In understandthe meaning of the key terms in

Business, Corporate Governance

In many respects of our day to day activities, there is evidence indicating that there is a closeinteraction between the law generally and economics. The law in fact penetrates the veryfoundation of economics. 1 For instance, through the law, legal institutions are able to agreeupon prices of goods and services2, wages, set up business organisations and so forth. 3 Thepurpose of this essay is to discuss the role of banking regulatory law in poverty reductionand economic development. In view of the foregoing, it is imperative to firstly understandthe meaning of the key terms in the topic subject for discussion as this will clearly define theparameters and context in which this essay has been written. 1.

2. Banking regulatory law in broad terms refers to those " laws that govern how banks and otherfinancial institutions conduct business." 4 For example, in Zambia, the Banking and FinanceService Act, Chapter 387 of the Laws of Zambia5(the " BFSA") is the primary legislationthat govern the banking and financial services sector. Further, it is important to note thatthese laws also govern securities and other transactions, regulate taxes and that they alsoplay an important role in mergers and acquisitions of corporations, stock purchases andinvestments by both individuals and companies, and tax audits of bank accounts. 61. 3.

Poverty is a concept that is difficult to define except to say that it is a situation in whichpeople have great difficulty meeting minimum levels of income, food, shelter, healthcare, clothing, education, employment and other essentials. 71. 4. Economic development refers to " the development of economic wealth of countries, regionsor communities for the well-being of their inhabitants. From a policy perspective, economicdevelopment can be defined as efforts that seek to improve the economic well-being andquality of life for a community by creating and/or retaining jobs and supporting or growingincomes and the tax base.

“ 81J. D Nyhart, “ The Role of Law and Economic Development” (Working Paper, School of Industrial Management: Massachusetts Institute of Technology), 4. 2 The Competition and Consumer Protection Act No. 24 of 2010 of the Laws of Zambia would be an example inrespect of Zambia on this point. 3 Nyhart (n 1), 4.

4Legal Career Path, “ Banking Law,” accessed on 30 December, 2017 from http://legalcareerpath. com/what-is-banking-law/5It is important to note that the BFSA is at the verge of being repealed by the new Banking and Financial ServicesAct No. 7 of 2017 of the Laws of Zambia which is yet to take effect but was assented on 12 April 2017.

6Find Law, “ What is Banking and Financial Law?,” accessed on 30 December, 2017 fromhttp://hirealawyer. findlaw. com/choosing-the-right-lawyer/banking-and-finance-law.

html7 Michael P. Todaro and Stephen C. Smith, Economic Development 11th ed. (Boston: Pearson Education Inc., 2012), 2. 8Salmon Valley Business and Innovation Centre, “ What is Economic Development?,” accessed on 30 December2017 from http://www.

svbic. com/node/24HOW CAN BANKING REGULATORY LAW REDUCE POVERTY AND SUPPORTECONOMIC DEVELOPMENT? 17/03OC2102P22. THE ROLE OF THE BANKING REGULATORY LAW IN POVERTY REDUCTIONAND ECONOMIC

DEVELOPMENT2. 1. There is evidence that finance can be a limiting factor in economic development.

9 This isbecause the financial sector performs very critical functions that can directly and/orindirectly have an impact on the economy of any country. These critical functions include: providing payment services, matching savers and investors, generating and distributinginformation, allocating credits efficiently, pricing, pooling and trading risks, and increasingassets liquidity. 10 Accordingly, in developing countries whose financial sectors areunderdeveloped and/or without it, economic development may be constrained. 112. 2. Consequently, banking regulatory laws that are deliberately intended to enhance thefunctioning of the financial sector are very important in achieving economic prosperity andpoverty reduction.

12 The following are some of the roles the banking regulatory laws play inpoverty reduction and economic development: Banking and Financial Services Institutions Framework2. 3. As earlier stated, in Zambia, the BFSA is the primary legislation that govern the banking andfinancial services sector. The BFSA provides for a “ licensing system with respect to theconduct of the banking or financial business and provision of financial services; theincorporation standards, principles and concepts of corporate governance in institutionalsystems and structures of banks and financial institutions; the sound business practices andconsumer protection mechanisms; the regulation and supervision of banking and financialservices.” 2. 4. The function of such substantive law plays an important role of predicting

people’s actionsand with such predictions, people come to guide their own actions and have confidence intheir assessment of how others will act.

13 Accordingly, to facilitate economic activity, setsof rules such as the BFSA are important in providing guidance with respect to economicrelationships among people in respect of the banking and financial sector. There is evidencethat foreign investors are generally “ attracted to legal systems which are predictable andefficient; and also those that have a uniform set of characteristics which render any legalsystem predictable and efficient.” 142. 5. In light of both paragraphs 2. 3 and 2. 4 above, one would argue that an adequate bankingregulatory framework, in addition to sound fiscal policy and macroeconomic stability, in fact9 Todaro and Smith (n 7), 730.

10 Todaro and Smith (n 7), 730-731. 11 Ellis Karen, Policy Division Working Paper – The Importance of Financial Sector Development for Growth andPoverty Reduction (London: DFID, 2004), 20. 12 Ross Levine, “ Regulating Finance and Regulators to Promote Growth,” accessed on 30 December 2017 fromhttps://www. kansascityfed. org/hcgSS/publicat/sympos/2011/Levine_final.

pdf13 Nyhart (n 1), 12. 14 Perry, Amanda. “ An Ideal Legal System for Attracting Foreign Direct Investment? Some Theory and Reality.” American University International Law Review 15, no. 6 (2000), 1628.

17/03OC2102P3brings about poverty reduction and economic development. This is so because “ foreigndirect investment is a source of capital and stimulant of economic growth in developingcountries.” 15Money Laundering Regulations2.

6. Money laundering is a process by which “ one conceals the existence, illegal source or illegalapplication of income, and then disguises that income to make it appear legitimate.” 16 Thisactivity can damage the financial-sector institutions “ that are critical to economic growth, reduces productivity in the economy’s real sector by diverting resources and encouragingcrime and corruption, which slow economic growth, and can distort the economy’s externalsector, international trade and capital flows, to the detriment of long-term economicdevelopment.” 172. 7. Further, strategies by developing countries to establish offshore financial centres (“ OFCs”)as tools of achieving economic development and in turn poverty reduction may also beimpaired by such activities through OFC channels.

18 As such, effective anti-money-laundering regulations and policies which reinforce good governance policies can helpsustain economic development and poverty reduction, particularly through the strengtheningof the financial sector. 19 For instance, Zambia has the Prohibition and Prevention of MoneyLaundering Act No. 14 of 2001 of the Laws of Zambia that is deliberately intended tostrengthen the financial sector in this respect.

2. 8. To this extent, if these activities are left to succeed without being regulated or prevented, this may cause damage to the reputation of the financial system which may in turn increasepoverty levels and prevent economic development. For example, in the 80s and 90s Nigeria’sfinancial system was dominated by these activities of money laundering which

resulted inforeign investors to be reluctant to take commercial investment into Nigeria. 20Borrowing and Lending Regulations2. 9.

Regulations that are deliberately intended to facilitate the allocation of credit not only tothose with the most wealth and political connections but also to those with the bestentrepreneurial ideas and abilities in fact help in poverty reduction and economicdevelopment. 21 For instance, Zambia has recently come up with the Movable Property(Security Interest) Act No. 3 of 2016 of the Laws of Zambia (the “ MPA”). The MPAprovides for the creation of security interests in movable property so as to contribute toeconomic development. The MPA facilitates the availability of financial support to small15 Amanda (n 14), 1628. 16 Guy Stresses, Money Laundering: A new International Law Enforcement Model (Cambridge: CambridgeUniversity Press, 2000) 83.

17 Ayodegi Aluko, “ The Impact of Money Laundering on Economic and Financial Stability and on PoliticalDevelopment of Developing Countries” (Masters of Laws Thesis: University of London, 2011)18 Aluko (n 17), 27. 19 Aluko (n 17), 27. 20 Aluko (n 17), 27-28. 21 Levine (n 12). 17/03OC2102P4and medium enterprises that have in the past been unable to access financial support aslenders were reluctant to provide them with loans . 222. 10. Therefore, the impact of such regulations on economic development and poverty reductionentail that, for example, an impoverished mother in Zambia who attempted to feed her familywith income from her initially credit-starved microenterprise will now be able to accessfinancial support for her business.

Further, such regulations arguably provide for a well-developed financial system that in turn " accelerates economic growth and shrink incomeinequality by disproportionately increasing the earnings of lower income families." 23Exchange Controls Regulations2. 11. Exchange control refers to the " direct government interference with incoming and/oroutgoing foreign payments through prohibitions, quotas, or licensing, and/or the existenceof an exchange rate system in which a single buying and selling exchange rate are notmaintained, with a spread no larger than is necessary to pay for the services of brokers andother exchange dealers." 24 These regulations have an impact on economic development andpoverty reduction.

2. 12. For example, in Zambia in 1991, " the new government's priorities were the restoration ofeconomic future growth and employment through liberalising the economy and allowingmarket forces a greater role." 25In so doing, the Exchange Control Act was repealed whichresulted in no controls on the conversion and transfer of currency from Zambia, withinvestors being free to repatriate any funds, whether or not generated from a source inZambia, provided they have been derived from legitimate sources and provided thenecessary taxes and duties have been paid.

262. 13. However, in 2012, there were concerns regarding the excessive demand for foreign currencyarising in part from local entities requiring to be paid in foreign currency for goods andservices produced within Zambia. 27 In addressing this concern the Bank of Zambia (" BoZ")issued Statutory Instrument 33 of 2012 (" SI 33"). This SI 33 prohibited the quoting in, paying or receiving foreign currency as legal tender for goods, services or any other

domestictransactions. Further, the SI 33 was amended by Statutory Instrument 78 of 2012 (“ SI 78”), amending the definition of ‘ domestic transactions’.

2. 14. With such prohibition, the Zambian Association of Chambers of Commerce and Industry(“ ZACCI”) criticised the complete ban on dollarized local transactions and raised concerns22 Kabanda Chulu, “ BoZ advocates movable property security interest Bill,” accessed on 30 December 2017 fromhttps://www.

daily-mail. co. zm/boz-advocates-movable-property-security-interest-bill/23 Levine (n 12). 24 Jorge Marshall, “ Exchange Controls and Economic Development,” accessed 30 December, 2017 fromhttps://link. springer. com/chapter/10. 1007/978-1-349-08449-4_1525 Celia Becker, “ Zambia Scraps Exchange Controls Regulations,” accessed on 30 December, 2017 fromhttps://www. ensafrica.

com/news/Zambia-scraps-exchange-control-regulations? Id= 143826 Becker (n 25). 27 Becker (n 25). 17/03OC2102P5to the effect that these measures would result into further depreciation of the Kwacha. ZACCI further noted that, this would result into an increase in inflation levels and curtailingforeign investment and foreign currency inflows into the country which would result in aforeign currency shortage in Zambia, encouraging informal foreign exchange activities.

282. 15. The government ignored these concerns and, instead, went a step further by introducingStatutory Instrument 55 of 2013 (“ SI 55”), enabling

the BoZ to monitor balance of paymenttransactions and regulate charges in the financial sector. In terms of SI 55, importers, exporters and foreign investors were required to open and maintain foreign currencydenominated accounts with a Zambian commercial bank for purposes of enforcing of theseregulations. Further, exporters were required to repatriate foreign currency earned fromexports back to Zambia and report on the receipt of export proceeds within 120 days ofreceipt of the proceeds. All persons obtaining any foreign exchange loan from a non-residentwere also required to report the details of the borrowing to the BoZ. 2. 16.

These regulations proved to have impacted on the Zambian economy negatively. Thesemeasures were introduced to help the government monitor currency flows and address taxevasion by foreign companies, but it was in fact negatively perceived by businesses as areintroduction of exchange control. 29 The Kwacha depreciated badly leading to therevocation of both these regulations in 2014. This move resulted into immediate gain of theKwacha against the dollar. This move has met with general approval from the Zambianbusiness community, hopeful that it would incentivise foreigners to invest in Zambia andimprove local businesses' ability to obtain foreign loans. 3.

CONCLUSION3. 1. In conclusion, this essay has demonstrated how the banking regulatory law influenceseconomic development and poverty reduction. To a large extent, evidence has shown that anadequate financial sector can make important contributions to economic development andpoverty reduction.

The essay has shown that this is likely to be evident in developingcountries whose financial sectors are likely not to be developed and thus, constrainingeconomic development.