

# MESSERS LEONARD KALINDE AND PARTNERS

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## A Structural Shift in Financial Regulation: A Legal Analysis of the Banking and Financial Services Act No. 9 of 2026

by Leonard Kalinde LL.B, AHCZ

### 1. Introduction

The enactment of the Banking and Financial Services Act No. 9 of 2026 (“the 2026 Act”) represents a significant legislative development in Zambia’s financial regulatory framework. It repeals and replaces the Banking and Financial Services Act No. 7 of 2017 (“the 2017 Act”), introducing expanded regulatory scope, enhanced enforcement mechanisms, and modern supervisory tools.

This opinion examines whether the 2026 Act constitutes a fundamental departure from the 2017 Act or a structured evolution of the existing framework, and identifies the legal implications arising therefrom.

### 2. Issues for Determination

The following issues arise:

1. Whether the 2026 Act materially alters the licensing framework under the 2017 Act.
2. Whether the Act introduces new regulatory concepts or formalises existing ones.
3. Whether the powers of the Bank of Zambia have been expanded, and if so, to what extent.
4. Whether the shift from statutory prescription to regulatory discretion raises administrative law concerns.
5. Whether the enhanced penalty regime is legally and constitutionally sustainable.

### 3. Applicable Law

1. Banking and Financial Services Act No. 7 of 2017
2. Banking and Financial Services Act No. 9 of 2026

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## 4. Analysis

### 4.1 Licensing Framework: Expansion of an Existing Regime

**Section 9 of the 2026 Act** provides that multiple categories of licences may be issued, including community banking, alternative financial services, and virtual financial services. This is a departure from **section 5 of the 2017 Act**, which limited licences to banking, financial business, and financial institution licences. However, **section 6 of the 2017 Act** already prohibited unlicensed banking activity, establishing the foundational regulatory approach.

Conclusion:

The 2026 Act does not introduce a new licensing philosophy but expands the categories to accommodate financial innovation.

### 4.2 Digital and Virtual Financial Services: Codification of Existing Practice

**Section 9(1)(f) of the 2026 Act** introduces a licence for virtual financial services. This builds upon **section 24 of the 2017 Act**, which allowed the Bank of Zambia to authorise banking without reliance on physical branches.

Conclusion:

The 2026 Act formalises digital banking as a regulated category, removing reliance on discretionary approval.

### 4.3 Expansion of Regulatory Powers

**Section 7 of the 2026 Act** sets out the general powers and functions of the Registrar, including licensing, supervision, and enforcement. However, the Act does not rely on section 7 alone to confer specific powers. Detailed provisions governing approval of directors and officers, fit and proper requirements and intervention and resolution are contained in other operative sections of the Act and subsidiary regulatory instruments. Under the 2017 Act, **sections 33 and 34** expressly addressed approval of directors and intervention in governance structures

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## Conclusion:

The 2026 Act consolidates regulatory authority at a high level under section 7, while distributing specific powers across the statute. It expands regulatory reach but does so through a layered legislative structure, not a single provision.

## 4.4 Licensing Criteria: Shift to Regulatory Discretion

**Section 8 of the 2026 Act** provides that the Bank shall determine licensing criteria. In contrast, **section 7 of the 2017 Act** expressly set out detailed statutory criteria, including capital adequacy, governance structures, and managerial competence.

## Conclusion:

There is a clear shift from a rules-based statutory framework to a principles-based system driven by regulatory discretion.

## 4.5 Transparency and Record-Keeping Obligations

**Section 172 of the 2026 Act** requires financial service providers to maintain detailed records, including registers of beneficial owners and daily customer transaction records.

The 2017 Act, particularly under **Part XII**, required submission of information and access to records but did not prescribe such granular obligations.

## Conclusion:

The 2026 Act introduces significantly enhanced compliance and transparency obligations aligned with international Anti-Money Laundering and Counter the Financing of Terrorism standards.

## 4.6 Enforcement and Penalty Regime

**Section 10 (2) of the 2026 Act** imposes a penalty of up to thirty years' imprisonment for unlicensed financial services. This represents a substantial increase from **section 6(3) of the 2017 Act**, which prescribed a maximum of four years' imprisonment.

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## Conclusion:

The amendment reflects a deliberate legislative shift toward deterrence through severe penalties.

## 5. Legal Implications

### 5.1 Administrative Law Concerns

The delegation of licensing criteria to the Bank of Zambia under section 8 of the 2026 Act raises potential issues of excessive delegation, lack of guiding statutory standards and susceptibility to judicial review on grounds of arbitrariness.

### 5.2 Expansion of Executive Power

The broadened powers under section 7 may implicate procedural fairness requirements, property rights considerations and the need for clear safeguards in resolution processes

### 5.3 Proportionality of Penalties

The increase in penalties may invite scrutiny on proportionality and consistency with constitutional protections against excessive punishment

## 6. Conclusion

**The Banking and Financial Services Act No. 9 of 2026** is best understood as a structured evolution rather than a complete departure from the 2017 framework.

It retains the foundational licensing architecture, expands regulatory scope to include emerging financial services, enhances supervisory and enforcement powers and shifts regulatory detail from statute to regulator. The overall effect is the creation of a centralised, regulator-driven framework designed to address modern financial risks, innovation, and systemic stability.

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## 7. Final Observation

For legal practitioners and financial institutions, the implications are immediate. Increased regulatory exposure, greater reliance on regulatory guidance rather than statutory text and heightened enforcement risk is present in the 2026 Act.

The 2026 Act demands a corresponding shift in legal strategy from statutory interpretation to regulatory engagement and compliance management.

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