basle Committee on Banking Supervision *Core Principles for Effective Banking Supervision, Final Version* Basle. Press Statement. 22 September 1997 <https://www.bis.org/press/p970922.htm> (accessed 24 November 2024).
- BCBS *Core Principles for Effective Banking Supervision* (September 1997) 2 <https://www.bis.org/publ/bcbsc102.pdf> (accessed 24 November 2024).
- Beck *et al.* *Bank Concentration and Crisis: The Digest* No 2 1–42 (2004) <https://www.nber.org/digest/feb04/bank-concentration-and-crisis> (accessed 21 December 2022).
- Belle “Regional Economic Integration in SADC: Progress Prospects and Statistical Issues for Monetary Union” <https://www.bis.org/ifc/pub/ifcb32e.pdf> (accessed 1 July 2023).
- Berkeley University “The Diamond-Dybvig Model” (2016) 38 <https://www.econ.berkeley.edu/sites/default/files/course-homepage/2016-11-15/lecture-notes/Notes%20for%2011-17-2016.pdf> (accessed 12 April 2021). Best “Pathologies of Power and the Rise of the Global Industrial Complex” <https://drstevebest.wordpress.com/2011/12/18/pathologies-of-power-and-the-rise-of-the-global-industrial-complex/> (accessed 11 April 2021).
- Biglaiser & Gauvran “The Effects of IMF Loan Conditions on Poverty in the Developing World” 2022 *Journal of International Relations and Development* 25 806–833.
- Billett *et al.* “The Cost of Market Versus Regulatory Discipline in Banking” https://www.biz.uiowa.edu/faculty/jgarfinkel/pubs/mkt_reg_disc.pdf (accessed 3 October 2023).
- Black “Rules and Regulators” *Oxford Academic* (1997) <https://doi.org/10.1093/acprof:oso/9780198262947.001.0001> (accessed 17 March. 2023).
- Bondarenko “European Central Bank” *Encyclopedia Britannica* (29 November 2024) <https://www.britannica.com/money/European-Central-Bank> (accessed 29 November 2024).
- Bondarenko “Subprime Mortgages” <https://www.britannica.com/money/time-value-of-money-calculator> (accessed 19 August 2023).
- Bordo “A Brief History of Central Banks” <https://www.clevelandfed.org/publications/economic-commentary/2007/ec-20071201-a-brief-history-of-central-banks> (accessed 13 July 2018).

- Bowmans “Merger and Acquisition in Africa: Current Trends (2022) <https://bowmanslaw.com/wp-content/uploads/2022/03/MA-Review-2022-final.pdf> (accessed 13 October 2023). Bretton Woods Project “Bretton Woods Update 74” (17 February 2011) <https://www.brettonwoodsproject.org/publications/74-2/>.
- Bretton Woods Project “‘Groupthink’ IMF Slammed for Mistakes Before Crisis” (2011) 1 <https://www.brettonwoodsproject.org/2011/02/art-567577/> (accessed 27 April 2024).
- Bretton Woods Project “IEG Findings Cast Doubt on Bank’s Ability to Deliver on General Capital Increase” (2018) 1 <https://www.brettonwoodsproject.org/2018/07/ieg-findings-cast-doubt-banks-ability-deliver-general-capital-increase/> (accessed 27 April 2024).
- Bretton Woods Project “Independent Evaluations Continue to Lack Traction at IMF” (26 September 2018) 1 <https://www.brettonwoodsproject.org/2018/09/independent-evaluations-continue-lack-traction-imf/> (accessed 27 April 2024).
- Bretton Woods Project “What are the Main Criticisms of the World Bank and the IMF?” (2019) 1–10 5 <https://www.brettonwoodsproject.org/2019/06/what-are-the-main-criticisms-of-the-world-bank-and-the-imf/> (accessed 27 April 2024).
- Britannica “Joint-Stock Company” (2010) <https://www.britannica.com/money/joint-stock-company> (accessed 13 July 2018).
- Britannica “Mulungushi Reforms” <https://www.britannica.com/topic/Mulungushi-Reforms> (accessed 20 March 2023).
- Britannica “The OECD” <https://www.britannica.com/money/international-payment/The-OECD#ref125864> (accessed 4 November 2024).
- Britannica “Young Plan” <https://www.britannica.com/event/Young-Plan> (accessed 11 April 2021)
- Britannica Money “Corporatism” (17 March 2023) <https://www.britannica.com/topic/corporatism> (accessed 3 May 2023).
- Britannica Money “Command Economy” <https://www.britannica.com/money/command-economy> (accessed 20 March 2023).
- Britannica Money “House of Tudor” <https://www.britannica.com/topic/House-of-Tudor> (accessed 13 July 2018).
- Britannica Money “Insider Trading” <https://www.britannica.com/money/insider-trading> (accessed 11 April 2021). Britannica Money “International Economics” <https://www.britannica.com/money/topic/economics/International-economics#ref837671> (accessed 20 November 2023). Britannica Money “Laissez-Faire” <https://www.britannica.com/topic/laissez-faire> (accessed 2 June 2024).
- Britannica Money “Marketization” <https://www.britannica.com/topic/marketization> (accessed 11 April 2021).
- Britannica Money “Money Market” <https://www.britannica.com/topic/money-market> (accessed 23 March 2020). BritishHistory.co.uk “Bank of England” <https://www.british-history.ac.uk/old-new-london/vol1/pp453-473> (accessed 13 July 2018).
- Brownbridge “Financial Policies and the Banking System in Zambia Summary” <https://www.ids.ac.uk/download.php?file=files/Wp32.pdf> (accessed 9 September 2023).

Bryant “Federal Reserve Bank of Atlanta” <https://www.federalreservehistory.org/essays/great-inflation> (accessed 11 April 2021).

Buch “Implications of the Too-Big-to-Fail Reforms for Global Banking” remarks by the Vice-President of Deutsche Bundesbank prepared for the IIF-BPI Colloquium on Cross-Border Resolution & Regulation <https://www.bis.org/review/r200804a.pdf> (accessed 28 November 2024).

BusinessTech “Here is Absa’s Brand-New Look” (11 July 2018) <https://businesstech.co.za/news/banking/257755/here-is-absas-brand-new-look/> (accessed 7 May 2024).

Cambridge Dictionary “Asset Base” <https://dictionary.cambridge.org/dictionary/English/asset-base> (accessed 18 April 2024).

Caruana *et al.* “Banking on more” <https://www.imf.org/external/pubs/ft/fandd/2008/06/pdf/caruana.pdf> (accessed 4 November 2024).

Central Bank Ireland “What is Shadow Banking” <https://www.centralbank.ie/consumer-hub/explainers/what-is-shadow-banking> (accessed 11 April 2021).

Central Banking “Zambian President Fires Central Bank Governor” (2020) <https://www.reuters.com/article/idUSKBN25I0NV/> (accessed 20 January 2024). CEPS “About” <https://www.ceps.eu/about-ceps/> (accessed 5 August 2022)

ChaloChatu.org “1990 Zambia Food Riots” http://www.chalochatu.org/1990_Zambia_food_riots (accessed 14 August 2022).

Chatham House “What is the Eurasian Economic Union?” <https://www.chathamhouse.org/2022/07/what-eurasian-economic-union> (accessed 8 June 2023),

Chikulo “Decentralisation Reforms in Zambia 1991–2010” [http://www.krepublishers.com/02-Journals/JSS/JSS-40-0-000-14-Web/JSS-40-1-14-Abst-PDF/JSS-40-1-095-14-1549-Chikulo-B-C/JSS-40-1-095-14-1549-Chikulo-B-C-Tx\[10\].pdf](http://www.krepublishers.com/02-Journals/JSS/JSS-40-0-000-14-Web/JSS-40-1-14-Abst-PDF/JSS-40-1-095-14-1549-Chikulo-B-C/JSS-40-1-095-14-1549-Chikulo-B-C-Tx[10].pdf) (accessed 20 March 2023)

Cleartax “Paid Up Capital” <https://cleartax.in/glossary/paid-up-capital/> (accessed 25 April 2024),

Collard *et al.* “On the Overcapitalization for Market Risk Under the US Regulatory Framework” <https://bpi.com/on-the-overcapitalization-for-market-risk-under-the-u-s-regulatory-framework/> accessed 5 August 2022);

CollinsDictionary.com “Economistic Definition and Meaning” <https://www.collinsdictionary.com/dictionary/english/economistic#> (accessed 11 April 2021),

Committee of Central Bank Governors “Bankers Terms of Reference for the Committee of Governors of Central Banks in SADC” <https://www.sadcbankers.org/Lists/News%20and%20Publications/Attachments/3/Terms%20of%20reference.pdf> (accessed 23 June 2023).

Committee of Central Bank Governors “SADC Model Law Final Explanatory Guide” (2011) <https://www.sadcbankers.org/Lists/News%20and%20Publications/Attachments/178/Final%20Explanatory%20Guide%20English.pdf> (accessed 21 November 2022).

- Common Market for Eastern and Southern Africa (COMESA) “COMESA Court of Justice” <https://comesacourt.org/comesa-monetary-institute/> (accessed 8 June 2023).
- Common Market for Eastern and Southern Africa (COMESA) “COMESA in Brief: Growing Together for Prosperity” (September 2018) https://www.comesa.int/wp-content/uploads/2020/05/COMESA-in-brief-FINAL-_web.pdf (accessed 15 June 2023).
- Common Market for Eastern and Southern Africa (COMESA) “Monetary Institute (CMI) Conducts Risk Training for Financial Sector” (2022) <https://cmi.comesa.int/cmi-conducts-risk-training-for-financial-sector/> (accessed. 8 June 2023).
- Common Market for Eastern and Southern Africa (COMESA) “Regional Bank Staff Trained to Prevent Institutional Failures” (12 November 2021) <https://www.comesa.int/training-staff-to-forestall-banks-failures/> (accessed 20 September 2022).
- Common Market for Eastern and Southern Africa (COMESA) “Treaty Establishing the Common Market for Eastern and Southern Africa Treaty” 18 (2012) Comesa-treaty-revised-20092012_with-Zaire_final. Pdf (accessed November 2022).
- Competition Authority of Kenya (CAK) “Mergers and Acquisitions” <https://www.cak.go.ke/mergers/overview> (accessed 1 August, 2019).
- Comptroller of the Currency Administrator of National Banks “National Banks and The Dual Banking System” (September 2003) <https://www.occ.treas.gov/publications-and-resources/publications/banker-education/files/pub-national-banks-and-the-dual-banking-system.pdf> (accessed 7 July 2023).
- Congressional Research Service “Tailoring Bank Regulations: Differences in Bank Size, Activities, and Capital Levels” (21 December 2017) https://www.everycrsreport.com/files/20171221_R45051_47c4381dedef75e1685f83900702a2e8a904be22.pdf (accessed 16 October 2023)
- Cornell Law School “Blackletter Law. Legal Information Institute (LII)” (2020) https://www.law.cornell.edu/wex/blackletter_law (accessed 16 July 2023).
- Cornell Law School Legal Information Institute (LII) “12 US code §5321 Financial Stability Oversight Council established” <https://www.law.cornell.edu/uscode/text/12/5321#> (accessed 17 July 2023).
- Cornell University “Electronic Code of Federal Regulations (e-CFR) Title 12—Banks and Banking Chapter III—Federal Deposit Insurance Corporation Subchapter B—Regulations and Statements of General Policy Part 345—Community Reinvestment Subpart A—General 345.12 Definitions” <https://www.law.cornell.edu/cfr/text> (accessed 29 November 2024)
- Corporate Finance Institute (CFI) “Black Monday” <https://corporatefinanceinstitute.com/resources/equities/black-monday/> (accessed 16 June 2017)
- Corporate Finance Institute (CFI) “Commercial Paper” <https://corporatefinanceinstitute.com/resources/fixed-income/commercial-paper/> (accessed 6 April 2024).
- Corporate Finance Institute (CFI) “Infant Industry Argument: New Industries Need Protection from International Competitors in The Infancy Stage” <https://corporatefinanceinstitute.com/resources/economics/infant-industry-argument/> (accessed 5 November 2023)

- Corporate Finance Institute (CFI) “Return on Assets Formula”
<https://corporatefinanceinstitute.com/resources/accounting/return-on-assets-roa-formula/>
(accessed 18 April 2024).
- Corporate Finance Institute (CFI) “What is a Repurchase Agreement (Repo)?”
https://corporatefinanceinstitute.com/resources/capital_markets/repurchase-agreement-repo/
(accessed 13 November 2024).
- Council on Foreign Relations “What is ASEAN?” <https://www.cfr.org/backgrounder/what-asean> (accessed 8 June 2023).
- Counter Cyclical Capital Buffers (CCyB) “The Counter Cyclical Capital Buffer Aims”
<https://www.bis.org/bcbs/ccyb/index.htm#> (accessed 10 August 2017).
- Cuts International “Parliamentary Submission: Financial Inclusion vis-à-vis the Use of Digital Payment Platforms in Zambia” (January 2020) 4 <https://cuts-lusaka.org/pdf/policy-brief-financial-inclusion-vis-à-vis-the-use-of-digital-payment-platforms-in-Zambia.pdf>
(accessed 9 September 2023).
- D+C/E+Z “The Common Framework for Debt Treatment”
<https://www.dandc.eu/en/article/all-countries-become-able-rise-challenges-current-polycrisis-debt-restructuring-needed> (accessed 25 November 2023).
- Deaton “When France Sneezes the Whole of Europe Catches a Cold”
https://www.princeton.edu/~deaton/downloads/An_Evaluation_of_World_Bank_Research_1998-2005.pdf (accessed 27 April 2024).
- Deloitte “Regulatory Landscapes in the Nordics”
<https://www2.deloitte.com/content/dam/Deloitte/dk/Documents/risk/Regulatory-landscape-in-the-Nordics.pdf> (accessed 26 November 2024).
- DLA Piper “Mergers and Acquisitions”
<https://www.dlapiperafrica.com/en/zambia/services/corporate/mergers.html> (accessed 13 October 2022).
- Doctors without Borders “The Practical Guide to Humanitarian Law” <https://guide-humanitarian-law.org/contnet/article/3/soft-law/> (accessed 17 June 2023).
- Dowed *et al.* “Capital Inadequacies the Dismal Failure of the Basel Regime of Bank Capital Regulation, Policy Analysis No 681” (2011) <https://www.cato.org/policy-analysis/capital-inadequacies-dismal-failure-basel-regime-bank-capital-regulation> (accessed 24 June 2023)
- Dugan “US Implementation of Basel II: Final Rules Issued but no Supervisory Approvals to Date” European Parliament Directorate General for Internal Policies, Economic and Scientific Policy (2011) <https://www.europarl.europa.eu> (accessed 5 August 2022).
- East African Community <https://www.eac.int/> (accessed 8 June 2023).
- Economic Community of West African States (ECOWAS) “Activity of the Constituting Countries” <https://ecowas.int/basic-information> (accessed. 8 June 2023).
- Economics Help “Criticism of the IMF” <http://www.economics-help.org> (accessed 12 September 2022).
- Economist Intelligence Unit (EIU) “The Central Bank Takes Over the Operations of FBZ” (1 January 2011)
<https://country.eiu.com/article.aspx?articleid=647727649&Country=Zambia&topic=Econ>

omy&subtopic=Recent+developments&subsubtopic=Economic+performance:+The+central+bank+takes+over+the+operations+of+FBZ (accessed 13 October 2022).

El Khoury “Credit Rating Agencies and Their Potential Impact on Developing Countries, No186” United Nations Conference on Trade and Development (UNCTAD) (2008) https://unctad.org/system/files/official-document/osgdp20081_en.pdf (accessed 8 November 2024).

Elliott & Brummer “The IMF: One Size Does Not Fit All. A Leak in the Global Economy Has Turned into a Flood. Larry Elliott and Alex Brummer Audit the Plumbers” *The Guardian* (July 1998) <https://archive.globalpolicy.org/soecon/bwi-wto/imf/1998/elliott.htm> (accessed 4 April 2024).

Ellyne “Zambian Economic History” IMF Resident Representative (2002) www.imf.org/external/country/zmb/rr/pdf/2002/070702.pdf (accessed 16 June 2017).

Embassy of the Russian Federation “Bilateral Cooperation” <https://zambia.mid.ru/en/countries/bilateral-relations/political-relations/> (accessed 5 November 2024).

Encyclopedia Britannica “African Union” (9 June 2023) <https://www.britannica.com/topic/African-Union> (accessed 15 June 2023).

Encyclopedia Britannica “Federation of Rhodesia and Nyasaland” (6 January 2011) <https://www.britannica.com/place/Federation-of-Rhodesia-and-Nyasaland> (accessed 20 March 2023).

Encyclopedia Britannica “Iron Curtain Speech” (26 February 2023) <https://www.britannica.com/topic/Iron-Curtain-Speech> (accessed 3 Mar. 2023).

Encyclopedia Britannica “Laissez-Faire” (3 March 2023) <https://www.britannica.com/topic/laissez-faire> (accessed 13 July 2018).

Encyclopedia Britannica “Normal Distribution” (2 April 2023) <https://www.britannica.com/topic/normal-distribution> (accessed 3 May 2023).

Encyclopedia Britannica “Treaty of Versailles” (6 January 2023) <https://www.britannica.com/event/Treaty-of-Versailles-1919> (accessed 22 March 2023).

Encyclopedia Britannica “Causes of the Arab Spring” <https://www.britannica.com/event/Arab-Spring> (accessed March 20, 2021).

Encyclopedia Britannica “Copperbelt Region Africa” (2014) <https://www.britannica.com/place/Copperbelt-region-Africa> (accessed 13 November 2024).

Encyclopedia Britannica “Liberalism in the 19th Century” <https://britannica.com/topic/liberalism/Liberalism-in-the-19th-century> (accessed 11 April 2021).

Encyclopedia Britannica “Par Value System” <https://www.britannica.com/topic/Smithsonian-Agreement> (accessed 5 May 2023).

Encyclopedia Britannica “Southern African Development Community” (20 March 2023) <https://www.britannica.com/topic/Southern-African-Development-Community> (accessed 15 June 2023).

- Encyclopedia of the Nations “Country Overview: Republic of Zambia” <https://www.nationsencyclopedia.com/economies/Africa/Zambia.html> (accessed 2 May 2024).
- Encyclopedia.com “Economism” <https://www.encyclopedia.com/history/modern-Europe/Russian-soviet-and-cis-history/economism> (accessed 11 April 2021).
- Etzioni “The Concept of Capture Theory of Regulation Revisited” *SOC 64* 319-323 (2009) <https://www.doi.org/10.1007.12115-009-9228-3> (accessed 30 March 2021).
- Eubanks “The Basel Accords: The Implementation of II and the modification of I. CRS Report for Congress Congressional Research Services” Library of Congress (June 2006) <https://everycrsreport.com> (accessed 5 August 2022).
- Eubanks “The Status of the Basel III Capital Adequacy Accord” Congressional Research Services (CRS) (2010) <http://www.everycrsreport.com> (accessed 13 May 2021).
- Eurasian Customs Union “What is the Eurasian Customs Union” <https://www.chathamhouse.org/2022/07/what-eurasian-economic-union> (accessed 8 June 2023).
- European Banking Authority (EBA) “The Single Rulebook” <https://www.eba.europa.eu/single-rulebook> (accessed 29 November 2024).
- European Center for Constitutional and Human Rights (ECCHR) “Hard Law/Soft Law” <https://www.ecchr.eu> (accessed 14 August 2022).
- European Central Bank “Systemic Risk, Contagion and Financial Networks” https://www.ecb.europa.eu/pub/pdf/fsr/art/ecb.fsrart201511_03.en.pdf (accessed 3 October 2023)
- European Central Bank “What is a Lender of Last Resort?” (26 August 2019) <https://www.ecb.europa.eu/ecb/educational/explainers/tell-me-more/html/what-is-a-lender-of-last-resort.en.html> (accessed 13 July 2018).
- European Stability Mechanism (ESM) https://www.esm.europa.eu/about-us#headline-who_we_are (accessed 28 November 2024).
- European Union “History of the European Union 1990-1999” https://european-union.europa.eu/principles-countries-history/history-eu/1990-99_en (accessed 11 April 2021).
- FDIC “Failing Bank Resolutions” <https://www.fdic.gov/resolutions#> (accessed 18 November 2024).
- Federal Deposit Insurance Corporation (FDIC) “About” <https://www.fdic.gov/about/> (accessed 6 October 2023).
- Federal Deposit Insurance Corporation (FDIC) “Chapter 4. The Savings and Loan Crisis and its Relationship to Banking” https://www.fdic.gov/bank/historical/history/167_188.pdf (accessed 16 June 2017).
- Federal Deposit Insurance Corporation (FDIC) “Failed bank List” <https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/> (accessed 20 July 2023)
- Federal Deposit Insurance Corporation Improvement Act of 1991. Pub 1 No 102-242,105 stat.2236 and codified in part at 12 USC§1831t <https://www.ftc.gov/legal->

- library/brouws/statutes/federal-deposit-insurance-corporation-improvement act-1991 (accessed 18 July 2023).
- Federal Reserve “Supervision and Regulation. Understanding Federal Reserve Supervision” <https://www.federalreserve.gov/supervisionreg.htm> (accessed 20 April 2024)
- Federal Reserve Bank (FRB) “Supporting Statement for the Market Risk Capital Rule (FR 4201; OMB No. 7100–0314)” (2019) <https://www.federalreserve.gov/reportforms/formsreview/FR%204201%20OMB%20SS%202019.pdf> (accessed 5 August 2022).
- Federal Reserve Bank (FRB) “Understanding Federal Reserve Supervision” (2023) <https://www.federalreserve.gov/supervisionreg/understanding-federal-reserve-supervision.htm> (accessed 20 April 2024),
- Federal Reserve Board (FRB) “Supporting Statement for the Market Risk Capital Rule (FR 4201; OMB No. 7100–0314)” (2023) <https://www.federalreserve.gov/reportforms/formsreview/FR%204201%20OMB%20SS%202023.pdf> (accessed 5 August 2022).
- Federal Reserve History “Asian Financial Crisis July 1997 to December 1998” <https://www.federalreservehistory.org/essays/asian-financial-crisis> (accessed 22 April 2024).
- Federal Reserve History “Federal Deposit Insurance Corporation Improvement Act of 1991” <https://www.federalreservehistory.org/essay/fdicia> (accessed 18 July 2023)
- Federal Reserve History “Overview: The History of the Federal Reserve 1913 to Today” <https://www.federalreservehistory.org/essays/federal-reserve-history> (accessed 7 July 2023).
- Finance Bank (LinkedIn presence) <https://www.linkedin.com/company/finance-bank-z-ltd/?originalSubdomain=zm> (accessed 13 October 2022).
- Financial Insight “African Business News and Analysis. FNB Zambia conferred Best SME Bank Zambia 2022 and Best Innovative Bank Zambia” (2022) <https://fizambia.com/fnb-zambia-conferred-best-sme-bank-zambia-2022-and-best-innovative-bank> (accessed 9 March 2023).
- Financial Insight Zambia “Bank of Nevis acquires 24.08% of Investrust Bank” <https://fizambia.com/bank-of-nevis-acquires-24-08-of-investrust-bank/> (accessed 13 October 2022).
- Financial Sector Deepening Africa (FSD Africa) “Harbingers of Doom: Bank failures in Africa—How to Interpret These” <http://www.fsdafrica.org> (accessed 13 October 2022)
- Financial Stability Board (FSB) “Global Systemically Important Financial Institutions (G-SIFIs)” <https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/global-systemically-important-financial-institutions-g-sifis/> (accessed 10 May 2023).
- Financial Stability Institute *Core Principles for Effective Banking Supervision –Executive Summary* (2024) 1–3 https://www.bis.org/fsa/fsisummaries/cps_for_bankig.htm (accessed 24 November 2024).
- Finextra Blog “Basel III—Driving Mergers and Acquisitions” (20 September 2010) <https://www.finextra.com/blogposting/4468/basel-iii---driving-mergers-and-acquisitions>

- FNB Zambia “Business SME Account” <https://www.fnbzambia.co.zm/for=my-buisness/accounts/smeAccount.html> (accessed 30 September 2023).
- Food and Agricultural Organisation of the United States (FAO) “Appendix 2C: Preferential Trade Area of Eastern and Southern Africa” <https://www.fao.org/3/w5973e/w5973e06.htm> (accessed 8 June 2023).
- Fraser “Did Structural Adjustment Programmes Assist African Development?” (13 January 2015) <https://www.e-ir.info/2015/01/13/did-structural-adjustment-programmes-assist-african-development/> (accessed 16 June 2023).
- Full Marx “What are the ‘Base’ and ‘Superstructure’ of Society?” Morning Star <https://morningstaronline.co.uk/article/c/what-are-base-and-superstructure-society> (accessed 25 April 2024).
- Gabel “European Union” *Encyclopedia Britannica* (8 June 2023) <https://www.britannica.com/topic/European-Union> (accessed 8 June 2023).
- Gabel “European Community” *Encyclopedia Britannica* (24 March 2023) <https://www.britannica.com/topic/European-Community-European-economic-association> (accessed 12 May 2023).
- Galletti “A History of the League of Nations” https://www.aape.org/exhibit_view_frame.asp?intExhibitNumber=1&intCurrentFrameNumber=1 (accessed 13 July 2018).
- Garg “Consequences of Violation of International Law” <https://blog.ipleaders.in/consequences-of-violation-of-international-law/?amp=1> 1 June 2020 (accessed 14 August 2022).
- Garg “International Law—Meanings and Definitions” <https://blog.ipleaders.in/international-law-meaning-definitions/> (accessed 17 June 2023).
- George “Kaufman Bank Runs” <https://www.econlib.org/library/Enc/BankRuns.html> (accessed 26 September 2023).
- Getter “US Implementation of the Basel Capital Regulatory Framework” 5 (2014) <https://digital.library.unt.edu/ark:/67531/metadc332990> (accessed 5 August 2022) 4–5.
- Gleijeses “Africa in the Cold War” Oxford Bibliographies <https://www.oxfordbibliographies.com/view/document/obo-9780199846733/obo-9780199846733-0225.xml> (accessed 3 Mar. 2023).
- GlobalEconomy.com “Zambia: Economic Globalisation” https://www.theglobaleconomy.com/Zambia/kof_econ_glob/ (accessed 3 May 2024).
- GlobalPolicy.org “A Leak in the Global Economy Has Turned into a Flood Larry Elliott and Alex Brummer Audit the Plumbers” <https://archive.globalpolicy.org/soecon/bwi-wto/imf/1998/elliott.htm> (accessed 4 April 2024).
- Goldenburg & Ogba “Leveraging Data to Support the Expansion of Agent Networks in Rural Areas of Zambia” <https://uncdf.org/article/3377/leveraging-data-support-the-expansion-of-agent-networks-in-rural-areas-of-zambia#fn1> (accessed 9 September 2023).
- Goldstein “The EU’s Implementation of Basel III: A deeply flawed compromise” (2012) <http://voxeu.org/article/eu-s-implementation-basel-iii-deeply-flawed-compromise> (accessed 10 August 2017).

- Gottschalk & Griffith-Jones “Review of Basel II Implementation in Low Income Countries” Brighton University of Sussex (2006) https://www.ids.ac.uk/files/Basel_II_in_LICs_web.pdf (accessed 10 August 2017).
- Government of the United States “Milestones 1945–1952 Decolonization of Asia and Africa, 1945–1960” Office of the Historian <https://history.state.gov/milestones/1945-1952/asia-and-africa> (accessed 3 Mar. 2023).
- Government of the United States Embassy “Standard Chartered Bank, First National Bank, Zambia National Commercial Bank, ABSA Bank all have SME funding” <https://zm.usembassy.gov/usaiddfc-loan-guarantee/> (accessed 9 September 2023).
- Government of the United States Embassy in Zambia “US Government Launches Loan Guaranty to Support SMEs in Zambia” <https://zm.usembassy.gov/usaiddfc-loan-guaranty/> (accessed 9 March 2023).
- Government of the United States Publishing Office “Who Is too Big to Fail: Does Dodd-Frank Authorize the Government to Break up Financial Institutions?” (2013) <https://www.govinfo.gov/content/pkg/CHRG-113hhrg80880/html/CHRG-113hhrg80880.htm> accessed 22 November 2024).
- Government of United States “Trade Act of 1974 Public Law 93–618 (as amended through P.L. 117–286, enacted 27 December 2022)” <https://www.govinfo.gov/content/pkg/COMPS-10384/pdf/COMPS-10384.pdf> (accessed 6 October 2023).
- Government of Zambia “Government Gazette No 5943 Gazette Notice No 815 of 2010. Vol XLII No 97” (31 December 2010) 813–816 <https://zambiandemocracy.wordpress.com/wp-content/uploads/2012/06/government-goazette-31-dec-2010.pdf> (accessed 15 May 2024).
- Great Depression History <https://www.history.com/topics/great-depression/great-depression-history> (accessed 19 November 2024).
- Gwera “Business of Business is Business” https://www.academia.edu/36505921/Business_of_Business_is_Business_Seth_E_G_docx (accessed 25 April 2024).
- Hallak “Capital Markets Union Overview and State of Play” European Parliamentary Research Service 2024 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757648/EPRS_BRI\(2024\)757648_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757648/EPRS_BRI(2024)757648_EN.pdf) (accessed 15 November 2024).
- Hansard Northern Rhodesia (African Development) HC DEB Vol 553 CC656-80 (1 June 1956) <https://api.parliament.uk/historic-hansard/commons/1956/jun/01/northern-rhodesia-african-development> (accessed 20 March 2023).
- Harold “In Defense of Globalisation. International Monetary Fund Finance and Development” (2023) <https://www.imf.org/en/Publications/fandd/issues/2023/03/in-defense-of-globalisation-harold-james> (accessed 11 April 2021).
- Haubrich “A Brief History of Bank Capital Requirements in the United States” (2020) <https://www.clevelandfed.org/en/publications/economic-commentary/2020/ec-202005-evolution-bank-capital-requirements> (accessed 24 June 2023).
- Heilbroner “Adam Smith” *Encyclopedia Britannica* (2024) <https://www.britannica.com/biography/Adam-Smith> (accessed 6 November 2024).
- HistoryAndPolicy.org “Planning for the Bicentenary of the Abolition of Slavery and African Emancipation in 2033–2038” <http://www.historyandpolicy.org/policy->

papers/papers/british-and-american-banking-in-historical-perspective-beware-of-false-prec (accessed 13 July 2018).

HistoryWorld.net “Plain Text Histories”
<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?ParagraphID=idu> (accessed 20 December 2017).

HM Treasury “Implementation of the Basel 3.1 standards” (2022)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1120898/HMT_Basel_3.1_consultation_document.pdf (accessed 7 July 2023).

Holden “Diamond-Dybvig Model” *ECON* 4325 1
[https://www.uio.no/studier/emner/sv/oekonomi/ECON4325/v09/undervisningsmateriale/diamond-dybvig\[1\].pdf](https://www.uio.no/studier/emner/sv/oekonomi/ECON4325/v09/undervisningsmateriale/diamond-dybvig[1].pdf) (accessed 12 April 2021).

Hudgins “Why the Soviets do not Belong at the World Bank” <https://www.heritage.org> (accessed 2 July 2020).

Hussein *et al.* “UK Regulation after Brexit” (February 2021) <https://ukandeu.ac.uk/wp-content/uploads/2021/02/uk-regulation-afterBrexit.pdf> (accessed 16 July 2023).

IDC home page <https://www.idc.co.zm> (accessed 27 Nov 2024).

Ilchenko *Competition in the Banking System: Definition and Types* (2013) 385–389 385.

Illinois University “Colonial Reports—Annual. No 1992 Northern Rhodesia Report for 1924–1925” (2011) https://libsysdigi.library.illinois.edu/ilharvest/Africana/books2011-05/3064635/3064635_1924_1925/3064635_1924_1925_opt_.pdf (accessed 20 March 2023).

IMF & World Bank “Implementation of the Basel Core Principles for Effective Banking Supervision. Experiences Influences and Perspectives” (September 2002)
<https://www.imf.org/external/np/mae/bcore/2002/092302.pdf> (accessed: 20 July 2023).

Independent Evaluation Group (IEG) of the World Bank <https://ieg.worldbankgroup.org/> (accessed 27 April 2024).

Independent Evaluation Office (IEO) of the International Monetary Fund (IMF)
<https://ieo.imf.org/> (accessed 27 April 2024).

Industrial Development Corporation of SA (IDC) <https://www.idc.co.zm> (accessed 27 November 2024).

International Comparative Legal Guides (ICLG) “Mergers and Acquisitions, Laws and Regulations” <https://iclg.com/practice-areas/mergers-and-acquisitions-laws-and-regulations/tanzania> (accessed 13 June 2023).

International Crisis Group “African Union and Burundi Crisis Ambition v Reality. Briefing No 122” (28 September 2016) <https://www.crisisgroup.org/africa/central-africa/burundi/african-union-and-burundi-crisis-ambition-versus-reality> (accessed 15 June 2023).

International Finance Corporation (IFC) “Governance and Financial Sustainability” <https://www.ifc.org/en/about/governance-and-financial-sustainability> (accessed 1 December 2023).

- International Finance Corporation (IFC) “Project Information & Data Portal Disclosures” <https://disclosures.ifc.org/> (accessed 13 October 2022).
- International Labour Organisation (ILO) “Rural Development Through Decent Work: Empowering Rural Communities Through Financial Inclusion” https://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_159004.pdf (accessed 11 October 2023).
- International Monetary Fund (IMF) “Is the Emerging World Still Emerging?” <https://www.imf.org/external/pubs/ft/fandd/2021/06/jim-oneill-revisits-brics-emerging-markets.htm> (accessed 16 October 2023).
- International Monetary Fund (IMF) & World Bank “Factsheets 2022” World Bank News <https://www.imf.org/en/about/factsheet/Sheets/2022/imf-World-Bank-New> (accessed 17 June 2023).
- International Monetary Fund (IMF) “A Guide To Committees, Groups, and Clubs” <https://www.imf.org/en/About/Factsheets/A-Guide-to-Committees-Groups-and-Clubs> (accessed 13 November 2024).
- International Monetary Fund (IMF) “Articles of Agreement: Article I” [https://www.imf.org/external/pubs/ft/aa/Article I](https://www.imf.org/external/pubs/ft/aa/Article%20I) (accessed 11 April 2021).
- International Monetary Fund (IMF) “Financial Development—IMF Data—International Monetary Fund” <https://data.imf.org/?sk=f8032e80-b36c-43b1-ac26-493c5b1cd33b&sid=1480712464593> (accessed 24 April 2024).
- International Monetary Fund (IMF) “List of Members as at March July 2017” <https://www.imf.org/external/np/sec/memdir/memdate.htm> (accessed 16 October 2023).
- International Monetary Fund (IMF) “Technical Assistance Country Reports” <https://www.imf.org/en/Publications/SPROLLs/Technical-assistance-country-reports#sort=%40imfdate%20descending> (accessed 16 October 2023).
- International Monetary Fund (IMF) “Technical Assistance” <https://www.imf.org/external/about/techasst.htm> (accessed 16 October 2023).
- International Monetary Fund (IMF) “Zambia’s Request for an Arrangement Under the Extended Credit Facility—Press Release, IMF Country Report No 22/292” (September 2022) <https://www.elibrary.imf.org/view/journals/002/2022/292/article-A000-en.xml> (accessed 25 April 2024).
- International Monetary Fund “Implementation of Basel II—Implications for the World Bank and the IMF” (2005) <https://www.imf.org/external/np/pp/eng/2005/072205.htm> (accessed 17 June 2023).
- International Monetary Fund, Financial Sector Assessment Program (FSAP) 2023 <https://www.imf.org/en/About/Factsheets/Sheets/2023/financial-sector-assessment-program-FSAP#> (accessed 24 November 2024).
- Irwin *et al.* “What is the ‘Washington Consensus’?” (2021) <https://www.piie.com/blogs/realtime-economic-issues-watch/what-washington-consensus> (accessed 6 November 2024).
- Jahan *et al.* “What Is Keynesian Economics?” (2014) IMF Finance & Development <https://www.imf.org/external/pubs/ft/fandd/2014/09/basics.htm> (accessed 13 November 2024).

- Jones *et al.* “Basel Standards and Developing Countries: A Difficult Relationship” VoxEU Centre for Economic Policy Research (CEPR) Policy Portal (2018) <https://voxeu.org/article/basel-standards-and-developing-countries> (accessed 16 October 2023).
- Jones *et al.* “Basel Standards and Developing Countries: A Difficult Relationship” VoxEU Centre for Economic Policy Research (CEPR) Policy Portal (2018) <https://voxeu.org/article/basel-standards-and-developing-countries> (accessed 16 October 2023).
- Kamande “After Half a Century of Misguided Policies, Here’s How the World Bank and IMF Can Work for the Poor” (12 October 2023) <https://views-voices.oxfam.org.uk/2023/10/how-the-world-bank-imf-can-work-for-poor/> (accessed on 25 November 2024).
- Kamensy “When Interagency Conflict is a Good Thing” (2018) 1 <https://www.govexec.com/management/2018/08/when-interagency-conflict-good-thing/150713/> (accessed 12 August 2023).
- Kashyap “Bank Runs Aren’t Madness: This Model Explained Why” *Chicago Booth Review* (2014) <https://reviewchicagobooth.edu/magazine/summer-2014/bank-runs-aren’t-madness-this-model-explained-why> (accessed 13 April 2021).
- Kenya Institute for Public Policy Research and Analysis (KIPPRA) “Mergers and Acquisitions: Experience in Kenyan Banking Industry” (2020) <http://kippra.or.ke/mergers-and-acquisitions-the-experience-in-kenya-banking-industry/>
- Khor “IMF Policies Make Patients Sicker Third World Network (TWN)” <https://www.twn.my/title/sick-cn.htm> (accessed 20 January 2023).
- Khurram Implementation of Basel III Framework <https://www.linkedin.com/pulse/implementation-basel-standards-iii-transitional-2017-sonia-khurram/> (graphic) (accessed 15 November 2024).
- Kiely “The Clash of Globalisations. Neo-Liberalism, The Third Way and Anti-Globalisation” (2005) 109–159 <http://www.gci.org.uk/Documents/CLash.pdf> (accessed 11 April 2021).
- King “Governor of the Bank of England” *Speech at the University of Exeter, January 19* (2010).
- King “Alan Greenspan Professor of Economics” (2017) <https://web.archive.org/web/20170920044505/> (accessed 15 November 2024).
- Kluwer “Implementing Basel 3.1: Your Guide To Manage Reforms” <https://www.wolterskluwer.com/en/expert-insights/implementing-basel-3-1-your-guide-to-manage-reforms> (accessed 7 July 2023).
- Kurian “Basel and How it Has Never Worked. In the Hindu Business Line” <http://www.thehindubusinessline.com/opinion/basel-and-how-it-has-never-worked/article2811562.ece?> (accessed 10 August 2017)
- Labonte & Perkins “Over the Line: Asset Thresholds in Bank Regulation” (3 May 2021) <https://sgp.fas.org/crs/misc/R46779.pdf> (accessed 16 October 2023)
- Labonte “An Analysis of the Regulatory Burden on Small Banks Congressional Research Services” (updated 22 April 2015) <https://crsreports.congress.gov/product/pdf/R/R43999> (accessed 16 October 2023).

- Lakelet Capital “Reasons Why Mergers and Acquisitions Fail to Succeed” <https://lakeletcapital.com/reasons-why-mergers-acquisitions-fail-and-succeed/> (accessed 15 June 2019).
- Landau “Procyclicality—What it Means and What Could be Done” (4 May 2009) <https://www.bis.org/review> (accessed 12 May 2020).
- Lead & Follow “Global Policy Forum” (GPF) (1998).
- Legal Information Institute (LII) “Title 12: Chapter III, Subchapter B, Part:345, Subpart B: 345.26” https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=99e5b31c338f92033104f9402ef4646&term_occur=999&term_src=Title:12:Chapter:III:Subchapter:B:Part:345:Subpart:B:345.26 (accessed 11 July 2023).
- Leitner “British Students Force End of Barclays Banks Investments in South African Apartheid 1969–1987” (8 February 2014) <https://nvdatabase.swarthmore.edu/content/british-students-force-end-barclays-bank-s-investments-south-african-apartheid-1969-1987> (accessed 7 May 2024).
- Lund “Bond Ratings: Report Cards for Risk” <https://www.britannica.com/money/bond-ratings-credit-risk> (accessed 13 May 2021).
- Lusaka Securities Exchange (LuSE) “About us” <https://www.luse.co.zm/about-us/ourstory> (accessed 12 April 2024).
- Magnus *et al.* “Upgrading the Basel Standards: From Basel III to Basel IV” Briefing. European Parliament (2017) [https://www.europarl.europa.eu/RegData/etudes/BRIEF/2016/587361/IPOL_BRI\(2016_587361_EN.P](https://www.europarl.europa.eu/RegData/etudes/BRIEF/2016/587361/IPOL_BRI(2016_587361_EN.P) (accessed 23 January 2023).
- Making Finance Work for Africa “Zambia: MPs—Natsave Needs Recapitalising” (2017) <https://www.mfw4a.org/news/zambia-mps-natsave-needs-recapitalising> (accessed 25 April 2024).
- Malawi Independence Act 1964 Chapter 46 https://www.legislation.gov.uk/ukpga/1964/46/pdfs/ukpga_19640046_en.pdf (accessed 30 November 2024).
- Management Study Guide “Three Basel Accords: History of the Basel Norms” <https://www.managementstudyguide.com/three-basel-accords.htm> (accessed 13 May 2021).
- Marketing Study Guide “SWOT Analysis Ideas for a Small Bank” <https://www.marketingstudyguide.com/swot-analysis-ideas-for-a-small-bank/> (accessed 6 October 2023).
- Meghana “Top 4 Theories of Liquidity Management” Micro-EconomicNotes.com <https://www.microeconomicsnotes.com/banking/commercial-banks/top-4-theories-of-liquidity-management/1234> (accessed April 18, 2021).
- Meryn King: Former Governor, Bank of England <http://www.stern.nyu.edu/faculty/bio/mervyn-king> (accessed 27 April 2024).
- Michell “Small Banks Make More Business Loans” (10 February 2010) <https://ilsr.org/banks-and-small-business-lending/> (accessed 6 October 2023)
- Michie *et al.* “British and American Banking in Historical Perspective: Beware of False Precedents” History & Policy <https://www.historyandpolicy.org/policy->

- papers/papers/british-and-american-banking-in-historical-perspective-beware-of-false-prec (accessed: 25 June 2024).
- Mlachila *et al.* “Financial Development in sub-Saharan Africa: Promoting Inclusive and Sustainable Growth” International Monetary Fund (IMF) African Department (2016) <https://www.imf.org/external/pubs/ft/dp/2016/afr1605.pdf> (accessed 18 August 2023).
- MoneyTerms.co.uk “Risk Weighted Assets” <https://moneyterms.co.uk/risk-weighted-assets/> (accessed 8 January 2020).
- Montevirgen “Federal Deposit Insurance Corporation (FDIC)” <https://www.britannica.com/money/Federal-Deposit-Insurance-Corporation> (accessed 7 July 2023).
- Mugumbate & Mumba “Kenneth Buchizya Kaunda” <https://africasocialwork.net/kenneth-buchizya-kaunda/> (accessed 13 July 2018)
- Munro “Non-Aligned Movement” 5 November 2024. *Encyclopedia Britannica* <https://www.britannica.com/topic/Non-Aligned-Movement> (accessed 26 November 2024).
- Musiker & Musiker “Historical Dictionary of Greater Johannesburg” (1999); Barclays Archives “ABSA Group: Amalgamated Banks of South Africa” (2006) <https://www.archive.barclays.com/items/show/5402> (accessed 7 May 2024).
- Mutenta “Is the Bank of Zambia Independent” (2019) <https://www.grin.com/document/490360> (accessed 20 March 2023).
- National Assembly of Zambia “National Savings and Credit Bank of Zambia (Dissolution)” <https://www.parliament.gov.zm/node/1450> (accessed 25 April 2024).
- National Bureau of Economic Research <https://www.nber.org/> (accessed 28 November 2024).
- National Historical Publications and Records Commission “From Alexander Hamilton to Robert Morris” (30 April 1781) <https://founders.archives.gov/documents/Hamilton/01-20-02-0332> (accessed 12 October 2022).
- Northern Rhodesia Order In Council (1924) (a) <https://vlex.co.uk/vid/northern-rhodesia-order-in-812571609> (accessed 30 November 2024).
- Nyasaland Order in Council (1907) <https://vlex.co.uk/vid/nyasaland-order-in-council-812214669> (accessed 30 November 2024).
- Office of the Comptroller of Currency “OCC Approves Basel II Capital Rule” <https://www.occ.gov/news-issuances/news-releases/2007/nr-occ-2007-123.html> (accessed 15 November 2024).
- Office of the Controller of Currency “Founding of the OCC & the National Banking System” <https://www.occ.treas.gov/about/who-we-are/history/founding-occ-national-bank-system/index-founding-occ-national-banking-system.html>. (accessed 7 July 2023).
- Office of the Controller of Currency “OCC Supplementary Leverage Ratio: Interim Final Rule” <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-52.html> (accessed 10 June 2023).
- Office of the United Nations High Commissioner for Human Rights (OHCHR) “Declaration on Human Rights Defenders” <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders> (accessed 17 June 2023).

- Official Regional Communities (graphic)
<https://www.researchgate.net/profile/MessayGobena/publication/341279718/figure/fig1/AS:889649694244865@1589120424578/The-Spaghetti-bowl-of-overlapping-memberships-in-African-RECs.jpg> (accessed 2 May 2020).
- Ogus *Regulation: Legal Form and Economic Theory* (1994) 2–7
<https://www.bloomsburycollections.com/book/regulation-legal-form-and-economic-theory/> (accessed 13 July 2018).
- Open Education Sociology Dictionary “Economism Definition” <https://sociologydictionary.org/economism/> (accessed 11 April 2021).
- Open Knowledge Repository “World Bank” <https://openknowledge.worldbank.org/server/api/core/bitstreams/ac35e46b-1f8c-5167-82a2-a50a1dbaf5a2/content> (accessed 3 October 2023).
- Organisation for Economic Co-operation and Development (OECD) “African Economic Outlook AfDB” 353 (2003) <https://www.oecd.org/countries/zambia/2497663.pdf> (accessed 6 December 2023).
- Organisation for Economic Co-operation and Development (OECD) “Enterprises by Business Size” <https://data.oecd.org/entrepreneur/enterprises-by-business-size.htm> (accessed 30 December 2023).
- Oxford English Dictionary* “Zambianisation” <https://www.oed.com/dictionary/zambianization> (accessed 13 November 2024).
- Oxford Reference* “Flight to Quality” <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095824998> (accessed 13 April 2024).
- Parker “Core Principles for Effective Deposit Insurance Systems—Overview and Methodology” International Monetary Fund Monetary and Capital Markets Department” 1–86 <http://siteresources.worldbank.org/financialsector/resources/N-CorePrinciplesofDepositInsurance.pdf> (accessed 13 July 2018).
- Petit & Beck “Recent Trends in the UK Financial Sector Regulation and Possible Implications for the EU” Policy EU Parliament (February 2023) <https://www.europarl.europa.eu/f> (accessed 16 July 2023).
- PitchBook “Crédit Agricole” <https://pitchbook.com/profiles/advisor/4406653#overview> (accessed 10 June 2023).
- Pritchard “The Benefits of Local Banks Versus the Big Banks” <https://www.bankbound.com/blog/why-bank-locally> (accessed 19 August 2023).
- PWC “Zambia Bank and Non-Bank Industry Survey” (2020) 38 <https://www.pwc.com/zm/en/publications/zambia-bank-and-non-bank-industry-survey.html> (accessed 15 October 2023).
- Radziyevska & Us “Regionalisation of the World as the Key to the Future” (2020) https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/26/e3sconf_icsf2020_13016.pdf (accessed 20 November 2022).
- Rakner *Political and Economic Liberalisation in Zambia 1991–2001* Nordic Africa Institute (2003) http://saipar.org/wp-content/uploads/2015/12/Political-and-Economic-Liberalisation-in-Zambia_Lise-Rakner.pdf (accessed 14 July 2023).

- Ray “Euro-zone debt crisis” (24 March 2023) <https://www.britannica.com/topic/euro-zone-debt-crisis> (accessed 8 June 2023).
- Reuters “South Africa’s FirstRand to pay \$5.4 million for Zambian assets” <https://www.reuters.com/article/ozabs-firststrand-zambia-20110912-idAFJOE78B0F620110912>(accessed 15 May 2024).
- Richards “Federal Deposit Insurance Corporation Improvement Act of 1991” 1991 <https://www.federalreservehistory.org/essays/fdicia#> (accessed 15 November 2024).
- Richardson *et al.* “Limitations on the Use of Mathematical Models in Transport Policy Analysis Deep” (1979) <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/509/43459.0001.001.pdf;sequence=2> (accessed 13 May 2021).
- Richardson *et al.* “The Federation of Rhodesia and Nyasaland Africa Today. Pamphlets No 4. American Committee on Africa” (1959) <http://kora.matrix.msu.edu/files/50/304/32-130-B60-84-32-130-B60-84-al.sff.document.acoa000245.pdf> (accessed 13 July 2018).
- Rubinstein “The End of Banking” NetInterest.co <https://www.netinterest.co/p/the-end-of-banking> (accessed 15 October 2023).
- Ruo “The Black-Scholes Option Pricing Model” (20 November 2020) <https://cklixx.people.wm.edu/teaching/math400/Chen-paper2.pdf> (accessed 13 May 2021).
- Ryden “What is a Multilateral Organisation?” Impact Pool <https://www.impactpool.org/articles/what-is-a-multilateral-organization> (accessed 11 April 2021).
- Sales & Tannuri-Pianto “The Use of Duration Models to Explain Bank Failures in Brazil Paper 1994–1998” Central Bank of Brazil (2005).
- Schler “*Uns* Paris: Éditions de la Maison des sciences de l’homme” (2021) <https://doi.org/10.4000/books.editionsmsmh.51525> (accessed 17 March 2023).
- Schoenmaker “Contagion Risk in Banking” (1996) https://www.researchgate.net/publication/252724304_Contagion_Risk_in_Banking (accessed 3 October 2023)
- Senate Democrats “Brief Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act” https://www.dpc.senate.gov/pdf/wall_street_reform_summary.pdf (accessed: 12 August 2023).
- Shah “Structural Adjustment—A Major Cause of Poverty” (2013) 1 <https://www.globalissues.org/article/3/structural-adjustment-a-major-cause-of-poverty> (accessed 13 May 2021).
- Shannon “The Modern Colonial Sterling Exchange Standard” Hansard 347 (9 November 1950) <https://www.elibrary.imf.org/view/journals/024/1952/001/article-a005-en.xml> (accessed 24 March 2023).
- Sharma & Mohapatra “Mergers and Acquisitions in the Banking Sector of India” (30 November 2021) <https://blog.ipleaders.in/mergers-and-acquisitions-in-the-banking-sector-of-india/> (accessed 5 June 2023).
- Shughart “II: Public Choice. Schools of Economic Thought Econlib CEE” <https://www.econlib.org/library/enc/PublicChoice.html> (accessed 22 February 2020).

- Shvangiradze “The Gorbachev Era: Glasnost & Perestroika Pre-Fall of the Soviet Union” (2022) <https://www.thecollector.com/gorbachev-era-glasnost-perestroika-fall-of-the-soviet-union> (accessed 3 March 2023).
- Siaba “Governance: How to Improve the G20 Common Framework for Debt Treatment” (2023) <https://www.dandc.eu/en/article/all-countries-become-able-rise-challenges-current-polycrisis-debt-restructuring-needed> (accessed 12 April 2024).
- Sikamo *et al.* “Copper Mining in Zambia –History and Future” <http://www.scielo.org.za/pdf/jsaimm/v116n6/03.pdf> (accessed 20 March 2023).
- Sims & Romero “The Latin American Crisis of the 1980s, (1982–1989)” Federal Reserve History (2013) <https://www.federalreservehistory.org/essays/latin-american-debt-crisis> (accessed 8 January 2020).
- Sims “Bank Runs and the Diamond-Dybvig 1983 Model ECON 43370: Financial Crises: University of Notre Dame Spring” (2019) 2. https://www3.nd.edu/~esims1/slides_diamond_sp2019.pdf (accessed 11 April 2021)
- Sloss “Domestic Applications of Treaties” (2011) 2 <http://digital.commonlaw.scu.edu/facpubs/635> (accessed 14 August 2022).
- Smith “Economic Democracy; Political Struggle of the 21st Century” (2002) <http://www.ied.info/books/economic-democracy> (accessed 13 May 2021).
- Smith “What is Regulation? A Reply to Julia Black” (2002) <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ajlph27&div=5&id=&page=> (accessed 17 March 2023).
- Société Générale Group <https://pitchbook.com/profiles/advisor/55486-72#overview> (accessed 10 June 2023).
- Soderbaum “Regionalism” (2011) https://www.researchgate.net/publication/260228052_Regionalism (accessed 9 November 2022).
- Southern African Customs Union (SACU) <https://www.sacu.int/show.php?id=394> (accessed 8 June 2023).
- Southern African Development Community (SADC) “Banking” <https://www.sadc.int/pillars/banking> (accessed 21 June 2023).
- Southern African Development Community (SADC) “Model Law Final Explanatory Guide” (2011) <https://www.sadcbankers.org> (accessed 21 November 2022).
- Southern African Development Community (SADC) “Objectives” <https://www.sadc.int/pages/sadc-objectives> (accessed 8 November 2022).
- Southern African Development Community (SADC) “Protocol on Finance and Investment” <https://www.sadc.int/document/protocol-finance-and-and-investment-2006> (accessed 23 June 2023).
- Southern African Development Community (SADC) “Regional Indicative Strategic Development Plan 2020–2030” <https://www.sadc.int/pillars/regional-indicative-strategic-development-plan-2020-2030> (accessed 21 June 2023).
- Southern African Development Community (SADC) “SADC Protocols” <https://www.sadc.int/pages/sadc-protocols> (accessed 23 June 2023).

- Southern African Institute for Policy and Research “Central Role of the Central Bank Governor” <https://saipar.org/wp-content/uploads/2020/08/Central-Role-of-the-Central-Bank-Governor.pdf> (accessed 20 March 2023).
- Southern Rhodesia Act 1965 Chapter 76 <https://www.legislation.gov.uk/ukpga/1965/76/enacted> (accessed 30 November 2024).
- Southern Rhodesia Act 1979 Chapter 52 <https://www.legislation.gov.uk/ukpga/1979/52> (accessed 30 November 2024).
- Southern Rhodesia Constitution Letters Patent, 1923, Dated September 1, 1923, Providing For The Constitution of Responsible Government In The Colony of Southern Rhodesia <https://vlex.co.uk/vid/southern-rhodesia-constitution-letters-812450145> (accessed 30 November 2024).
- Southern Rhodesia Order in Council Act 20th October 1898 <https://www.rhodesia.me.uk/wp-content/uploads/2018/10/Southern-Rhodesia-Order-In-Council-1898.pdf> (accessed 30 November 2024).
- Stanbic Bank “Annual Report 2022” (2022) [https://www.stanbicbank.co.zm/static/file/Zambia/filedownloads/SBZ_annualReport 2022.pdf](https://www.stanbicbank.co.zm/static/file/Zambia/filedownloads/SBZ_annualReport%2022.pdf) (accessed 30 September 2023).
- Step Worldwide “The Birth of the Trading Trust” <http://miami.step.org/tgr/tgr-may-2011/birth-trading-trust> (accessed 14 August 2020).
- Stiglitz “Democratizing the International Monetary Fund and the World Bank: Governance and Accountability” (2003) 111–139 <https://core.ac.uk/download/pdf/161443554.pdf> (accessed 5 May 2024),
- Stiglitz “One of the Main Lessons from the Financial Crisis is that the State must play a Key Role in Sustaining Economic Development” <https://www.afdb.org/en/news-and-events/joseph-stiglitz-one-of-the-main-lessons-from-the-financial-crisis-is-that-the-state-must-play-a-key-role-in-sustaining-economic-development-5524#> (accessed 14 May 2024).
- Tesch *et al.* “Foreign Dependency Economics and Politics” Britannica (2014) <https://www.britannica.com/topic/foreign-dependency> (accessed 8 June 2023).
- Trade Commissioner Service “Get to Know the IFI’s, the UN and Aid Agencies” <https://www.trade commissioner.go.ca/development-development/ifi/know-ifi-connaître.aspx?lang=eng> (accessed 11 April 2021).
- Treasury Historical Association “A Brief History of the Treasury Department” <https://treasuryhistoricalassn.org/index.php/treasury-history-tours/treasury-department> (accessed 7 July 2023).
- UN Academy “Explain the Statement: When France Sneezes, the Rest of Europe Catches a Cold” <https://unacademy.com/content/question-answer/gk/explain-the-statement-when-france-sneezes-the-rest-of-europe-catches-a-cold/> (accessed 14 February 2023).
- United Nations Charter “Chapter I: Purposes and Principles” *United Nations* (1945) <https://www.un.org/en/about-us/un-charter/chapter-1> (accessed 13 February 2023).
- United States Department of State Office of the Historian, “Nixon and the End of the Bretton Woods System, 1971–1973” <https://history.state.gov/milestones/1969-1976/nixon-shock> (accessed 06 November 2024).

- University of the Fraser Valley “Early Modern Studies: Tudor-Stuart England”
<https://libguides.ufv.ca/c.php?g=320458&p=2139507> (accessed 13 July 2018).
- US Congress “Dodd-Frank Wall Street Reform and Consumer Protection Act”
<https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf> (accessed 13 May 2021).
- US Department of State “OPEC Oil Embargo 1973–1974” Office of the Historian
<https://history.state.gov/milestones/1969/1976/oil-embargo> (accessed 3 March 2023).
- US Department of State Archive 2001–2009 “Bretton Woods Conference 1944” <https://2001-2009.state.gov/r/pa/ho/time/wwii98681.html> (accessed 11 April 2021).
- US-Mexico-Canada Agreement (USMCA) <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA#> (accessed 28 November 2024).
- Valladares “Internationally Active Banks are Meeting Initial Basel III Standards” (4 October 2018) 1 <https://www-forbes-com.cdnampproject.org/> (accessed 16 January 2020).
- Van Trotsenburg El País “Bretton Woods: 75 Years of Solidarity with Latin America and the Caribbean” <https://www.worldbank.org/en/news/opinion/2019/07/15/bretton-woods-75> (accessed 4 November 2024).
- Veron “Is the United States Reneging on International Financial Standards?” (16 April 2020) (2020) <https://www.bruegel.org/2020/04/is-the-united-states-reneging-on-international-financial-standards/> (accessed 20 November 2022).
- Volle “Allied Powers” *Encyclopedia Britannica* (2024) <https://www.britannica.com/topic/Allied-powers-World-War-II> (accessed 19 November 2024).
- Wadhwa “Public International Law” <https://www.jiwaji.edu/pdf/ecourse/law/4%20-%20Public%20International%20Law%20-%20Historical%20Development%20of%20International%20Law.pdf> (accessed 17 June 2023).
- Wallace & Martin-Ortega “Academic Catalogue—2019–2020” (2016) 2 https://www.sweetandmaxwell.co.uk/downloads/2019_Academic_Catalogue.pdf (accessed 13 May 2021).
- Warwick Research “Warwick Commission” <https://warwick.ac.uk/research/warwickcommission/> (accessed 27 April 2024).
- Wayback Machine “History of Intermarket Bank” (archived 11 September 2012) (accessed 3 March 2023).
- Weller & Hersh “Banking on Multinationals Increased Competition from Large Foreign Lenders Threatens Domestic Banks, Raises Financial Instability, EPI Issue Brief Issue Brief #178” Economic Policy Institute 16 April 2002).
- Westpac Banking Corporation Annual Report according to section 13 or 15(D) of the Securities Exchange Act of 1934 35 https://www.sec.gov/Archives/edgar/data/719245/000110465914079213/a14-23773_120f.htm (accessed 17 November 2024).
- Wikipedia “Lord Justice Bingham” https://en.wikipedia.org/wiki/Thomas_Bingham,_Baron_Bingham_of_Cornhill

Wilcox *et al.* “The History of Banking: Early Banking in Ancient Times: Banking Across Different Civilisations and Kingdoms” Sutori <https://sutori.com/end/story/the-history-of-banking-XEGO38UR09ijcAGaocDmHmgD> (accessed 16 March 2023).

WisdomQuotes.com “210 History Quotes” <http://wisdomquotes.com/history-quotes/> (accessed 13 July 2017).

World Bank “Archives Celebrating the International Finance Corporation’s 60th Anniversary” <https://www.worldbank.org/en/archive/history/exhibits/Celebrating-IFC-60th-Anniversary> (accessed 1 December 2023).

World Bank “Are Banks Cutting Off Customers in Developing and Emerging Economies?” (May 2018) <https://www.worldbank.org/en/news/feature/2018/05/02are-global-banks-cutting-off-customers-in-developing-and-emerging-economies> (accessed 14 May 2024)

World Bank “Financial Depth” <https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/financial-depth> (accessed 4 April 2024).

World Bank “Financial Inclusion” (2018) <https://www.worldbank.org/en/topic/financialinclusion> (accessed 16 November 2024).

World Bank “Small and Medium Enterprises (SMEs) Finance” <https://www.worldbank.org/en/topic/sme/finance> (accessed 10 March 2023).

World Bank <https://www.worldbank.org/en/home>

World Bank in Zambia “Zambia Overview” (2022) 1 <https://www.worldbank.org/en/country/zambia/overview> (accessed 12 April 2024).

Zambia Association of Manufacturers (ZAM) “Securing the Future of Manufacturing in ZAMBIA” <http://zam.co.zm/securing-the-future-of-manufacturing-in-zambia/> (accessed 3 March 2023).

Zambia Independence Act 1964 Chapter 65 www.legislation.gov.uk/ukpga/1964/65/pdfs/ukpga_19640065_en.pdf (accessed 30 November 2024).

Zambia Institute of Banking and Financial Services (ZIBFS) “Training with Bank of Zambia: Basel I, II & III, ICAAP & Implications on Capital” (15–16 August 2019) <https://www.zibfs.com/training-with-boz-basel-i-ii-iii-icaap-implications-on-capital-15th-16th-august-2019/> (accessed 7 May 2020).

Zapodeanu & Gall “The Limits of Basel II Accord” 723–729 <https://core.ac.uk/download/pdf/6304008.pdf> (accessed 6 June 2020).

Zimbabwe Act 1979 Chapter 60 <https://www.legislation.gov.uk/ukpga/1979/60> (accessed 30 November 2024).

ZimFieldGuide.com “Kenneth Kaunda who Died on 17 June 2021 aged 97; the Last of Africa’s True Independence Leaders and One of the Few that Stepped Down” <https://zimfieldguide.com/harare/kenneth-kaunda-who-died-17-june-2021-aged-97-last-africa%E2%80%99s-true-independence-leaders-and-one> (accessed 24 March 2023).

Interviews, speeches, presentations

Baah “History of Economic Development Initiatives” (2 May 2003) 1.

- Bank for International Settlements (BIS) & Basel Committee on Banking Supervision (BCBS) “Basel III International Framework for Liquidity Risk Measurement, Standards and Monitoring” (2010) 3–25.
- Bank for International Settlements (BIS) & Basel Committee on Banking Supervision (BCBS) “Consultative Document, Standards, Capital Floors, The Design of a Framework Based on Standardised Approaches” (December 2014) <https://www.bis.org/bcbs/publ/d306.pdf> (accessed 17 August 2023).
- Bank for International Settlements (BIS) “Basel III Leverage Ratio Framework and Disclosure Requirements” <https://www.bis.org/publ/bcbs270.htm> (accessed 7 August 2023).
- Bank of Zambia (BoZ) “CB Circular No 3/96: Minimum Capital Requirements” (21 February 1996).
- Bank of Zambia (BoZ) “Speech for the Official Launch of ABSA Bank Zambia PLC by Francis Chipimo” (10 February 2020) https://www.boz.zm/DGO_Absa_Launch.pdf (accessed 10 September 2023).
- Bondarenko “Securitization” (24 March 2023) <https://www.britannica.com/money/securitization> (accessed 29 March 2024).
- Bowman “The Path Forward for Bank Capital Reform: A Speech at Protect Main Street Sponsored by the Center for Capital Markets at the US Chamber of Commerce” (17 January 2024).
- Burger “A Historical Analysis of the Credit Crunch of 1966 from Federal Bank of St Louis” (September 1969) https://files.stlouisfed.org/files/htdocs/publications/review/69/09/Historical_Sep1969.pdf (accessed 11 April 2021).
- Charles Enoch *et al.* “Pan-African Banks: Opportunities and Challenges for Cross-Border Oversight” International Monetary Fund (2015) (accessed 3 April 2024).
- Chipimo “Official Launch of ABSA Bank Zambia Plc” speech by Deputy Governor Operations (10 February 2020) https://www.boz.zm/DGO_Absa_Launch.pdf (accessed 4 April 2024).
- Churchill “Iron Curtain Speech” <https://www.thoughtco.com/winston-churchills-iron-curtain-speech-1779492> (accessed 13 July 2018).
- Coen “Global Adoption of the Basel Framework: Enhancing Financial Stability Across Countries” speech by Secretary General BCBS William Coen to the 9th Islamic Financial Services Board Public Lecture on Financial Policy and Stability (5 April 2017) 1–8.
- Corporate Finance Institute “What is a Foreign Exchange Swap?” <https://corporatefinanceinstitute.com/resources/derivatives/foreign-currency-swap> (accessed 22 April 2024).
- Curry & Shibut “The Cost of the Savings and the Loan Crisis. Truth and Consequences” FDIC Review (December 2000) 26–34.
- Driscoll “The IMF and the World Bank: How Do They Differ?” (1 June 1995) 1–14 <https://www.imf.org/en/Publications/Other-Statistical-Electronic-Products/Issues/2016/12/30/The-IMF-and-the-World-Bank-How-Do-They-Differ-276> (accessed 8 April 2024).
- Driscoll “The IMF and the World Bank: How Do They Differ?” (December 2016) 13 <https://www.imf.org/en/Publications/Other-Statistical-Electronic->

- Products/Issues/2016/12/30/The-IMF-and-the-World-Bank-How-Do-They-Differ-276 (accessed 8 April 2024).
- Driscoll “What is the International Monetary Fund?” (July 1997) <https://www.elibrary.imf.org/downloadpdf/book/9781557754080/9781557754080.pdf> (accessed 20 June 2023).
- Finscope Zambia “2020 Survey Report” (2020) 1–92 <https://www.boz.zm/FinScope-2020-Survey-Report.pdf> (accessed 22 April 2024)
- Fisher “Ending Too Big to Fail” Speech at the Conservative Political Action Conference (March 2013) 1–6 2-4.
- Formal Bank Credit to Micro, Small and Medium Enterprises in Zambia “Lessons and Implications” University of Zambia and the Zambia Institute for Policy Analysis and Research (2013).
- Gartner “Definition of Bank Tiers” <https://www.gartner.com/en/information-technology/glossary/bank-tier> (accessed 27 November 2024)
- GSMA “Mobile Money for the Unbanked: Mobile Money Definitions” (July 2010) <https://www.gsma.com/solutions-and-impact/connectivity-for-good/mobile-for-development/wp-content/uploads/2012/06/mobilemoneydefinitionsnomarks56.pdf> (accessed 16 November 2024).
- Iftekhor & Matej “Should Competition Policy in Banking be Amended During Crisis? Lessons from the EU” Bank of Finland research discussion papers (17 April 2013)
- Kani “Central Banking and Macroeconomic Stability” paper presented at the Bank of Zambia International Conference (1996) 21.
- Katz “The Case for the Par Value System, International Finance Discussion Paper No 4” (8 September 1971) <https://www.federalreserve.gov/pubs/ifdp/1971/4/ifdp4.pdf>
- King “Governor of the Bank of England” speech at the University of Exeter (19 January 2010).
- King “Speech at the University of Exeter. Exeter” (January 2010) <http://www.bankofengland.co.uk/archive/Documents/historicpubs/speeches/2010/speech419.pdf> pp1-10 (accessed 27 April 2024).
- Kwan “Banking consolidation” Federal Reserve Bank of San Francisco 2004. 1–3.
- Lautenschläger “Is Small Beautiful? Supervision, Regulation and the Size of Banks” statement by Member and Vice-Chair of the Supervisory Board of the European Central Bank (14 October 2017) 1–2.
- Legal Information Institute (LII) “Sui Generis” https://www.law.cornell.edu/wex/sui_generis (accessed 1 April 2024).
- Logue “The Swaps Market: How Companies Manage Interest Rate and Other Risks with OTC Derivatives” (1 September 2023) <https://www.britannica.com/money/types-of-otc-derivatives> (accessed 29 March 2024).
- Lusaka Star, The “Christopher Kabamba” (19 November 2020) <https://lusakastar.com/authors/christopher-kabamba> (accessed 3 May 2024).
- Management Study Guide “Bretton Woods Agreement and the Smithsonian Agreement” <https://www.managementstudyguide.com/bretton-woods-agreement-and-smithsonian-agreement.htm> (accessed 18 February 2019).

- Marcus “Issues for Consideration in Mergers and Takeovers from a Regulatory Perspective” speech to the Institute for International Research 9th Annual Conference (8 July 2000).
- Matsieli *et al.* “Why is Public Policy Implementation Difficult in Developing Countries?” analysis of E-Government Implementation in Lesotho (2023) 2.
- Mishkin “Financial Stability and Globalisation: Getting it Right” presented at the Bank of Spain Conference (8–9 June 2006) 1–48 https://www.bde.es/f/webbde/Agenda/Eventos/06/Jun/Fic/Mishkin_BdE.pdf (accessed 23 January 2023).
- Muhamba “Standard Chartered is leaving Zimbabwe but it’s Not Happening Overnight” Techzim (14 April 2022) <https://www.techzim.co.zw/2022/04/standard-chartered-is-leaving-zimbabwe-but-its-not-happening-overnight/> (accessed 3 May 2024).
- Muke ‘The State of Banks in Zambia’ paper presented at a Senior Auditors Seminar in Siavonga, Bank of Zambia, Lusaka (1996) 2.
- Muke “Investment Opportunities in the Banking Sector and the Effects of Bank Closures” *Proceedings of Zambia Investment Promotion Mission in South Africa* 2 8–23.
- Musokotwane “Bank Competitiveness, Restructuring and Privatisation in Zambia” *Proceedings of the first Commonwealth Policy Seminar on Bank Competitiveness, Restructuring and Privatisation* (1–4 July 1997) 1.
- Nowzad “The IMF And Its Critics. Essays in International Finance No 146” (December 1981).
- Phiri-Mambo “Impact of Basel II Implementation: A Case Study on Zambia” Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI) (2015) 1-66.
- Quirk “When Basel-Inspired Capital Regulations are Insufficient: Evidence from Zambia’s use of Absolute Minimum Bank Capital Requirements” (15 January 2022) <http://dx.doi.org/10.2139/ssrn.4095879> (accessed 5 March 2020).
- Rhoades “Bank Mergers and Banking Structure in the United States, 1980-1998, Staff Study No 174” Federal Reserve System (August 2000) 1–30.
- Scholte “The Sources of Neoliberal Globalization” United Nations (8 October 2005) 3–31.
- Shaffer “Revenue-Restricted Cost Study of 100 Large Banks, Federal Reserve Banks of New York, Research Paper No 8806” (1988).
- Soludo “Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century” address at the Bankers’ Committee Central Bank of Nigeria (6 July 2004).
- Soyibo *et al.* “A Positive and Normative Analysis of Bank Supervision in Nigeria” Research Paper 2004 African Economic Research Consortium.
- Stiglitz “Moving Towards the Post-Washington Consensus” Helsinki Lecture (January 1998).
- Tembo & Makina “Regional Financial Integration and its Impact on Financial Development: Evidence from SADC Countries” African Economic Conference (7 October 2019) https://aec.afdb.org/sites/default/files/2019/10/07/regional_financial_integration_and_its_impact_on_financial_development_-_evidence_from_sadc_countries.pdf (accessed 22 April 2024).

- Tucker “The Lender of Last Resort and Modern Central Banking: Principles and Reconstruction, BIS Paper No 79b” (September 2014) <https://ssrn.com/abstract=2504686> (accessed 3 October 2023).
- University of Maine “Steady State Economics” <https://umaine.edu/soe/wp-content/uploads/sites/199/2013/01/Economics-Steady-State.pdf> (accessed 26 June 2019).
- Whites “StanChart Cuts Seven Minnow Businesses in Africa and Middle East” Reuters (14 April 2022) <https://www.reuters.com/business/stanchart-exits-7-markets-africa-middle-east-2022-04-14/> (accessed 3 May 2024).
- Yeats & Ng “Open Economies Work Better! Did Africa’s Protectionist Policies Cause Its Marginalization in World Trade?, World Bank Research Paper No 1636” (1996) <https://www.sciencedirect.com/science/article/pii/S0305750X97000119> (accessed 17 May 2023).
- Yusuf “Determining Bank Size in The Nigerian Banking Industry: A Principal Component Analysis Approach” *Proceedings of the 5th Annual International Academic Conference* (2019) 769.
- Zhang “Supporting Macro Economic Convergence in African RECs, Regional Integration Policy Papers. No 001” African Development Bank (December 2012) https://www.afdb.org/fileadmin/uploads/afdb/Document/Publication/Regional_Integration_Policy_Papers_Supporting_Macroeconomic_Convergence_in_African_RECs.pdf (accessed 1 July 2023).

Journal articles

- Abdul & Noraziah “Tracking the Pre- and Post-Colonial Banking: The Quest for Islamic Banking” 2010 *Prosiding Perkem Journal* 1 173–184.
- Abdulahi *et al.* “Factors Affecting Technical Efficiency of the Banking Sector: Evidence from Ethiopia Cogent Economics and Finance” 2023 *Cogent Economics & Finance* 1 2186039–2186218.
- Adam “Fiscal Adjustment, Financial Liberalization, and the Dynamics of Inflation: Some Evidence from Zambia” 1995 *World Development* 5 735–750.
- Adu *et al.* “Mobile Money Agents and the Financial Inclusion Drive of Central Bank of Nigeria” 2022 *Abuja Journal of Economics and Allied Fields* 43–59.
- Agu *et al.* “Mergers and acquisitions: The Nigerian banking consolidation program” 2011 *International Journal of Banking and Finance* 19–46.
- Ahamd *et al.* “Factors Determining Mergers of Banks in Malaysia’s Banking Sector” 2007 *Multinational Finance Journal* 3–4 177–194.
- Ahmed “A Critical Evaluation of IMF History and Policies” *Management & Economics Research Journal* (2018).
- Akande *et al.* “Competition and Commercial Banks Risk-Taking: Evidence from sub-Saharan Africa Region” 2018 *Applied Economics* 44 4774–4787.
- Akins *et al.* “Bank Competition and Financial Stability: Evidence from the Financial Crisis” 2014 *Journal of Financial and Quantitative Analysis* (forthcoming).
- Alam *et al.* “Does Competition Make Banks Riskier in Dual Banking System?” 2019 *Borsa Istanbul Review* 34–43.

- Allen *et al.* “Credit Market Competition and Capital Regulation” 2011 *Review of Financial Studies* 4 983–1018.
- Altuntas *et al.* “Does One Size Fit All? Determinants of Insurer Capital Structure around the Globe” 2015 *Journal of Banking & Finance* 251–271.
- Amel & Rhoades “Empirical Evidence on the Motives for Bank Mergers” 1989 *Eastern Economic Journal* 95–139.
- Amonya “The Future of Interdisciplinary Policy Research in Africa: A Case Study of the Transport Sector” 2010 *Proceedings of the Conference on Traffic and Transportation Studies*, ICTTS 8.
- Amorello “Beyond the Horizon of Banking Regulation: What to Expect from Basel IV” 2016 *Harvard International Law Journal* 21–38.
- Amungo & Buck “International Expansion of Nigerian Banks. Which Theories of Internationalisation prevailed?” 2017 *Nile Journal of Business and Economic.s*
- Andrade *et al.* “New Evidence and Perspectives on Mergers” 2001 *Journal of Economic Perspectives* 2 103–120.
- Aron “Mobile Money and the Economy: A Review of the Evidence” 2018 *World Bank Research Observer* 2 135–188.
- Ashraf *et al.* “Trade Openness and Bank Risk-Taking Behavior: Evidence from Emerging Economies” 2017 *Journal of Risk and Financial Management* 3 15.
- Asongu & Odhiambo “Size, Efficiency, Market Power, And Economies of Scale in The African Banking Sector” 2019 *Finance Innovation* 4.
- Atik “EU Implementation of Basel III in the Shadow of Euro Crisis” (23 January 2014) *Review of Banking and Financial Law* 287; Loyola-LA Legal Studies Paper No 2014–3 SSRN.
- Avgouleas *et al.* “Critical Reflections on Bank Bail-Ins” 2015 *Journal of Financial Regulation* 3–29.
- Ayobami Ojeyinka & Enisan “Does Bank Size Affect Efficiency? Evidence from Commercial Banks in Nigeria” 2021 *Ilorin Journal of Economic Policy* 1 79–100.
- Ayyagari *et al.* “Financing of Firms in developing countries: LESSONS from research, Policy Research Working Paper 6036” World Bank Development Research Group Finance and Private Sector Development (2012) 1–97.
- Azadinamin “The Bankruptcy of Lehman Brothers: Causes of Failure & Recommendations Going Forward” 2013 *Social Science Research* 1–151.
- Baltensperger “Economies of Scale, Firm Size, and Concentration in Banking” 1972 *Journal of Money, Credit and Banking* 3 467–88.
- Banerjee *et al.* “An Evaluation of World Bank Research, 1998–2005” 2006 SSRN 1–16.
- Bank of Zambia (BoZ) “BoZ Responds to Deteriorating Macro Economic Environment & COVID–19 “ 2020 *Zambanker Journal* 3.
- Bank of Zambia “BoZ Responds to Deteriorating Macro Economic Environment & COVID–19 March” 2020 *Zambanker Journal* 3.
- Bartlett “Civil Society and Democracy: A Zambian Case Study” 2000 *Journal of Southern African Studies* 3 429–446.

- Beck *et al.* “Bank Competition and Access to Finance: International Evidence” 2004 *Journal of Money, Credit, and Banking* 36 627–648.
- Beena “An Analysis of Merger in the Private Corporate Sector in India” 2019 *Journal of Scientific & Industrial Research* 8 34–51.
- Beltratti & Stultz “The Credit Crisis Around the Globe: Why Did Some Banks Perform Better?” 2012 *Journal of Financial Economics* 105 1–17.
- Benston “Economies of Scale of Financial Institutions” 1972 *Journal of Money, Credit and Banking* 2 312–41.
- Berger & Hannan “The Efficiency Cost of Market Power in the Banking Industry: A Test of the ‘Quiet Life’ and Related Hypotheses” 1998 *The Review of Economics and Statistics* 3 454–465.
- Berger “The Profit Structure Relationship in Banking-Tests of Market Power and Sufficient Structure Hypothesis” 1995 *Journal of Money Credit and Banking* 5 404–431.
- Berger *et al.* “The Efficiency of Financial Institutions a review and preview of research past, present and future” 1993 *Journal of Banking and Finance* 17 221–249.
- Biglaiser & Gauvran “The Effects of IMF Loan Conditions on Poverty in the Developing World” 2022 *Journal of International Relations and Development* 25 806–833.
- Blatter & Fuster “Scale Effects on Efficiency and Profitability in the Swiss Banking Sector” 2022 *Swiss Journal of Economics Statistics* 158 12.
- Boateng *et al.* “Commercial Bank Ownership and Performance in China” 2015 *Applied Economics* 49 5320–5336.
- Bogatzky “Socialist Industrialisation and the Infant Industry Argument” 2017 *ResearchGate*
- Bosshardt & Lopus “Business in the Middle Ages: What Was the Role of Guilds?” 2013 *Social Education* 77 64–67.
- Boyd & Nicolo “The Theory of Bank Risk Taking and Competition Revisited” 2005 *Journal of Finance* 60 1329–43.
- Brownbridge “Financial Distress in Local Banks in Kenya, Nigeria, Uganda and Zambia Causes and Implications for Regulatory policy” 1998 *Development Policy Review* 2 173–188.
- Bull & Simpson “End of the Road for Meridien” 1995 *Profit* 6.
- Caprio & Demirgüç-Kunt “The Role of Long-Term Finance: Theory and Evidence” 1998 *World Bank Research Observer* 2 171–89.
- Carlson & Mitchener “Bank Branching, Bank Competition, and Financial Stability” 2006 *Journal of Money, Credit, and Banking* 5 1293–1328.
- Chalmers “When Banks Lobby: The Effects of Organizational Characteristics and Banking Regulations on International Bank Lobbying” 2017 *Business and Politics* 1 107–134.
- Chami *et al.* “A Framework for Financial Market Development” 2010 *Journal of Economic Policy Reform* 2 107–35.
- Chang “Kicking Away the Ladder: Development Strategy in Historical Perspective” 2002 *World Development* 4 775–788.

- Chen *et al.* “Bank Competition, Foreign Bank Entry, and Risk-Taking Behavior” 2019 *Cross Country Evidence* 3 106.
- Chen *et al.* “Cross-Border Cooperation in Bank Resolution: A Framework for Asia” 2016 *Singapore Journal of Legal Studies* 1–28.
- Cheng & Degryse “The Impact of Bank and Non-Bank Financial Institutions on Local Economic Growth in China” 2010 *Journal of Financial Services Research* 37 179–199.
- Chimuka “A Study of the Development of the Leasing Industry in Zambia” 2013 *International Journal of Sciences: Basic and Applied Research* 1–19.
- Chortareas *et al.* “Banking Sector Performance in Latin America: Market Power Versus Efficiency” 2011 *Review of Development Economics* 2 307–325.
- Chukwuma *et al.* “Mergers and Acquisitions: The Nigerian Banking Consolidation Program” (2011) *International Journal of Banking and Finance* 19–46.
- Clark “Economies of Scale and Scope at Depository Financial Institutions: A Review of the Literature” 1988 *Federal Reserve Bank of Kansas City Economic Review* 16–33.
- Clarke *et al.* “Foreign Bank Entry: Experience, Implications for Developing Economies, and Agenda for Further Research” 2003 *World Bank Research Observer* 1 25–59.
- Colak & Öztekin “The Impact of COVID–19 Pandemic on Bank Lending Around the World” 2020 *SSRN Electronic Journal*.
- Conor & Maxwell “Learning from The Financial Crisis” 2020 *Quarterly Journal of Finance and Accounting* 3 77–106.
- Copelovitch “Master or Servant? Common Agency and The Political Economy of IMF Lending” 2000 *International Studies Quarterly* 54.
- Craig & Hardee “The Impact of Bank Consolidation on Small Business Credit Availability” 2010 *Journal of Banking & Finance* 31 1237–1263.
- Crook “Fear of Finance” 1992 *Economist* 19 5–18.
- Cubillas & González “Financial Liberalization and Bank Risk-Taking: International Evidence” 2014 *Journal of Financial Stability* 11 32–48.
- Dang & Stone “Multinational Banks and IMF Conditionality” 2021 *International Studies Quarterly* 2 375–386.
- Davies “A Bibliographic Review of Neoliberalism” (2014) *Journal of Theory, Culture and Society* 309–317.
- De Vries “Twenty Years with Par Values, 1946–1966” 1966 *Finance & Development* 0004.
- De Vries *The Bretton Woods Conference and the Birth of the International Monetary Fund* (2015) 3–18.
- Demirgüç-Kunt & Detragiache “Corporate Governance and financial Sector Stability” 2005 *Journal of Development Economics* 2 291–322.
- Demirgüç-Kunt & Maksimovic “Institutions, Financial Markets and Firm Debt Maturity” 1999 *Journal of Financial Economics* 3 295–336.
- Demirgüç-Kunt & Maksimovic “Law, Finance, and Firm Growth” 1998 *Journal of Finance* 6 2107–2137.

- DeYoung “Safety, Soundness, and the Evolution of the US Banking Industry” 2007 *Economic Review-Federal Reserve Bank of Atlanta* 1/2 41.
- Diamond “Banks and Liquidity Creation: A Simple Exposition of the Diamond-Dybvig Model” 2007 *Economic Quarterly* 2 189–200 189.
- Duan *et al.* “Bank Systemic Risk around COVID–19 : A Cross-Country Analysis” 2021 *Journal of Banking & Finance*.
- Dunning “Conditioning the Effects of Aid: Cold War Politics, Donor Credibility, and Democracy in Africa” 2004 *International Organization* 2 409–423.
- Dyer “How Chrysler Created an American Keiretsu” 1996 *Harvard Business Review*.
- Ebbinghaus “Forgetting Curve (Definitions and Examples” *Practical Psychology* <https://practicalpie.com/ebbinghaus-forgetting-curve/> (accessed 18 July 2023).
- Elnahass *et al.* “Global Banking Stability in the Shadow of COVID–19 Outbreak” 2021 *Journal of International Financial Markets, Institutions and Money*.
- Eloranta “Why did the League of Nations fail?” 2011 *Cliometrica* 27–52.
- Ely & Robinson “Consolidation Technology and the Changing Structure of Small Banks’ Small Business Lending” 2001 *Federal Reserve Bank of Dallas Economic and Financial Review* 23–32.
- Ely & Song “Acquisition of Large Depository Institutions in the 1990s: An Empirical Analysis of Motives” 2000 *Quarterly Review of Economics and Finance* 4 467–484.
- European Union (EU) EUR-Lex “Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013” 2013 *Journal of the European Union*,
- European Union “Amending regulation (EU) No 648/2012” 2013 *Journal of the European Union*,
- Evanoff & Ors “The Competitive Dynamics of Geographic Deregulation in Banking: Implications for Productive Efficiency” 2008 *Journal of Money, Credit and Banking* 5 897–928.
- Ezeoha “Structural Effects of Banking Industry Consolidation in Nigeria: A review” 2007 *Journal of Banking Regulation* 8 159–176.
- Feridun & Özün “Basel IV Implementation: A Review of the Case of the European Union” 2020 *Journal of Capital Markets Studies* 1 7–24.
- Feroz “Financial Accounting Standards Setting: A Social Science Perspective” 1987 *Advances in Accounting* 3–14 8–9.
- Findlay “Swap Applications for Community Banks” 1987 *Journal of Commercial Bank Lending* 12 9–14.
- Fisher “The Debt Deflation Theory of Great Depressions” 1933 *Econometrica* 1 337–357 344.
- Friedrichs *et al.* “The World Bank and Crimes of Globalization: A case study” 2002 *Social Justice* 13–36.
- Fu & Heffernan “The Effects of Reform on China’s Bank Structure and Performance” 2009 *Journal of Banking and Finance* 1 39–52.
- Gachigo *et al.* “The Effect of Mergers and Acquisitions Strategies on Financial Performance of Commercial Banks in Kenya” 2022 *European Scientific Journal* 25 110.

- Garrison “The Austrian Theory of the Business Cycle in the Light of Modern Macroeconomics” 1989 *Review of Austrian Economics* 3 3–29.
- Gauthier *et al.* “A Firm’s-Eye View of Commercial Policy and Fiscal Reforms in Cameroon” *World Bank Economic Review* 3.
- Giannone *et al.* “Market Freedom and the Global Recession” 2011 *IMF Economic Review* 1 111–135.
- Gidadhubli “Perestroika and Glasnost” 1987 *Economic and Political Weekly* 784–787.
- Gilbert “Bank Market Structure and Competition: A Survey” 1984 *Journal of Money, Credit and Banking* 16 617–44.
- Goldstein *et al.* “COVID–19 and Its Impact on Financial Markets and the Real Economy” 2021 *SSRN* 6.
- Goldthwaite “The Medici Bank and the world of Florentine capitalism” 1987 *Past & Present* 114 3–31.
- Gopinath *et al.* “Capital Allocation and Productivity in South Europe” 2017 *Journal of Economics* 4 1915–1967.
- Gray “Court Castigates BCCI liquidators’ Claim Against Bank of England” 2006 *Journal of Financial Regulation and Compliance* 4 411–417.
- Grier “The Use of section 301 to Open Japanese Markets to Foreign Firms” 1992 *North Carolina Journal of International Law and Commercial Regulation* 1.
- Haakantu “Effects of Mergers and Acquisitions on the Financial Performance of Commercial Banks in Developing Countries—A Case of Zambia” 2022 *Open Journal of Business and Management* 10 3114–3131.
- Hafer “Economic Freedom and Financial Development: International Evidence” 2013 *Cato Journal* 1 111–126.
- Han & Hausman “Flexible Parametric Estimation of Duration and Competing Risk Models” 1990 *Journal of Applied Econometrics* 1 1–28.
- Hannah & Rhoades “Acquisition Targets and Motives: The Case of the Banking Industry” 1978 *Review of Economics and Statistics* 1 67–74.
- Hardlock *et al.* “The Role of Managerial Incentives in Bank Acquisitions” 1999 *Journal of Banking and Finance* 221–249.
- Harris “The Bubble Act: Its Passage and its Effects on Business Organisations” 1994 *Journal of Economic History* 3 610–627.
- Harrison “Productivity, Imperfect Competition, and Trade Reform” 1994 *Journal of International Economics* 53–73
- Hasan & Marinč “Should Competition Policy in Banking be Amended During Crises? Lessons from the EU: Bank of Finland Research Discussion Paper No 7/2013” 2013 *European Journal of Law and Economics*, forthcoming.
- Head “Seven Deadly Sins: An Assessment of Criticisms Directed at the International Monetary Fund” 2003 *University of Kansas Law Review* 521.
- Heitz “The impact of the Cold War on African security” *African Security Review* (2016) 427–430.

- Huang “A Critique of Marketism: Varieties of Exchanges in China’s Past and Present. Modern China” 2021 *Modern China* 1 3–28.
- Hunter & Timme “Technical Change, Organizational Form, and the Structure of Bank Production” 1986 *Journal of Money, Credit and Banking* 18 152–66.
- Ihonybere “The Crisis of Democratic Consolidation in Zambia” 1996 *Civilisations, Revue Internationale d’Anthropologie et de Sciences Humaines* 43–2 83–109.
- Imala “Challenges of Banking Sector Reforms and Bank Consolidation” 2005 *Nigeria Central Bank of Nigeria* 2 26–37.
- Jagtiani *et al.* “How Important Are Local Community Banks to Small Business Lending? Evidence from Mergers and Acquisitions” 2022 *Journal of Mathematical Finance* 12 382–410.
- Jayadev *et al.* “Small Finance Banks: Challenges” 2017 *IIMB Management Review* 4 311–325 311.
- Jayaratne & Strahan “Entry Restrictions, Industry Evolution, and Dynamic Efficiency: Evidence from Commercial Banking” 1998 *Journal of Law & Economics* 1 239–273.
- Jemison & Sitkin “Corporate Acquisitions: A Process Perspective” 1986 *Academy of Management Review* 1.
- Jones & Knaack “Global Financial Regulation: Shortcomings and Reform options” 2019 *Global Policy* 2 193–206.
- Jones & Zeitz “The Limits of Globalizing Basel Banking Standards” 2017 *Journal of Financial Regulation* 1 89–124.
- Kaniki “The Impact of the Great Depression on Northern Rhodesia” 1995 *TransAfrican Journal of History* 24 131–150.
- Kanu “Kenneth Kaunda and the Quest for an African Humanist Philosophy” 2014 *International Journal of Scientific Research* 8 375–377.
- Kapstien “Between Power and Purpose: Central Bankers and the Politics of Regulatory Convergence” 1992 *International Organisation* 1 265–287.
- Karwowski *et al.* “Financialisation in Emerging Economies: A Systematic Overview and Comparison with Anglo-Saxon Economies” 2017 *Economic and Political Studies* 60–86.
- Kashyap “Merger and Acquisition in Indian Banking Sector: A Case Study of the Bank of Baroda” 2021 *SSRN*.
- Katsuki & Lennerfors “The New Improved Keiretsu” *Harvard Business Review* (2013).
- Kaufman “Bank Contagion: A Review of the Theory and Evidence” 1994 *Journal of Financial Services Research* 8 123–150.
- Keeley “Deposit Insurance, Risk, and Market Power in Banking” 1990 *American Economic Review* 5 1183–1200.
- Klok *et al.* “The Role of Emotions During Mergers and Acquisitions: A Review of The Past and A Glimpse into The Future” 2023 *International Journal of Management Reviews* 25 587–613.
- Krishna & Mitra “Trade Liberalization, Market Discipline and Productivity Growth: New Evidence from India” 1998 *Journal of Development Economics* 2 447–462.

- Kumari & Kumari “Merger and Acquisitions in Indian Banking Sector of Five Years (2018–2022): A Review” 2022 *International Journal of Science and Research* 10.
- Leepsa & Mishra “Post Merger Financial Performance: A Study with Reference to Select Manufacturing Companies in India” 2019 *International Research Journal of Finance and Economics*.
- Levinsohn “Testing the Imports-as-Market-Discipline Hypothesis” 1993 *Journal of International Economics* 1–22.
- Liqin Hu *et al.* “A Study on the Transnational Spillover Effects of Bank Risk and Sovereign Risk-From the Perspective of COVID–19 Epidemic Situation” 2022 *Frontiers of Public Health*.
- Lynch *et al.* “Escaping merger and acquisition madness” 2002 *Strategy & Leadership* 5–12.
- Maddison “Western Economic Performance in the 1970s: A Perspective and Assessment” 1980 *PSL Quarterly Review* 134.
- Madimutsa *et al.* “Public Sector Reform and the Introduction of Neoliberal Capitalism in African Socialist States: The Case of Zambia” 2021 *Review of Radical Political Economics* 3). 462–477.
- Mahawiya *et al.* “Foreign Bank Inflows: Implications for Bank Stability in sub-Saharan Africa” 2018 *African Review of Economics and Finance*.
- Maimbo “The Diagnoses and Prediction of Bank failure in Zambia. 1990–1998” 2002 *Development Policy Review* 3 261–278.
- Makinde “Problems of Policy Implementation in Developing Nations: The Nigerian Experience” 2005 *Journal of Social Sciences* 11 63–69.
- Malilwe & Haabazoka “A Study of the Factors Affecting the Growth of Building Societies in Zambia: A Case Study of Building Societies, Banks and Micro-Finance Institutions in Lusaka” 2024 *Open Journal of Business and Management* 12 993–1020.
- Mansel “Paris, Court City of the Nineteenth Century” 2006 *The Court Historian* 15–28.
- Mashamba “The Effects of Basel III liquidity Regulations on Banks’ Profitability” 2018 *Journal of Governance & Regulation* 2 34–48.
- McDonnell “Financial Regulation Reform and Too Big to Fail” *American University Business Law Review* 113 https://scholarship.law.umn.edu/faculty_articles/115 (accessed 16 June 2023).
- McGowan *et al.* “The Walking Dead? Zombie Firms and Productivity Performance in OECD Countries” 2018 *Economic Policy* 96 685–736.
- Melitz “When and How Should Infant Industries Be Protected?” 2005 *Journal of International Economics* 178.
- Merino & Neimark “Disclosure Regulation and Public Policy: A Socio-Historical Reappraisal” 1982 *Journal of Accounting and Public Policy* 1 33–57 34.
- Merry “From Law and Colonialism to Law and Globalization” 2006 *Law & Social Inquiry* 28 569–590.
- Meseguer & Gilardi “What Is New in the Study of Policy Diffusion? [Review of The Global Diffusion of Markets and Democracy; Bounded Rationality and Policy Diffusion: Social

- Sector Reform in Latin America by B. Simmons, F. Dobbins, G. Garrett, & K. Weyland”] 2009 *Review of International Political Economy* 3 527–543.
- Mester “Efficient Production of Financial Services: Scale and Scope Economies” 1987 *This Business Review* (January/February 15–25).
- Mester “Multiple Market Contact between Savings and Loans” 1987 *Journal of Money, Credit, and Banking* 538–549.
- Mijere “African Socialist Ideologies and the IMF Policies for Economic Development: The Case of Zambia” 1988 *The African Review* 1 41–59.
- Mikesell “The Bretton Woods Debates: A Memoir. Princeton International Finance Section” Essay No 192 (1994).
- Miller “Counterfactual Experiments of Deregulation on Banking Structure” 1988 *Quarterly Review of Economics and Business* 28 38–49.
- Mirzaei & Moore “What are the Driving Forces of Bank Competition Across Different Income Groups of Countries?” 2014 *Journal of International Financial Markets, Institutions and Money* 38–71.
- Mirzaei *et al.* “Does Market Structure Matter on Banks’ Profitability and Stability? Emerging vs. Advanced Economies” 2013 *Journal of Banking and Finance* 8 2920–2937.
- Mishkin “Anatomy of a Financial Crisis” 1992 *Journal of Evolutionary Economics* 2 115–117 115 122.
- Mishkin “Over the Cliff: From Subprime to the Global Financial Crisis” 2011 *Journal of Economic Perspectives* 1 49–70.
- Mohammad *et al.* “The Analysis of Financial Banks in Libya and their Role in Providing Liquidity” 2021 *Journal of Economic Education* 1–13 5–6.
- Mügge (ed) ‘The Wrong Phoenix Rising’ in *Europe and the Governance of Global Finance* abridged in 2014 *Green European Journal*.
- Mulendema & Sinkala “An Analysis of the Performance of Banks: A Comparative Study of Domestic and Foreign Banks in Zambia” 2023 *Journal of Economics, Finance and Management Studies* 6 2149–2154.
- Muuka “Wrong-Footing MNCs and Local Manufacturing: Zambia’s 1992–1994 Structural Adjustment Program” 1997 *International Business Review* 667–687.
- Naqvi *et al.* “Bank Size and the Transmission of Monetary Policy: Revisiting the Lending Channel” 2023 *Journal of Banking & Finance* 146.
- Nyamunda *et al.* “Money in South-Central Africa, 1890–1931: Africans, Imperial Sterling, and Colonial Economy-Building” 2023 *African Studies Review* 618–636.
- O’Keefe “Banking Industry Consolidation: Financial Attributes of Merging Banks” 1996 *FDIC Banking Review* 1.
- Odeh *et al.* “Effect of Loan Assets Classification on Financial Performance of Nigerian Listed Deposit Money Banks” 2023 *British Journal of Multidisciplinary and Advanced Studies* 5 38–50.
- Ogubunka “Banking Sector Reforms and Bank Consolidation: The Experience of Turkey, Bullion” 2005 *Central Bank of Nigeria* 2 17–25.

- Oji & Ozioko “Effect of Globalization on Sovereignty of States” 2011 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 256–270.
- Ouattara “The Challenges of Globalisation for Africa” *Proceedings of Southern Africa Economic Summit sponsored by the World Economic Forum* (1997).
- Ozili “Banking Stability Determinants in Africa” 2018 *International Journal of Managerial Finance* 3.
- Ozili “Determinants of Banking Stability in Nigeria” 2019 *CBN Bullion* 2.
- Peihani “The Basel Committee on Banking Supervision: A Post-Crisis Assessment of Governance and Accountability” 2015 *Canadian Foreign Policy Journal* 2 146–163.
- Peltzman “Towards A More General Theory of Regulation” 1976 *Journal of Law and Economics* 19 54 211–240.
- Pettman “Zambia’s Second Republic—the Establishment of a One-Party State” 1974 *Journal of Modern African Studies* 2 231–244.
- Poncian “The Persistence of Western Negative Perceptions About Africa: Factoring in the Role of Africans” 2015 *Journal of African Studies and Development* 3 72–80.
- Posner & Casey “A Framework for Bailout Regulation” 2015 *Notre Dame Law Review* 479.
- Pride *et al.* “Decline of Westphalia in West Africa. How Decentralized Power in West Africa Can be a Rebirth of African Identity” 2017 *Inter-Agency Journal* 4.
- Prochnow “Bank Liquidity and the New Doctrine of Anticipated Income” 1949 *Journal of Finance, American Finance Association* 298–314.
- Radecki “The Expanding Geographic Reach of Retail Banking Markets” 1998 *Federal Reserve Bank of New York Economic Policy Review* 6 415–432.
- Rauch “Bancassurance in the European Financial Sector: A Cross-Country Analysis” 2020 *International Journal of Managerial Studies and Research* 12 1–14.
- Ravi “Recent Mergers and Acquisitions in Indian Banking Sector—A study” 2019 *Journal of Emerging Technologies and Innovative Research* 7.
- Rekiso “Tried and Tested: The Infant Industry Theory and its Relevance for Africa” *SSRN* (2009).
- Resnick “The Middle Class and Democratic Consolidation in Zambia. Journal of international development special issue: The political economy of Africa’s Middle Class” 2015 *Journal of International Development* 5 693–715.
- Rocheteau *et al.* “Open Market Operations” 2018 *Journal of Monetary Economics* 98 114–128.
- Rosholm & Svarer “Structurally Dependent Competing Risks” 2001 *Economics Letters* 2 169–173.
- Russell “Understanding the term structure of interest rates: The expectations theory” 1992 *Federal Reserve Bank of St. Louis Review* 74 36–50.
- Rutberg “Race Relations and Politics in Colonial Zambia: The Eli.parliament.uk/historiwell Incident” 1965 *Race* 117–29.
- Salas *et al.* “How Does Competition Impact on Bank Risk Taking?” *SSRN*.
- Sanford “Small Banks Recover, Big Banks Languish” 1988 *American Banker* 153 1 4,

- Sarapong-Kumankoma *et al.* “Freedom Competition and Bank Profitability in sub-Saharan Africa” 2018 *Journal of Financial Regulation and Compliance* 1–20,
- Sarwat “Back to Basics. What Is Keynesian Economics?” 2014 *IMF Finance & Development* 9 3.
- Schenk “Summer in the City: Banking Failures of 1974 and the Development of International Banking Supervision” 2014 *English Historical Review* 1129–1156
- Schler & Gez “Development Shadows: The Afterlife of Collapsed Development Projects in The Zambian Copperbelt” 2018 *Africa Spectrum* 3 3–31.
- Schmitthoff “The Origin of the Joint-Stock Company” (1939) *University of Toronto Law Journal* 74–96.
- Schoen “The 2007–2009 Financial Crisis: An Erosion of Ethics: A Case study” 2017 *Journal of Business Ethics* 805–830.
- Seelanatha “Market Structure, Efficiency and Performance of Banking Industry in Sri-Lanka” 2010 *Banks and Bank Systems* 1 20–31.
- Sekwat “Beyond African Humanism: Economic Reform in Post-Independent Zambia” 2000 *International Journal of Organization Theory & Behavior* 3 521–546.
- Sen “A Hard Rain’s a-Gonna Fall’: The Global Financial Crisis and Developing Countries” 2011 *New Political Economy* 3 399–413.
- Shaffer “Competition, Economies of Scale, and Diversity of Firm Sizes” 1985 *Applied Economics* 17 467–76.
- Shaffer “Scale Economies in Multiproduct Firms” 1984 *Bulletin of Economic Research* 36 1 4.
- Shen “Capitalism, Corporatocracy and Financialisation: Imbalances in the American Political Economy. The Public Sphere” 2012 *Journal of Public Policy* 1 15–32.
- Shleifer *et al.* “Fire sales in finance and macroeconomics” 2011 *Journal of economic perspectives* 25 29–48.
- Simmons “Compliance with International Agreements” 1998 *Annual Review of Political Science* 75–93.
- Simmons “International Law and State Behaviour: Commitment and Compliance in International Monetary Affairs” 2000 *American Political Science Review* 94 819–835.
- Simmons *et al.* “Bounded Rationality and Policy Diffusion: Social Sector Reform in Latin America” 2009 *Review of International Political Economy* 527–543.
- Simmons *et al.* “Introduction: The International Diffusion of Liberalism” 2006 *International Organization* 4 781–810.
- Simpson & Bond “Narratives of Nationhood and HIV/AIDS: Reflections on Multidisciplinary Research on the HIV/AIDS Epidemic in Zambia over the last 30 years” 2014 *Journal of Southern African Studies* 5 1065–1089.
- Simutanyi “The Politics of Structural Adjustment in Zambia” 1996 *Third World Quarterly* 4 825–839.
- Sinkala *et al.* “An Assessment of the Effects of COVID–19 on Credit Risk Management in Banking Industry: A Case of Selected Commercial Banks in Lusaka Zambia” 2022 *Journal of Economics Management and Trade* 6 20–28.

- Srivastava “A Study of Mergers and Acquisitions in Indian Banking Sector” 2022 *Journal of Education*.
- Stefanos *et al.* “Too Big to Fail: Why Mega Banks Have Not Become Smaller Since the Global Financial Crisis?” 2019 *Review of Political Economy* 3 356–381.
- Stigler “The Theory of Economic Regulation, Bell” 1971 *Journal of Economics and Management Science* 2 3–21.
- Stiglitz “Capital Market Liberalisation, Globalisation and the IMF” 2004 *Oxford Review of Economic Policy* 1 57–71.
- Stiroh & Strahan “Competitive Dynamics of Deregulation: Evidence from US Banking” 2003 *Journal of Money, Credit, and Banking* 5 801–828.
- Stone “The Political Economy of IMF Lending in Africa” 2004 *American Political Science Review* 4 577–591 577.
- Strahan “Too Big To Fail; Causes Consequences and Policy Responses” 2013 *Annual Review of Financial Economics* 1 43–61.
- Strom & Tabatabadze “Why ‘Measurand’ Is the First Scientific Word We Should Teach Health Physicists” 2022 *Health Physics* 5 607–613.
- Sufian “The Nexus Between Economic Freedom and Islamic Bank Performance: Empirical Evidence from the MENA Banking Sectors” 2014 *Contemporary Review of the Middle East* 4 411–439.
- Susanto *et al.* “Public Ownership and Local Bank Lending at the Time of the COVID–19 Pandemic: Evidence from Indonesia” 2023 *Pacific-Basin Finance Journal* 80 102072.
- Svetličič “Challenges of Globalisation and Regionalisation in the World” 1996 *Global Society: Journal of Interdisciplinary International Relations* 107–123.
- Tabb “Contextualizing Globalization: Comments on Du Boff and Herman” 1997 *Monthly Review* 35–40.
- Takwi “The Influence of Colonial Culture on the Banking Systems of Countries in sub-Saharan Africa” 2022 *International Journal of Science and Research* 375–381.
- Tarullo “Norms and Institutions in Global Competition Policy” 2000 *American Journal of International Law* 3 478–504.
- Taylor & Gans-Morse “Neoliberalism: From New Liberal Philosophy to Anti-Liberal Slogan” 2009 *Studies in Comparative International Development* 2 137–161.
- Tembo & Makina “Regional Financial Integration and Its Impact on Banking Development: Evidence from Southern African Development Community Countries” 2020 *Business Strategy and Development* 3 356–368.
- Thacker Strom “The High Politics of IMF Lending” 1999 *World Politics* 1 38–75.
- Themrise *et al.* “How We Classify Countries and People-and Why it Matters” 2022 *BMJ Global Health* 6 e009704.
- Thompson “The Dodd-Frank Act and Too-Big-To-Fail: What’s Missing? A Survey of the Current Literature” 2015 *Kansas Journal of Law & Public Policy* 4 53.
- Tregenna “The Fat Years: The Structure and Profitability of the US Banking Sector in the Pre-Crisis Period” 2009 *Cambridge Journal of Economics* 4 609–632.

- Tybout “Manufacturing Firms in Developing Countries: How Well Do They Do, and Why?” 2000 *Journal of Economic Literature* 38 11–44.
- Uchendu “Banking Sector Reforms and Bank Consolidation: The Malaysian Experience” 2005 *Central Bank of Nigeria* 2 12–16.
- Ullah & Ahmed ”A Review of European Sovereign Debt Crisis: Causes and Consequences” 2014 *International Journal of Business and Economics Research* 66–71.
- Van Heerden “The Legislative and Institutional Framework for South Africa’s new Twin Peaks Model of Financial Regulation” 2018 *Proceedings of Law and Political Sciences Conferences*.
- Vercelli “A Perspective on Minsky Moments: Revisiting the Core of the Financial Instability Hypothesis” 2011 *Review of Political Economy* 49–67.
- Vetterlein “Paradigm Maintenance: The IMF and Social Policies After the Financial Crisis” 2015 *Global Social Policy* 1 85–88.
- Vives “Competition in the Changing World of Banking” 2001 *Oxford Review of Economic Policy* 4 535–547.
- Vives “Competition Policy in Banking” 2011 *Oxford Review of Economic Policy* 3 476–497
- Walter “US Bank Capital Regulation: History and Changes since the Financial Crisis” 2019 *Economic Quarterly Review* 1 1–40.
- Weller “Financial Liberalisation, Multinational Banks and Credit Supply” 2000a *International Review of Applied Economics* 2.
- Wheelock & Wilson “Do Large Banks Have Lower Costs? New Estimates of Returns to Scale for US Banks” 2012 *Journal of Money, Credit and Banking* 44 171–199.
- White “Zambia in the 1990s as a Case of Adjustment in Africa” 1997 *African Development Review* 2 56–87.
- Wright “Mobilisation of Public Opinion: Professional Women in Community and Home Service” 1942 *Pi Lambda Theta Journal* 4 149–151.
- Yin “Foreign Bank Entry and Bank Competition: Cross-Country Heterogeneity” 2021 *Global Finance Journal* 6 100558.
- Young “Condorcet’s Theory of Voting” 1988 *American Political Science Review* 4.
- Yury *et al.* “Globalization and Regionalization” 2016 *International Electronic Journal of Mathematics Education* 8 3114–3126.
- Zalewska “Bankers’ Remuneration Reforms and New Challenges” 2023 *Corporate Governance: An International Review* 1 161–177 164.
- Zeleznirow & Hunter “Deductive, Inductive and Analogical Reasoning in Legal Decision Support Systems” 1995 *Law, Computers & Artificial Intelligence* 2 157.

Media

- Ayadi *et al.* “Investigating Diversity in the Banking Sector in Europe: The Performance and Role of Savings Banks” Centre for European Policy Studies (2009) <https://doi.org/10.2139/ssrn.1427753> (accessed 10 May 2023).

- Ayodele “Basel III to Spur Banks ‘Merger and Acquisition’ Renaissance Capital Limited RenCap” *Business Day Nigeria* (10 December 2021) <https://businessday.ng/companies/article/basel-iii-to-spur-banks-ma-rencap/> (accessed 16 October 2023).
- Babkova *et al.* “Mobile Money Scoping Country Report Zambia” International Finance Corporation (IFC) 1–10 1 (2016) <https://www.ifc.org> (accessed 12 April 2024).
- Bank for International Settlements (BIS) “Group of Governors and Heads of Supervision announces higher global minimum global standards” (12 September 2010) <https://www.bis.org/press/p100912.htm> (accessed 7 July 2023).
- Bank for International Settlements (BIS) *74th Annual Report* (29 June 2009)
- Bank of Zambia (BoZ) “Non-Bank Financial Institutions (NBFIs)” (31 October 2023) <https://www.boz.zm/non-banks.htm> (accessed 1 December 2023).
- Bank of Zambia (BoZ) *Circular No 13/2020: Bank of Zambia Prudential Relief Measures in View of COVID–19* CB (14 April 2020) <https://www.boz.zm/cbcircularno13of2020bankofzambiaprudentialreliefmeasuresinviewofcovid19.pdf> (accessed 25 April 2024).
- Bank of Zambia (BoZ) *Circular Number 1/99* (14 January 1999); *Circular Number 2/2000* (10 April 2000).
- Bank of Zambia (BoZ) *Commercial Bank Circular 15/2013* (25 July 2013).
- Bank of Zambia (BoZ) *Commercial Bank Circular No 05/2007: Implementation of the New Basel Capital Accord (Basel II) in Zambia* (2007).
- Bank of Zambia (BoZ) *Commercial Bank Circular No 9/96* (11 July 1996) <https://www.boz.zm> (accessed 27 November 2025).
- Bank of Zambia (BoZ) *Commercial Bank Circular Number 9/96* (11 July 1996).
- Bank of Zambia (BoZ) *Commercial Bank Circular Number 9/96: Insider Lending and Large Credit Exposures* (11 July 1996).
- Bank of Zambia (BoZ) *National Financial Sector Development Policy* (2017) 7 <https://www.boz.zm/National-Financial-Sector-Development-Policy-2017.pdf>. (accessed 12 April 2024).
- Bank of Zambia “Circulars” <https://www.boz.zm/circulars> (accessed 27 November 2025).
- Bank of Zambia “Notice of Taking Possession of Investrust Bank” Press Statement https://www.boz.zm/Investrust_Notice.pdf (accessed 4 November 2024).
- Basel Committee on Banking Supervision (BCBS) “Basel III monitoring results published by the Basel Committee” <https://www.bis.org/press/p180306.htm> (accessed 10 November 2024).
- BIS Press Release “Governors and Heads of Supervision announce deferral of Basel III implementation to increase the operational capacity of banks and supervisors to respond to COVID–19 “ (27 March 2020) <https://www.bis.org/press/p200327.htm> (accessed 4 November 2024).
- Bittman “Is It Bad Enough Yet?” *The New York Times* (2014) https://www.nytimes.com/2014/12/14/opinion/sunday/mark-bittman-is-it-bad-enough-yet.html?referrer&_r=1 (accessed 12 August 2020).

Blinder “Six Errors on the Path to the Financial Crisis” *The New York Times* (25 January 2009) <https://www.nytimes.com/2009/01/25/business/economy/25view.html> (accessed March 30, 2021).

Board of Governors of the Federal Reserve System “Press Release—Federal Reserve Board announces Temporary Change to its supplementary Leverage Ratio Rule” (1 April 2020) <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200401a.htm> (accessed 13 May 2021).

Bradt “83% of Mergers Fail—Leverage a 100-day Action Plan for Success Instead” *Forbes* (27 January 2015) <https://www.forbes.com/sites/georgebradt/2015/01/27/83-mergers-fail-leverage-a-100-day-value-acceleration-plan-for-success-instead/> (accessed 15 June 2019).

Brownbridge “The Causes of Financial Distress in Local Banks in Africa and Implications for Prudential Policy” (March 1998).

Central Bank Circular 05/23 to all heads of Commercial Banks and Designated Payment System Entities (13 December 2023) 1–2.

Central Bank Kenya “Press Release—Acquisition of Habib Bank Kenya Branch” https://www.centralbank.go.ke/uploads/press_releases/2093481458_Press%20Release%20-%20Acquisition%20of%20Habib%20Bank%20Kenya%20Branch%20by%20Diamond%20Trust%20Bank.pdf (accessed 11 July 2019).

Central Bank of Kenya “Press Release—Liquidation of Chase Bank Limited (in receivership)” https://www.centralbank.go.ke/uploads/press_releases/706595395_Press%20Release%20-%20Chase%20Bank%20-%20Liquidation.pdf. (accessed 11 July 2019).

Central Bank of Kenya “Press Release—Imperial Bank Liquidation” (20 December 2021) https://www.centralbank.go.ke/uploads/press_releases/1065588915_Press%20Release%20-%20Imperial%20Bank%20-%20Liquidation-December%202021.pdf (accessed 10 March 2019).

Central Bank of Kenya “Press Release—Liquidation of Imperial Bank Limited (in receivership)” https://www.centralbank.go.ke/uploads/press_releases/1065588915_Press%20Release%20-%20Imperial%20Bank%20-%20Liquidation-December%202021.pdf (accessed 10 March 2019).

Central Bank of Kenya “Press Release Imperial Bank Limited (In Receivership)” October 27, 2015 <https://www.centralbank.go.ke/images/docs/media/2015/ImperialBank27102015.pdf> (accessed 27 November 2024).

Central Bank of Kenya Group Holding “Company will be Known as NCBA Group Plc” <https://ke.ncbagroup.com/nic-group-plc-and-commercial-bank-of-africa-limited-merger-receives-final-approval-from-central-bank-of-kenya/> (accessed August 1, 2019).

Central Bank of Nigeria “Press Release—Bank Consolidation: 25 Banks Meet December 31st Deadline” Governor’s Office (3 January 2006) <https://www.cbn.gov.ng/documents/pressreleases.asp?beginrec=161&endrec=180&keyword=&from=&tod=> (accessed 12 June 2023)

Central Banking “Zambian President Fires Central Bank Governor” (24 Aug 2020) <https://www.centralbanking.com/central-banks/governance/people/7671141/zambian-president-fires-central-bank-governor> (accessed 20 January 2024).

Centre for International Governance Innovation “The Warwick Commission on International Financial Reform: In Praise of Unlevel Playing Fields: The Report of the Second Warwick Commission” University of Warwick and the Centre for International Governance Innovation (CIGI) (2009).

Commercial Bank *Circular No 3/94* (11 March 1994).

Congressional Budget Office “Report on the Troubled Asset Relief Programme” (July 2021) <https://www.cbo.gov/publications/57341> (accessed 28 November 2024).

Cotterill “Zambia’s President Under Fire For Sacking Bank Governor” *The Financial Times* <https://www.ft.com/content/47896075-7590-4e59-a2ea-1c36961df655> (accessed 9 February 1998).

Cytonn Investments Report “Consolidation in Kenya’s Banking Sector to Continue” (February 2019) <https://cytonnreport.com/topicals/consolidation-in-kenyas-banking-sector-to-continue> (accessed 20 March 2023).

Farnsworth “IMF Chief Challenges Criticism from Zambia”. *The New York Times*. May 7, 1987 <https://www.nytimes.com/1987/05/07/business/imf-chief-challenges-criticism-from-zambia.html> (accessed 20 March 2023).

Fidelis “Vingirai Fights On” *The Herald* <https://www.herald.co.zw/vingirai-fights-on-2/> (accessed 13 October 2022).

Gertz & Kharas “Beyond Neoliberalism Insights from Emerging Markets Global Economy and Development at Brookings” (April 2019) 1–108.

Guzman *et al.* *IMF Country Reports* 23/257 Chitambo Bupe Zambia Selected Issues (July 2023) 4–46.

International Monetary Fund (IMF) “International Finance and Growth in Developing Countries: What Have We Learned?” (2009) 63–111 <https://www.elibrary.imf.org/view/journals/024/2009/001/article-A003-en.xml>. (accessed 15 April 2024).

International Monetary Fund Washington (IMF) *Country Report: United Republic of Tanzania Selected Issues—Macrofinancial Issues. No 16/255* International Monetary Fund Publication Services 6 (30 June 2016) <https://www.elibrary.imf.org/view/journals/002/2016/255/article-A000-en.xml> (accessed 13 June 2023).

Kabamba “Standard Chartered Closes Five Branches, Opts to go Digital” *Lusaka Star* (19 November 2020) <https://lusakastar.com/news/standard-chartered-closes-five-branches-opts-to-go-digital> (accessed 3 May 2024).

Kerviel “Who are The Worst Rogue Traders in History?” *The Guardian* <https://www.theguardian.com/business/2011/sep/15/who-are-worst-rogue-traders> (accessed 20 July 2023).

KPMG “Basel IV Credit Risk Standardised Approach (SA) January 2021 Considerations for Implementation” (January 2021) <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2021/02/basel-iv-credit-risk-standardised-approach.pdf> (accessed 7 July 2023).

KPMG “Mergers and Acquisitions: Unlocking Shareholder Value: The Keys to Success” Global Research Report LLC 29 (November 1999) <https://pages.stern.nyu.edu/~adamodar/pdfiles/eqnotes/KPMGM&A.pdf> (accessed 15 June 2019).

- Mafa “Intermarket Probe Exposes BoZ Negligence” *Diggers News* (20 April 2017 <https://diggers.news/business/2017/04/20/intermarket-probe-exposes-boz-negligence/> (accessed 15 May 2024)).
- Marone “Small African Stock Markets—The Case of the Lusaka Stock Exchange IMF eLibrary (2003) 1–28 <http://www.elibrary.imf.org> (accessed 12 April 2024)
- Momba “Globalisation and Emerging Political Contradictions: The Challenges of the New Millennium, in *Globalisation and Development in Zambia: Challenges and Prospects*” (10 May 2001) 1–29 5.
- Moonga “Zambia Industrial Commercial Bank, Mastercard Forge Partnership” *The Mast Online* (28 November 2019) (accessed 13 February 2020).
- Njombo “SA Firm to Set Up Fitment Centre” *Zambia Daily Mail* (15 April 2016 <http://www.daily.mail.co.zm/sa-firm-to-set-up-fitment-centre/#> (accessed 30 September 2023)).
- Oxfam “Rigged Rules and Double Standards: Trade, Globalisation, and the Fight Against Poverty” (2002) 1–276 <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/112391/cr-rigged-rules-double-standards-010502-en.pdf> (accessed 6 April 2024).
- Parks “Barclays’ Exit Biggest Pullout Yet in South Africa” (25 November 1986) *Los Angeles Times* <https://www.latimes.com/archives/la-xpm-1986-11-25-mn-13169-story.html> (accessed 7 May 2025).
- Perez “Need to Know. Why Basel Was Not a Good Fit for All Banks” (2014) <https://finance.yahoo.com/news/must-know-why-basel-wasn-205707242.html> (accessed 15 November 2024).
- Probasco “Forget Bailouts. Here’s How A Bank ‘Bail-In’ Works” *Fortune Recommends* (April 2023) <https://fortune.com/recommends/banking/what-is-a-bail-in/> (accessed 22 November 2024).
- Reddit “Break down of the United States by Federal Reserve Banks” https://www.reddit.com/r/MapPorn/comments/ttgb0w/break_down_of_the_united_states_by_federal/ (accessed 7 July 2023).
- Sabre Capital Worldwide “First Invested in Intermarket Bank in 2008” <http://maravi.blogspot.com/2008/10/intermarket-embarks-on-expansion.html> (accessed 13 October 2022).
- Sachs “IMF is a Power unto Itself” *Financial Times* (11 December 1997) https://www.earth.columbia.edu/sitefiles/file/Sacchs%20writing/1997/FinacialTimes_1997_IMFIsapoweruntoitself_12_11_97.pdf (accessed 20 June 2023).
- Winkler & Koen “Basel IV; What Will Be Its Impact on Europe?” *The International Banker* <https://internationalbanker.com/banking/basel-iv-what-will-be-its-impact-on-Europe/> (accessed 7 August 2022).
- Zambia Business Times “ABSA Partners with ZDA to Facilitate SME Financing” <https://zambiabusinesstimes.com/absa-patrners-with-zda-to-facilitate-sme-fincing/> (accessed 30 September 2023)

Zulu “ABSA Partners with ZDA to Facilitate SME Financing” *Zambian Business Times* (27 July 2021) <https://zambianbusinesstimes.com/absa-partners-with-zda-to-facilitate-sme-financing/> (accessed 30 September 2023) Reports

Adenas & Fairgrieve “Bingham and the Transformation of the Law” (2009) 209.

Afriland First Group Annual Report (2014) 22
<https://www.afrilandfirstgroup.com/images/docs/AfrilandFB-RA2014-ENG.pdf> (accessed 27 November 2024).

Bank of Zambia “Annual Report 2011” 1–120 <https://www.boz.zm/bozannualreport2011.pdf> (accessed 3 May 2024).

Banking and Financial Services (Large Loans Exposures) Regulations SI No 96 of 1996

Basel Banking Committee on Banking Supervision (BCBS) “CRE Calculation Credit of Risk CRE50: Counterparty Definitions RWA for Credit And risk terminology” Version 15 (2019) 1 (updated July to 2024).

Basel Banking Committee Supervision (BCBS) “RBC Risk-based Capital Requirements. RBC25 Boundary between the Banking Book and the Trading Book” (2019) 1–2.

Basel Banking Committee Supervision (BCBS) “RBC Risk-based capital requirements. RBC25 Boundary between the banking book and the trading book” (2019) 1–2.

Basel Committee for Banking Supervision (BCBS) “The Supervision of Cross-Border Banking” (1996) 1–25.

Basle Committee on Banking Supervision & Offshore Group of Banking Supervisors Basle (October 1996) <https://www.bis.org/publ/bcbs27.pdf> (accessed 20 June 2023).

BIS-BCBS “Part 2: The First Pillar—Minimum Capital Requirements” 12–203.

Centre for European Policy Studies (CEPS) “Basel II Implementation in the Midst of Turbulence, CEPS Task Force Report” (June 2008) <http://www.ceps.eu/ceps/download/1506> (accessed 5 August 2022).

FDIC “Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010” FDIC Annual Report <https://www.fdic.gov/system/files/2024-07/ar10doddfrank.pdf> (accessed 30 November 2024) 13–15.

Financial Stability Institute (FSI) “FSI Survey Basel II, 2.5 and III Implementation” (July 2015) <https://www.bis.org/fsi/fsiop2015.pdf> (accessed 4 December 2024).

Financial System Supervision Department *Financial System Supervision Annual Report* (1995).

Global Standards Proportionality (GSP) “WG Survey Report on The Implementation of The Basel Framework” (August 2018) 8 https://www.afi-global.org/sites/default/files/publications/2018-09/AFI%20GSP_WG_basel%20survey_AW_digital.pdf (accessed 8 March 2024).

Held *et al.* “The World Crisis: Global Financial Governance: Principles of Reform” https://www.researchgate.net/publication/254436255_The_world_crisis_global_financial_governance_principles_of_reform#fullTextFileContent (accessed 12 November 2024) 1–7.

Kwan “Banking consolidation” Federal Reserve Bank of San Francisco (2004) 1–3.

- Menzie *et al.* “The Eurozone in crisis: Origins and prospects” La Follette Policy Report (2012) 1–5.
- Republic of Zambia *Report of the Committee on National Economy, Trade and Labour Matters on the Impact of the COVID–19 Pandemic on Zambia’s Economy* Fifth Session of The Twelfth National Assembly (2017).
- Rule “Zambia-IMF Fallout Mirrors Third-World Woes” *The New York Times* (8 June 1987) <https://www.nytimes.com/1987/06/08/world/zambia-imf-fallout-mirrors-third-world-woes.html> (accessed 20 March 2023).
- Schildbach “Large or Small How to Measure Banks Size. Horses for Courses” EU Monitor Global Financial Markets Deutsche Bank Research (2017) 1–24.
- Sinkala “How IMF Loan Conditions Cost Zambians Dearly” TRTAFRIKA (June 2023) <https://www.trtafrica.com/insight/how-imf-loan-conditions-cost-zambians-dearly-13464638> (accessed 20 November 2023).
- Slaughter *Infant Industry Protection and Trade Liberalisation in Developing Countries* https://pdf.usaid.gov/pdf_docs/pnacx950.pdf (accessed 7 November 2023).
- Standard Chartered “Business Instalment Loans is Standard Chartered Innovative Facility Targeted at SMEs” <https://www.sc.com/cn/en/business-sme/business-loans-working-capital/sme-business-instalment-loan/> (accessed 9 March 2023).
- Times of Zambia “Zambia: 190 Lose Jobs as Dunlop Zambia Shuts Down” (5 September 1997) <https://allafrica.com/stories/199709050007.html> (accessed 9 March 2023).
- Title 12 Chapter III Part 345 Community Reinvestment Act of Federal Regulations 2024 <https://www.ecfr.gov/current/title-12/chapter-III/subchapter-B/part-345> (accessed 29 November 2024).
- Tyson “Policy Priorities for sub-Saharan Africa’s Financial Development” (2021) Policy Brief 1 ODI Research Series for Financial Development in Africa https://cdn.odi.org/media/documents/ODI_Policy_brief_1_FINAL_clean.pdf. (accessed 1 May 2024).
- Wall Street Journal Europe, The 14–15 April 2000.
- Wall Street Journal, The (8 January 1998).
- Washington Post, The “Where’s Japan’s Level Playing Field?” (1992) <https://www.washingtonpost.com/archive/opinions/1992/06/15/wheres-japans-level-playing-field/45351508-9d08-42a7-adc6-7defb2dec7f/> (accessed 16 October 2023).
- Weller & Hersh “Multinational Banks in Developing and Transition Economies, Technical Paper No. 241” Economic Policy Institute (2000b).
- Wiltermuth “Banks Fail. It’s OK,’ says former FDIC chair Sheila Bair” MarketWatch (11 October 2023) <https://www.marketwatch.com/story/when-money-is-free-you-squander-it-says-former-fdic-chair-sheila-bair-50a4764> (accessed 1 May 2024).
- World Economic Forum “Global Risks Report” 2021 16 ed <https://www.weforum.org/publications/the-global-risks-report-2021/> (accessed 13 October 2023).
- Wyman “The EU Banking Regulatory Framework and its Impact on Banks and the Economy” (2023) <https://www.ebf.eu/wp-content/uploads/2023/02/The.eu.banking-regulatory->

framework-and-its-impact-on-bnaks-and-the-economy_30Jan-1.pdf (accessed 16 July 2023).

Xiao “Why British Banks Dominated Colonial Financial Markets for so Long” London School of Economics (LSE) <https://blogs.lse.ac.uk/economichistory/2022/03/08/why-british-bnaks-dominated-colonial-financial-markets-for-so-long/> (accessed 8 March 2022).

Zanaco *Annual Report 2021* https://luse.co.zm/wp-content/uploads/2022/06/Zanaco-annual-report-2021_pdf (accessed 30 September 2023).

Zhao & Murinde “Bank Competition, Risk-Taking and Productive Efficiency: Evidence from Nigeria’s Banking reform experiments. Stirling Economics Discussion Paper 2009–23” (2009) <http://www.economics.stir.ac.uk> (accessed 13 October 2023).

APPENDICES

APPENDIX 1

Institutions Represented on the Basel Committee on Banking Supervision.²¹⁵⁵	
Members	
<i>Country/jurisdiction</i>	<i>Institutional Representative</i>
Argentina	▪ Central Bank of Argentina
Australia	▪ Reserve Bank of Australia Australian Prudential Regulation Authority
Belgium	▪ National Bank of Belgium
Brazil	▪ Central Bank of Brazil
Canada	▪ Bank of Canada Office of the Superintendent of Financial Institutions
China	▪ People's Bank of China. China Banking Regulatory Commission
European Union	▪ European Central Bank European Central Bank Single Supervisory Mechanism
France	▪ Bank of France Prudential Supervision and Resolution Authority
Germany	▪ Deutsche Bundesbank Federal Financial Supervisory Authority (BaFin)
Hong Kong SAR	▪ Hong Kong Monetary Authority
India	▪ Reserve Bank of India
Indonesia	▪ Bank Indonesia Indonesia Financial Services Authority
Italy	▪ Bank of Italy
Japan	▪ Bank of Japan Financial Services Agency
Korea	▪ Bank of Korea Financial Supervisory Service
Luxembourg	▪ Surveillance Commission for the Financial Sector
Mexico	▪ Bank of Mexico <i>Comisión Nacional Bancaria y de Valores</i>
Netherlands	▪ Netherlands Bank
Russia	▪ Central Bank of the Russian Federation
Saudi Arabia	▪ Saudi Central Bank
Singapore	▪ Monetary Authority of Singapore
South Africa	▪ South African Reserve Bank
Spain	▪ Bank of Spain
Sweden	▪ <i>Sveriges Riksbank Finansinspektionen</i>
Switzerland	▪ Swiss National Bank Swiss Financial Market Supervisory Authority FINMA

²¹⁵⁵ BIS site Membership <https://www.bis.org/bcbs/membership.htm>

Turkey	Central Bank of the Republic of Türkiye Banking Regulation and Supervision Agency
United Kingdom	Bank of England Prudential Regulation Authority
United States	Board of Governors of the Federal Reserve System Federal Reserve Bank of New York Office of the Comptroller of the Currency Federal Deposit Insurance Corporation
Observers	
Country	<i>Institutional representative</i>
Chile	Banking and Financial Institutions Supervisory Agency
Malaysia	Central Bank of Malaysia
United Arab Emirates	Central Bank of the United Arab Emirates
<i>Supervisory groups, international agencies and other bodies</i>	
	Bank for International Settlements (BIS)
	Basel Consultative Group
	European Banking Authority (EBA)
	European Commission
	International Monetary Fund (IMF)
Secretariat	Bank for International Settlements

APPENDIX 2²¹⁵⁶

PRINCIPLE	CORE PRINCIPLE	SECTION OF BFSA AND BOZ ACT APPLICABLE
SUPERVISORY POWERS RESPONSIBILITIES AND FUNCTIONS OF THE REGULATOR		
PRINCIPLE 1	Responsibilities, Objectives and Powers	Sections 68,71,74,77 BFSA(2017)
PRINCIPLE 2	Independence, Accountability, Resourcing and Legal Protection for Supervisors	Sections 88 BFSA(2017)
PRINCIPLE 3	Cooperation and Collaboration	Section 95 of The BFSA(2017)
PRINCIPLE 4	Permissible Activities	Section 12 BFSA(2017)
PRINCIPLE 5	Licensing Criteria	Section 3 and 10 BFSA(2017)
PRINCIPLE 6	Transfer of Significant Ownership	Section 27(3) and 29 BFSA(2017)
PRINCIPLE 7	Major Acquisitions	Section 83 and 84 BFSA(2017)
PRINCIPLE 8	Supervisory Approach	Section 64 BFSA(2017)
PRINCIPLE 9	Supervisory Techniques and Tools	Section 68 BFSA(2017)
PRINCIPLE 10	Supervisory Reporting	Section 27 BoZ Act 2006
PRINCIPLE 11	Corrective and Sanctioning Powers of Supervisors	Section 63 and 68 BFSA(2017)
PRINCIPLE 12	Consolidated Supervision	Section 61 BFSA(2017)
PRINCIPLE 13	Home-Host Relationships	Section 62 (2) BFSA(2017)
PRUDENTIAL REGULATIONS AND REQUIREMENTS		
PRINCIPLE 14	Corporate Governance	Section 49 and 39 (2) BFSA(2017)
PRINCIPLE 15	Risk Management Process	Section 37(1) BFSA(2017)
PRINCIPLE 16	Capital Adequacy	Section 52 and 57 BFSA(2017)
PRINCIPLE 17	Credit Risk	Section 108 BFSA(2017)
PRINCIPLE 18	Problem Assets Provisions and Reserves	Section 48 (2)(a) 90 BFSA(2017)
PRINCIPLE 19	Concentration Risk and Large Exposure Limits	Section 82(1) and 65
PRINCIPLE 20	Transactions with Related Parties	Section 58 BFSA(2017)
PRINCIPLE 21	Country and Transfer Risk	Section 62 (2) BFSA(2017)
PRINCIPLE 22	Market Risk	Section 108 of BFSA(2017)
PRINCIPLE 23	Interest Rate Risk in The Banking Book	Section 106 of

²¹⁵⁶ Information to Create This Table was taken from the BFSA (1994) (As Amended 2000), BFSA (2017), and the Bank of Zambia Act 1996 and from the 29 Core Principles for Effective Banking Supervision.

PRINCIPLE 24	Liquidity Risk	Section 59 BFSA(2017)
PRINCIPLE 25	Operational Risk	Section 61 BFSA(2017)
PRINCIPLE 26	Internal Control and Audit	Section 59(1) and (2) BFSA(2017)
PRINCIPLE 27	Financial Reporting and External Audit	Section 88, 97 and 95 BFSA(2017)
PRINCIPLE 28	Disclosure and Transparency	Section 88 BFSA(2017)
PRINCIPLE 29	Abuse of Financial Services	Sections 101, 102,103,104,107, 116, 117 BFSA(2017)

APPENDIX 3

Proposals outlined in Chapter 6 of the Explanatory Guide to the SADC Central Bank Model Law²¹⁵⁷

Problem statement		Proposal	Model Law Section	29 core principles
2	The relationship between central banks and commercial banks contributes to financial stability in a country.	The law should explicitly provide the nature and extent of the relationship with Government and other non-bank financial institutions.	46	Principle 1–13
3	While all SADC central banks provide credit facilities to the banking sector, most of their legislation is unclear regarding circumstances in which the central bank can financially accommodate banks.	The Model Law should include this function of providing short-term financial accommodation to solvent but illiquid banks. Where the central bank decides to extend credit to a bank, the terms and conditions should be above market rates. Ministerial approval is required because if the bank still fails, Government is required to cover any loss by the central bank for the transaction.	47	Principle 15: Risk Management Process Principle 4: Permissible activities Principle 8: Supervisory Approach
4	Most SADC central bank legislation does not specifically require the bank to publish its rates.	The Model Law should make publication of rates for the central bank mandatory.	48	Principle 28: Disclosure and Transparency
5	SADC central banks prescribe and implement reserve requirements for banks in diverse ways.	The Model Law should incorporate issues relating to the central bank prescribing reserves for banks.	49	Principle 16: Capital Adequacy
6	Most SADC legislation does not make it obligatory for central banks to demand disclosure of rates, and other charges by banks and financial institutions.	The Model Law should contain requirements relating to the central bank's ability to prescribe banks' disclosure requirements and to consult with banks on matters of common interest.	50	Principle 10: Supervisory Reporting
7	Some SADC central banks that are mandated to regulate and supervise banks do not have statutory powers of licensing and revocation of the licenses.	The Model Law should leave individual countries to decide whether their respective central banks should be responsible for supervision or regulation of banks. The Model Law should not make it mandatory for central banks to be supervisory and regulatory authorities for banks. Where the law mandates the central bank to supervise banks and financial institutions, the one who licenses should have the powers to regulate and revoke the license.	52	Principle 5: Licensing Criteria

²¹⁵⁷ SADC Central Bank Model Law 2011 explanatory guide 66–67.

** Note that the table starts at No 2.

APPENDIX 4

Chronology of the Banking Acts From 1937 to 2020 ²¹⁵⁸

Year	Banking Act	Year	BOZ Act
1906	Banks like Standard Bank of South Africa and Barclays Bank DCO were regulated from their bank's headquarters	1937	Southern Rhodesia Currency Board (SRCB)
1959	The Banking Act introduced	1954	Currency Board of Rhodesia and Nyasaland (CBRN)
1961	Banking (Amendment) Act Banking Act was amended by Banking Act No 1 of 1965	1956	Bank of Rhodesia and Nyasaland Act (BRN)
1965	Banking Act (1965) No. 1 of 1965	1963	Bank of Northern Rhodesia Ordinance (BNRO)
1971	Banking Act (AKA Banking and Savings Act) No 43 of 1971 Cap 700 of the Laws of Zambia.	1964	Bank of Northern Rhodesia Ordinance (BNRO) (No 24 of 1964)
1994	Banking Act. Cap. 700 repealed and replaced by BFSA (1994) according to section 131 (1) of BFSA (1994)	1964	BOZ Act (No 37 of 1964)
1994	Banking and Financial Services Act (BFSA) Cap 387 (1994) No 21 of (1994) No 12 of (1994) and No 28 of (1995)	1965	Bank of Zambia (BoZ) Act
2000	BFSA (No 18 of 2000)	1971	BoZ (Amendment) Act
2005	BFSA (No 25 of 2005)	1985	BoZ No 24 of 1985 Cap 699 and Cap 598 (Replaced the 1964 Act and the Currency Act), s 6 of the Currency Act was repealed by the Bank of Zambia Act
2017	Repeal of BFSA (1994) Cap 387 Repealed and replaced according to section 170 of the BFSA(2017) Act by BFSA(2017) No 7 of 2017.	1996	BoZ Act (Repealed and replaced by BOZ Act (1996)). According to section 63(1) of the BoZ Act (1996).
	BFSA(2017) (No 7 of 2017) Amends ss 2 and 137(3) and inserts ss 21 (3) and 62 A. Repeals ss 72 and 74.	1996	BOZ Act (1996) Cap360 No 43 SI191 of 1996 repealed according to section 75 of the BoZ Act 2022
2020	BFSA (Amendment) Act (Act 7 of 2020)	2022	BOZ Act 2022 (No 5 of 2022)

²¹⁵⁸ Information for this table was taken from various sources such as: BOZ. Before the Central Bank https://www.boz.zm/css/BoZ_Historical_Background.pdf (accessed 4 December 2024) Ibid. (Ailola 1988) 87-121; BFSA (1994) Cap 387 of the Laws of Zambia (No 21 of 1994); BFSA (1994) No 18 of 2000; BFSA No 25 of 2005; BFSA (2017) (No 7 of 2017) BFSA (Amendment act(Act 7 of 2020); BoZ Act (1996) No 43 Cap 360 of the Laws of Zambia; BoZ Act 2022.