

ACTS
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ACTS SUPPLEMENT

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Micro Finance
Act 5 Deposit-Taking Institutions Act 2003

THE MICRO FINANCE DEPOSIT-TAKING INSTITUTIONS
ACT, 2003.

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**THE MICRO FINANCE DEPOSIT-TAKING
INSTITUTIONS ACT, 2003.**

An Act to provide for the licensing, regulation and supervision of microfinance business in Uganda and to provide for matters connected with or incidental to the foregoing.

DATE OF ASSENT: 11th April, 2003.

Date of commencement: See Section 1(2) & (3).

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. (1) This Act may be cited as the Micro Finance Deposit-Taking Institutions Act, 2003.

Short title
and date
of
commerce
ment

(2) This Act shall come into operation on a date appointed by the Minister by statutory instrument.

(3) The Minister may fix different dates of commencement for different provisions of this Act.

2. In this Act, unless the context otherwise requires—

Inter-
pretation

“affiliate” in respect of any institution, means any entity, corporate or unincorporate, 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 the institution, or is held by it with power to vote;

“associate”

(a) in relation to a natural person, means—

- (i) a close relative of that person; or
- (ii) any person who has entered into an agreement or arrangement with that person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the controlling company in question;
- (iii) any company of which that person is a director;
- (iv) any person who is an employee or partner of that person.

(b) in relation to a person not being a natural person—

- (i) being a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
- (ii) not being a company to which subparagraph (i) applies, means another non natural person which would have been a subsidiary of the first-mentioned non natural person—

- (aa) had such first-mentioned non natural person been a company; or
 - (bb) where that other non natural person is not a company, had the first-mentioned non natural person and that other non natural person each been a company;
 - (iii) means any person in accordance with whose directions or instructions the board of directors of or, where such non natural person is not a company, the governing body is that non natural person is accustomed to act; and
 - (c) in relation to any person whether natural or not natural—
 - (i) means any non natural person of which the board of directors or where the non natural person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph; and
 - (ii) includes any trust controlled or administered by that person.
- “bank” means any company licensed under the Financial Institutions Statute, 1993 to carry on banking business as its principal business and includes all branches and offices of that company in Uganda;
- “banking business” has the meaning assigned to it in the Financial Institutions Statute, 1993;

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

“Credit Reference Bureau” means the Credit Reference Bureau referred to section 46 of this Act;

“Central Bank” means the Bank of Uganda established under the Bank of Uganda Statute 1993;

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

(a) his or her spouse;

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

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

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

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

“compulsory savings” means funds that must be contributed to by borrowers of an institution as a condition for receiving a loan either as a percentage of the loan or as a nominal amount;

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

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

“corporate governance” has the meaning assigned to it in subsection (2) of section 24 of this Act;

“credit facilities” means—

- (a) the granting by an institution of advances, loans and other facilities by which a customer of the institution has access to funds or financial guarantees; or
- (b) the incurring by the institution of other liabilities on behalf of a customer;

“currency point” means the value of a currency point specified in the First Schedule to this Act;

“deposit” means a sum of money received or paid on terms 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; except that the following shall not qualify as deposits for the purposes of this Act—

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

(c) a sum of money which is paid as security for a loan granted or promised at a future date to be granted to the person making the payment, except that such sum or interest on it shall not be on lent;

“executive officer” in relation to any institution, includes any general manager or deputy manager of the institution;

“*Gazette*” means the official *Uganda Gazette*;

“group guarantee” means a guarantee mechanism by which a group of borrowers undertake to be liable jointly or severally to a loan of any one of them.

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

“institution” means a micro finance deposit-taking institution;

“liquid assets” has the meaning assigned to it in subsection (2) of section 17 of this Act;

“licence” means a licence granted under section 7 of this Act;

“loan insurance fund” means an earmarked fund contributed to by group members of an institution to act as collateral for loans given to individual members of the institution ;

“MDI” means micro finance deposit-taking institution;

“MDI Deposit Protection Fund” means the Deposit Insurance Fund established under section 80 of this Act;

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

“microfinance business” means the business carried on as a principal business of—

- (a) acceptance of deposits;
- (b) employing such deposits wholly or partly by lending or extending credit for the account and at the risk of the person accepting those deposits, including the provision of short term loans to small or micro enterprises and low-income households, usually characterized by the use of collateral substitutes, such as group guarantees or compulsory savings;
- (c) transacting such other activities as may, by regulations under section 89 of this Act, be prescribed by the Central Bank;

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

“Minister means the Minister responsible for finance;

“non-performing loan” means a loan or 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;

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

“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 other than Uganda and which meets such other criteria as may be prescribed by the Central Bank;

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

“resident” means —

- (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 and 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, or 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;

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

“significantly undercapitalised” has the meaning assigned to it in subsection (8) of section 59 of this Act;

“small loan” means a loan which is less than one per cent of the core capital prescribed in this Act for individual borrowers and five per cent of the core capital prescribed in this Act for group borrowers;

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

3. This Act shall apply only to micro finance deposit-taking institutions.

Application
of Act

PART II—LICENSING.

4. (1) No microfinance business shall be transacted in Uganda except by a company, which is in possession of a valid licence granted by the Central Bank authorising it to conduct microfinance business in Uganda.

Provisions
relating to
the carrying
out of
microfinance
business

(2) Any person who contravenes subsection(1) 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; and in the case of a continuing offence to a further fine not exceeding fifty currency points for each day during which the offence continues after conviction.

(3) The Central Bank shall upon a person being convicted under subsection (2) issue a cease and desist order to that person, prohibiting that person from conducting microfinance business in Uganda.

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

Use of word
“bank”,
“banker”,
“MDI”, or
“Micro
Finance
Deposit-
Taking
Institution”.

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

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

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

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

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

(a) have full and free access to the premises at which that person is suspected of transacting microfinance business without a licence or at which that person may have books, accounts and records; and

(b) have the power to examine, copy or take possession of the books, accounts and records of that person in order to ascertain whether or not that person has contravened, or is contravening any of the provisions of this Act.

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

Application
of licence

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

- (a) a copy of the memorandum of association and articles of association or other instrument under which the company is incorporated;
- (b) verified official notification of the company's registered place of business;
- (c) the prospective place of operation, indicating that of the head office and branches;
- (d) biographical data on each of the founders, proposed directors and officers;
- (e) the information which is necessary for assessing the trustworthiness of the applicant;
- (f) the information which is necessary for assessing the professional qualifications, as required for managing the institution and of the proprietors;
- (g) a copy of the latest balance sheet of the company or such other suitable evidence of the resources needed for business operations;
- (h) a feasibility study of the company showing the nature of the planned business, the organizational structure and the planned internal monitoring procedures of the company and covering *inter alia* the following aspects—
 - (i) mission statement and overall goals;
 - (ii) market research;
 - (iii) ownership and governance;
 - (iv) management;
 - (v) financial analysis;
 - (vi) business strategy.

(2) Any person who knowingly or recklessly furnishes any document or information which is false or misleading in a material particular in connection with an application for a licence under subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding two years or both.

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

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

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

(5) Any person who fails to comply with any of the conditions of its licence commits an offence and is liable on conviction to a fine not exceeding fifty currency points and, in

the case of a continuing offence, to a further fine not exceeding ten currency points for each day during which the offence continues after conviction.

8. (1) Every institution shall pay an annual licence fee prescribed by the Central Bank by notice published in the Gazette. Licencing fees

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

9. A licence issued under section 7 shall expire if business is not commenced within one year from the date it is granted. Expiry of licence.

10. A licence issued under this Act shall not be transferable or assignable. Prohibition on transfer or Assignment of licence.

11. (1) Subject to this section, the Central Bank may at any time amend or restrict the licence of an institution— Amendment and restriction of 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 the depositors or potential depositors of that institution; or

(e) if for any other reason the Central Bank considers the amendment necessary or desirable in the public interest.

(2) Before amending the licence of an institution in accordance with subsection(1), other than at the request of the institution, 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.

Revocation
of licence.

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

- (a) has not commenced or has ceased to carry on business;
- (b) has furnished any information or document to the Central Bank in connection with its application for a licence which is false or misleading in a material particular;
- (c) has been found by the Central Bank to be insolvent or unable to pay its liabilities as they mature;
- (d) has gone into liquidation;
- (e) has been wound up;
- (f) has been dissolved;
- (g) is in the opinion of the Central Bank conducting business in a manner detrimental to the interests of its depositors or customers;
- (h) has persistently in the view of the Central Bank contravened the provisions of this Act;
- (i) has engaged in 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;

- (j) has without the consent of the Central Bank been amalgamated with another company or has sold or otherwise transferred its assets and liabilities to another company.
- (k) has failed to comply with any conditions specified in its licence;
- (l) has transferred or assigned its licence.

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

13. Where the Central Bank revokes a licence under section 12—

Effect of
revocation
of licence.

- (a) the Central Bank shall cause notice of the revocation to be published in the *Gazette*; and
- (b) the affected licensee shall, as from the date of the notice, cease to transact microfinance business in Uganda except as may be approved by the Central Bank for the purpose of winding up its business.

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

Publication
of list of
companies

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

Minimum
capital
require-
ments.

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

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

On-going
capital
adequacy
require-
ments.

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

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

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

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

Minimum
liquid
assets.

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

(2) For the purposes of this Act, liquid assets are—

(a) notes and coins which are legal tender in Uganda;

(b) balances with the Central Bank;

(c) balances with banks and financial institutions licensed to accept deposits in Uganda;

(d) money at call in Uganda;

(e) treasury bills issued by Government and maturing within three months, exclusive of days of grace; and

(f) such other assets as the Central Bank may from time to time approve.

PART III—RESTRICTIONS ON CERTAIN TRANSACTIONS AND DEALINGS
BY MICRO FINANCE DEPOSIT-TAKING INSTITUTIONS.

- 18.** (1) An institution shall not—
- Credit
facilities
and limits
- (a) grant or permit to be outstanding to any one person or to any group of persons under the control or influence of any one person, any credit facility if the aggregate amount of such credit facilities exceeds—
- (i) one per cent of the core capital of the institution for an individual borrower; or
- (ii) five per cent of the core capital of the institution for a group borrower;
- (b) grant any credit facility against the security of its own shares and debt instruments or those of a company affiliated to it;
- (c) grant, directly or indirectly unsecured credit facilities which in the aggregate and outstanding at any time exceed one per cent of the core capital of the institution except on terms which are non-preferential in all respects, including creditworthiness, term, interest rate and the value of the collateral—
- (i) to any of its directors, staff members or their associates whether those credit facilities are obtained by them or any of them jointly or severally;
- (ii) to a firm in which the company or any of its directors, staff member or their associates has an interest as a partner, manager or agent, or to any individual or firm of whom or of which any of its directors is a guarantor;

(iii) to a company in which any of its directors, staff member or their associates whether legally or beneficially owns more than fifty per cent of the issued capital or in which any of its directors controls the composition of the board of directors;

(d) grant to any of its officers other than a director or its employees or other persons, being persons receiving remuneration from the company (other than any persons receiving remuneration from company in respect of their professional services) unsecured credit facilities which in the aggregate and outstanding at any one time exceed one year's emoluments of that officer or employee or person.

(2) All the directors of the institution shall be liable jointly and severally to indemnify the institution against any loss arising from the making of any unsecured credit facility or any credit facility under which subsequently becomes an unsecured credit facility under subsection (1) (d) whether the institution has contravened that provision or not.

(3) In this section—

(a) the reference to “director” in subsection (1) (d) includes the wife, husband, father, mother, son or daughter of a director;

(b) for purposes of subsection (1) “non-preferential” mean upon terms not more favourable than those which would be offered under prevailing conditions to persons other than those referred to in (i), (ii) and (iii) of subsection(1)(c);

(c) “unsecured credit facility” means a credit facility given without security, or in respect of any credit facility given with security, any part of it which at any time

exceeds the market value of the assets constituting that security, or where the Central Bank is satisfied that there is no established market value, on the basis of a valuation approved by it.

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

Prohibited
transactions

- (a) opening and operating demand cheque accounts;
- (b) engaging directly or indirectly for its own account or on a commission basis, in trade, commerce, industry, insurance or agriculture, except in the course of the satisfaction of debts due to it for the purpose of carrying on its business;
- (c) acquiring or holding, directly or indirectly, in the aggregate, any part of share capital of, or make any capital investment or otherwise have any interest in enterprises engaged in trade, commerce, industry or agriculture in excess of twenty-five per cent of its core capital, except in the course of the satisfaction of debts due to it; but in such a case all shares and interests shall be disposed of at the earliest reasonable opportunity;
- (d) underwriting and placement of securities;
- (e) transacting in computer networks or electronic commerce;
- (f) engaging in trust operations;
- (g) taking deposits and lending in foreign exchange;
- (h) intermediating loan insurance funds;

(i) purchasing a non-performing or low quality loan from any of the directors, officers or affiliates of the institution or their related interests;

(j) dealing in derivatives.

Payment of dividends, etc, by institutions.

20. An institution shall not pay a dividend or other income to its shareholders unless it has made adequate provision against losses on loans and has taken adequate steps to ensure compliance with the financial requirements specified in sections 15, 16 and 17 of this Act.

PART IV—OWNERSHIP AND CORPORATE GOVERNANCE.

Ownership and transfer of shares

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

(2) If at the commencement of this Act any person or group of related persons holds more than thirty percent of the shares in an institution or controlling company, that person or group of related persons shall—

(a) within five years from the commencement of this Act, reduce their shareholding in the institution or controlling company to the percentage prescribed in subsection(1) of this section;

(b) within ninety days from the commencement of this Act, present a credible plan of action regarding the reduction of their shareholding.

(3) Subsections (1) and (2) of this section shall, subject in each case to the approval of the Central Bank, not apply to the holding or acquisition of shares in an institution by a wholly owned subsidiary of a bank licensed under the Financial Institutions Statute, 1993 or by a reputable financial institution, or in exceptional cases, a reputable public company.

(4) No person shall own ten per cent or more of the shares of an institution except where that person has been approved as a fit and proper person by the Central Bank in accordance with the Second Schedule to this Act.

(5) Notwithstanding any provision in any other legislation, where any person intends to transfer ten per cent or more of the shares in an institution, that person shall first seek the approval of the Central Bank.

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

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

Board of
directors.

(2) No person shall become a director of an institution without the approval of the Central Bank and the Central Bank shall have due regard to the fit and proper person criteria prescribed in Second Schedule to this Act.

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

Disqualified
persons.

- (a) a person who is less than eighteen years of age;
- (b) a person who is of unsound mind and has been so found by a court in Uganda or outside Uganda;
- (c) a person who has the status of a bankrupt;
- (d) a person who is not a natural person;
- (e) a person under any legal disability in Uganda or outside Uganda;

- (f) any individual who does not satisfy the fit and proper criteria in accordance with Schedule 2;
- (g) a former director of an institution responsible for its placement under management by the Central Bank, receivership or liquidation.

Responsi-
bilities of
the Board.

24. (1) The board of directors of an institution shall be responsible for—

- (a) the good corporate governance and business performance of the institution;
- (b) ensuring that the board is in full control of the affairs and business operations of the institution;
- (c) ensuring that the business of the institution is conducted in a safe and sound manner;
- (d) ensuring and reporting to the shareholders at the annual general meeting of the institution that the internal controls and systems, and management information systems of the institution—
 - (i) provide reasonable assurance as to the integrity and reliability of the financial statements of the institution;
 - (ii) adequately verify, safeguard and maintain accountability of the assets of the institution;
 - (iii) are based on established and written policies and procedures and are implemented by trained and skilled officers with an appropriate segregation of duties; and

- (iv) are continuously monitored, reviewed and updated by the board of directors to ensure that no material breakdown occurs in the functioning of such controls, procedures and systems.

(2) For the purposes of this Act, “corporate governance” covers the overall environment in which the institution operates and consists of checks and balances which promote a healthy balancing of risk and return.

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

Duties of
directors.

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

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

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

(3) No director serving on the board of an institution or a Financial Institution licensed under the Financial Institutions Statute, shall simultaneously serve as a board member, or in any executive capacity with another institution or its subsidiary or affiliate.

Meetings of
the Board.

26. (1) The directors shall meet at least four times during each financial year.

(2) Unless otherwise specified by the Central Bank, the board of directors of an institution shall meet at such time and place in Uganda as dictated by the business of the institution.

(3) The Central Bank may—

(a) order the board of directors of an institution to convene a meeting and consider specified agenda;

(b) appoint an observer to any board meeting of an institution;

(c) by notice order any institution to provide it within such period as shall be specified in the notice, a copy of the board minutes and resolutions duly certified as a true record by the secretary and chairperson to the board.

(4) Where a meeting of the board is convened under paragraph (a) of subsection (3), the quorum of the meeting shall be two directors and decisions shall be taken by simple majority.

(5) A director or officer of an institution shall not deliberate on any matter in which he or she has an interest.

(6) In any meeting where the subsection (5) applies, every director or officer of an institution shall inform the meeting of his or her interest and shall to the extent of the deliberation on the matter in which he or she has an interest, exclude himself or herself from further attendance at that meeting.

27. (1) Every institution shall appoint officials who shall perform such functions and duties prescribed by regulations, as may be agreed upon in consultation with the Central Bank.

Finance
manager

(2) A finance manager shall have the following duties—

- (a) perform such functions as the board of directors shall specify in relation to establishing broad guidelines for the institution's tolerance for risk, and expectations from investment;
- (b) introduce such measures as in his or her opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the institution.

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

- (a) limits on loan 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) limits on maximum and minimum maturities for newly acquired categories of assets and liabilities;
- (f) limits on maximum and minimum maturities for existing categories of assets and liabilities;
- (g) limits on the sensitivity of the net interest margin on changes in market interest rates;
- (h) maximum percentage imbalance between rate sensitive assets and liabilities;
- (i) limits on minimum spread acceptable between costs and yields of liabilities and assets;

- (j) limits on minimum liquidity provision to be maintained to sustain operations while longer term adjustments are made;
- (k) primary sources of meeting funds that should be quantified.

Internal
auditors

28. (1) Every institution shall, with the approval of the Central Bank appoint an internal auditor who shall report to the board of directors.

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

- (a) evaluate the reliability of the information produced by accounting and computer systems;
- (b) provide an independent appraisal function;
- (c) evaluate the effectiveness, efficiency and economy of the institutions' operations;
- (d) evaluate compliance with laws, policies and operating instructions;
- (e) provide investigative services to line management;
- (f) certify returns submitted to the Central Bank by the institution; and
- (g) establish appropriate accounting procedures and accounting controls in respect of the institution's business;
- (h) ensure compliance with the procedures established under paragraph (g);
- (i) require the management of the institution to implement and maintain appropriate internal control procedures and management information systems;
- (j) review, evaluate and approve those procedures;

- (k) review operations and transactions of the institution that could adversely affect the well-being of the institution;
- (l) ascertain the nature of the external audit, co-ordinate the internal and external audits and consider rectification and implementation of issues raised by the external auditor; and
- (m) perform an audit of the financial statements of the institution to detect irregularities and illegal acts in the conduct of the institutions business.

29. For the purpose of this section and sections 30 to 44—

External
auditors.

- (a) “firm of accountants” means a partnership, the members of which are accountants engaged in the practice of accounting, or a body corporate that is incorporated by or under any Act of Parliament, engaged in the practice of accounting;
- (b) “member”, in relation to a firm of accountants, means—
 - (i) an accountant who is a partner in a partnership, the members of which are accountants engaged in the practice of accounting; or
 - (ii) an accountant who is an employee of a firm of accountants.

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

Appointment
of external
auditor

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

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

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

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

Qualification
of external
auditors.

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

- (a) two or more members of the firm are accountants who—
 - (i) are members in good standing of the Institute of Certified Public Accountants established under the Accountants Statute, 1992;
 - (ii) each have at least two years experience at a senior level in performing audits of a financial institution;
 - (iii) are independent of the institution; and
- (b) the member of the firm jointly designated by the firm and the institution to conduct the audit of the institution on behalf of the firm is qualified in accordance with paragraph (a).

Statute No.
12 of 1992.

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

- (a) independence is a question of fact; and
- (b) a member of a firm of accountants is deemed not to be independent of an institution if that member or any other member of the firm of accountants, or if the firm of accountants—

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

32. (1) No institution shall before the expiry of a running term remove or change its auditor except with the approval of the Central Bank.

(2) An auditor of an institution who resigns or is asked by the institution to resign shall—

- (a) give adequate written notice to the institution of his or her decision to resign;
- (b) give written notice to the institution of his or her forced resignation; and

No change of external auditor without approval of Central Bank.

(c) submit to the Central Bank a written statement giving the reasons for the resignation.

Insurance
cover by
external
auditors.

33. A firm of accountants approved by the Central Bank to be auditors of an institution 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.

Time limit
for external
auditor

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

Duties of
the external
auditor

35. The duties of an external auditor appointed under subsections (1) or (3) of section 30 shall be—

(a) in relation to the institution—

(i) to perform an audit of the financial statements of the institution to detect irregularities, and illegal acts in the conduct of the business of the institution;

(ii) communicating to the institution's board of directors any evidence it may have that irregularities or illegal acts have been committed in the course of the institution's business, whether or not they may have led to material misstatements in the institution's accounts or records;

(iii) warning the board of directors of the institution of—

(aa) the institution's ability or inability to meet the prescribed capital requirements;

(bb) the institution's ability or inability to meet the prescribed liquidity requirements;

- (cc) the institution's credit and operational risks;
- (dd) any other matter which the auditor becomes aware of in the performance of its duties or functions which may—
 - (A) prejudice the ability of the institution to continue conducting its business as a going concern; or
 - (B) be detrimental to the interest of the depositors; or
 - (C) violate the principles of sound financial management or the maintenance of adequate internal controls and systems by the institution—
- (ee) any act which has contributed to a loss of the institution's monies or assets; and
- (ff) any other matter which, in the auditor's opinion, requires rectification or attention by the institution;
- (iv) to obtain sufficient, relevant and reliable evidence to satisfy themselves of the various matters necessary to form their opinion;
- (v) to carefully plan, supervise and review all their work including work performed by subordinate staff;
- (vi) to ascertain, evaluate and test internal controls before placing audit reliance on them;

(vii) to exercise reasonable care and skill in accordance with the current professional standards and practices and to perform the audit in accordance with international auditing standards and such other regulations, directives, policies and guidelines as the Central Bank may issue;

(viii) to assess, and in writing comment on the report of the board of directors before the report is tabled at the annual general meeting.

(b) in relation to the Central Bank—

(i) communicating to the Central Bank any evidence it may have that irregularities or illegal acts have been committed by—

(aa) any director of the institution; or

(bb) the institution itself; or

(cc) any person, if there is a reasonable possibility that they may significantly damage the institution's financial stability;

(ii) informing the Central Bank, if there are reasonable grounds to believe that the institution is insolvent or that there is a significant risk that it will become insolvent;

(iii) to verify all quarterly returns and other reports of the institution which the Central Bank may from time to time require to be verified;

(iv) to submit to the Central Bank a management letter in which is disclosed all shortcomings and illegal acts committed by the institution or its directors;

(v) to perform any other duties as may be assigned by the Central Bank.

36. (1) The Central Bank may impose all or any of the following duties on an external auditor in addition to those prescribed by section 35—

Additional duties of the external auditor.

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

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

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

Information by external auditor to Central Bank.

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

Powers of
external
auditor

- 38.** (1) Every auditor of an institution shall—
- (a) have a right of access at all reasonable times to such of the institution's books, accounts, vouchers, securities, records, computer systems and assets;
 - (b) be entitled to require such information and explanations from any present or former director, officer, employee or agent of the institution;

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

- (2) Any person who fails without just cause—
- (a) to permit an auditor the access referred to in paragraph (a) of subsection (1); or
 - (b) to comply with a requirement under paragraph (b) of subsection (1);

commits an offence and liable to a fine not exceeding twenty-five currency points or imprisonment for a period not exceeding six months or both.

No civil
liability.

- 39.** A person who in good faith makes an oral or written communication under subsection (1) of section 37 shall not be liable in any civil action arising from having made the communication.

Audit
report.

- 40.** (1) The external auditor of an institution shall, after performing the audit, submit to the institution an audit report.

(2) The institution shall ensure that a report made and submitted to it under subsection (1) is forwarded to the Central Bank within four months after the end of its financial year.

(3) Any institution which contravenes subsection (2) of this section commits an offence and is liable on conviction to a fine not exceeding five currency points for each day exceeding the period prescribed in subsection (2) until submission of the report.

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

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

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

Qualified
audit report.

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

Rejection
of audit
report.

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

Require-
ments on
provisions.

- (a) sufficiency of provisions for bad debts; and
- (b) existence and enforcement of a proper policy of non-accrual of interest on non-performing loans.

44. (1) The Central Bank shall at least once in every financial year arrange trilateral meetings with an institution and its auditors to discuss matters relevant to the Central Bank's supervisory responsibilities which have arisen in the course of the statutory audit of that institution.

Meetings
with
auditors.

(2) The Central Bank shall if it considers it necessary, arrange from time to time bilateral meetings with the auditors of an institution.

Indemnity. **45.** No liability shall be incurred by an external auditor as a result of anything done by him or her in good faith and not negligently in the exercise of any power, or the performance of any function or duty, conferred or imposed by or under this Act.

Credit
reference
bureau. **46.** (1) Every institution shall promptly report to the Credit Reference Bureau established by the Central Bank—

(a) all the details of non-performing loans or credit accommodations classified as doubtful or loss in its portfolio, where the amount owed is not in dispute, the customer has not made any satisfactory proposals for repayment following formal demand, and the customer has been given at least twenty-eight days' notice of the intention to disclose that information to the Credit Reference Bureau;

(b) information on its customers involved in financial mal-practices including bouncing of cheques due to lack of funds or fraud.

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

(3) Where—

(a) the Credit Reference Bureau; or

(b) an institution,

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

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

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

Corporate records.

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

48. The financial and non-financial records referred to in section 47 shall be kept and recorded in the English language using the system of numerals employed in Government accounts and shall comply with the requirements of the Companies Act, international accounting standards and such other requirements that the Central Bank may in writing prescribe.

Form of corporate records,*etc.*

Cap 85.

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

Submission of audited accounts

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

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

Financial year

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

Disclosure of violations in audited financial statements

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

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

Publication
of audited
accounts

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

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

Rectification
of audited
accounts

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

- (a) amend or correct the audited accounts to comply with this Act or any other additional requirements;
- (b) correct the misleading information;
- (c) republish the amended or corrected audited accounts;

(d) submit to the Central Bank such further documents or information or explanations relating to any document or information as the Central Bank may require.

54. (1) An institution shall take reasonable precautions to—

Protection
and
retention
of records

(a) prevent loss or destruction of;

(b) prevent falsification of entries in;

(c) facilitate detection and correction of inaccuracies in, and

(d) ensure that unauthorized persons do not have access to or use of information;

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

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

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

PART V—SUPERVISION OF MICRO FINANCE DEPOSIT-TAKING
INSTITUTIONS.

55. (1) Subject to this Act, the Central Bank shall be responsible for—

Responsi-
bilities of
the Central
Bank

(a) continuously supervising institutions to ensure that they comply with the provisions of this Act, and

(b) monitoring associates or affiliates of institutions to ensure that the institutions comply with the provisions of this Act.

(2) The Central Bank's function of supervising institutions may be exercised through all or any of the following methods—

- (a) analysis of documents and information supplied to it under sections 49 and 53 (d) and statutory returns;
- (b) the inspection and analysis of corporate accounting, financial and non-financial records prepared and maintained at the premises of the institution concerned;
- (c) any other lawful means that the Central Bank considers appropriate.

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

Powers of
supervisors

56. For the purpose of supervising any institution, the Central Bank may—

- (a) at any time, at the Central Bank's discretion, enter any premises of the institution or any premises in which it is believed on reasonable grounds that books, records, accounts or documents relating to the institution's business are kept;
- (b) require any officer, employee or agent of the institution to produce any of the institution's, corporate accounting, financial and non-financial records or documents;
- (c) search any premises referred to in paragraph (a) for any moneys, financial and non-financial records, books or documents;
- (d) open or cause to be opened any strong room, safe or other container in which it is suspected, on reasonable grounds, that there are any of the institutions securities, books, records, accounts or documents;

- (e) examine and make extracts from and copies of any of the institution's securities, books records, accounts or documents;
- (f) remove any of the institution's securities, books records, accounts or documents from the institution's premises, for as long as may be necessary for the purpose of examining them or making extracts from or copies of them;
- (g) require any officer, employee or agent of the institution—
 - (i) to explain any entry in the institution's books, records, accounts or documents;
 - (ii) to provide the Central Bank with such information concerning the institution's management or activities as the supervisor may reasonably require.

57. (1) The Central Bank shall require all institutions to furnish it at such times and in such form as the Central Bank may by notice prescribe, periodic reports of its operations. Periodic reports.

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

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

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

Corrective
actions

58. If the Central Bank is satisfied that an institution or its director(s) or board of directors has contravened any term or condition of its licence or any provision of this Act or any direction, requirement or duty or order made under this Act, the Central Bank may, subject to this section do any one or more of the following—

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

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

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

Prompt
mandatory
corrective
actions.

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

- (a) prohibit the institution from declaring and distributing any dividends which would, in the opinion of the Central Bank, be likely to cause the institution to contravene the capital requirements prescribed in sections 15 and 16 of this Act; and
- (b) prohibit the institution from awarding any bonuses or increments in the salary, emoluments and other benefits of all directors, officers and employees on the institution;
- (c) undertake more frequent inspections of the institution;
- (d) require the institution to provide written explanations detailing the causes of such losses and the measures to be taken by the institution to rectify the position and avert future losses.

(3) Where an institution has contravened the capital requirements prescribed in sections 15 and 16 of this Act, the Central Bank shall take the following actions against that institution—

- (a) all of the actions prescribed in paragraphs (a), (b) and (c) of subsection (2) of this section; and
- (b) order the institution to submit to the Central Bank within forty five days after the order a capital restoration plan containing such details as shall be specified in the order; and
- (c) appoint a person, suitably qualified and competent in the opinion of the Central Bank, to advise and assist the institution in designing and fulfilling the capital

restoration plan, and the person so appointed shall regularly report to the Central Bank on the progress of the capital restoration plan.

(4) Where an institution fails, refuses or neglects to comply with the requirements or prescriptions of subsection (3) of this section, the Central Bank shall—

- (a) prohibit the institution from opening new branches;
- (b) impose restrictions on the growth of assets or liabilities or both, of the institution as the Central Bank shall deem fit;
- (c) remove any officer of the institution responsible for its non-compliance with the orders;
- (d) order the institution to do anything that the Central Bank may deem necessary to rectify the capital position of the institution.

(5) Where an institution is significantly under capitalized, the Central Bank shall immediately take any or all of the following actions against it—

- (a) take any or all of the actions prescribed in subsection (4) of this section;
- (b) enter into an agreement with the board of directors of the institution requiring the institution to restore its core capital to eight per cent of total risk adjusted assets within such period as shall be notified by the Central Bank, except that the period shall not exceed one hundred and eighty days.

(6) If at any time—

- (a) after the period given in subsection (5) the institution is unable to restore its core capital to eight per cent of the total risk adjusted assets;

- (b) before the end of that period the Central Bank is of the opinion that the institution will not be able to restore its core capital to eight per cent of total risk adjusted assets;

the Central Bank shall close the institution and place it under receivership.

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

(8) For the purposes of this Act, a significantly undercapitalised institution is one whose core capital does not exceed ~~at~~ ~~per~~ of its total risk adjusted assets, or such other percentage as may from time to time, be determined by the Central Bank.

Management
take-over

60. Where—

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

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

(2) With effect from the date on which an institution is placed under the management of the Central Bank—

- (a) all legal proceedings and the execution of all writs, summonses and other legal processes against the institution concerned shall be stayed and not be instituted or proceeded with unless the High Court has granted leave and the Central Bank has received thirty days notice of the intention to sue or apply; and
- (b) the operation of set-off in respect of any amount owing by a creditor to the institution concerned shall be suspended; and
- (c) any term whether statutory, contractual or otherwise on the expiration of which a claim of right of the institution concerned would expire or be extinguished, shall be extended six months from the date of the seizure;
- (d) any attachment or lien existing six months prior to the take over by the Central Bank of the management of the institution concerned 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 institution concerned as long as the Central Bank continues to manage the institution;
- (e) any transfer of any asset of the institution concerned made six months before the take-over by the Central Bank of the management, with intent to effect a preference of less than the appraised book value is void;

- (f) any gratuitous transfer of any asset of the institution concerned made within one year before the take-over by the Central Bank of the management shall stand revoked and all such assets shall be surrendered to the Central Bank;
- (g) 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 institution concerned shall be rescinded; and that officer, director or related person to the officer or director shall immediately refund the monies advanced and the interest accrued.

Powers of
Central
Bank on
taking over
manage-
ment

61. (1) The Central Bank shall have the following powers, to the extent that it is authorized to exercise them in terms of its taking over the management of an institution—

- (a) to suspend or reduce, as from the date on which the institution concerned was placed under its management or any subsequent date, the right of the institution's creditors to claim or receive interest on any money owing to them by the institution;
- (b) to make payments, whether in respect of capital or interest, to any creditor of the institution concerned at such time, in such order and in such manner as it thinks fit;
- (c) to cancel any agreement between the institution concerned and any other party to advance moneys due after the date on which the institution's management was taken over or to extend any existing credit facility after that date, if in its opinion—

- (i) that advance or any loan under that facility would not be adequately secured or would not be repayable on satisfactory terms; or
 - (ii) the institution lacks the necessary funds to meet its obligations under that agreement; or
 - (iii) it would not otherwise be in the interest of the institution to abide by the agreement;
- (d) to convene from time to time, in such manner as it thinks fit, a meeting of creditors of the institution concerned for the purpose of establishing the nature of the institution's indebtedness to them and consulting them on decisions taken by it in the course of managing the institution's affairs, to the extent that the creditors' interests may be affected by those decisions;
- (e) to negotiate with any individual creditor of the institution concerned with a view to final settlement of the creditor's affairs with the institution;
- (f) to cancel any lease of movable or immovable property entered into by the institution concerned before its management was taken over: except that a claim for damages in respect of such a cancellation may be instituted against the institution after the expiry of one year from the date of the cancellation or after such shorter period as the High Court may permit;
- (g) to dispose, by public auction, tender or individual negotiation, of any asset of the institution concerned including:
- any advance or any loan under a facility referred to in paragraph (c); and

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

Duties of the Central Bank on a management take-over of an institution.

62. Upon taking over and assuming the management of an institution the Central Bank shall—

- (a) immediately inform the public; and
- (b) appoint an auditor at the expense of the institution to make an inventory of the assets and liabilities of the institution and submit a report to the Central Bank; and

- (c) manage the institution concerned in such manner as it considers prudent and most likely to promote the interest of the institution; and
- (d) ensure that proper accounting records are kept and proper annual financial statements are prepared in relation to the operations of the institution; and
- (e) examine the affairs and transactions of the institution concerned before its management was taken over to ascertain whether any past or present director, officer or employee of the institution—
 - (i) has contravened or appears to have contravened any provision of this Act;
 - (ii) has committed or appears to have committed any offence; or
 - (ii) is or appears to be personally liable to pay damages or compensation to the institution or is personally liable for any of the institution's liabilities; and
- (f) close the institution and place it under receivership if within one hundred and twenty days after its management take-over, it fails to comply with prudential standards except that the Central Bank may in the best interests of the depositors, the public or the financial sector close the institution before the expiry of the said one hundred and twenty days.

63. (1) A statutory manager appointed under paragraph (n) of section 61 shall have the powers and functions of the members of the board of directors collectively and individually, including the board's powers of delegation and use of the institution's seal until an advisory board is appointed.

Powers and duties of a statutory manager.

- (2) The duties of a statutory manager shall include—

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

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

- (a) be applied equally and without discrimination to all classes of creditors;
- (b) limit the maximum rate of interest which shall accrue on deposits and other debts payable by the institution during the period of the moratorium to a minimum

rate prescribed by the Central Bank by notice for the purposes of this section, except that this paragraph shall not be construed so as—

- (i) to impose an obligation on the institution to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case;
- (ii) to suspend the running of time for the purposes of any limitation period in respect of any claim by any depositor, or creditor of the institution; or
- (iii) cease to apply upon the termination of the manager's appointment and in such a case the rights and obligations of the institution, its depositors and creditors shall, except to the extent provided in this paragraph be the same as if there had been no declaration under this subsection.

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

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

64. No party to a contract with an institution shall be relieved of his or her obligations on the ground that the institution is under management of the Central Bank.

Management
by Central
Bank not
relief from
contractual
obligations

Costs of
manage-
ment

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

Offences.

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

(a) makes a false entry knowing it to be false, or causes such an entry to be made; or

(b) omits an entry or causes an entry to be omitted; or

(c) alters, abstracts, conceals, removes or destroys an entry, or causes an entry to be altered, abstracted, concealed, removed or destroyed.

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

PART VI—RECEIVERSHIP.

Placing
institution
under
receivership.

67. (1) The Central Bank may close up an institution and place it under receivership if—

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

(b) the company has incurred or is likely to incur losses that will deplete all or substantially all of its capital;

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

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

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

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

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

Options
available to
receiver

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

(2) The Central Bank or its appointed agent shall take the action described in subsection (1) which in the opinion of the Central Bank is most likely to result in marshalling the greatest amount of the institution's assets or which otherwise protects the interests of the institution's depositors and other creditors.

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

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

(4) In determining how best to dispose of the assets of the institution in receivership, the Central Bank or its appointed agent shall be guided by the objectives of minimizing costs to the Deposit Protection Fund and losses to uninsured depositors while maintaining the stability of the financial sector.

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

Effect of
placement
of
institution
under
receivership

- 69.** Where an institution is placed under receivership—
- (a) no steps may be taken by any person to enforce any security over the property of the institution;
 - (b) no other proceedings and no execution or other legal process may be commenced or continued against the institution or its property.

PART VII—LIQUIDATION.

Bar on
liquidation
or winding
up
proceedings

- 70.** Notwithstanding any other law to the contrary, no proceedings for the winding up or liquidation of an institution shall be commenced or continued except—
- (a) where the proceedings are commenced or continued by the Central Bank; or
 - (b) where the proceedings are commenced by an institution which has obtained the prior approval of the Central Bank.

Voluntary
liquidation

- 71.** (1) An institution may, with the prior approval of the Central Bank apply to the High Court to voluntarily liquidate its operations.
- (2) Subject to subsection (1) of this section, an 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 settlement under this section.

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

- (a) the liability of shareholders for uncalled subscriptions to the capital stock of the institution shall continue until the end of the liquidation process;
- (b) notwithstanding of the Companies Act, where an institution is in voluntary liquidation, the ranking of claims shall be in accordance with subsection (2) of section 73 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 an institution;
- (c) the Board of Directors of the institution shall, before paying creditors holding direct claims and with the approval of the Central Bank, make such arrangements as are necessary 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 an institution that has applied for voluntary liquidation of its operations under this section are insufficient to discharge its obligations or that the completion of the liquidation of its operations is unduly delayed, the Central Bank may place the institution in compulsory liquidation in conformity with the provisions of section 72 of this Act.

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

Liquidation
by the
Central
Bank

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

Cap 85

Duties of
Liquidator

- 73.** (1) A liquidator shall—
- (a) immediately after appointment give notice thereof to each claimant and creditor of the institution known to the liquidator;
 - (b) immediately after appointment publish notice of the appointment once a week for four consecutive weeks in a newspaper circulating in the whole Uganda, requiring—
 - (i) any person indebted to the institution to render an account and pay to the liquidator at the time and place specified in the notice any amount owing;
 - (ii) any person possessing property of the institution to deliver it to the liquidator at the time and place specified in the notice; and
 - (iii) any person having a claim against the institution, whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than thirty days after the first publication of the notice;
 - (c) carry on the business of the institution as required by an orderly liquidation;
 - (d) settle or compromise any claims by or against an institution;
 - (e) keep accounts of the moneys received and paid out by the liquidator in the course of the liquidation of the institution;
 - (f) maintain separate lists of each class of directors, shareholders and other persons having claims against the institution;

(g) where necessary, summon a meeting of creditors and contributories;

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

(i) within two months after submission of its report on the assets and liabilities of the institution, commence the payment to the depositors and creditors of the institution.

(2) Payment under paragraph (i) of subsection (1) shall be in the following order of priority—

(a) payment to the loan insurance fund;

(b) payment to the MDI Deposit Protection Fund;

(c) payment to the liquidator for all expenses incurred in the process of liquidating the institution;

(d) payment to employees for all wages and salaries due net of any liabilities to the institution;

(e) payment to secured creditors in *pari passu*;

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

(g) payment to other creditors to rank in *pari passu*; and

(h) and finally to the shareholders of the institution in accordance with their respective rights and interest.

(3) The provisions of section 315 of the Companies Act shall not apply to a compulsory liquidation of an institution;

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

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

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

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

(8) Upon realizing all the property of the institution or so much of as can, in his or her opinion, be realized without needlessly protracting the liquidation and distribution to all depositors of the institution, cause audited financial statements to be submitted to the Central Bank.

74. (1) A liquidator may—

Powers of
Liquidator

- (a) sell by public auction or private sale any property of the institution with power to transfer the whole of it to any person or company;
- (b) do all acts and execute documents in the name and on behalf of the institution;
- (c) prove, rank and claim in bankruptcy, insolvency or sequestration of any contributory for any balance against his or her estate and receive dividends in the bankruptcy or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateable with the other separate creditors;
- (d) draw, accept, make and endorse any Act of exchange or promissory note in the name and on behalf of the institution;
- (e) borrow money on the security of the property of the institution;
- (f) take out in his or her official name letters of administration to any deceased contributory, and do in his or her official name any other act necessary for obtaining payment of any amount due from a contributory of his estate which cannot be conveniently done in the name of the institution, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself or herself;

except that nothing in this paragraph shall be deemed to affect the rights, duties and privileges of the Administrator General;

- (g) appoint an agent to do any business which the liquidator is unable to do himself or herself;
- (h) enforce the individual liability of the shareholders and directors of the institution;
- (i) eliminate the interests of shareholders;
- (j) where liquidation proceedings have been commenced in respect of the institution in one country or more, make such payments to the liquidator of the institution as may be necessary;
- (k) do all other things necessary for the liquidation of the institution and distribution of its property.

Bank— (2) A liquidator may, with the sanction of the Central

- (a) retain advocates, notaries, accountants, appraisers and other professional advisors;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceedings in the name and on behalf of the institution;
- (c) carry on the business of the institution as required for an orderly liquidation;
- (d) settle or compromise any claims by or against the institution.

(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 of any exercise or proposed exercise of any of those powers; except that no review shall be allowed except where the action complained of is arbitrary and capricious.

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

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

76. A liquidator is not liable if the liquidator relies in good faith on— Reliance on Statements

(a) financial statements of the institution represented to the liquidator by an officer of the institution, or a written report of the auditor or auditors of the institution, to reflect fairly the financial condition of the institution; or

(b) an opinion, a report or a statement of a lawyer or advocate, a notary, an accountant, an appraiser or other professional adviser retained by the liquidator.

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

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

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

Release of
Liquidity

79. (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 institution.

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

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

PART VIII—MISCELLANEOUS.

MDI
Deposit
Protection
Fund

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

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

Branches

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

(2) No institution incorporated in Uganda shall open a new branch, agency or office in any place outside Uganda without submitting a written application to the Central Bank for approval.

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

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

- (a) the history and financial condition of the institution;
- (b) whether the proposed management are fit and proper;
- (c) adequacy of the institution's 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 opening of a new place of business or changing the location of the place or hours of business, as the case may be.

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

(6) Any institution which contravenes subsection (1) or (2) or (5) commits an offence and is liable on conviction to a fine not exceeding fifty currency points and, in the case of a continuing offence, to a further fine not exceeding ten currency points for each day during which the offence continues after conviction.

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

Freezing of
Accounts

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

Unclaimed
balances

83. (1) Where a deposit has been made with an institution in Uganda and in respect of which no transaction or business has taken place and no statement of account has been requested or acknowledged by the depositor during a period of two years—

- (a) in the case of a deposit for a fixed period, from the day on which the fixed period terminated; and
- (b) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the depositor, whichever is later, no withdrawals shall be allowed on such account except with the permission of two officers of the institution out of a number of signatories authorized to grant such permission.

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

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

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

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

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

(7) The Central Bank shall refund any unclaimed balances to the depositor of those balances with the respective 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.

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

84. An officer or servant of an institution shall be deemed a person employed in the public service for the purposes of sections 83, 84 and 88 of the Penal Code. Officers deemed public officers

85. Nothing in this Act shall be deemed to relieve an institution from any of its obligations under the Companies Act or Building Societies Act. Obligations under the Companies Act, etc. Can 85.

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

87. (1) Any institution or any person who issues any advertisement, brochure, circular or other documents inviting any person to make a deposit which— Deposit Advertisements

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

(b) is issued contrary to any direction given by the Central Bank under of subsection (2),

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

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

Offences **88.** (1) Any person who, being a director, manager, officer or employee of an institution—

- (a) fails, to take any reasonable steps to secure compliance with the requirements of this Act;
- (b) makes any statement or gives any information which is false or misleading in answer to any request for information made under this Act;
- (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 less than fifty currency points but not exceeding one hundred currency points or imprisonment not less than six months but not exceeding two years or both.

(2) An institution which fails to comply with an order issued by the Central Bank under this Act commits an offence and is liable on conviction to a fine not exceeding fifty currency points.

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

(4) Where a director or officer of 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 an institution, causes loss to the institution directly or indirectly commits an offence and is on conviction liable to a fine not less than fifty currency points but not exceeding one hundred currency points or imprisonment not less than six months but not exceeding two years or both.

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

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

Regulations
notices and
directions

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

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

- (a) prudential norms on asset quality; bad debt provisions and write offs;
- (b) licensing of institutions;
- (c) minimum level of capital for institutions;
- (d) computation of on-going capital adequacy requirements for an institution;

- (e) lending limits on credits extended to insiders;
- (f) limitations for advances or credit facilities to a single borrower;
- (g) the operations and permitted usages of a loan insurance fund;
- (h) reporting requirements by the institution to the Central Bank;
- (i) control of money-laundering in Uganda;
- (j) generally giving effect to the provisions of this Act.

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

- (a) prescribe a penalty of a fine not exceeding two hundred 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.

Amendment
of Schedules

90. (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 Schedule to this Act.

91. Any person who, immediately before the commencement of this Act was carrying on microfinance business in Uganda shall, immediately upon the coming into force of this Act apply for a licence under this Act and within twenty four months from the commencement of this Act comply with the requirements of this Act or wind up its business within six months.

Transitional
provisions

FIRST SCHEDULE.

Currency Point SECTIONS 2 AND 90

A currency point shall be equivalent to twenty thousand shillings.

SECOND SCHEDULE.

SECTIONS 2,7 (4), 21(4) AND 22(2)

CRITERIA FOR DETERMINING WHETHER A PERSON IS A FIT
AND PROPER PERSON TO MANAGE, CONTROL, BECOME A
DIRECTOR OR SUBSTANTIAL SHAREHOLDER IN A MICRO
FINANCE DEPOSIT-TAKING 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 company licensed to carry on micro finance business to become substantial shareholders, or directors, the Central Bank, shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned:

- (a) his or her general probity,
- (b) his competence and soundness of judgement for the fulfilment of the responsibilities of the office in question; and
- (c) the diligence with which the person concerned is likely to fulfil those responsibilities.

(2) For the purpose of and without prejudice to the generality of the provisions of paragraph (a), 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 such person:

- (a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
- (b) has contravened the provisions of any Act designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services; was a director of an institution that has been liquidated or is under liquidation or management of the Central Bank or under receivership;

- (c) has taken part in any business practices that in the opinion of or the Central Bank, as the case may be, were fraudulent, prejudicial or otherwise improper whether unlawful or not or which otherwise discredited his or her methods of conducting business;
- (d) has taken part or been associated with any other business practices as would, or has otherwise conducted himself or herself in such manner as to cast doubt on his or her competence and soundness of judgement;
- (e) has defaulted on a loan of an institution of which he or she is a director.

(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.