

THE FINANCIAL INSTITUTIONS ACT, 2004.

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THE FINANCIAL INSTITUTIONS ACT, 2004.

An Act to revise and consolidate the law relating to financial institutions; to provide for the regulation, control and discipline of financial institutions by the Central Bank; to repeal the Financial Institutions Act, Cap. 54 and to provide for other related matters.

DATE OF ASSENT: 21st March, 2004.

Date of commencement: 26th March, 2004.

BE IT ENACTED by Parliament as follows—

PART I—PRELIMINARY.

1. Short title

This Act may be cited as the Financial Institutions Act, 2004.

2. Application of Act

(1) This Act applies to a financial institution defined in section 3 of this Act.

(2) This Act shall not apply to a co-operative society registered under the Co-operative Societies Act, except a co-operative society established for the purpose of accepting deposits from the public.

(3) This Act does not apply to a micro finance deposit-taking institution.

3. Interpretation

In this Act, unless the context otherwise requires—

“acceptance house” means a company licensed to conduct the financial institution business in Uganda which is specified in the Second Schedule to this Act as its principal business and which consists mainly in the granting of acceptance facilities;

“affiliate” in respect of any financial institution means any entity, corporate or unincorporated where five per cent or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by that financial institution or is held by it with power to vote;

“associate” means—

(a) in relation to a natural person—

- (i) where the relationship is through marriage, includes wife, husband, mother or father in law, wife or husband's sister, wife or husband's brother;
- (ii) where the relationship is through consanguinity includes father, mother, sister, brother, son, daughter, niece, nephew, grandson or granddaughter, maternal or paternal uncle or aunt or cousin german;
- (iii) any company of which that person is a director;
- (iv) any person who is an employee or partner of that person;
- (b) in relation to a company, any company which enjoys common share holding or common shareholders with another company directly or indirectly;
- (c) in relation to trusts the trustees of any settlement in which that person is a beneficiary;

“bank” means any company licensed to carry on financial institution business as its principal business, as specified in the Second Schedule to this Act and includes all branches and offices of that company in Uganda;

“Bank of Uganda securities” includes bills and bonds issued by the Bank of Uganda;

“board” in relation to the Central Bank means the board of directors of the Central Bank and in relation to a financial institution, means the board of directors of the financial institution;

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

“building society” means a society formed for the purpose of raising by subscriptions of members a stock or fund from which to make advances to members and registered in accordance with the Building Societies Act;

“Central Bank” means the Bank of Uganda existing under the Bank of Uganda Act;

“commercial bank” means a company licensed to carry on financial institution business in Uganda and whose principal business consists mainly in the acceptance of call, demand, savings and time deposits withdrawable by cheque or otherwise, in the capacity of a bank, provision of overdrafts and short to medium term loans; provision of foreign exchange, participation in inter-bank clearing systems and the provision and assumption of guarantees, bonds and other warranties on behalf of others;

“company” means a company incorporated or registered under the Companies Act and includes—

- (a) the Uganda Development Bank established by the Uganda Development Bank Act;
- (b) a building society duly incorporated under the Building Societies Act; and
- (c) any institution classified as a financial institution under this Act;

“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 a financial institution pursuant to its charter or to an agreement, or direct or indirect influence by a person over decision-making and the management of a financial institution;

“core capital” means permanent shareholders equity in the form of issued and fully paid-up shares plus all disclosed reserves, less goodwill or any intangible assets;

“credit accommodation” includes contractual commitments to lend, letters of credit and guarantees issued on behalf of any persons;

“credit institution” means any company licensed to carry on financial institution business in Uganda which is specified in the Second Schedule to this Act as its principal business, and any other body specified by the Central Bank to be a credit institution for the purposes of this Act; and includes all branches and offices of that company or body in Uganda;

“currency point” has the value specified in the First Schedule to this Act;

“demand deposits” means deposits which are repayable on demand and are withdrawable by cheque, draft, order or by other means;

“demand liabilities” means the total deposit liabilities of a bank or credit institution which are denominated in any currency and payable upon demand;

“deposit advertisement” means any advertisement containing an invitation to make a deposit or information, which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit;

“deposit substitutes” means funds received from the public through the issue, endorsement or acceptance of debt instruments of any kind other than deposits, or through the issue of participations, certificates of assignment, repurchase agreements or similar instruments;

“director” means a natural person occupying the position of a director, by whatever name called, of a body corporate, and “board of directors” or “directors” refers to the directors of a body corporate as a body;

“disclosed reserves” includes all reserves created or increased through share premiums, retained profits, after deducting all expenses, provisions, taxation, and dividends and general reserves if the disclosed reserves are permanent and unencumbered and thus able to absorb losses;

“discount house” means a company licensed to carry on or conduct the financial institution business in Uganda which is specified in the Second Schedule to this Act as its principal business and which consists mainly in the acceptance of deposits from banks and other financial institutions, discounting of bills of exchange, bankers’ acceptances and trade in money market making in a variety of short-term financial instruments;

“draft” means a bankers’ draft payable on demand drawn by or on behalf of a bank upon itself whether payable at the head office or some other office of the bank;

“entity” means a body corporate, trust, partnership, fund or organization;

“exposure” shall include loans, advances, overdrafts, holding of papers as well as off balance sheet commitments such as acceptances, guarantees, underwriting, endorsements, placements, documentary credits, performance bonds and other contingent liabilities;

“finance house” means a company licensed to conduct financial institution business in Uganda which is specified in the Second Schedule to this Act as its principal business and which consists mainly in acceptance of time deposits, hire-purchase financing, operational and finance leasing, and factoring and provision of short and medium term loans;

“financial institution” means a company licensed to carry on or conduct financial institutions business in Uganda and includes a commercial bank, merchant bank, mortgage bank, post office savings bank, credit institution, a building society, an acceptance house, a discount house, a finance house or any institution which by regulations is classified as a financial institution by the Central Bank;

“financial institution business” means the business of—

- (a) acceptance of deposits;
- (b) issue of deposit substitutes;
- (c) lending or extending credit, including—
 - (i) consumer and mortgage credit;
 - (ii) factoring with or without recourse;
 - (iii) the financing of commercial transactions;

- (iv) the recovery by foreclosure or other means of amounts so lent, advanced or extended;
- (v) forfeiting, namely, the medium term discounting without recourse of bills, notes and other documents evidencing an exporter's claims on the person to whom the exports are sent;
- (vi) acceptance credits;
- (d) engaging in foreign exchange business, in particular buying and selling foreign currencies, including forward and option type contracts for the future sale of foreign currencies;
- (e) issuing and administering means of payment, including credit cards, travellers' cheques and banker's drafts;
- (f) providing money transmission services;
- (g) trading for own account or for account of customers in—
 - (i) money market instruments, including bills of exchange and certificates of deposit;
 - (ii) debt securities and other transferable securities;
 - (iii) futures, options and other financial derivatives relating to debt securities or interest rates;
- (h) safe custody and administration of securities;
- (i) soliciting of or advertising for deposits;
- (j) money broking;
- (k) financial leasing if conducted by a financial institution;
- (l) merchant banking;
- (m) mortgage banking;
- (n) creating and administration of electronic units of payment in computer networks;
- (o) dealing in securities business as an exempt dealer within the meaning of section 48 of the Capital Markets Authority Act;
- (p) transacting such other business as may be prescribed by the Central Bank.

“financial statements” includes the balance sheet, profit and loss accounts, statements of funds flow and notes to the financial statements;

“fit and proper person” means fit and proper person as determined according to the criteria specified in the Third Schedule to this Act;

“foreign bank” means a body corporate or entity incorporated or formed under the laws of a country other than Uganda that—

- (a) is a bank according to the laws of any foreign country where it carries on business;
- (b) carries on a business in a country other than Uganda that if carried out in Uganda, would be wholly or to a significant extent, financial institution business;
- (c) employs, to identify or describe its business, a name that includes the word “bank”, “banque”, “banking” or “bancaire”, either alone or in combination with other words or any word or words in any language other than English or French corresponding generally to any such word;

“foreign company” means a company not being a local company;

“foreign currency” means a currency other than legal tender of Uganda;

“foreign exchange business” means any facility offered, business undertaken or transaction executed with any person involving a foreign currency inclusive of any account facility, credit extension, lending, issue of guarantee, counter-guarantee, purchase or sale by means of cash, cheque, draft, transfer or any other instrument denominated in a foreign currency;

“forward transaction” or “forward purchase” or “forward buy” or “forward sale” means a transaction that is to be executed after more than two working days from the date the transaction is contracted or agreed;

“government securities” includes treasury bills and government bonds issued by the Government of Uganda;

“home country regulator” means the supervisory authority of the home country where the head office of the parent financial institution is based;

“insider” means a director or person who has executive authority or a shareholder of a financial institution and includes any related person and any related interest of such person;

“large exposure” means an exposure, which is equal to or exceeds ten percent of a financial institution’s core capital;

“licence” means a licence issued under section 12 of this Act;

“licensed” means licensed under this Act;

“local company” means a company registered or incorporated under the Companies Act in which the majority shares and actual controlling interest are held by citizens of Uganda;

“long position” or “long open position” or “overbought position” of a financial institution in a foreign currency means the holding by the financial institution of that foreign currency for its own account in excess of all its contractual spot, same day value and forward transaction commitments in that foreign currency;

“management letter” means a letter written by the external auditor to the management of the financial institution pointing out apparent weaknesses in the internal controls which require management action to correct;

“manager” means an officer of a financial institution empowered to control, direct, and influence decision-making of the financial institution;

“merchant bank” means a company licensed to carry on financial institution business in Uganda and whose business consists mainly in the acceptance of call and time deposits from corporate, institutional and international clients, withdrawable by cheque or otherwise and engaging in the financing of international trade, provision of corporate services advisory services, provision of foreign exchange facilities; engaging in bond issues and other securities, buying and selling of shares, investment portfolio management, investment advisory services; arranging finance, lending or participation in syndicated loans and acting as guarantors and financing or lending in the institutional money markets;

“merchant banking” means the business of a merchant bank;

“micro finance deposit-taking institution” means a company licensed to carry on, conduct, engage in or transact microfinance business in Uganda;

“microfinance business” means the business of accepting deposits from and providing short-term loans to small micro enterprises and low income households, usually characterised by the use of collateral substitutes, such as group guarantees;

“Minister” means the Minister responsible for finance;

“money laundering” has the meaning assigned to it by section 130(2) of this Act;

“mortgage bank” means a company licensed to carry on financial institutions business in Uganda and whose business consists mainly in the granting of loans for the acquisition, construction, enlargement, repair, improvement and maintenance of urban or rural real estate and for the substitution of mortgages taken out for that same purpose; acceptance of deposits of participation in mortgage loans and in

special accounts; provision of guarantees, bonds or other forms of collateral connected with the operations in which they may take part and acting as an intermediary in loans extended in local and foreign currency;

“mortgage banking” means the business of a mortgage bank;

“net open position” of a financial institution in a foreign currency means the sum of all its assets and liabilities inclusive of all its spot, same day value and forward transactions and its off balance sheet items in that foreign currency;

“non-bank financial institution” includes a credit institution, a building society, an acceptance house, a discount house and a finance house and any other institution classified by the Central Bank as a non-bank financial institution;

“non-resident” means any person other than a resident;

“off balance sheet items” includes all items not shown on the balance sheet but which constitute credit risk and such other risks as in guarantees, acceptances, performance bonds, letters of credit, and other off balance sheet items deemed to constitute risk as such by the Central Bank;

“off balance sheet activities” includes activities which relate to off balance sheet items;

“officer” includes a person who carries out or is empowered to carry out functions relating to the direction of a financial institution;

“order” when used in conjunction with the word “cheque” or “draft”, means an unconditional order in writing constituting a bill of exchange as defined in the Bills of Exchange Act;

“person” means any individual, a personal representative, company, partnership, trust, fund, foundation or enterprise wherever located or incorporated;

“personal representative” means a person who stands in a place of and represents another person and without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, an executor, an administrator, a guardian, a tutor, a curator, an assignee, a receiver, an agent, or an attorney of any person;

“prudential standard” means formal rules, bench marks and regulations set by the Central Bank;

“public company” for the purposes of this Act means a company which is owned by at least fifty people and whose articles of association do not restrict the right to transfer its shares;

“related person” or “group of related persons” means—

(a) in relation to natural persons—

- (i) an associate or close relative of the person;
- (ii) any person who has entered into an agreement or arrangement with the first-mentioned person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of shares in the financial institution in question;

(b) in relation to a company means any—

- (i) 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) associate of the company;

(c) in relation to a non- natural person which is not a company, means another non-natural person which would have been a subsidiary of the first mentioned non- natural person—

- (i) had the first-mentioned non-natural person been a company; or
- (ii) where that other non-natural person, is not a company, had both the first mentioned non-natural person and that other non- natural person been a company;

(d) any person in accordance with whose direct or indirect directions or instructions the board of directors or where the non-natural person is not a company, the governing body of that non-natural person is accustomed to act; and

(b) in relation to any person—

- (i) means any non- natural person of which the board of directors or, where that non- natural person is not a company, of which the governing body is accustomed to act in accordance with directions or instructions of the person first-mentioned in this paragraph; and
- (ii) includes any trust controlled or administered by that person;

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

“representative office” means premises in Uganda from which any person conducts business or holds himself out as ready to conduct business as a representative of a foreign bank”;

“repurchase agreement” means an agreement between a seller and a buyer of securities, by which the seller agrees to repurchase the securities at an agreed upon price or interest rate or both, and usually at a stated price;

“reputable financial institution” means a financial institution licensed to conduct banking or other financial institution business under the laws of any state, country or territory and which meets such other criteria as may be prescribed by the Central Bank;

“reputable publicly held company” means a company that is financially strong, whose ownership is not concentrated in a few hands and which is of good public standing and meets such other criteria as may be prescribed by the Central Bank.

“resident” mean—

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

“same day transaction” or “same day purchase” or “same day buy” or a “same day sale” means a transaction having a same day value;

“same day value” means the transaction to which it is referred is to be executed on the very day it is contracted or agreed;

“securities” includes—

- (a) debentures, stocks or bonds issued by or proposed to be issued by a Government;
- (b) debentures, stocks, bonds or notes issued or proposed to be issued by a body corporate;
- (c) any right, warrant, option or futures in respect of any debenture, stocks, shares, bonds, notes or in respect of commodities; or
- (d) any instrument commonly known as securities, but does not include bills of exchange, promissory notes or certificates of deposit issued by a financial institution;

“significantly undercapitalised” has the meaning assigned to it in section 87(4) of this Act;

“short position” or “short open position” or “oversold position” of a financial institution in a foreign currency means that the holding by the financial institution of that foreign currency for its own account is less than all its contractual spot, same day value and forward transaction commitments in that foreign currency;

“spot transaction” or “spot purchase” or “spot buy” or “spot sale” means a transaction having a spot value;

“spot value” means the transaction to which it is referred is to be executed two working days from the date it is contracted or agreed;

“substantial shareholder” means any person who holds more than five percent of the shares of a financial institution;

“supplementary capital” means general provisions which are held against future and current unidentified losses that are freely available to meet losses which subsequently materialize, and revaluation reserves on financial institution premises which arise periodically from independent valuation of those premises, and any other form of capital as may be determined from time to time by the Central Bank;

“time deposits” means deposits repayable after a fixed period or after notice and includes saving deposits;

“time liabilities” means deposit liabilities other than demand liabilities of a financial institution which are denominated in any currency and are subject to payment after a fixed period of time or after notice;

“total capital” means the sum of core capital and supplementary capital;

“unsecured advances or unsecured credit facilities” means advances or credit facilities made without security or, in respect of any advance or credit facility made with security or any part of it which at any time exceeds the market value of the assets constituting that security, or where the Central Bank is satisfied that there is no established market value, on the basis of a valuation approved by the Central Bank;

“value date” of a transaction means the date on which it is to be executed.

PART II—LICENSING.

4. Prohibitions against transacting financial institution business

(1) A person shall not transact any deposit-taking or other financial institution business in Uganda without a valid licence granted for that purpose under this Act.

(2) No person shall be granted a licence to transact business as a financial institution unless it is a company within the meaning of this Act.

(3) A financial institution shall not—

(a) transact any financial institution business not specified in its licence;

(b) effect any major changes or additions to its licensed business or principal activities without the approval of the Central Bank.

(4) For purposes of this section “deposit” means a sum of money paid on terms—

(a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(b) which are not referable to the provision of property or services or the giving of security.

(5) For the purposes of paragraph (b) of subsection (4), money is paid on terms which are referable to the provision of property or services or to the giving of security only if—

(a) it is paid by way of advance or part payment under a contract for the sale, hire or other provisions of property or services, and is repayable only where the property or services is not or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or

(c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property whether in a particular state of repair or otherwise.

(6) For the purposes of this section, “deposit” does not include—

(a) a sum paid by the Central Bank or the sums paid to a co-operative society; or

(b) a sum which is paid by a person to an associate of that person.

(7) For the purposes of this section, a business is a deposit-taking business if—

(a) in the course of the business money received by way of deposit is lent to others; or

(b) any other activity of the business is financed, wholly or to any material extent, and out of the capital of or the interest on money received by way of deposit.

(8) Notwithstanding that paragraph (a) or (b) of subsection (7) applies to a business, it is not a deposit-taking business for the purposes of this section if—

(a) the person carrying it on does not hold himself or herself out as accepting deposits on a day-to-day basis; and

(b) any deposits, which are accepted, are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.

(9) For the purposes of subsection (7), all the activities, which a person carries on by way of business, shall be regarded as a single business carried on by him or her.

(10) In determining, for the purposes of paragraph (b) of subsection (8), whether deposits are accepted only on particular occasions, regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(11) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding three hundred and fifty currency points or imprisonment not exceeding two years or both.

(12) A person convicted of an offence under subsection (11) of this section shall be disqualified from acquiring a licence under this Act and under any other law authorizing the taking of deposits.

5. Deposit advertisements

(1) Any person who issues an advertisement, brochure, circular, or other document inviting or intended to induce any person to make a deposit which—

(a) falsely represents that he or she is authorised to accept deposits or is otherwise licensed under this Act;

(b) is contrary to the regulations issued by the Central Bank under this section,

commits an offence under this Act and is liable on conviction to a fine not exceeding three hundred and fifty currency points or imprisonment not exceeding two years or both.

(2) The Central Bank may at any time direct in writing any 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.

(3) Any person who, without lawful excuse, fails or refuses to comply with a direction under subsection (2) commits an offence and is liable on conviction to a fine not exceeding fifty currency points or imprisonment not exceeding one year or both.

6. Corporate powers outside Uganda

(1) A financial institution shall not open or set up a subsidiary, branch or representative office or transact financial institution business outside Uganda or acquire an interest in any undertaking conducting business outside Uganda, except with the consent of the Central Bank.

(2) Before granting any approval under this section, the Central Bank may require to be satisfied as to the financial institution's capital adequacy and proposed business plans and may require such additional information as shall be specified by the Central Bank in regulations made under this Act.

(3) In the case of an acquisition referred to in subsection (1), the Central Bank shall, in accordance with regulations made under this Act, appoint a firm of accountants to examine and report on the financial position of the undertaking to be acquired, to ensure that the acquisition is not detrimental to the interests of the depositors of the acquiring financial institution.

(4) After establishing the subsidiary, branch or representative office outside Uganda, the financial institution concerned shall, in writing, notify the Central Bank of—

(a) any change of address of the subsidiary, branch or representative office in question; or

(b) the closing of the subsidiary, branch or representative office; as soon as it occurs.

(5) The provisions of subsections (1), (2) and (4) in so far as they are relevant, shall, with the necessary modifications, apply in respect of any controlling company.

7. Prohibitions against use of the word 'bank' or its derivatives

(1) No person other than a person licensed as a commercial bank, merchant bank, mortgage bank, or post office bank under this Act, shall except with the consent of the Central Bank—

(a) use the word "bank" or any other expression, name, title or symbol indicating or likely to create the impression that the person is

conducting or is authorised to conduct business as a commercial bank, merchant bank, or post office savings bank under this Act;

(b) make or continue to make any representation indicating the transaction of the business specified in paragraph (a) of this subsection in any bill head, letter-paper, notice, advertising or in any other manner.

(2) A financial institution may not be licensed under this Act with a name—

(a) that is prohibited by an Act of Parliament;

(b) that is in the opinion of the Central Bank, deceptively misdescriptive;

(c) that is the same as or, in the opinion of the Central Bank, similar to, any existing trade-mark or trade name, or corporate name of a body corporate, except where the trade name or trade mark is being changed or the body corporate is being dissolved or is changing its corporate name and the consent to the use of the trade mark or trade name, or corporate name is signified to the Central Bank in such manner as the Central Bank may require;

(d) that is the same as, or in the opinion of the Central Bank, substantially the same as or confusingly similar to, the known name under or by which any entity carries on business or is identified.

(3) No company shall carry on business as a commercial bank, merchant bank, mortgage bank or post office savings bank unless it uses as part of its name the word “bank” or one of its derivatives.

(4) A person who contravenes sub-section (1) or (3) of this section, commits an offence and is liable on conviction, to a fine not exceeding five currency points for every day during which the offence continues.

8. Search and seizure

(1) The Central Bank may, at any time and without prior notice, if it has reason to believe that a person is transacting or carrying on business as a financial institution or taking deposits in contravention of section 4, in writing, authorize an officer of the Central Bank to—

(a) enter any premises which the Central Bank has reason to believe are occupied or used by any person for the purpose of or in connection with the contravention of section 4;

(b) search for any book, record statement, document or other item used, or which is believed to be used, in connection with the contravention of section 4;

(c) seize or make a copy of any book, record, statement, documents or other item referred to in paragraph (b), or seize any money found on the premises;

- (d) question any person who is present on the premises referred to in paragraph (a), or the auditors, directors, members or partners of any person conducting business on the premises, in connection with the conducting of the business on the premises;
- (e) direct that the premises referred to in paragraph (a) or any part of it or anything on the premises, should be left undisturbed for as long as it is necessary to search the premises for any book, record, statement, document or item under paragraph (b);
- (f) by notice in writing addressed and delivered to any person who has control over or custody of any book, record, statement, document or other item referred to in paragraph (b), require the person to produce the book, record, statement, document or other item to the officer of the Central Bank issuing the notice, at the place, on the date and at the time specified in the notice;
- (g) examine any book, record, statement, document or other item referred to in paragraph (b) and may require from any person referred to in paragraph (d) an explanation regarding any entry in the book, record, statement, document or other item;
- (h) by notice in writing delivered to a financial institution, instruct the financial institution to freeze summarily any bank account or accounts of any person referred to in this subsection with the financial institution and to retain all moneys in that bank account or those accounts, pending the further instructions of the Central Bank;
- (i) by notice in writing delivered to any person referred to in this section, direct that the business of that person be summarily suspended, pending the investigation by the Central Bank under this section;
- (j) if any person has been convicted of an offence under subsection (11) of section 4, close down the business of that person.

(2) If the officer of the Central Bank referred to in subsection (1) of this section performs a function under this section in the presence of any person affected by the performance of the function, the officer shall, at the request of the person affected, exhibit to the person the written authorization referred to in that subsection.

(3) No person shall—

- (a) hinder or obstruct an officer of the Central Bank authorized under subsection (1) in the performance of his or her functions;
- (b) refuse or fail to comply with any request made by an officer under subsection (1) in the performance of the officer's functions;
- (c) refuse or fail to answer any question which an officer under subsection (1) lawfully directs at that person in the performance of that officer's functions;

(d) wilfully furnish false or misleading information to an officer under subsection (1); or

(e) falsely give himself or herself out as an officer under subsection (1).

(4) For the purposes of this section, “premises” includes any building or structure, or part of a building or structure, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

(5) Any person who contravenes any of the provisions of subsection (3) of this section commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

9. Repayment of moneys by unauthorized persons

(1) If the Central Bank is satisfied that a person has obtained any moneys in contravention of section 4, the Central Bank shall, in writing, direct the person to repay all the moneys obtained by him or her and all profits accruing to that person as a result of the illegally obtained monies or deposits, including any interest or other amounts which may be owing by that person in respect of those moneys—

(a) to the respective persons from whom he or she has obtained the moneys;

(b) in the manner and in accordance with the direction; and

(c) within the period of time imposed by the Central Bank and specified in the direction.

(2) Any person referred to in subsection (1) who refuses or fails to comply with a direction under that subsection, shall, for the purposes of section 223 of the Companies Act, be deemed to be unable to pay its debts, or for the purposes of the Bankruptcy Act be deemed to have committed an act of bankruptcy, as the case may be, and the Central Bank may apply to the High Court for the winding-up, or for the sequestration of the estate, of that person, as the case may be.

(3) Subsections (1) and (2) shall be in addition to, and not derogate from, any criminal liability under this Act or any other law, of a person referred to in those subsections.

10. Application for a licence

(1) A company proposing to transact or carry on business as a financial institution shall apply, in writing, to the Central Bank for a licence under this Act.

(2) An application for a licence under this section shall contain the following information—

(a) the name and address of—

(i) the proposed financial institution;

(ii) the directors;

(iii) the shareholders;

(b) the nationality of directors;

- (c) the nationality and shareholding of each shareholder;
- (d) the proposed location where the financial institution is going to operate from;
- (e) the estimated number of persons to be employed;
- (f) the qualifications, experience, nationality and other relevant particulars of the proposed management and staff;
- (g) the capital structure and earning prospects of the financial institution;
- (h) the applicant's business, financial plans and earnings forecasts namely, balance sheet, income statement and cash flow, for at least three years and sufficient detail to describe the operating plan, demand for financial products and services and existing competition in the proposed market;
- (i) a summary of the applicant's board risk management policies and management operating procedures and systems that will ensure the integrity of its financial controls;
- (j) a description of the applicant's proposed organisational and management structure, reporting lines and responsibilities of its Board;
- (k) any other information relating to the viability of the financial institution or other matters as the applicant considers relevant to its application.

(3) The following classes of licences shall expressly be included in the provisions of this law, the permitted main financial services provided or businesses conducted, particulars of which are more elaborately specified in the Second Schedule to this Act as—

- (a) the business of a commercial bank(Class 1);
- (b) the business of a post-office savings bank(Class 2);
- (c) the business of a merchant bank(Class 3);
- (d) the business of a mortgage bank(Class 4);
- (e) the business of a credit institution(Class 5);
- (f) the business of an acceptance house (Class 6);
- (g) the business of a discount house(Class 7);
- (h) the business of a finance house(Class 8).

(4) The list of classes of licences specified in subsection (3) does not preclude the issue by the Central Bank of other classes of licence which by reason of the provision of other financial services fall within the scope of this Act.

(5) Subject to subsections (3) and (4) of this section, the applicant shall state the class of licence in which it seeks to be licensed.

(6) An application under subsection (1) of this section shall be accompanied by—

- (a) the applicant's memorandum and articles of association or other instrument under which the company is incorporated and its certificate of incorporation;
- (b) a certified copy of the resolution of the board of the applicant authorizing the preparation and submission of the application;
- (c) a sworn declaration for all individuals proposing to become directors, shareholders, controllers or managers, issued in a form specified by the Central Bank in regulations made under this Act.

(7) Where an application under subsection (1) of this section does not provide all the relevant information or if clarification is necessary, the applicant may be called upon to provide that information or clarification to complete the application.

(8) Any person who, in relation to an application for a licence under this Act, knowingly or recklessly provides the Central Bank or any other person with information which is false or misleading in a material particular, shall for purposes of this Act, cease to be a fit and proper person, without prejudice to that person being prosecuted under this Act.

11. Factors to be considered in making a decision to grant a licence

The Central Bank shall, in considering an application for a licence under section 10 of this Act, require to be satisfied as to—

- (a) the financial condition and history of the applicant;
- (b) the nature of the business of the applicant including the range of services and products proposed;
- (c) the competence and integrity of the proposed management;
- (d) the adequacy of the applicant's capital structure, earning prospects, business plans, financial plans;
- (e) the convenience and needs of the community to be served;
- (f) geographical locations and branch distribution network of the proposed business;
- (g) whether the directors and officers of the applicant are fit and proper persons for the purpose of transacting business as a financial institution, according to the criteria set out in the Third Schedule to this Act and such other criteria as the Central Bank may determine;
- (h) the structure and shareholding of the group of companies of which the applicant forms a part or intends to form a part;

- (i) whether the applicant is or will be able to apply or maintain adequate, effective and proper internal control systems when conducting financial institution business under the licence;
- (j) whether public or economic interest will be served by the granting of the licence;
- (k) whether the promoters, controllers, and substantial shareholders are fit and proper persons;
- (l) whether the institution's business is or is required to be directed by at least two individuals;
- (m) the existence of a moratorium in force against the licensing of new financial institutions;
- (n) any other matter which the Central Bank may regard as relevant to the application or to the applicant.

12. Processing, granting and refusal of licence

(1) The Central Bank shall, within six months after receipt of an application, or of the additional information or clarification referred to in subsection (7) of section 10 of this Act, investigate and prepare a detailed report in respect of each application.

(2) The Central Bank shall within fourteen days after the period referred to in subsection (1) of this section consider the application and the report, and shall—

- (a) grant the licence if it is satisfied that the application is in accordance with this Act; or
- (b) grant the applicant a conditional licence with such conditions as it may deem necessary; or
- (c) grant the applicant a limited licence covering only the part of financial institution business for which it is satisfied that the applicant meets the requirements of this Act; or
- (d) refuse to grant the licence for reasons that shall be stated in the letter of refusal.

(3) The Central Bank shall, within seven days after its decision under subsection (2), inform the applicant of its decision in writing.

(4) A licence granted under this Act shall clearly indicate—

- (a) the name and address of the financial institution;
- (b) the nature or classification of the financial institution;
- (c) the type of financial institution business and financial services it is licensed to conduct;

(d) the place or places at which the licensee is authorised to conduct the business.

(5) A financial institution shall not engage in any business other than the business specified in its licence.

(6) A financial institution which contravenes subsection (5) shall pay to the Central bank a fine of three hundred currency points per day on which the violation continues.

(7) Any financial institution which, at the commencement of this Act was a licensed financial institution within the meaning of this Act, is deemed to have been licensed under this Act; except that that financial institution shall, within ninety days after the coming into force of this Act, submit its existing licence to the Central Bank for classification in accordance with the requirements of subsection (3) of section 10 and the Second Schedule to this Act.

(8) Sub-section (7) shall not be construed as preventing the Central Bank from amending the licence under section 15 of this Act to prohibit the financial institution from engaging in any activity under the licence.

(9) Any person aggrieved by a decision of the Central Bank under this section may appeal to the High Court against the decision of the Central Bank within thirty days after being notified of the decision and the High Court may confirm or set aside the decision.

(10) Where the High Court sets aside a decision of the Central Bank under subsection (9), the High Court shall direct the Central Bank to reconsider its decision and refund the financial institution the fines so far paid.

(11) On an appeal under subsection (9), the question for determination of the High Court shall be whether, for the reasons stated by the appellant, the decision appealed against was unlawful or not justified by the evidence on which it was based.

13. Licence fee

(1) The applicant shall, upon being granted a licence under this Act, pay a fee prescribed by the Central Bank by notice and the holder of the licence shall after that pay an annual fee prescribed by the Central Bank on or before the 31st day of January of each year.

(2) If a financial institution fails to pay the prescribed annual licence fees before or on the date specified in subsection (1) of this section—

(a) the financial institution shall pay to the Central Bank a late payment civil penalty at a rate of fifty percent of the licence fee.

(b) the unpaid annual licence fee and any civil penalty payable under paragraph (a) of this subsection shall be a debt due to the Central Bank by the financial institution.

14. Duration and display of licence

(1) A licence granted under section 12 of this Act shall remain in force until revoked.

(2) A licence granted under section 12 of this Act shall be kept displayed in its original form in a conspicuous place in the premises in which the financial institution carries on its lawful business, and copies of it shall be similarly displayed in each of its branch offices.

15. Amendment and restriction of licence

(1) Subject to this section, the Central Bank may at any time amend or restrict a financial institution's licence or any term or condition of its licence—

- (a) to correct any error;
- (b) if the institution requests the amendment;
- (c) if the Central Bank 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 that institution's depositors or potential depositors; or
- (e) if for any other reason the Central Bank considers the amendment necessary or desirable in the public interest.

(2) Before amending a financial institution's licence in accordance with sub-section (1), other than at the institutions' request, the Central Bank 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) If the Central Bank refuses to make an amendment in accordance with paragraph (b) of subsection (1) of this section, it shall, within a reasonable time after reaching its decision notify the institution, in writing, of its decision and the reasons for it.

16. Failure to commence operations

The licence of a financial institution which fails to commence operations within twelve months from the date of issue of the licence shall be revoked.

17. Revocation of licence

The Central Bank may, at any time, revoke a licence of a financial institution if it is satisfied that the financial institution at any time—

- (a) has ceased to carry on business;
- (b) is significantly undercapitalised as defined in subsection (4) of section 87 of this Act or is unable to pay its liabilities as they mature;
- (c) has gone into liquidation;
- (d) has been wound up;
- (e) has been dissolved;

- (f) is in the opinion of the Central Bank conducting business in a manner detrimental to the interests of depositors;
- (g) has in the view of the Central Bank contravened this Act or any other financial law in a manner which is serious or persistent;
- (h) has engaged in serious deception of the Central Bank or the general public in respect of its financial condition, ownership, management, operations or other facts material to its business;
- (i) has without the consent of the Central Bank amalgamated with another financial institution or sold or otherwise transferred its assets and liabilities to another financial institution;
- (j) has failed to comply with any condition stipulated by the Central Bank under subsection (2) of section 12 of this Act;
- (k) has failed to comply with any instruction or direction given by the Central Bank under Part IX of this Act to remedy managerial or financial deficiencies.
- (l) does not or may not fulfil or has not or may not have fulfilled any of the licensing conditions specified in section 11 of this Act.

PART III—SHAREHOLDING IN FINANCIAL INSTITUTIONS.

18. Prohibitions on share holding in financial institutions

(1) Except as expressly provided in this Act, no—

- (a) individual; or
- (b) body corporate controlled by one individual;

shall own or acquire more than forty nine per cent of the shares of a financial institution.

(2) Notwithstanding the provisions of the Companies Act, no financial institution shall, except with the permission of the Central Bank, allot or issue, or register the transfer of five per cent or more of any of its shares to one person.

(3) Permission under subsection (2) may be obtained from the Central Bank on application in writing.

(4) Permission under subsection (2) for the acquisition of shares in a financial institution shall not be granted unless the Central Bank is satisfied that the proposed acquisition of shares—

- (a) will not be contrary to the public interest;
- (b) will not be contrary to the interests of the financial institution concerned or its depositors; and
- (c) will not be detrimental to the financial services industry in general.

(5) If through on site inspection the Central Bank discovers that the retention of a certain amount of shareholding in a financial institution by a person

will be to the detriment of the financial institution or the depositors concerned, the Central Bank may—

(a) order that person to reduce, within a period not exceeding three years, that person's shareholding in the financial institution to such percentage of the total nominal value of all the issued shares of that financial institution as the Central Bank shall determine as sufficient to achieve the objective in subsection (5); and the person so ordered shall within ninety days after the order is given present to the Central Bank the plan of action regarding the reduction of their share holding;

(b) consider the plan of action submitted under paragraph (a) of this subsection and make further orders on it;

(c) limit, with immediate effect, the voting rights that may be exercised by that shareholder by virtue of that person's shareholding to such percentage of the voting rights attached to all the issued shares of the financial institution as the Central Bank may by notice determine.

(6) If, at the commencement of this Act any individual or body corporate controlled by one individual holds more than forty nine percent of the shares in a financial institution or controlling company, that individual or body corporate controlled by one individual shall—

(a) within a period not exceeding seven years, reduce their shareholding in the financial institution or controlling company to the percentage prescribed in subsection (1) of this section;

(b) within six months after the commencement of this Act, present to the Central Bank a credible plan of action regarding the reduction of the share holding.

(7) If any person fails to submit a plan of action as required by paragraph (b) of subsection (6) of this section, the Central Bank shall limit, with immediate effect, the voting rights that may be exercised by that person by virtue of their shareholding to such percentage of the voting rights attached to all the issued shares of the financial institution as the Central Bank may by notice determine until such a time as a credible plan is submitted.

(8) The Central Bank shall, within forty five days after receipt of the plan of action submitted under paragraph (b) of subsection (6) consider the plan of action and either approve it, or make further orders on it, or reject the plan in writing with reasons.

(9) Where any plan is rejected the person concerned shall within thirty days of notification submit another plan.

(10) Where the Central Bank has not received a plan or is not satisfied with the plan of action submitted to it, and the person has failed, refused or neglected to provide an acceptable plan which satisfies the requirements of the Central Bank, then the Central Bank shall draw up a plan of action which shall be followed by that person.

(11) Any person who fails to comply with—

(a) a plan of action instituted by the Central Bank under subsection(10) of this section; or

(b) an order of the Central Bank issued under paragraph (a) of subsection (6) of this section;

shall cease to be a fit and proper person for the purposes of this Act and shall not remain a substantial shareholder in a financial institution.

(12) Subsections (1), (2) and (6) of this section shall, subject to the Central Bank's approval, not apply to the holding or acquisition of shares in a financial institution by a reputable financial institution or in exceptional cases, a reputable public company.

19. Persons who are not fit and proper not to become substantial shareholders

(1) A person or group of related persons who do not satisfy the criteria for the fit and proper test relating to substantial shareholders as determined by the Central Bank in accordance with the Third Schedule to this Act shall not acquire more than five per cent of the shares of a financial institution.

(2) No person or group of related persons shall acquire more than five per cent of the shares of a financial institution unless the Central Bank has—

(a) received from them a written notice of their intention to become substantial shareholders; and

(b) given them a written notice of no objection.

(3) The Central Bank shall not issue a notice of no objection unless it is satisfied that—

(a) the person or the whole group of related persons are fit and proper persons to become substantial shareholders of a financial institution;

(b) the interests of depositors would not be in any manner threatened by that person's or group of related persons' becoming substantial shareholders.

(4) Where the Central Bank receives a notice under paragraph (a) of subsection (2) it may seek such further information and documents from any person including the applicants.

20. Prohibition on allotment, issue or registration of transfer of shares

(1) No financial institution shall allot or issue or register a transfer of shares exceeding five percent of the shares of a financial institution to any person or group of related persons, if that person or group of related persons has not obtained a notice of no objection from the Central Bank.

(2) The registrar of companies shall not register any transfer of shares of a financial institution referred to in subsection (1) without receiving a notice of no objection from the Central Bank.

21. Registration of shares in the names of nominees

(1) Notwithstanding the provisions of the Companies Act, no financial institution or controlling company shall without the written approval of the Central Bank—

- (a) allot or issue any of its shares to, or register any of its shares in the name of any person other than the intended beneficial shareholder;
- (b) transfer any of its shares in the name of a person other than the beneficial shareholder, or
- (c) allow any of its shares to remain registered in the name of a person other than the beneficial shareholder at any time after thirty days after the commencement of this Act.

(2) Subsection (1) shall not affect the allotment or issue, or the registration of the transfer of shares in a financial institution—

- (a) in the name of any executor, administrator, trustee, curator, guardian or liquidator under the Companies Act;
- (b) for a period of not more than six months, in the name of a stockbroker or a company established by him or her for the purposes of the Capital Markets Authority Act; except that the Central Bank shall require to be satisfied that the shares are allotted, issued or registered in such a manner in order to facilitate delivery of the shares to the purchaser of the shares.

(3) The financial institution shall on issue or allotment, transfer or registration of any shares under subsection (2) provide the Central Bank in writing with the full particulars of the transaction relating to the allotment, issue, registration, or transfer of the shares under that subsection.

(4) The voting rights attached to the shares registered under subsection (2) shall, unless otherwise determined by the Central Bank, not be more than twenty percent of the aggregate of the voting rights attached to all the issued shares of the financial institution concerned.

(5) Any person who contravenes subsection (1) of this section commits an offence and is liable on conviction to a fine equal to twice the nominal value of the shares registered or transferred in contravention of subsection (1) for each day on which the shares remain so registered.

22. Registration of shares contrary to this Act

(1) No person shall—

(a) either personally or by proxy granted to any other person, cast a vote attached to; or

(b) receive a dividend payable on,

any share in a financial institution allotted or issued to him or her or registered in his or her name in contravention of this Act.

(2) The validity of any resolution adopted by a financial institution shall not be affected by a vote being cast in contravention of paragraph (a) of subsection (1), if that resolution was adopted by the requisite majority of votes which were validly cast.

(3) A dividend referred to in paragraph (b) of subsection (1) shall accrue to the financial institution concerned.

23. Shareholders register and disclosure of interests in shares

(1) A financial institution shall maintain a register of the current beneficial holders of all shares in the financial institution in such form and manner as the Central Bank may approve.

(2) A financial institution shall every six months provide the Central Bank with the most up-to-date returns of the register referred to in subsection (1).

(3) No transfer of shares of a financial institution shall be valid unless the transfer is recorded in the register.

(4) Any person or group of related persons who acquire a substantial interest in shares comprised in the financial institution's share capital or ceases to be interested in shares so comprised, whether or not retaining an interest in other shares so comprised, shall within twenty one days after the acquisition or ceasure of holding that interest, notify the financial institution of the interest so acquired or ceasing to be held.

24. Restriction of right to control financial institutions

(1) No person other than a reputable financial institution or in exceptional cases a reputable public company, may exercise control over a financial institution.

(2) For the purposes of this section a person shall be deemed to exercise control over a financial institution if, where that person is a company, the financial institution is a subsidiary of that company, or, whether or not that person is a company, if that person by himself or herself or together with his or her associates, related persons or group of related persons—

(a) is entitled or has the power to determine the appointment of the majority of the directors of that financial institution, including—

(i) the power to appoint or remove, without the concurrence of any other person, all or the majority of such directors; or

(ii) the power to prevent any person from being appointed a director without his or her consent, and if a person's appointment as a director of the financial institution follows necessarily from his or her appointment as a director of the person first-mentioned in this subsection, the first-mentioned appointment shall for the purposes of this subsection be deemed to be an appointment by virtue of a power of a person first-mentioned;

(b) exercises directly or indirectly a controlling influence over the financial institution, its major policies or strategies singly or in concert with a related person or group of related persons.

25. Penalties for violating provisions on share holding

(1) The Central Bank may, in writing, if it is satisfied that a financial institution or any other person has contravened any of the provisions of sections 18, 19, 20, 23 or 24 as the case may be, make a preliminary order imposing one or more of the restrictions specified in subsection (2) on the person or on the financial institution as the case may be, as the Central Bank may consider appropriate.

(2) A preliminary order by the Central Bank under subsection (1) may, in respect of any of the shares forming the subject of, or related to, the contravention referred to in that subsection, prohibit—

(a) the transfer of, or the due performance in terms of any agreement to transfer, the shares; or

(b) in the case of unissued shares, the transfer of, or the right to be issued with, the unissued shares;

(c) the exercise of any voting rights in respect of the shares;

(d) the issue of any further shares in accordance with any offer made to the holder of the shares; or

(e) except in the case of liquidation, the payment of any amount due by the financial institution in respect of the shares.

(3) A preliminary order made by the Central Bank under subsection (1) shall—

- (a) be in the prescribed form and shall be signed by a person appointed by the Central Bank;
- (b) be addressed to the financial institution or the person concerned;
- (c) specify and contain full particulars of the order made by the Central Bank; and
- (d) during normal hours of business be delivered by a person appointed in writing by the Central Bank for the purpose, upon the principal officer of the financial institution or upon the other person referred to in subsection (1), as the case may be, to whom the preliminary order is directed or, in the case of a financial institution, if the principal officer is not available, upon any person above the age of 18 years employed by the financial institution.

(4) The person to whom the preliminary order is delivered under subsection (3) (d), shall—

- (a) in writing, acknowledge receipt of the order, specifying—
 - (i) the full names and designation of the person who received the order; and
 - (ii) the date and time of the receipt; and
- (b) sign the acknowledgement of receipt referred to in paragraph (a).

(5) The Central Bank may, at its discretion and in addition to the delivery of the preliminary order under paragraph (d) of subsection (3) to the financial institution or upon the other person concerned, publish the preliminary order in one or more of the newspapers in the manner and form as the Central Bank may specify.

(6) A preliminary order delivered upon a financial institution or other person referred to under subsection 3 (d) shall, from the date of the delivery, be binding upon the financial institution or the other person, as the case may be, to whom the order is directed and to whom it is delivered under that subsection.

(7) A person holding shares in a financial institution and to whom a preliminary order has been delivered under paragraph (d) of subsection (3) shall, within seven days after the date of service, or within such longer period as the Central Bank may allow, surrender the share certificate concerned to the Central Bank, together with such other documents relating to the shares as the Central Bank may specify in the order.

(8) Any person to whom a preliminary order has been delivered under paragraph (d) of subsection (3) or any other person prejudiced by the order, may within fourteen days after the date of service of the order, or after the date upon which he or she became aware of the order, as the case may be, make written representations to the Central Bank applying for—

- (a) the cancellation of the order on the grounds that the person had not contravened any provision of this Act as specified in the order; or
- (b) an amendment of the order on the grounds specified in the application.

(9) The Central Bank may, after consideration of the representations made to it under subsection (8)—

- (a) confirm the preliminary order;
- (b) cancel the preliminary order; or
- (c) confirm the preliminary order subject to such amendments as the Central Bank may consider appropriate.

(10) If the Central Bank confirms a preliminary order under subsection (9), it may dispose of the shares surrendered to it under subsection (7), at a fair valuation determined by the Central Bank in such manner as it may consider appropriate, to a person qualified to hold such shares under this Act.

(11) The proceeds of a sale of shares under subsection (10) shall, subject to subsection (12), be paid by the Central Bank to the person entitled to the proceeds.

(12) If the Central Bank—

- (a) in writing for any reason declines to pay the proceeds referred to in subsection (11) to any person claiming to be entitled to it;
- (b) does not receive a claim under subsection (11) within a period of two years after the date of sale of the shares referred to in subsection(11),

then the proceeds shall be kept in an account with the Central Bank and the Central Bank may apply to the High Court for directions as to the disposal of the proceeds.

(13) The Central Bank may, in writing, give such instructions or directions to the directors or officers of a financial institution referred to in subsection (1) as the Central Bank may consider necessary to give effect to an order made by the Central Bank under this section.

(14) Any transaction, including any agreement or arrangement, in relation to any shares or security, or to any interest in any shares or security, which contravenes—

- (a) any order made under this section; or
- (b) any instruction or direction given under subsection (13), by the Central Bank,

shall be null and void.

(15) The Central Bank may, irrespective of whether a person referred to in subsection (1) has been prosecuted in respect of the contravention of a provision of this Act referred to in that subsection, make a preliminary order or take such other steps as the Central Bank may consider appropriate.

(16) Any person who contravenes subsection (4) of this section commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

PART IV—CAPITAL REQUIREMENTS.

26. Minimum capital requirements for financial institutions

(1) A person proposing to transact financial institution business in the capacity of a bank in Uganda shall have a minimum paid-up cash capital of not less than two hundred thousand currency points invested initially in such liquid assets in Uganda as the Central Bank may approve.

(2) The minimum capital funds unimpaired by losses of a bank shall at any time not be less than two hundred thousand currency points.

(3) A person proposing to transact business as a non- bank financial institution shall have a minimum paid up cash capital of not less than fifty thousand currency points invested in such liquid assets in Uganda as the Central Bank may approve.

(4) The minimum capital funds unimpaired by losses of a non-bank financial institution shall at any time not be less than fifty thousand currency points.

(5) The Minister, on the advice of the Central Bank, may from time to time revise the minimum capital requirements of financial institutions by a statutory instrument, which shall immediately be laid before Parliament

27. Minimum on going capital requirements

(1) A financial institution shall at all times maintain—

(a) a core capital of not less than eight percent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank by statutory instrument;

(b) a total capital of not less than twelve percent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank by statutory instrument.

(2) The Central Bank may prescribe higher on-going capital requirements for a specific financial institution if the supervisory review process reveals existing risks in the financial institution warranting the increase.

28. Minimum holding and computation of liquid assets

(1) A financial institution shall maintain a minimum holding of liquid assets, as determined by the Central Bank in accordance with subsection (2) of this section.

(2) Subject to subsections (1) and (2) of section 26, the minimum holding of liquid assets under this section shall be expressed as a proportion of the demand and time liabilities of a financial institution and shall not exceed thirty percent of such demand and time liabilities, except that—

(a) different proportions may be determined for demand liabilities and time liabilities and for different types of financial institutions;

(b) demand or time liabilities due by a financial institution to its head office or to any bank situated outside Uganda may, at the discretion of the Central Bank, be included wholly or in part.

(3) The Central bank shall prescribe the minimum amount of liquid assets to be held by a financial institution, including the off-setting of general or specified liquid assets against demand and time liabilities; except that in so doing the Central Bank may distinguish between requirements for deposit liabilities denominated in foreign currency and those denominated in Uganda shillings.

(4) In computing the minimum amount of liquid assets to be held by a financial institution operating in Uganda and elsewhere, all offices or branches of that financial institution in Uganda shall be deemed to constitute one institution.

(5) A financial institution which contravenes this section is liable to pay, to the Central Bank, a civil penalty of one-tenth of one percent of the amount of the deficiency for every day on which the deficiency continues.

(6) For the purposes of this section “liquid assets” means all or any of the following—

(a) notes and coins which are legal tender in Uganda and any other currency prescribed by the Central Bank;

(b) balances held at the Central Bank as may be approved by the Central Bank;

(c) moneys at call and balances at banks in Uganda other than the Central Bank after deducting balances owed to those banks;

(d) Uganda Treasury Bills maturing within a period not exceeding ninety one days;

(e) marketable Government securities that are held by financial institutions for trading purposes ;

(f) uncommitted balances at banks outside Uganda withdrawable on demand and money at call outside Uganda after deducting therefrom balances owed to banks outside Uganda, if the balances and money at call are in currencies which are freely negotiable and transferable in

international exchange markets consistent with the articles of agreement of the International Monetary Fund;

- (g) commercial bills and promissory notes which are eligible for discount by commercial banks or by the Central Bank under the Bank of Uganda Act;
- (h) any other asset that the Central Bank may by statutory instrument approve.

(7) The Central Bank shall allow reasonable time after a minimum holding is prescribed or increased under subsection (1) of this section to enable the financial institution comply with the requirement.

PART V—PROHIBITIONS AND RESTRICTIONS.

29. Bar on lending where liquid assets are insufficient

Where a financial institution fails to maintain the minimum amount of liquid assets it shall not grant any new or additional loan or credit accommodation to any person without the prior written approval of the Central Bank

30. Restrictions on lending against own shares and debt instruments

A financial institution shall not grant any advance or credit facility or accommodation against—

- (a) security of its own shares or those of a company affiliated to it;
- (b) any instruments which may qualify as capital of the financial institution.

31. Restrictions on credit concentration

(1) A financial institution shall not grant or promise to grant to a single person, or to a group of related persons any advance or credit accommodation which is more than twenty five percent of its total capital.

(2) Notwithstanding subsection (1), a financial institution may grant an advance or credit facility in excess of twenty five percent but not more than fifty percent of its total capital if the facility is self-liquidating, and its maturity or expiry does not exceed three years and is adequately secured by—

- (a) Uganda Government securities to be pledged to the financial institution;
- (b) fixed deposits held by the financial institution and secured by a lien;
- (c) other qualifying securities as the Central Bank may by statutory instrument prescribe.

(3) The Central Bank shall aggregate as a single advance or credit facility all loans and credit accommodations made by a financial institution to one or more persons with a common interest.

(4) A common interest shall be deemed to exist between persons for the purposes of this section if—

- (a) the exposure to those persons constitutes a single exposure because of the fact that one of them directly or indirectly exercises control over others;
- (b) although the persons to whom the financial institution is exposed are different entities, they are so interconnected that if one of them experiences financial difficulties, another one or all of them are likely to experience lack of liquidity;
- (c) the persons are affiliates within the meaning of this Act;
- (d) those persons are related persons within the meaning of this Act;
- (e) those persons have common control;
- (f) those persons are associates within the meaning of this Act.

(5) In addition to but without derogation from subsections (1), (2) and (3) of this section, a financial institution shall not have large exposures which in the aggregate exceed eight hundred percent of its total capital.

(6) Notwithstanding subsections (1) and (2) of this section, a financial institution may grant to another financial institution an advance or credit facility which is more than twenty five percent of its total capital except that the advance or credit facility—

- (a) shall not exceed fifty percent of its total capital;
- (b) shall not have a maturity exceeding one year; and
- (c) shall immediately be reported to the Central Bank.

(7) Where the advance or credit facility by a financial institution to another financial institution exceeds one year, it shall be secured in accordance with subsection (2) of this section.

(8) A financial institution which at the commencement of this Act has outstanding credit facilities which contravene the provisions of this section shall comply with those provisions within a period of three years from the date of commencement.

32. Restrictions relating to reduction of capital

(1) A financial institution shall not at any time—

- (a) pay or declare any dividend;

(b) make any transfer from profits or capital; or

(c) make any other distributions, other than to a reserve account, if the dividend, payment, or distribution is likely to result in the financial institution not meeting its capital requirements.

(2) Subsection (1) of this section shall apply with the necessary modifications to any financial institution that does not meet the capital requirements prior to the payment or distribution.

(3) The Central Bank shall direct any institution which contravenes this section to—

(a) recall all the dividends, payments or distributions made or make good their full value and in addition;

(b) pay a civil penalty equivalent to twice the value of dividends or distributions payments made.

33. Restrictions on inter institutional placements and loans

(1) A financial institution whose core capital is less than forty percent of the core capital prescribed in this Act shall not take any placement or receive any loan from any financial institution in Uganda.

(2) Placements between affiliated financial institutions shall be considered as insider transactions and shall be subject to all the provisions of section 34 of this Act;

(3) Where the Central Bank finds that any person has contravened any of the provisions of this section it shall—

(a) where the person is a financial institution—

(i) order the immediate repayment by the taking financial institution of the excess by which the placement exceeded the limits prescribed in this section and impose a civil penalty on the offending financial institution of two hundred and fifty currency points for each day on which the contravention continues;

(ii) impose one or more of the foregoing penalties as it, in its own discretion, deems fit.

(b) where the person is an individual, impose civil penalty of fifty currency points per day on which the contravention continues, which fine shall be paid personally by every officer, or director who authorised the contravention.

(4) A civil penalty imposed under subsection (3) of this section shall be a debt due from that person to the Central Bank and shall—

- (a) in case of officers and directors if not paid within sixty days after demand of the civil penalty be recoverable by personal action against them; or
- (b) in case of the financial institution be recoverable by debit to their account with the Central Bank.

34. Prohibitions on insider transactions

(1) A financial institution shall not grant or permit to be outstanding a loan or credit accommodation to any of its affiliates and associates, directors, persons with executive authority, substantial shareholders or to any of their related persons or their related interests except on terms which are non-preferential in all respects including creditworthiness, term, interest rate and the value of the collateral.

(2) For the purpose of subsection (1) “non-preferential” means upon terms no more favourable than those which would be offered under prevailing conditions to persons other than those referred to under sub-section (1).

(3) A financial institution shall not grant or permit to be outstanding loans or credit accommodations to its affiliates and associates, directors, persons with executive authority, substantial shareholders or to any of their related persons or group of related persons or their related interests which, in the aggregate, exceed twenty percent of its core capital.

(4) Every loan or credit accommodation by a financial institution to any of its affiliates and associates, directors, persons with executive authority, substantial shareholders or to any of their related persons or group of related persons or their related interests shall be secured at all times by collateral having a market value of at least one hundred and twenty percent of the outstanding amount of the loan throughout its term.

(5) Any collateral required by subsection (4) shall be assigned to the financial institution and shall at all times be an enforceable or realisable security.

(6) A financial institution shall not grant or permit to be outstanding aggregate loans and credit accommodations to any one of its employees, including executive directors, in excess of two years’ salary of the officer or executive director.

(7) Subsection (6) shall not apply to any residential mortgage loan which is governed by subsection (9) of this section.

(8) A financial institution shall not grant or permit to be outstanding loans or credit accommodations to any one of its non-executive directors and his or her related interests, in excess of 2.5 percent of core capital of the financial institution.

(9) Notwithstanding subsection (6), a financial institution may grant to an employee a secured loan or credit accommodation which aggregate up to three times one year’s salary of the employee for the purpose of purchasing or constructing a primary residence for the employee.

(10) A loan or credit accommodation shall not be granted to any officer including an executive director under subsection (6) and (9) while any other loan to that person is non-performing.

(11) “Non-performing” shall have the same meaning as that assigned to it in subsection (2) of section 35 of this Act.

(12) A director of a financial institution who contravenes this section, shall immediately cease to be a ‘fit and proper’ person for the purposes of this Act and shall cease to be a member of the board of directors of the financial institution and in addition, shall not be permitted to be re-appointed to the board of directors of that financial institution or appointed to any board of directors of a financial institution in Uganda without the prior written permission of the Central Bank.

(13) A person who grants or receives a loan or credit accommodation which contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of fifty percent of the amount in excess of the limit or imprisonment not exceeding one year or both.

(14) Notwithstanding subsection (13) of this section, the Central Bank may order for—

- (a) repayment by the offending officer and director of any amount which exceeds the legal lending limits prescribed in this section;
- (b) the execution of proper security documentation where applicable;
- (c) delivery of adequate collateral;
- (d) regularization of any preferential terms or conditions of a loan as the case may be;
- (e) dismissal from the financial institution of the offending officer;
- (f) bar the offending officer from any future employment at any financial institution for a specified or indefinite period.

(15) Where a financial institution enters into a transaction that it is prohibited from entering into by this section, the institution shall deduct the outstanding amount of the loan or sum granted or extended to the insider when computing the on-going capital requirements of the institution.

35. Restriction on purchase of certain loans

A financial institution shall not purchase a non-performing or low quality asset from any of its affiliates and associates, directors, persons with executive authority, substantial shareholders or from any of their related persons or group of related persons or their related interests.

(2) For the purpose of this section a “non-performing asset” means a loan, credit accommodation or asset whose principal or interest has been due and unpaid for ninety days or more, or where its principal or interest payments, overdue by ninety days or more have been capitalized, restructured or renewed.

36. Restriction on externalization of assets

(1) A financial institution shall not transfer any part of its assets out of Uganda where the aggregate of assets to be transferred exceeds twenty five percent of its total capital, without the prior notice to the Central Bank unless the transfer is done in the normal course of business of the institution.

(2) A financial institution which contravenes subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding one hundred currency points per day on which the contravention continues.

37. Engaging in trade, commerce, industry

A financial institution shall not—

(a) engage directly or indirectly for its own account, alone or with others in trade, commerce, industry, insurance or agriculture, except in the course of the satisfaction of debts due to it in which case all such activities and interests shall be disposed of at the earliest reasonable opportunity;

(b) acquire or hold, 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.

38. Investments in immovable property

(1) A financial institution shall not purchase or acquire any immovable property or any right in it except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff, in which case the cost of the property, in aggregate, shall not exceed one hundred percent of the financial institution's core capital.

(2) A financial institution which on the date of commencement of this Act, holds directly or indirectly, in the aggregate immovable property, the cost of which exceeds one hundred percent of its core capital, shall within five years from that date—

(a) dispose of the property in order to comply with this Act; or

(b) add new capital as shall be directed by the Central Bank in order to comply with this Act.

(3) The provisions of this section shall not be construed so as to prevent a financial institution from securing a debt on any immovable property and in case of default of payment of the debt, from holding the immovable property for realization at the earliest reasonable opportunity to the financial institution.

(4) A financial institution which contravenes subsection (1) of this section shall pay to the Central Bank a civil penalty of five currency points for each day on which the contravention continues.

39. Restrictions on engaging in securities activities

(1) No financial institution which is licensed to accept deposits shall on its own account or at its own risk engage in—

- (a) any underwriting of shares; or
- (b) any securities brokerage or dealing activities.

(2) A financial institution which contravenes this section shall pay to the Central Bank a civil penalty of five currency points for each day on which the contravention continues.

(3) For the purposes of this section—

- (a) securities brokerage means any activity engaged in by a person whether as principal or agent, who acts as an intermediary between a buyer and a seller of securities;
- (b) securities dealing means any activities engaged in by a person, whether as a principal or an agent who buys and sells securities or otherwise deals in securities on his or her own account.

(4) Subsection (1) of this section does not apply to government securities and Bank of Uganda securities.

40. Foreign exchange holdings

(1) The Central Bank may, by notice, prescribe rules applicable to financial institutions for the conduct of foreign exchange business.

(2) The Central Bank may, by notice, impose restrictions on the foreign exchange business of a financial institution.

(3) Any person who—

- (a) contravenes a rule prescribed under subsection (1) of this section; or
- (b) fails to comply with a restriction imposed under subsection (2) of this section,

commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

41. Core capital requirements for conducting foreign exchange business

(1) A financial institution shall not conduct any new foreign exchange business if it is significantly under capitalised as defined in subsection (4) of section 87 of this Act.

(2) Any financial institution which contravenes subsection (1) commits an offence.

(3) Where a financial institution commits an offence under subsection (2), the financial institution shall be liable to a fine not exceeding two hundred and fifty currency points for each day on which the offence continues.

42. Net open position in foreign currencies

(1) The Central Bank may fix or prescribe a manner of determination of—

(a) the net open position of the financial institution in foreign currencies generally or in any specified foreign currency;

(b) the maximum limit for the net open position in foreign currencies generally or in any specified foreign currency that the financial institution may create which shall not exceed twenty five per cent of the core capital of the financial institution.

(2) The Central Bank may prescribe, by notice, the manner of correcting the net open position of a financial institution that exceeds the maximum limit.

(3) A financial institution whose net open position in foreign currencies generally or in any specified foreign currency exceeds the limit prescribed under paragraph (b) of subsection (1) shall pay to the Central Bank a civil penalty of one percent of the excess net open position per day on which the contravention continues.

(4) All financial institutions shall in such format as shall be prescribed by the Central Bank, provide to the Central Bank daily or weekly or monthly returns for their net open position in foreign currencies.

(5) Any financial institution that fails to comply with subsection (4) or submits inaccurate returns shall pay to the Central Bank a civil penalty of fifty currency points for each day on which the contravention continues.

(6) A financial institution which provides false information in the returns to the Central Bank under subsection (4) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points for each day on which the return remains uncorrected.

43. Suspension of foreign exchange business

The Central Bank may suspend any financial institution from conducting foreign exchange business if the financial institution is under any criminal investigation concerning its dealings in foreign exchange.

44. Stored value cards

(1) No person shall, in Uganda, issue any stored value card except—

(a) a financial institution which has obtained the approval of the Central Bank; or

(b) a person, for payment only of goods or services or both goods and services provided directly by that person.

(2) The Central Bank may impose terms and conditions under which a stored value card may be issued by a financial institution.

(3) Where a financial institution which has obtained the approval of the Central Bank issues a stored value card, the proceeds arising from the issue by the financial institution of the stored value card shall be subject to such reserve and liquidity requirements as the Central Bank may by notice in accordance with this section prescribe.

(4) Any person who—

(a) issues a stored value card otherwise than in accordance with this section; or

(b) fails to comply with such requirements as the Central Bank may impose under this section,

commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.

(5) For the purpose of this Act, the holder of a store value card shall be considered as a depositor and the issuer of a store value card shall, until his or her claim is settled by the financial institution, be considered as a creditor of the financial institution.

(6) In this section “stored value card” means a card for which a person pays in advance a sum of money to the issuer in exchange for an undertaking by the issuer that on production of the card to the issuer or a third party (whether or not some other action is required), the issuer or the third party, as the case may be, will supply goods or services or both goods and services; and for the purpose of this section “card” includes any token, coupon, stamp, form, booklet, other document or thing.

45. Restrictions on a mortgage bank

No mortgage bank shall advance more than twenty five percent of all its loans for a purpose other than the acquisition, construction, enlargement, repair, improvement and maintenance of urban or real estate or the substitution of mortgages taken out for that same purpose.

PART VI—ACCOUNTS AND FINANCIAL STATEMENTS.

46. Financial ledgers and other financial records

(1) A financial institution shall at all times keep financial ledgers and other financial records which—

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

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

(3) Where the financial year of a financial institution is different from that prescribed in subsection (2), the financial institution shall, within twelve months from the commencement of this Act, change its financial year to comply with subsection (2).

(4) The financial ledgers and other financial records to which this section applies shall be kept in Uganda and shall comply with the requirements of—

- (a) the Companies Act,
- (b) International Accounting Standards, and
- (c) such other requirements as the Central Bank may in writing prescribe.

(5) All accounting entries in financial ledgers and all financial records to be kept by a financial institution shall be kept and recorded in the English language using the system of numerals employed in Government accounts.

(6) A financial institution shall preserve the financial ledgers and other financial records referred to in this section for a period of not less than ten years.

(7) For the purposes of this section, 'financial records' include any book, computer record, report, statement or document relating to the business affairs, transactions, and property of a financial institution.

(8) Without derogation from subsections (1) and (4) of this section, every financial institution shall maintain within Uganda such non-financial records as are necessary—

- (a) to reveal clearly and correctly the state of its business affairs and financial condition; and
 - (b) to explain its transactions so as to enable the Central Bank to determine whether the institution has complied with this Act.
- (9) An institution and its agents shall take reasonable precaution to—
- (a) prevent loss or destruction of;
 - (b) prevent the falsification of the entries in;
 - (c) facilitate the detection and correction of inaccuracies in; and
 - (d) ensure that unauthorized persons do not have access to or use of information in,

the registers and records required or authorised by this Act to be prepared and maintained.

47. Entries in financial ledgers

(1) No person shall with intent to deceive or mislead in any financial ledger, record, report, statement or other document relating to the business affairs, transactions, property, assets, liabilities or accounts of a financial institution—

(a) make a false entry knowing the entry to be false, or cause such an entry to be made; or

(b) omit an entry or cause an entry to be omitted; or

(c) alter, abstract, conceal, remove or destroy an entry, or cause an entry to be altered, abstracted, concealed, removed or destroyed.

(2) A financial institution shall indicate in its profit and loss account any civil penalty levied against it under this Act.

(3) A person who contravenes subsection (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding five years or both.

48. Submission of audited annual financial statements

(1) A financial institution shall within a period of three months after the end of its financial year, submit to the Central Bank its audited annual financial statements approved by its board of directors together with the auditors' report and the management letter.

(2) The form and contents of the audited annual financial statements required under this section shall comply with the requirements in the regulations made by the Central Bank under section 131 of this Act.

(3) A financial institution which fails to submit the audited annual financial statements within the period prescribed in subsection (1) of this section shall pay to the Central Bank a civil penalty of twenty currency points for every day on which the default continues.

49. Disclosures to the Central Bank

(1) The audited annual financial statements shall at least disclose the following—

(a) the name of any person or group of related persons who hold five per cent or more of the total voting rights in the financial institution;

(b) the number of borrowers and the aggregate amount of advances or credit facilities exceeding twenty five per cent of core capital lent to a single person or group of related persons.

(c) the names and amount of any lending to directors, shareholders and companies in which the directors and shareholders directly or indirectly have an interest; and

(d) the range of interest rates and performance status of such insider loans during the reporting period.

(2) In this section, 'reporting period' means the period to which the financial statements referred to in subsection (1) relate.

50. Publication of annual and quarterly financial statements

(1) A financial institution shall within four months after the end of its financial year, publish its audited annual financial statements together with the auditors report, in a newspaper circulating in the whole of Uganda in the format prescribed in the regulations or in such other format as may be prescribed by notice to the financial institution issued by the Central Bank.

(2) A financial institution shall exhibit on a half yearly basis, in the banking hall of each of its offices and branches a copy of its un-audited financial statement stating the fact that they are not audited.

(3) A financial institution shall exhibit throughout the year in a conspicuous place in the banking hall of each of its offices and branches a copy of its audited annual financial statements together with the auditor's report.

(4) A financial institution which fails to publish the audited annual financial statements within the period prescribed in subsection (1) of this section shall pay to the Central Bank a civil penalty of twenty currency points for each day on which the default continues.

51. Rectification of audited annual financial statements

Where the Central Bank is satisfied that the audited annual financial statements of a financial 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 the contents specified by this Act, the Central Bank may require the financial institution to—

- (a) amend or correct the audited annual financial statements to comply with this Act or any other additional requirements;
- (b) correct the misleading information;
- (c) re-publish the amended or corrected audited annual financial statements;
- (d) submit to the Central Bank any further documents or information or explanations relating to any document or information.

PART VII—CORPORATE GOVERNANCE.

52. Appointment of board of directors

(1) Every financial institution shall have a board of directors of not less than five directors.

(2) The board of directors shall be headed by a Chairperson who shall be a non-executive director.

(3) Notwithstanding anything to the contrary in any other written law, or any agreement, not more than fifty percent of the directors of the financial institution shall be employees of the financial institution or any of its subsidiaries or affiliates except in such cases where the Central Bank is satisfied that all those directors who are employees have been deemed fit and proper to be directors of a financial institution by the home country regulator of the financial institution.

(4) No person who is not a fit and proper person in accordance with the fit and proper test specified in the Third Schedule shall become or remain a director of a financial institution, and for the purposes of this subsection, the Central Bank shall vet all persons proposed as directors of a financial institution within six months and notify the financial institution accordingly.

(5) Notwithstanding the provisions of the Companies Act, no appointment of a director of a financial institution shall have legal effect for the purposes of this Act or any other law unless that person has complied with the requirements of subsection (4).

(6) Subject to subsection (1) no person who on the date of commencement of this Act is a director of a financial institution shall, on the expiry of his or her current term of office be eligible for re-appointment as a director unless or until he or she qualifies for appointment under subsection (4).

(7) No person who on the date of commencement of this Act is a director of a financial institution shall six months after the commencement of this Act remain a director unless or until he or she qualifies for such appointment under subsection (4).

53. Disqualification of director

(1) No person shall become a director in a financial institution unless—

- (a) he or she is above eighteen years of age;
- (b) he or she is of sound mind and has not been declared to be of unsound mind by any court of law in Uganda or elsewhere;
- (c) he or she is not an undischarged bankrupt;
- (d) he or she is a natural person;
- (e) the financial institution has served a written notice on the Central Bank of its nomination of that person to become a director; and
- (f) the Central Bank has given a written approval of his or her compliance with the fit and proper test.

(2) The Central Bank may, on receipt of the notice referred to in subsection (1) of this section, seek further information and documents from the applicant or from other sources.

(3) After due consideration has been given to the written notice, the Central Bank may—

- (a) give its approval of the applicant to become a director; or
- (b) withhold its approval on the ground that the person concerned is not a fit and proper person to become a director.

(4) Any person who under subsection (1) or subsection (2) of this section knowingly or recklessly provides information to the Central Bank which is false or misleading in a material particular commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

(5) At least fifty percent of the directors of a financial institution licensed under this Act must, during the tenure of their office, be resident in Uganda.

54. Conflict of interest

(1) No director or officer of a financial institution shall take part in the discussion of or taking a decision on any matter in which that person or any of his or her related interest has an interest.

(2) In any meeting where subsection (1) of this section applies, every officer or director referred to in subsection (1) shall inform the meeting of his or her interest or that of any of the parties mentioned in subsection (1) and to the extent that the discussion or decision concerns any matter in which he or she has an interest, shall exclude himself or herself from further attendance at that meeting.

55. Responsibilities of the board

(1) The board of directors of a financial institution shall be responsible for—

- (a) good corporate governance and business performance of the financial institution;
- (b) ensuring that the board is in full control of the affairs and business operations of the financial institution;
- (c) ensuring that the business of the financial institution is carried on in compliance with all applicable laws and regulations and is conducive to safe and sound banking practices;
- (d) ensuring and reporting to the shareholders at the annual general meeting of the financial institution, that the internal controls and systems, and management information systems of the financial institution—

- (i) are designed to provide reasonable assurance as to the integrity and reliability of the financial statements of the financial institution and to adequately safeguard, verify and maintain accountability of its assets;
 - (ii) are based on established and written policies and procedures, and are implemented by trained and skilled officers with an appropriate segregation of duties; and
 - (iii) 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' shall cover the overall environment in which the financial institution operates comprising a system of checks and balances which promotes a healthy balancing of risk and return.

(2) The directors of a financial institution shall appoint from among their number two executive directors who must—

- (a) be ordinarily resident in Uganda;
- (b) have knowledge of the manner in which the institution's longer term strategy is pursued in practice and an ability to influence its policies; and
- (c) effectively direct the business of the financial institution.

56. Duties of directors

(1) A director shall in relation to the financial institution in which he or she serves, stand in a fiduciary relationship and shall in addition and without derogation owe the financial 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 interest and for the benefit of the financial institution;
- (c) a duty to act independently, free from undue influence of any other person; and
- (d) a duty to access necessary information to enable him or her to discharge his or her responsibilities.

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

- (a) the financial institution may not be able to properly conduct its business as a going concern;

- (b) the financial institution appears to be or is likely in the near future to be unable to meet all, or any of its obligations;
- (c) the financial institution has suspended or is about to suspend any payment of any kind;
- (d) the financial institution does not, or may not be able to meet its capital requirements as prescribed in this Act.

(3) Any individual director who acts in accordance with this section shall make his or her intention known to the board in writing prior to reporting to the Central Bank.

(4) Where the board of directors or a director fails, omits or neglects to report to the Central Bank any matter required to be reported under subsection (2) of this section, the Central Bank may—

- (a) withdraw its approval of the board of directors as an organ, or
- (b) withdraw its approval of any of the directors.

57. Removal and suspension of directors

(1) The Central Bank may, for sufficient cause—

- (a) remove a director of a financial institution;
- (b) remove or suspend the whole board of directors of a financial institution; or
- (c) exclude any member of the board from qualifying to serve on a board of any financial institution in Uganda for a period of not less than ten years.

(2) For the purposes of subsection (1), 'sufficient cause' means—

- (a) in relation to a director or directors', ceasing to comply with the fit and proper test specified in the Third schedule;
- (b) in relation to the board of directors—
 - (i) failure, omission or neglect of their responsibilities in section 55;
 - (ii) failure, omission or neglect to report to the Central Bank as required by subsection (2) of section 56;
 - (iii) failure or omission or neglect of duties as prescribed by subsection (1) of section 56;

(iv) failure to attend without a lawful excuse, two consecutive meetings of the board or being absent from three board meetings for a consecutive period of six months.

(3) No director serving on the board of a financial institution shall simultaneously serve as a board member, or in any executive capacity, with any other financial institution or a subsidiary or affiliate of the financial institution in Uganda.

(4) Where the Central Bank—

(a) removes or suspends the whole board of directors; or

(b) removes any directors from the board and as a result of the removal the number of board members falls below the minimum prescribed in this Act,

the Central Bank shall immediately assume the powers of the board of directors and shall within fourteen days summon a meeting of the shareholders for the purpose of electing a new board of directors, which shall be required to satisfy the provisions of this Act relating to the appointment of directors.

58. Board Meetings

(1) The Central Bank may, by notice, order any financial institution to provide the Central Bank within a period specified in the notice, a copy of the board minutes and resolutions duly certified as a true record by the Secretary and Chairperson of the board.

(2) Notwithstanding anything in this Act and the memorandum and articles of association of a financial institution, or the Companies Act, the Central Bank may, in the interest of the financial institution or the safety of depositors—

(a) order the board of directors of a financial institution to meet within three days and at such place in Uganda as the order shall specify;

(b) order the board of directors of a financial institution to consider on the agenda of the convened meeting such items relating to the financial institution as the Central Bank may deem necessary for purposes of the safety of the financial institution and its depositors;

(c) appoint an observer to any board meeting of a financial institution.

(3) Where a meeting of the board is convened under paragraph (a) of subsection (2) of this section, the quorum for the meeting shall be three directors or one third of the total directors present, whichever is greater, and decisions shall be taken by a simple majority.

(4) Any decision taken under subsection (3) shall be binding on the financial institution.

(5) Where no director turns up, the Central Bank shall take appropriate action as it deems fit.

59. Audit Committee of the board

(1) The board of directors shall constitute from among its members, a committee on audit, consisting of not less than two persons to perform such functions as the board of directors shall specify.

(2) Notwithstanding subsection (1), all directors employed by the financial institution in any other position except that of director, shall be disqualified from serving on the committee on audit.

(3) The committee on audit shall be headed by a Chairperson who shall be appointed by the board of directors.

(4) The Chairperson shall have such functions as are prescribed by the board.

(5) The committee on audit shall meet once in every quarter of the financial year of the financial institution.

(6) The following shall be required to attend all meetings of the committee on audit—

- (a) the board members of the committee on audit;
- (b) the officer responsible for internal audit in the financial institution; and
- (c) the officers in charge of the financial and treasury functions of the financial institution.

(7) The committee on audit shall have the following duties—

- (a) to review the internal audit report and programs of the financial institution;
- (b) to review the internal controls, operating procedures and systems and management information systems of the financial institution;
- (c) to ensure that the audit function of the financial institution is adequately staffed;
- (d) to ascertain the nature of the external audit, co-ordinate the internal and external audits and consider rectification and implementation of issues raised by the external auditor;
- (e) to review the financial statements of the financial institution and make recommendations on them;

(f) to review such investments and transactions that could affect the well being of the financial institution as the auditor or auditors or any officer of the financial institution may bring to the attention of the committee;

(g) to review the practices of a financial institution to ensure that any insider transactions of the institution that have a material effect on the stability or solvency of the institution are identified and dealt with.

60. Asset and Liability Management Committee

(1) The board of directors shall constitute an Asset and Liability Management Committee consisting of not less than two persons to perform such functions as the board of directors shall specify in relation to establishing the broad guidelines on the financial institution's tolerance for risk and expectations from investment.

(2) The guidelines shall include but may not be limited to the following areas—

(a) limits on loan to deposit ratio;

(b) limits on loan 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) maximum dependence on inter-bank and other volatile funding instruments;

(f) limits on maximum and minimum maturities for newly acquired categories of assets and liabilities;

(g) limits on maximum and minimum maturities for existing categories of assets and liabilities;

(h) limits on the sensitivity of the net interest margin on changes in market interest rates;

(i) maximum percentage imbalance between rates sensitive assets and liabilities;

(j) limits on minimum spread acceptable between costs and yields of liabilities and assets;

(k) limits on minimum liquidity provision to be maintained to sustain operations while longer term adjustments are made;

(l) primary sources of meeting funds should be quantified.

(3) The Central Bank may from time to time issue notices to financial institutions concerning matters to be considered by the Asset and Liability Management Committee.

61. Internal Auditor.

(1) Every financial institution shall appoint an internal auditor suitably qualified and experienced in banking who shall report to the committee on audit of the board of directors.

(2) The duties of the internal auditor shall be—

- (a) to evaluate the reliability of the information produced by accounting and computer systems;
- (b) to provide an independent appraisal function;
- (c) to evaluate the effectiveness, efficiency and economy of operations;
- (e) to evaluate compliance with laws, policies and operating instructions;
- (e) to provide investigative services to line management; and
- (f) to certify returns submitted to the Central Bank by the financial institution.

62. External Auditors

(1) Subject to subsection (5) of this section, every financial institution shall nominate for appointment annually, from a pre-qualified list to be published by the Central Bank a firm of qualified auditors whose duty shall be to perform an audit of the financial statements of the financial institution and to give an opinion in accordance with this Act, the Companies Act, and International Standards on Auditing as adopted in Uganda on the following—

- (a) annual balance sheet, profit and loss account and other financial statements required to be submitted by the financial institution to the Central Bank under this Act;
- (b) compliance of the financial institution with the requirements of this Act;
- (c) compliance of the financial institution with the requirements of the Companies Act.

(2) A financial institution shall, within thirty days after the nomination for appointment of an external auditor, apply in writing to the Central Bank for the approval of the appointment.

(3) On receipt of an application under subsection (2), the Central Bank may in writing—

- (a) approve the appointment;
- (b) approve the appointment subject to such conditions as shall be specified in the approval;
- (c) decline to approve the appointment.

(4) Where the Central Bank declines to approve the appointment of an external auditor under subsection (3) or withdraws an approval under subsection (7), the financial institution shall nominate another firm as external auditors and subsection (2) shall apply with the necessary modifications in respect of that nomination.

(5) Where a financial institution fails to nominate or obtain approval of an external auditor within two months after the lapse of the term of its previous external auditor, or fails to fill a vacancy for an external auditor, the Central Bank may appoint a qualified firm of auditors whose remuneration shall be paid by the financial institution.

(6) A person appointed as an external auditor under subsection (5) shall—

- (a) for the purposes of the Companies Act be deemed to have been appointed as an external auditor at the immediately preceding annual general meeting of the financial institution;
- (b) be deemed to be an external auditor appointed by the financial institution under subsection (1) of this section and approved by the Central Bank as required by subsection (3).

(7) The Central Bank may for sufficient cause withdraw its approval of the appointment of an external auditor previously granted, and upon the withdrawal, the external auditor concerned shall vacate office.

(8) For the purposes of subsection (7), “sufficient cause” shall relate to any of the following—

- (a) failure to comply with the requirements of this Act;
- (b) breach of duty as imposed by this Act;
- (c) inability to perform to the prescribed standard or at all;
- (d) any other reason that the Central Bank may, in its discretion consider applicable.

63. Approval of External Auditor

Notwithstanding the provisions of the Companies Act, no person shall hold office as an external auditor of a financial institution unless his or her appointment has been approved by the Central Bank under section 62.

64. Disqualification of External Auditor

A person shall not qualify to be appointed or to act as an external auditor of a financial institution if—

- (a) that person, and in case of a firm, every partner in the firm, is not registered as a member of the Institute of Certified Public Accountants established under the Accountants Act;

- (b) that person, either directly or indirectly has a material interest in the financial institution or its affiliates;
- (c) in the opinion of the Central Bank, circumstances exist which may impair the independence or impartiality of that person in the performance of his or her duties as an external auditor of the financial institution;
- (d) that person is an officer or servant of the financial institution;
- (e) that person is a partner, or associate of a director or substantial shareholder of the financial institution;
- (f) that person by himself or herself, together with his or her partners or employees, performs the duties of secretary or book-keeper for the financial institution.

65. No change of External Auditor

(1) No financial institution shall, before the expiry of the term of the current external auditor remove or change its auditor except with the prior written approval of the Central Bank.

(2) Any person who is an external auditor of a financial institution shall give adequate written notice to the financial institution and the Central Bank of—

- (a) his or her decision to resign from office and the reasons for the resignation;
- (b) his or her decision not to seek to be re-appointed and the reasons for doing so.

66. Insurance cover by External Auditor

Each firm of external auditors approved for appointment by the Central Bank under this Act shall have in force, before the commencement of the audit, a valid professional indemnity insurance cover for negligence in the performance of its duties under this Act.

67. Time limit for External Auditor

No audit firm or individual auditor shall serve the same financial institution as external auditors for a continuous period exceeding four years.

68. Duties of External Auditor to financial institution

An external auditor appointed under this Act shall have a primary duty to audit, which shall include the following—

- (a) a duty to warn the board of directors of a financial institution of—
 - (i) the financial institution's ability or inability to meet the capital requirements;

- (ii) the financial institution's ability or inability to meet the reserve and liquidity requirements;
 - (iii) the financial institution's credit, foreign exchange and operations risks;
 - (iv) any other matter which the auditor becomes aware of in the performance of his or her functions as an auditor which may—
 - (aa) prejudice the ability of the financial institution to continue conducting business as a going concern;
 - (ab) be detrimental to the interests of the depositors; or
 - (ac) violate the principles of sound financial management or the maintenance of adequate internal controls and systems by the financial institution.
- (b) a duty to obtain sufficient, relevant and reliable evidence to satisfy themselves of the various matters necessary to form their opinion;
- (c) a duty to carefully plan, supervise and review all their work including work performed by subordinate staff;
- (d) a duty to ascertain, evaluate and test internal controls before placing audit reliance on them;
- (e) a duty 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 Central Bank may issue;
- (f) a duty to assess, and in writing comment on, the report of the board of directors before the report is tabled at the annual general meeting.

69. Duties of External Auditor to Central Bank

(1) An external auditor appointed under this Act shall inform the Central Bank if there are reasonable grounds to believe that—

- (a) the financial institution is insolvent, or there is a significant risk that the financial institution will become insolvent; or
- (b) the financial institution has contravened a—
 - (i) a prudential standard,
 - (ii) a requirement in this Act, regulation, notice or directive issued under this Act; or
 - (iii) a condition imposed on its license.

(2) The external auditor shall verify all quarterly returns and other reports of the financial institution which the Central Bank may from time to time require to be verified.

(3) The external auditor shall submit to the Central Bank a management letter in which they shall disclose all shortcomings or any contravention of the law which may not be sufficiently fundamental to lead to qualification of the accounts.

(4) The external auditor shall perform any other functions as the Central Bank may by notice assign the auditor.

70. External Auditors right to access financial records

(1) The external auditor appointed under this Act shall have a right of access at all times to such books, accounts, computer systems, vouchers, financial records and securities of the financial institution and shall be entitled to receive from the officers and staff of the financial institution all information and explanations as he or she may require in the performance of his or her duties.

(2) Any person who—

(a) obstructs an external auditor in the performance of his or her duties under this Act;

(b) fails, refuses or neglects to provide an external auditor with such books, accounts, computer systems, vouchers, financial records and securities as requested by the external auditor, commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

71. Information by External Auditors to Central Bank

(1) The Central Bank may, by notice in writing, require a person who is, or who has been an external auditor of—

(a) a financial institution; or

(b) a subsidiary or affiliate of a financial institution;

to provide such information about the financial institution, subsidiary or affiliate, if the Central Bank considers that the information will assist it in performing its functions.

(2) Where a person to whom a request to provide information has been made under subsection (1), fails, refuses or neglects to provide the information, or provides information which is false or misleading, that person commits an offence under this Act and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

72. Audit report

(1) The external auditor shall, after performing the audit, submit to the financial institution an audit report.

(2) A financial institution shall ensure that a report made under subsection (1) of this section is submitted to the Central Bank within three months after the close of its financial year.

(3) A financial institution which contravenes subsection (2) of this section commits an offence and is liable on conviction to a fine of twenty currency points for each day exceeding the period prescribed in subsection (2) until submission of the report.

(4) A financial 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 and a copy of the letter shall be submitted to the Central Bank with the audit report.

73. Qualified audit report

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

74. Rejection of audit report

(1) The Central Bank may, if dissatisfied with the standard or quality or both, of the audit, reject the audit report and call for a fresh audit at the expense of the financial institution concerned, the external auditor or both.

(2) Where the Central Bank rejects an audit report, it may appoint an auditor for the financial institution and shall fix the remuneration to be paid to the auditor by that financial institution.

75. Requirements on provisions

The Central Bank shall, before annual accounts of a financial institution are finalized, dividends paid, and the capital requirements in sections 26 and 27 are met, require to be satisfied by the financial institution in respect of—

- (a) sufficiency of provisions for bad debts;
- (b) existence and enforcement of a proper policy of non-accrual of interest on non-performing loans;
- (c) amortization of preliminary expenses, goodwill and similar expenses.

76. Special and further investigations by External Auditors

(1) The Central Bank may require an external auditor to—

- (a) submit such additional information in relation to the audit as the Central Bank shall deem necessary;
- (b) to carry out any other special investigation;

(c) carry out any further investigation;

(d) to submit a report on any of the matters referred to in paragraphs (a), (b), and (c);

and the financial institution concerned shall remunerate the auditor in respect of the discharge by him or her of all or any of such additional duties.

(2) The Central Bank shall, at least once in every financial year arrange meetings between the Central Bank, a financial institution and its external auditor to discuss matters relevant to the Central Bank's supervisory responsibilities which have arisen in the course of the statutory audit of that financial institution, including relevant aspects of the business of the financial institution, its accounting and internal control systems, and its annual balance sheet, profit and loss accounts, and management letter.

(3) The Central Bank may, if it considers it necessary, arrange from time to time meetings with the external auditors of the financial institution.

(4) If an external auditor, acting in good faith and not negligently or with wrongful intent, furnishes to the Central Bank any information or opinion on a matter to which this Act applies and which is relevant to the supervisory function of the Central Bank whether or not in response to a request by it, such actions by the external auditor shall not—

(a) constitute a breach of any duty which the external auditor may owe to any person, or

(b) constitute a contravention of any code of professional conduct to which the external auditor may be subject.

(5) Subsection (4) shall apply to any matter of which the external auditor becomes aware in his or her capacity as an external auditor or in discharge of his or her duties under this Act and which relates to the business or affairs of the institution or its subsidiary or affiliate.

77. Control over management

(1) The Central Bank may, by order in writing, remove from office a chairperson, director or the chief executive of a financial institution if satisfied that in the public interest or for preventing the affairs of the financial institution being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the financial institution, it is necessary to do so.

(2) The removal under subsection (1) shall take effect from such date as may be prescribed by the Central Bank.

(3) Any person aggrieved by the decision of the Central Bank may, within fourteen days after making the order, make representations to the Central Bank and the Central Bank may modify, cancel or uphold its decision to remove that person or impose any conditions on the modification or cancellation.

(4) Where an order under subsection (1) has been made, the Central Bank may appoint any suitable person in place of the chairperson, director or chief executive who has been removed from office to hold that office for such period as the letter of appointment may specify.

(5) Notwithstanding anything in any law or in any contract, or memorandum and articles of association, a person removed by the Central Bank under this Act is entitled to compensation for loss or termination of employment of not more than three months' salary.

(6) A person who has been convicted of an offence involving financial impropriety, fraud, or financial loss shall not become or continue in the management of a financial institution.

78. Credit Reference Bureau

(1) The Central Bank or its appointed agent or any other person authorised by the Central Bank shall establish a Credit Reference Bureau for the purpose of disseminating credit information among financial institutions for their business.

(2) All financial institutions shall promptly report to the Credit Reference Bureau—

(a) all the details of non-performing loans classified as doubtful or loss in their portfolio, where the amount owed is not in dispute and the customer has not made any satisfactory proposals for repayment of the debt 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;

(b) information on customers involved in financial malpractices including bouncing of cheques due to lack of funds and fraud.

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

(4) Where—

(a) a Credit Reference Bureau formed under this Act or its officer,

(b) a financial institution or its officer;

discloses to a financial institution or its officer, the Credit Reference Bureau or its officer, the information referred to in subsection (2), in good faith, in the performance of their duties, no right of action shall accrue to or against that person for breach of the duty of confidentiality.

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

PART VIII—SUPERVISION.

79. Inspection of financial institutions

(1) The Central Bank may, periodically or at any time at its discretion, cause an inspection to be made, by an officer of the Central Bank or other person appointed by the Central Bank, of any financial institution and of its financial records and books of accounts on the premises of the financial institution and shall provide to that financial institution a copy of the report on inspection.

(2) The financial institution shall furnish to the officer making an inspection under subsection (1) of this section, all such books of accounts and financial records and other documents as well as assets including cash, notes and securities held by the financial institution in its custody or power and furnish the officer with such statements or information relating to the affairs of the financial institution as the officer may require of it within such reasonable time as the officer may specify.

(3) Any officer of a financial institution who fails to furnish any document in his or her custody or power as required under subsection (2) of this section commits an offence and is liable on conviction to a fine not exceeding fifty currency points or imprisonment not exceeding six months or both.

(4) An officer of the Central Bank or any person appointed by the Central Bank under subsection (1) shall after inspection prepare and submit a report which shall draw attention to any breach or contravention of this Act, regulations, notices or directions issued under this Act, any weaknesses in systems control and procedures or in the manner of conduct of the business of the financial institution inspected, any mismanagement, and such other matter relating to the business of the financial institution not consistent with sound banking practice.

80. Information to be provided by financial institutions.

(1) A financial institution shall furnish to the Central Bank at such times and in such form as the Central Bank may prescribe, all information and data of its operations in Uganda including periodic returns called for by the Central Bank and the audited balance sheet and profit and loss account and those of any company which is a subsidiary, affiliate, associate or holding company to that financial institution which the Central Bank may require for the proper discharge of its functions under this Act.

(2) A financial institution shall report to the Central Bank all loans granted or extended to its insiders at least once every month.

(3) Any financial institution which, without reasonable cause, fails to comply with subsection (1) or (2) of this section, or submits inaccurate returns, shall pay to the Central Bank a civil penalty of fifty currency points per day of default.

(4) The Central Bank may impose restrictions on the operations of a financial institution which fails to provide information required under this section or which provides false information.

(5) The Central Bank may, upon request made to it by any monetary or financial regulatory authority in the ordinary course of its business, disclose any of the information provided under this section to that monetary or financial regulatory authority within or outside Uganda; except that the Central Bank shall, before disclosing any information under this section, first satisfy itself that the information is required for the proper discharge of the functions of the requesting monetary authority or financial regulatory authority.

81. Information for consolidated supervision

(1) The Central Bank shall, if it deems necessary for the safety and soundness of the financial institution, or for the safety of the depositors or to determine whether the provisions of this Act are being duly complied with, require in writing any affiliates, associates, holding or subsidiary companies or any person who controls a financial institution to provide the Central Bank or its appointed agent such information or documents as may be necessary including the financial statements and other financial records of that affiliate, associate, holding or subsidiary company or controller within the period specified in the notice.

(2) The Central Bank may appoint a competent person to carry out an examination of the operations and affairs of the affiliate, associate, holding or subsidiary company of a financial institution; or of any person who exercises control over a financial institution in order to satisfy itself that the operations and affairs of the affiliate, associate or holding or subsidiary company or of the person who exercises control over a financial institution are not detrimental to the safety and soundness of the financial institution concerned.

(3) Any person who fails, refuses, omits or neglects to provide information requested under subsection (1) and/or (2) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both; and an additional fine not exceeding fifty currency points for each day on which the offence continues.

- (4) Any substantial shareholder or director of a financial institution who—
- (a) being a natural person fails, refuses, omits or neglects to provide information requested for under subsection (1) or (2) of this section or is a party to such failure, refusal, omission or neglect; or
 - (b) being a company fails, refuses, omits or neglects to provide information requested under subsections (1) or (2) of this section or is a party to such failure, refusal, omission or neglect,

shall cease to be a fit and proper person and shall not remain a substantial shareholder or director in a financial institution.

PART IX—CORRECTIVE ACTIONS.

82. Intervention

(1) If the Central Bank has reason to believe or finds that the affairs of the financial institution are conducted in a manner detrimental to the interests of the depositors or prejudicial to the interests of the financial institution or in contravention of this Act, or any other written law or that the financial institution has refused to submit to inspection, or has provided false information, the Central Bank may, without prejudice to any other course of action—

- (a) order in writing that the financial institution takes remedial action to comply with this Act or regulations, notices, or orders issued under this Act;
- (b) issue directions regarding measures to be taken to improve the management, financial soundness or business methods of the financial institution;
- (c) require the directors or management of the financial institution to execute an agreement concerning their implementation of orders or directions issued under paragraphs (a) and (b) of this subsection; or
- (d) perform or appoint an agent to perform a special examination of the financial institution to determine the financial condition of the institution and evaluate resolution options, at the cost of the financial institution.

(2) Where a financial institution fails, refuses or neglects to comply with an order, direction, or agreement issued or made under subsection (1) then the Central Bank may do any or all of the following—

- (a) initiate a legally binding cease and desist order, of either temporary or indefinite duration requiring the financial institution and its management to—
 - (i) stop the improper or unacceptable practice;
 - (ii) put a limit to lending; or
 - (iii) stop any declaration of dividends.
- (b) remove or suspend any person from the management of the affairs of the financial institution;

- (c) impose penalties on the offending member of the management to be met personally;
- (d) appoint a person who, in the opinion of the Central Bank is, suitably qualified and competent to advise and assist the institution generally or for the purposes of implementing the orders, directions or agreements under paragraph (a), (b) or (c) of this subsection and the advice of a person so appointed shall have the same force and effect as a direction made under paragraph (a), (b), or (c) and shall be deemed to be a direction of the Central Bank under this section;
- (e) appoint a person, suitably qualified and competent in the opinion of the Central Bank, to manage the affairs of the financial institution for such period as shall be necessary to rectify the problem;
- (f) require the financial institution to reconstitute its board of directors within such period as shall be specified;
- (g) withhold approvals on establishment of new branches;
- (h) withdraw the foreign exchange dealers' licence;
- (i) require the financial institution to add such capital as may be specified;
or
- (j) impose any other sanctions as the Central Bank may deem appropriate in the circumstances.

83. Modification, cancellation and upholding of orders

The Central Bank may, upon representation made to it or on its own motion, modify or cancel or uphold any order issued under section 82, and upon such modification or cancellation, impose such conditions as are necessary subject to which the modification or cancellation shall have effect.

84. Prompt mandatory corrective actions

The prompt, mandatory corrective actions prescribed in sections 85 to 87 of this Act, shall take precedence over any discretionary corrective actions available to the Central Bank under this Act or any other law.

85. Adequately capitalised financial institutions suffering large losses

(1) Where a financial institution which complies with the capital requirements prescribed in sections 26 and 27 of this Act has incurred or is likely to incur large losses within any financial year, the Central Bank shall take the following actions against that financial institution—

- (a) prohibit the financial institution from declaring and distributing any dividends which are, in the opinion of the Central Bank, likely to

cause the financial institution not to comply with the capital requirements prescribed in sections 26 and 27 of this Act;

(b) undertake more frequent inspection of that financial institution.

(2) In addition to the actions prescribed in subsection (1) of this section, the Central Bank may require the directors or management of the financial institution to provide a written explanation detailing the causes of those losses and the measures to be taken by the financial institution to rectify the position and avert future losses.

86. Undercapitalised financial institutions

(1) An “undercapitalised financial institution” is one which does not comply fully with any or all of the capital requirements prescribed in sections 26 and 27 of this Act.

(2) Where a financial institution is undercapitalised, the Central Bank shall take the following actions against that financial institution—

(a) all of the actions prescribed in subsection (1) of section 85;

(b) order the financial institution to submit to the Central Bank within forty five days after the making of the order, a capital restoration plan to restore the financial institution to capital adequacy as prescribed in sections 26 and 27 of this Act within one hundred and eighty days of making that order; and

(c) prohibit the financial institution from awarding any bonuses, or increments in the salary, emoluments and other benefits of all directors and officers of the financial institution.

(3) In addition to the actions prescribed in paragraphs (a), (b) and (c) of subsection (2) of this section, the Central Bank may appoint a person, suitably qualified and competent in the opinion of the Central Bank, to advise and assist the financial institution in designing and implementing the capital restoration plan, and the person appointed shall regularly report to the Central Bank on the progress of the capital restoration plan.

(4) Where a financial institution has been ordered by the Central Bank to submit a capital restoration plan or to add more capital, and the financial institution fails, refuses or neglects to comply with the order, or to implement the capital restoration plan, the Central Bank shall—

(a) prohibit the financial institution from opening new branches;

(b) impose restrictions on growth of assets or liabilities of the financial institution as it shall deem fit;

(c) restrict the rate of interest on savings and time deposits payable by the financial institution to such rates as the Central Bank shall determine;

(d) in addition to the actions prescribed in subsection (2) the Central Bank may—

- (i) remove officers of the financial institution responsible for the financial institution's non-compliance with the orders;
- (ii) order the financial institution to do any or such other things that the Central Bank may deem necessary to rectify the capital deficiency of the financial institution.

87. Significantly undercapitalised financial institutions

(1) Where a financial institution is significantly undercapitalized, the Central Bank shall immediately take any or all of the following actions against the financial institution—

- (a) take any or all of the actions prescribed in section 86 and this section;
- (b) enter into an agreement with the board of directors of the financial institution requiring the financial institution to rectify its significant undercapitalisation within ninety days, and to restore capital adequacy within one hundred and eighty days, or within such shorter periods as the Central Bank shall order.

(2) In addition to the actions prescribed in subsection (1) of this section, the Central Bank may take any or all of the following actions—

- (a) restrict the financial institution from engaging in new foreign exchange business;
- (b) prohibit the financial institution from engaging in new off-balance sheet transactions.

(3) If at any time—

- (a) after the period specified in paragraph (b) of subsection (1), the financial institution has failed to raise its capital to the levels necessary to rectify its significant undercapitalisation; or
- (b) before the end of the period specified in paragraph (b) of subsection (1), the financial position of the institution continues to deteriorate,

the Central Bank shall without having to wait for the expiry of that period, close the financial institution and place it under receivership, or where the closure of the financial institution would pose a systemic risk to the stability of the financial system, the Central Bank shall take the financial institution into statutory management in accordance with section 88 of this Act; except that subsection (6) of section 89 of this Act shall not apply to a statutory management under this section.

(4) For the purposes of this Act, a “significantly undercapitalized” financial institution is one which does not comply with any of the following—

- (a) hold the minimum capital funds, unimpaired by losses, of at least fifty percent of the requirement prescribed in section 26 of this Act;

(b) hold core capital of at least fifty percent of the requirement prescribed in section 27 of this Act;

(c) hold total capital of at least fifty percent of the requirement prescribed in section 27 of this Act.

(5) This section shall not be construed so as to preclude the Central Bank from closing any financial institution under any other provision of this Act.

88. Management take-over

(1) The Central Bank may take over management of a financial institution if—

(a) it is conducting its business in a manner contrary to this Act;

(b) the continuation of its activities is detrimental to the interests of depositors;

(c) it refuses to submit itself to inspection by the Central Bank as required by this Act;

(d) its licence has been revoked under section 17 of this Act; or

(e) it is engaged in or is knowingly facilitating criminal activities.

(2) Where the Central Bank takes over the management of a financial institution under this section or closes the financial institution under any provision of this Act, the following shall apply—

(a) any term whether statutory, contractual or other-wise on the expiration of which a claim of right of the financial institution would expire or be extinguished, shall be extended six months from the date of taking over management;

(b) any attachment or lien existing six months prior to the take over by the Central Bank of the management of the financial institution shall be vacated and no attachment or lien except a lien created by the Central Bank, shall attach to any property or asset of the financial institution as long as the Central Bank continues to manage the financial institution;

(c) any transfer of any asset of the financial institution made six months before the take over by the Central Bank of the management, with intent to effect a preference or at less than the appraised book value is void;

(d) any gratuitous transfer of any asset of the financial institution made within one year before the take over by the Central Bank of the management shall stand revoked and all such assets shall be surrendered to the Central Bank;

- (e) any lending 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 take over by the Central Bank of the management of the financial institution shall be rescinded; and that officer, director or related person to the officer or director shall immediately refund the moneys advanced and the interest accrued at the going rate in the bank.

89. Powers of Central Bank on taking over management of financial institution

(1) The Central Bank shall, on taking over management of a financial institution under section 88 of this Act, have exclusive powers of management and control of the affairs of the financial institution.

(2) The powers referred to in subsection (1) of this section shall include power to—

- (a) continue or discontinue any of its operations as a financial institution notwithstanding the revocation of its licence;
- (b) stop or limit the payment of its obligations;
- (c) employ any necessary staff;
- (d) execute any instrument in the name of the financial institution;
- (e) initiate, defend and conduct in its name any action or proceeding to which the financial institution may be a party;
- (f) reorganize or liquidate the financial institution in accordance with this Act;
- (g) appoint a person to be known as a statutory manager to manage, control and direct the affairs of the financial institution;
- (h) assume or reject any executory contracts;
- (i) cancel any leases or tenancy agreements entered into by the financial institution as lessee or tenant;
- (j) appoint an advisory board of directors;
- (k) close the financial institution;
- (l) sell the financial institution; or
- (m) do any other act which is necessary to enable the Central Bank to carry out its obligations under this section.

(3) The Central Bank shall as soon as possible after taking over management of a financial institution, appoint an auditor at the cost of the financial

institution to make an inventory of the assets and liabilities of the financial institution and submit a report to the Central Bank.

(4) The Central Bank shall upon taking over management of a financial institution immediately inform the public.

(5) The Central Bank shall exercise statutory management over a financial institution for the minimum time necessary to bring the financial institution into compliance with prudential standards.

(6) Where the financial institution does not comply with prudential standards within six months after its being placed under statutory management, the Central Bank shall close the financial institution and place it under receivership.

(7) Notwithstanding subsection (6), where the Central Bank is of the opinion that—

(a) the financial institution is not likely to comply with prudential standards within the period specified in subsection (6) of this section;

(b) the financial institution is not likely to be able to meet the demands of its depositors or pay its current obligations as and when they fall due;

(c) the continued operation of the financial institution would not be in the best interests of the depositors, the public, or the financial sector;

the Central Bank may at any time after taking over statutory management, close the financial institution.

(8) Upon appointment of a statutory manager, the board of directors shall stand suspended.

(9) A statutory manager appointed under paragraph (g) of subsection (2) of this section shall have the functions of the members of the board of directors collectively and individually, including the board's powers of delegation and use of the seal until such a time as the Central Bank shall appoint an advisory board.

(10) A statutory manager shall, upon assuming the management, control and conduct of the affairs and business of an institution, discharge his or her duties with diligence and in accordance with sound banking and financial principles and, in particular, with due regard to the interests of the institution, its depositors and other creditors.

90. Duties of a statutory manager

(1) Where a financial institution complies with the prudential standards within the period specified in this part, the Central Bank shall request the shareholders of the financial institution, subject to sections 52 and 53, to appoint an interim board of directors, charged with the management and control of the financial institution.

(2) The interim board of directors appointed under this section shall hold office on such terms and conditions as may be prescribed in the instrument of appointment, and in any case, at the cost of the financial institution.

(3) Where, within six months of its appointment, the Central Bank is of the opinion that the interim board of directors is managing the financial institution in accordance with prudential standards, the Central Bank shall request the shareholders of the financial institution, subject to section 52, to confirm the appointment of each eligible individual director.

(4) 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 and owing to the institution;
- (c) evaluating the capital structure and management of the institution and recommending to the Central Bank any restructuring or re-organization which he or she considers necessary and which, subject to the provisions of any other written law, 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 raising of funds by borrowing on such terms as he or she may consider reasonable;
- (e) obtaining from any officers or employees of the institution any documents, 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 him or her by the Central Bank.

(5) For the purposes of discharging his or her functions under this section, the statutory manager may declare a moratorium on the payment by the institution of its liabilities to depositors and other creditors.

(6) The declaration of a 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 the minimum rate as may be prescribed by the Central Bank by notice for the purposes of this section except that this paragraph shall not be construed so 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;

(c) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor or creditor of the institution; or

(d) cease to apply upon the termination of the manager's appointment in which case the rights and obligations of the institution, its depositors and creditors shall, except to the extent provided in paragraphs (b) and (c), be the same as if there had been no declaration under this subsection.

(7) A statutory manager may for the purposes of exercising his duties under this Act require any person who has at any time been an officer or director of the financial institution to provide the statutory manager with information relating to business of the financial institution.

(8) Any person who wilfully fails, refuses or neglects to provide any information requested under subsection (4) of this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

91. Prohibition on legal proceedings against a financial institution under management of Central Bank

(1) A person shall not except—

(a) with leave of court, on ground that he or she would be caused exceptional hardship if leave were not granted; or

(b) with the prior written consent of the Central Bank,

commence or continue with any legal proceeding in any court against a financial institution while the financial institution is under management of the Central Bank.

(2) An application for leave under subsection (1) shall not be filed unless the Central Bank receives thirty days notice of the intention to apply.

(3) The Central Bank may apply to the court to be joined as a party to the proceedings for leave.

92. Management by Central Bank not relief from contractual obligations

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

93. Costs of management

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

PART X—RECEIVERSHIP.

94. Placing of financial institution under receivership

(1) Subject to this section, the Central Bank may close a financial institution and place it under receivership.

(2) A financial institution may be placed under receivership—

(a) if the Central Bank determines that there is a likelihood that the financial institution will not be able to meet the demands of its depositors or pay its obligations in the normal course of business;

(b) if the Central Bank determines that the financial institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital;

(c) if it is significantly under capitalised.

(3) If a financial institution is placed under receivership, the Central Bank shall become the receiver of the closed financial institution.

95. Options available to the receiver

(1) The Central Bank shall, within twelve months from the date of taking over as a receiver, consider and implement any or all of the following options either singly or in combination—

(a) arrange a merger with another financial institution

(b) arrange for the purchase of assets and assumption of all or some of the liabilities by other financial institutions;

(c) arrange to sell the financial institution;

(d) liquidate the assets of the financial institution.

(2) The Central Bank shall take the action described in subsection (1) which in the opinion of the Central Bank—

(a) is most likely to result in marshalling the greatest amount of the financial institution's assets; or

(b) protects the interests of depositors including their interest in the unprotected deposit amounts; or

(c) minimises costs to the Deposit Protection Fund and losses to other creditors; or

(d) ensures stability of the financial sector.

(3) In determining the amount of assets that is likely to be realized from the financial institution's assets, the receiver shall—

(a) evaluate the alternatives on a present value basis, using a realistic discount rate; or

(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.

96. Prohibitions on proceedings against a financial institution in receivership

Where a financial institution is placed under receivership—

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

PART XI—LIQUIDATION.

97. Bar on liquidation or winding up proceedings

(1) Notwithstanding any other law to the contrary, no proceedings for the winding up or liquidation of a financial institution shall be commenced or continued except—

- (a) where the proceedings are commenced by the Central Bank or its authorized agent; or
- (b) where the proceedings are commenced by a financial institution under section 98.

(2) A financial institution shall obtain the approval of the Central Bank before commencing any proceedings under this section.

98. Voluntary liquidation

(1) A financial institution may, with the prior approval of the Central Bank, apply to the High Court for voluntary liquidation of its operations.

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

(3) In case of a liquidation under this section—

- (a) the liability of the shareholders for uncalled subscriptions to the capital stock of the financial institution shall continue until the end of the liquidation process;
- (b) notwithstanding the provisions of the Companies Act, where a financial institution is in voluntary liquidation, the ranking of claims shall be in accordance with section 105 of this Act ; except that the provisions relating to preferential payments in section 315 of the Companies Act shall not be applicable to a voluntary liquidation of a financial institution;

(c) the board of directors of the financial institution, shall, before paying creditors holding direct claims and with the approval of the Central Bank, make necessary arrangements to ensure a pro rata distribution among holders of claims that are likely to be reduced to judgement in a court.

(4) Where the Central Bank is satisfied that the assets of a financial institution which has applied for voluntary liquidation of its operations under this section are not sufficient to discharge its obligations or that the completion of the liquidation of its operation is unduly delayed, the Central Bank may, if it deems fit, place the financial institution in compulsory liquidation in accordance with section 99 of this Act.

99. Liquidation by the Central Bank

(1) The Central Bank shall, on determination that the financial institution should be liquidated, make an order for the winding up of the affairs of the financial institution.

(2) The order referred to in subsection (1) shall be published in a local newspaper of general circulation in Uganda.

(3) Notwithstanding anything in the Companies Act, where any proceeding for the liquidation of a financial institution is commenced under this section, the Central Bank or any other person appointed by the Central Bank shall be the liquidator of the financial institution.

(4) The remuneration of the liquidator appointed under this section, the cost and expenses of his or her establishment and the costs and expenses of the liquidation shall be met out of the assets of the financial institution under liquidation.

100. Powers of liquidator

(1) The liquidator may, with the approval of the Central Bank—

- (a) bring or defend any action or other legal proceedings in the name and on behalf of the financial institution;
- (b) carry on the business of the financial institution so far as may be necessary for the beneficial winding up of the financial institution;
- (c) retain advocates, notaries, accountants, appraisers and other professional advisers as may be approved by the Central Bank.
- (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 in damages against the financial 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 financial institution and a

contributory or alleged contributory or other debtor or person apprehending liability to the financial institution and all questions in any way relating to or affecting the assets or the liquidation of the financial 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.

(2) The liquidator may—

- (a) sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole of it to any person or company or to sell the same in parcels;
- (b) do all acts and execute in the name and on behalf of the financial institution, all deeds, receipts and other documents, and for that purpose to use, when necessary, the seal;
- (c) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his or her estate, and receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the financial institution with the same effect, with respect to the liability of the financial institution as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the financial institution in the course of its business;
- (e) raise on the security of the assets of the financial institution any money required;
- (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 money due from a contributory or his or her estate which cannot be conveniently done in the name of the company, 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; but 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 financial institution;
- (i) eliminate the interests of shareholders;

- (j) where liquidation proceedings have been commenced in respect of the financial institution in one country or more, make such payments to a liquidator of the financial institution as may be necessary;
- (k) generally realise the assets of the insolvent financial institution;
- (l) arrange, negotiate and conclude in the interest of the depositors of the financial institution an agreement to the benefit of the depositors and for the purposes of—
 - (i) releasing the liquidator from its obligations in respect of the depositors' claims for payment of their deposits out of the liquidation proceeds;
 - (ii) imposing those obligations on any third party as shall be agreed.
- (m) by notice in writing require 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;
 - (iii) produce any books or documents that relate to the affairs of the institution being liquidated.

(3) The exercise by a liquidator of the powers conferred by this section shall be subject to the control of the Central Bank; and any creditor or contributory may apply to the High Court for review with respect to any exercise or proposed exercise of any of those powers.

(4) In exercise of its powers as a liquidator, the Central Bank or its appointed agent shall make a forensic investigation to determine the causes of failure of the financial institution and report on among other things, significant related party transactions, violations of the law and the institutions governing policies and regulations, and unsound business and lending practices.

(5) A person who—

- (a) refuses or fails to comply with a requirement of the liquidator which is applicable to him or her, to the extent to which he or she is able to comply with it;
- (b) obstructs or hinders a liquidator in the exercise of the powers conferred under this Act;

- (c) furnishes information or makes a statement which he or she knows to be false or misleading in any material particular; or
- (d) when appearing before a liquidator for examination in accordance with such requirement, makes a statement which he or she knows to be misleading in any material particular;

commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points, or imprisonment not exceeding three years, or both.

(6) Any person who, following the forensic investigation, is found to have contravened this Act and the institution's policies and regulations or significantly contributed to the failure of the institution shall cease to be a fit and proper person for the purposes of this Act.

101. Stay of proceedings

(1) Notwithstanding anything to the contrary in any other law, a court shall not entertain any application for stay of proceedings in relation to the liquidation or winding up of a financial institution under this Act.

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

102. Invitation of claims from creditors

The Central Bank or its appointed liquidator shall, within a period not exceeding forty five days from the date of publication of the intention to liquidate a financial institution, for the purpose of making an estimate of the debts and liabilities of the financial institution, publish in a local newspaper of national circulation a notice calling upon all creditors, secured and unsecured, including depositors, to submit to the Central Bank or the liquidator within one month from the date of publication, a statement of the amount claimed and the particulars of the claim.

103. Report on assets and liabilities by liquidator

(1) The liquidator shall within a period not exceeding five months from the date of his or her appointment, submit to the Central Bank a report detailing the assets of the financial institution in his or her custody or control and their value, and as far as can be established the liabilities of the financial institution to its depositors and other creditors.

(2) Where a notice is issued under section 102, any statement of claim which is not received by the liquidator before the expiry of thirty days from the date

of publication, shall not be treated as a claim eligible for payment under liquidation but shall be treated as an ordinary debt due from the financial institution.

(3) Any person who fails to file a claim with the liquidator in the period prescribed in subsection (1) shall not be entitled to be paid in priority to other debts but shall be treated as an ordinary debt due from the financial institution.

(4) Where a financial institution is under liquidation, every depositor of the financial institution shall be deemed to have filed his or her claim for the amount shown in the books of the financial institution as standing to his or her credit.

(5) The liquidator shall be entitled to deduct from the amount referred to in subsection (4)—

(a) any amount paid to the depositor from the Deposit Protection Fund;

(b) such other amounts as may be due from the depositor to the financial institution.

(6) The liquidator shall in the administration of the assets of the financial institution and in the distribution of those assets among its creditors, comply with the directions of the Central Bank.

104. Creditors and contributories meeting

The Central Bank or the liquidator may summon a meeting of creditors or contributories, except that where the Central Bank or the liquidator considers that no object will be achieved by the meeting, sufficient to justify the delay and expense, the meeting may be dispensed with.

105. Payment to Creditors and ranking of claims

(1) The liquidator shall, within two months after submission of a report of the assets and liabilities of the financial institution commence the payment to depositors and creditors of the financial institution except that—

(a) payment shall be made first to the Deposit Protection Fund;

(b) second to the liquidator for all expenses incurred in the process of liquidating the financial institution;

(c) third to employees for all wages and salaries due net of any liabilities to the financial institution;

(d) fourth to secured creditors in *pari passu*;

(e) fifth to depositors for deposits which are in excess of the protected deposit amount;

(f) then to other creditors to rank in *pari passu*.

(2) Section 315 of the Companies Act shall not apply to a liquidation of a financial institution.

(3) Where any assets remain after the payment by the liquidator of all claims against the financial institution, the remaining assets shall be distributed among the shareholders in accordance with their respective rights and interests.

106. Financial ledgers and financial records of liquidator

(1) A liquidator shall keep proper financial ledgers and financial records in a manner prescribed by the Central Bank in which shall be recorded all financial transactions relating to the liquidation.

(2) When the liquidator has realized all the property of the financial institution, or so much of it as can, in his opinion, be realized without needlessly protracting the liquidation, and has made distribution to all depositors and creditors, he or she shall cause audited financial statements to be submitted to the Central Bank.

107. Release of liquidator

(1) Where the Central Bank 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 Central Bank may release the liquidator and discharge him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the financial institution; except that such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

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

PART XII—THE DEPOSIT PROTECTION FUND.

108. Establishment of Deposit Protection Fund

(1) The Fund in the Central Bank known immediately before the commencement of this Act as the Deposit Protection Fund, in this Part referred to as the Fund, shall continue in existence.

(2) The Fund shall be managed and controlled by the Central Bank

(3) There shall be paid into the Fund all contributions and other payments required by this Part of this Act to be paid into it and there shall be paid out of the Fund all monies required by this Part of this Act be paid out of it.

(4) The Minister may, from time to time, by notice in the *Gazette*, fix the size of the Fund sufficient to protect the interests of depositors to be made up by the contributions under section 109 and the Central Bank may borrow any such amount

as it may require for temporary purposes of making up deficiency in the Fund pending collection of contributions.

(5) The Fund shall consist of—

(a) moneys contributed to the Fund by financial institutions under section 109;

(b) income credited to the Fund under subsection (6) of this section;

(c) money borrowed for purposes of the Fund under subsection (4).

(6) The money constituting the Fund shall be placed in an account with the Central Bank to be invested in such manner as the Central Bank shall deem appropriate and any income from the investment shall be credited to the Fund.

(7) There shall be chargeable to the Fund the administrative expenses of the Central Bank, repayment of money borrowed by the Fund and payments made in respect of protected deposits.

109. Contributions to the Fund

(1) Every financial institution shall be a contributor to the Fund.

(2) The Central Bank shall serve on a financial institution a notice specifying the amount and the period, which shall not be later than twenty-one days after the date of service of the notice, within which the amount shall be paid into the Fund by the financial institution.

(3) A financial institution which for any reason fails to pay its contribution to the Fund within the period specified in a notice issued under subsection (2) shall be liable to pay to the Fund a civil penalty interest charge of one half per cent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

(4) The minimum annual amount of contribution to the Fund under this section shall not be less than 0.2 per cent of the average weighted deposit liabilities of the financial institution in its previous financial year; except that the Central Bank may from time to time issue statutory instruments varying the percentage and advising on the basis of weighting.

(5) If the Central Bank finds that the affairs of a financial institution are being conducted in a manner detrimental to the interests of depositors or the financial institution and it is of the opinion that the continued conduct may cause loss to the Fund, the Central Bank may, by notice, increase the contributions of that financial institution beyond the rate set out in subsection (4) of this section.

(6) The increased contributions effected under subsection (5) shall be risk adjusted contributions based on the quarterly ratings resulting from the Central Bank's off-site surveillance reports.

(7) A financial institution whose overall performance shows an unsatisfactory or marginal rating shall be charged on a quarterly basis as follows—

(a) marginal: additional charge of 0.1 percent of the average weighted deposit liabilities on top of the contribution in subsection (3);

(b) unsatisfactory: additional charge of 0.2 percent of the average weighted deposit liabilities on top of the contribution in subsection(3).

(8) The charges prescribed by subsection (7) of this section shall be averaged out for a year after full scope examination.

110. Protection of deposits and payments out of the Fund

(1) For the purpose of determining a protected deposit under this section, the amount being the aggregate credit balance of any accounts maintained by a customer at a financial institution less any liability of the customer to the financial institution, shall be a protected deposit to the extent determined by the Central Bank, from time to time, by statutory order.

(2) Subsection (1) of this section shall not be construed so as to impose an obligation on the liquidator to set off any liability of a depositor in a financial institution.

(3) A customer of a financial institution may, if the financial institution becomes closed, lodge a claim with the Central Bank in such form as the Central Bank may approve for payment to him or her out of the Fund of any protected deposit which he or she would but for the closure have been paid if he or she had demanded payment from the financial institution.

(4) The Central Bank shall make payment of the protected deposit to customers after ninety days of closure of the financial institution.

(5) The Central Bank may, before paying any claim lodged under subsection (3), require the claimant to furnish it with such documentary proof as may be proper to show that the person is entitled to payment out of the Fund, and the Central Bank may decline to make any payment under this section to a person who, in the opinion of the Central Bank, had any responsibility for or has profited directly or indirectly from the circumstances leading up to the financial institution being closed.

(6) The Central Bank or its appointed liquidator may direct the Deposit Protection Fund to withhold payment of such portion of the protected deposit of any customer in an insolvent institution as may be required to satisfy, whether fully or in part, any liability of that customer to the insolvent institution.

(7) Notwithstanding subsections (5) and (6), the Central Bank may carry out inspections and ascertain the type, number and values of the protected deposits which, but for the closure would be payable by the financial institution.

(8) Upon payment of a protected deposit the Fund shall be entitled to receive from the financial institution or liquidator, as the case may be, an amount equal to the payment made by the Fund on account of its sub-rogation to the claims of any customer or depositor in accordance with this Act.

(9) For the purposes of this section “customer” includes any person entitled to a deposit as trustee or a person holding any deposits jointly.

(10) No person or authority shall pay a depositor of a failed or closed financial institution any money in excess of the protected deposits under the Deposit Protection Fund.

111. Annual Report of the Deposit Protection Fund

(1) The Central Bank shall, within four months after the close of each financial year, submit audited financial statements and an annual report of its operation of the Deposit Protection Fund to the Minister and contributing banks.

(2) The financial year of the Fund shall be the same as the financial year prescribed for financial institutions in this Act.

(3) The financial statements shall be prepared and audited within four months after the end of the financial year.

PART XIII—AMALGAMATIONS, ARRANGEMENTS AND AFFECTED TRANSACTIONS.

112. Amalgamations and arrangements

(1) No amalgamation or arrangement which involves a financial institution as one of the principal parties to the relevant transaction, and no arrangement for the transfer of all or any part of the assets and liabilities of a financial institution to another person, shall have legal force unless the prior consent of the Central Bank to the transaction in question has been obtained.

(2) The Central Bank shall not grant its consent referred to in subsection (1) unless—

- (a) it is satisfied that the transaction in question will not be detrimental to the public interest;
- (b) in the case of an amalgamation referred to in subsection (1), the amalgamation is an amalgamation of financial institutions only; or
- (c) in the case of an acquisition or a transfer of assets and liabilities referred to in subsection (1) which involves the transfer by the transferor financial institution of the whole or any part of its business as a financial institution, the transfer is effected to another financial institution approved by the Central Bank for the purpose of that transfer.

(3) Upon the coming into effect of a transaction effecting the amalgamation of one financial institution with another financial institution under paragraph (b) of subsection (2), or effecting the transfer of all or part of the assets and liabilities of one financial institution to another financial institution under paragraph (c) of subsection (2)—

- (a) all the assets and liabilities of the amalgamating financial institutions or, in the case of the transfer of assets and liabilities, those assets and liabilities of the transferor financial institution that are transferred under the transaction, shall vest in and become binding upon the amalgamated financial institution or, as the case may be, the financial institution taking transfer of those assets and liabilities;
- (b) the amalgamated financial institution or, in the case of the transfer of assets and liabilities, the financial institution taking transfer of those assets and liabilities, shall have the same rights and be subject to the same obligations as those which the amalgamating financial institution or, as the case may be, the transferor financial institution is or to which they or it is subject immediately before the amalgamation or transfer;
- (c) all agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by or in favour of any of the amalgamating financial institutions or, as the case may be, the transferor financial institution, and in force immediately prior to the amalgamation or transfer, but excluding such agreements, appointments, transactions and documents that, by virtue of the terms and conditions of the amalgamation or transfer, are not to be retained in force, shall remain in force and shall be construed for all purposes as if they had been entered into, made, drawn up or executed with, by or in favour of the amalgamated financial institution or, as the case may be, the financial institution or person taking transfer of the assets and liabilities in question; and
- (d) any bond, pledge, guarantee or instrument to secure future advances, facilities or services by any of the amalgamating financial institutions or, as the case may be, by the transferor financial institution, which was in force immediately prior to the amalgamation or transfer, shall remain in force and shall be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated financial institution or, as the case may be, the financial institution or person taking transfer of those assets and liabilities, as security for future advances, facilities or services by that financial institution or person except where, in the case of the transfer, any obligation to provide such advances, facilities or services is not included in the transfer.

(4) Any amalgamation or arrangement or any arrangement for the transfer of assets and liabilities, referred to in subsection (1), excluding a transfer other than a transfer that is referred to in paragraph (c) of subsection (2), shall be subject—

- (a) to confirmation at a general meeting of shareholders of each of the financial institutions concerned; or
- (b) in the case of a transaction effecting the transfer of assets and liabilities of one financial institution to another financial institution under paragraph (c) of subsection (2), to confirmation at a general meeting of shareholders of the transferor financial institution and the financial institution taking transfer of those assets and liabilities; and the notice convening the meeting shall contain or have attached to it the terms and conditions of the relevant agreement or arrangement.

(5) Notice of the passing of the resolution confirming any amalgamation or arrangement, or any arrangement for the transfer of assets and liabilities, under subsection (4) together with a copy of the resolution and the terms and conditions of the relevant agreement or arrangement, duly certified by the chairperson of the meeting at which the resolution was passed and by the secretary of the financial institution or person concerned, shall be sent to the Central Bank by each of the financial institutions involved or, in the case of a transaction effecting the transfer of assets and liabilities of one financial institution to another financial under paragraph (c) of subsection (2), by the relevant transferor financial institution and the financial institution taking transfer of the assets and liabilities, and after having received the notices from all the parties to the relevant agreement or arrangement, the Central Bank shall register those notices.

(6) Upon the registration by the Central Bank of the notices referred to in subsection (5)—

- (a) of any amalgamation of two or more financial institutions, the licences of the individual financial institutions which were parties to the amalgamation shall be deemed to be cancelled and the Central Bank shall withdraw those licences and, on payment by the financial institution created by the amalgamation of the prescribed registration fee, licence the financial institution subject to the necessary modifications to the provisions of Part II of this Act, as a financial institution; or
- (b) of any arrangement for the transfer of all the assets and liabilities of a financial institution, the licence of that financial institution shall be deemed to be cancelled and shall be withdrawn by the Central Bank.

(7) Upon licensing of a financial institution by the Central Bank under subsection (6), the Central Bank shall issue a licence to the financial institution.

(8) The Registrar of Companies, Registrar of Titles and every officer or person in charge of a deeds registry or any other office, if, in his or her office or any register under his or her control there—

(a) is registered any title to property belonging to, or any bond or other right in favour of, or any appointment of or by; or

(b) is registered any share, stock, debenture or other marketable security in favour of; or

(c) has been issued any licence to or in favour of, any financial institution which has amalgamated with any other financial institution, or any financial institution which has transferred all or part of its assets and liabilities to any other financial institution, shall, if satisfied—

(i) that the Central Bank has consented under subsection (1) to the amalgamation of transfer; and

(ii) that the amalgamation or transfer has been duly effected, and upon production to him or her of any relevant deed, bond, share, stock debenture, certificate, letter of appointment, licence or other document, make such endorsements on the documents and effect such alterations in the registers as may be necessary to record the transfer of the relevant property, bond or other right, share, stock, debenture, marketable security, letter of appointment or licence and of any rights under it to the amalgamated financial institution or, as the case may be, to the financial institution that has taken transfer of the assets and liabilities.

(9) No transfer duty, stamp duty, registration fees, licence duty or other charges shall be payable in respect of—

(a) a transfer under subsection (8) taking place in the execution of a transaction entered into at the instance of the Central Bank in the interest of the financial institution or its depositors or the maintenance of a stable financial sector; or

(b) any endorsement or alteration made to record the transfer, upon submission to the Registrar of Companies, Registrar of Titles or person referred to in subsection (8), as the case may be.

(10) This section shall not affect the rights of any creditor of a financial institution which has amalgamated with or transferred all its assets and liabilities to any other financial institution or taken over all the assets and liabilities of any other financial institution, except to the extent provided in this section.

(11) In the case of an acquisition to which this section applies, the Central Bank shall, at the cost of the acquiring financial institution, appoint a firm of accountants to examine and report on the financial position of the undertaking being

acquired to ensure that the acquisition is not detrimental to the interests of the depositors of the acquiring financial institution.

113. Reconstruction within group of companies

No reconstruction of companies within a group of which a financial institution or subsidiary of a financial institution is a member shall be effected without the prior written approval of the Central Bank.

114. Alteration of memorandum and articles

(1) No—

- (a) alteration under the Companies Act, of the memorandum of association or articles of association of a company registered as a financial institution; or
- (b) change under the Companies Act, of the name of any such company, shall have legal force for the purposes of this Act or any other law unless the alteration or change of name has been approved in writing by the Central Bank prior to the registration of the alteration or change of name by the Registrar of Companies.

(2) Any application for the Central Bank's approval under subsection (1) shall be lodged with the Central Bank before the proposed special resolution authorizing the alteration or change in question is laid before a general meeting of the company; and the application shall be accompanied by—

- (a) two copies of the proposed special resolution; and
- (b) an explanation of the reasons for the resolution.

(3) The Central Bank shall not approve the alteration or change of name if it is of the opinion—

- (a) that the proposed alteration is inconsistent with any provision of this Act or is undesirable in so far as it concerns the activities of financial institutions; or
- (b) that the proposed new name is unacceptable on the ground that it is identical with the name of an existing financial institution, or that it closely resembles the name of an existing financial institution that one is likely to be mistaken for the other.

(4) A financial institution shall, within twenty one days after the registration by the Registrar of Companies of an alteration of its memorandum of association or articles of association or a change of its name, furnish the Central Bank with a certified copy of the special resolution which sets out the alteration or change of name, as the case may be.

(5) Upon receipt under subsection (4) of a copy of a special resolution, and payment by the concerned financial institution of the prescribed fee, the Central Bank shall—

(a) in the case of a special resolution relating to an alteration of a memorandum of association or articles of association, register the alteration in question and issue to the financial institution a certificate to the effect that the alteration has been registered by the Central Bank with effect from a date specified in the certificate; or

(b) in the case of a special resolution relating to a change of name, change the name of the financial institution in the register of financial institutions, and issue to the financial institution a certificate of the change of name.

(6) An alteration referred to in paragraph (a) of subsection (5) shall not take effect until it has been registered under that subsection.

(7) Subsections (1), (2) and (3) shall not apply with respect to any alteration of a memorandum of association or articles of association of a financial institution in accordance with a direction by the Central Bank under this Act.

115. Alteration of memorandum and articles of association in accordance with directions of Central Bank

(1) The Central Bank may, at any time in writing direct a financial institution to effect such alteration, not contrary to any provision of this Act, to its memorandum of association or articles of association as the Central Bank may deem desirable in order to remove anomalies or undesirable divergences in the activities of different financial institutions.

(2) An alteration directed by the Central Bank under subsection (1) shall, on or before the day of the first annual general meeting, referred to in the Companies Act, after the date of the direction, be submitted for consideration by the shareholders of the financial institution.

(3) If a financial institution refuses or fails to alter its memorandum of association or articles of association in accordance with a direction of the Central Bank under subsection (1), the Central Bank may submit a copy of that direction to the Registrar of Companies, who shall deal with the proposed alteration in accordance with the Companies Act, as if it were contained in a special resolution adopted by the financial institution and submitted to him or her by that financial institution in accordance with that Act.

PART XIV—MISCELLANEOUS.

116. Branches

(1) A financial institution shall not open a new place of business or change the location of an existing place of business or change its hours of business without the approval of the Central Bank.

(2) Before granting any approval under this section in respect of opening a new place of business or change of location of an existing place of business, the Central Bank may require to be satisfied by an inspection of the financial institution or otherwise as to—

- (a) the history and financial condition of the financial institution;
- (b) whether the proposed management are fit and proper;
- (c) adequacy of its capital structure and earning prospects;
- (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 of the location of the place or hours of business.

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

(4) A financial institution which contravenes subsection (1) or (3) of this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points.

117. Representative offices for foreign banks

(1) A foreign bank may, in such form and in such manner as shall be prescribed by the Central Bank by statutory instrument apply to the Central Bank for permission to establish a representative office in Uganda to engage in such limited activities, excluding the taking of deposits as the Central Bank may approve.

(2) An application under subsection (1) shall be accompanied by the prescribed application fee.

(3) Where a foreign bank is granted permission to establish a representative office in Uganda, it shall not, without the prior permission of the Central Bank, do any of the following—

- (a) change its name;
- (b) change its management;
- (c) change its address or location of its registered office in Uganda;
- (d) close down the representative office; or
- (e) engage in any other activity other than such limited activity as the Central Bank may authorise the foreign bank to conduct.

(4) Any person who—

- (a) establishes a representative office of a foreign bank in Uganda without the permission of the Central Bank; or

(b) contravenes any of the provisions of subsection (3) of this section, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

(5) The Central Bank may by statutory instrument prescribe the provisions of this Act which shall apply to representative offices of foreign banks in Uganda.

118. Freezing of accounts

(1) The Central Bank shall if it has reason to believe that any account held in any financial institution has funds on the account which are the proceeds of crime, direct in writing the financial institution at which the account is maintained to freeze the account in accordance with the direction.

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

119. Unclaimed balances

(1) Whenever any current or savings account has not been operated for a period of two years or a time deposit account has not been operated for a period of two years after the date of maturity of the deposit, no withdrawals shall be allowed on the account except with the permission of two officers of the financial institution out of a number of signatories authorized to grant the permission.

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

(3) Where any account which is transferable under subsection (2) of this section is subject to a service charge, the charge may continue to be levied up to the date on which the account has been transferred to the separate ledger of dormant accounts; except that no charge shall be levied beyond two years.

(4) Where an account is transferred to a register of dormant accounts and the account has been on the register for three years, the institution shall advertise in the print media the fact that it has been on the register for three years.

(5) Any account may be transferred out of the register of dormant accounts if the depositor or, if the depositor is dead, his or her legal representative, makes such request.

(6) Unclaimed balances shall after a period of five years from the date of the advertisement be transferred to the Central Bank and the Central Bank shall employ them to off set costs of supervising financial institutions or as may be prescribed.

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

120. Disqualification of officers

(1) A person—

(a) who has been a director or officer of, or directly responsible for the mismanagement of a financial institution leading to its liquidation or its being placed under receivership or its management being taken over by the Central Bank; or

(b) who has been convicted of an offence under section 4 of this Act; or

(c) who is a bankrupt or who suspends payment or compounds with his or her creditors,

shall not, without the express authorization of the Central Bank, act or continue to act as a director or officer, or be directly or indirectly involved in the management of a financial institution.

(2) A person who has been convicted of an offence involving dishonesty or fraud shall not act or continue to act in any way in the management of a financial institution.

121. Officers deemed public officers

An officer or servant of a financial institution shall be deemed to be a person employed in the public service for the purposes of sections 87, 89 and 93 of the Penal Code Act.

122. Fines and penalties

All fines and penalties expressed in monetary terms and recovered by the Central Bank under the provisions of this law shall be paid to the Consolidated Fund.

123. Obligations under Companies Act

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

124. Protection of Central Bank

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

125. Bank holidays

(1) The Minister may, at any time, by statutory instrument, declare any day to be a bank holiday.

(2) A financial institution shall not be open to the public on a bank holiday.

(3) A bank holiday declared under subsection (1) of this section shall not necessarily be a public holiday and nothing in this section shall be deemed to affect the provisions of any law in force relating to public holidays.

126. Offences etc

(1) Any person who, being a director, manager or officer of a financial institution—

(a) fails to take any reasonable steps to secure compliance with the requirements of this Act,

(b) knowingly or recklessly makes any statement or gives any information which is false or misleading in any material particular in answer to any request for information made under any provisions of this Act,

(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 not exceeding two hundred and fifty currency points or imprisonment not exceeding three years or both.

(2) A financial institution which fails to comply with an order issued by the Central Bank under this Act is liable to pay to the Central Bank a civil penalty of one hundred currency points per day on which the financial institution fails to comply with the order.

(3) A financial institution which does any act prohibited by this Act or fails to do anything required by this Act commits an offence and where no specific penalty is provided the financial institution is liable on conviction to a fine not exceeding two hundred and fifty currency points and in the case of a continuing offence to an additional fine not exceeding fifty currency points for each day on which the offence continues.

(4) Where a director or officer of a financial institution authorizes 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 a financial institution with intent to defraud causes loss to the financial institution directly or indirectly, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding one year or both.

(6) Any person who being a director or officer of a financial institution receives or possesses or takes for himself or herself or for any related person of the director or officer any of the property of the financial institution otherwise than in payment for it of the full value, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

127. Powers to summon officers, directors and shareholders

(1) Where the Central Bank is of the opinion that any officer, director or shareholder, past or present, of a financial institution has any information relating to the operations of the financial institution which the Central Bank considers necessary for the performance of its supervisory functions, the Central Bank may on notice summon that officer, director or shareholder, past or present of a financial institution for an examination.

(2) Any person who when summoned by the Central Bank under this section—

(a) fails without reasonable excuse to appear before the Central Bank to answer the summons;

(b) withholds any information in his or her knowledge;

(c) provides any information which is false in any material particular; or

(d) refuses to answer any question put to him or her;

commits an offence and is liable on conviction to imprisonment not exceeding two years.

128. Recovery of civil penalties

(1) Before imposing a civil penalty on any financial institution or person under this Act, the Central Bank shall, except in the case of an emergency, give to the financial institution or person not less than three days notice in writing requiring the financial institution or person to show cause why the civil penalty should not be imposed.

(2) Unless special provision is otherwise expressly made for the purpose in this Act, where any provision of this Act imposes a civil penalty on any financial institution the amount of the civil penalty shall constitute a debt due from the financial institution to the Central Bank, and the Central Bank may—

(a) sue the financial institution or person for the recovery of the civil penalty;

(b) debit the amount of the civil penalty to the account (if any) of the financial institution or person with the Central Bank;

(c) direct that any part of the civil penalty which remains unpaid after a particular period notified to the financial institution and the officials concerned,

shall constitute a debt payable by the directors and particular officers of the financial institution specified in the notification; and the Central Bank is entitled to sue those directors and officers jointly and severally for the amount due.

(3) Any amount recoverable as a debt under this section shall be paid subject to such interest as is payable in respect of a judgment debt calculated from the date on which the debt became due.

129. Control of money laundering

(1) A financial institution in Uganda shall—

- (a) demand proof of and record the identity of its clients or customers, whether usual or occasional, when establishing business relations or conducting transactions, in particular opening of accounts or issuing of passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing large cash transactions;
- (b) together with its directors, officers and employees report promptly to the national law enforcement agencies any suspected money laundering activity related to any account held with the financial institution.

(2) Any financial institution or director, officer or employee of a financial institution which or who contravenes subsection (1) of this section, as applicable, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points.

130. Action against money laundering

(1) A financial institution shall promptly report to the national law enforcement agencies any suspected money laundering activity related to any account held with the financial institution.

(2) For purposes of this Act, ‘money laundering’ shall cover all activities and procedures designed to change the identity of illegally obtained money so that it appears to have originated from a legitimate source.

(3) Any financial institution which contravenes the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points.

131. Regulations

(1) The Central Bank, in consultation with the minister, may make regulations —

- (a) prescribing prudential norms on asset quality, including bad debt provisions and write-offs;
- (b) providing for the licensing of financial institutions;
- (c) providing for the minimum level of capital for financial institutions;
- (d) providing for the computation of on-going capital adequacy requirements for financial institutions;
- (e) providing for lending limits on credits extended to insiders;
- (f) providing for the limitations for advances or credit facilities to a single borrower;
- (g) providing for rules and regulations against the use of financial institutions for money laundering purposes;

- (h) classifying institutions as financial institutions for the purposes of the definition of a financial institution in section 3 of this Act;
- (i) providing for reporting requirements by financial institutions to the Central Bank;
- (j) providing for the issue, form and content of advertisements for deposits;
- (k) providing for any thing required or authorised by this Act to be provided for by regulations or by notice;
- (l) providing for the allotment or issuance and/or registration of the transfer of five percent or more of any of the shares of a financial institution listed on the stock exchange;
- (m) generally for giving effect to the provisions of this Act.

(2) Regulations made under this section may in respect of any contravention of any of the regulations under this section—

- (a) prescribe a penalty of a fine not exceeding two hundred and fifty currency points or imprisonment 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;
- (d) provide that a court which convicts the offender may forfeit to the State any document or other matter involved in the commission of the contravention.

132. Amendment of Schedules

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

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

133. Precedence of Act

For the purposes of any matter concerning financial institutions, this Act shall take precedence over any enactment and in the case of conflict, this Act shall prevail.

134. Repeal and saving

(1) The Financial Institutions Act is repealed.

(2) Notwithstanding the repeal by subsection (1) of this section all regulations, instruments, instructions, licences, orders and decisions made under the

repealed Act, shall, in so far as they are consistent with this Act, remain valid and binding and shall be deemed to have been made under the Act.

(3) Upon the coming into force of this Act, any reference to the repealed Act in any enactment immediately before the commencement of this Act shall be construed as a reference to this Act.

SCHEDULES.



FIRST SCHEDULE.

SECTION 3.

CURRENCY POINT.

A currency point is equivalent to twenty thousand shillings.

SECOND SCHEDULE

SECTION 3, 10(3) AND 12(7)

TYPES OF FINANCIAL INSTITUTIONS

TYPE OF INSTITUTION	MAIN FINANCIAL SERVICES PROVIDED/ BUSINESSES CONDUCTED
(A) BANKS	
(i) Commercial Banks	<ul style="list-style-type: none">u Acceptance of call, demand, savings and time deposits withdrawable by cheque or otherwise;u Provision of overdrafts and short to medium term loans;u Provision of foreign exchange facilities;u Acceptance and discounting of bills of exchange;u Provision of financial and investment advice;u Participation in inter-bank clearing systems;u Give guarantees, bonds or other forms of collateral, and accept and place third party drafts and promissory notes connected with operations in which they take part.
(ii) Post-Office Savings Bank	<ul style="list-style-type: none">u Acceptance of savings and fixed deposits ;u Investment in Government Securities ;
(iii) Merchant Banks	<ul style="list-style-type: none">u Acceptance of corporate call and time deposits;u Provision of foreign exchange facilities;u Facilitation of trade through the granting of acceptance facilities;u Provision of corporate finance advisory services through :<ul style="list-style-type: none">(a) share issues;(b) rights issues;(c) mergers and acquisitions and corporate reconstruction;(d) private placement, excluding underwriting arrangements;u Issue of bonds, debt obligations and certificates in such loans as they may grant or any other instrument traded in the domestic market or abroad according to the regulations the Central Bank may set forth;u Investment portfolio management, investment advisory services and nominee services;u Arranging of finance, lending or participation in syndicated loans and acting as guarantors;
TYPE OF INSTITUTION	MAIN FINANCIAL SERVICES PROVIDED/ BUSINESSES CONDUCTED
(iv) Mortgage Banks	<ul style="list-style-type: none">u Financing or lending in the institutional markets.u Receiving deposits of participation in mortgage loans and in special accounts;

- u Granting of loans for the acquisition, construction, enlargement, repair, improvement and maintenance of urban or rural real estate, and for the substitution of mortgages taken out for that purpose;
- u Giving of guarantees, bonds or other forms of collateral connected with the operations in which they may take part;
- u Obtaining of foreign loans and acting as intermediary in loans extended in local and foreign currency, having the previous authorisation of the Central Bank for such loans exceeding a specified limit as prescribed by the Central Bank.

(B) NON-BANK FINANCIAL INSTITUTIONS

(i) Credit Institutions

- u Acceptance of call and time deposits repayable after a fixed period or after notice and employment of such deposits wholly and partly by lending or any other means for the account and at the risk of the person accepting such deposits.

(ii) Acceptance Houses

- u Granting of Acceptance Facilities.

(iii) Discount Houses

- u Dealing mainly in short term assets such as treasury bills, bills of exchange and negotiable certificates of deposit.

(iv) Finance Houses

- u Provision of hire-purchase facilities;
- u Provision of finance and operating leases/ factoring facilities;
- u Provision of short and medium-term loans.

THIRD SCHEDULE

SECTIONS 3, 11, 18, 19, 52, 53 & 57

CRITERIA FOR DETERMINING WHETHER A PERSON IS A FIT AND PROPER PERSON TO MANAGE, CONTROL, BECOME A DIRECTOR OR SUBSTANTIAL SHAREHOLDER IN A FINANCIAL INSTITUTION

1. In order to determine, for the purposes of this Act, the professional and moral suitability of persons proposed to manage or control a financial institution, to become a substantial shareholder, or director, the Central Bank, shall have regard to the following qualities, in so far 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 judgement 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 paragraph (1), the Central Bank 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) was a director of an institution that has been liquidated or is under liquidation or management of the Central Bank or under receivership;
- (d) has taken part in any business practice that in the opinion of the Central Bank, 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 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 judgement;
- (f) has defaulted on a loan or a company in which he or she is a director has defaulted on a loan.

3. The Central Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of that person.

