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CHAPTER 58**THE MICROFINANCE DEPOSIT-TAKING INSTITUTIONS ACT**

Commencement: 1 July, 2003

An Act to provide for the licensing, regulation and supervision of microfinance business in Uganda and for related matters.**PART I—PRELIMINARY****1. Application of Act**

This Act shall apply only to microfinance deposit-taking institutions.

2. Interpretation

- (1) In this Act, unless the context otherwise requires—
“affiliate” in respect of any institution, means any entity, corporate or incorporate, where five percent or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by the institution, or is held by it with power to vote;
“agent” means an entity contracted by an institution and approved by the Bank of Uganda to provide microfinance deposit taking services on behalf of that institution;
“associate ” in relation to—
- (a) a natural person, means—
 - (i) a close relative of that person;
 - (ii) any person who has entered into an agreement or arrangement with that person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of shares in the controlling company in question;
 - (iii) any company of which that person is a director; or
 - (iv) any person who is an employee or partner of that person;
 - (b) a person not being a natural person—
 - (i) being a company, means any subsidiary or holding company of that company, any other subsidiary of

- that holding company and any other company of which that holding company is a subsidiary;
- (ii) not being a company to which subparagraph (i) applies, means another non-natural person which would have been a subsidiary of the first-mentioned non-natural person—
- (A) had such first-mentioned non-natural person been a company; or
- (B) where that other non-natural person is not a company, had the first-mentioned non-natural person and that other non-natural person each been a company; or
- (iii) means any person in accordance with whose directions or instructions the board of directors of or where such non-natural person is not a company, the governing body of that non-natural person is accustomed to act; and
- (c) any person whether natural or non-natural—
- (i) means any non-natural person of which the board of directors or where the non-natural person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph; and
- (ii) includes any trust controlled or administered by that person;

“bank” means any company licensed under the Financial Institutions Act to carry on banking business as its principal business and includes all branches and offices of that company in Uganda;

“banking business” has the meaning assigned to the term “financial institution business” in the Financial Institutions Act;

“branch” means a place of business which forms a dependent part of a microfinance institution and which conducts all or some of the operations inherent in the business of that microfinance institution;

“cease and desist order” means an order issued by the Bank of Uganda to an institution to refrain from doing anything that is unsafe or that may prejudice depositors’ interests;

“Credit Reference Bureau” means the Credit Reference Bureau referred to in section 50;

“close relative” in relation to any person, means—

- (a) his or her spouse;

(b) his or her child, stepchild, parent, ward of parent or step-parent;

(c) the spouse of any person mentioned in paragraph (b);

“collateral substitutes” means collateral not ordinarily used as security in conventional banking;

“company” means a company limited by shares and having a share capital;

“compulsory savings” means monies that shall be contributed by a borrower as a condition for receiving a loan or other credit;

“control” means the relationship between the parent undertaking and a subsidiary undertaking or similar relations between an individual and an undertaking or the power to determine the financial and operational policy of an institution under its charter or an agreement, or direct or indirect influence by a person over decision-making and the management of an institution;

“core capital” means shareholders’ equity in the form of issued and fully paid-up shares including retained reserves approved by the Bank of Uganda;

“corporate governance” has the meaning assigned to it in section 28(2);

“credit facilities” means—

(a) an institution granting an advance, loan or other facility in which a customer of the institution has access to funds or financial guarantees; including any economically equivalent arrangement in connection with Islamic microfinance business; or

(b) an institution incurring a liability on behalf of a customer;

“currency point” has the value assigned to it in Schedule 1 to this Act; “deposit” means a sum of money received or paid on terms under which it will be repaid, either on demand or at a time or in circumstances agreed upon by or on behalf of the person making the payment and the person receiving it, with or without interest, premium or other economic return, except that the following shall not qualify as deposits—

(a) any sum of money which is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or service, where the sum is repayable only if the property or service is not in fact sold, hired or otherwise provided;

(b) a sum of money which is paid by way of security for performing a contract; or

- (c) a sum of money which is paid as security for a credit facility which has been advanced or granted to any person making the payment, except that such sum or interest on it shall not be on-lent;
- “executive officer” in relation to any institution, includes any general manager or deputy manager of the institution;
- “group guarantee” means a guarantee mechanism including any economically equivalent arrangement relating to Islamic microfinance business by which a group of borrowers undertake to be liable jointly or severally for a loan or any other credit facility of any one of them;
- “home country regulator” means the supervisory authority of the home country where the head office of the parent financial institution is based;
- “institution” means a microfinance deposit-taking institution;
- “Islamic contract” means a contract designed to comply with the *Shari’ah* and which satisfies conditions specified by the Bank of Uganda for purposes of complying with the *Shari’ah*;
- “Islamic microfinance business” means—
- the business of receiving money into profit sharing investment accounts or of managing those accounts;
 - the business of providing finance; whether through the acquisition, disposal or leasing of assets or otherwise; or other services which have a similar economic effect or are otherwise economically equivalent to any other microfinance business; or
 - any other microfinance business which involves or is intended to involve entering into Islamic contracts, or which is otherwise carried out or purported to be carried out in accordance with the *Shari’ah*;
- “Islamic microfinance institution” means a company licensed to carry on microfinance business, whose entire business comprises of Islamic microfinance business and which has declared to the Bank of Uganda that its entire operations are to be conducted in accordance with the *Shari’ah*;
- “Islamic window” means the part of a microfinance institution, other than an Islamic microfinance institution, which conducts Islamic microfinance business;
- “liquid assets” has the meaning assigned to it in section 17(2); “licence” means a licence granted under section 6;

- “loan insurance fund” means a fund consisting of contributions of group customers of an institution to act as collateral for a credit facility;
- “MDI” means microfinance deposit-taking institution;
- “MDI Deposit Protection Fund” means the Deposit Insurance Fund established under section 84;
- “manager” means an officer of a microfinance deposit taking institution who directs, controls or influences the decision-making of the institution;
- “microfinance business” means the business carried on as a principal business of—
- (a) acceptance of deposits from members of the public by any person or institution, regardless of the business form, whether licensed by Bank of Uganda or not;
 - (b) employing deposits, wholly or partly, by lending or extending credit for the account and at the risk of the person accepting those deposits, including the provision of short-term loans or other credit to small or micro enterprises and low-income households, usually characterised by the use of collateral substitutes, such as group guarantees or compulsory savings;
 - (c) engaging in Islamic microfinance business; or
 - (d) transacting such other activities as may be prescribed by the Bank of Uganda by regulations made under section 93 of this Act;
- “microfinance deposit-taking institution” means a company licensed to carry on, conduct, engage in or transact in microfinance business in Uganda;
- “Minister” means the Minister responsible for finance;
- “non-performing loan” means a loan or other credit facility or asset in respect of which the principal, interest or other payment has been due and unpaid for a period specified in the Regulations, or where the principal or interest payment is overdue and has been capitalised;
- “person” means any individual, company, partnership, fund, foundation or enterprise wherever located or incorporated;
- “place of business” means any premises at which an institution transacts microfinance business in Uganda and which is open to the public and includes a branch, an agent, a mobile unit, or such other premises as may, from time to time, be prescribed by the Bank of Uganda;

“profit sharing investment account” means an account managed by a microfinance deposit-taking institution

- (a) in relation to property of any kind, including currency specified in this Act, held for or within the account;
- (b) as part of its Islamic microfinance business; and
- (c) under the terms of an agreement where—
 - (i) the account holder agrees to share any profit with the microfinance deposit-taking institution as a manager of the account in accordance with a pre-determined specified percentage or ratio; and
 - (ii) the account holder agrees that he or she alone will bear any losses in the absence of negligence or breach of contract on the part of the microfinance bank;

“registered society” means a cooperative society registered under the Cooperative Societies Act;

“related interest” means the business interests of affiliates, associates and their related persons;

“reputable financial institution” means a financial institution licensed to conduct banking or other financial institution business under the laws of any other country or territory and which meets the criteria prescribed by the Bank of Uganda;

“reputable public company” means a company that is financially strong, whose ownership is widely distributed, is of good public standing and meets such other criteria as may be prescribed by the Bank of Uganda;

“resident” means—

- (a) an individual who is ordinarily resident in Uganda for one year or more;
- (b) the Government of Uganda and its diplomatic representatives located outside Uganda;
- (c) a company, firm or other enterprise whose principal place of business or centre of control and management is located in Uganda;
- (d) a corporation, firm or other enterprise incorporated or formed under the laws of Uganda; or
- (e) a branch of a company, firm or other enterprise located in Uganda, whose principal place of business is located outside of Uganda,

except that “resident” does not include a foreign diplomatic representation or an accredited official of that representation

located within Uganda, or office of an organisation established by international treaty located within Uganda, or a branch of a company, firm or other enterprise located in Uganda, whose principal place of business is located outside of Uganda;

“*Shari’ah* advisory board” means a board established in accordance with section 22;

“short-term credit facility” means a loan or other credit, for which the period for repayment does not exceed two years;

“significant shareholder” means a shareholder holding five percent or more of the allotted shares of an institution;

“significantly under-capitalised” has the meaning assigned to it in section 63(8);

“small credit” means a loan or other credit which is less than one percent of the core capital prescribed in this Act in the case of individual borrower; and five percent of the core capital prescribed in this Act in the case of a group borrower; and

“time deposits” means deposits repayable after a fixed period or after notice and includes savings deposits.

(2) A reference to loans or credit, lending, extension or provision of credit, credit accommodation or such similar terms, or to any instrument in that respect, collectively referred to as “credit provision” shall apply—

- (a) any finance arrangement which satisfies the following conditions—
 - (i) the arrangement provides for a person who is the financier to pay a sum of money to another person who is the customer;
 - (ii) the arrangement identifies assets, or a class of assets, which the customer acquires;
 - (iii) the arrangement specifies a finance term which shall be the period at the end of which the arrangement shall cease to have effect;
 - (iv) the customer undertakes, under the arrangement, to make a payment in respect of the capital to the financier during or at the end of the finance term, whether in instalments or not and to pay to the financier other payments on one or more occasions during or at the end of the finance term; and
 - (v) the arrangement satisfies such other conditions as may be specified by the Bank of Uganda by regulations;
- (b) any finance arrangement other than the finance arrangement referred to in subsection 2(a) which satisfies the following conditions—

- (i) the arrangement provides for a customer to make a payment in respect of capital to the financier to purchase, lease, hire or otherwise acquire or use assets which are identified;
 - (ii) the financier agrees to sell, lease, hire or otherwise dispose of or allow the use of assets or classes of assets to a customer or to pay a sum of money to another person;
 - (c) any other provision of finance including through the acquisition, disposal or leasing of assets that is economically equivalent to credit provision.
- (3) In this Act, unless the context otherwise requires, a reference to guarantees or similar terms or a reference to any instrument in respect of guarantees or similar terms, in the Act referred to collectively as a “guarantee provision”, shall be interpreted to apply to any arrangement which satisfies the following conditions—
- (a) the arrangement is economically equivalent to a guarantee provision; and
 - (b) the arrangement satisfies such conditions as may be specified by the Bank of Uganda by regulations.

PART II—LICENSING

3. Provisions relating to carrying out of microfinance business

- (1) Microfinance business shall not be transacted in Uganda except by a company or registered society, which is in possession of a valid licence granted by the Bank of Uganda authorising it to conduct microfinance business in Uganda.
- (2) A person licensed to carry out microfinance business may carry out the licensed business through an agent.
- (3) The Bank of Uganda shall, in consultation with the Minister, make regulations in respect of agents and agent banking.
- (4) Any person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred fifty currency points or to imprisonment for a term not exceeding three years, or both; and in the case of a continuing offence to a further fine not exceeding fifty currency points for each day during which the offence continues after conviction.

(5) The Bank of Uganda shall, upon a person being convicted under subsection (4), issue a cease and desist order to that person, prohibiting that person from conducting microfinance business in Uganda.

4. Use of word “bank”, “banker”, “MDI” or “microfinance deposit-taking institution”

(1) Except as otherwise provided by any other Act, the term “bank” or “banker” or any of their derivatives or a term in which the word “bank” or “banker” appears, in any language, may be used in the firm name, title or as an addition to it or in any representation in a bill head, letter paper, notice, advertisement or description of the object of the business only by a bank licensed by the Bank of Uganda to conduct banking business in Uganda.

(2) A microfinance deposit-taking institution licensed under this Act shall use the word “MDI” after its name.

(3) Except as authorised under this Act or any other Act, no person shall use the word “MDI” or the words “microfinance deposit-taking institution” in any of the circumstances specified in subsection (1).

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding one year, or both; and in the case of a continuing offence, to a further fine not exceeding ten currency points for each day during which the offence continues after conviction.

5. Examination of persons suspected of transacting microfinance business and access to premises

(1) Whenever the Bank of Uganda has reason to believe that a person is transacting microfinance business in Uganda without a licence, the Bank of Uganda shall, at all times—

- (a) have full and free access to the premises at which that person is suspected of transacting microfinance business without a licence or at which that person may have books, accounts and records; and
- (b) have the power to examine, copy or take possession of the books, accounts and records of that person in order to ascertain whether

or not that person has contravened, or is contravening any of the provisions of this Act.

(2) Any refusal to allow full and free access to the premises referred to in subsection (1) or to submit any books, accounts or records to which subsection (1) applies shall be *prima facie* evidence of the fact of operation without a licence.

6. Application for licence

(1) A company which desires authority to carry on microfinance business in Uganda shall apply in writing to the Bank of Uganda for a licence under this section and shall supply—

- (a) a copy of the memorandum and articles of association or other instrument under which the company is incorporated, the certificate of incorporation and, in the case of a person intending to conduct Islamic microfinance business, a statement stating that the business of the institution shall be conducted in accordance with the *Shari'ah*;
- (b) verified official notification of the company's registered place of business;
- (c) the prospective place of operation, indicating that of the head office and branches;
- (d) biographical data on each of the founders, proposed directors and officers;
- (e) the information which is necessary for assessing the trustworthiness of the applicant;
- (f) the information which is necessary for assessing the professional qualifications, as required for managing the institution and of the proprietors;
- (g) a copy of the latest balance sheet of the company or such other suitable evidence of the resources needed for business operations; and
- (h) a feasibility study of the company showing the nature of the planned business, the organisational structure and the planned internal monitoring procedures of the company and covering *inter alia* the following aspects—
 - (i) mission statement and overall goals;
 - (ii) market research;
 - (iii) ownership and governance;

- (iv) management;
 - (v) financial analysis; and
 - (vi) business strategy.
- (i) such other information as the Bank of Uganda may, by regulations, specify.
- (2) A registered society which intends to provide financial services among its members shall apply in writing to the Bank of Uganda for a licence if—
- (a) the voluntary savings of the registered society are in excess of one billion five hundred million shillings; and
 - (b) the institutional capital of the registered society is above five hundred million shillings.
- (3) An application under subsection 2 shall be accompanied by—
- (a) a copy of a certificate of registration issued under the Cooperative Societies Act;
 - (b) evidence that the registered society meets the minimum equity requirements prescribed under section 46 of the Tier 4 Microfinance Institutions and Money Lenders Act;
 - (c) information on the prospective place of business, indicating the head office and branches;
 - (d) evidence of payment of the prescribed fees;
 - (e) a report on the objectives of the registered society in relation to offering financial services;
 - (f) evidence of the membership and the shareholding of members;
 - (g) a report on the economic and financial environment of the registered society;
 - (h) the organisational structure and management of the registered society;
 - (i) the business plan of the registered society; and
 - (j) the credit policies and lending procedures of the registered society.
- (4) Any person who knowingly or recklessly furnishes any document or information which is false or misleading in a material particular in connection with an application for a licence under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or to imprisonment for a term not exceeding two years, or both.

(5) Upon receiving an application under subsection (1), the Bank of Uganda shall within six months consider the application and may, subject to section 15, grant a licence, with or without conditions or refuse to grant a licence.

(6) Before issuing a licence under this Act, the Bank of Uganda shall take into account all the matters it considers relevant to the application and, without limiting the generality of the foregoing, the Bank of Uganda shall have particular regard to—

- (a) whether the institution will be operated responsibly by persons who are fit and proper for involvement in microfinance business in accordance with the criteria specified in Schedule 2 to this Act;
- (b) the business record and experience of the applicant or applicants;
- (c) the nature and sufficiency of the financial resources of the applicant as a source of continuing financial support for the institution;
- (d) the soundness and feasibility of the plans submitted by the applicant or applicants for the future conduct and development of the business of the institution; and
- (e) whether public interest will be served by the granting of the licence.

(7) Any person who fails to comply with any of the conditions of its licence commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points and, in the case of a continuing offence, to a further fine not exceeding ten currency points for each day during which the offence continues after conviction.

7. Licensing fees

(1) Every institution shall pay an annual licence fee prescribed by the Bank of Uganda by notice in the *Gazette*.

(2) The Bank of Uganda may prescribe different licence fees in respect of different classes of licences and the fees shall apply uniformly to those classes.

(3) The manner of payment of the licence fee shall be as specified by the Bank of Uganda.

8. Expiry of licence

A licence issued under section 6 shall expire if business is not commenced within one year from the date it is granted.

9. Duration and display of licence

(1) A licence granted under section 6 shall remain valid unless it is revoked.

(2) A licence granted under section 6 shall be displayed in its original form, in a conspicuous place, in the premises in which the institution carries on its lawful business and copies of it shall be similarly displayed in each of the branch offices of the institution.

10. Prohibition on transfer or assignment of licence

A licence issued under this Act shall not be transferable or assignable.

11. Amendment and restriction of licence

(1) Subject to this section, the Bank of Uganda may at any time amend or restrict the licence of an institution—

- (a) to correct any error;
- (b) if the institution requests the amendment;
- (c) if the Bank of Uganda considers the amendment necessary to reflect the true nature of the business which the institution is conducting;
- (d) if it is desirable for the protection of the depositors or potential depositors of that institution; or
- (e) if for any other reason the Bank of Uganda considers the amendment necessary or desirable in public interest.

(2) Before amending the licence of an institution in accordance with subsection (1), other than at the request of the institution, the Bank of Uganda shall notify the institution, in writing, of the nature of the amendment it proposes to make and of its reasons for making the amendment and shall give the institution an opportunity to make representations in that matter.

(3) Where the Bank of Uganda refuses to make an amendment in accordance with subsection (1)(b) it shall, within a reasonable time after reaching its decision, notify the institution in writing of its decision and the reasons for the decision.

12. Revocation of licence

(1) The Bank of Uganda may by notice in writing, revoke or vary a licence issued under this Act if it is satisfied that the licensee at any time—

- (a) has not commenced or has ceased to carry on business;
- (b) has furnished any information or document to the Bank of Uganda in connection with its application for a licence which is false or misleading in a material particular;
- (c) has been found by the Bank of Uganda to be insolvent or unable to pay its liabilities as they mature;
- (d) has gone into liquidation;
- (e) has been wound up;
- (f) has been dissolved;
- (g) is, in the opinion of the Bank of Uganda, conducting business in a manner detrimental to the interests of its depositors or customers;
- (h) has persistently, in the view of the Bank of Uganda, contravened the provisions of this Act;
- (i) has engaged in deception of the Bank of Uganda or the general public in respect of its financial condition, ownership, management, operations or other facts material to its business;
- (j) has without the consent of the Bank of Uganda been amalgamated with another company or has sold or otherwise transferred its assets and liabilities to another company;
- (k) has failed to comply with any condition specified in its licence; or
- (l) has transferred or assigned its licence.

(2) Before varying or revoking a licence, the Bank of Uganda shall give a holder of the licence an opportunity to submit reasons why the conditions of its licence should not be so varied or revoked.

13. Effect of revocation of licence

Where the Bank of Uganda revokes a licence under section 12—

- (a) the Bank of Uganda shall cause notice of the revocation to be published in the *Gazette*; and

- (b) the affected licensee shall, as from the date of the notice cease to transact microfinance business in Uganda except as may be approved by the Bank of Uganda for the purpose of winding up its business.

14. Publication of list of companies

The Bank of Uganda shall once in every year publish in a newspaper circulating in the whole of Uganda, the names of all companies authorised to conduct microfinance business in Uganda.

15. Minimum capital requirements

(1) Subject to this Act, a company shall not be granted or hold a licence unless it has a minimum paid-up capital of twenty-five thousand currency points invested in such liquid assets in Uganda as the Bank of Uganda may approve.

(2) The minimum capital funds of a company referred to in subsection (1) unimpaired by losses shall at all times not be less than thirty-five thousand currency points.

(3) The Minister may, by statutory instrument, with the approval of Parliament, vary the minimum paid-up capital prescribed by subsection (1).

16. On-going capital adequacy requirements

(1) The Bank of Uganda may require any institution to maintain capital funds in Uganda in proportion to its total assets or to every category of assets at such ratio or ratios as may be determined by the Bank of Uganda by notice in writing.

(2) An institution shall not, at any time, have a core capital adequacy ratio of less than fifteen percent of risk-weighted assets of such other percentage as may be determined by the Bank of Uganda.

(3) An institution shall not, at any time, have a total capital adequacy ratio of less than twenty percent of risk-weighted assets or such other percentage as may be determined by the Bank of Uganda.

(4) The Bank of Uganda may suspend or restrict the operations of any institution which fails to comply with subsection (2) or (3) or any requirement of the Bank of Uganda under subsection (1).

17. Minimum liquid assets

(1) The Bank of Uganda shall by regulations prescribe the minimum amount of liquid assets to be held by an institution.

- (2) For the purposes of this Act, “liquid assets” are—
- (a) notes and coins which are legal tender in Uganda;
 - (b) balances with the Bank of Uganda;
 - (c) balances with banks and financial institutions licensed to accept deposits in Uganda;
 - (d) money at call in Uganda;
 - (e) treasury bills issued by Government and maturing within three months, exclusive of days of grace; and
 - (f) such other assets as the Bank of Uganda may approve.

PART III—RESTRICTIONS ON CERTAIN TRANSACTIONS AND DEALINGS BY MICROFINANCE DEPOSIT-TAKING INSTITUTIONS

18. Credit facilities and limits

- (1) An institution shall not—
- (a) grant or permit to be outstanding to any one person or to any group of persons under the control or influence of any one person, any credit facility if the aggregate amount of such credit facility exceeds
 - (i) two percent of the core capital of the institution for an individual borrower; or
 - (ii) five percent of the core capital of the institution for a group borrower;
 - (b) grant any credit facility against the security of its own shares and debt instruments or those of a company affiliated to it;
 - (c) grant directly or indirectly unsecured credit facilities which in the aggregate and outstanding at any time exceed one percent of the core capital of the institution except on terms which are non-preferential in all respects, including creditworthiness, term, interest rate and the value of the collateral—

- (i) to any of its directors, staff members or their associates whether those credit facilities are obtained by them or any of them jointly or severally;
 - (ii) to a firm in which the company or any of its directors, staff member or their associates has an interest as a partner, manager or agent, or to any individual or firm of whom or of which any of its directors is a guarantor;
 - (iii) to a company in which any of its directors, staff member or their associates whether legally or beneficially owns more than fifty percent of the issued capital or in which any of its directors controls the composition of the Board of Directors;
- (d) grant to any of its officers other than a director or its employees or other persons, being persons receiving remuneration from the company, other than any persons receiving remuneration from the company in respect of their professional services, unsecured credit facilities which in the aggregate and outstanding at any one time exceed one year's emoluments of that officer or employee or person.
- (2) All the directors of the institution shall be liable jointly and severally to indemnify the institution against any loss arising from the making of any unsecured credit facility or any credit facility which subsequently becomes an unsecured credit facility under subsection (1)(d), whether the institution has contravened that provision or not.
- (3) In this section
- (a) the reference to "director" in subsection (1)(d) includes the wife, husband, father, mother, son or daughter of a director;
 - (b) for purposes of subsection (1), "non-preferential" means upon terms not more favourable than those which would be offered under prevailing conditions to persons other than those referred to in subsection (1)(c)(i), (ii) and (iii); and
 - (c) "unsecured credit facility" means, a credit facility given without security, or in respect of any credit facility given with security, any part of it which at any time exceeds the market value of the assets constituting that security, or where the Bank of Uganda is satisfied that there is no established market value, on the basis of a valuation approved by it.

19. Prohibited transactions

An institution shall not, without the approval of the Bank of Uganda, whether alone or with others, engage in the following activities and dealings—

- (a) opening and operating demand cheque accounts;
- (b) engaging directly or indirectly for its own account or on a commission basis, in trade, commerce, industry, insurance or agriculture, except in the course of the satisfaction of debts due to it for the purpose of carrying on its business;
- (c) acquiring or holding, directly or indirectly, in the aggregate, any part of share capital of, or make any capital investment or otherwise have any interest in enterprises engaged in trade, commerce, industry or agriculture in excess of twenty-five percent of its core capital, except in the course of the satisfaction of debts due to it; but in such a case all shares and interests shall be disposed of at the earliest reasonable opportunity;
- (d) underwriting and placement of securities;
- (e) transacting in computer networks or electronic commerce;
- (f) engaging in trust operations;
- (g) taking deposits or funds or other property into sharing investment accounts and lending in foreign exchange;
- (h) intermediating loan insurance funds;
- (i) purchasing a non-performing or low quality loan or other credit facility from any of the directors, officers or affiliates of the institution or their related interests; or
- (j) dealing in derivatives including, to any Islamic contract or combination of contracts are economically equivalent to derivatives.

20. Payment of dividends, etc., by institutions

An institution shall not pay a dividend or other income to its shareholders unless it has made adequate provision against losses on loans and has taken adequate steps to ensure compliance with the financial requirements specified in sections 16, 17 and 18.

PART IV—ISLAMIC BANKING

21. Licensing of institutions to conduct Islamic microfinance business

- (1) An institution carrying on microfinance business as at the 14th day of July, 2023 may apply to the Bank of Uganda for a licence to carry on Islamic microfinance business in addition to its licensed microfinance business.
- (2) An institution licensed to carry out Islamic microfinance business under subsection (1), shall carry out that business through an Islamic window.
- (3) The Bank of Uganda shall, by statutory instrument, in consultation with the Minister, make regulations for the licensing and operation of Islamic banking.

22. *Shari'ah* Advisory Board

- (1) Every institution which conducts Islamic microfinance business shall appoint and maintain a *Shari'ah* Advisory Board.
- (2) A *Shari'ah* Advisory Board appointed by an institution under this Act shall advise, approve and review the activities of the Islamic microfinance business in order to ensure that the institution complies with the *Shari'ah*.
- (3) The Bank of Uganda, in consultation with the Minister, shall make regulations in respect of *Shari'ah* Advisory Boards including
 - (a) the size, functions, duties and responsibilities, governance and conduct of *Shari'ah* Advisory Boards;
 - (b) the competency, interests and terms of engagement of members of *Shari'ah* Advisory Boards; and
 - (c) policies, procedures, record-keeping, reviews, reporting and disclosure.
- (4) The appointment, maintenance, operation and conduct of a *Shari'ah* Advisory Board shall at all times be carried out in accordance with the applicable rules and policies of the institution and shall be answerable to the board of directors of that institution.

**PART V—CONDUCT OF BANCASSURANCE BY
MICROFINANCE DEPOSIT-TAKING INSTITUTIONS**

23. Engaging in bancassurance business

(1) An institution shall not engage in insurance business, bancassurance or Islamic insurance business in Uganda as a principal or agent without the prior written authorisation of the Bank of Uganda.

(2) An institution shall engage in the business of bancassurance, insurance or Islamic insurance in a form and manner prescribed by the Insurance Regulatory Authority of Uganda, in consultation with the Bank of Uganda.

(3) Subject to subsections (1) and (2), the bancassurance, insurance or Islamic insurance business activities of an institution shall comply with the Insurance Act.

(4) For the purposes of this section, “bancassurance” means using an institution and its branches, sales network and customer relationships to sell insurance products.

PART VI—OWNERSHIP AND CORPORATE GOVERNANCE

24. Ownership and transfer of shares

(1) No person or group of related persons shall hold more than thirty percent of the shares of an institution.

(2) Subsection (1) shall, subject to the approval of the Bank of Uganda, not apply to the holding or acquisition of shares in an institution by a wholly owned subsidiary of a bank licensed under the Financial Institutions Act or by a reputable financial institution, or in exceptional cases, a reputable public company.

(3) No person shall own five percent or more of the shares of an institution except where that person has been approved as a fit and proper person by the Bank of Uganda in accordance with Schedule 2 to this Act.

(4) Notwithstanding any provision in any other legislation, where any person intends to transfer five percent or more of the shares in an institution, that person shall first seek the approval of the Bank of Uganda.

(5) Notwithstanding the provisions of the Companies Act, an institution or its controlling company shall not, without the written approval of the Bank of Uganda, allot, issue or transfer any of its shares to, or register any of its shares in the name of any person other than the intended beneficial shareholder.

(6) A significant shareholder of an institution shall not participate in the day to day management of an institution.

25. Board of directors

(1) The operations of every institution shall be directed by a board consisting of at least five directors, headed by a chairperson who shall be a non-executive director of the institution.

(2) A person shall not become a director of an institution without the approval of the Bank of Uganda and the Bank of Uganda shall have due regard to the fit and proper person criteria prescribed in Schedule 2 to this Act.

(3) A director serving on the board of an institution shall hold office for a term of five years, renewable once.

26. Board audit committee

(1) There is established a board audit committee comprised of three independent non-executive directors who are persons of proven integrity.

(2) The board audit committee shall serve for a term of three years, renewable once.

27. Disqualified persons

The following persons are disqualified from being directors of an institution—

- (a) a person who is under eighteen years of age;
- (b) a person who is suffering from mental illness and has been so found by a court in Uganda or outside Uganda;

- (c) a person who has the status of a bankrupt;
- (d) a person who is not a natural person;
- (e) a person under any legal disability in Uganda or outside Uganda;
- (fi) any individual who does not satisfy the fit and proper criteria in accordance with Schedule 2 to this Act; or
- (g) a former director of an institution responsible for its placement under management by the Bank of Uganda, receivership or liquidation.

28. Responsibilities of board

- (1) The board of directors of an institution shall be responsible for—
 - (a) the good corporate governance and business performance of the institution;
 - (b) ensuring that the board is in full control of the affairs and business operations of the institution;
 - (c) ensuring that the business of an institution is in compliance with all applicable laws and regulations, and, in the case of an institution that conducts Islamic microfinance business, that the business of the institution complies with the *Shari'ah*, and is conducive to safe and sound banking practices; and
 - (d) ensuring and reporting to the shareholders at the annual general meeting of the institution that the internal controls and systems and management information systems of the institution—
 - (i) provide reasonable assurance as to the integrity and reliability of the financial statements of the institution;
 - (ii) adequately verify, safeguard and maintain accountability of the assets of the institution;
 - (iii) are based on established and written policies and procedures and are implemented by trained and skilled officers with an appropriate segregation of duties; and
 - (iv) are continuously monitored, reviewed and updated by the board of directors to ensure that no material breakdown occurs in the functioning of such controls, procedures and systems.
- (e) For the purposes of this Act, “corporate governance” includes the overall environment in which an institution operates, comprising a system of checks and balances which promotes a healthy balancing of risk and return, and in the case of an institution which conducts Islamic microfinance business, promotes compliance with the *Shari'ah*.

29. Duties of directors

(1) A director in relation to an institution in which he or she serves, stands in a fiduciary relationship and shall in addition and without derogation owe the institution and its shareholders the following duties—

- (a) a duty to act honestly and in good faith;
- (b) a duty to act in the best interests and for the benefit of the institution;
- (c) a duty to act independently, free from undue influence of any person; and
- (d) a duty to access necessary information to enable the director to control and discharge his or her responsibilities.

(2) It shall be the duty of the board of directors as an organ and each director individually to immediately report in writing to the Bank of Uganda if they have reason to believe that—

- (a) the institution may not be able to properly conduct its business as a going concern;
- (b) the institution appears to be or may in the near future be unable to meet all or any of its obligations under this Act; or
- (c) the institution has suspended or is about to suspend any payment of any kind or any transfer or delivery of any asset;
- (d) the institution does not, or may not be able to meet its capital requirements as prescribed by this Act.

(3) A director serving on the board of an institution or a financial institution licensed under the Financial Institutions Act shall not simultaneously serve as a board member or in any executive capacity with another institution or its subsidiary or affiliate.

(4) An individual director who intends to report to the Bank of Uganda in accordance with subsection (2), shall make his or her intention known to the board in writing, prior to reporting to the Bank of Uganda.

(5) Where the board of directors or a director fails to report to the Bank of Uganda any matter required to be reported under subsection (2), the Bank of Uganda may withdraw its approval of—

- (a) the board of directors as an organ; or
- (b) an individual director.

30. Meetings of board

- (1) The directors shall meet at least four times during each financial year.
- (2) Unless otherwise specified by the Bank of Uganda, the board of directors of an institution shall meet at such time and place in Uganda as dictated by the business of the institution.
- (3) The Bank of Uganda may—
 - (a) order the board of directors of an institution to convene a meeting and consider specified agenda;
 - (b) appoint an observer to any board meeting of an institution; or
 - (c) by notice order any institution to provide it within such period as shall be specified in the notice, a copy of the board minutes and resolutions duly certified as a true record by the secretary and chairperson to the board.
- (4) Where a meeting of the board is convened under subsection (3)(a), the quorum of the meeting shall be at least half of the directors and decisions shall be taken by a simple majority.
- (5) A director or officer of an institution shall not deliberate on any matter in which he or she has an interest.
- (6) In any meeting where subsection (5) applies, every director or officer of an institution shall inform the meeting of his or her interest and shall to the extent of the deliberation on the matter in which that director or officer has an interest, exclude himself or herself from further attendance at that meeting.

31. Other staff of the institution

- (1) Every institution shall appoint officials who shall perform such functions and duties prescribed by regulations, as may be agreed upon in consultation with the Bank of Uganda.
- (2) The officers referred to in subsection (1) shall include a finance manager who shall have the following duties—

- (a) perform such functions as the board of directors shall specify in relation to establishing guidelines for the institution's tolerance for risk, and expectations from investment; and
 - (b) introduce such measures as, in his or her opinion, may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the institution.
- (3) The guidelines referred to in subsection (2) shall include but may not be limited to the following areas—
- (a) limits on loan or other credit facility to deposit ratio;
 - (b) limits on loan or other credit facility to capital ratio;
 - (c) limits on exposure to single or related customers;
 - (d) flexible limits on the percentage reliance on a particular deposit liability category;
 - (e) limits on maximum and minimum maturities for newly acquired categories of assets and liabilities;
 - (f) limits on maximum and minimum maturities for existing categories of assets and liabilities;
 - (g) limits on the sensitivity of the net interest margin on changes in market interest rates;
 - (h) maximum percentage imbalance between rate sensitive assets and liabilities;
 - (i) limits on minimum spread acceptable between costs and yields of liabilities and assets;
 - (j) limits on minimum liquidity provision to be maintained to sustain operations while longer term adjustments are made; and
 - (k) primary sources of meeting funds that should be quantified.

32. Internal auditor

- (1) Every institution shall, with the approval of the Bank of Uganda appoint an internal auditor who shall report to the board of directors.
- (2) The duties of the internal auditor shall be to—
- (a) evaluate the reliability of the information produced by accounting and computer systems;
 - (b) provide an independent appraisal function;
 - (c) evaluate the effectiveness, efficiency and economy of the operations of the institution;
 - (d) evaluate compliance with laws, policies and operating instructions;

- (e) provide investigative services to line management;
- (f) certify returns submitted to the Bank of Uganda by the institution;
- (g) establish appropriate accounting procedures and accounting controls in respect of the business of the institution;
- (h) ensure compliance with the procedures established under paragraph (g);
- (i) require the management of the institution to implement and maintain appropriate internal control procedures and management information systems;
- (j) review, evaluate and approve the internal control procedures and other systems;
- (k) review operations and transactions of the institution that could adversely affect the well-being of the institution;
- (l) ascertain the nature of the external audit, coordinate the internal and external audits and consider rectification and implementation of issues raised by the external auditor; and
- (m) perform an audit of the financial statements of the institution to detect irregularities and illegal acts in the conduct of the business of the institution;
- (n) perform any other additional duties as the Bank of Uganda may specify by regulations; and
- (o) perform any other duties as the board of directors of the institution or the board audit committee may specify.

33. External auditor

For the purpose of this section and sections 34 to 48—

“firm of accountants” means a partnership, the members of which are accountants engaged in the practice of accounting, or a body corporate that is incorporated by or under any Act of Parliament, engaged in the practice of accounting; and

“member”, in relation to a firm of accountants, means—

- (a) an accountant who is a partner in a partnership, the members of which are accountants engaged in the practice of accounting; or
- (b) an accountant who is an employee of a firm of accountants.

34. Appointment of external auditor

(1) Every institution shall appoint a firm of accountants approved by the Bank of Uganda to be the external auditors of the institution.

(2) A firm of accountants shall not be approved by the Bank of Uganda as external auditors of an institution unless it complies with such conditions in relation to the discharge of its duties as the Bank of Uganda may determine and is qualified to be external auditors of any financial institution.

(3) The Bank of Uganda may appoint a firm of accountants to be the external auditors of an institution—

- (a) if the institution fails to appoint external auditors; or
- (b) if it considers it desirable that other external auditors should act with the auditors appointed under subsection (1).

(4) The Bank of Uganda may fix the remuneration to be paid by the institution to the external auditor appointed under subsection (3).

35. Qualifications of external auditor

(1) A firm of accountants is qualified to be an external auditor of an institution if—

- (a) two or more members of the firm are accountants who—
 - (i) are members in good standing of the Institute of Certified Public Accountants established under the Accountants Act;
 - (ii) each have at least two years experience at a senior level in performing audits of a financial institution; and
 - (iii) are independent of the institution; and
- (b) the member of the firm jointly designated by the firm and the institution to conduct the audit of the institution on behalf of the firm is qualified in accordance with paragraph (a).

(2) For the purposes of subsection (1)—

- (a) independence is a question of fact;
- (b) a member of a firm of accountants is deemed not to be independent of an institution if that member or any other member of the firm of accountants, or if the firm of accountants—
 - (i) is a director or an officer or employee of the institution or of any affiliate of the institution or is a business partner of

- any director, officer or employee of the institution or of any affiliate of the institution;
 - (ii) beneficially owns or controls directly or indirectly, a material interest in the shares of the institution or of any affiliate of the institution;
 - (iii) has been a liquidator, trustee in bankruptcy, receiver or manager of any affiliate of the institution within the two years immediately preceding the firm's proposed appointment as auditor of the institution; or
 - (iv) performs duties of secretary or book keeper for that institution; and
- (c) a member of a firm of accountants or the firm of accountants is not independent of the institution if any circumstances exist which may impair the independence or impartiality of that person or firm in the performance of the duties of that person or that firm as auditor of the institution.

36. External auditor not to be changed without approval of Bank of Uganda

- (1) No institution shall, before the expiry of a running term, remove or change its auditor except with the approval of the Bank of Uganda.
- (2) An auditor of an institution who resigns or is asked by the institution to resign shall—
 - (a) give adequate written notice to the institution of his or her decision to resign;
 - (b) give written notice to the institution of his or her forced resignation; and
 - (c) submit to the Bank of Uganda a written statement giving the reasons for the resignation.
- (3) An institution which contravenes subsection (1) is liable to a civil penalty of two hundred currency points.

37. Insurance cover by external auditor

A firm of accountants approved by the Bank of Uganda to be auditors of an institution shall have in force before the audit and during the entire duration

of the audit, a valid professional indemnity insurance cover for negligence in the performance of its duties under this Act.

38. Time limit for external auditor

No audit firm shall serve the same institution for a continuous period exceeding four years.

39. Duties of external auditor

The duties of an external auditor appointed under section 34(1) or (3) shall be—

- (a) in relation to the institution—
 - (i) to perform an audit in accordance with the standards adopted by the relevant accounting and auditing regulatory bodies in Uganda;
 - (ii) to communicate to the board of directors of the institution any evidence it may have that irregularities or illegal acts have been committed in the course of the business of the institution, whether or not the irregularities or illegal acts may have led to material misstatements in the accounts or records of the institution;
 - (iii) to warn the board of directors of the institution of—
 - (A) the institution's ability or inability to meet the prescribed capital requirements;
 - (B) the institution's ability or inability to meet the prescribed liquidity requirements;
 - (C) the risks faced by the institution;
 - (D) any other matter which the auditor becomes aware of in the performance of the duties or functions of the auditor which may—
 - (I) prejudice the ability of the institution to continue conducting its business as a going concern;
 - (II) be detrimental to the interest of the depositors; or
 - (III) violate the principles of sound financial management or the maintenance of adequate internal controls and systems by the institution;

- (E) any act which has contributed to a loss of money or assets of the institution; and
 - (F) any other matter which, in the opinion of the auditor, requires rectification or attention by the institution;
 - (iv) to obtain sufficient, relevant and reliable evidence to satisfy themselves of the various matters necessary to form their opinion;
 - (v) to carefully plan, supervise and review all their work including work performed by subordinate staff;
 - (vi) to ascertain, evaluate and test internal controls before placing audit reliance on them;
 - (vii) to exercise reasonable care and skill in accordance with the current professional standards and practices and to perform the audit in accordance with international auditing standards and such other regulations, directives, policies and guidelines as the Bank of Uganda may issue; and
 - (viii) to assess, and in writing comment on the report of the board of directors before the report is tabled at the annual general meeting;
- (b) in relation to the Bank of Uganda—
- (i) to communicate to the Bank of Uganda any evidence it may have that irregularities or illegal acts have been committed by
 - (A) any director of the institution;
 - (B) the institution; or
 - (C) any other person,if there is a reasonable possibility that they may significantly damage the financial stability of the institution;
 - (ii) to inform the Bank of Uganda, if there are reasonable grounds to believe that the institution is insolvent or that there is a significant risk that it will become insolvent;
 - (iii) to verify all quarterly returns and other reports of the institution which the Bank of Uganda may from time to time require to be verified;
 - (iv) to submit to the Bank of Uganda a management letter in which is disclosed all shortcomings and illegal acts committed by the institution or its directors; and
 - (v) to perform any other duties as may be assigned by the Bank of Uganda.

40. Additional duties of external auditor

(1) The Bank of Uganda may impose all or any of the following duties on an external auditor in addition to those prescribed by section 39—

- (a) a duty to submit such additional information in relation to its audit as the Bank of Uganda considers necessary;
- (b) a duty to enlarge or extend the scope of its audit of the business and affairs of the institution;
- (c) a duty to carry out any other examination or establish any procedure in any particular case; or
- (d) a duty to submit a report on any of the matters referred to in paragraphs (b) and (c).

(2) The institution shall remunerate the external auditor in respect of the discharge by it of all or any of the additional duties specified in subsection (1).

41. Information by external auditor to Bank of Uganda

(1) The Bank of Uganda may, by notice in writing, require a person who is or has been an auditor of an institution or its subsidiary or affiliate to provide any information about the institution, its subsidiary or affiliate, if the Bank of Uganda considers that the provision of that information would assist the Bank of Uganda in performing its functions.

(2) Any person to whom a request for provision of information has been made under subsection (1) who refuses, neglects or fails to provide that information, commits an offence and is liable, on conviction, to a fine not exceeding twenty-five currency points or to imprisonment for a term not exceeding six months, or both.

42. Powers of external auditor

(1) Every auditor of an institution shall—

- (a) have a right of access at all reasonable times to books, accounts, vouchers, securities, records, computer systems and assets of the institution; and
- (b) be entitled to require such information and explanations from any present or former director, officer, employee or agent of the institution,

as are in the opinion of the auditor or auditors, necessary to perform the duties of the auditor or auditors of the institution.

(2) A person who fails without just cause—
(a) to permit an auditor the access referred to in subsection (1)(a); or
(b) to comply with a requirement under subsection (1)(b), commits an offence and is liable, on conviction, to a fine not exceeding twenty-five currency points or to imprisonment for a term not exceeding six months, or both.

43. No civil liability

A person who in good faith makes an oral or written communication under section 41(1) shall not be liable in any civil action arising from having made the communication.

44. Audit report and management letter

(1) The external auditor of an institution shall, after performing an audit, submit to the institution an audit report and a management letter.
(2) The institution shall submit the audit report and management letter made and submitted to it under subsection (1), to the Bank of Uganda within three months after the end of its financial year.

(3) Any institution which fails to submit a report required under subsection (2) shall pay to the Bank of Uganda a civil penalty of fifty currency points and an additional penalty of ten currency points for each day of default.

(4) An institution shall provide the external auditor with a letter of assurance from management stating that they have disclosed all financial and other related transactions both off and on balance sheet including contingent liabilities.

(5) A copy of the letter of assurance referred to in subsection (4) shall be submitted to the Bank of Uganda with the audit report.

45. Qualified audit report

The auditor shall, in every report on the institution prepare audited annual financial statements which include a qualification, identity and quantify the matters for qualification where possible.

46. Rejection of audit report

The Bank of Uganda may, if dissatisfied with the standard or quality of the audit, reject the audit report and call for a fresh audit at the expense of the institution concerned.

47. Requirements on provisions

The Bank of Uganda shall, before the annual accounts of an institution are finalised, dividends are paid and the capital requirements stipulated in sections 15 and 16 are met, require to be satisfied by the institution in respect of—

- (a) sufficiency of provisions for bad debts; and
- (b) the existence and enforcement of a proper policy of non-accrual of interest or other economic return on non-performing loans or other credit facilities.

48. Meetings with auditors

- (1) The Bank of Uganda shall at least once in every financial year, arrange trilateral meetings with an institution and its auditors to discuss matters relevant to the Bank of Uganda's supervisory responsibilities which have arisen in the course of the statutory audit of that institution.
- (2) The Bank of Uganda shall, if it considers it necessary, arrange from time to time bilateral meetings with the auditors of an institution.

49. Indemnity

No liability shall be incurred by an external auditor as a result of anything done by him or her in good faith and not negligently in the exercise of any power, or the performance of any function or duty, conferred or imposed by or under this Act.

50. Credit Reference Bureau

(1) Every institution shall promptly report to the Credit Reference Bureau established by the Bank of Uganda—

- (a) all the details of non-performing loans and other credit facilities classified as doubtful or loss in its portfolio, where the amount owed is not in dispute, and the customer has not made any satisfactory proposals for repayment following formal demand, and the customer has been given at least twenty-eight days' notice of the intention to disclose that information to the Credit Reference Bureau; and
- (b) information on its customers involved in financial malpractices including bouncing of cheques due to lack of funds or fraud.

(2) No information other than that referred to in subsection (1) shall be divulged by any institution to the Credit Reference Bureau without the customers' consent.

(3) Where—

- (a) the Credit Reference Bureau; or
- (b) an institution,

discloses to an institution or its officer, or to the Credit Reference Bureau or its officer the information referred to in subsection (1) in good faith, in the performance of their duties, no right of action shall accrue to or against the customer for breach of any duty of confidentiality.

(4) A customer of an institution has a right to know what information is held on him or her by the Credit Reference Bureau.

(5) An institution shall perform a credit check on all its customers at the time they apply for credit facilities, unless the Bank of Uganda otherwise directs.

(6) The Bank of Uganda may provide for any other circumstances under which institutions may be required to perform a credit check on their customers.

51. Corporate records

An institution shall prepare and maintain adequate books of accounts, vouchers, securities, records, computer systems and other financial and non-financial records which—

- (a) show a true and fair state of affairs; and
- (b) explain its transactions and financial position to enable the Bank of Uganda to determine whether the institution has complied with the provisions of this Act.

52. Form of corporate records, etc.

The financial and non-financial records referred to in section 51 shall be kept and recorded in the English language using the system of numerals employed in Government accounts and shall comply with the requirements of the Companies Act, international accounting standards and such other requirements that the Bank of Uganda may in writing prescribe.

53. Submission of audited accounts

(1) An institution shall within four months after the end of its financial year, submit to the Bank of Uganda its audited accounts approved at its annual general meeting together with the auditors' report and management letter.

(2) The form and content of audited accounts required under this section shall comply with the requirements prescribed by the Bank of Uganda by notice.

54. Financial year

The financial year of every institution shall be the period of twelve months ending on 31st December in each calendar year.

55. Disclosure of violation in audited financial statements

The financial statements of an institution shall as a minimum, disclose the following—

- (a) the name of any person or group of related persons who hold twenty percent or more of the total voting rights in the institution;

- (b) the advances or credit facilities exceeding one percent of the core capital lent to a single person or group of related persons including the number of borrowers and amounts advanced;
- (c) the amounts of any lending to insiders including directors and companies in which they have an interest, management, officers of the institution and their associates and the names of those persons; and
- (d) the interest rates and performance status of all loans.

56. Publication of audited accounts

(1) Every institution shall within three months after the end of its financial year publish in a newspaper of wide circulation in Uganda, in such form and content as the Bank of Uganda may by notice in writing prescribe, a copy of its audited accounts together with the auditors' report.

(2) Every institution shall exhibit throughout the year in a conspicuous place at each of its offices and branches, a copy of its audited annual financial statements together with the auditors' report.

(3) An institution shall, by the 31st day of August of every year, exhibit in the banking hall of each of its offices and branches, a copy of its unaudited financial statement, stating the fact that the accounts are not audited.

57. Rectification of audited accounts

Where the Bank of Uganda is satisfied that the audited accounts of any institution do not comply with the requirements of this Act, or contain information that may be misleading in any way, or are not published in the form and with such content as specified by this Act, the Bank of Uganda may require the institution to—

- (a) amend or correct the audited accounts to comply with this Act or any other additional requirements;
- (b) correct the misleading information;
- (c) republish the amended or corrected audited accounts; and
- (d) submit to the Bank of Uganda such further documents, information or explanations relating to any document or information as the Bank of Uganda may require.

58. Protection and retention of records

- (1) An institution shall take reasonable precautions to—
(a) prevent loss or destruction of;
(b) prevent falsification of entries in;
(c) facilitate detection and correction of inaccuracies in; and
(d) ensure that unauthorised persons do not have access to or use of information in,

the books, accounts, vouchers, securities, records, computer systems and other financial and non-financial records required or authorised by this Act to be prepared and maintained.

(2) An institution shall preserve the corporate accounting and other financial records referred to in this section for not less than ten years.

(3) In this section, “financial records” includes any book, record, report, statement or document relating to the business affairs, transactions and property of the institution.

PART VII—SUPERVISION OF MICROFINANCE DEPOSIT-TAKING INSTITUTIONS**59. Responsibilities of Bank of Uganda**

- (1) Subject to this Act, the Bank of Uganda shall be responsible for—
(a) continuously supervising institutions to ensure that they comply with the provisions of this Act; and
(b) monitoring associates or affiliates of institutions to ensure that the institutions comply with the provisions of this Act.
- (2) The Bank of Uganda’s function of supervising institutions may be exercised through all or any of the following methods—
(a) analysis of documents and information submitted to it under sections 53 and 57(d) and statutory returns;
(b) the inspection and analysis of corporate accounting, financial and non-financial records prepared and maintained at the premises of the institution concerned; or
(c) any other lawful means that the Bank of Uganda considers appropriate.

(3) In this section, “statutory returns” means information and data of the business of an institution in Uganda, including periodic returns called for by the Bank of Uganda and the audited balance sheet and profit and loss account of the institution.

60. Powers of supervisors

For the purpose of supervising any institution, the Bank of Uganda may—

- (a) at any time, at the Bank of Uganda’s discretion, enter any premises of the institution or any premises in which it is believed on reasonable grounds that books, records, accounts or documents relating to the institution’s business are kept;
- (b) require any officer, employee or agent of the institution to produce any of the corporate accounting, financial and non-financial records or documents of the institution;
- (c) search any premises referred to in paragraph (a) for any money, financial and non-financial records, books or documents;
- (d) open or cause to be opened any strong room, safe or other container in which it is suspected, on reasonable grounds, that there are any of the institutions securities, books, records, accounts or documents;
- (e) examine and make extracts from and copies of any of the securities, books, records, accounts or documents of the institution;
- (f) remove any of the securities, books, records, accounts or documents of the institution from the premises of the institution, for as long as may be necessary for the purpose of examining them or making extracts from or copies of them; or
- (g) require any officer, employee or agent of the institution—
 - (i) to explain any entry in the books, records, accounts or documents of the institution; or
 - (ii) to provide the Bank of Uganda with such information concerning the management or activities of the institution as the supervisor may reasonably require.

61. Periodic reports

(1) The Bank of Uganda shall require an institution to furnish the Bank of Uganda with periodic reports of its operations, at such times and in such form as the Bank of Uganda may by notice prescribe.

(2) In examining the reports, the Bank of Uganda shall require to be satisfied about—

- (a) compliance by the institution with the capital requirements;
- (b) the composition of assets and liability items;
- (c) the quality of the earning assets;
- (d) financial risks, operational risks, business risks and event risks; and
- (e) any other matter that in the opinion of the Bank of Uganda is relevant to the discharge of its supervisory functions under this Act.

(3) Any institution which fails to submit a report required under this section shall pay to the Bank of Uganda a civil penalty of fifty currency points and an additional penalty of ten currency points for each day of default.

62. Corrective actions

If the Bank of Uganda is satisfied that an institution, its directors or Board of Directors has contravened any term or condition of its licence or any provision of this Act or any direction, requirement, duty or order made under this Act, the Bank of Uganda may, subject to this section do any one or more or the following

- (a) issue a warning to the institution;
- (b) issue a written instruction to the institution to undertake remedial action specified in the instruction;
- (c) issue directions regarding measures to be taken to improve the management, financial soundness or business methods of the institution;
- (d) require the directors or management or both the directors and management of the institution to execute an agreement concerning their implementation of instructions and directions issued in accordance with paragraphs (b) and (c);
- (e) require the institution to appoint a person who in the opinion of the Bank of Uganda, is qualified to advise the institution on the proper conduct of its business;
- (f) initiate a legally binding cease and desist order of either temporary or indefinite duration requiring the institution to—
 - (i) stop any improper or unacceptable practice;
 - (ii) put a limit to lending; or
 - (iii) stop or suspend any declaration of dividends;

- (g) convene a meeting of the shareholders or other owners of the institution to discuss the remedial measures to be taken;
- (h) direct the institution to suspend all or any of its business;
- (i) withhold approvals on the establishment of new branches;
- (j) require the institution to inject such new capital as may be specified;
- (k) appoint a supervisor to monitor the affairs of the institution;
- (l) appoint a person, suitably qualified and competent to manage the affairs of the institution;
- (m) instruct the institution to suspend or remove any director, officer or employee from the performance of his or her duties;
- (n) remove or suspend any person from the management of the affairs of the institution;
- (o) require the institution to reconstitute its board of directors within a period specified by the Bank of Uganda;
- (p) impose on a defaulting member of the management of the institution, a civil penalty not exceeding one hundred currency points to be paid personally by that member; or
- (q) impose any other sanctions as the Bank of Uganda may deem appropriate in the circumstances.

63. Prompt mandatory corrective actions

(1) The prompt, mandatory corrective actions prescribed in this section shall take precedence over any discretionary corrective actions available to the Bank of Uganda under this Act or any other law.

(2) Where an institution is in compliance with the capital requirements prescribed in sections 15 and 16 but has incurred or is likely to incur large losses within any financial year, the Bank of Uganda shall take the following actions against the institution

- (a) prohibit the institution from declaring and distributing any dividends which would in the opinion of the Bank of Uganda, be likely to cause the institution to contravene the capital requirements prescribed in sections 15 and 16;
- (b) prohibit the institution from awarding any bonuses or increments in the salary, emoluments and other benefits of all directors, officers and employees of the institution;
- (c) undertake more frequent inspections of the institution; and

- (d) require the institution to provide written explanation detailing the causes of such losses and the measures to be taken by the institution to rectify the position and avert future losses;
 - (e) restrict the rate of interest or other economic return on savings and time deposits, payable by the institution, to rates that the Bank of Uganda shall determine.
- (3) Where an institution has contravened the capital requirements prescribed in sections 15 and 16, the Bank of Uganda shall take the following actions against that institution—
- (a) all of the actions prescribed in subsection (2)(a), (b) and (c);
 - (b) order the institution to submit to the Bank of Uganda, within forty-five days after the order, a capital restoration plan containing such details as shall be specified in the order; and
 - (c) appoint a person, suitably qualified and competent in the opinion of the Bank of Uganda, to advise and assist the institution in designing and fulfilling the capital restoration plan, and the person so appointed shall regularly report to the Bank of Uganda on the progress of the capital restoration plan.
- (4) Where an institution fails, refuses or neglects to comply with the requirements or prescriptions of subsection (3), the Bank of Uganda shall—
- (a) prohibit the institution from opening new branches;
 - (b) impose restrictions on the growth of assets or liabilities or both, of the institution as the Bank of Uganda shall deem fit;
 - (c) remove any officer of the institution responsible for its non-compliance with the orders; and
 - (d) order the institution to do anything that the Bank of Uganda may deem necessary to rectify the capital position of the institution.
- (5) Where an institution is significantly under-capitalised, the Bank of Uganda shall immediately take any or all of the following actions against it—
- (a) take any or all of the actions prescribed in subsection (4); or
 - (b) enter into an agreement with the Board of Directors of the institution requiring the institution to restore its core capital to eight percent of the total risk adjusted assets within such period as shall be notified by the Bank of Uganda, except that the period shall not exceed one hundred eighty days.
- (6) Where at any time—

- (a) after the period given in subsection (5) the institution is unable to restore its core capital to eight percent of the total risk adjusted assets; and
- (b) before the end of that period, the Bank of Uganda is of the opinion that the financial position of the institution continues to deteriorate, the Bank of Uganda shall close the institution and place it under receivership.

(7) The provisions of this section shall not be construed so as to preclude the Bank of Uganda from closing any institution under any other provision of this Act.

(8) For the purposes of this Act, a significantly under-capitalised institution is one which does not comply with any of the following—

- (a) hold minimum capital funds, unimpaired by losses, of at least fifty percent of the requirement prescribed under section 16;
- (b) hold core capital of at least fifty percent of the requirement prescribed under section 17; or
- (c) hold total capital of at least fifty percent of the requirement prescribed under section 17.

64. Management take over

(1) Where—

- (a) the Bank of Uganda considers that an institution is in an unsound financial condition, is not operating in accordance with sound administrative and accounting practices and procedures and is not adhering to proper risk management policies;
- (b) an institution has failed to comply with the minimum financial requirements prescribed under this Act;
- (c) an institution refuses to submit itself to inspection by the Bank of Uganda as required by this Act;
- (d) an institution's licence has been cancelled or revoked under section 12;
- (e) the continuation of the business of an institution is detrimental to the interests of its depositors; or
- (f) an institution is conducting its business in a manner contrary to this Act,

the Bank of Uganda may take over the management of the institution for such maximum period as in its opinion will permit the financial condition of the institution to be remedied or resolved.

- (2) With effect from the date on which an institution is placed under the management of the Bank of Uganda
- (a) all legal proceedings and the execution of all writs, summonses and other legal processes against the institution concerned shall be stayed and not be instituted or proceeded with unless the High Court has granted leave and the Bank of Uganda has received thirty days' notice of the intention to sue or apply;
 - (b) the operation of set-off in respect of any amount owing by a creditor to the institution concerned shall be suspended;
 - (c) any term whether statutory, contractual or otherwise on the expiration of which a claim of right of the institution concerned would expire or be extinguished, shall be extended six months from the date of the seizure;
 - (d) any attachment or lien existing six months prior to the takeover by the Bank of Uganda of the management of the institution concerned shall be vacated and no attachment or lien except a lien created by the Bank of Uganda, shall attach to any property or asset of the institution concerned as long as the Bank of Uganda continues to manage the institution;
 - (e) any transfer of any assets of the institution concerned made six months before the takeover by the Bank of Uganda of the management, with intent to effect a preference of less than the appraised book value is void;
 - (f) any gratuitous transfer of any asset of the institution concerned made within one year before the takeover by the Bank of Uganda of the management shall stand revoked and all such assets shall be surrendered to the Bank of Uganda; and
 - (g) any lending or other credit facility to any officer, director or any related person of an officer or director on preferential terms or without adequate security made within six months prior to the takeover by the Bank of Uganda of the management of the institution concerned shall be rescinded; and that officer, director or related person of the officer or director shall immediately refund the monies advanced and the interest or other economic return accrued.

65. Powers of Bank of Uganda on management takeover of institution

The Bank of Uganda shall have the following powers, to the extent that it is authorised to exercise them in terms of its taking over the management of an institution—

- (a) to suspend or reduce, as from the date on which the institution concerned was placed under its management or any subsequent date, the right of the creditors of the institution to claim or receive interest on any money owing to them by the institution;
- (b) to make payments whether in respect of capital or interest, to any creditor of the institution concerned at such time, in such order and in such manner as it thinks fit;
- (c) to cancel any agreement between the institution concerned and any other party to advance money due after the date on which the management of the institution was taken over or to extend any existing credit facility after that date, if in its opinion—
 - (i) that advance or any loan under that facility would not be adequately secured or would not be repayable on satisfactory terms;
 - (ii) the institution lacks the necessary funds to meet its obligations under that agreement; or
 - (iii) it would not otherwise be in the interests of the institution to abide by the agreement;
- (d) to convene, in such manner as it thinks fit, a meeting of the creditors of the institution concerned for the purpose of establishing the nature of the institution's indebtedness to them and consulting them on decisions taken by it in the course of managing the affairs of the institution, to the extent that the interest of the creditors may be affected by those decisions;
- (e) to negotiate with any individual creditor of the institution concerned with a view to final settlement of the affairs of the creditor with the institution;
- (f) to cancel any lease of movable or immovable property entered into by the institution concerned before its management was taken over; except that a claim for damages in respect of such a cancellation may be instituted against the institution after the expiry of one year from the date of the cancellation or after such shorter period as the High Court may permit;
- (g) to dispose, by public auction, tender or individual negotiation, of any asset of the institution concerned, including any advance or other credit facility or any loan under a facility referred to in paragraph (c);
- (h) to continue or discontinue any of the operations of the institution as an institution, notwithstanding the revocation, where applicable, of the licence of the institution;

- (i) to stop or limit the payment of the obligations of the institution;
- (j) to employ any necessary staff;
- (k) to execute any instrument in the name of the institution;
- (l) to initiate, defend and conduct in its name any action or proceeding to which the institution may be a party;
- (m) to re-organise or liquidate the institution;
- (n) to appoint a person to be known as a statutory manager to manage, control and direct the affairs of the institution;
- (o) to assume or reject any executory contracts;
- (p) to cancel any tenancy agreement entered into by the institution as a tenant;
- (q) to appoint an advisory board of directors;
- (r) to close the institution; and
- (s) to do any other act which is necessary to enable the Bank of Uganda to perform its obligations under this section.

66. Duties of Bank of Uganda on management takeover of institution

Upon taking over and assuming the management of an institution, the Bank of Uganda shall—

- (a) immediately inform the public;
- (b) appoint an auditor at the expense of the institution to make an inventory of the assets and liabilities of the institution and submit a report to the Bank of Uganda;
- (c) manage the institution concerned in such a manner as it considers prudent and most likely to promote the interest of the institution;
- (d) ensure that proper accounting records are kept and proper annual financial statements are prepared in relation to the operations of the institution;
- (e) examine the affairs and transactions of the institution concerned before its management was taken over to ascertain whether any past or present director, officer or employee of the institution—
 - (i) has contravened or appears to have contravened any provision of this Act;
 - (ii) has committed or appears to have committed any offence; or
 - (iii) is or appears to be personally liable to pay damages or compensation to the institution or is personally liable for any of the liabilities of the institution; and

- (f) close the institution and place it under receivership if within one hundred twenty days after its management takeover, it fails to comply with prudential standards; except that the Bank of Uganda may in the best interest of the depositors, the public or the financial sector close the institution before the expiry of the one hundred twenty days.

67. Powers and duties of statutory manager

(1) A statutory manager appointed under section 65(n) shall have the powers and functions of the members of the board of directors collectively and individually, including the board's powers of delegation and use of the seal of the institution until an advisory board of directors is appointed.

- (2) The duties of a statutory manager shall include
- (a) tracing and preserving all the property and assets of the institution;
 - (b) recovering debts and other sums of money due to and owing to the institution;
 - (c) evaluating the capital structure and management of the institution and recommending to the Bank of Uganda any restructuring or re-organisation which the statutory manager considers necessary and which subject to the provisions of any other enactment may be implemented by him or her on behalf of the institution;
 - (d) entering into contracts in the ordinary course of the business of the institution, including the raising of funds by borrowing on such terms as the statutory manager may consider reasonable;
 - (e) obtaining from any officers or employees of the institution any document, records, accounts, statements or information relating to its business;
 - (f) issuing a new balance sheet and profit and loss accounts; and
 - (g) any other duties that may be assigned to the statutory manager by the Bank of Uganda.

(3) For the purpose of discharging his or her responsibilities, a statutory manager shall have power to declare a moratorium on the payment by the institution of its depositors and other creditors and the declaration of the moratorium shall—

- (a) be applied equally and without discrimination to all classes of creditors;

- (b) limit the maximum rate of interest which shall accrue on deposits and other debts payable by the institution during the period of the moratorium to a minimum rate prescribed by the Bank of Uganda by notice for the purpose of this section, except that this paragraph shall not be construed so as—
 - (i) to impose an obligation on the institution to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case; or
 - (ii) to suspend the running of time for the purposes of any limitation period in respect of any claim by any depositor or creditor of the institution; or
- (c) cease to apply upon the termination of the appointment of the statutory manager and in such a case the rights and obligations of the institution, its depositors and creditors shall, except to the extent provided in this paragraph be the same as if there had been no declaration under this subsection.

(4) A statutory manager may for the purpose of exercising his or her duties under this Act require any person who has at any time been an officer, director or employee of the institution to provide him or her with information relating to the business of the institution.

(5) Any person who wilfully refuses, neglects or fails to provide information requested under subsection (4) commits an offence and is liable, on conviction, to a fine not exceeding twenty-five currency points or to imprisonment for a term not exceeding six months, or both.

68. Management by Bank of Uganda not relief from contractual obligations

A party to a contract with an institution shall not be relieved of his or her obligations on the ground that the institution is under the management of the Bank of Uganda.

69. Costs of management

All costs of management by the Bank of Uganda shall be payable by the institution and shall be a debt due from the institution to the Bank of Uganda.

70. Offences

Any person who with the intent to deceive or mislead, in any book, record, report, statement or other document relating to the business affairs, transactions, property, assets, liabilities or accounts of an institution—

- (a) makes a false entry knowing it to be false, or causes such an entry to be made;
- (b) omits an entry or causes an entry to be omitted; or
- (c) alters, abstracts, conceals, removes or destroys an entry, or causes an entry to be altered, abstracted, concealed, removed or destroyed,

commits an offence and is liable, on conviction, to a fine of not less than fifty currency points but not exceeding one hundred currency points or to imprisonment for a term not less than six months but not exceeding one year, or both.

PART VIII—RECEIVERSHIP**71. Placing of institution under receivership**

(1) The Bank of Uganda may close up an institution and place it under receivership if—

- (a) there is a likelihood that the institution will not be able to meet the demands of its depositors or pay its obligations in the normal course of business; or
- (b) the company has incurred or is likely to incur losses that will deplete all or substantially all of its capital.

(2) Upon an institution being placed under receivership, the Bank of Uganda shall become the receiver of the closed company.

(3) Notwithstanding subsection (2), the Bank of Uganda may in writing appoint any suitably qualified person or group of persons or experts to perform such functions of a receiver as shall be prescribed.

(4) The appointment of a person under subsection (3) shall not be construed so as to exclude the Bank of Uganda from performing any of the functions that a receiver may perform.

(5) No suit or other legal proceedings shall lie against any person appointed as a receiver by the Bank of Uganda for anything which is done or intended to be done in good faith in the exercise of his or her duties as a receiver.

72. Options available to receiver

(1) The Bank of Uganda or a person appointed as a receiver shall, within twelve months after assuming the function of receiver, consider and implement any one or more of the following—

- (a) arrange for a merger with another institution;
- (b) arrange for the purchase of assets and assumption of certain liabilities by other institutions;
- (c) arrange to sell the institution; or
- (d) arrange to liquidate the institution.

(2) The Bank of Uganda or any person appointed as a receiver shall take action under subsection (1), which in the opinion of the Bank of Uganda—

- (a) is most likely to result in marshalling the greatest amount of the assets of the institution;
- (b) protects the interests of the depositors of the institution, including their interest in the unprotected deposit amounts and other creditors;
- (c) minimises costs of the Deposit Protection Fund and losses to other creditors; and
- (d) ensures stability of the financial sector.

(3) In determining the amount of assets that are likely to be realised by a sale of the assets of the institution, the receiver shall

- (a) evaluate the alternatives on a present value basis, using a realistic discount rate; and
- (b) document the evaluation and the assumptions on which the evaluation is based including any assumptions with regard to interest rates, asset recovery rates, inflation, asset holding and other costs.

(4) Where the Bank of Uganda arranges an acquisition under subsection (2), it shall negotiate with the acquiring company or institution the terms and conditions of the acquisition.

73. Effect of placement of institution under receivership

Where an institution is placed under receivership—

- (a) no steps may be taken by any person to enforce any security over the property of the institution; and
- (b) no other proceedings and no execution or other legal process may be commenced or continued against the institution or its property.

PART IX LIQUIDATION

74. Bar on liquidation or winding up proceedings

Notwithstanding any other law to the contrary, no proceedings for the winding up or liquidation of an institution shall be commenced or continued except

- (a) where the proceedings are commenced or continued by the Bank of Uganda or its appointed agent; or
- (b) where the proceedings are commenced by an institution which has obtained the prior approval of the Bank of Uganda.

75. Voluntary liquidation

(1) An institution may, with the prior approval of the Bank of Uganda, apply to the High Court to voluntarily liquidate its operations.

(2) Subject to subsection (1), an institution under voluntary liquidation shall immediately cease all activities except those which are incidental to the orderly realisation, conservation and preservation of its assets and settlement under this section.

- (3) In case of a liquidation under this section—
 - (a) the liability of shareholders for uncalled subscriptions to the capital stock of the institution shall continue until the end of the liquidation process;
 - (b) notwithstanding the provisions of the Companies Act, where an institution is in voluntary liquidation, the ranking of claims shall be in accordance with section 77(2), except that the provisions relating to preferential payments in section 11 of the Insolvency Act shall not be applicable to a voluntary liquidation of an institution;

- (c) the board of directors of the institution shall, before paying creditors holding direct claims and with the approval of the Bank of Uganda, make such arrangements as are necessary to ensure a *pro rata* distribution among holders of claims that are likely to be reduced to judgment in a court.
- (4) Where the Bank of Uganda is satisfied that the assets of an institution that has applied for voluntary liquidation of its operations under this section are insufficient to discharge its obligations or that the completion of the liquidation of its operations is unduly delayed, the Bank of Uganda may place the institution in compulsory liquidation in conformity with the provisions of section 76.

76. Liquidation by Bank of Uganda

(1) Upon determination that an institution should be liquidated, the Bank of Uganda shall make an order for the winding up of the affairs of the institution.

(2) Notwithstanding anything in the Companies Act, where any proceedings for the liquidation of an institution are commenced under this section, the Bank of Uganda or its appointee shall be the liquidator of the institution.

77. Duties of liquidator

- (1) A liquidator shall—
- (a) immediately after appointment give notice of the appointment to each claimant and creditor of the institution known to the liquidator;
- (b) immediately after appointment publish notice of the appointment once a week for four consecutive weeks in a newspaper circulating in the whole of Uganda, requiring—
- (i) a person indebted to the institution to render an account and pay to the liquidator at the time and place specified in the notice any amount owing;
- (ii) a person possessing property of the institution to deliver it to the liquidator at the time and place specified in the notice; and

- (iii) a person having a claim against the institution whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than thirty days after the first publication of the notice;
 - (c) carry on the business of the institution as required by an orderly liquidation;
 - (d) settle or compromise any claims by or against the institution;
 - (e) keep accounts of the money received and paid out by the liquidator in the course of the liquidation of the institution;
 - (f) maintain separate lists of each class of directors, shareholders and other persons having claims against the institution;
 - (g) where necessary, summon a meeting of creditors and contributories;
 - (h) within a period not exceeding five months from the date of appointment of a liquidator, submit to the Bank of Uganda a report detailing the assets of the institution in his or her custody or control and their value, and as far as can be established, the liabilities of the institution to its depositors and other creditors; and
 - (i) within two months after submission of the report on the assets and liabilities of the institution, commence the payment to the depositors and creditors of the institution.
- (2) Payment under subsection (1)(i) shall be in the following order of priority—
- (a) payment to the loan insurance fund;
 - (b) payment to the MDI Deposit Protection Fund;
 - (c) payment to the liquidator for all expenses incurred in the process of liquidating the institution;
 - (d) payment to employees for all wages and salaries due net of any liabilities to the institution;
 - (e) payment to secured creditors, to rank in *pari passu*;
 - (f) payment to depositors for deposits which are in excess of the protected deposit amount;
 - (g) payment to other creditors, to rank in *pari passu*; and
 - (h) payment to the shareholders of the institution in accordance with their respective rights and interests.
- (3) The provisions of section 11 of the Insolvency Act shall not apply to a compulsory liquidation of an institution.

(4) Where a notice is issued under subsection (1)(b), any statement of claim which is not received by the liquidator before the expiry of thirty days from the date of the publication shall not be treated as a claim eligible for payment under liquidation but shall be treated as an ordinary debt due from the institution.

(5) A person who fails to file a claim with the liquidator within the period prescribed in subsection (1)(b) shall not be entitled to be paid in priority to other debtors but shall be treated as an ordinary debtor.

(6) Every depositor of an institution under compulsory liquidation shall be deemed to have filed his or her claim for the amount shown in the books of the institution standing to credit of a depositor, but the liquidator shall be entitled to deduct from such amount any amount paid to the depositor from the MDI Deposit Protection Fund and such other amounts as may be due from the depositor to the institution.

(7) In the administration of the assets of the institution and in the distribution of those assets among its creditors, the liquidator shall have access to and comply with the directions of the Bank of Uganda.

(8) The liquidator shall upon realising all the property of the institution or so much of it as can, in his or her opinion, be realised without needlessly protracting the liquidation and distribution to all depositors of the institution, cause audited financial statements to be submitted to the Bank of Uganda.

78. Powers of liquidator

- (1) A liquidator may—
 - (a) sell by public auction or private sale any property of the institution and shall have power to transfer the whole of it to any person or company;
 - (b) do all acts and execute documents in the name and on behalf of the institution;
 - (c) prove, rank and claim in bankruptcy, insolvency or sequestration of any contributory for any balance against his or her estate and receive dividends in the bankruptcy or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateable with the other separate creditors;

- (d) draw, accept, make and endorse any act of exchange or promissory note in the name and on behalf of the institution;
- (e) borrow money on the security of the property of the institution;
- (f) take out in his or her official name letters of administration to any deceased contributory, and do in his or her official name any other act necessary for obtaining payment of any amount due from a contributory of his or her estate which cannot be conveniently done in the name of the institution, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself or herself except that nothing in this paragraph shall be deemed to affect the rights, duties and privileges of the Administrator General;
- (g) appoint an agent to do any business which the liquidator is unable to do himself or herself;
- (h) enforce the individual liability of the shareholders and directors of the institution;
- (i) eliminate the interests of shareholders;
- (j) arrange, negotiate and conclude, in the interests of the depositors of an insolvent institution, an agreement for the purposes of—
 - (i) benefiting the depositors;
 - (ii) releasing the liquidator from its obligations in respect of the depositors' claims for payment of their deposits out of the liquidation proceeds; and
 - (iii) imposing those obligations on any third party as shall be agreed;
- (k) by notice in writing, requiring any person who is or has been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the financial institution or any person who has custody of any funds or other assets of the institution being liquidated, to—
 - (i) give to the liquidator all reasonable assistance in connection with the liquidation;
 - (ii) appear before the liquidator for examination concerning matters relevant to the liquidation; and
 - (iii) produce any books or documents that relate to the affairs of the institution being liquidated;
- (l) where liquidation proceedings have been commenced in respect of the institution in one country or more, make such payments to the liquidator of the institution as may be necessary; and

- (m) do all other things necessary for the liquidation of the institution and distribution of its property.
- (2) A liquidator may, with the sanction of the Bank of Uganda—
(a) retain advocates, notaries, accountants, appraisers and other professional advisers;
(b) bring, defend or take part in any civil, criminal or administrative action or proceedings in the name and on behalf of the institution;
(c) carry on the business of the institution as required for an orderly liquidation; and
(d) make any compromise or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only damages against the institution or by which the company may be rendered liable;
(e) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the institution and a contributory or to another debtor or person apprehending liability to the institution and all other questions in any way relating to or affecting the assets or the liquidation of the institution on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

(3) The exercise by a liquidator of the powers conferred by this section shall be subject to the control of the Bank of Uganda and any creditor or contributory may apply to the High Court for review of any exercise or proposed exercise of any of those powers; except that no review shall be allowed except where the action complained of is arbitrary and capricious.

79. Stay of proceedings

(1) Notwithstanding anything to the contrary in any other law, no court shall entertain any application for stay of the proceedings in relation to the liquidation or winding up of an institution.

(2) Subsection (1) does not apply to an application filed by the Bank of Uganda.

80. Reliance on statements

A liquidator is not liable if he or she relies in good faith on

- (a) financial statements of the institution represented to him or her by an officer of the institution, or a written report of the auditor or auditors of the institution, to reflect fairly the financial condition of the institution; or
- (b) an opinion, a report or a statement of a lawyer or advocate, a notary, an accountant, an appraiser or other professional adviser retained by him or her.

81. Examination of person, etc.

(1) Where a liquidator has reason to believe that any property of the institution is in the possession or under the control of a person or that a person has concealed, withheld or misappropriated any such property, the liquidator may apply to the High Court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

(2) Where an examination conducted pursuant to subsection (1) discloses that a person has concealed, withheld or misappropriated any property of the institution, the court may order that person to restore the property or pay compensation to the liquidator.

82. Costs of liquidation

A liquidator shall pay the costs of a liquidation out of the property of the institution and shall pay or make adequate provision for all claims against the institution.

83. Release of liquidator

(1) Where the Bank of Uganda is satisfied that the audited financial statements present a correct state of affairs of the liquidation and is satisfied with the performance of the liquidator, the Bank of Uganda may release the liquidator and discharge him or her from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the institution.

(2) An order made under subsection (1) may be revoked on proof that it was obtained by fraud, suppression or concealment of any material fact.

(3) The release of the liquidator shall operate as his or her removal from office.

PART X—MISCELLANEOUS

84. MDI Deposit Protection Fund

(1) The Bank of Uganda shall by statutory instrument establish a fund in the Bank of Uganda to be known as the MDI Deposit Protection Fund.

(2) The object of the MDI Deposit Protection Fund shall be to compensate depositors for losses incurred by them in the event of the insolvency of an institution.

85. Branches

(1) An institution shall not open a new place of business or change the location of an existing business in Uganda or change its hours of business without submitting a written application for the purpose to the Bank of Uganda.

(2) An institution incorporated in Uganda shall not open a new branch, agency or office in any place outside Uganda without submitting a written application to the Bank of Uganda for approval.

(3) The Bank of Uganda may approve or refuse to give approval to an application under subsection (1) or (2).

(4) Before granting any approval under subsection (1) or (2), the Bank of Uganda may require to be satisfied by an inspection of the institution or otherwise as to—

- (a) the history and financial condition of the institution;
- (b) whether the proposed management are fit and proper;
- (c) the adequacy of the capital structure and earning prospects of the institution;
- (d) the convenience and needs of the community to be served; and

(e) whether the public interest will be served by the opening of a new place of business or changing the location of the place or hours of business, as the case may be.

(5) An institution shall not close an existing place of business unless it has given six months' notice to the Bank of Uganda, or such shorter period of notice as the Bank of Uganda may consider reasonable, of its intention to close the place of business.

(6) Any institution which contravenes subsection (1), (2) or (5) shall pay to the Bank of Uganda a civil penalty of fifty currency points and an additional penalty of ten currency points for each day of default.

86. Freezing of accounts

(1) The Bank of Uganda shall, if it has reason to believe that an account held with an institution has funds which are the proceeds of crime, direct in writing the institution at which the account is maintained, to restrict the operation of that account in accordance with the direction.

(2) An institution acting in compliance with a direction under subsection (1) shall incur no liability solely as a result of that action.

87. Unclaimed balances

(1) Where a deposit has been made or funds or other property have been placed in a profit-sharing investment account with an institution in Uganda and in respect of which no transaction or business has taken place and no statement of account has been requested or acknowledged by the depositor during a period of two years—

- (a) in the case of a deposit for a fixed period, from the day on which the fixed period terminated; and
- (b) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the depositor, whichever is later,

no withdrawals shall be allowed on such account except with the permission of two officers of the institution out of a number of signatories authorised to grant such permission.

(2) An account referred to in subsection (1) shall be transferred to a separate register of dormant accounts in the books of the institution and the institution shall give notice in writing to the depositor at his or her last known address.

(3) Where an account is transferred to the register of dormant accounts and the account has been on the register for three years, the institution shall advertise the fact that it has been on the register for three years, and the cost of advertisement shall be charged on the account.

(4) No other fee or service charge may be levied on the dormant account apart from the cost of the advertisement referred to in subsection (3).

(5) Any account may be transferred out of the register of dormant accounts if the depositor, or if he or she is dead, the legal or personal representative of the depositor makes a request to that effect.

(6) Unclaimed balances shall, after a period of five years from the date of the advert in subsection (3), be transferred to the Bank of Uganda and the Bank of Uganda shall employ them to off-set the costs of supervising institutions or as may be prescribed.

(7) The Bank of Uganda shall refund any unclaimed balances to the depositor of those balances with the respective institution or if the depositor is dead, the legal representative of the depositor, if a request is made after the dormant account has been transferred to the Bank of Uganda.

(8) In this section, “register of dormant accounts” means the financial records maintained by an institution at its head office containing a record of dormant accounts.

88. Officers deemed public officers

An officer or servant of an institution or a member of its *Shari 'ah* Advisory Board shall be deemed a person employed in the public service for the purposes of sections 10, 17 and 25 of the Anti-Corruption Act.

89. Obligations under the Companies Act or the Building Societies Act

Nothing in this Act shall be deemed to relieve an institution from any of its obligations under the Companies Act or the Building Societies Act.

90. Protection of Bank of Uganda

No suit or other legal proceedings shall lie against the Bank of Uganda or any officer of the Bank of Uganda for anything which is done or is intended to be done in good faith, under this Act.

91. Deposit advertisements

(1) An institution which or a person who issues an advertisement, brochure, circular or other documents inviting another person to make a deposit which

- (a) falsely represents that the institution or the person is authorised to accept deposits or is otherwise licensed under this Act; or
- (b) is issued contrary to any direction given by the Bank of Uganda under subsection (2),

commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points.

(2) The Bank of Uganda may at any time direct any institution or person to withdraw, amend or refrain from issuing any advertisement, brochure, circular or other document relating to deposits which, in its sole discretion, it considers to be misleading.

92. Offences

(1) A person who, being a director, manager, officer or employee of an institution or a member of a *Shari'ah* Advisory Board

- (a) fails to take any reasonable steps to secure compliance with the requirements of this Act;
- (b) makes any statement or gives any information which is false or misleading in answer to any request for information made under this Act; or
- (c) is privy to the furnishing of any false information supplied under this Act,

commits an offence and is liable, on conviction, to a fine of not less than

fifty currency points but not exceeding one hundred currency points, or to imprisonment for a term of not less than six months but not exceeding two years, or both.

(2) Any institution which fails to comply with an order issued by the Bank of Uganda under this Act shall pay to the Bank of Uganda a civil penalty of fifty currency points.

(3) An institution which refuses or fails to do anything required to be done by this Act or which does anything prohibited by this Act, commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points.

(4) Where a director or officer of an institution or a member of its *Shari'ah* Advisory Board authorises a contravention of, or contravenes any provision of this Act, he or she shall be personally liable to the penalty specified in relation to the contravention.

(5) Any person who, being an officer or director of an institution or a member of a *Shari'ah* Advisory Board, causes loss to the institution directly or indirectly, commits an offence and is liable, on conviction, to a fine of not less than fifty currency points but not exceeding one hundred currency points or to imprisonment for a term of not less than six months but not exceeding two years, or both.

(6) Any person being a director or officer of an institution or a member of a *Shari'ah* Advisory Board, who receives or possesses or takes for himself or herself or for any related person of the director or officer any property of the institution otherwise than in payment for it of the full value, commits an offence and is liable, on conviction, to a fine of not less than one hundred currency points but not exceeding two hundred currency points or to imprisonment for a term of not less than one year but not exceeding two years, or both.

93. Regulations, notices and directions

(1) The Bank of Uganda may, make regulations, and issue notices and directions as may be necessary or expedient for carrying out the purposes and provisions of this Act and for prescribing anything that may be required or authorised to be prescribed by this Act.

(2) Without prejudice to the general effect of subsection (1), regulations, notices and directions may be made under this section with respect to the operations and activities of institutions, including the minimum qualifying criteria for the issue or grant of a licence under this Act.

(3) Without prejudice to subsections (1) and (2), regulations made under this section may relate to—

- (a) the prudential norms on asset quality; bad debt provisions and write-offs;
- (b) the licensing of institutions;
- (c) the minimum level of capital for institutions;
- (d) the computation of on-going capital adequacy requirements for an institution;
- (e) the lending limits on credits extended to insiders;
- (f) the limitations for advances or credit facilities to a single borrower;
- (g) the operations and permitted usages of a loan insurance fund;
- (h) the reporting requirements by institutions to the Bank of Uganda;
- (i) the control of money laundering in Uganda; and
- (j) generally giving effect to the provisions of this Act.

(4) Regulations made under this section may, in respect of any contravention of any of the regulations or a notice issued under this section—

- (a) prescribe a penalty of a fine not exceeding two hundred fifty currency points or imprisonment for a term not exceeding two years, or both;
- (b) in the case of a continuing contravention, prescribe an additional penalty not exceeding fifty currency points in respect of each day on which the offence continues;
- (c) prescribe a higher penalty in respect of a second or subsequent contravention; and
- (d) provide that a court which convicts the offender may forfeit to the State any document or other matter involved in the contravention.

94. Power to amend Schedules

(1) The Minister may, by statutory instrument, with the approval of Cabinet, amend Schedule 1 to this Act.

(2) The Minister may, by statutory instrument, amend Schedule 2 to this Act.

SCHEDULES*Schedule 1*

Sections 2, 94(1)

Currency Point

A currency point is equivalent to twenty thousand shillings.

*Schedule 2*Sections 6(6), 24(3),
25(2), 27(f), 94(2)**Criteria and Procedure for Determining whether a Person is a Fit and Proper Person to Manage, Control, Become Director or Substantial Shareholder in a Microfinance Deposit-Taking Institution****PART I****Criteria for Determining a Fit and Proper Person to Manage, Control or Become a Director or Substantial Shareholder in a Microfinance Deposit-Taking Institution****1. Interpretation**

In this Schedule, unless the context otherwise requires—

“executive manager” means a person who is either—

- (a) empowered to control, direct, and influence decision making of the microfinance deposit-taking institution;
- (b) principally accountable or responsible for implementing and enforcing policies and strategies approved by the board in their respective area of responsibility; or
- (c) principally accountable or responsible for developing and implementing systems, internal controls or processes that identify, measure, increase or decrease, monitor or control, a supervised microfinance deposit-taking institutions risk;

“ultimate beneficial shareholder” means a person or entity that ultimately owns shares in a supervised microfinance deposit-taking institution and derives the benefits associated with ownership or control of the supervised microfinance deposit-taking institutions.

2. Criteria to determine fit and proper person

- (1) In order to determine, for the purposes of the Act, the professional and moral suitability of any person proposed to manage or control a microfinance deposit-taking institution, or to become a substantial shareholder, or director, the Bank of Uganda shall have regard to the following qualities, insofar as they are reasonably determinable, in respect of the person concerned—his or her general probity;

- (b) his or her competence and soundness of judgment for the fulfilment of the responsibilities of the office in question;
 - (c) the diligence with which the person concerned is fulfilling or likely to fulfil those responsibilities; and
 - (d) whether the interests of depositors or potential depositors of the institution are, or are likely to be in any way, threatened by his or her holding that position.
- (2) For the purposes of and without prejudice to the general effect of subparagraph (1), the Bank of Uganda may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that the person—
- (a) has been convicted of the offence of fraud, corruption, drug, wildlife and human trafficking, tax crime, a predicate offence generating proceeds of crime to money laundering and terrorism financing or any other offence depicting dishonesty or indicative of involvement or participation in handling of proceeds of illegal activities or any other offence of which dishonesty or violence is an element;
 - (b) has contravened any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractice by, persons engaged in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
 - (c) was a director of an institution that has been liquidated or is under liquidation or management of the Bank of Uganda or under receivership;
 - (d) has taken part in any business practice that in the opinion of the Bank of Uganda, was deceitful or oppressive, fraudulent, prejudicial or otherwise improper whether unlawful or not, or which otherwise reflect discredit on his or her method of conducting business;
 - (e) has engaged in or taken part in or been associated with any other business practices or otherwise conducted himself or herself in such manner as to cause doubt on his or her competence and soundness of judgment;
 - (f) has defaulted on a loan or credit accommodation or a company in which he or she is a director has defaulted on a loan or credit accommodation;

- (g) has been listed as an individual or entity subject to targeted financial sanctions under any United Nations Security Council Resolution or any other national, regional or international sanctions list;
- (h) has contravened any law protecting members of the public against financial loss;
- (i) was a director or substantial shareholder or vetted executive manager of any corporate entity that has been or is under involuntary liquidation, receivership or management by the Bank of Uganda or financial sector regulator or by the direction of Court or a creditor mandated administrative process;
- (j) has been refused admission to, or has been expelled from or has an outstanding probe or pending disciplinary process with, any professional body;
- (k) has taken part in any improper business practices that discredit or bring into disrepute the said business;
- (l) has engaged in business practices or conduct that causes or casts doubt as to his or her competence or integrity or soundness of judgment;
- (m) has been sanctioned by any regulator or professional body or association;
- (n) has defaulted on a loan as an individual or he or she is a director or has a substantial shareholding or is an ultimate beneficial shareholder in a company that has defaulted on a loan or credit facility;
- (o) has been the subject of an adverse judgment or has been found guilty on any matter or subject that speaks to their integrity in a civil or criminal proceeding by any lawfully established court;
- (p) has deliberately misled or attempts to mislead by act or omission, a client, the institution or the regulator that is seeking or sought to authenticate their probity;
- (q) has deliberately falsified documents to mislead a client, the institution or regulator, or failed to disclose the existence of falsified documents;
- (r) has deliberately failed to inform the client, institution or regulator, without reasonable cause, of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding;
- (s) has deliberately prepared or to a material extent, participated in the preparation of inaccurate records or returns;

- (t) has a record of non-compliance with statutory codes, including but not limited to disciplinary or supervisory or regulatory administrative sanctions; or
 - (u) his or her appointment would result in a conflict of interest, real or perceived.
- (3) Notwithstanding paragraph (2), the Bank of Uganda reserves the right to take into consideration other facets or features not expressly provided for under paragraph (2) that may be applicable to the nominee, to ascertain that the nominee is fit and proper.
- (4) The Bank of Uganda may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of a nominee.

PART II

Procedure for Determining a Fit and Proper Person to Manage, Control, Become a Director or Substantial Shareholder in a Microfinance Deposit-Taking Institutions

3. Procedure for determination of whether person is fit and proper

- (1) A microfinance deposit-taking institution shall subject every substantial shareholder, chief executive officer, executive director, director and executive manager to the fit and proper criteria to ensure that they are fit and proper persons.
- (2) A microfinance deposit-taking institution shall ensure that a nominee substantial shareholder, chief executive officer, executive director, director and executive manager complies with the fitness and probity criteria prior to forwarding the nominee's name to the Bank of Uganda for further review and approval.
- (3) A microfinance deposit-taking institution shall conduct risk-based evaluations and due diligence on every nominee substantial shareholder, chief executive officer, executive director, director and executive manager and take reasonable steps to verify the authenticity of documents submitted by the applicant against independent sources prior to forwarding them to the Bank of Uganda for vetting purposes.

(4) The Bank of Uganda shall vet every ultimate beneficial shareholder or owner of proposed or nominated substantial shareholders, in the case of a natural person, director and executive manager and shall grant approval if found to be compliant with the fit and proper test.

(5) Before approval under subparagraph (4), the Bank of Uganda may, at its discretion, conduct a face-to-face meeting or an online interview with the nominee, where the nominee or ultimate beneficiary is a natural person.

(6) In determining whether a person is fit and proper to hold a position as a substantial shareholder, chief executive officer, executive director, director or executive manager of the microfinance deposit-taking institutions, a microfinance deposit-taking institutions shall, in general, have due regard to—

- (a) his or her probity;
- (b) whether the interests of depositors or potential depositors of the institution are or are likely to be, in any way, threatened by his or her holding of that position;
- (c) his or her competence and soundness of judgment for fulfilling the responsibilities of the job or position;
- (d) the diligence with which he or she is fulfilling or likely to fulfil those responsibilities;
- (e) his or her ability to understand the technical requirements of the business; or
- (f) his or her ability to clearly demonstrate a tangible or credible contribution to the nominating supervised microfinance deposit-taking institution business.

(7) A microfinance deposit-taking institution shall, at least once in every calendar year, evaluate and update the fit and proper status for each of its board or executive management staff, including conducting performance assessments and appraisals of board directors and executive management as integral to their continuous fit and proper evaluations.

4. Assessing fitness and probity

(1) A microfinance deposit-taking institution shall consider the following criteria when assessing the fitness and probity of key personnel within the institution

- (a) good character, including honesty, integrity, fairness and reputation;
 - (b) competence, diligence, capability, soundness of judgment; and
 - (c) financial soundness in relation to substantial shareholders.
- (2) With regard to corporate entities which are controlling shareholders, the following shall be taken into consideration—
- (a) financial soundness and strength;
 - (b) the nature and scope of the business;
 - (c) fitness and propriety of key functionaries; and
 - (d) group structure, if applicable, and organisation charts.
- (3) A proposed shareholder, director or manager shall demonstrate the competence and ability to understand the technical requirements of the business, the inherent risks therein and the management processes required to conduct its operations effectively, with due regard to the interests of all stakeholders.

5. Assessing competence and capability

In assessing the competence and capability of a person, a microfinance deposit-taking institution shall consider the following—

- (a) whether the person has demonstrated, through qualifications and experience, the capacity to successfully undertake the responsibilities of the position;
- (b) whether the person has been declared mentally incompetent by any official proceeding under the laws of Uganda or elsewhere;
- (c) whether the person has ever been disciplined by a professional, trade or regulatory body or dismissed or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement; or
- (d) whether the person has a sound knowledge of the business and the responsibilities of the position.

6. Financial soundness

- (1) A microfinance deposit-taking institution shall consider the financial soundness of a nominee, before appointment.

(2) In determining the financial soundness of a nominee, the microfinance deposit-taking institution shall consider the following

- (a) whether the nominee has been the subject of any judgment or award that remains outstanding;
- (b) whether the nominee has made any arrangements with his creditors, filed for bankruptcy, been adjudged bankrupt, had assets confiscated, or has been involved in proceedings relating to any of the aforementioned; and
- (c) whether the nominee has contracted a loan which subsequently turned nonperforming.

(3) The Bank of Uganda shall, in assessing whether a nominee is fit, consider the following—

- (a) examine submissions related to the nominee's education and theoretical knowledge within the context of their proposed role in the institution;
- (b) consider the nominee's current and previous roles and positions held, including the nominee's length of service, the nature, complexity and size of the business they were responsible for in the past; their performance assessments in past management or directorship roles and functions; the nature and complexity of past responsibilities held; and the reporting lines and delegated authority that the nominee has been responsible for in their past roles; and
- (c) consider the nominee's time commitment, given their existing obligations to the role or position for which they are being nominated and in considering time commitments, factors such as the number of directorships held, the size, nature, scale and complexity of the institutions where those directorships are held, or the existence of any other professional or personal commitments and circumstances shall form part of the regulatory assessment process for fitness.

7. Obtaining and giving professional references

A microfinance deposit-taking institution shall, when hiring an executive manager or contracting a director for its board, obtain a professional reference covering a minimum of the last six years of the nominee's employment whether with a regulated entity or otherwise.

8. Obtaining and giving regulatory references

(1) The Bank of Uganda shall obtain an independent assessment in form of a confidential opinion from the most recent regulator or supervisory body where applicable, about the professional conduct and integrity of a nominee, if a natural person, covering the period of his or her employment with any previous regulated entity where applicable, in addition to any other information that may be beneficial or incidental to the nominee's fit and proper evaluation.

(2) In cases where a nominee for fit and proper assessment is a corporate body, the Bank of Uganda shall conduct sufficient due diligence from the country of origin or domicile or host regulator or supervisory body or any other law enforcement agency in the home jurisdiction of the nominee, to ascertain the ultimate beneficial shareholders.

(3) The costs for a due diligence conducted under sub paragraph (2), shall be borne by the microfinance deposit-taking institution and payable prior to the conduct of the due diligence.

(4) The due diligence referred to in subparagraph (2), shall relate to matters including legal ownership, financial capacity, credit usage history, corporate structure or arrangement, evidence of existence, ultimate beneficial shareholders and ownership and past or existing infractions and sanctions if any.

9. Role of the board of directors

- (1) A microfinance deposit-taking institution shall—
 - (a) establish a fit and proper person policy which shall take into account the fit and proper criteria specified in this Act and the Bank of Uganda Guidance Note on the Risk-Based Criteria for the Vetting of Substantial Shareholders, Directors and Executive Managers of supervised microfinance deposit-taking institutions;
 - (b) have documented processes used to assess whether a person is fit and proper and reasons for any decisions made and shall make the documentation available to the institution as required; and
 - (c) ensure that—

- (i) candidates who are being considered for appointment to key positions meet the fit and proper test before being appointed;
- (ii) processes are implemented to keep under constant review the capacity of directors, controllers, managers, controlling shareholders, registrants under the Act and others with significant influence on the operations of the institution, to continue to meet the fit and proper test; and
- (iii) the managing director or chief executive officer applies the fit and proper test to middle and lower level management positions within the organisation and reports to the board periodically on the results of the tests.

10. Role of external auditors

A microfinance deposit-taking institution shall request the external auditors of the microfinance deposit-taking institution to advise and provide necessary details if they become aware of information that points to non-compliance or potential non-compliance with the fit and proper requirements.

11. Application of fit and proper tests by Bank of Uganda

- (1) Fit and proper tests may be applied by the Bank of Uganda at the licensing stage and thereafter, every year or on the occurrence of specified events, including for new appointments of any such persons.
- (2) The application of fitness, propriety or other qualification tests to executive manager and controlling shareholders may vary depending on the degree of their influence and on their responsibilities in the affairs of the institution.
- (3) The Bank of Uganda may have regard to current, past and prospective matters when conducting fit and proper assessments of persons or entities.
- (4) The Bank of Uganda shall assess the fulfillment of the fit and proper criteria in a holistic manner, after due consideration of relevant areas.
- (5) In cases where a person being assessed is known to have connections in other jurisdictions, the Bank of Uganda shall communicate

with the supervisors in the relevant jurisdictions as part of the assessment procedure, to the extent permitted by law.

12. Clearance and approval of fit and proper persons

(1) The Bank of Uganda shall approve the appointment of directors and senior officers deemed fit and proper to hold their respective offices.

(2) The Bank of Uganda shall approve the controlling shareholders deemed fit and proper to acquire shares in the microfinance deposit-taking institution.

(3) Notwithstanding subparagraph (1) and (2), the Bank of Uganda may withdrawal the approval or clearance referred to in subparagraph (1) and (2) at any time, if the Bank of Uganda is satisfied that the person is no longer fit and proper.

13. General vetting requirements for substantial shareholders, directors and executive management

(1) The documentation submitted to the Bank of Uganda shall be in English, and where it is in another language, it is the responsibility of the nominating supervised microfinance deposit-taking institution to obtain a certified English version from a competent authority.

(2) The request for approval of a nominated candidate in case of an ultimate beneficial shareholder who is corporate body shall be accompanied by—

- (a) an information sheet for the applicant and for each of its substantial direct and indirect shareholders, subsidiaries or affiliates in the form prescribed by regulations, witnessed by a Commissioner of Oaths or his or her equivalent, in the respective country of residence or domicile;
- (b) a certified true copy of income tax returns for the substantial shareholder;
- (c) the latest audited financial statements for a corporate body for each of the three years preceding the date of the application by the nominee, including for entities in which they hold a substantial shareholding or beneficial interest or where any of the substantial shareholders is a corporate body;

- (d) a company resolution by the corporate's shareholders to acquire a shareholding in the proposed supervised microfinance deposit-taking institutions in Uganda;
 - (e) Memorandum and Articles of Association for the corporate body (MEMARTS);
 - (f) letters duly certified by microfinance deposit-taking institutions with whom the corporate body has had dealings or transactional relationships in the last five years, including the performance of past and present accounts held at those microfinance deposit-taking institutions; and
 - (g) a breakdown of the ultimate beneficial shareholding structure of the corporate body nominee subsequent to which the individual shareholders, if any, will provide their respective information similar to that relating to the individual ultimate shareholders.
- (3) The request for approval of a nominated person, in the case of an ultimate individual beneficiary shareholder, board and executive management shall be accompanied by—
- (a) a personal declaration form for each of the proposed directors, executive managers and substantial shareholders, if natural persons, in the form prescribed by regulations made under the Act and witnessed by a Commissioner of Oaths or his or her equivalent in the respective country of residence or domicile;
 - (b) a signed declaration by the chairperson of the board of a microfinance deposit-taking institutions on appointment of a director designate, in the form prescribed in regulations made under the Act;
 - (c) an updated, signed curriculum vitae of every individual substantial shareholder, director and executive manager who is likely to take part in or be a part of, the supervised microfinance deposit-taking institution's policy making or execution process, with the respective dates, positions held, key responsibilities, and achievements thereof, clearly indicated;
 - (d) a statement of assets and liabilities of each individual substantial shareholder, director and executive manager, duly certified by a certified public accountant or his or her equivalent in the respective country of residence or domicile;
 - (e) the latest tax compliance certificate for individual substantial shareholders, directors and executive management from their home jurisdiction;

- (f) two character references from individuals, other than relatives or related persons as defined in the Act, who have personally known the substantial shareholder, director or executive manager for at least five years;
- (g) letters duly certified by microfinance deposit-taking institutions with whom the nominee or director designate has had dealings or transactional relationships in the last five years, including the performance of past and present accounts held at those microfinance deposit-taking institutions;
- (h) individual credit references for the nominee and each of the substantial shareholders, directors and executive manager from his or her bankers during the last five years, as well as for all the companies where he or she has a substantial shareholding;
- (i) certified copies of all academic qualifications of the nominee at University level and above, where applicable, as well as of professional qualifications or verifiable proof of membership to professional bodies, where applicable;
- (j) a copy of the nominees passport or valid national identification document;
- (k) two passport size photographs;
- (l) a certificate of good character or conduct from Interpol or similar policing authority of the relevant home jurisdiction, in the case of foreign directors, substantial shareholders and executive manager nominees;
- (m) if the most recent audited financial statements are more than six months out of date, management accounts which need not be audited, showing the current financial position and the current results of the entity in which the nominee has a substantial shareholding interest or controlling influence;
- (n) written confirmation by the nominating microfinance deposit-taking institution on whether or not the nominee is a politically exposed person, and the grounds for that categorisation or non-categorisation as the case may be;
- (o) a filled and signed potential material conflicts of interest form as may be prescribed by the Bank of Uganda, which shall be updated and re-submitted annually to the Bank of Uganda;
- (p) proof that a check has been conducted on the nominee against the list of sanctioned persons at the Office of Foreign Assets Control of the United Nations, the European Union, or any such listing of sanctioned persons at a national, regional and domestic level;

- (q) copy of the proposed job description in the case of nominees for executive manager; and
- (r) assess and consider the individual Board nominee's value addition to the board of the supervised microfinance deposit-taking institutions in relation to the other existing board member's areas of expertise.

(4) The individual Board nominee's shall be assessed and considered for value addition to the board of the supervised microfinance deposit-taking institutions in relation to the other existing board member's areas of expertise.

(5) Subject to subparagraphs (2), (3) and (4), the Bank of Uganda reserves the right to request for additional information and, where there is a failure to submit the information to the Bank of Uganda within fifteen working days from the time the institution is notified, the request for approval shall be rejected for lack of sufficient supporting documentation.

14. Qualifications and experience required for appointments

(1) A microfinance deposit-taking institution shall ensure that individuals hired or assigned managerial and other senior positions have the requisite qualifications, knowledge and experience to handle the positions with minimum standards.

(2) The minimum standards referred to in subparagraph (1) in relation to a non-executive director include—

- (a) a first or undergraduate degree or its equivalent, in any discipline and the ability to demonstrate more than a basic knowledge of the financial services industry; microfinance deposit-taking institution business; financial industry related supervisory or regulatory frameworks and laws and regulations that govern the operating context of the nominating supervised microfinance deposit-taking institution;
- (b) a demonstrable and verifiable value addition that he or she shall bring to the microfinance deposit-taking institution or board;
- (c) a demonstrable and verifiable understanding of risk management; its identification, impact assessment, mitigation, monitoring and control for at least one of the main risk categories that the nominating microfinance deposit-taking institution is subject to in the normal course of its business;

- (d) ability to assess the effectiveness of a microfinance deposit-taking institution's arrangements, and ensure effective governance and oversight over the entity's control environment;
 - (e) ability to interpret financial information, identify key issues arising therefrom, and make meaningful and objective contributions to board deliberations;
 - (f) willingness and ability to exercise independent judgment and provide credible and informed challenge or critical review of executive manager decisions, implementation plans and recommendations;
 - (g) possession of background, knowledge, and experience in business or another discipline relevant to the provision of an oversight role within the financial services industry;
 - (h) acceptance of fiduciary duties and obligations, including a firm and sworn commitment to put the supervised microfinance deposit-taking institution's interests ahead of their personal interests or to avoid conflicts of interest; perceived or actual;
 - (i) demonstrable and verifiable commitment to regularly attend, prepare and contribute to board and committee meetings;
 - (j) having knowledge of the communities or demographic or sectors that the nominating supervised microfinance deposit-taking institution serves;
 - (k) previous or existing board membership or exposure in any regulated institution as an added advantage;
 - (l) the existence and number of independent directors on the board; and
 - (m) the collective suitability requirement for all existing board members with respect to diversity of the board in terms of professionalism, awareness of emerging issues and risks and experience.
- (3) Subject to subparagraph (2), where the nominee has no academic qualifications he or she may be appointed on the following conditions—
- (a) his or her direct involvement in an established business enterprise with total assets or gross revenue of not less than twenty-five billion shillings or its equivalent;
 - (b) the size, scope and complexity of the institution for which the nominee is being considered for directorship, and the nature of nominee's intended contribution to the institution;

- (c) the relevant experience and qualifications of other board members; and
 - (d) the proposed assignment of responsibilities on the board, commensurate with the member's experiences.
- (4) The minimum standards referred to in subparagraph (1) in relation to a chief executive officer or managing director shall include—
- (a) a minimum of first or undergraduate degree in any discipline from an accredited institution, with a professional qualification in any business-related discipline being an added advantage;
 - (b) prerequisite post-graduate experience, out of which at least ten years must have been at executive management, with responsibility in major areas of microfinance deposit-taking institution business including but not limited to: business, development, credit, finance, risk management, audit or treasury management; and
 - (c) in case of Islamic banking institutions, in addition to the requirements in subparagraphs (a) and (b), possession of requisite and verifiable knowledge and experience or training in Islamic banking and finance.
- (5) The minimum standards referred to in subparagraph (1) in relation to executive directors shall include—
- (a) a minimum of a first or undergraduate degree in any discipline from an accredited institution and attainment of a professional qualification in any business-related discipline being an added advantage;
 - (b) prerequisite post-graduate experience, and significant working experience of at least five years at executive level management, evidence of experience in several areas of banking operations, including business development, credit, finance, risk management, audit or treasury management;
 - (c) for an executive director, to be qualified for appointment as a chief executive officer or managing director, the executive director, shall have served in the position of executive director for a minimum of two years, except in extenuating circumstances where the Bank of Uganda may assess the executive director's suitability for the position of chief executive officer or managing director he or she does not meet the minimum two years' experience; and
 - (d) in case of Islamic banking institutions, in addition to the requirements in subparagraphs (a), (b) and (c), possession of

requisite and verifiable knowledge and experience or training in Islamic banking and finance.

(6) The minimum standards referred to in subparagraph (1) in relation to executive manager shall include—

- (a) a minimum of a bachelor's degree in any field, from an accredited institution, membership in a relevant professional body or associations being an added advantage and where membership in a professional body or association is mandated by law, having possession of such membership;
- (b) the requisite post-graduate experience, in the role for which they are being nominated and evidence of relevant experience of not less than five years at middle level management in the proposed area of appointment or nomination; and
- (c) in case of Islamic banking supervised microfinance deposit-taking institutions, in addition to the requirements referred to in subparagraphs (a) and (b), possession of requisite and verifiable knowledge and experience or training in Islamic banking and finance and the Bank of Uganda reserves the right and discretion, for deserving cases or situations to waive the mandatory requirement of prior knowledge about Islamic banking and finance for Islamic banking supervised microfinance deposit-taking institutions.

(7) In case of an independent non-executive director he or she shall only be deemed independent if he or she has no direct or indirect material relationship or interest in the microfinance deposit-taking institution or any of its subsidiaries or affiliates or related parties.

History: Act 5/2003; Act 18/2016; S.I. 111/2022; Act 16/2023

Cross References

Accountants Act, Cap. 294

Anti-Corruption Act, Cap. 116

Building Societies Act, Cap. 104

Companies Act, Cap. 106

Cooperative Societies Act, Cap. 107