BILLS
SUPPLEMENT No. 6 14th April, 2023

BILLS SUPPLEMENT

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Bill No. 13 *Foreign Exchange (Amendment) Bill* **2023**

THE FOREIGN EXCHANGE (AMENDMENT) BILL, 2023

MEMORANDUM

1. POLICY AND PRINCIPLES

The object of this Bill is to amend the Foreign Exchange Act, 2004 to provide for the enhancement of the minimum capital requirements to carry on foreign exchange business; the use of technology in operations, the charging of administrative penalties, the strengthening of the vetting requirements and the harmonisation of the regulatory regime pertaining to foreign exchange bureaus and money remittance companies within the East African Community region.

2. DEFECTS IN THE EXISTING LAW

The Foreign Exchange Act, 2004 was enacted to eliminate barriers to the development of the currency market sector; to support innovation, financial inclusion and deepening of the foreign exchange market in Uganda and to provide for the licensing, regulation and supervision of foreign exchange business in Uganda.

The advent of technological innovation developments in the East African Community, the need for Regional legal harmonisation and increasing client sophistication has now resulted in a shift in the currency market customers' expectations, particularly in terms of new innovative operational frameworks which are less costly and convenient. "Know-your-customer" requirements, compliance to anti-money laundering and combating financing of terrorism, and increasing the minimum capital requirements among others, has necessitated the review of the Act.

Further, the Bill seeks to address the issues of inadequate, risky, inefficient, unfair, inappropriate and restrictive buying, selling, sending and receiving of foreign currencies within or outside the country for purposes of trade, payments, saving, investment and consumption, the high cost of doing business, exchange rate volatility, high cost of operations of forex dealers and money remitters due to factors such as failure to deal with illegal forex dealers, lack of flexibility to revise capital requirements by the regulator, inadequate and information asymmetries regarding the operations of foreign exchange markets; low uptake of the foreign exchange market and low financial literacy.

The inadequate provision of financial services and safety of customers of financial products has led to adverse effects including low profitability, low productivity of the population, a low tax base and a high rate of transformation to other businesses, calling for the amendment of the Act.

3. REMEDIES PROPOSED TO DEAL WITH THE DEFECTS

The Foreign Exchange (Amendment) Bill, 2023 seeks—

(a) to redefine foreign exchange business to include both physical and virtual buying and selling of foreign currency;

(b) to revise the minimum paid up share capital required to carry out foreign exchange business from one thousand to two thousand five hundred currency points;

(c) to increase the the minimum paid up share capital required to carry out foreign exchange business from one thousand to five thousand currency points;

(d) to provide that the minimum paid up share capital to carry out the business of dealing in money transfers shall be ten thousand currency points;

(e) to empower the Governor to revise the minimum capital requirements of foreign exchange and money remittance businesses by a statutory instrument in consultation with the Minister, from time to time;

(f) to provide for civil penalties for non-compliance with the Act;

(g) to empower the minister to revise the fees prescribed in section 5 (2) by statutory instrument;

(h) to require forex bureaus and money remitters to furnish the Bank of Uganda with all information and data of its operations in Uganda, including periodic returns and make provision for civil penalties;

(i) to provide for the use of technology in the operation and levying of administrative penalties;

(j) to provide for the strengthening of the vetting requirements; and

(k) to harmonise the regulatory regime pertaining to foreign exchange bureaus and money remittance companies within the East African Community.

MATIA KASAIJA,
Minister of Finance, Planning and Economic Development.

THE FOREIGN EXCHANGE (AMENDMENT) BILL, 2023

ARRANGEMENT OF CLAUSES

Clause

A Bill for an Act

ENTITLED

THE FOREIGN EXCHANGE (AMENDMENT) ACT, 2023.

An Act to amend the Foreign Exchange Act, 2004 to provide for the enhancement of the minimum capital requirements to carry on foreign exchange business; to provide for the use of technology in operations; to provide for the levying of administrative penalties; to provide for the strengthening of the vetting requirements; to harmonise the regulatory regime pertaining to foreign exchange bureaus and money remittance companies within the East African Community region; and for related matters.

BE IT ENACTED by Parliament as follows—

1. Amendment of Act 5 of 2004

The Foreign Exchange Act, 2004, in this Act, referred to as the principal Act is amended in section 3—

(a) by substituting for the definition of "foreign exchange business" the following—

""foreign exchange business" means the business of physical or virtual buying and selling of foreign currency;";

(b) by inserting the following definition immediately after the definition of "Governor"—

"licensee" means a person licensed in accordance with this Act and regulations made under this Act to transact foreign exchange business or money remittance business;";

(c) by inserting the following definition immediately after the definition of "Minister"—

""money remittance business" means the business of foreign currency transfers consisting of the acceptance of monies for the purpose of transmitting them to persons resident in Uganda or another country;".

2. Amendment of section 5 of principal Act

Section 5 of the principal Act is amended—

(a) in subsection (1), by substituting for the words "any other law" the words "an Act of Parliament";

(b) by inserting immediately after subsection (2) the following—

"(2a) The Bank of Uganda may, by statutory instrument and in consultation with the Minister, revise the fees prescribed under subsection (2).";

(c) by substituting for subsection (3), the following—

"(3) "The minimum paid up share capital to carry out foreign exchange business shall be two thousand five hundred currency points.";

(d) by substituting for subsection (4), the following—

"(4) The minimum paid up share capital to carry out money remittance business shall be ten thousand currency points.";

(e) by inserting immediately after subsection (4) the following—

"(4a) The Governor may, by statutory instrument made in consultation with the Minister, revise the minimum capital requirements for foreign exchange business and money remittance business.";

(f) in subsection (5), by substituting for the words, "or renew a licence issued under subsection (2)", the word "a licence";

(g) by substituting for subsection (6) the following—

"(6) A licence issued under this section shall remain valid, unless suspended or revoked by the Bank of Uganda.";

(h) by repealing subsection (7);

(i) by substituting for subsection (8), the following—

"(8) The Bank of Uganda may, when issuing a licence under this section, impose such conditions or restrictions on the licence as the Bank of Uganda considers appropriate.";

(j) by substituting for subsection (9) the following—

"(9) Notwithstanding any other law in force in Uganda, only a body incorporated under the Companies

Act, 2012 or under any other Act of Parliament with a minimum of two shareholders shall qualify for a licence under this section."

3. Insertion of section 5A in principal Act

The principal Act is amended by inserting immediately after section 5, the following new section—

"5A. On-going capital requirements

(1) The minimum capital fund for foreign exchange business and money remittance business, unimpaired by losses, shall not be less than the minimum capital required under section 5(3) and 5(4) respectively.

(2) Where a foreign exchange business or money remittance business is undercapitalised, the Bank of Uganda shall immediately take the following action—

(a) require the directors to submit a written explanation detailing the causes of the undercapitalisation and the measures being taken by the foreign exchange business or money remittance business to rectify the undercapitalisation;

(b) where the foreign exchange business or money remittance business remains undercapitalised for two consecutive quarters, the Bank of Uganda shall order the shareholders or directors of the foreign exchange business or money remittance business to recapitalise the foreign exchange business or money remittance business within a period not exceeding one hundred and eighty calendar days from the date on which the order is received by the foreign exchange bureau or money remittance business; and

(c) where the shareholders or directors fail to recapitalise the foreign exchange business or money remittance business within the time prescribed under paragraph (b), the Bank of Uganda shall revoke the licence of the foreign exchange business or money remittance business.

(3) For the purposes of this section, an undercapitalised foreign exchange bureau or money remittance business is one which does not comply with the capital requirements prescribed in section 5(3) and 5(4)."

4. Amendment of section 6 of principal Act

The principal Act is amended in section 6—

(a) in subsection (2), by repealing the words, "extended or renewed";

(b) in subsection (3), by repealing the words, "extended or renewed"; and

(c) in subsection (3) (b), by repealing the words, "extension, or renewal".

5. Amendment of section 9 of principal Act

Section 9 of the principal Act is amended—

(a) by substituting for subsection (2) the following—

"(2) All payments in foreign currency within Uganda, to or from Uganda, between residents and non-residents or between non-residents, shall be made through an entity licensed by the Bank of Uganda."; and

(b) in subsection (3) by substituting for the words "the business of money transfers" the words "money remittance business".

6. Insertion of sections 15A and 15B in principal Act

The principal Act is amended by inserting immediately after section 15, the following sections—

"15A. Furnishing of information

(1) Every licensee under this Act shall furnish to the Bank of Uganda, at such times and in such form as the Bank of Uganda may prescribe, all information and data relating to their operations in Uganda; including periodic returns.

(2) A licensee who, without reasonable cause, fails to comply with subsection (1) or who submits inaccurate information or returns shall pay an administrative penalty as may be levied by the Bank of Uganda.

(3) An administrative penalty levied on a licensee under subsection (2) shall not exceed one thousand currency points and shall be used by the Bank of Uganda to offset supervision costs and such monies shall be retained by the Bank of Uganda.

15B. Compliance with reporting requirements under Anti-Money Laundering Act, 2013

A licensee under this Act shall comply with the reporting requirements under the Anti-Money Laundering Act, 2013."

7. Amendment of section 17 of principal Act

The principal Act is amended in section 17(1) by substituting for the words "two hundred currency points" the words "one thousand currency points".

8. Insertion of section 17A in principal Act

The principal Act is amended by inserting immediately after section 17 the following—

"17A. Administrative penalties

The Bank of Uganda may, by statutory instrument, prescribe and levy administrative penalties on licensees for the contravention of this Act or regulations made under this Act."

9. Amendment of section 18 of principal Act

The principal Act is amended in section 18—

(a) by inserting immediately after subsection (1) the following—

"(1a) Without limiting the general effect of subsection (1), the Bank of Uganda may make regulations relating to—

(a) licence fees;

(b) security deposits;

(c) minimum and ongoing capital requirements for licensees;

(d) reporting requirements; and

(e) anything required or authorised by the Act to be prescribed by regulations;

(b) in subsection (2) (a) by substituting for the words "two hundred currency points" the words "one thousand currency points".

10. Insertion of section 22 in principal Act

The principal Act is amended by inserting immediately after section 21 the following—

"22. Act not to apply to financial institutions

For the avoidance of doubt, this Act does not apply to a financial institution licensed under the Financial Institutions Act, 2004 to conduct financial institutions business in Uganda."

11. Transitional

A foreign exchange bureau or money remittance business in existence at the commencement of this Act, shall—

(a) within sixty days from the commencement of this Act, comply with sections 15A and 15B; and

(b) within one hundred and eighty days after the commencement of this Act, comply with the requirements of section 5 (3) and 5 (4).

Cross References

Anti-Money Laundering Act, 2013, Act 12 of 2013.
Companies Act, 2012, Act 1 of 2012.
Financial Institutions Act, 2004, Act 2 of 2004.