

## CHAPTER 61

### THE TIER 4 MICROFINANCE INSTITUTIONS AND MONEY LENDERS ACT

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## CHAPTER 61

### THE TIER 4 MICROFINANCE INSTITUTIONS AND MONEY LENDERS ACT

*Commencement:* 1 July, 2017

**An Act to establish the Uganda Microfinance Regulatory Authority; to provide for the licensing and management of Tier 4 Institutions; to provide for management and control of money lending Business; to establish the SACCO Stabilisation Fund; to establish a SACCO Savings Protection Scheme; to provide for a Central Financing Facility; to provide for licensing of money lenders; to provide for self-help groups and commodity; to provide for receivership and liquidation of a Tier 4 Institution and for related matters.**

#### PART I—PRELIMINARY

##### 1. Application of Act

- (1) This Act applies to—
  - (a) tier 4 microfinance institutions; and
  - (b) money lenders.
- (2) This Act does not apply to microfinance business conducted by institutions regulated by the Bank of Uganda, except as otherwise provided.

##### 2. Purpose of Act

The purpose of this Act is to regulate tier 4 microfinance institutions by—

- (a) facilitating the microfinance industry to promote social and economic development;
- (b) promoting legitimacy and building the confidence of members, customers and investors in the microfinance business;
- (c) establishing prudential standards for microfinance institutions in order to safeguard the deposits of members, prevent financial system instability of the funds of depositors and ensure stability of the financial system;

- (d) applying non-prudential standards to tier 4 microfinance institutions by—
  - (i) defining sources of capital;
  - (ii) establishing default protection mechanisms;
  - (iii) enforcing compliance with generally accepted accounting practices; and
  - (iv) instituting mechanisms for the prevention of fraud and financial crimes; and
- (di) providing a regulatory framework for the management and control of money lending business.

### **3. Classification of tier 4 microfinance institutions**

For the purposes of this Act, tier 4 microfinance institutions shall comprise

- (a) SACCOs;
- (b) non-deposit taking microfinance institutions;
- (c) self-help groups; and
- (d) community based microfinance institutions.

### **4. Interpretation**

In this Act, unless the context otherwise requires—

“Authority” means the Uganda Microfinance Regulatory Authority established by section 5;

“Board” means the Board of directors of the Authority;

“capital” means paid-in shares, reserves and profits or un appropriated surplus;

“Central Financing Facility” means a mechanism established on a cooperative basis in order to facilitate the financial stability of member SACCOs;

“chattels transfer” means a letter of hypothecation or a hire-purchase agreement;

“committee” means the governing body of a SACCO to which the management of its affairs is entrusted and includes a Board of directors of the SACCO;

“compulsory savings” means a sum of money that is obligatory for a borrower to deposit with a microfinance institution as a condition for receiving a loan or as collateral for a loan either as a percentage of the loan or as a nominal amount;

- “core capital” means shareholders’ equity in the form of issued and fully paid-up shares including retained reserves approved by the Authority;
- “currency point” has the value assigned to it in Schedule 1 to this Act;
- “customer protection” includes appropriate product design, avoidance of over indebtedness, transparency in pricing, responsible pricing, avoidance of unethical behaviour in debt collection, confidentiality of client data and establishing a complaints handling system;
- “equity” means shares, reserves, retained surplus, donations and grants;
- “financial services” means—
- (a) in the case of a SACCO, accepting savings from and providing loans to members;
  - (b) in the case of a non-deposit taking microfinance institution, providing micro loans to individuals, small and medium sized businesses;
- “firm” means an unincorporate body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;
- “Fund” means the SACCO Stabilisation Fund established under section 53;
- “institution” means a tier 4 microfinance institution;
- “Islamic contract” means a contract which complies with the *Shari’ah* and satisfies the conditions specified by the Authority;
- “Islamic business” means the business of engaging in microfinance activities in accordance with *Shari’ah* and includes—
- (a) the business of receiving property into profit sharing investment accounts or of managing such accounts;
  - (b) the business of providing finance through the acquisition, disposal or leasing of assets or other services which have a similar economic effect or are otherwise economically equivalent to any other microfinace business; or
  - (c) any othermicrofinace business whichinvolves or is intended to involve the entry into one or more islamic contracts, or which is otherwise carried out or purported to be carried out in accordance with the *Shari’ah*;
- “liquid assets” includes cash at hand, cash in bank, mobile money float, short term government securities and savings with other institutions;

“microfinance activities” means extending micro loans, accepting savings and providing other financial services as provided in this Act;

“micro loan” means a loan of an amount not exceeding—

- (a) one percent of the core capital of the non-deposit taking microfinance institutions for an individual borrower; or
- (b) five percent of the core capital of the non-deposit taking microfinance institutions total capital for the group borrower;

“Minister” means the Minister responsible for finance;

“money lender” means a company licensed under section 78;

“non-deposit taking microfinance institution” means a company or non-governmental organisation licensed under section 61;

“principal” in relation to a loan, means the amount lent to the borrower;

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

“Registrar” means the Registrar of Cooperatives within the meaning of the Cooperative Societies Act;

“responsible officer” means the Community Development Officer of a district;

“SACCO Savings Protection Fund” means a SACCO Savings Protection Fund established under section 56;

“savings account” means a record of balance held by a tier 4 microfinance institution and owned by a member, which constitutes a liability owed by the tier 4 microfinance institution to the member;

“Savings and Credit Cooperative (SACCO)” means a registered society licensed under section 38;

“share capital” means members’ equity in the form of issued and fully paid up shares of common stock;

“*Shari’ah* adviser” means a person appointed by a tier 4 microfinance institution in accordance with this Act to advise, approve and review activities of islamic business in order to ensure that the institution complies with the *Shari’ah*;

“significant shareholder” means a person who holds more than five percent of the shares of an institution regulated under this Act;

“tier 4 microfinance institution” means an institution specified in section

person with an institution that can be withdrawn on demand or at an agreeable future date.

PART II—UGANDA MICROFINANCE REGULATORY AUTHORITY

*Authority*

**5. Establishment of Authority**

(1) There is established an autonomous body known as the Uganda Microfinance Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may, for the discharge of its functions under this Act—

- (a) acquire, hold and dispose of movable and immovable property;
- (b) sue and be sued in its corporate name; and
- (c) do, enjoy or suffer anything that may be done, enjoyed or suffered by a body corporate.

**6. Official seal of Authority**

(1) The Authority shall have an official seal which shall be in a form determined by the Board.

(2) The official seal shall, when affixed to any document, be authenticated by the signatures of the Chairperson of the Board and the Secretary to the Board.

(3) In the absence of the Chairperson, the person performing the functions of the Chairperson shall sign.

(4) In the absence of the Secretary, a person nominated by the Chairperson shall sign.

(5) An instrument or contract which if executed or entered into by a person other than a body corporate would not require to be under seal may be executed or entered into on behalf of the Board by the Chairperson, or by any member of the Board or other person if that member of the Board or other person has been duly authorised by resolution of the Board to execute or enter into the instrument or contract as the case may be.

(6) A document purporting to be an instrument or contract executed or issued by or on behalf of the Board shall be deemed to be executed or issued until the contrary is proved.

## 7. Functions of Authority

(1) The Authority is responsible for regulating, licensing and supervising tier 4 microfinance institutions and money lenders.

(2) Without limiting the general effect of subsection (1), the Authority shall—

- (a) license tier 4 microfinance institutions;
- (b) promote programmes and interventions that are necessary for the development of tier 4 microfinance institutions;
- (c) protect the interests of the members and beneficiaries of tier 4 microfinance institutions, including the promotion of transparency and accountability by applying non-prudential standards;
- (d) promote the stability and integrity of the financial sector through ensuring the stability and security of tier 4 microfinance institutions;
- (e) ensure the sustainability of the microfinance sector with a view to promoting long term capital development;
- (f) establish and enforce standards of sound business and financial practices for tier 4 microfinance institutions;
- (g) collect and publish statistics related to the operations of tier 4 microfinance institutions;
- (h) manage a savings protection scheme and a stabilisation fund for tier 4 microfinance institutions;
- (i) advise the Minister on matters relating to the development and operation of tier 4 microfinance institutions;
- (j) conduct periodic reviews of the activities of tier 4 microfinance institutions;
- (k) prescribe performance indicators for tier 4 microfinance institutions;
- (l) establish a mechanism of reporting by tier 4 microfinance institutions to the Credit Reference Bureau;
- (m) supervise, control and administer the assets of the Authority in such a manner and for such purposes as is best to promote the purpose of this Act;
- (n) prescribe minimum capital requirements;

- (o) regulate and supervise self-help groups;
- (p) regulate and supervise commodity-based microfinance institutions; and
- (q) perform any other activity necessary to facilitate the discharge of its functions and for giving full effect to this Act.

## **8. Powers of Authority**

- (1) The Authority may, in the discharge of its functions—
  - (a) investigate or inquire into the operations of tier 4 microfinance institutions;
  - (b) inspect and examine books of accounts, records, returns and any other document of the tier 4 microfinance institutions;
  - (c) request for information related to the activities of tier 4 microfinance institutions;
  - (d) instruct on the proper management of tier 4 microfinance institutions;
  - (e) at any time, at the discretion of the Authority, enter any premises of a tier 4 microfinance institution or any premises in which it is believed, on reasonable grounds, that books, records, accounts or documents relating to the business of the institution, are kept;
  - (f) 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 securities, books, records, accounts or documents of an institution;
  - (g) remove and take extracts from and copies of any of the securities, books, records, accounts or documents of a tier 4 microfinance institution;
  - (h) require any officer, employee or agent of a tier 4 microfinance institution—
    - (i) to explain any entry in the books, records, accounts or documents of the tier 4 microfinance institution; or
    - (ii) to provide the Authority with such information concerning the management or activities of the tier 4 microfinance institution as the supervisor may reasonably require; and
  - (i) exercise power that is necessary for the performance of its functions.

**9. Independence of Authority**

The Authority shall be independent in the performance of its functions and shall not be subject to the direction, instruction or control of any person or authority.

*Board of Directors*

**10. Board of directors of Authority**

(1) The Authority shall have a Board which shall be the governing body of the Authority.

(2) The Board shall comprise seven members appointed by the Minister.

**11. Composition of Board**

(1) The members of the Board are—  
(a) a representative of the Bank of Uganda;  
(b) a representative of the ministry responsible for finance;  
(c) a representative of the ministry responsible for cooperatives;  
(d) three persons with experience in microfinance; and  
(e) the Executive Director of the Authority, who shall be an *ex officio* member.

(2) The Executive Director shall be the Secretary to the Board.

(3) The members of the Board shall be persons of high moral character and proven integrity and shall be fit and proper persons in accordance with the criteria specified in Schedule 3 to this Act.

(4) A person shall not be eligible for appointment if that person is an employee or member of a company, firm or institution where that employment or membership may lead to a conflict of interest.

(5) The Minister shall appoint a chairperson from among the members of the Board.

## **12. Tenure of office of Board members**

- (1) A member of the Board shall hold office for three years and is eligible for re-appointment for one more term.
- (2) A member of the Board shall hold office on terms and conditions specified in the instrument of appointment.
- (3) A member of the Board may, at any time, resign his or her office by letter addressed to the Minister, giving notice of at least one month.
- (4) The Minister may, at any time, remove a member of the Board—  
(a) for inability to perform the functions of his or her office arising from infirmity of body or mind;  
(b) for misbehaviour or misconduct;  
(c) for incompetence;  
(d) for failure to disclose, at a Board meeting, a matter in which he or she has a personal interest;  
(e) for absence from more than four consecutive meetings of the Board, or absence from Uganda for more than twelve months, without the prior permission of the Chairperson, or without reasonable cause to the satisfaction of the Minister;  
(f) for bankruptcy or insolvency;  
(g) for conviction of an offence involving dishonesty, fraud or moral turpitude; or  
(h) where information relating to the conduct of a member, which could have precluded his or her appointment if it had been made available to the Minister, is brought to the attention of the Minister.

## **13. Filling of vacancies of Board**

- (1) The Chairperson of the Board shall notify the Minister of a vacancy that occurs in the membership of the Board within one month of the office falling vacant.
- (2) Where a vacancy occurs in the office of the chairperson of the Board, the Secretary to the Board shall notify the Minister of the occurrence of the vacancy and the Minister shall appoint another person to the office of chairperson.

(3) Where the Minister is notified of a vacancy under this section, the Minister shall within three months of the notice appoint another person to fill that vacancy.

#### **14. Functions of Board**

(1) The Board is responsible for the general direction and supervision of the Authority.

(2) Without prejudice to the general effect of subsection (1), the Board shall—

- (a) oversee the operations of the Authority;
- (b) advise the Minister on policy and other strategic matters relating to tier 4 microfinance institutions;
- (c) review and approve the business and operating plans, budgets, reports and audited financial statements of the Authority;
- (d) establish rules and procedures for the appointment, promotion, termination, discipline, and the terms and conditions of service of the staff of the Authority; and
- (e) perform any other function which may be necessary for the proper implementation of this Act.

#### **15. Meetings of Board**

Meetings of the Board shall be conducted in a manner prescribed in Schedule 2 to this Act.

#### **16. Committees of Board**

(1) The Board may appoint committees as they deem necessary to advise the Board on any matter as the Board may determine.

(2) A committee appointed under this section shall consist of a chairperson who shall be a member of the Board, and other persons, whether members of the Board or not, as the Board may determine.

(3) The Board shall specify in writing, the terms and conditions of service of the members of a committee of the Board.

(4) Subject to directions given by the Board, a committee appointed under this section may regulate its own procedure.

*Executive Director and other Staff of Authority*

**17. Executive Director**

- (1) The Authority shall be headed by an Executive Director.
- (2) The Executive Director shall be appointed by the Minister on the recommendation of the Board, on terms and conditions specified in the instrument of appointment.
- (3) A person shall not be appointed an Executive Director unless that person—
  - (a) is of high moral character and proven integrity; and
  - (b) has academic or professional qualifications and experience and competence to manage the affairs of the Authority.

**18. Functions of Executive Director**

- (1) The Executive Director shall be the chief executive officer of the Authority and as such, subject to the general supervision and control of the Board, shall be responsible for
  - (a) the day-to-day operations of the Authority;
  - (b) the management of the funds of the Authority;
  - (c) the administration and management of the property of the Authority;
  - (d) the supervision and control of the officers and other staff of the Authority;
  - (e) implementing the policies and programmes of the Board and reporting on them to the Board and ensuring that the agreed objectives, targets and service standards are met;
  - (f) providing advice to the Board as required on all matters which fall within the responsibility of the Board; and
  - (g) performing any other duty necessary for the implementation of this Act as may be assigned to him or her by the Board.

(2) The Executive Director, in the performance of his or her functions, is answerable to the Board.

**19. Tenure of office of Executive Director**

- (1) The Executive Director shall hold office for five years and is eligible for re-appointment for one more term.
- (2) The Executive Director shall cease to hold office where
- (a) he or she resigns;
  - (b) he or she is declared or becomes bankrupt or insolvent or has made an arrangement with his or her creditors;
  - (c) he or she is convicted of an offence involving dishonesty, fraud or moral turpitude; or
  - (d) he or she is removed from office by the Minister on the recommendation of the Board.
- (3) The Executive Director may be removed from office by the Minister on the recommendation of the Board under subsection (2)(d) for
- (a) inability to perform the functions of the office of the executive director arising from infirmity of body or mind;
  - (b) misbehaviour or misconduct; or
  - (c) incompetence.

**20. Other officers and staff of Authority**

- (1) The Board may, on the advice of the Executive Director, appoint other officers and staff of the Authority as may be necessary for the effective performance of the functions of the Authority.
- (2) The Board may delegate its powers to appoint officers and staff to the Executive Director, subject to conditions as the Board may specify.
- (3) The staff appointed under this section shall hold office on such terms and conditions as the Board may determine and specify in their instruments of appointment.

*Financial and other matters*

**21. Funds of Authority**

- (1) The funds of the Authority shall consist of
- (a) money appropriated by Parliament;

- (b) money that may accrue to the Authority in the discharge of its functions;
- (c) grants, gifts or donations from Government or other sources made with the approval of the Minister;
- (d) money from any other source as may be approved by the Minister; and
- (e) any revenue derived from the sale of property, movable or immovable, by or on behalf of the Authority.

(2) All money obtained under (b), (c), (d) and (e) shall be managed in accordance with the provisions of the Public Finance Management Act.

## **22. Power to open and operate bank accounts**

The Board shall not open or maintain a bank account to receive or spend public money without the written authority of the Accountant General.

## **23. Borrowing powers**

The Board may, with the approval of the Minister and the Minister responsible for finance, borrow money from any source as may be required for meeting its obligations or for the discharge of the functions of the Authority under this Act.

## **24. Estimates**

(1) The Executive Director shall, before the end of each financial year, cause to be prepared and submitted to the Board for its approval, estimates of the income and expenditure of the Authority and the work plan for the next financial year.

(2) The Board shall, on receipt of the estimates referred to in subsection (1), cause to be submitted to the Minister for approval, the estimates of income and expenditure as approved by the Board.

## **25. Financial year**

The financial year of the Authority is the period of twelve months commencing on the 1st day of July and ending on the 30th day of June of the following year.

**26. Books of accounts**

The Executive Director shall cause to be kept proper books of accounts and records of the financial transactions of the Authority in accordance with internationally accepted accounting standards.

**27. Audit**

(1) The Auditor General, or an auditor appointed by the Auditor General shall, in each financial year, audit the accounts of the Authority.

(2) The Board shall, within three months after the end of each financial year, submit the accounts of the Authority to the Auditor General or to an auditor appointed by the Auditor General.

**28. Annual report**

(1) The Board shall, within one month after receipt of the audited accounts, submit to the Minister, an annual report on the operations of the Authority of the preceding year and the report shall include an audited financial statement.

(2) The Minister shall, within two months after the receipt of the annual report, submit the report to Parliament with any statement which he or she considers necessary.

**29. Compliance with the Public Finance Management Act**

The Authority shall, in managing the finances of the Authority, comply with the Public Finance Management Act.

*Supervision of tier 4 microfinance institutions*

**30. Supervision**

(1) The Authority shall, in the exercise of its supervisory function of tier 4 microfinance institutions—

(a) analyse the audited accounts of tier 4 microfinance institutions and information, documents, explanations related to the audited accounts that the Authority may require;

- (b) analyse statutory returns; and
- (c) inspect and analyse records of tier 4 microfinance institutions.

(2) In this section, “statutory returns” means information and data on the business of a tier 4 microfinance institution, including periodic returns required by the Authority and the audited balance sheet and profit and loss account of the institution.

### **31. Periodic reports**

(1) The Authority shall require tier 4 microfinance institutions to furnish it with periodic reports of operations of the institution at such times and in such form as the Authority may by notice prescribe.

- (2) In examining the reports, the Authority shall satisfy itself of—
  - (a) compliance with capital requirements of a tier 4 microfinance institution;
  - (b) the composition of assets and liability items;
  - (c) the quality of the earning assets;
  - (d) the financial risks, operational risks, business risks and event risks; and
  - (e) any other matter which in the opinion of the Authority is relevant to the discharge of its supervisory function under this Act.

(3) A tier 4 microfinance institution that fails to submit a report required under this section commits an offence and is liable, on conviction, to a fine not exceeding twenty currency points.

### **32. Management and take-over**

Where—

- (a) the Authority considers that a tier 4 microfinance institution is in an unsound financial condition and is not operating in accordance with sound administrative and accounting practices and procedures, adhering to proper risk management policies; a tier 4 microfinance institution fails to comply with the minimum capital requirements prescribed under this Act;
- (c) a tier 4 microfinance institution refuses to be inspected by the Authority as required by this Act;

- (d) a tier 4 microfinance institution's licence has been cancelled or revoked;
- (e) the continuation of the business of a tier 4 microfinance institution is detrimental to the interests of its depositors; or
- (f) a tier 4 microfinance institution is conducting its business in a manner contrary to this Act,

the Authority may take over the management of the tier 4 microfinance institution for a period, that, in the opinion of the Authority, permits the institution's financial condition to be remedied.

### **33. Liability under contract**

A party to a contract with a tier 4 microfinance institution shall not be relieved of its obligations on the ground that the institution is under the management of the Authority.

### **34. Costs of management**

The costs of management of a tier 4 microfinance institution during the period of take over shall be payable by the Authority.

## **PART III—SAVINGS AND CREDIT COOPERATIVES**

### *Categorisation of SACCOs*

### **35. SACCOs to be registered societies and licensed under this Act**

- (1) A SACCO shall not carry on the business of financial services unless it is—
  - (a) a registered society; and
  - (b) licensed under this Act.
- (2) A SACCO shall provide financial services only to its members.
- (3) Subject to subsection (1), a SACCO may carry on the business of financial services if—
  - (a) it is operating on a probationary period pending registration under the Cooperatives Societies Act; or
  - (b) it has applied for a licence under this Act.

### **36. Powers of SACCO**

- (1) A SACCO shall—
  - (a) mobilise and receive savings from members;
  - (b) borrow in an aggregate amount not exceeding a limit prescribed by the Authority.
  
- (2) A SACCO—
  - (a) shall provide loans to its members;
  - (b) may serve as a fiscal agent for and receive payments or deposits from a government body on behalf of the members;
  - (c) may acquire and hold property in trust for its members;
  - (d) may purchase or make available, various forms of insurance or risk management programmes for its members, either on an individual or group basis in compliance with relevant laws; and
  - (e) may exercise such powers as may be necessary to enable it to carry out the purposes for which it is established.

#### *Licensing of SACCOs*

### **37. Licensing of SACCOs**

- (1) A SACCO that intends to carry on the business of financial services among its members shall apply to the Authority for a SACCO licence.
  
- (2) An application under subsection (1) shall be accompanied by—
  - (a) a certified copy of the certificate of registration of the SACCO issued under the Cooperative Societies Act;
  - (b) evidence that the SACCO meets the minimum equity requirements prescribed under section 46;
  - (c) information on the prospective place of business, indicating the head office and branches;
  - (d) evidence of payment of the prescribed fees;
  - (e) a statement on the objectives of the registered society in relation to offering financial services;
  - (f) evidence of the membership and the shareholding of the members;
  - (g) a statement 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.
- (3) Any person who knowingly or recklessly furnishes a document or information which is false or misleading in a material particular in connection with an application for a licence 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.

### **38. Issue of licence**

- (1) The Authority shall, within three months after receiving an application consider the application and may, if satisfied that the applicant meets the requirements, issue a licence to the applicant.
- (2) The Authority may issue a licence subject to such conditions as the Authority may consider necessary and may from time to time add, vary or substitute the conditions as it deems appropriate.
- (3) A licence shall indicate the location of operation for which the licence is issued.
- (4) The Authority shall, before issuing a licence, take into account all the matters it considers relevant to the application and shall have particular regard to—
  - (a) whether the SACCO will be operated responsibly by persons who are fit and proper;
  - (b) the nature and sufficiency of the financial resources of the applicant as a source of continuing financial support to the SACCO;
  - (c) the effectiveness of the business plan submitted by the applicant for the future conduct and development of the business of the institution; and
  - (d) whether the public interest will be served if the registered society is issued a licence.

### **39. Use of words “Savings and Credit Cooperative Society” or “SACCO”**

- (1) A SACCO which is licensed under this Act shall include the words “Savings and Credit Cooperative Society” or “SACCO” in its name.

(2) For the avoidance of doubt, a registered society which is not a licensed SACCO shall not include the words “Savings and Credit Cooperative Society” or “SACCO” in its name.

(3) Notwithstanding subsection (2), a registered society shall have up to twelve months from the date of its registration to apply for a licence under this Act.

(4) A registered society which includes the words referred to in subsection (2) in its name commits an offence and is liable, on conviction, to a fine not exceeding twenty-five currency points and where the contravention continues, shall be liable to pay an additional ten currency points for each day for which the contravention continues.

#### **40. Annual fee**

(1) The SACCO shall pay a prescribed annual fee in respect of the licence.

(2) Where the SACCO fails to pay the annual fee prescribed under subsection (1), the licence shall be cancelled.

(3) The annual fee payable under subsection (1) shall be payable on the issue of a licence and thereafter annually upon application for renewal of the licence.

#### **41. Renewal of licence**

(1) A SACCO may apply for a renewal of a licence.

(2) An application for the renewal of a licence shall be made every year in accordance with the regulations made under this Act.

(3) Subject to subsection (2), on application duly made for the renewal of a licence, the Authority may renew the licence.

(4) The Authority shall not renew a licence where the SACCO has violated a provision of this Act or a condition of the licence.

**42. Publication of SACCOs**

(1) The Authority shall cause the list of the SACCOs to be published once every year in the *Gazette* and in at least one newspaper of wide circulation in Uganda.

**43. Revocation of SACCO licence**

(1) The Authority may, by notice in writing, revoke the licence of a SACCO if it is satisfied that the SACCO—

- (a) has not commenced business within six months from the date of issue of the licence;
- (b) ceased to carry on the business of financial services for which the licence was issued;
- (c) furnished to the Authority, information or a document in connection with its application for a licence, which is false or misleading in a material particular;
- (d) has been declared insolvent;
- (e) has been wound up;
- (f) is conducting business in a manner detrimental to the interests of its members;
- (g) is misleading in respect of the financial condition, ownership, management, operations or other facts material to its business;
- (h) has, without the consent of the Authority, been amalgamated with another SACCO or has sold or otherwise transferred its assets and liabilities to another SACCO or company;
- (i) transferred or assigned its licence; or
- (j) contravened the provisions of this Act.

(2) The Authority shall, before revoking a licence, give to the affected licensee at least fourteen days' notice in writing, of the intention to revoke the licence and shall require the licensee to show cause why the licence should not be revoked.

(3) Where the Authority revokes a licence—

- (a) the Authority shall cause a notice of the revocation to be published in the *Gazette* and at least one newspaper of wide circulation in Uganda; and
- (b) the affected licensee shall, from the date of the notice, cease to offer financial services.

*Management of SACCOs*

**44. Financial Year of SACCO**

The financial year of a SACCO shall be the period of twelve months ending on 31st December.

**45. Liquid assets**

(1) A SACCO shall maintain minimum holdings of liquid assets in relation to the savings of members.

(2) The minimum holdings of liquid assets in subsection (1) shall be in form of—

- (a) legal tender;
- (b) account balances in a financial institution or a microfinance deposit taking institution;
- (c) money at call in Uganda;
- (d) treasury bills issued by the Government of Uganda and maturing within three months; and
- (e) any other asset as may be prescribed by the Authority by notice in the *Gazette* and a paper of wide circulation.

**46. Equity**

(1) The equity of a SACCO includes—

- (a) share capital;
- (b) retained earnings;
- (c) capital donations and grants;
- (d) statutory reserves; and
- (e) other net-worth accounts owned collectively by all members.

(2) The Authority shall prescribe the minimum equity that a SACCO shall maintain.

**47. Shareholding**

(1) A SACCO may offer an unlimited number of shares at a per value established in its byelaws.

(2) An individual member of a SACCO shall not hold more than one-third of the paid-up share capital of a SACCO.

- (3) The shares of the member of a SACCO—  
(a) shall form part of the equity of a SACCO;  
(b) are transferable;  
(c) shall not be withdrawn; and  
(d) shall not be used as security for a loan.

#### **48. Savings**

(1) A member may operate a savings account with a SACCO, according to the terms and conditions under which the account was opened and classified.

(2) The committee of a SACCO shall determine the basis and rate of interest to be paid on a savings account.

(3) Savings shall constitute the first call on the payment obligations of a member.

#### **49. Restrictions on borrowing**

(1) A SACCO may borrow an amount up to the maximum set by members during the general meeting of the SACCO.

(2) Notwithstanding subsection (1), a SACCO shall not borrow an amount which in aggregate exceeds the limit prescribed by the Authority under section 36(1)(b).

#### **50. Credit**

- (1) A SACCO shall have a credit policy which shall include—  
(a) the terms and conditions of repayment;  
(b) the maximum amount that may be borrowed; and  
(c) an acceptable form of security for a loan.

(2) A SACCO shall provide credit according to the terms and conditions prescribed in the credit policy of that SACCO.

## **51. Surplus**

(1) A SACCO shall create a Reserve Fund comprising ten percent of the annual surplus from the operations of the SACCO.

(2) A SACCO shall maintain a fund to be known as the Share Transfer Fund and shall allocate annually out of its surplus, if any, an amount to be determined by the Authority not exceeding five percent of the SACCO's share capital.

(3) A SACCO may create any other reserves as may be approved by members in the general meeting.

(4) The management of the reserves under this section shall be prescribed by regulations made under this Act.

## **52. Unclaimed balances**

(1) Where the savings account of a member in a SACCO in respect of which no transaction or business takes place and no statement of account is requested or acknowledged by a member during a period of two years—

(a) in the case of a saving for a fixed period, from the day on which the fixed period terminated; and

(b) in the case of any other saving, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the member, whichever is later,

a withdrawal shall not be allowed on the saving account except with the permission of two officers of the SACCO authorised to grant the permission.

(2) An account referred to in subsection (1) shall be transferred to a register of dormant accounts in the books of the SACCO and the SACCO shall give notice in writing to the member 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 SACCO 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) A SACCO shall not charge on the dormant account any fee or cost apart from the cost of the advertisement referred to in subsection (3).

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

(6) Unclaimed balances shall, after a period of five years, be transferred to the Authority and the Authority shall employ them to offset the costs of supervising SACCOs or as the Authority may deem appropriate.

(7) A member of a SACCO whose unclaimed balances have been transferred to the Authority may make a request to the Authority within one year of transfer of unclaimed balances under subsection (6) and the Authority shall refund the unclaimed balances.

*SACCO Stabilisation Fund*

**53. SACCO Stabilisation Fund**

(1) There is established a SACCO Stabilisation Fund to be managed by the Authority.

(2) Every SACCO shall subscribe to the SACCO Stabilisation Fund.

**54. Objective of SACCO Stabilisation Fund**

(1) The object of the SACCO Stabilisation Fund is—  
(a) to provide financial assistance to SACCOs that are insolvent or are likely to become insolvent;  
(b) to advance loans and grants to SACCOs that require financial assistance;  
(c) to purchase the assets of insolvent SACCOs or take over all or any portion of the liabilities of the SACCO; and  
(d) to supervise, administer and reorganise the affairs of a SACCO that is likely to become insolvent.

(2) A SACCO shall submit a quarterly financial report to the Authority.

**55. Funds of SACCO Stabilisation Fund**

The funds of the SACCO Stabilisation Fund shall consist of—

- (a) an annual contribution from each SACCO, equivalent to 0.5 percent of the average total assets of the SACCO; and
- (b) money realised from assets purchased from a SACCO in the process of dissolution.

*SACCO Savings Protection Fund*

**56. SACCO Savings Protection Fund**

(1) There is established a Fund to be known as the SACCO Savings Protection Fund.

(2) Every SACCO shall pay a prescribed subscription into the SACCO Savings Protection Fund.

(3) The SACCO Savings Protection Fund shall provide protection for savings of the individual members, up to an amount determined by the Authority, by notice in a newspaper of wide circulation in Uganda.

(4) The SACCO Savings Protection Fund shall not provide protection for shares of individual members.

**57. Funds of the SACCO Savings Protection Fund**

The funds of the SACCO Savings Protection Fund shall consist of

- (a) money appropriated by Parliament; and
- (b) an annual contribution from the SACCOs as determined by the Authority.

**58. Investment of SACCO funds**

The money constituting the SACCO Savings Protection Fund may be invested by the Authority in—

- (a) Government securities;
- (b) commercial paper;
- (c) deposits in a financial institution and a microfinance deposit taking institution; and
- (d) any other investment approved by the Authority.

**59. Payments out of SACCO Savings Protection Fund**

(1) A member of a SACCO may, upon the SACCO becoming insolvent, lodge a claim with the Authority, for payment to the member out of the SACCO Savings Protection Fund, of the amount of savings which are protected under section 56(3).

(2) The Authority shall, before paying a claim, require the claimant to furnish documentary proof that the claimant is entitled to the payment.

(3) The Authority shall not pay a member who in the opinion of the Authority is wholly or partly responsible for or may have benefited directly or indirectly from the SACCO becoming insolvent.

(4) The Authority may, at any time, inspect the SACCO Savings Protection Fund to ascertain the type, number and value of the savings of members of a SACCO that are protected by the SACCO Savings Protection Fund.

**60. Central Financing Facility**

(1) At least two or more SACCOs may establish a central financing facility.

(2) A SACCO shall not borrow from more than one central financing facility except with the approval of the Authority.

(3) A Central Financing Facility shall only serve member SACCOs and not individuals.

(4) A Central Financing Facility may be operated by—

- (a) an apex society;
- (b) a cooperative union; or
- (c) a company incorporated by the SACCOs for purposes of operating a Central Financing Facility.

PART IV—NON-DEPOSIT TAKING MICROFINANCE  
INSTITUTIONS

*Licensing of non-deposit taking microfinance institutions*

**61. Issue of licence**

(1) The Authority shall, after receiving an application for a licence, of a non-deposit taking microfinance institution consider the application and may, if satisfied that the applicant meets the requirements, issue a licence to the applicant.

(2) The Authority may issue a licence for a non-deposit taking microfinance institution subject to such conditions as the Authority may consider necessary and may add, vary or substitute such conditions as it deems appropriate.

**62. Annual fee**

(1) The non-deposit taking microfinance institution shall pay a prescribed annual fee in respect of the licence.

(2) Where the non-deposit taking microfinance institution fails to pay the annual fee prescribed under subsection (1), the licence shall be cancelled.

(3) The annual fee payable under subsection (1) shall be payable on the issue of a licence and thereafter annually upon application for renewal of the licence.

**63. Renewal of licence**

(1) A non-deposit taking microfinance institution may apply for renewal of its licence.

(2) An application for the renewal of a licence shall be made every year in accordance with the regulations made under this Act.

(3) Subject to subsection (2), on application duly made for the renewal of a licence, the Authority may renew a licence.

(4) The Authority shall not renew a licence where the non-deposit taking microfinance institution has violated a provision of this Act or a condition of the licence.

#### **64. Publication of licensed non-deposit taking microfinance institution**

The Authority shall cause the list of the licensed non-deposit taking microfinance institution to be published once every year in the *Gazette* and at least one newspaper of wide circulation in Uganda.

#### **65. Revocation of licence**

(1) The Authority may, by notice in writing, revoke a licence if it is satisfied that the non-deposit taking microfinance institution—

- (a) has not commenced or has ceased to carry on business within six months from the date of issue;
- (b) furnished any information or document to the Authority in connection with its application for a licence which is false or misleading in a material particular;
- (c) is 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 conducting business that is contrary to the objectives of the non-deposit taking microfinance institution stated in the memorandum and articles of association or the Constitution, as the case may be;
- (h) has engaged in deception in respect of the financial condition, ownership, management, operations or other facts material to its business;
- (i) has transferred or assigned its licence; or
- (j) has contravened the provisions of this Act.

(2) The Authority shall, before revoking a licence, give the affected non-deposit taking microfinance institution notice of at least fourteen days in writing of its intention, and shall consider representations made by the non-deposit taking microfinance institution before revoking the licence.

- (3) Where the Authority revokes a licence—

- (a) the Authority shall cause notice of the revocation to be published in the *Gazette* and in at least one newspaper of wide circulation in Uganda; and
- (b) the affected non-deposit taking microfinance institution shall, from the date of the notice, cease to provide financial services.

## **66. Micro loans**

- (1) A non-deposit taking microfinance institution may grant micro loans.
- (2) A micro loan shall be in Uganda Shillings and may be granted with or without collateral.

## **67. Transparency**

A non-deposit taking microfinance institution shall exhibit transparency in dealing with the public and in particular shall—

- (a) furnish borrowers with accurate information on the procedure and conditions for micro-lending;
- (b) inform borrowers, prior to the acquisition of a micro loan, of the financial costs associated with the procurement and servicing of that micro loan to be met by the borrower;
- (c) maintain confidentiality of information relating to borrowers; and
- (d) inform borrowers of the rights and duties associated with the acquisition of micro loans.

## **68. Scope of activities for non-deposit taking microfinance institution**

- (1) A non-deposit taking microfinance institution shall—
  - (a) assist in the development of micro, small and medium sized businesses; and
  - (b) expand access to micro loan resources to individuals for the promotion of their businesses, livelihoods and land holdings.
- (2) In the course of its activities, a non-deposit taking microfinance institution shall make available for examination by its clients—
  - (a) the procedures for loan application and approval;
  - (b) the micro loan agreement;
  - (c) the amount of the loan;

- (d) the interest rate;
  - (e) the schedule of repayment;
  - (f) the performance of a micro loan agreement; and
  - (g) the responsibilities of the parties in the event of non-performance.
- (3) For the avoidance of doubt, a non-deposit taking microfinance institution shall not—
- (a) raise money in form of deposits from individuals;
  - (b) act as a surety for the obligations of the shareholders of the non-deposit microfinance institution or third parties;
  - (c) lend loan insurance funds; or
  - (d) provide collateral for its members or third parties.
- (4) A non-deposit taking microfinance institution shall not, except with the approval of the Authority, dispose of an asset of a non-deposit taking microfinance institution which results in a ten percent reduction of the book value of the assets of the non-deposit taking microfinance institution.

## **69. Loan application and agreement form**

- (1) The loan application form to be used by the non-deposit taking microfinance institution shall be prescribed by regulations.
- (2) The loan agreement form shall include—
- (a) the names of the borrower;
  - (b) the amount of the loan;
  - (c) the purpose and drawdown period of the loan;
  - (d) the maturity date and repayment schedule of the loan;
  - (e) the total amount of interest to be paid over the course of the loan;
  - (f) the penalties in case a borrower is unable to fulfill a loan obligation;
  - (g) the security or collateral, if any; and
  - (h) the procedures for settlement of disputes.

## **70. Powers of non-deposit taking microfinance institution**

A non-deposit taking microfinance institution—

- (a) may request for and receive information and documents from a borrower as may be required in considering an application for a micro loan; and

- (b) shall enforce compliance with the terms and conditions of a micro loan agreement.

## **71. Rights and duties of borrower**

(1) A non-deposit taking microfinance institution shall provide to the borrower full and accurate information on the procedure and conditions of micro lending, including information on the borrower's financial costs associated with the acquisition and servicing of a micro loan.

(2) A borrower has a right to request for the information in subsection (1).

## **72. Finances of non-deposit taking microfinance institution**

(1) The assets and capital of a non-deposit taking microfinance institution comprise—

- (a) voluntary property contributions by one or more promoters;
- (b) donations and charitable contributions from third parties;
- (c) grants and non-repayable special purpose financing from a local government or Government;
- (d) earnings from the activities of the non-deposit taking microfinance institution including micro-lending; and
- (e) loans and credits.

## **73. Reporting of non-deposit taking microfinance institution**

(1) A non-deposit taking microfinance institution shall submit an annual report to the Authority, within three months after the end of a financial year.

- (2) The annual report shall contain information on—
  - (a) the audited financial statements;
  - (b) the structure of the management; and
  - (c) any other matter as the Authority may require.

## **74. Accounts and audit**

(1) A non-deposit taking microfinance institution shall keep proper books of accounts which may be inspected by the Authority at any time.

(2) The books of accounts of a non-deposit taking microfinance institution shall be kept for at least seven years.

#### **75. Merger and acquisition of non-deposit taking microfinance institution**

A non-deposit taking microfinance institution may, with the approval of the Authority, merge with one or more non-deposit taking microfinance institutions.

### **PART V—MONEY LENDING**

#### **76. Supervision of money lending business**

(1) The Authority shall regulate and supervise the money lending business.

(2) The Authority shall, in the exercise of its function under subsection (1)—

- (a) grant, renew and revoke money lending licences;
- (b) keep and maintain a register of money lenders;
- (c) sensitise the public about the money lending business; conduct inspection and examination of books of accounts, records, returns and any other document or premises of a money lending business; and
- (e) conduct an inquiry into money lending business.

#### **77. Application for money lending licence**

(1) A person intending to engage in money lending business shall be a company.

(2) A money lender does not include—

- (a) a company carrying on the business of banking or insurance;
- (b) a society registered under the Cooperative Societies Act; or
- (c) a body corporate, incorporated or empowered by an Act of Parliament to lend money in accordance with that Act.

(3) An application for a licence for money lending shall be made in writing to the Authority and shall be accompanied by—

- (a) the certificate of incorporation of the company;
- (b) a resolution of the particulars of the directors of the company;
- (c) a resolution of the particulars of the secretary of the company;
- (d) the postal and physical address of the company; and
- (e) the prescribed fee.

**78. Issue of money lending licence**

(1) The Authority shall, within three months after receiving an application under this section, consider the application and may, if satisfied that the applicant meets the requirements, issue a licence to the applicant.

(2) The Authority may issue a licence subject to such conditions as the Authority may consider necessary and may add, vary or substitute the conditions as it deems appropriate.

- (3) A licence issued under this section—
  - (a) shall expire on the thirty first day of December in every year;
  - (b) shall specify the name under which, and the address at which, the money lender is authorised to carry on business; and
  - (c) shall not authorise a money lender to carry on business under more than one name.

**79. Refusal to issue money lending licence**

- (1) The Authority shall not issue a licence for money lending where—
  - (a) the Authority is not satisfied that the shareholders and persons responsible for the management of the company or firm are of good character;
  - (b) the applicant, or any person responsible for the management of a company that is issued with a money lending licence has been convicted of an offence relating to embezzlement or any other financial impropriety; or
  - (c) the applicant has not complied with section 77(3).

(2) Where the application has been rejected, notice of rejection shall be given within 30 days.

(3) Any applicant aggrieved by the decision of the Authority not to grant a licence may appeal to the High Court.

**80. Annual fee**

(1) The money lender shall pay a prescribed annual fee in respect of the money lending licence.

(2) Where the money lender fails to pay the annual fee prescribed under subsection (1), the licence shall be cancelled.

(3) The annual fee payable under subsection (1) shall be payable on the issue of a licence and thereafter annually upon application for renewal of the licence.

**81. Renewal of money lending licence**

(1) A money lender may apply for a renewal of a money lending licence.

(2) An application for the renewal of a money lending licence shall be made every year in accordance with the regulations made under this Act.

(3) Subject to subsection (2), on application duly made for the renewal of a money lending licence, the Authority may renew the licence.

(4) The Authority shall not renew a money lending licence where the money lender has violated a provision of this Act or a condition of the licence.

**82. Revocation of a money lending licence**

(1) The Authority may, by notice in writing, revoke a money lending licence if it is satisfied that the money lender—

- (a) has not commenced business within twelve months from the date of issue of the money lending licence;
- (b) ceased to carry on the money lending business for which the licence was issued;
- (c) furnished to the Authority, information or a document in connection with its application for a licence, which is false or misleading in a material particular;
- (d) has been declared insolvent;
- (e) has been wound up;

- (f) is conducting business in a manner detrimental to the interests of the public;
- (g) transferred or assigned its licence; or
- (h) contravened the provisions of this Act.

(2) The Authority shall, before revoking a licence, give to the licensee at least fourteen days' notice in writing, and shall consider representations made by the licensee before revoking the licence.

- (3) Where the Authority revokes a licence—
  - (a) the Authority shall cause a notice of the revocation to be published in the *Gazette* and at least one newspaper of wide circulation; and
  - (b) the affected licensee shall, from the date of publication of the notice, cease to transact money lending business.

(4) A licensee aggrieved by a revocation of its licence may appeal to the High Court and the High Court may confirm, reverse or otherwise vary the decision of the Authority.

### **83. Offences in respect of money lending business**

(1) Any person who—

- (a) carries on business as a money lender without a money lending licence; or
- (b) carries on business in a name or at any other place other than the name or address specified in the money lending licence,

commits an offence and is liable, on conviction, to a fine of two hundred currency points and on a second or subsequent conviction, is liable to a fine of four hundred currency points.

- (2) In addition to the penalty under subsection (1), the court may—
  - (a) by order suspend a money lending licence; or
  - (b) in the case of a conviction under subsection (1)(a), disqualify that person from engaging in money lending business.

### **84. Form of money lending contract**

(1) A money lending contract shall be in writing and shall be signed by the money lender and the borrower and shall be witnessed by a third party.

- (2) The contract shall take the form of a note or memorandum which shall contain all the terms of the contract and, in particular, shall show—
- (a) the date on which the loan is disbursed;
  - (b) the amount of the principal of the loan;
  - (c) the interest charged on the loan expressed in terms of a percentage per year;
  - (d) the nature of the security, if any;
  - (e) the duties and obligations of the borrower;
  - (f) the mode of repayment;
  - (g) the nature of guarantorship, if any; and
  - (h) the right to early repayment.

## **85. Prohibition of compound interest and provision as to defaults**

- (1) A money lending contract is illegal and unenforceable if it directly or indirectly provides for—
- (a) the payment of compound interest; or
  - (b) the rate or amount of interest being increased by reason of a default in the payment of sums due under the contract.
- (2) Where a borrower defaults to pay the sum payable to the money lender on the due date, the money lender is entitled to charge simple interest on that sum from the date of default until the sum is paid.

## **86. Money lender to issue receipts and keep records**

- (1) A money lender shall issue a receipt to a borrower for every repayment made on a loan.
- (2) The receipt shall be issued immediately after the payment is made.
- (3) Every money lender shall keep a record which shall contain—
- (a) the date on which the loan was disbursed;
  - (b) the amount of the principal;
  - (c) the rate of interest; and
  - (d) the sum repaid on the loan and the date on which the repayment is made.

**87. Powers of court**

(1) Where a money lender applies to court for the recovery of any money lent, or the enforcement of an agreement or security made or taken in respect of money lent, the money lender shall produce the records referred to in section 86.

(2) Where court is satisfied that a borrower has defaulted in payment of a sum due to the money lender under a money lending agreement and that there is a further outstanding amount under the agreement that is not yet due, the court may determine the contract and order the principal outstanding to be paid to the money lender, with such interest as the court may allow, up to the date of payment.

(3) Subsections (1) and (2) shall affect the rights of any *bona fide* assignee or holder for value without notice.

**88. Re-opening transactions of money lenders**

(1) Where a borrower or a money lender applies to court for the recovery of money lent or the enforcement of a money lending agreement or security made or taken in respect of money lent, the court may re-open a transaction if it is satisfied that—

- (a) the interest charged in respect of the sum actually lent is excessive;
- (b) the amount charged for expenses, inquiries, fines, bonus, premium, renewals or any other charges, is excessive;
- (c) the transaction is harsh and unconscionable; or
- (d) the transaction is such that a court of equity would give relief.

(2) Where the court re-opens a transaction, the court shall take into account the agreement between the money lender and the borrower and may, notwithstanding any statement or settlement of account or any agreement to close previous dealings—

- (a) relieve the borrower from payment of a sum in excess of the sum adjudged by the court to be fairly due in respect of the principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable;
- (b) order the money lender to repay the excess sum paid by the borrower;

- (c) set aside, either wholly or in part, or revise or alter any security given or agreement made in respect of money lent; or
- (d) order the money lender to indemnify the borrower if the money lender has realised the security.

(3) A court may, at the instance of the borrower or surety or other person liable, exercise the powers under subsections (1) and (2), notwithstanding that the time for repayment of the loan, or any installment of the loan, is not yet due.

(4) Where a court re-opens the transaction of a money lender under subsection (1), the court may require the money lender to produce the money lenders licence under which the money lender operates, and may endorse on the licence such particulars as the court considers necessary, and the court shall transmit to the Authority a copy of the licence bearing the endorsement.

(5) Nothing in this section shall affect the rights of any *bona fide* assignee or holder for value without notice.

## **89. Control of interest rates**

(1) The Minister may, in consultation with the Authority, by notice in the *Gazette*, prescribe a maximum interest rate which a money lender shall charge.

(2) Any money lender who charges an interest that is higher than the maximum interest rate prescribed by the Minister commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points and the court may, in addition to the fine order that the money lenders licence be cancelled and that the money lender pays the borrower any money paid in excess as a result of the interest rate charged.

## **90. Money lending advertisements**

A money lender may publish in a newspaper or exhibit at an authorised address of the money lender, a notice which contains—

- (a) the authorised address at which the money lender carries on business;
- (b) the particulars of the address at which the money lender carries on business;

- (c) the address at which the money lender formerly carried on business;
- (d) a statement that the money lender lends money with or without security; and
- (e) a statement of the highest and lowest sums that the money lender offers.

## **91. Penalties for false statements and representations**

(1) Any person who by any false, misleading, or deceptive statement, representation or promise, or by a dishonest concealment of material facts, induces or attempts to induce another person to borrow money or to agree to the terms on which money is borrowed, commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding two years, or both.

(2) Where the offence under subsection (1) is committed by a money lender, the directors, secretary or other officer responsible shall be held liable for the commission of the offence.

## **92. Notice of assignment of money lenders debts**

(1) Where a debt arising out of money lending is assigned to another person, the assignor, whether he or she is the money lender, by whom the money was lent or any person to whom the debt has been previously assigned, shall—

- (a) give to the assignee, notice in writing that the assignment is subject to this Act; and
- (b) supply to the assignee all information necessary to enable the assignee to comply with this Act.

(2) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding two years, or both and shall, in addition to the penalty, indemnify any other person who is prejudiced by the contravention.

(3) In this section, “assigned” means assigned by any assignment *inter vivos* other than an assignment by operation of law, and “assignor” and “assignee” have corresponding meanings.

**93. Application in respect of assignees**

(1) This Act shall apply in respect of a debt to a money lender arising from money lent after the commencement of this Act or the benefit of any agreement made or security taken in respect of a debt, notwithstanding that the debt or the benefit of the agreement or security may have been assigned and, except where the context otherwise requires, references in this Act to a money lender shall be construed as including an assignee.

(2) An agreement with, or security taken by, a money lender in respect of money lent after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him or her.

(3) A payment or transfer of money or property made *bona fide* by a person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of the agreement or security, without notice of the defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid.

**94. Repayment of money by borrower**

(1) Where a borrower wishes to repay a loan to a money lender and the money lender evades the borrower to the extent that it becomes impossible for the borrower to repay the money lender, the borrower may deposit the loan money with the Authority on behalf of the money lender and the repayment shall be deemed to have been paid to the money lender.

(2) The Authority shall transmit the money paid under subsection (1) to the money lender.

**95. Prohibition of charge for expenses on loans**

An agreement between a money lender and a borrower for the payment of a sum on account of costs, charges or expenses incidental to or relating to the negotiations for the granting of the loan is illegal, and if a borrower pays a sum to a money lender on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or, be offset against the amount actually lent.

**96. Penalty for taking promissory note in which the amount is left blank or not truly stated**

A money lender who takes, as security for any loan, a promissory note or other contract for the repayment of money lent in which the principal is, to the knowledge of the money lender, not truly stated, or is left blank, commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding two years, in the event of a second or subsequent offence, to a fine not exceeding one hundred currency points or to imprisonment for a term not exceeding four years.

**97. Non-application of Part**

- (1) This Part shall not apply
  - (a) to a money lending transaction where the security for repayment of the loan and interest on the loan is effected by execution of a chattels transfer in which the interest provided for is not in excess of nine percent per year;
  - (b) to a transaction where a bill of exchange is discounted at a rate of interest not exceeding nine percent per year; or
  - (c) to a money lending transaction where the security for repayment of the loan and interest on the loan is effected by execution of a legal or equitable mortgage upon immovable property or of a charge upon immovable property or of any *bona fide* transaction of money lending upon such mortgage or charge.

(2) The exemption provided for in this section shall apply whether the transactions referred to are effected by a money lender or not.

(3) A person who lends money only by means of the type of transactions set out in subsection (1) and by means of no other type of transaction shall be deemed not to be a money lender for the purpose of this Act.

**PART VI—SELF-HELP GROUPS**

**98. Self-help groups**

- (1) A self-help group shall
  - (a) mobilise and manage its own savings;

- (b) provide interest-bearing loans to its members;
  - (c) offer a limited form of insurance to its members;
  - (d) share out member equity at least once a year in proportion to the savings; and
  - (e) be time-bound.
- (2) A responsible officer in a district shall—
- (a) register a self-help group in the prescribed form; and
  - (b) maintain a register of self-help groups.
- (3) A self-help group shall be registered for the purpose of developing the economic interests of the group members and may provide services including—
- (a) savings and credit;
  - (b) revolving fund;
  - (c) fundraising;
  - (d) rotational group farming; or
  - (e) barter trade.

## **99. Financial stabilisation**

The Authority shall issue operational guidelines to assist a self-help group to establish financial stabilisation mechanisms for purposes of providing compensation to the members.

## **100. Governance and management**

- (1) A self-help group shall comprise members with a common bond.
- (2) The self-help group shall form among themselves a governance committee which shall be responsible for the day-to-day management of the self-help group.
- (3) For purposes of subsection (2), the committee shall—
- (a) convene meetings; and
  - (b) keep records and books of accounts of the self-help group.
- (4) The responsible officer shall submit to the Authority, within one month after the end of each financial year—
- (a) a copy of the register of self-help groups; and

- (b) an annual report on self-help groups in the district.

## PART VII—COMMODITY BASED

### **101. Operation of commodity based**

For the purpose of this section—

- “commodity based” means the provision of microfinance services in the form of goods and services;  
“recipient” means a person selected to receive a commodity.

### **102. Selection of recipient**

- (1) A responsible officer shall organise a meeting to select a recipient of a commodity.
- (2) The selection of a recipient shall be guided by—  
(a) transparency and participation of the stakeholders;  
(b) equity and spatial distribution; and  
(c) access to or ownership of land and other factors of production.
- (3) A recipient of a commodity shall not use that commodity for a purpose other than income generation.

### **103. Prohibition on use of commodity**

- (1) A recipient of a commodity shall not, except with the approval of the Authority—  
(a) liquidate the commodity acquired; or  
(b) assign or transfer the commodity.
- (2) A recipient who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding twenty-five currency points or to imprisonment for a term of one year, or both.

**PART VIII—ISLAMIC MICROFINANCE****104. Islamic microfinance**

- (1) A tier 4 microfinance institution that intends to operate Islamic microfinance shall apply to the Authority for approval.
- (2) An application under subsection (1) shall be accompanied by—
  - (a) proof that the proposed dealings and transactions in Islamic microfinance business shall be in accordance with *Shari'ah* law;
  - (b) the nominee to be appointed as a *Shari'ah* adviser;
  - (c) the modes of finance and product structures proposed to be used for raising resources and extending financial assistance to the clients;
  - (d) a *Shari'ah* compliance mechanism;
  - (e) a method of segregating the Islamic microfinance business from the conventional microfinance business; and
  - (f) any other information that the Authority may require.
- (3) The Authority shall consider the application and may, if satisfied that the applicant meets the requirements, grant an approval to the applicant to offer Islamic products and services.
- (4) The Authority may withdraw the approval granted under subsection (3) if the Authority is satisfied that the applicant made a material misrepresentation or concealment of information.

**PART IX—RECEIVERSHIP AND LIQUIDATION***Receivership***105. Receivership of tier 4 microfinance institution**

- (1) The Authority may place under receivership a tier 4 microfinance institution where—
  - (a) there is a likelihood that the tier 4 microfinance 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 tier 4 microfinance institution has incurred or is likely to incur losses that will deplete all or a substantial amount of its capital.

(2) The Authority or a person appointed by the Authority shall be the receiver of the tier 4 microfinance institution.

*Liquidation*

**106. Bar on liquidation or winding up proceedings**

Notwithstanding any other law to the contrary, proceedings for the winding up or liquidation of a tier 4 microfinance institution shall not be commenced except—

- (a) by the Authority; or
- (b) by a tier 4 microfinance institution with the prior approval of the Authority.

PART X—MISCELLANEOUS

**107. Application of Insolvency Act and Companies Act**

The Insolvency Act and the Companies Act shall apply, with necessary modifications, to receivership and liquidation of a tier 4 microfinance institution.

**108. Application of Cooperative Societies Act**

(1) The Cooperative Societies Act, shall not apply to SACCOs regulated under this Act except as expressly provided by this Act.

(2) The Cooperative Societies Act shall apply to a SACCO in respect of

- (a) governance of a SACCO;
- (b) investment of funds;
- (c) dividends or bonus;
- (d) the Reserve Fund;
- (e) the Share Transfer Fund; and
- (f) contribution to the Education Fund.

(3) Where the Cooperative Societies Act requires that an act be done by the registrar, that act shall for purposes of subsection (2), be done by the Authority.

**109. Offences**

Any person who, with 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 a tier 4 microfinance 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 not exceeding one hundred currency points or to imprisonment for a term not exceeding four years, or both.

**110. Regulations**

(1) The Minister may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the general effect of subsection (1), the Minister may make regulations for—

- (a) the fees to be paid for a licence issued under this Act;
- (b) the terms and conditions for renewal of a licence;
- (c) the minimum holdings of liquid assets in relation to its members' deposits;
- (d) the conditions for lending;
- (e) minimum equity requirements;
- (f) risk management for non-deposit taking microfinance institutions.
- (g) the operation of self-help groups;
- (h) the operation of commodity based;
- (i) money lending; and
- (j) accounting and financial reporting.

(3) Regulations made under this section may prescribe in respect of a contravention of the regulations—

- (a) a penalty not exceeding a fine of forty-eight currency points or to imprisonment for a term not exceeding two years, or both;

- (b) in the case of a second or subsequent contravention, a fine not exceeding ninety-six currency points or to imprisonment for a term not exceeding four years, or both;
- (c) in the case of a continuing contravention, an additional penalty not exceeding ten currency points in respect of each day on which the offence continues; and
- (d) may also require that the court shall order the forfeiture of anything used in the commission of the offence.

### **111. Power to amend Schedule 1**

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

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**SCHEDULE****S Schedule 1**

Sections 4, 111

**Currency Point**

A currency point is equivalent to twenty thousand shillings.

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**Schedule 2**

Section 15

**Meetings of Board****1. Meetings of Board**

(1) The Chairperson shall convene every meeting of the Board at a time and place as the Board may determine, and the Board shall meet for the discharge of business at least once in every three months.

(2) The Chairperson may, at any time, convene a special meeting of the Board and shall also call a meeting within fourteen days, if requested to do so in writing by at least five members of the Board.

(3) Notice of a Board meeting shall be given in writing to each member at least fourteen working days before the day of the meeting.

(4) The Chairperson shall preside at every meeting of the Board and in the absence of the Chairperson, the members present shall appoint a member from among themselves to preside at that meeting.

**2. Quorum**

(1) The quorum for a meeting of the Board is five members.

(2) All decisions at a meeting of the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(3) In absence of the Chairperson from any meeting of the Authority, members present shall elect one among themselves to preside, and such a member shall, for the purpose of that meeting, have all the powers of the Chairperson under this Act.

### **3. Minutes of meetings**

(1) The Secretary shall cause to be recorded and kept, minutes of all meetings of the Board in a form approved by the Board.

(2) The minutes recorded under this paragraph shall be submitted to the Board for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson, in the presence of the members present at the latter meeting.

### **4. Power to co-opt**

(1) The Board may invite any person who, in the opinion of the Board, has expert knowledge concerning the functions of the Board, to attend and take part in the proceedings of the Board.

(2) A person attending a meeting of the Board under subparagraph (1) may take part in any discussion at the meeting on which his or her advice is required but shall not have any right to vote.

### **5. Validity of proceedings not affected by vacancy**

The validity of any proceedings of the Board shall not be affected by a vacancy in its membership or by any defect in the appointment or qualification of a member or by reason that a person not entitled, took part in its proceedings.

### **6. Disclosure of interest of members**

(1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board, or in any other matter which falls to be considered by the Board, shall disclose the nature of his or her interest at a meeting of the Board.

(2) A disclosure made under subparagraph (1) shall be recorded in the minutes of that meeting.

(3) A member who makes a disclosure under subparagraph (1) shall not—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(4) For purposes of determining whether quorum is realised, a member withdrawing from a meeting or who is not taking part in a meeting under subparagraph (3) shall be treated as being present.

#### **7. Board may regulate its procedure**

Subject to this Act, the Board may regulate its own procedure or any other matter relating to its meetings.

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*Schedule 3*

Section 11(3)

**Criteria for Determining Whether a Person is Fit and Proper Person  
to Become Member of Board**

**1. Qualities for professional suitability**

In order to determine, for the purposes of this Act, the professional and moral suitability of a person proposed to be appointed as a member of the Board, the Minister shall have regard to the following qualities, insofar as they are reasonably determinable, in respect of the person concerned—

- (a) 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 functions of the Board are, or are likely to be in any way threatened by his or her holding that position.

**2. Previous conduct and activities**

(1) For the purposes of and without prejudice to the general effect of paragraph (1), the Minister 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 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) has taken part in any business practice that in the opinion of the Minister, 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; or
- (d) has engaged 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.

### **3. Additional information**

The Minister may request any person to furnish additional information as may be necessary in determining the professional suitability of a person.

**History:** Act 18/2016; S.I.19/2017

#### **Cross references**

Companies Act, Cap. 106

Cooperative Societies Act, Cap. 107

Insolvency Act, Cap. 108

Public Finance Management Act, Cap. 171

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